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GA. TAX TRIBUNAL
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Yvonne Bouras
Yvonne Bouras
Tax Tribunal Administrator

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

PAGE AVJET FUEL CO., LLC and SIGNATURE FLIGHT SUPPORT CORP.,	*	
Petitioners,	*	ADMINISTRATIVE APPEAL
v.	*	DOCKET NO. 1808885
DAVID CURRY, in his Official Capacity as Commissioner of the GEORGIA DEPARTMENT OF REVENUE,	*	
Respondent.	*	

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PETITIONERS' MOTIONS FOR SUMMARY JUDGMENT

This case is before the Tribunal on the parties' cross-motions for summary judgment. On August 15, 2019, Petitioners Page AvJet Fuel Co., LLC ("PAFCO") and Signature Flight Support Corp. ("Signature") filed a Motion for Summary Judgment for the Refund of Motor Fuel Excise Tax, a separate Motion for Summary Judgment for the Refund of Prepaid State Tax, and a request for oral argument on both of these motions. On that same day, Respondent David Curry, Commissioner of the Georgia Department of Revenue ("Department"), filed a Motion for Summary Judgment as to all of Petitioners' claims before the Tribunal.[1] On September 16, 2019, Petitioners filed a response to the Department's motion for summary judgment, and the Department filed a combined response to Petitioners' separate motions for summary judgment. On October 16, 2019, both parties filed replies to these responses. A hearing on these motions was held on November 22, 2019. Mr. Sean McLaughlin, Esq. and Mr. Brian Morrissey, Esq.

[1] The Department also filed a Motion to Exclude the Expert Testimony of Phillip Embry, who Petitioners had identified as their expert witness. After a response from Petitioners and a reply by the Department, the Tribunal denied this motion at oral argument on November 22, 2019.

appeared on behalf of the Petitioners. Mr. J. Scott Forbes, Esq. appeared on behalf of the Department.

Having read and considered the relevant briefs, and listened to the arguments of both parties, the Department's Motion is hereby **GRANTED**, Petitioners' Motions are **DENIED**, and judgment is entered in favor of the Department.

FACTUAL BACKGROUND

I. Signature Flight Support Corp.

1.

Petitioner Signature is the world's largest fixed-base operation and distribution network for aviation services.[2] Joint Stipulation of Fact ("JSF") ¶ 8. As a fixed-base operator, Signature provides services and fuel to consumer aircraft operators and corporate jets at major airports throughout the United States. JSF ¶¶ 8, 11; Deposition of Jeanne Atalksi p. 20. Signature operates approximately 120 locations in over 40 states and has about 2,500 employees in the United States. JSF ¶ 8. Signature also operates in Canada, Europe, the Caribbean, and certain locations in South America. JSF ¶ 8.

2.

Signature is a subsidiary of BBA Aviation, which is company based in the United Kingdom with over 5,000 employees worldwide. JSF ¶ 9.

3.

All of Signature's tax functions are performed by BBA Aviation's tax division, which is comprised of eight people and is responsible for corporate income taxes at the state and federal

[2] Unless otherwise noted, all facts referenced herein applied during the refund period of May 1, 2009 through May 31, 2014 ("Refund Period").

level, sales taxes, excise taxes, and fuel taxes throughout the United States. JSF ¶ 10. The tax division also performs tax research and uses a tax research network called CCH, which allows them to find information on federal and state tax matters and search state regulations by topic. Id. The tax division uses outside tax advisors, such as CPA firms for time-consuming or complex matters, and will escalate a tax matter to an outside tax attorney if needed. Id.

4.

Signature has operated in Georgia for over 20 years, and operated at airports in Savannah and Atlanta, Georgia during the Refund Period. JSF ¶¶ 11, 13. Signature provided jet fuel to various aviation organizations at its Savannah location as well as other services such as ground handling, lavatory services, interior cleanings, and catering. JSF ¶ 11. Signature had thousands of customers in Georgia and upwards of 35 employees. JSF ¶ 12.

II. Page AvJet Fuel Co., LLC

5.

Petitioner PAFCO is a fuel distributor that acts as an agent for Signature and manages the process of finding and purchasing aviation fuels such as jet fuel and aviation gasoline. JSF ¶ 4; Dep. of Atalski pp. 15-17. Generally, PAFCO purchases fuel from suppliers and then sells that fuel to Signature, and Signature in turn sells the fuel to its customers at its fixed-base operations. JSF ¶¶ 4, 6; Dep. of Atalksi pp. 16-17. Signature owns 50% of PAFCO, and Signature purchases all of the fuel that it sells from PAFCO. JSF ¶¶ 5-6. PAFCO operated in Georgia and held a Georgia motor fuel distributor's license throughout the Refund Period. JSF ¶ 3.

III. Signature's Government Fuel Contract

6.

In addition to providing fixed-base operations services to consumers, Signature commonly bids on government contracts to provide ground handling and fueling for government aircraft at all of its locations throughout the United States. Deposition of Sherri Miller pp. 6, 23. For government fuel contracts, Signature bids using an "into-plane fee" that includes both the fuel price and applicable taxes. See Dep. of Miller pp. 17-18. Rather than calculating these fuel prices and taxes itself, Signature relies on PAFCO for fuel pricing and to "break down every tax" applicable under the bid terms. Dep. of Miller pp. 17-18.

7.

On October 1, 2008, Signature made an offer on a United States Military solicitation to supply jet fuel at Savannah International Airport. Affidavit of Sherri Miller Exhibit A. Signature was awarded this contract on April 28, 2009, and agreed to sell jet fuel from May 1, 2009, through March 31, 2013. JSF ¶ 25; Aff. of Miller Ex. A. The rate that Signature billed the United States Military for jet fuel under this contract included both Georgia motor fuel tax and prepaid sales tax, but these amounts were not broken out in the contract or the bills Signature submitted to the United States Military. JSF ¶ 27. Signature purchased the jet fuel sold to the United States Military from PAFCO, and bills submitted by PAFCO to Signature included itemized Georgia motor fuel tax and prepaid sales tax. JSF ¶ 26.

8.

At some point in 2009, the United States Military stopped paying Signature the full amount billed on jet fuel sold under the contract. JSF ¶ 29; Dep. of Miller pp. 19-21. Signature only realized that the United States Military was not paying the bills in full when Signature's regional

employees began reviewing collection accounts at the end of 2012. JSF ¶ 30; Dep. of Miller pp. 21-22. Signature's witness Sherri Miller testified that the United States Military did not pay Signature for the amount of sales tax associated with the jet fuel sold. JSF ¶ 29; Dep. of Miller pp. 22-23. However, Miller did not know if the United States Military paid Signature for the amount of motor fuel tax on the jet fuel sold. Dep. of Miller pp. 22-23.

