STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RAD ENERGY CORPORATION	:	DECISION DTA NO. 818452
for Revision of a Determination or for Refund of Motor Fuel Tax under Article 12-A of the Tax Law for the Period January 1, 1998 through April 20, 1998.	:	

Petitioner RAD Energy Corporation, c/o Levine & Schulman, PC, 145 Pinelawn Road, Melville, New York 11747, filed an exception to the determination of the Administrative Law Judge issued on October 4, 2001. Petitioner appeared by Carl S. Levine, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (John E. Matthews, Esq., of counsel).

Petitioner filed a brief in support of its exception. The Division of Taxation did not file a brief in opposition. Oral argument, at petitioner's request, was heard on March 13, 2002 in New York, New York.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Tax Law provides authority to grant petitioner's application for a refund of prepaid motor fuel tax based upon a bad debt.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

The parties agree that there are no material facts in dispute.

During the relevant period, petitioner, RAD Energy Corporation, was registered as a motor fuel and diesel motor fuel distributor pursuant to sections 282 and 283 of the Tax Law and as a petroleum business as defined in section 300(b) of the Tax Law.

RAD sold 2,587,692 gallons of diesel fuel and gasoline to Bayview Fuel Oil, Inc. ("Bayview") from January 1998 through April 1998 (the "Bayview gallons"). All of the fuel was delivered directly to retail service stations in New York State.

As required by the Tax Law and regulations, RAD included the Bayview gallons on its petroleum business tax returns and paid all motor fuel and petroleum business taxes imposed under articles 12-A and 13-A of the Tax Law.

Bayview failed to pay RAD for the Bayview gallons and also failed to pay the related motor fuel, petroleum business and sales taxes on those gallons.

RAD subsequently determined that the Bayview account was uncollectible as defined in section 534.7(a)(1) of the sales tax regulations of the Division of Taxation ("Division").

RAD took a deduction for the Bayview bad debts on its Federal income tax returns, Form 1120S, for 1998. Bayview filed a Petition in Bankruptcy under Chapter 11 in the Eastern District of New York on April 26, 1999 and listed RAD as one of its 20 largest unsecured creditors.

RAD timely submitted a motor fuel tax refund application to the Division on January 31, 2001 requesting a refund of motor fuel taxes in the amount of $207,015.46, all of which relates to the taxes paid on the Bayview gallons.

RAD's claim for a refund of motor fuel taxes was denied in its entirety. In a letter dated March 14, 2001, the Division set forth the basis for its denial of the refund application as follows: "The reason for the denial is because Article 12-A does not contain a provision to allow a distributor a credit or refund for prepaid motor fuel tax where the distributor is not paid by the customer for the motor fuel."

On its Reports of Sales Tax Prepayment of Motor Fuel/Diesel Motor Fuel, RAD took bad debt credits for prepaid sales taxes on motor fuel and diesel motor fuel totaling $251,764.91 for the months of January through March 2000. These bad debt credits also related to the Bayview gallons. The Division granted the prepaid sales tax credits.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In her determination, the Administrative Law Judge noted that in order to obtain summary determination, the moving party must demonstrate by documentary evidence that there is no material issue of fact and that the facts mandate a determination in the moving party's favor. Based on the affidavit and documentation furnished by petitioner, the Administrative Law Judge concluded that there is no material issue of fact in dispute in this proceeding. Rather, the only issue was whether the Tax Law allows petitioner to take a credit against its motor fuel tax liability for the Bayview bad debt.

On this issue, the Administrative Law Judge concluded that the Tax Law does not allow for such a credit. In arriving at her conclusion, the Administrative Law Judge found that the

facts of this case are not distinguishable from the facts found in ***Matter of New York Fuel Terminal Corp.*** (Tax Appeals Tribunal, February 12, 1998 [hereinafter, "***NYFT1998***"]) and the holding of ***NYFT1998*** is binding precedent in this proceeding. In ***NYFT1998***, the Tax Appeals Tribunal (hereinafter the "Tribunal") affirmed, without discussion, the Administrative Law Judge's determination that there was no statutory authority for a taxpayer to receive a credit for prepaid motor fuel tax.

The Administrative Law Judge rejected petitioner's argument that the holding in ***NYFT1998*** was based, in part, on the Tribunal's conclusion that the petitioner had not shown that the debts in issue were bona fide bad debts as well as the argument that the holding in ***NYFT1998*** was tainted by the Tribunal's knowledge that the corporate principals of New York Fuel Terminal Corporation had been convicted of Federal tax evasion and of defrauding the government in the collection of Federal gasoline excise tax.

Despite petitioner's argument that the ***NYFT1998*** decision did not give sufficient weight to the interrelationship between Article 12-A of the Tax Law and Article 28 of the Tax Law, the Administrative Law Judge found that this same argument was considered and rejected by the Tribunal in ***NYFT1998***. The Administrative Law Judge quoted relevant portions of the Administrative Law Judge's determination in ***NYFT1998***, the reasoning of which had been adopted by the Tribunal in its decision. As a result, the Administrative Law Judge upheld the Division's denial of petitioner's claim for credit or refund.

ARGUMENTS ON EXCEPTION

On exception, petitioner relies on the rationale of ***Matter of New York Fuel Terminal Corp.*** (Tax Appeals Tribunal, October 26, 1995 [hereinafter, "***NYFT1995***"]), which held that a

registered distributor of motor fuel was entitled to a bad debt credit for prepaid sales taxes on motor fuel despite the lack of explicit statutory authority for such a credit. Petitioner argues that there is nothing in the Tax Law or the Division's regulations prohibiting a refund of motor fuel tax where the debt attributable to the underlying sale of motor fuel has become uncollectible. Petitioner points out that this same rationale was adopted by the Tribunal in an earlier case, ***Matter of Burnside Coal & Oil Co.*** (Tax Appeals Tribunal, September 29, 1994), concerning a claim for credit of the gross receipts tax. Petitioner takes the position that ***NYFT1998*** is not binding precedent because the legal holding was tainted by the felonious conduct of the taxpayer's corporate principals and because denial of the credit was based on a finding that the debts were not shown to be uncollectible. Further, petitioner asserts that the Administrative Law Judge incorrectly analyzed the interrelationship between Tax Law Articles 12-A and 28 relating to bad debts. Under the First Import Law (L 1985, ch 44) petitioner asserts Article 12-A and Article 28 taxes are imposed at the same time and on the same gallons of fuel. Petitioner maintains that pursuant to Tax Law §§ 289-f and 1142(11), the reporting, assessment, collection, determination and refund of taxes due under each of these articles are to be performed on a joint basis. Therefore, petitioner argues that the Tribunal erred in ***NYFT1998*** by deciding that the refund provision of Tax Law § 1132(e) concerning bad debts does not also apply to motor fuel tax. While the Tribunal was concerned in ***NYFT1995*** over who bore the burden of the tax if no bad credit were allowed, the Tribunal failed to consider this issue in ***NYFT1998***. Petitioner maintains that it is inequitable to single out motor fuel distributors and deny them a credit or refund for bad debts while allowing such credit/refund to other taxpayers on other types of excise taxes, such as the telecommunications tax under Tax Law § 186(1)(a).

The Division did not file a brief on exception but contends that the Administrative Law Judge properly weighed all the evidence presented in this matter and correctly decided the issues.

OPINION

Petitioner asks us to focus not on the fact that there is no statutory authority allowing the requested refund but on the fact that there is no statutory prohibition against granting petitioner's request for a refund. Specifically, petitioner analogizes its situation to that of the taxpayer in whose favor we decided ***NYFT1995***. The issue in ***NYFT1995*** was whether the credit or refund of sales and use tax allowed for bad debts pursuant to Tax Law § 1132(e) also applied to prepaid sales tax on motor fuel. We concluded that despite the fact that Tax Law § 1120 [the section which provided for a refund or credit of prepaid sales and use tax on motor fuel in specific instances] did not authorize a refund of prepaid sales and use tax on motor fuel for bad debts, such a refund was allowable due to the interplay of certain sections within Article 28, specifically Tax Law §§ 1102(b) and 1132(e).

The distinction between prepaid sales and use tax on motor fuel imposed pursuant to Article 28 and motor fuel tax imposed pursuant to Article 12-A is that there is no statutory authority anywhere in Article 12-A that allows a refund of motor fuel tax for bad debts. Neither Tax Law § 289-f of Article 12-A nor § 1142(f) of Article 28 provides authority (as does Tax Law § 1102[b] with respect to prepaid sales tax for motor fuel) that the specific provisions of Article 28 apply to Article 12-A.

In ***Matter of Airlift Intl. v. State Tax Commn***. (52 AD2d 688, 382 NYS2d 572) the court stated:

> In construing a taxing statute in order to determine what is included within its purview the rule is that the statute is to be strictly construed in favor of the taxpayer and against the taxing authority (***Matter of Nehi Bottling Co. v. Gallman,*** 39 AD2d 256, 333 NYS2d 824, ***affd*** 34 NY2d 808, 359 NYS2d 44, 316 NE2d 331; ***Matter of American Locker Co. v. Gallman***, 38 AD2d 105, 327 NYS2d 973, ***affd*** 32 NY2d 175, 344 NYS2d 358, 297 NE2d 96). In construing a taxing statute in order to determine the scope of a statutorily prescribed exemption, however, the rule is that the exemptions are to be strictly construed and that if any ambiguity or uncertainty exists it is to be resolved in favor of the sovereign and against exemption (***Matter of Aldrich v. Murphy***, 42 AD2d 385, 348 NYS2d 384) (***Matter of Airlift Intl. v. State Tax Commn.***, ***supra***, 382 NYS2d, at 574).

In order for petitioner to obtain a refund or credit of the motor fuel tax paid on sales where payment has been determined to be uncollectible, petitioner must demonstrate that it is authorized to deduct the uncollectible sales from its motor fuel tax base. A deduction has been found to be "functionally a particularized species of exemption from taxation . . . . [A] taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms" (***Matter of Grace v. New York State Tax Commn.,*** 37 NY2d 193, 371 NYS2d 715, 719, ***lv denied*** 37 NY2d 708, 375 NYS2d 1027). As set forth above, there is no statutory authorization that would enable petitioner to deduct the uncollectible portion of its motor fuel sales from its otherwise taxable transactions in order to obtain a credit or refund. Further, where a petitioner challenges the Division's interpretation of a statute, it must prove that its interpretation is the only reasonable interpretation, or that the Division's interpretation is unreasonable (***see***, ***Matter of Blue Spruce Farms v. New York State Tax Commn.***, 99 AD2d 867, 472 NYS2d 744, ***affd*** 64 NY2d 682, 485 NYS2d 526). Based on the foregoing, we find that the Division's interpretation of Article 12-A was reasonable, and, as a result, petitioner's challenge must be rejected.

Thus, we agree with the Administrative Law Judge's determination that despite petitioner's claims to the contrary, the facts of this case are not distinguishable from those in ***NYFT1998*** and the holding of that decision is binding precedent in this proceeding. We also reject petitioner's assertion that we should extend, by analogy, Tax Law § 301-l, which allows for a refund or credit of petroleum business tax paid for gallonage which is represented by a worthless debt. We do not dispute petitioner's logic that motor fuel tax, petroleum business tax and prepaid sales and use tax are all imposed on motor fuel imported into New York State. As refunds of prepaid sales and use tax and petroleum business tax are allowed for bad debts, it would be entirely consistent to allow a similar refund or credit of prepaid motor fuel tax as well on sales where payment is uncollectible by the seller. However, that is a matter entirely within the province of the Legislature to consider.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of RAD Energy Corporation is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of RAD Energy Corporation is denied; and

4. The Division of Taxation's denial of petitioner's claim for refund or credit is sustained.

DATED: Troy, New York
September 12, 2002

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner