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STATE OF ARIZONA
EXECUTIVE HEARING OFFICE
DEPARTMENT OF TRANSPORTATION

IN THE MATTER OF THE DENIAL OF REFUND REQUESTS, A.R.S. §§ 28-5924, 28-5611, 28-5613	**IFTA-2614**
[redacted]	**FINDINGS OF FACT CONCLUSIONS OF LAW DECISION AND ORDER**
Petitioner.	

[redacted], Administrative Law Judge

Pursuant to the authority of A.R.S. §§ 28-5924, 28-5611, 28-5613, a hearing was scheduled to convene in the Executive Hearing Office of the Arizona Department of Transportation. The purpose of that hearing was to afford [redacted] ([redacted] or "Petitioner") an opportunity to show cause why the denial decisions issued by the Fuel Tax Refund Compliance Unit of the Arizona Department of Transportation ("Department") are in error as alleged by Petitioner in Petitioner's hearing requests. Pursuant to A.R.S. § 28-

5924(A), the scope of the hearing was limited to the reasons Petitioner listed in the original hearing requests.

On [redacted] 2019, the parties filed with the Executive Hearing Office a Joint Motion for Briefing Schedule & Continuance. On [redacted] 2019, an Order issued granting the parties' Joint Motion for Briefing Schedule & Continuance. The Administrative Law Judge accepted the parties' proposed deadlines of [redacted] 2020 for the submittal of "opening memoranda addressing the pure legal issues," and of [redacted] 2020 for the submittal of "combined opposition/reply memoranda." The Order further continued the hearing in this matter, if necessary, to a future date to be determined.

The parties filed their respective briefs pursuant to the proposed and accepted deadlines.

FINDINGS OF FACT

The dispute in this matter involves two applications for tax refunds filed by [redacted] with the Department for taxes paid for diesel fuel and gasoline used in vehicles for miles driven off-highway. The refund request for diesel fuel was in the amount of $[redacted] for the time period [redacted] 2016 through [redacted] 2016. The refund request for gasoline was in the amount of $[redacted] for the time period [redacted], 2016 through [redacted] 2016.

The Department denied both refund requests and sent [redacted] Notices of Additional Requirements informing [redacted] that the Department required "invoices/receipts/bill of lading showing fuel tax paid in Arizona must be submitted," and "[i]n addition to the Fuel Purchase schedule you have included, copies of invoices are required as stated on the refund application. Also, your Motor Vehicle Fuel Log Summary Schedule is listed by

month. We require it to be listed by the day of each fill up." *See* Additional Requirements Notice dated [redacted] 2018. [redacted] thereafter submitted additional documentation to the Department that the Department found still failed to meet the statutory and regulatory requirements.

[redacted] appealed the denials of its refund claims.

In its Memorandum of Law, [redacted] argues: i) its records are sufficient to establish that it purchased the motor fuel subject to the two refund claims at issue; and ii) [redacted] is permitted to calculate its refund claims using a methodology that provides a sufficiently reliable estimate of the daily off-highway miles driven and the daily off-highway fuel consumed by each vehicle operated by [redacted] in Arizona during the refund periods.

In its Opening Memorandum, the Department frames the issues as: i) whether [redacted]'s refund applications based on an estimate of off-highway fuel usage rather than off-highway mileage logs for its vehicles fail to meet the requirements of Arizona's fuel tax statues and rules; and ii) whether [redacted]'s refund applications fail to meet the requirements to prove that it paid tax on the fuel it purchased by failing to include the name and address of the fuel sellers, data broken down by vehicle, and reference to invoices.

[redacted]'s Methodology Argument

In calculating its refund claims, [redacted] relied on two weeks of telematics and [redacted] data from [redacted] 2018, to estimate the total miles its vehicles drove off-highway during that two-week period and resulting amount of fuel used by its entire fleet off-highway. [redacted] proposed to use that information and applied it to the two 2016 time periods for which it claimed a refund is owed. [redacted] asserted that "day in and day out, and year in and year

out, [redacted] cars typically drive the same routes." *See* [redacted] Memorandum of Law, page 4. According to [redacted], it prepared its refund claims as follows:

> . . . using millions of data points received from telematics devices included in the engine on each of [redacted] package cars operating in Arizona. . . . When superimposed over the coordinates of the government's public highway maps for Arizona, the telematics data provides an extremely accurate estimate of each [redacted] delivery route and the vehicle's mileage and speed while on Arizona highways and, more importantly, off of Arizona highways. With the benefit of fuel consumption data provided by the Electronic Control Module devices that are attached to the engines of each of [redacted]s vehicles, the off-highway mileage and speed can be used to accurately calculate the amount of fuel consumed off of Arizona's highways by [redacted].

