

05-0017
Refund Request
Signed 06/15/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
v.)	Appeal No.	05-0017
)	Account No.	#####
)		
TAXPAYER SERVICES DIVISION OF)	Tax Type:	Special Fuel
THE UTAH STATE TAX)		
COMMISSION,)	Judge:	Phan
)		
Respondent.)		

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner:	PETITIONER REPRESENTATIVE, VP Operations, COMPANY
For Respondent:	RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
	RESPONDENT REPRESENTATIVE 2, Assistant Director, Taxpayer Services Division
	RESPONDENT REPRESENTATIVE 3, Agent
	RESPONDENT REPRESENTATIVE 4, Agent

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. 59-1-502.5, on May 5, 2005. Petitioner is appealing the denial of a refund request for special fuel tax in the amount of \$\$\$\$ for the period of October 2001 through June 30, 2004. Respondent had issued the Statutory Notice denying Petitioner's claim for refund on December 9, 2004.

APPLICABLE LAW

(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, but his exemption applied only in those cases where the purchasers or the users of special fuel establish to the satisfaction of the commission that the special fuel was used for purposes other than to operate a motor vehicle upon

the public highways of the state; or (ii) is sold to this state or any of its political subdivisions. (Utah Code Sec. 59-13-301(2)(a).)

No special fuel tax is imposed on undyed diesel fuel which: (i) is sold to the United States government or any of its instrumentalities or to this state or any of its political subdivisions; (ii) is exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation; (iii) is used in a vehicle off-highway; (iv) is used to operate a power take-off unit of a vehicle; (v) is used for off-highway agricultural uses; (vi) is used in a separately fueled engine on a vehicle that does not propel the vehicle upon the highways of the state; or (vii) is used in machinery and equipment not registered and not required to be registered for highway use. (Utah Code Sec. 59-13-301(2)(b).)

Fuel used in a vehicle off-highway is calculated by taking off-highway miles divided by the average number of miles per gallon. Any other method of calculating undyed diesel fuel used off-highway must be supported by on-board computer information or other information that shows the number of gallons used off-highway with accuracy equal or comparable to on-board computers. (Utah Admin. Rule R865-4D-2(B).)

Where a power take-off unit is driven by the main engine of the vehicle and used to operate auxiliary equipment, a quantity, as enumerated below, of the total undyed diesel fuel delivered into the service tank of the vehicle shall be deemed to be used to operate the power take-off unit. The allowances for power take-off units are as follows:

1. concrete mixer trucks-20 percent;
2. garbage trucks with trash compactor - 20 percent;
3. vehicles with powered pumps, conveyors or other loading or unloading devices may be individually negotiated but shall not exceed: a) $\frac{3}{4}$ gallon per 1000 gallons pumped; or b) $\frac{3}{4}$ gallon per 6000 pounds of commodities, such as coal, grain, and potatoes, loaded or unloaded.
4. Any other method of calculating the amount of undyed diesel fuel used to operate a power take-off unit must be supported by documentation and records, including on-board computer printouts or other logs showing daily power take-off activity, that establish the actual amount of power take-off activity and fuel consumption. (Utah Admin. Rule R865-4D-2(C).)

Allowances provided for in B. and C. above will be recognized only if adequate records are maintained to support the amount claimed. (Utah Admin. Rule R865-4D-2(D).)

DISCUSSION

Petitioner operates a commercial (X). Petitioner requested refund of special fuel tax for fuel consumed in two different types of uses. Petitioner requests a refund for the portion of fuel consumed in Utah used to power air conditioning and heating units during highway operations, arguing that this fuel should be exempt as fuel used to operate a power take-off unit (“PTO”). Secondly, Petitioner requests a refund for the portion of fuel consumed while busses are idling for the boarding or offloading of passengers, baggage and cargo, arguing that it constitutes “off-highway” fuel usage. Utah Code Sec. 59-13-301(2) provides for an exemption from special fuel tax for fuel used in a vehicle “off-highway” and fuel used to operate a power take-off unit. It is Respondent’s position that Petitioner is not entitled to a refund for the portion of fuel used in either situation, as the uses do not qualify for exemption from special fuel tax. In addition Respondent argues that even if the uses qualified for exemption, Petitioner had provided insufficient documentation to support the portion of the total fuel consumed during these activities.

Concerning the first issue, whether heating and air-conditioning units fit within the PTO exemption, the Commission upon review of the party’s arguments in this matter concludes that they are not a PTO. A PTO is a unit that is driven by the main engine of the vehicle and used to operate auxiliary equipment. See Utah Admin. Rule R865-4D-2(C). The rule refers to vehicles with concrete mixers, trash compactors, powered pumps, conveyors or other loading or unloading devices that are powered by the main engine of the vehicle. Respondent cited to US Xpress, Inc. v. Utah State Tax Commission, 886 P.2d 1115 (1994) in support of its position concerning the heating and air-conditioning systems. However, although the court in that case considered air-conditioning units specifically, it had been decided prior to the adoption of the statutory exemption for fuel used by PTO’s. Regardless, it is the Commission’s position that a heating or air-conditioning unit used to heat or cool the passenger cabin of a vehicle is part of its normal operation and is not a PTO for purposes of the exemption.

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Considering the second issue, the fuel consumed while the buses are idling for boarding or offloading, the question is whether this is “off-highway” use of the vehicle. Respondent points out that most of the Utah stops are actually on a public highway or in a parking lot that is generally open to the public, for example one is at a COMPANY’S fast food restaurant, and ones is at a truck stop. Respondent points out that even in CITY, where Petitioner operates a traditional bus terminal, some loading and off-loading takes place with the buses parked on the city street. Respondent points to Tax Commission Private Letter Ruling 04-003, issued April 16, 2004, in which the Commission indicated that privately owned parking lots that are generally open to the public, are not considered to be “off-highway” for purpose of the fuel tax exemption. In fact the only type of parking lot mentioned in the private letter ruling that would be considered “off-highway” was the Federal Reserve parking lot that is fully fenced and gated and is not accessible to the general public. In this matter the information is insufficient to show if there is such a restricted parking area at that the (X) for loading and off-loading and which busses used the restricted area and how much fuel was consumed while idling in the restricted area. As was stated by the Utah Court of Appeals in US Xpress, Inc., it is Petitioner who bears the burden of proving that it qualifies for the exemption sought.

DECISION AND ORDER

Based on the foregoing, Petitioner’s appeal in this matter is denied. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

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Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2005.

Jane Phan

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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