



3. Notice of assessment dated October 14, 2003.
4. Letter dated November 14, 2003, received by the Division January 20, 2004, from Taxpayer to the Division requesting a hearing.
5. Letter dated July 21, 2004 from Eugene J. Cella to Taxpayer scheduling the administrative hearing for August 26, 2004 at the request of Taxpayer.
6. Memorandum dated May 16, 2001 by E. Norris Tolson, Secretary of Revenue, delegating to Eugene J. Cella the authority to conduct hearings required or allowed under Chapter 105 of the General Statutes.

### **FINDINGS OF FACT**

From the evidence presented, the undersigned Assistant Secretary entered the following findings:

1. During all times relevant to the audit and assessment herein, Taxpayer operated a golf course utilizing bulk storage of tax-paid motor fuel.
2. Taxpayer applied for and received refunds for tax-paid motor fuel used off highway pursuant to G.S. § 105-449.107(a) for tax years 2000, 2001, and 2002, having filed the Motor Fuel Tax Division Form GAS-1201.
3. Division Investigator D. R. Farmer performed a routine audit of Taxpayer's operation to verify that Taxpayer received appropriate refunds for the tax years at issue.
4. In the course of the audit, the investigator determined that Taxpayer maintained both gasoline and non-highway diesel bulk storage facilities at the maintenance shop, and gasoline storage at the pro shop for use in golf carts.
5. The auditor also determined that taxpayer did not own licensed vehicles.
6. Taxpayer did not keep logbooks or other types of withdrawal records for their bulk storage facilities, and did not maintain locks on the pumps but turned the electricity off when the maintenance shop closed at the end of the day.
7. The Division's Administrative Rules, 17 NCAC 12B .0413 and .0403, state that claims for refund of taxes previously paid require an accounting of tax paid motor fuel purchased and used, and further, must include the name of the machinery or equipment used and engine or motor number.
8. Without withdrawal records or logbooks, Taxpayer could not verify all the fuel they purchased was used exclusively in off-highway equipment.

9. The investigator found that Taxpayer reported 15,869 gallons of gasoline purchased during the audit period, and received \$3,042.07 in refunds for the three-year period.
10. The investigator reduced Taxpayer's refund claims by fifty percent (50%) due to inadequate accounting of off-road fuel usage, and issued an assessment for \$2,075.30.
11. Taxpayer filed an untimely objection to the assessment, and requested that the Division treat the request as timely.
12. The Division complied with this request, treating Taxpayer's request as timely, referring this matter to the Secretary for an administrative tax hearing.
13. The Division has subsequently amended the audit based upon revised computations, and amended the assessment herein accordingly.
14. The amended audit reflects a total liability of \$2,010.37 plus accrued interest from October 10, 2003.
15. Taxpayer presented no records during the audit to refute the assessment, did not appear at the hearing of this matter, and presented no additional information.

### **CONCLUSIONS OF LAW**

From the above findings of fact, the Assistant Secretary enters the following conclusions of law:

1. N.C.G.S. §105-449.107(a) provides for an annual refund for taxpayers that use tax paid fuel off-road.
2. However, it is axiomatic that refunds are analogous to exemptions from taxation, and the burden is upon a taxpayer to bring themselves within the expressly stated exemption or exclusion. *See Henderson v. Gill*, 229 N.C 313, 49 S.E.2d 754 (1948).
3. The Taxpayer herein has failed to demonstrate compliance with the necessary requirements to substantiate its refund claim by not maintaining an adequate accounting of off-road fuel usage.
4. The Division reduced the proposed assessment by allowing a 50% credit for unaccounted for fuel used off road.

5. Tax assessments proposed by the Secretary are presumed correct, and it is incumbent upon a Taxpayer to present sufficient evidence to refute the assessment proposed against them.
6. Taxpayer has not presented any information to refute the assessment proposed against it, and has not demonstrated its entitlement to any additional credit than the Division has previously allowed.
7. The proposed assessment must therefore be affirmed.

**WHEREFORE**, the undersigned **HEREBY AFFIRMS** the assessment for taxes previously refunded to Taxpayer, the adjustments made by the Division and the assessment for tax of \$1,536.97, penalty of \$384.24 and accrued interest of \$233.41, for a total liability of \$2,154.62. Interest accrues at a rate of \$.21 per day until paid.

This the 22 day of November 2004.

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Eugene J. Cella  
Assistant Secretary for Administrative Tax Hearings  
North Carolina Department of Revenue