

02-1619  
Audit  
Signed 03/12/2003

BEFORE THE UTAH STATE TAX COMMISSION

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|-------------------------------------|---|--|---------|
| PETITIONER,                         | : |  |         |
|                                     | : | <b>Formal Hearing Decision and Order</b> |         |
| Petitioner,                         | : |  |         |
|                                     | : | Appeal No.                               | 02-1619 |
| v.                                  | : |  |         |
|                                     | : | Acct. No.                                | #####   |
| Auditing Division of the Utah State | : |  |         |
| Tax Commission,                     | : | Tax Type                                 | Income  |
|                                     | : |  |         |
| Respondent.                         | : | Tax Period                               | 2000    |

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Presiding:  
    Irene Rees, Administrative Law Judge

Appearances:  
    For Petitioner:    PETITIONER, Petitioner  
    For Respondent:   RESPONDENT REPRESENTATIVE 1, Assistant Attorney  
                          General, and RESPONDENT REPRESENTATIVE 2, Audit  
                          Manager, Auditing Division

STATEMENT OF THE CASE

Petitioner brings this appeal from an assessment issued by Respondent on August 21, 2002. The parties appeared at a status conference on January 15, 2003. At that time, Petitioner requested a Formal Hearing on the matter. This matter was argued in a Formal Hearing on March 6, 2003.

ISSUES

At issue in this case is a credit that Petitioner claimed on his individual income tax return for taxes paid on purchases of fuel used in equipment that he uses in his business. The credit was denied by the Division for two reasons: (1) Petitioner did not have records to demonstrate that tax had been paid on his fuel purchases, and (2) that Petitioner's use of the fuel does not qualify for the tax credit claimed.

### FINDINGS OF FACT

1. Petitioner operates a landscape service business in which he contracts to trench or otherwise prepare the ground of private residences or other properties for sod or seed.<sup>1</sup> His activities including plowing the soil and mixing additives into the soil, then preparing it for the installation of sod, seed or a spray application of seed. Petitioner does not grow, sell or install the sod or seed.

2. Petitioner stated that he took a credit for the fuel on his federal return because, in his opinion, his use qualifies under the federal definitions and instructions outlined in IRS Publication 378. Petitioner then applied the same credit to his state return.

3. The federal and state provisions for the income tax credit differ from one another as follows:

a. IRS Publication 378 indicates that a taxpayer may be eligible for a credit on the excise tax on, among other things, (i) fuel used in farming operations, and (ii) off-highway business uses. Petitioner describes his use as an off-highway business use within the federal definition.

b. The state credit for agricultural fuel set out in Section 59-13-202 of the Utah Code and Utah Administrative Rule R865-13G-8 allows a credit allows a credit for fuel used to operate or propel stationary farm engines and self-propelled farm machinery. The provisions limit refunds to persons who own or operate the land upon used for agricultural purposes or who works for hire to do custom jobs for farmers.

4. The Division disallowed the credit because Petitioner could not produce records to confirm that the paid tax on the fuel (and did not buy dyed fuel), and because, in the Division's opinion, Petitioner's use of the fuel does not qualify as an agricultural use within the meaning of the statute and rule.

### APPLICABLE LAW

1. With regard to eligibility for the credit, Utah Code Ann. §59-13-202 states in pertinent part:

(1) Any person who purchases and uses any motor fuel within the state for the purpose of operating or propelling stationary farm engines and self-propelled farm machinery used for nonhighway agricultural uses, and who has paid the tax on the motor fuel as provided by this part, is entitled to a refund of the tax subject to conditions and limitations under this part.

(2) Every person desiring a nonhighway agricultural use refund under this part shall claim the refundable credit on the state income tax return or corporate franchise tax return.

2. With regard to claiming the income tax credit for agricultural use, Utah Code Ann. §59-13-202 states in pertinent part:

(3) In order to obtain a permit for a refund of the motor fuel tax paid, an application shall be filed containing:

...

(c) location and number of acres owned and operated and the number of acres rented and operated . . . .

(d) number of acres planted to each crop, type of soil and whether irrigated or dry; and

(e) If the applicant is an operator of self-propelled or tractor-pulled farm machinery which the applicant works for hire doing custom jobs for other farmers, the application shall include information the commission requires. . .

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3. With regard to record keeping requirements, Utah Code Ann. 59-13-202 (4) requires the applicant to “retain the original invoice to support the claim.”

4. Regarding exemptions for other off-highway uses, Utah Code Ann. §59-13-301 (2) (a) and (b) state in pertinent part:

(a) No special fuel tax is imposed or collected upon dyed diesel fuel which:

(i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the public highways of the state . . . .

(b) No special fuel tax is imposed on undyed diesel fuel which:

...

(iii) is used in a vehicle off-highway;

(vii) is used in machinery and equipment not registered and not required to be registered for highway use.

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<sup>1</sup> Petitioner states that he has discontinued his own trenching operations and works in conjunction with another party to provide that service.

5. Regarding refunds for taxes paid on special fuel, Section §59-13-301 (10) of the Utah Code states:

- (a) The purchaser shall pay the tax on diesel fuel purchased for uses under Subsection (b) . . . and apply for a refund for the tax paid . . . .
- (b) . . . the commission shall make rules governing the application and refund for off-highway and non-highway uses provided under Subsections (2) (b) (iii), (iv), (vi), and (vii).
- (c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural uses shall be made in accordance with tax return procedures under Section 59-13-202.

6. Regarding record keeping requirements, Utah Code Ann. §59-13-312 (2) requires

[a]ny user claiming a refund for taxes paid to a supplier shall retain on file a receipt or invoice, evidencing the purchase of special fuel and the payment of the tax. The commission may require the user to furnish summaries or copies of original documentation substantiating the amount of refund claimed.

#### DISCUSSION

Petitioner owns a landscape service in which he prepares soil for the application of grass seed or seed spray application or for the installation of sod. He does not raise cultivate or raise or sell sod or other agricultural products.

Petitioner claimed a credit on his 2000 tax return for the tax paid on the fuel used to run the equipment that he uses in his business. Petitioner testified that he reviewed information pertaining to the federal tax credit, set out in IRS publication 378, and determined that he qualified for a credit for the excise tax paid on fuel used for “off-highway business use.” Adopting that definition set out in the federal publication, Petitioner took the credit on his state return as well.

In arguing that his use qualifies for the income tax credit, Petitioner attempts to blend the federal off-highway business use income tax credit with the state agricultural income credit. For state purposes, the only income tax credit allowed pertains to agricultural use. See Utah Code Ann. §§59-13-202 and 59-13-301 (10) (c). Clearly, Petitioner is not an agricultural producer and, therefore, he is not entitled to the income tax credit.

Although Petitioner is not eligible for the income tax credit relating to agricultural uses, he may be eligible to purchase special fuel (i.e. diesel) tax free under provisions of §59-13-301 of the Utah Code. In the alternative, he may be eligible for a refund of the tax paid. The refund request must be submitted to the Taxpayer Services Division. Upon receipt of the request, the

Division will determine whether Petitioner's use is eligible for a refund and whether he has sufficient documentation to support his claim for refund.

Ideally, the Auditing Division would have informed Petitioner of the appropriate means for pursuing his refund claim, especially given that the statutory time limitations on those claims loomed close at hand. At this point, we encourage Petitioner to pursue his remedy with the Taxpayer Services Division. Because he technically made a claim at the time he filed his 2000 tax return, we deem the request to be timely as to any eligible overpayments made during tax year 2000.

DECISION AND ORDER

Petitioner has not supported a claim for an income tax credit for fuel used for agricultural purposes. Therefore, his request for abatement of the assessment issued by the Auditing Division is denied.

BY ORDER OF THE COMMISSION:

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Administrative Law Judge

The undersigned Commissioners have reviewed this matter and concur in this decision.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

**NOTICE OF APPEAL RIGHTS:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.