

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.	:	DETERMINATION
for Revision of Determinations or for Refunds of Tax on	:	DTA NOS. 827916
Petroleum Businesses under Article 13-A of the Tax Law	:	AND 828547
for the Period September 1, 2013 through	:	
December 31, 2016.	:	

Petitioner, Watchtower Bible and Tract Society of New York, Inc., filed petitions for revision of determinations or for refunds of tax on petroleum businesses under article 13-A of the Tax Law for the period September 1, 2013 through December 31, 2016.

A hearing was held before Kevin R. Law, Administrative Law Judge, on November 1, 2018, in Albany, New York, with all briefs to be submitted by March 29, 2019, which date began the six-month period for issuance of this determination. Petitioner appeared by Beth L. Konken, Esq., and John O. Miller, Esq. The Division of Taxation appeared by Amanda Hiller, Esq. (Brian Evans, Esq., of counsel).

ISSUE

Whether petitioner, a tax exempt religious organization, qualifies for a refund of tax on petroleum businesses paid on non-highway diesel motor fuel used in its off-road equipment while building its world headquarters in Warwick, New York.

FINDINGS OF FACT

1. Petitioner, Watchtower Bible and Tract Society of New York, Inc., is a New York not-for-profit corporation exempt from sales and use taxes under section 1116 (a) (4) of the Tax Law. Petitioner's purposes are religious and charitable. Petitioner supports the activities of Jehovah's Witnesses by printing and distributing bibles and other religious literature; supporting bible-based education; supporting a religious order; providing humanitarian assistance in times of disaster; and building and owning facilities where many of those activities are organized, initiated, or performed.

2. On September 10, 2015, petitioner filed a claim for refund of tax on petroleum businesses in the amount of \$67,466.13, for the period September 1, 2013 through December 31, 2014. The refund application stated that petitioner used the non-highway diesel motor fuel (dyed diesel) "[f]or off road construction and farming equipment, emergency fuel for generators, and heaters." The refund application included invoices for the dyed diesel petitioner purchased during this time frame. The Division of Taxation (Division) does not take issue with the amount of tax claimed as a refund.

3. By letter dated September 27, 2015, the Division requested an equipment list of the items used in petitioner's farming and construction operations as well as a statement as to what petitioner does in relation to the refund request.

4. Petitioner responded to the Division's September 27, 2015 inquiry via letter dated October 7, 2015. Petitioner's response included a list of equipment as well as an explanation that the dyed diesel was used in its farming operations and during the construction of petitioner's world headquarters in Warwick, New York. As to its farming operations, petitioner explained

that its farms were located in Wallkill, New York, and provide fruit, vegetables and beef for its volunteer members in New York.

5. On November 12, 2015 the Division sent a refund claim determination notice (first refund denial) denying petitioner's refund request. Thereafter, the Division learned that the dyed diesel used by petitioner was delivered to a fuel truck with a hose and nozzle that was used to fuel petitioner's off-road construction equipment. With that knowledge, the Division issued an addendum to the first refund denial which clarified that the refund claim was denied because the dyed diesel was delivered into a fuel truck equipped with a nozzle.

6. Subsequently, on August 21, 2017, petitioner filed separate applications for refund of tax on petroleum businesses in the amounts of \$64,686.28 and \$10,891.03, for the calendar years 2015 and 2016, respectively (second and third refund requests). The second and third refund requests also included invoices for the dyed diesel petitioner purchased during this time frame. The Division does not take issue with the amount of tax claimed as a refund.

7. On October 6, 2017, the Division issued separate refund claim determination notices denying the second and third refund requests. These refund denials each state that, because petitioner's purchases of dyed diesel were delivered into a tank equipped with a nozzle that could be used to fuel a motor vehicle, petitioner did not qualify for the exemption.

8. At the hearing in this matter, petitioner presented the testimony of Dirk Johnson, a member of the Jehovah's Witnesses religious order, who oversaw the procurement of construction equipment and motor fuel for petitioner during the construction of petitioner's world headquarters in the Town of Warwick, New York. During his testimony, Mr. Johnson confirmed that none of the fuel that forms the basis of the refund claims was used for farming. All of the

dyed diesel that forms the basis of the refund claims was consumed by petitioner during this construction project.

9. Construction of petitioner's world headquarters began in 2013 and was completed in 2017. The facility was built primarily by members of a religious order who took vows of obedience and poverty and by religious volunteers, none of whom received any compensation for their services. The construction project was viewed by the religious order members and religious volunteers as an act of worship.

10. The construction of petitioner's world headquarters had some unique challenges as it was a small site occupied by many workers and many pieces of equipment, and there was a short schedule to complete the project. At the site, approximately 108 pieces of equipment owned by petitioner were fueled with dyed diesel. Petitioner also leased equipment that was fueled with dyed diesel. Some of this equipment was stationary, such as ground heaters and light towers. Other equipment was mobile, such as utility carts, forklifts, excavators, off-road dump trucks, loaders, bulldozers, backhoes, and cranes.

11. Petitioner accepted delivery of the dyed diesel into fuel tanks. Over the course of the project, the primary tank was a 4,500 gallon tank carried on a 2007 Peterbilt 335 fuel truck. For approximately two weeks while the Peterbilt fuel truck was unavailable, petitioner accepted delivery into a fuel tank carried on an International fuel truck and into a stationary tank located at petitioner's property in Tuxedo, New York. Petitioner owned all of these fuel trucks/tanks. For most of the project, petitioner dispensed the dyed diesel from its fuel tanks into a smaller 600-gallon tank on a fuel and lube truck that could easily navigate the construction site. This fuel and lube truck delivered fuel to the various pieces of equipment on site.

12. Each of the fuel tanks was equipped with a diesel nozzle that was capable of fueling the various pieces of equipment used by petitioner in the construction of its world headquarters. The diesel nozzles were too large to fuel most on-road vehicles such as passenger cars and trucks, but could fuel vehicles such as buses and tractor trailers.

13. During construction petitioner did not permit any of the dyed diesel to be used for on-road vehicles. Petitioner implemented policies, procedures, training initiatives, and security to prevent its nozzles from being used to fuel anything other than off-road equipment. The fuel truck tanks and nozzles could be engaged only with keys, and the keys were kept in a secure location. Only a limited number of authorized persons had access to the keys and were specifically trained to use the fuel only for off-road equipment for the construction project. Security guards patrolled the construction site, and gates at each entrance blocked unauthorized vehicles.

14. On-road vehicles were assigned electronic keys to access on-road fuel in a separate fueling area.

15. Petitioner's world headquarters now house a visitor's center, bible displays and exhibits showing the history of Jehovah's Witnesses, and administrative offices that support the international activities of Jehovah's Witnesses, including the preparation of bible teaching materials and publications and the coordination of disaster relief efforts.

CONCLUSIONS OF LAW

A. Article 13-A of the Tax Law imposes a tax on petroleum businesses operating in New York State. The tax is imposed at a cents-per-gallon rate on petroleum products sold or used in the state. The tax is passed through to the purchaser by the seller and included as part of the

selling price (*see* Tax Law § 282-a [4]). Tax Law § 301-b (h) provides an exemption for non highway diesel motor fuel (dyed diesel) sold to nonprofit organizations as follows:

“There shall be exempt from the measure of the petroleum business tax imposed by section three hundred one-a of this article a sale or use of residual petroleum product, or non-highway diesel motor fuel to or by an organization which has qualified under paragraph four or five of subdivision (a) of section eleven hundred sixteen of this chapter where such non-highway diesel motor fuel or residual petroleum product is exclusively for use and consumption by such organization, but only if all of such non-highway diesel motor fuel or product is consumed other than on the public highways of this state. Provided, however, this exemption shall in no event apply to a sale of non-highway diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and all deliveries hereunder shall be made to the premises occupied by the qualifying organization and used by such organization in furtherance of the exempt purposes of such organization. Provided, however, that the commissioner shall require such documentary proof to qualify for any exemption provided herein as the commissioner deems appropriate. Provided, further, the distributor selling such non-highway Diesel motor fuel and product shall separately report on its return the gallonage sold during the reporting period exempt from tax under the provisions of this subdivision and provide such other information with respect to such sales as the commissioner deems appropriate to prevent evasion.”

