

STATE OF NORTH CAROLINA

**BEFORE THE SECRETARY
OF REVENUE**

WAKE COUNTY

IN THE MATTER OF:)

**The Denial of Claim for Refund for)
Tax-paid Motor Fuel Used Off-Highway)
for Calendar Years 2000 and 2001 and)
Assessment in the Amount of \$16,659.55)
Issued June 23, 2003 by the Secretary of)
Revenue of North Carolina,**)

against)

[Taxpayer])

FINAL DECISION
(Docket No. 2004-278)

This matter was conducted before the undersigned Assistant Secretary for Administrative Hearings, Eugene J. Cella, in Raleigh, North Carolina on September 1, 2004. Neither taxpayer nor anyone representing Taxpayer appeared. Representing the Motor Fuels Tax Division was Investigations Supervisor J. Martin Barrow and Christopher E. Allen, General Counsel.

ISSUE

Whether the Division properly assessed Taxpayer for 2000 and 2001 for refunds of motor fuel taxes previously paid for alleged off road use of tax paid fuel when taxpayer failed to supply verifiable records documenting claimed nonhighway use.

EVIDENCE

The Division introduced the following items into evidence:

1. Motor Fuels Claim for Refund (Form 2101) filed by Taxpayer for tax year 2000.
2. Motor Fuels Claim for Refund (Form 2101) filed by Taxpayer for tax year 2001.
3. Screen print dated April 12, 2001 from Division's system (ITAS) showing total refund of \$7,236.32 for tax year 2000.
4. Screen print dated July 22, 2002 from Division's system (ITAS) showing total refund of \$5,355.07 for tax year 2001.
5. Field Audit Report dated May 29, 2003.
6. North Carolina Administrative Code, 17 NCAC 12B .0403 and .0404.
7. Notice of Tax Assessment dated June 23, 2003 for \$16,659.55.
8. Letter dated August 4, 2003 from Taxpayer to Julian W. Fitzgerald, Sr. requesting a hearing and including a 23-page equipment list.
9. Letter dated August 20, 2003 from the Division to Taxpayer confirming that the matter was placed on administrative hold pending receipt of additional information.
10. Transmittal letter dated September 5, 2003 from Taxpayer's vendor together with over 3,000 pages of documentation for fuel purchased by taxpayer for the years 2000 and 2001.
11. Letter dated November 3, 2003 from the Division to Taxpayer acknowledging receipt of the documents presented to the Division and requesting that taxpayer arrange for a meeting with Division auditors to properly prepare refund claims for the affected years.
12. Status report by the Division investigator dated February 15, 2004.
13. Letter dated June 7, 2004 from Eugene J. Cella to Taxpayer scheduling an administrative hearing for June 23, 2004.
14. Letter dated June 21, 2004 from Eugene J. Cella to Taxpayer scheduling an administrative hearing for September 1, 2004.

15. Memorandum dated May 16, 2001 by E. Norris Tolson, Secretary of Revenue, delegating to Eugene J. Cella the authority to conduct hearings required or allowed under Chapter 105 of the General Statutes.

FINDINGS OF FACT

From the evidence submitted at the hearing the undersigned Assistant Secretary enters the following findings of fact:

1. Taxpayer applied for a refund for tax-paid motor fuel used off highway pursuant to G.S. § 105-449.107(a) for the calendar years 2000 and 2001, filing the Motor Fuel Tax Division Form GAS-1201 (Motor Fuel Claim for Refund) for each year.
2. Initially, the Division accepted both applications and paid Taxpayer the requested refunds totaling \$12,591.38.
3. However, during a review of Taxpayer's refund claims, the Division investigator noted that they were filed with details from Taxpayer's fuel card vendor rather than actual receipts as required.
4. The Division's administrative rules detail specific information that is required to be included on a refund application, and what information that an acceptable invoice must contain to qualify as a valid receipt for refund for off-highway use of motor fuel.
5. These requirements include the name of machinery or equipment in which the fuel will be used, number of gallons used, date of purchase, name of purchaser and seller, address of seller, the number of gallons purchased, price per gallon, and the total amount paid. (*See* 17 NCAC 12B .0403 and .0404).
6. Investigator Heather Davis contacted Taxpayer on September 17, 2002, regarding the claims for refund, and advised taxpayer that the Division needed the actual receipts forming the basis for the claimed refunds.
7. Taxpayer's representative explained that Taxpayer did not receive the actual receipts or any other paper record from its vendor.
8. Rather, Taxpayer obtained an electronic text file on a monthly basis for the fuel purchases they downloaded from the vendor's website.
9. Taxpayer stated that they create a Microsoft Access database, extracting only the necessary information needed for the annual Form 1201.

10. Investigator Davis then explained that the Division needed verification from the vendor as to the amount of off-road fuel purchased during the audit period and a list of all nonhighway equipment used during these periods.
11. Investigator Davis provided taxpayer with a January 2003 deadline to submit the requested records.
12. When Taxpayer did not comply with the request for records, the claims for refund were adjusted and the Division issued an assessment on June 23, 2003 for \$16,659.55.
13. Taxpayer filed a request for a hearing dated August 8, 2003, protesting the assessment and providing a list of off-road equipment consisting of forklifts used to load and unload building supplies.
14. In this letter taxpayer stated that they had requested their vendor to provide printouts from their system showing fuel purchased in this State for the years covered in the Division's review.
15. The Division responded to Taxpayer by placing the matter on administrative hold pending receipt of the information from Taxpayer's vendor.
16. The Division received a box of computer-generated data from Taxpayer's vendor on September 5, 2003 and began its review of the documentation, consisting of over 3,000 pages of coded credit card fuel purchases for the tax years 2000 and 2001.
17. On November 3, 2003, the Division responded to Taxpayer stating that it was returning the materials and requesting that taxpayer arrange for a conference within thirty (30) days in order that Division auditors can assist Taxpayer in properly preparing the claims for refund.
18. The materials were returned to Taxpayer with a request for a conference to allow taxpayer an opportunity to organize and explain the material to Division auditors due to the sheer volume of material presented.
19. The parties agreed to meet on January 7, 2004, where Taxpayer's representative demonstrated to Motor Fuels Investigations Supervisor Martin Barrow and Investigator Davis, how text files were downloaded from the vendor's website and then used to create the Access database.
20. Taxpayer's representative also demonstrated how this material is then converted into a readable file where only the necessary information is extracted to prepare their Form 2101 refund claims.

21. During the demonstration Division investigators noted that there were several fuel purchases that were larger than the maximum gallons that tanks of any forklifts in taxpayer's equipment inventory could hold.
22. Taxpayer's representative was advised that they should supply the Division with a computer disk containing the access database and the Division would then review the database, make warranted adjustments to the refund claims, and then process the refunds.
23. The original mutually agreed deadline of January 31, 2004 was extended until February 15, 2004, to provide Taxpayer additional time to prepare the computer disk.
24. To date Taxpayer has been unresponsive.
25. This matter was referred to the Secretary for an administrative hearing, and the matter was scheduled for hearing June 23, 2004, and was rescheduled for September 1, 2004 at the request of Taxpayer.
26. Taxpayer failed to appear at the hearing, and has not presented the promised information, nor has it presented any additional documentation to refute the assessment herein.

CONCLUSIONS OF LAW

1. N.C.G.S. §105-449.107(a) provides for an annual refund for taxpayers that use tax paid fuel off-road.
2. However, it is axiomatic that refunds are analogous to exemptions from taxation, and the burden is upon a taxpayer to bring themselves within the expressly stated exemption or exclusion. *See Henderson v. Gill*, 229 N.C 313, 49 S.E.2d 754 (1948).
3. The Taxpayer herein has failed to tender to the Division invoices containing the required information to substantiate its refund claims for the tax years at issue pursuant to 17 NCAC 12B .0403 and .0404.
4. The Division's original deadline of January 2003 passed without Taxpayer producing the requested information.
5. The Division's second deadline of February 15, 2004, again passed without Taxpayer producing the requested computer disk.
6. Taxpayer has not demonstrated cooperation with the Division's efforts to obtain the necessary information upon which to make any adjustments to the assessment.

7. Taxpayer has not demonstrated compliance with the necessary requirements for refunds of taxes paid on motor fuel that it contends was used in operating its forklifts.
8. An assessment issued by the Secretary is presumed correct, and it is incumbent upon a Taxpayer to present evidence to refute the assessment proposed against him.
9. Taxpayer failed to appear at the hearing and present evidence to refute the assessment proposed herein.
10. The adjustments to the refund claims for the subject tax years leading to the assessment of tax, penalty and interest must therefore be affirmed in all respects.

WHEREFORE, the undersigned **HEREBY AFFIRMS** denial of taxpayer's refunds, the adjustments made by the Division and the assessment for tax of \$12,591.38, penalty of \$3,147.84, and accrued interest of \$1,904.99, for a total liability of \$17,644.21. Interest accrues at a rate of \$2.22 per day until paid.

This the 8th day of October 2004.

Eugene J. Cella
Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue