

MEMORANDUM OF DECISION: 47-20220055
Proportional Use Fuel Tax Credit
For the Year 2021

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Indiana Motor Carrier met its burden of establishing that it submitted its Proportional Use Credit refund claim within the quarterly period for which the proportional credit was claimed.

ISSUE

I. Motor Carrier Fuel Tax - Proportional Use Credit Refund.

Authority: IC § 6-6-4.1-4.8; *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988).

Taxpayer argues it timely filed a refund claim based on its proportional use credit.

STATEMENT OF FACTS

Taxpayer is an Indiana Motor Carrier. Publicly available information indicates that Taxpayer operates 38 power units (trucks) operated by 31 drivers. Taxpayer provides its customers general and specialized transportation services including transportation of refrigerated goods.

Taxpayer submitted a "Claim for Proportional Use Credit" (MCS-1789). In that claim, Taxpayer sought a refund of approximately \$6,000 in motor fuel tax. The MCS-1789 is dated January 28, 2022.

In a letter dated August 31, 2022, the Indiana Department of Revenue ("Department") denied the refund. The letter explained the reason for denying the refund.

Quarterly report or the claim for refund was received after the prescribed date, was received without payment or was paid late. Carrier is ineligible to claim a refund for the quarter.

Taxpayer disagreed with the decision and submitted a protest to that effect. In that protest, Taxpayer argued that the Department was wrong when it denied the refund on the ground that the claim was untimely filed.

I. Motor Carrier Fuel Tax - Proportional Use Credit Refund.

DISCUSSION

The issue is whether Taxpayer has established its refund claim was timely filed.

The credit is authorized under IC § 6-6-4.1-4.8 requiring the Department to refund tax based on it "proportional use" of motor fuel. IC § 6-6-4.1-4.8(c) provides:

The department shall determine the aggregate amount of proportional use credits claimed under section 4(d) of this chapter or section 4.5(e) of this chapter (before its repeal) for each quarter. The department may approve the full amount of a proportional use credit claimed by a carrier if the aggregate amount of proportional use credits claimed for the quarter and for the fiscal year do not exceed the limits set forth in subsection (d). If the aggregate amount of proportional use credits claimed in a quarter exceeds the limits set forth in subsection (d), the department shall pay the claims for that quarter on a pro rata basis.

IC § 6-6-4.1-4.8(d) imposes a "cap" on the dollar amount refunded carriers. In small part, IC § 6-6-4.1-4.8(d) provides:

The department may not approve more than three million five hundred thousand dollars (\$3,500,000) of proportional use credits under this section in a state fiscal year.

IC § 6-6-4.1-4.8(d) provides additional requirements specifically addressing instances in which the amount claimed exceeds the \$3,500,000 limit.

IC § 6-6-4.1-4.8(b) explains the means by which a carrier is required to submit its claim. In part, the statute provides:

In order to obtain a proportional use credit against taxes imposed under section 4 of this chapter or section 4.5 of this chapter (before its repeal) a carrier must file a claim with the department. The claim must be submitted on a form prescribed by the department and must be filed with the quarterly return for the taxable period for which the proportional use credit is claimed.

The Department is required to address claims submitted on the MCS-1789. The form explains that in order to claim the credit, the carrier must "Submit the MCS-1789 (Claim for Proportional Use Credit) by the due date on the form." Taxpayer's claim was for the fourth quarter of 2021, but the "Due Date" is not provided on Taxpayer's own claim.

The envelope in which Taxpayer submitted the claim was postmarked Tuesday, February 1, 2022. Taxpayer argues that the claim was submitted to the local post office on Friday, January 28, 2022. Taxpayer explains:

The claim for refund was mailed January 28, 2022, in Vincennes, Indiana. The copy of the envelope shows a postmark of February 1, 2022, in Louisville, Kentucky . . . [the local post office representative] said that even though it was mailed in Vincennes, it then goes to Evansville, Indiana and then on to Louisville, Kentucky or one other location. The envelope may not be postmarked until it finally gets to Louisville, Kentucky.

The Vincennes post office's representative confirmed Taxpayer's written account. The Vincennes representative explained that mail deposited in Vincennes is sent to Evansville and then sent to Louisville, Kentucky "for speed processing and stamp cancellation." The Vincennes representative explained that the local post office would postmark mail only if specifically requested and that its practice of forwarding local mail "is normal procedure for smaller and midsized USPS office[s]."

In assessing Taxpayer's objection, the Department bears in mind that the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

Taxpayer has met its burden of establishing that the MCS-1789 was submitted by Friday, January 28, 2022. However, This Memorandum does not address the merits of the refund itself. Instead, this Memorandum addresses only the question of whether the MCS-1789 was submitted within the "taxable period for which the proportional use credit is claimed" as called for by IC § 6-6-4.1-4.8(b).

FINDING

To the limited extent set out in this Memorandum of Decision, Taxpayer's protest is sustained.

February 15, 2023

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