Id. at 3.

[redacted] contends that there is no requirement in any Arizona law that prohibits a motor fuel tax refund claim from using an accurate estimate of the off-highway mileage driven as long as there is "competent proof" of off-highway use. [redacted] asserts that there is "simply no legal reason why [redacted] cannot base its refund claims on calculations derived from the measurement of the off-highway fuel consumed by every vehicle in its Arizona fleet during a two-week long (14 days) period." *Id.* at 4. [redacted] argues that it is permissible to use a sample methodology for calculation as competent proof. [redacted] purports that its methodology of using a two week sample of dates two years *after* the time frame of the requested refund provides an "accurate and reliable calculation" because "with minimal exception, [redacted] drove the same delivery routes in Arizona during the 2016 calendar year as they drove during the two week test period in [redacted] 2018." *See* [redacted] Memorandum of Law, page 12. Therefore, [redacted] contends that this methodology provides competent proof of the amount of the refund that should be issued by the Department. [redacted] asserts that it has complied with all the statutory and regulatory requirements *except*

that it has never had the actual daily off-highway mileage logs for its vehicles for the period at issue.

[redacted] further argues that none of the provisions of A.A.C. R17-8-604 prohibit [redacted] from using a "reliable methodology to calculate off-highway miles driven or the off-highway fuel consumed by its fleet of vehicles. Nor do these requirements mandate that [redacted] use the actual daily mileage of every vehicle in a fleet to claim a refund Tax for diesel fuel and gasoline used off-highway." *See* [redacted] Reply Memorandum, page 6.

Conversely, the Department argues that the statutes and rules pertaining to fuel tax refunds do not permit an off-highway sample to estimate off-highway usage, but rather require actual logs of off-highway mileage by vehicle. The Department urges that had the rules been intended to allow a sample study for an estimation (as [redacted] has done in this matter by using a two week period in [redacted] 2018 to estimate taxes paid for fuel used for off-highway mileage for the refund period of 2016), the language would reflect that intention. The Department cites to the fact that the rules specifically reference a motor fuel consumption study related to "power take-off." *See* A.A.C. R17-8-604(C)(2). Further, the rules for such a study state that the study shall be approved by the Department *prior to the application* for refund. *Id*. In this case, there is no provision for a sample study for off-highway fuel usage (as the Department has proposed), and even if there was such a provision, approval would have been required by the Department prior to the application.

The Department maintains that [redacted] position would require the Department to accept any methodology that a taxpayer chooses to estimate fuel used as long as it is "competent." This would place an unreasonable burden on the Department as it would be compelled to analyze every refund claim's methodology for competency.

Documentation Arguments

The Department denied [redacted] refund applications because they were estimated based on a sample of time approximately two years after the time frame covered by the applications, and because the applications were not complete applications as they did not provide the requisite supporting documentation and fuel logs.

Regarding whether [redacted] provided the Department with sufficient records to support its applications for the fuel tax refunds, [redacted] asserts that during the periods of the two refund claims, [redacted] made over 50,000 separate retail purchases of gasoline and diesel fuel and over 500 bulk purchases of fuel. *See* [redacted] Memorandum of Law, page 2. [redacted] filed computerized fuel purchase statements that listed each bulk purchase and a summary of the retail purchases by month for diesel fuel purchases and by day, by month, and by geographic territory for gasoline purchases. *Id.* Subsequently, [redacted] provided to the Department computerized fuel purchase statements that were prepared using electronic transaction data for each of the approximately 50,000 retail purchases and approximately 500 bulk purchases that it received through the Enterprise Resource Planning ("ERP") software that [redacted] utilizes. *Id.* at 3. [redacted] purports that this information complies with the statutory and regulatory requirements for fuel tax refunds.

The Department argues that the documentation submitted by [redacted] with its applications lacked the seller's name and address, and instead only provided the city where fuel was purchased. Further, [redacted] data is provided as a summary of the total daily purchases in a city, and not the purchases per vehicle per day. [redacted] data does not break down the information by transaction. [redacted] asserts that it filed "computerized fuel purchase statements that listed each of the bulk purchases and also provided a detailed schedule that

summarized the retail purchases by month (for diesel) and by day and geographic territory (for gasoline)." (Emphasis added.) *See* [redacted] Reply Memorandum, page 3. The computerized fuel purchase statements prepared by [redacted] were prepared "in lieu of paper invoices and receipts." *Id.* [redacted] acknowledges in its Opening Memorandum that neither individual invoices nor daily off-highway mileage logs existed. [redacted] submitted additional fuel purchase documentation attached to its Memorandum of Law, and while the newly submitted information may contain names and addresses for the fuel sellers, the transactions on the spreadsheet are not delineated by VIN.

The Department cited the example of a [redacted] purchase of 1,039 gallons of fuel on [redacted] 2016, in Joseph City. *See* Department's Opening Memorandum, page 7. The Department contended that this information is likely combined transactions for multiple vehicles as a single entry. Moreover, [redacted]'s data does not reference any invoices or documentation as a means of reference.

CONCLUSIONS OF LAW

The Arizona Legislature bestowed upon the Department the authority to adopt rules to enforce "provisions of the laws the director administers or enforces." A.R.S. § 28-366(3).

> When an agency adopts rules through the formal rulemaking process, those rules are given the force and effect of law. "[A] public entity's regulations, if consistent with its statutory scheme, 'are entitled to be given the force and effect of law,'" *Kaman Aerospace v. Arizona Bd. of Regents*, 217 Ariz. 148, 155 paragraph 29 (App. 2007).

See the Department's Reply Memorandum, page 2.

In this case, the Department adopted A.A.C. R17-8-601 and R17-8-604 governing motor fuel refunds and off-highway fuel use. Those administrative rules provide clarification on what is required to be submitted with refund applications for motor fuel. "[A]n administrative agency's interpretation of statutes and its own regulations is entitled to great weight." *Capitol Castings, Inc. v. Arizona Dept. of Econ. Sec.*, 171 Ariz. 57, 60 (App. 1992).

Pursuant to A.R.S. § 28-5611(A), a taxpayer shall receive a refund "on application to the director pursuant to this article *and if section 28-5612 is complied with,* a person who buys and uses motor vehicle fuel shall receive a refund in the amount of the tax if the person pays the tax on the fuel and either: 1. Uses the fuel other than in any of the following: (a) A motor vehicle on a highway in this state." (Emphasis added.)

A.A.C. R17-8-601 requires a "complete application" in order to grant a refund of fuel taxes paid. A "complete application" is "an application that includes *all supporting documentation and schedules* <u>*for the period of the refund claim*</u>, claimant signature, and *provides all information required on the application*." (Emphasis added.)

A.R.S. § 28-5612(C) governs the content that must be included in a fuel purchase statement. The statute gives the Department discretion to determine if an invoice is satisfactory. *The original invoice or a duplicate that is satisfactory to the director* and that includes the following information shall accompany the application:

1. The date of purchase.
2. The seller's name and address.
3. The number of gallons purchased.
4. The type of fuel purchased.
5. The price per gallon of the fuel.

6. Other information required by the director.

(Emphasis added.) A.R.S. § 28-5612(C)

A.R.S. § 28-5612(C) requires an original invoice or a satisfactory duplicate of an invoice. [redacted] has failed to submit an original invoice or a satisfactory duplicate of an invoice. [redacted] data is provided as a summary of the total daily purchases in a city, rather than the purchases per *vehicle* per day. [redacted] data does not break down the information by transaction. [redacted] admits that it provided a *summary* of the retail purchases by month (for diesel) and by day and geographic territory (for gasoline) and that the computerized fuel purchase statements prepared by [redacted] were prepared "in lieu of paper invoices and receipts." [redacted] Reply Memorandum, page 3. [redacted] acknowledged that individual invoices never existed. The Department's example of [redacted] purchase of 1,039 gallons of fuel on [redacted] 2016, in Joseph City evidences that transactions for multiple vehicles were combined as a single entry, contrary to the requirement that fuel purchases be reported by vehicle identification number. A.A.C. R17-8-604(B)(1) requires that a complete application for refund shall include a "system or manual motor fuel log summary by VIN." Moreover, [redacted] data does not reference any invoices or documentation. The contents of [redacted] original and resubmitted refund claims do not meet the requirements of A.R.S. § 28-5612(C)(2) because they did not contain the seller's name and address. Instead, the documentation only provided the city where fuel was purchased. The name and address of the seller is statutorily required by A.R.S. § 28-5612(C)(2) and without such information, the Department cannot verify the seller and the tax paid or tax rate on the purchase.

The Department, in its discretion, determined that the documentation provided by [redacted] did not constitute invoices or duplicates "satisfactory to the director" because they did not meet the requirement that the fuel purchase statements be recorded by transaction by vehicle or VIN. *See* A.A.C. R17-8-604(B)(1)(a). [redacted] refund applications do not include the off-highway mileage logs for its vehicles. Instead, [redacted] provided information that related to a two-week study conducted in February 2018, not on records of actual times driven off-highway by vehicle.

Consequently, [redacted] cannot provide the documentation required by the applicable statutes and rules. The applications do not meet the requirement of a "complete application" because [redacted] cannot provide the supporting documentation and schedules *for the period of the refund claim* as required by A.A.C R17-8-601(A).

A.R.S. § 28-5615 indicates that a refund is only granted when the taxpayer can prove that it complies with the statutes and rules adopted by the Department. [redacted] asserts that it has met a "competent proof standard" under A.R.S. § 28-5615 which states:

> For the proper administration of this article and to prevent evasion of the use fuel tax, it is presumed, until the contrary is established by competent proof under rules and procedures the director adopts, that all use fuel received into any receptacle on a motor vehicle from which fuel is supplied to propel the vehicle is consumed in propelling the vehicle on the highways in this state.

The statutory presumption that fuel is used on-highway governs a claim until the taxpayer can show that the claim complied with all statutes as well as rules and procedures adopted by the Department. These statutes, rules, and procedures do not permit an estimate of mileage and fuel usage. They require a *complete application* including individual motor fuel logs by VIN in order to determine off-highway fuel usage.

[redacted] admittedly does not have off-highway mileage logs by vehicle, and therefore, it cannot provide logs that do not exist. The spreadsheet submitted by [redacted] contains combined information for both motor vehicle fuel and use fuel and pertain to both refund claims. The information as submitted provides no "straightforward method for ADOT to connect the data in the spreadsheet to the refund equipment schedules provided with each of the refund claims." *See* Department's Reply Memorandum, page 4. In the form as provided by [redacted], the Tribunal determines the spreadsheet is not competent proof of the actual fuel purchases that [redacted] has claimed as off-highway use.

Pursuant to A.A.C. R17-8-601(B)(5)(c), "if the Department determines that the supporting documentation required under these rules does not provide sufficient evidence of motor fuel tax paid, the Department may require the claimant to produce additional information." The Department notified [redacted] of the deficiencies that existed in its refund applications and requested that UPS produce the required documentation. [redacted] failed to produce statutorily and regulatory required information. As a result of [redacted] failure to "produce additional documentation as requested by the Department, within the time prescribed under subsection (B)(2)(d)," the Department acted in accordance with A.A.C. R17-8-601(B)(5)(d) in denying the refund requests. The arguments presented by [redacted] fail to establish error by the Department in denying the refund clams.

DECISION AND ORDER

After due and deliberate consideration of legal memoranda submitted by [redacted] and the Department, the Administrative Law Judge finds that [redacted] failed to prove that the Department erred in denying its refund claims. As such, the Department's denials of the refund claims at issue are affirmed.

It is so ORDERED this 19th day of May, 2020.

/s/ [redacted], Administrative Law Judge
Executive Hearing Office

Copies mailed this day of , 2020, to:

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