B. Under the plain wording of the statute, dyed diesel sold to or used by organizations that are exempt from sales and use taxes, is exempt from the petroleum business tax if: (i) it is delivered to the premises occupied by the qualifying organization; (ii) the fuel is exclusively for use and consumption in furtherance of its exempt activities; and (iii) the fuel is consumed other than on state highways. If, however, the dyed diesel is delivered to a filling station or into a repository which is equipped with a hose or other apparatus by which the dyed diesel can be dispensed into the fuel tank of a motor vehicle, the exemption does not apply. In this case, the first three requirements are not in dispute; rather, the controversy centers on whether petitioner's acceptance of the dyed diesel into its fuel trucks and stationary tank equipped each equipped with a nozzle disqualifies it from receiving the exemption under Tax Law § 301-b (h).

C. It is petitioner's contention that the definition of motor vehicle contained in Tax Law § 282¹ should be read into the statutory language of Tax Law § 301-b (h) as follows:

“Provided however, this exemption shall in no event apply to a sale of non-highway diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of [*any vehicle propelled by any power other than muscular, except boats, road building machinery, power shovels, tractor cranes, tractors used exclusively for agricultural purposes and such vehicles as are run only on rails or tracks*].”

Petitioner contends that Tax Law § 301-b (h) should be not interpreted to deny the exemption because there are no fuel nozzles in existence capable of filling the fuel tanks of road building machinery, power shovels, tractor cranes, etc., and not motor vehicles that are propelled on state highways. Instead, petitioner contends that Tax Law § 301-b (h) should be interpreted to allow the exemption in this situation because the dyed diesel was not permitted to be dispensed into any vehicle other than petitioner's construction equipment by virtue of the safeguards petitioner had in place.

D. Petitioner's assertions are rejected. Statutes creating tax exemptions are to be strictly and narrowly construed (*see Matter of Blue Spruce Farms v New York State Tax Commn.*, 99 AD2d 867 [1984], *affd* 64 NY2d 682 [1984]; *Matter of Grace v New York State Tax Commn.*, 37 NY2d 193 [1975], *rearg denied* 37 NY2d 816 [1975], *lv denied* 338 NE2d 330 [1975]). In cases of statutory exemptions, the presumption is in favor of the taxing authority and the burden of proving entitlement to an exemption rests with the taxpayer (*see Dental Socy. of State of N.Y. v New York State Tax Commn.*, 110 AD2d 988, 989 [1985], *affd* 66 NY2d 939 [1985]). In this case, the dyed diesel was admittedly delivered into fuel trucks, as well as a fuel tank, that were

¹Tax Law § 282 (3) defines motor vehicle as “any vehicle propelled by any power other than muscular, except boats, road building machinery, power shovels, tractor cranes, tractors used exclusively for agricultural purposes and such vehicles as are run only on rails or tracks.”

equipped with nozzles. The fuel was then dispensed into the tanks of petitioner's construction equipment. The fuel trucks in question were capable of fueling motor vehicles regardless of whether petitioner allowed such act to occur or not. The statute does not look to whether the exempt organization permits dyed diesel to be dispensed into motor vehicles but whether the repository where the dyed diesel is delivered can fuel a motor vehicle. Although petitioner argues that this interpretation renders the exemption impossible, the Division notes petitioner would qualify for the exemption if the supplier directly fueled petitioner's construction equipment rather than accepting delivery into intermediary repositories and then fueling its equipment. Based upon the foregoing, it is determined that the Division properly denied petitioner's refund claims.

E. The petitions of Watchtower Bible and Tract Society of New York, Inc., are denied, and the refund claim determination notices, dated November 12, 2015 and October 6, 2017, are sustained.

DATED: Albany, New York
September 26, 2019

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE