STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Detroit Diesel Corporation,
Petitioner,

v

MTT Docket No. 319939

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

In this case, Detroit Diesel Corporation ("Petitioner") seeks a refund, with applicable statutory interest, from the Michigan Department of Treasury ("Respondent") of tax paid under the Motor Carrier Fuel Tax Act. It is Respondent's position that Petitioner is not entitled to the refund because Petitioner should have paid tax under the Motor Fuel Tax Act and not the Motor Carrier Fuel Tax Act. If Petitioner had paid tax under the Motor Fuel Tax Act, the refund claim would be time-barred due to the 18-month statute of limitations found in the Motor Fuel Tax Act.

The parties have filed cross-motions for Summary Disposition and briefs in support thereof. For the reasons set forth herein, the Tribunal finds that Petitioner is entitled to the requested refund and, as such, Petitioner's Motion for Summary Disposition should be granted pursuant to MCR 2.116(C)(10). It follows, then, that Respondent's Motion for Summary Disposition must be denied.

FINDING OF FACTS

It is undisputed that Petitioner filed tax returns and paid tax under the Motor Carrier Fuel Tax Act ("MCFTA"), being MCL 207.211 *et seq*, for the 2002 calendar year. The returns,[1] filed quarterly by Petitioner, are dated April 11, 2002, July 11, 2002, August 11, 2002, and January 29, 2003. It is also undisputed that on May 25, 2005, Petitioner filed Amended Returns for each of the four quarterly 2002 returns. Under the Amended Returns, Petitioner claimed a total refund of Motor Carrier Fuel Tax ("MCFT") for the 2002 calendar year of $167,419.09, plus interest accrued pursuant to MCL 205.23. By letter dated August 3, 2005, Respondent informed Petitioner that its claim for refund was denied because the claim was filed "well beyond the 18th month statutory time limit" found in Section 48 of the Motor Fuel Tax Act ("MFTA"), being MCL 207.1048(e).[2]

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

Respondent's Motion for Summary Disposition asserts that it is entitled to Summary Disposition under MCR 2.116(C)(7), MCR 2.116(C)(8), or MCL 2.116(C)(10). In its Brief in Support of its Motion for Summary Disposition[3], Respondent explained that to purchase fuel under the MCFTA, a taxpayer must file a Motor Carrier Fuel Tax application and be licensed. Once the taxpayer is licensed, the taxpayer receives a decal that permits it to pay tax at the rate of nine cents per gallon at the time of purchase. To remain licensed, the taxpayer must renew its application each year. Without the license, taxpayers are required to pay tax at the rate of 15 cents per gallon at the time of purchase.

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[1] Petitioner's Brief in Support of Motion for Summary Disposition, Exhibit A.
[2] Exhibit F to Petitioner's Brief in Support of Partial Motion for Summary Disposition, hereinafter referred to as "Petitioner's Brief."
[3] Hereinafter referred to as "Respondent's Brief."

According to Respondent, Petitioner was licensed under the MCFTA during the period 1997 through 2001. In 2002, Petitioner did not renew its Motor Carrier Fuel Tax application and, as such, did not obtain the decal or license necessary to purchase fuel under the MCFTA. Respondent argues that while Petitioner was not eligible to purchase fuel under the MCFTA, it continued to do so. Respondent further argues that Petitioner should have paid tax under the Motor Fuel Tax Act and pay tax at the rate of 15 cents per gallon when it purchased the fuel. Instead, Petitioner paid the MCFTA tax of nine cents per gallon, filed quarterly MCFTA tax returns, and paid the additional six cents per gallon tax with the quarterly returns. "Consequently, Detroit Diesel's improper behavior allowed Detroit Diesel to delay payment of a substantial amount of fuel tax until the end of each quarter." (Respondent's Brief in Support of Motion for Summary Disposition, p2)

In 2005, Petitioner filed its amended tax returns. "According to the amended returns, the reason for Detroit Diesel's refund request was fuel used for off-road purposes." (Respondent's Brief, p2) Respondent denied Petitioner's refund request and describes its reason for doing so as follows:

> There is one reason, and one reason only, that this case exists – because Detroit Diesel violated the provisions of the Motor Carrier Diesel Fuel Tax Act and improperly purchased fuel as a motor carrier during the tax period at issue. If Detroit Diesel had not improperly operated as a motor carrier and purchased fuel as a motor carrier – and had, instead, paid motor fuel tax, as it should have – it would have no claim whatsoever to a refund of tax at this late date. Therefore, to grant Detroit Diesel's refund request is to reward its improper conduct and its use of that improper conduct to circumvent the statutory requirements of the Motor Fuel Tax Act. (Respondent's Brief, p6)
>
> Detroit Diesel claims a refund that all parties agree it would no longer be entitled to, had it obeyed statutory requirements and paid the motor fuel tax to its supplier at the time of purchase. Detroit Diesel claims that it is nevertheless entitled to the refund, only because it improperly purchased fuel and filed returns as a motor carrier. (Respondent's Brief, p10)

Respondent also believes that Petitioner's refund request is improper because the Motor Carrier Fuel Tax Act does not include a tax credit for off-road use. (Respondent's Brief, p11) On the other hand, "[c]redits for off-road use are provided for in the Motor Fuel Tax Act[4]." (Respondent's Brief, p11) Respondent acknowledges that while there isn't a credit for off-road use in the MCFTA, the MCFT tax return "includes a line to calculate the credits for off-road use." (Respondent's Brief, p11)

Finally, in addressing which statute of limitations is applicable in this case, Respondent explained that the MCFTA does not contain a specific statute of limitations for refund claims. Given this, refund claims for taxes paid under the MCFTA are governed by the Revenue Act, which provides a four-year statute of limitations. On the other hand, the MFTA contains a specific statute of limitations that requires refund claims to be made within 18 months of purchase. Respondent argues that, because Petitioner should have paid taxes under the MFTA and not the MCFTA, the 18-month statute of limitations in the MFTA governs in this case.

PETITIONER'S MOTION FOR PARTIAL SUMMARY DISPOSITION ON LEGAL ISSUE ONLY

"Petitioner is a manufacturer of diesel engines and uses diesel fuel in engine testing and other various off road uses." (Petitioner's Brief in Support of Motion for Partial Summary Disposition, footnote 1, p2) According to Petitioner, the facts in this case are:

> Taxpayer [Petitioner] erroneously paid Motor *Carrier* Fuel Taxes (MCL 207.211 *et seq*) on both taxable and non-taxable (off-highway use) fuel (MCL 207.212.) Taxpayer should have paid Motor Fuel Taxes under the Motor Fuel Tax Act (MCL 207.1001 *et seq*), which also "exempts" from the tax fuel used for "nonhighway purposes" (MCL 207.1033). Taxpayer sought a refund of Motor *Carrier* Fuel Taxes paid on non-taxable fuel within the four-year period of limitations (MCL 207.216a; MCL 205.27a(2).) The Department of Treasury denied the Taxpayer's Motor *Carrier* fuel Tax Refund claim because the Taxpayer should have sought a refund of Motor Fuel Taxes within the 18-month

[4] MCL 207.1033 and MCL 207.1039.

> period of limitations in the Motor Fuel Tax Act (MCL 207.1048(e)) – even though the Taxpayer did not pay motor fuel taxes under the Motor Fuel Tax Act (*Id*). (Emphasis in original.) (Petitioner's Brief, p3)

Petitioner argues that "[i]t is an obvious and indisputable principle that a tax not paid cannot be refunded." (Petitioner's Brief, p7) Simply put, "Over-payments of Motor *Carrier* Fuel Taxes Must Be Refunded from Revenue Received Under the Motor *Carrier* Fuel Tax Act." (Petitioner's Brief, p8)

Petitioner further argues that Respondent's position must fail because it cannot cite any statutory authority in support of its position. Petitioner cites *Borden, Inc v Dep't of Treasury*, 43 Mich App 106, 110; 204 NW2d 34 (1972), and *Molter v Dep't of Treasury*, 443 Mich 537, 549; 505 NW2d 244 (1993), wherein the courts stated:

> If there were any doubt nevertheless, "tax exactions, property or excise, must rest upon legislative enactment, and collecting officers can only act with an express authority conferred by the law. Tax collectors must be able to point to such express authority so that it may be read when it is questioned in court. The scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer. *Id*. (Petitioner's Response to Respondent's Motion for Summary Disposition, p2)

CONCLUSIONS OF LAW

It is undisputed that Petitioner paid taxes and filed tax returns under the MCFTA. It is also undisputed that Petitioner should have paid taxes and filed tax returns under the MFTA. The question then is whether Petitioner's claim of a refund of taxes paid under the MCFTA is governed by the statute of limitations applicable to the MCFTA, or under the statute of limitations contained in the tax that Petitioner should have paid, that being the MFTA. If the statute of limitations applicable to the MCFTA is utilized, the refund claim is timely; if the statute of limitations applicable to the MFTA is utilized, the refund claim is untimely.

As previously discussed, the MFTA contains a specific statute of limitations for refund claims. Section 32 of the Act, being MCL 207.1032, states: "If a person **pays the tax imposed by this act** and uses the motor fuel for a nontaxable purpose as described in sections 33 to 47, the person may seek a refund of the tax." (Emphasis added.) Because Petitioner did not pay this tax, Petitioner may not seek a refund of the tax. The language is clear and simple.

Having made this determination, the question remains whether Petitioner may claim a refund under the MCFTA. The MCFTA does not contain a statute of limitations for refund claims. Instead, Section 6a of the Act provides that: "The tax imposed by this act shall be administered pursuant to Act No. 122 of the Public Acts of 1941." (See MCL 207.216a(1).)

Act No. 122 of the Public Acts of 1941, also known as the Revenue Act, provides that: "A taxpayer who **paid a tax** that the taxpayer **claims is not due** may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a." (Emphasis added.) (MCL 205.30(2)) In this case, there is no dispute that Petitioner paid the MCFT and that Petitioner has claimed that a portion of this tax is not due.

MCL 205.27a(2) provides that: "A taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return." Again, there is no dispute that Petitioner filed its refund claim before the expiration of the four year period. For these reasons, Petitioner is entitled to the claimed refund, plus interest at the rate calculated under MCL 205.23. (See MCL 205.30(1))

Respondent's argument that "[t]he Motor Carrier Diesel Fuel Tax Act does not provide for a tax credit for off-road use" is misleading, at best. (Respondent's Brief, p11) While it is true that the MCFTA does not provide for a "tax credit for off-road use," the MCFTA does not tax off-road use. The tax is applied "at the rate of 15 cents per gallon on motor fuel consumed **on the public roads or highways** within this state." (Emphasis added.) (MCL 207.212) In

other words, while the MCFTA does not contain a specific "credit" for off-road use, the tax paid on fuel ultimately used off-road may be used to offset the tax owed.

To paraphrase Respondent's final arguments, Respondent requests that the Tribunal deny Petitioner's refund claim because Petitioner violated the MCFTA and did not pay the proper tax. Respondent specifically requests that the Tribunal "[a]pply rules of equity to find that the applicable statute of limitations can be circumvented by improper behavior." (Respondent's Brief, p13)

In *Electronic Data Systems Corp v Township of Flint*, 253 Mich App 538; 656 NW2d 215 (2002), the Court of Appeals held that the Tribunal:

> . . . did not err by "refusing" to exercise its equitable powers as petitioner maintains. The Tax Tribunal's powers are limited to those authorized by statute, MCL 205.732; *Federal-Mogul Corp v Dep't of Treasury,* 161 Mich App 346, 359; 411 NW2d 169 (1987), and the Tax Tribunal does not have powers of equity, *id. Id*., pp548-549.

Because the Tribunal is not a court of equity and does not have equitable powers, Respondent's requests must be denied. Moreover, even if the Tribunal were authorized to exercise equitable powers, it is unlikely that it would do so in this case. According to Petitioner:

> . . . the Department has not heretofore denied that Petitioner acted in good faith in paying motor carrier fuel taxes and remitting motor carrier fuel tax returns for tax years 2002, having mistakenly believed the amended definition of "qualified commercial motor vehicle" had not changed so as to exclude Petitioner from the amended definition. In fact, it was Petitioner who voluntarily disclosed the licensing error to the Department at the time it filed its amended Motor Carrier Tax Returns . . . The Department has not proffered any evidence which would suggest that Petitioner knowingly or intentionally made false statements or returns or otherwise knowingly or intentionally violated the Motor Carrier Fuel Tax Act. (Petitioner's Response to Respondent's Motion for Summary Disposition, p4)

In conclusion, the Tribunal finds that Respondent has not cited any statutory authority for its position that the statute of limitations found in the MFTA should be utilized in determining whether Petitioner's refund claim was timely, even though Petitioner did not pay tax under the

MFTA. As the Michigan Supreme Court stated in *Mitcham v City of Detroit*, 355 Mich 182; 94 NW2d 388 (1959):

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. *Id*., p203.

Petitioner has moved for Partial Summary Disposition as to the legal issue only. Because there is no specific Tribunal rule governing motions for summary disposition, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such a motion. TTR 1111(4). MCR 2.116(C)(10) provides the following ground upon which a summary disposition motion may be based: "Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." In this case, the Tribunal finds that there is no genuine issue as to any material fact and that Petitioner is entitled to judgment as a matter of law. Furthermore, the Tribunal finds that Petitioner should be granted Summary Disposition in its entirety.

Therefore,

IT IS ORDERED that Summary Disposition pursuant to MCR 2.116(C)(10) is GRANTED in favor of Petitioner.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent shall remit to Petitioner its claim for refund of Motor Carrier Fuel Tax in the amount of $167,419.09, plus interest accrued under MCL 205.23. Interest shall be added to the refund claim pursuant to MCL 205.30.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: March 16, 2010

By: Patricia L. Halm