IV. Signature's Knowledge of Motor Fuel Tax Laws and Rules

9.

BBA Aviation's tax division did not perform any research into Georgia's motor fuel laws and regulations before Signature entered into its contract with the United States Military or before it began selling fuel under this contract. JSF ¶ 28; Dep. of Atalski p. 36. Nor did the tax division consult with any tax advisors or tax attorneys about the subject. JSF ¶ 28. In fact, BBA Aviation's tax manager Jeanne Atalski testified that she was not even aware of the United States Military contract when it was implemented and was not familiar with Department Rule 560-9-1-.10, which governs the sale of jet fuel in Georgia. Dep. of Atalski pp. 38-39.

10.

In states other than Georgia, Signature generally paid motor fuel taxes on jet fuel during the refund period. JSF ¶ 17. In most instances, PAFCO would bill Signature for motor fuel tax when it sold jet fuel to Signature, but in other states such as California, Signature was required to collect and remit motor fuel tax itself. Id.

11.

In states other than Georgia, Signature generally did not pay PAFCO sales tax on purchases of jet fuel during the refund period because it held resale certificates. JSF ¶ 18. However, Signature was required to pay prepaid sales tax on jet fuel in California and New York. Id.

12.

During the refund period, Signature held a motor fuel distributor's license in New York which covered its sales of jet fuel. JSF ¶ 19.

13.

As early as July 1, 2011, Signature staff were aware that it was not eligible for a refund of motor fuel tax because it did not hold a Georgia motor fuel distributor's license. Department's Statement of Material Facts ("Department's SMF") Exhibit B. Despite this, Signature did not apply for a motor fuel distributor's license until April 7, 2014. JSF ¶ 16.

V. Refund Claims

14.

On October 2, 2012, PAFCO filed a refund claim with the Department for motor fuel tax and prepaid sales tax remitted based on bulk sales of jet fuel to Signature from May 1, 2009, through December 31, 2009, totaling $123,673.38. JSF ¶ 33. On November 9, 2012, PAFCO filed a second refund request for motor fuel tax and prepaid sales tax remitted based on these sales from January 1, 2010 through December 31, 2010 totaling $341,426.70.[3] JSF ¶ 34.

15.

On January 24, 2013, the Department denied PAFCO's refund claim for the 2010 period for failure to provide documentation. JSF ¶ 35. On April 26, 2013, the Department denied PAFCO's refund claim for the 2009 period for failure to provide documentation. JSF ¶ 36.

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[3] Signature also filed a sales tax refund claim for the period of May 2009 through December 2009 on June 29, 2011. JSF ¶ 32. On August 28, 2014, the Department issued a letter to Signature stating that this claim could not be processed for failure to submit proper documentation. JSF ¶ 42. The Department's letter gave Signature until October 15, 2014 to provide the requested documents. Id. Signature denies receiving this correspondence, and the Tribunal makes no finding as to the validity of this refund claim as it is not part of the instant case. See Petition; First Amended Complaint.

16.

On October 17, 2013, the Department issued two letters again denying PACFO's 2009 and 2010 refund claims and stating that "the Department of Revenue does not issue refunds to non-license[d] distributors." JSF ¶ 38.

17.

On November 14, 2013, Tracy Sellers, Managing Director of True Partners Consulting, LLC filed a protest of the Department's October 17, 2013 denial on behalf of PAFCO. JSF ¶ 40. PAFCO's protest included a letter setting out relevant facts and providing a legal analysis supporting its claims for refund. Id. Notably, this letter disclosed that: Signature owned a 50% stake in PAFCO; Signature was the world's largest fixed-base operator and distributor of business aviation services, which included fueling; Signature had not possessed a motor fuel distributor's license at the time that it purchased fuel from PAFCO; and Signature had been unaware of the distributor's license requirement because it was "not typically" required to be licensed as a distributor in other states. Id. Sellers and other PAFCO representatives remained in communication with the Department while these protests were pending and responded to Department requests for additional documentation. JSF ¶ 41.

18.

On September 16, 2014, Rick Gardner, the Department's Manager of Contracts & Specialized Taxes, issued a letter to Tracy Sellers denying PAFCO's refund requests for the 2009 and 2010 periods. JSF ¶ 43. The denial letter stated that PAFCO's bulk jet fuel sales to Signature would have been exempt from motor fuel tax and prepaid sales tax had Signature held a distributor's license at the time of these sales. See id. However, as Signature was not licensed during this period, PAFCO's collection of tax was proper and PAFCO was not eligible for a refund.

Id. The denial letter also applied the facts presented in Tracy Sellers' protest letter to the text of O.C.G.A. § 48-9-18 to determine that:

> [I]n light of Signature's extensive business participation in the aviation industry as well as Signature's fifty percent ownership interest in PAFCO (which is itself a licensed distributor) the Department cannot accept as ground for relief that Signature did not know the germane legal and tax requirements governing its operation in the State of Georgia. More pointedly, if Signature did not know of the requirement to be licensed in order to be exempt from the taxes they "should have known" due to their expertise in the Aviation and fuel industries.

Id. Accordingly, the Department found that the discretionary relief provided by O.C.G.A. § 48-9-18 was not appropriate for Signature and neither Signature nor PAFCO were eligible for a refund. Id. Gardner also warned that the Department's response to refund claims for other tax periods would likely be the same unless the facts underlying these claims were substantially different. Id.

19.

On December 8, 2014, both PAFCO and Signature submitted identical refund claims for motor fuel tax and prepaid sales tax for bulk jet fuel sales from January 1, 2012 through December 31, 2012 totaling $386,267.44. JSF ¶ 44. On December 7, 2015, PAFCO and Signature submitted identical refund claims for motor fuel tax and prepaid sales tax for bulk jet fuel sales from January 1, 2013 through June 30, 2013 totaling $105,300.80. JSF ¶ 45. These additional refund claims consisted only of spreadsheets detailing Petitioners' sales of jet fuel during the claim periods and did not contain any additional factual or legal argument to support Petitioners' previously rejected request for relief under O.C.G.A. § 48-9-18. See JSF ¶¶ 44-45.

20.

On January 4, 2016, the Department issued a letter denying Signature's refund claim for the January 1, 2013 through June 30, 2013 period because Signature did not hold a motor fuel distributor's license at the time these sales were made. JSF ¶ 46.

21.

On September 29, 2016, PAFCO and Signature submitted identical refund claims for motor fuel tax and prepaid sales tax for bulk jet fuel sales from July 1, 2013 through May 31, 2014 totaling $245,407.69. JSF ¶ 47. These additional refund claims consisted only of spreadsheets detailing Petitioners' sales of jet fuel during the claim periods and did not contain any additional factual or legal argument to support Petitioners' previously rejected request for relief under O.C.G.A. § 48-9-18. See JSF ¶ 47.

22.

Petitioner's representatives continued to communicate with Department staff while these additional refund claims were pending. JSF ¶ 41.

23.

On November 30, 2016, the Department issued letters to Signature denying its refund claims for the January 1, 2013 to June 30, 2013 and July 1, 2013 to May 31, 2014 periods. JSF ¶¶ 49-50. There is no allegation that the Department has issued a decision letter for Signature's January 1, 2012 through December 31, 2012 refund claim. See JSF.

24.

On December 1, 2016, the Department issued letters to PAFCO denying its refund claims for the January 1, 2012 through December 31, 2012, January 1, 2013 through June 30, 2013, and July 1, 2013 through May 31, 2014 periods because Signature was not a licensed motor fuel distributor at the time these sales took place. JSF ¶¶ 53-55. The Department also issued two letters to PAFCO denying its refund claims for the May 1, 2009 through December 31, 2009 and January 1, 2010 through December 31, 2010 periods on the same basis even though these refund claims had been denied in the Department's September 16, 2014 letter ruling. JSF ¶¶ 51-52.

25.

On September 8, 2017, Petitioners filed their petition in the Tax Tribunal seeking a refund of $1,202,076.00 in motor fuel tax and prepaid sales tax for the period of May 1, 2009 through May 31, 2014. JSF ¶ 56.

26.

A timeline of the Petitioners' claims and the Department's responses is set forth below:

Date	**Filing**
October 2, 2012	PAFCO files refund claim for **5/2009-12/2009**.
November 9, 2012	PAFCO files refund claim for the **1/2010-12/2010**.
January 24, 2013	Department denies PAFCO's **1/2010-12/2010** refund claim for lack of documentation.
April 26, 2013	Department denies PAFCO's **5/2009-12/2009** refund claim for lack of documentation.
October 17, 2013	Department denies PAFCO's **5/2009-12/2009** and **1/2010-12/2010** refund claims because Signature was not a licensed motor fuel distributor.
November 14, 2013	PAFCO submits protests of the Department's October 17, 2013 denial of its **5/2009-12/2009** and **1/2010-12/2010** refund claims.
September 16, 2014	Department issues a letter ruling denying PAFCO's protest of the denial of its **5/2009-12/2009** and **1/2010-12/2010** refund claims.
December 23, 2014	PAFCO and Signature each file identical refund claims for **1/2012-12/2012**.
December 7, 2015	PAFCO and Signature each file identical refund claims for **1/2013-6/2013**.
January 4, 2016	Department issues a letter denying Signature's **1/2013-6/2013** refund claim.
September 29, 2016	PAFCO and Signature each file identical refund claims for **7/2013-5/2014**.
November 30, 2016	Department issues letters denying Signature's **1/2013-6/2013** and **7/2013-5/2014** refund claims.
December 1, 2016	Department issues letters denying PAFCO's **5/2009-12/2009**, **1/2010-12/2010**, **1/2012-12/2012**, **1/2013-6/2013**, and **7/2013-5/2014** refund claims.
September 8, 2017	Petitioners file petition in the Tax Tribunal for refunds covering the claim periods from 5/2009 through 5/2014.

See JSF.

27.

Petitioners' total claim of $1,202,076.00 was articulated as follows in Petitioners' First Amended Complaint ¶ 14:

Claim Period	Gallons Claimed	Amount of Prepaid Sales Tax Claimed for Refund	Amount of Motor Fuel Tax Claimed for Refund	Total Amount Claimed for Refund
5/1/09 – 12/31/09	1,332,980	$62,818.75	$60,854.63	$123,673.38
1/1/10 – 12/31/10	4,281,758	$199,388.70	$142,038.00	$341,426.70
1/1/12 – 12/31/12	1,771,869	$253,377.27	$132,890.19	$386,267.44
1/1/13 – 6/30/13	478,640	$69,402.80	$35,898.00	$105,300.80
7/1/13 – 5/31/14	1,149,745	$159,177	$86,231	$245,407.69
		$744,164.52	$457,911.82	**$1,202,076**

First Amended Complaint ¶ 14.

VI. The Department's Application Of O.C.G.A. § 48-9-18

28.

The Department does not have a formal, written policy on the interpretation and application of O.C.G.A. § 48-9-18. JSF ¶ 60; Deposition of Stephen DeBaun p. 12. This is because requests for waiver under O.C.G.A. § 48-9-18 are rare, and the Department generally only produces guidance for more common issues. JSF ¶ 60; Dep. of DeBaun pp. 11-12, 14-15, 55-56; Dep. of Phillip Embry p. 56. Petitioners' expert witness, Phillip Embry, could only recall two or three instances where a taxpayer requested relief under this Code Section during the period he oversaw motor fuel tax at the Department from 1986 to 2005. Dep. of Embry pp. 42-43. In situations like this without a written directive, Department staff evaluate the facts and circumstances of a

taxpayer's particular case with the goal of treating similarly situated taxpayers the same way. JSF ¶ 61; Dep. of DeBaun pp. 28, 56.

CONCLUSIONS OF LAW

I. Standard of Review

29.

The standard for a grant of summary judgment was succinctly set forth in Lau's Corporation, Inc. v. Haskins, 261 Ga. 491 (1991):

> To prevail at summary judgment . . . the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. A defendant may do this by showing the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff's case. If there is no evidence sufficient to create a genuine issue as to any essential element of plaintiff's claim, that claim tumbles like a house of cards. All of the other disputes of fact are rendered immaterial. A defendant who will not bear the burden of proof at trial need not affirmatively disprove the nonmoving party's case; instead, the burden on the moving party may be discharged by pointing out by reference to the affidavits, depositions and other documents in the record that there is an absence of evidence to support the nonmoving party's case. If the moving party discharges this burden, the nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue.

Id. at 491 (citations and emphasis omitted).

30.

It is well-settled that:

> [t]axation is the rule, and exemption from taxation [is] the exception . . . . Exemption, being the exception to the general rule, is not favored; but every exemption, to be valid, must be expressed in clear and unambiguous terms, and, when found to exist, the enactment by which it is given will not be enlarged by construction, but, on the contrary, will be strictly construed.

Georgia Dep't of Revenue v. Owens Corning, 283 Ga. 489, 490 (2008) (quoting Collins v. City of Dalton, 261 Ga. 584, 585-586 (1991)); Superior Pine Prods. Co. v. Williams, 214 Ga. 485, 493

(1958). Moreover, "the interpretation of a statute by an administrative agency which has the duty of enforcing or administering it is to be given great weight and deference." Owens Corning, 283 Ga. at 490 (citing Kelly v. Lloyd's of London, 255 Ga. 291, 293 (1985)); see also Pruitt Corp. v. Georgia Dep't of Community Health, 284 Ga. 158, 159 (2008) ("[J]udicial deference is to be afforded the agency's interpretation of statutes it is charged with enforcing or administering and the agency's interpretation of rules and regulations it has enacted to fulfill the function given it by the legislative branch."); Excelsior Elec. Membership Corp. v. Georgia Pub. Serv. Comm'n, 322 Ga. App. 687 (2013).

II. PAFCO's 2009 and 2010 Refund Claims

31.

The Tribunal finds that PAFCO's 2009 and 2010 refund claims are barred by the statute of limitations set out in O.C.G.A. § 48-2-35(c)(6)(A), which states that no action for the recovery of a refund can be commenced after the later of: (1) the expiration of two years from the date of the claim's denial or (2) 30 days after the date of the Department's notice of decision on a protest. See O.C.G.A. § 48-2-35(c)(6)(A)(i) and (ii). Here, PAFCO filed its 2009 and 2010 refund claims on October 12, 2012 and November 9, 2012, respectively. JSF ¶¶ 33-34. The Department issued two letters on October 17, 2013 denying these refund claims because refunds could not be issued to non-licensed distributors. JSF ¶¶ 38-39. PAFCO's representative filed a protest of these denials on November 15, 2013 along with a letter detailing the facts at issue and a legal analysis supporting PAFCO's claims for refund. JSF ¶ 40. The Department denied this protest in a letter on September 16, 2014, which set forth the basis of the Department's denial and unequivocally stated that PAFCO was not eligible for a refund. JSF ¶ 43. PAFCO did not file its petition in the Tribunal until September 8, 2017, almost 3 years after the Department issued its letter denying PAFCO's

2009 and 2010 refund claims and well beyond either time window set out in O.C.G.A. § 48-2-35(c)(6)(A).

32.

Petitioners argue that PAFCO's 2009 and 2010 refund claims are timely under O.C.G.A. § 48-2-35(c)(6)(A)(ii) because the Department issued additional letters purporting to deny these claims on December 1, 2016. JSF ¶¶ 51-52. However, this argument is without merit because these redundant denial letters do not "reset" the clock for appeal under O.C.G.A. § 48-2-35(c)(6)(A), and PAFCO's appeal is still untimely. See Collins v. Columbus Foundries, 262 Ga. 710 (1993) (second denial letter issued by the Department did not extend the limitation period for refund claim).

III. PAFCO's 2012, 2013, and 2014 Refund Claims

33.

Although both PAFCO and Signature filed identical refund claims for the 2012, 2013, and 2014 periods and rely on the same facts and legal arguments in support of these claims, these are separate refund claims filed by separate companies occupying different positions, and each set of claims must be analyzed separately. The Tribunal will begin with PAFCO's claims for motor fuel tax and prepaid state tax for the 2012, 2013, and 2014 periods, which are supported by three separate theories: (1) PAFCO's sales of jet fuel were not subject to motor fuel tax because the jet fuel sold was not a "motor fuel" under the Georgia Revenue Code; (2) PAFCO's sales of jet fuel were not subject to some or all of the prepaid state tax because this fuel was ultimately sold to a tax exempt government entity; and (3) even if PAFCO's sales of jet fuel were properly subject to motor fuel tax and prepaid state tax, the Department should have applied the waiver in O.C.G.A. § 48-9-18, and its decision not to do so was an abuse of discretion.

A. Motor Fuel Tax

34.

A motor fuel tax is imposed on any distributor who sells motor fuel within the state of Georgia. O.C.G.A. §§ 48-9-3(a)(1) (2014), 48-9-14 (2014). The incidence of this tax is imposed upon the distributor selling the fuel and not the purchaser. O.C.G.A. § 48-9-3(a)(1) (2014). "Motor fuel" is defined as "any source of energy that can be used for propulsion of motor vehicles on the public highways" and includes gasoline, compressed petroleum gas, fuel oils, and special fuels, which are any other source of energy. O.C.G.A. § 48-9-2(9), (15). "Fuel oils" are further defined to include "all liquid petroleum products, including but not limited to, kerosene," but not including gasoline or compressed petroleum gas. O.C.G.A. § 48-9-2(6). Jet fuel is specifically addressed as a motor fuel under Department Rule 560-9-1-.10.

35.

A fuel is a motor fuel so long as it can be used by a motor vehicle on the highway, and the fact that it has not been used on the highway in a particular instance does not rob it of its status as a motor fuel. See O.C.G.A. § 48-9-2(9). Motor fuel tax is imposed on "distributors who sell or use motor fuel" within Georgia, and there is no requirement that the fuel be used on a highway before or after the tax is imposed. See O.C.G.A. § 48-9-3(a)(1) (2014). Notably, motor fuel tax is imposed on the sale of motor fuel and not just the "retail sale" like sales tax for other goods. See O.C.G.A. § 48-9-3(a)(1) (2014).

36.

Further, the motor fuel tax statutes clearly call for imposition of the tax even in situations where the specific fuel being sold is not used on the highway. The only exemptions from motor fuel tax are those specifically enumerated in Code Section 48-9-3(b) (2014), and these include a

number of non-highway uses, such as sales of motor fuel for export, sales of motor fuel for heating purposes, and sales of dyed fuel oils for non-highway use. O.C.G.A. § 48-9-3(b)(3), (8), (9) (2014). None of these enumerated exemptions apply to sales of jet fuel by a licensed motor fuel distributor to an unlicensed reseller no matter the end use of the fuel. See O.C.G.A. § 48-9-3(b) (2014). This conclusion is reinforced by Code Section 48-9-5(b) (2014), which states that a reseller of fuel oils, compressed petroleum gas, or special fuel may only become qualified to purchase motor fuel exempt from taxes if it obtains a motor fuel distributor's license.

37.

Petitioners argue that the specific jet fuel at issue here, Jet Fuel A, cannot be subject to motor fuel tax because it cannot, in fact, be used for propulsion of motor vehicles on public highways. Petitioners also argue that the Department bears the burden to make this demonstration based on the specific chemical composition of Jet Fuel A and its interaction with highway compression-ignition engines.

38.

The Tribunal finds that Petitioners' statement of the burden of proof is incorrect. It is well understood that the taxpayer seeking a refund of taxes bears the burden to prove that they were illegally accepted. Hawes v. Bigbie, 123 Ga. App. 122, 123 (1970) (quoting Hawes v. Smith, 120 Ga. App. 158 (1969)). PAFCO has already remitted motor fuel taxes on the jet fuel at issue here, and if Petitioners choose to argue that they are owed a refund because this jet fuel was not a "motor fuel" they bear the burden to make this demonstration. As the movant in this motion for summary judgment, the Department only bears the burden to show that there is an absence of evidence to support Petitioners' claim that jet fuel is not a motor fuel. See Lau's Corp. v. Haskins, 261 Ga. 491, 491 (1991) ("A defendant who will not bear the burden of proof at trial need not affirmatively

disprove the nonmoving party's case; instead, the burden on the moving party may be discharged by pointing out by reference to the affidavits, depositions and other documents in the record that there is an absence of evidence to support the nonmoving party's case.").

39.

The legislature has chosen to define "motor fuels" broadly and inclusively, rather than using precise categories such as particular chemical compositions or even industry standards. A "motor fuel" is "any source of energy that can be used for propulsion of motor vehicles on the public highways including, but not limited to: (A) Gasoline; (B) Fuel oils; (C) Compressed petroleum gas; and (D) Special fuel." O.C.G.A. § 48-9-2(9). "Fuel oils" in turn are "all liquid petroleum products including, but not limited to, kerosene," and "special fuels" are "all sources of energy other than gasoline, fuel oils, or compressed petroleum gas." O.C.G.A. § 48-9-2(6), (15). These broad definitions make sense given the variable nature of fuels. For example, Petitioners have submitted excerpts of a U.S. Environmental Protection Agency report that discusses how fuels are commonly blended to overcome lubrication or wear problems or to meet changing environmental standards. See Petitioners' Statement of Material Facts in Support of Motion for Summary Judgment for the Refund of Motor Fuel Tax ("Petitioners' Motor Fuel SMF") Ex. 12 pp. 2-4.

40.

Accordingly, the Tribunal finds that the burden to show that the jet fuel sold by PAFCO was not a "motor fuel" as that term is defined in the motor fuel tax statutes falls on the Petitioners. The Tribunal also finds that the motor fuel tax statutes define "motor fuels" broadly, and that Petitioners must not only show that the particular type of jet fuel sold by PAFCO, Jet Fuel A, cannot be used on public highways, but that jet fuel in general cannot be used in such a manner.

41.

The Tribunal finds that Petitioners have not put forward any evidence demonstrating that jet fuel cannot be used on public highways. Rather, the only evidence submitted by Petitioners that addresses the highway use of jet fuel is a December 2000 U.S. Environmental Protection Agency report titled Regulatory Impact Analysis: Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements. See Petitioners' Brief in Support of Refund of Motor Fuel Tax ("Petitioners' Motor Fuel Brief") pp. 9-10; Petitioners' Motor Fuel SMF ¶¶ 5-6, Exhibit 12. This excerpt does not state that jet fuel cannot be used on public highways but instead presents only an analysis of experiences with low-sulfur fuels in the context of diesel fuel regulation. See Petitioners' Motor Fuel SMF Ex. 12 pp. 2-10. The only mention of jet fuel in the Regulatory Impact Analysis excerpts are passing statements about its lubricating qualities, but these statements do not demonstrate that jet fuel "cannot" be used on public highways. See id. at pp. 2-4, 8. Additionally, the Regulatory Impact Analysis points out that fuels are commonly blended to overcome lubrication or wear problems, and states that "[i]n practice, many [municipal bus fleet] operators procure aviation kerosene fuels, particularly in more temperate southern areas" even though these fuels may provide poor lubrication. Id. at pp. 2-4. At most, the Regulatory Impact Analysis shows that jet fuel may be a worse choice of highway fuel than other fuels, but it does not state or demonstrate that jet fuel "cannot" be used on public highways. See id.

42.

Petitioners also rely on the Regulatory Impact Analysis to argue that Jet Fuel A cannot be used in highway vehicles because this fuel's sulfur content exceeds federal environmental limits. See Petitioners' Motor Fuel Brief p. 10. This claim is without merit because federal environmental standards for motor fuels have no bearing on the application of a Georgia motor fuel tax statute

that makes no mention of or reference to these standards. See O.C.G.A. § 48-9-2. And, even if referencing federal environmental standards were appropriate, the regulations cited by Petitioners do not state that jet fuel is barred from on-highway use. See Petitioners Motor Fuel Brief p. 10; 42 U.S.C. § 7524; 40 C.F.R. §§ 80.500, 80.520, 80.610, 80.615.

43.

Instead of identifying a specific rule or statute that bans the use of jet fuel on highways, Petitioners claim that the existence of an industry cap on jet fuel sulfur content that is greater than the sulfur content standard for highway diesel fuel means that any use of jet fuel would be illegal. Petitioners' Motor Fuel Brief p. 10. However, the mere existence of a higher maximum sulfur content standard does not demonstrate that jet fuel cannot be obtained with a sulfur content that meets standards for highway use. Additionally, simply because the use of jet fuel on public highways may be a violation of environmental laws does not mean that jet fuel "cannot" be used on public highways as a matter of fact. Finding that a fuel is not a "motor fuel" simply because it does not meet EPA standards would allow sellers to evade Georgia motor fuel tax simply by selling fuel that does not comply with these standards. Neither the Regulatory Impact Analysis nor the EPA regulations cited by Petitioners show that jet fuel cannot be used on the highway.

44.

Instead, the undisputed facts of this case demonstrate that jet fuel is a type of kerosene, which falls within the definition of "fuel oils" subject to motor fuel tax. O.C.G.A. § 48-9-2(6), (9); Petitioners' Motor Fuel SMF ¶ 5 (stating that Jet A is a "kerosene-based product"); Ex. 12 p. 2 (describing Jet A as "[a]viation turbine kerosene"). Petitioners' own expert, Phil Embry, who by his own account has 20 years of experience working with the motor fuel industry and oversaw motor fuel tax with the Department for nearly two decades, does not allege that jet fuel is not a

motor fuel. See Dep. of Embry; Petitioners' Motor Fuel SMF Ex. 10A. Instead, Embry appears to accept that jet fuel is a motor fuel subject to motor fuel taxes:

> And that's why I had to learn not only what the tax policies and procedures were, but also what the industry was. **Because it's more than just gasoline and diesel, it's jet fuel and LPG and CNG and all of that other stuff.** So you had to know all of those industries.

Dep. of Embry p. 45 (emphasis added);

> Whether you sell on road or off-road fuel -- diesel fuel can be used either way. Gasoline, it's taxable wherever you use it. But in diesel fuel, there's many off-road uses of diesel fuel and there's obviously on road use of diesel fuel. **Jet fuel is under the category of diesel fuel.**

Dep. of Embry p. 53 (emphasis added). Similarly, Tracy Sellers, who represented Petitioners during their protest before the Department, recognized that "[m]otor fuel is defined to include fuel oils, of which jet fuel is considered." Affidavit of Jeanne Atalski Ex. V p. 7. These statements are consistent with how both Petitioners and the Department have acted leading up Petitioners' filing of their First Amended Complain on June 7, 2019. The Department has published a form for reporting motor fuel taxes that includes jet fuel among the reportable motor fuel types, and PAFCO properly remitted motor fuel tax from its sales of jet fuel to Signature. See Department's Statement of Material Facts in Support of Motion for Summary Judgment Ex. G; JSF ¶ 24.

45.

Even if there were any question of fact as to whether jet fuel can be used on the public highway as a matter of fact, the Tribunal finds that jet fuel is a motor fuel subject to motor fuel tax as a matter of law under Department Rule 560-9-1-.10, which is contained in the chapter addressing motor fuel tax and is titled "Jet Fuel." Paragraph (1)(a) of this rule states that "jet fuel' means any type of fuel oil that may be used to propel aircraft powered by turbine or turboprop engines." Further, the rule states that "[t]he sale or use of jet fuel for highway use in diesel engines

is subject to motor fuel excise tax" along with the sale of jet fuel to a reseller that does not hold a motor fuel distributor's license. GA. COMP. R. & REGS. r. 560-9-1-.10(2)(a), (3)(b). The rule even addresses fixed base operators like Signature, stating that sales of jet fuel to a fixed base operator do not incur motor fuel tax only as long as that operator possesses a distributors' license. GA. COMP. R. & REGS. r. 560-9-1-.10(2)(a), (3)(a). Accordingly, jet fuel is a "motor fuel" in the state of Georgia as a matter of law, and Petitioners' claims to the contrary are without merit.

46.

As jet fuel is subject to motor fuel tax, and it is undisputed that Signature did not hold a motor fuel distributor's license during the refund period, the Tribunal finds that motor fuel tax was properly imposed upon PAFCO for these sales. Accordingly, the Tribunal finds that PAFCO is not eligible for a refund of motor fuel tax.

B. Prepaid State Tax.

47.

During the refund period, all motor fuel sold in Georgia was subject to prepaid state tax which was composed of two elements: a "Second Motor Fuel Tax" of 3% of the sale price of motor fuel set out in O.C.G.A. § 48-9-14 (2014), and a 1% general sales tax imposed under the general sales tax statutes and O.C.G.A. § 48-8-3.1(2014).[4] Petitioners argue that PAFCO is owed a refund of the 3% Second Motor Fuel tax because this tax was "in fact a retail sales tax on motor fuel" and should be treated like sales tax to allow an exemption because jet fuel was ultimately sold to a tax

[4] The Second Motor Fuel Tax was abolished and taxes on motor fuels were substantially amended by the Transportation Funding Act of 2015. See Ga. L. 2015, pp. 236, 241-264, § 5-8 (HB 170). A history of these changes and a general history of motor fuel taxes and sales tax on motor fuel purchases is set out in detail in Ga. Motor Trucking Ass'n v. Georgia Dep't of Revenue, 301 Ga. 354 (2017). Because the refund periods here were prior to 2015, the former provisions in effect at the time apply in this case.

exempt entity, the United States Military. See Petitioners' Brief in Support of Refund of Prepaid State Tax ("Petitioners' Prepaid State Tax Brief") pp. 12-15. The Tribunal finds that this argument is without merit because: (1) the Second Motor Fuel Tax was not a sales tax as a matter of law; and (2) even if sales tax exemptions did apply, PAFCO does not meet the requirements for a refund of prepaid state tax.

48.

First, Petitioners rely on legislative and constitutional committee reports to argue that the Second Motor Fuel Tax was in effect a sales tax. See Petitioners' Prepaid State Tax Brief pp. 9-14. This reliance is misplaced because the text of O.C.G.A. § 48-9-14 (2014) is clear, and the Tribunal must apply this text rather than some intent set out in committee reports. See Gibson v. Gibson, 301 Ga. 622, 631-632 (2017).

49.

The Second Motor Fuel Tax was imposed differently from sales tax. Whereas sales tax is imposed upon the "retail purchase" or "retail sale" of tangible personal property, O.C.G.A. § 48-8-30(a) (2014), the Second Motor Fuel Tax "imposed by [O.C.G.A. 48-9-14] [was] *levied . . . upon the sale*, use or consumption, as defined in Code Section 48-8-2, of motor fuel in this state." O.C.G.A. § 48-9-14(b)(1). Notably, the term "sale" was not the same as a "retail sale" as that term is used in the sales tax statutes. See O.C.G.A. § 48-8-2 (2014). While the term "retail sale" is a sale "for any purpose other than for resale," O.C.G.A. § 48-8-2(31) (2014), the term "sale" is "any exchange, gift, consignment, bailment, or any other accounted for or unaccounted for disposition" without any reference to resale. O.C.G.A. § 48-8-2(14) (2014). Thus, a "sale" of motor fuel occurred even if the purchaser then resold the motor fuel in question, and by using the term "sale"

rather than "retail sale," the legislature chose to impose the Second Motor Fuel tax on the first sale of motor fuel within Georgia rather than any eventual retail sale. See O.C.G.A. 48-9-14(b)(1).

50.

The Second Motor Fuel Tax and sales tax were collected differently. Sales tax is generally imposed upon the purchaser at the time of retail sale and is collected by the retail dealer who remits this tax to the Department. O.C.G.A. § 48-8-30(b)(1). In contrast, the Second Motor Fuel Tax was imposed upon the sale, use or consumption of motor fuel in Georgia, and attached to a sale or transfer at the time the first motor fuel tax under O.C.G.A. § 48-9-3 was imposed. O.C.G.A. § 48-9-14(b) (2014). Rather than the final retail sale like sales tax, the Second Motor Fuel Tax was imposed on the first sale in Georgia, and it was collected by distributors rather than retail dealers. O.C.G.A. § 48-9-14(b)(2)(B) (2014).

51.

The Second Motor Fuel Tax was subject to different exemptions than sales tax. Whereas sales tax exemptions are generally set out in O.C.G.A. § 48-8-3, the only exemptions that applied to the Second Motor Fuel Tax were those that also applied to the First Motor Fuel Tax in O.C.G.A. § 48-9-3 and paragraph (j) of 48-8-30 (2014). O.C.G.A. 48-9-14(b)(1) (2014). Petitioners do not claim that any of the exemptions in O.C.G.A. § 48-9-3 apply here.

52.

The only overlap between the Second Motor Fuel Tax and sales tax was the provision in O.C.G.A. § 48-9-14(c)(1) (2014) which stated that the Second Motor Fuel Tax shall be administered and collected in the same manner as sales tax. This provision makes sense, as the Second Motor Fuel Tax was based on the fluctuating retail sale prices of motor fuel rather than a

fixed tax amount like the First Motor Fuel Tax.[5] See O.C.G.A. §§ 48-9-3(a)(1) (2014), 48-9-14(b)(1) (2014). Notably, this Code Section did not state that the imposition of the Second Motor Fuel Tax shall be the same as for sales tax or that exemptions for sales tax shall apply to the Second Motor Fuel Tax. See O.C.G.A. § 48-9-18. Accordingly, the text of O.C.G.A. § 48-9-14 (2014) is clear – the Second Motor Fuel Tax was a motor fuel tax and not a sales tax, and it must be applied in accordance with this Code Section rather than the statutes governing sales tax. The Tribunal finds that the Second Motor Fuel Tax was properly imposed when PAFCO sold jet fuel to Signature, PAFCO properly remitted this tax to the Department, and no refund of the Second Motor Fuel tax is owed to PAFCO.

53.

Even if sales tax exemptions did apply to the Second Motor Fuel Tax, PAFCO does not meet the conditions for a refund. Petitioners claim that PAFCO is eligible for a refund under O.C.G.A. § 48-8-30(j) (2014), which authorizes the refund of prepaid state tax for sales of motor fuel to the United States when certain conditions are met. First, only a licensed motor fuel distributor is eligible to claim a prepaid state tax refund, and that licensed distributor must be the same entity that "resells the same" motor fuel to the government entity. Id. Second, "[t]o be eligible for the credit or refund, the distributor *shall reduce the amount such distributor charges* for the fuel" by an amount equal to the exempt tax. Id. (emphasis added). Here, PAFCO was a licensed motor fuel distributor, but it sold fuel to Signature and not directly to a government entity. JSF ¶¶ 3, 22. Additionally, PAFCO did not "reduce the amount charged" and invoiced Signature

[5] However, even the tax calculation is different for the Second Motor Fuel Tax. While sales tax is calculated at the time of each retail sale, the Second Motor Fuel Tax is calculated ahead of time by the Department on a semi-annual basis using the average retail price of motor fuel within Georgia. See O.C.G.A. §§ 48-8-30(b)(1); 48-9-14(2)(B) (2014).

for both motor fuel tax and prepaid state tax. JSF ¶ 22. Therefore, PAFCO does not meet the requirements for a refund of prepaid state tax under O.C.G.A. § 48-8-30(j) (2014).

54.

Petitioners argue in the alternative that, even if PAFCO cannot receive a refund of the 3% Second Motor Fuel Tax under O.C.G.A. § 48-9-14 (2014), they are entitled to a refund of the 1% general sales tax imposed under O.C.G.A. § 48-8-3.1 (2014). See Petitioners' Prepaid State Tax Brief p. 20. This argument is without merit because the term "prepaid state tax" as used in Title 48, Chapter 8 included both the Second Motor Fuel Tax imposed under O.C.G.A. § 48-9-14 (2014) and the general sales tax imposed under O.C.G.A. § 48-8-3.1 (2014). O.C.G.A. § 48-8-2(24) (2014) (stating that "'[p]repaid state tax' means the tax levied under Code Section 48-8-30 in conjunction with Code Section 48-8-3.1 and Code Section 48-9-14"). As discussed above, refunds of "prepaid state tax" from sales of motor fuel to government entities are controlled by O.C.G.A. § 48-8-30(j), and PAFCO does not meet all of the conditions for refund under this paragraph. Accordingly, PAFCO is not eligible for a refund of the Second Motor Fuel Tax under O.C.G.A. § 48-9-14 (2014) or general sales tax imposed under O.C.G.A. § 48-8-3.1 (2014).

55.

Petitioners also argue that the mechanism for refund in O.C.G.A. § 48-8-30(j) is not exclusive and that they are still able to claim a refund under the general refund statute, O.C.G.A. § 48-8-35. Petitioners' Opposition to Department's Motion for Summary Judgment ("Petitioners' Opposition") pp. 13-14. This argument is flawed because it ignores the well-recognized rule of construction that "a specific statute will prevail over a general statute, absent any indication of contrary legislative intent to resolve any inconsistency between them." Hooks v. Cobb Ctr. Pawn & Jewelry Brokers, 241 Ga. App. 305, 309 (1999) (quoting Hosp. Auth. v. State Health Planning

Agency, 211 Ga. App. 407, 408 (1993)) (internal quotation marks omitted). Here, an inconsistency exists because allowing the type of refund claim that is specifically addressed by O.C.G.A. § 48-8-30(j) to proceed under the general refund statute would mean that the requirements in this paragraph would have no meaning. If taxpayers met the requirements, they could choose to proceed under this paragraph. If, like Petitioners, the taxpayers did not meet these requirements, they could simply ignore them and file a refund claim anyway. The requirements would be meaningless, and the legislature's enactment of this paragraph would have no effect.

56.

A court must construe a statute to give effect to all of its provisions and avoid any construction that renders any part of the statute meaningless. Sikes v. State, 268 Ga. 19, 21 (1997) (citation omitted). Further, a court must reconcile different sections of a statute to bring it into harmony and give consideration to the entire statutory scheme. Id. (citations omitted). The legislature intended O.C.G.A. § 48-8-30(j) to have some effect, and to give it effect, it should be treated as the exclusive method for refunds of prepaid state tax from sales of motor fuel to government entities.[6] Accordingly, O.C.G.A. § 48-8-30(j) controls here, and, because PAFCO does not meet the conditions in this paragraph, PAFCO is not eligible for a refund of prepaid state tax.

57.

Finally, even if PAFCO did meet the requirements of O.C.G.A. § 48-8-30(j), prepaid state tax was properly imposed. Department Rule 560-9-1-.10(3)(b) rule states that "[m]otor fuel excise

[6] Petitioners argue that this interpretation "would preclude the issuance of a refund for all other exempt motor fuels transactions . . . ." Petitioners' Opposition p. 14. However, O.C.G.A. § 48-8-30(j) only applies to refunds of prepaid state tax from sales to government entities, and nothing prevents a taxpayer from receiving a refund under this paragraph as long as it meets the requirements.

tax and prepaid state taxes shall be charged on the sale of jet fuel by a licensed motor fuel distributor to any other reseller who is not a licensed motor fuel distributor." Notably, this paragraph exempts resellers with valid dealer registrations from local sales tax, but does not exempt registered dealers from prepaid state tax, indicating that prepaid state tax is treated differently from sales tax. Id. Department Rule 560-9-1-.10(3)(b) is consistent with the statute that imposes prepaid state tax, O.C.G.A. § 48-9-14(b)(1) (2014), which states that "[t]he motor fuel tax imposed by this Code Section . . . upon the sale, use, or consumption" of motor fuel. (emphasis added). The term "sale" is further defined as "transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration" without making any distinction between retail sales and sales for resale. O.C.G.A. § 48-8-2(33)(A) (2014). Thus, as Department Rule 560-9-1-.10(3)(b) states, prepaid state tax is charged or imposed at the time motor fuel is sold to a person who is not tax exempt like a licensed motor fuel distributor. It does not matter that the unlicensed buyer may then resell the motor fuel or is registered as a dealer for the purposes of sales tax. This is consistent with O.C.G.A. § 48-9-14(b)(1) (2014), which states that the only exemptions that apply to prepaid state tax are those set out in O.C.G.A. § 48-9-3. As this Code Section does not establish an exemption for resellers that do not hold a Georgia motor fuel distributor's license, an unlicensed reseller purchasing motor fuel is subject to prepaid state tax, and PAFCO properly remitted prepaid state tax.

C. Waiver Under O.C.G.A. § 48-9-18

58.

Petitioners argue alternatively that, even if PAFCO's sales of jet fuel were subject to motor fuel tax and prepaid sales tax, PAFCO is entitled to the relief in O.C.G.A. § 48-9-18, and PAFCO

should receive a refund of all motor fuel tax and prepaid state tax less the 10% penalty set out in this statute. Code Section 48-9-18 applies to "any person required by this article to hold an uncanceled distributor's license" where such person "engages in business in this state as a distributor without such a license" and incurs tax liability that would not have been incurred with a license. O.C.G.A. § 48-9-18. When these conditions are met, the Department has *discretion* to waive the tax liability incurred and any applicable interest and penalties, and "assess in lieu thereof a penalty" of 10% of the tax liability. Id. Thus, there are three conditions for application of the relief in O.C.G.A. § 48-9-18: (1) the person must be required to hold a distributor's license; (2) the person must have engaged in business as a distributor; and (3) the person must have incurred tax liability because the person was unlicensed.

59.

The Tribunal finds that PAFCO is not eligible for relief under O.C.G.A. § 48-9-18 because it held a valid motor fuel distributor's license throughout the Refund Period. JSF ¶ 3. Code Section 48-9-18 states that relief is available to "any person" where tax liability is incurred "but for the fact that *such person* was unlicensed . . . ." (emphasis added). The person incurring the tax liability must be the same person that was unlicensed, and there is no reference to multiple "persons" or tax liability incurred because *some other person* was unlicensed. See id. The Tribunal finds that PAFCO cannot receive relief for Signature's unlicensed conduct.

III. Signature's 2012, 2013, and 2014 Refund Claims.

60.

Petitioners claim that Signature is owed a refund of motor fuel tax and prepaid state tax for the 2012, 2013, and 2014 periods under theories similar to those advanced for PAFCO: (1) Signature's sales of jet fuel were not subject to motor fuel tax because the jet fuel sold was not a

"motor fuel" under the Georgia Revenue Code; (2) Signature's sales of jet fuel were not subject to some or all of the prepaid state tax because this fuel was ultimately sold to a tax exempt government entity; and (3) even if Signature's sales of jet fuel were properly subject to motor fuel tax and prepaid state tax, the Department should have applied the waiver in O.C.G.A. § 48-9-18, and its decision not to do so was an abuse of discretion.

A. Motor Fuel Tax

61.

Petitioners claim that Signature's purchases of jet fuel from PAFCO and sales of jet fuel to the United State Military were not subject to motor fuel tax because the specific jet fuel sold was not a "motor fuel" under the motor fuel tax statutes. As discussed in detail above, the Tribunal finds that Petitioners have not put forward any evidence demonstrating that jet fuel cannot be used on public highways. Further, the Tribunal finds that even if a question of fact exists as to whether jet fuel is a motor fuel, that question is answered as a matter of law because jet fuel is a motor fuel subject to motor fuel tax under Department Rule 560-9-1-.10. Accordingly, the jet fuel sold by PAFCO to Signature was subject to motor fuel tax, and PAFCO properly remitted this tax to the Department.

62.

Additionally, Signature cannot claim a refund of motor fuel tax because motor fuel tax is imposed on the distributor making the first sale of motor fuel in Georgia, rather than a purchaser like Signature. Code Section 48-9-3(a)(1) states that an excise tax is imposed on a per gallon basis on distributors who sell or use motor fuel, and that the legal incidence of this tax is imposed on the distributor itself. It is undisputed that PAFCO was licensed as and acted as a motor fuel distributor here and remitted motor fuel tax on the jet fuel it sold to Signature. JSF ¶¶ 2, 4, 6, 22, 24. The

fact that PAFCO then invoiced Signature for this tax, and that Signature paid these invoices does not mean Signature is a taxpayer for the purposes of motor fuel tax. Accordingly, Signature is not eligible for a refund of motor fuel tax.

B. Prepaid State Tax

Petitioners argue that Signature is owed a refund of the 3% Second Motor Fuel tax because this tax was "in fact a retail sales tax on motor fuel" and should be treated like sales tax to allow an exemption because jet fuel was ultimately sold to a tax exempt entity, the United States Military. See Petitioners' Prepaid State Tax Brief pp. 12-15. As discussed in detail above, the Tribunal finds that this argument is without merit because the Second Motor Fuel Tax was not a sales tax as a matter of law and was imposed and collected differently from sales tax.

63.

Further, even if sales tax exemptions did apply here, Signature does not meet the requirements for a refund of the Second Motor Fuel Tax under O.C.G.A. § 48-8-30(j) (2014), which, as discussed above, controls refunds of prepaid state tax for motor fuel sales to government entities. This paragraph authorizes a refund only when a "distributor licensed under [the motor fuel statutes]" sells motor fuel directly to the government entity and reduces the amount charged by the amount of prepaid state tax. Id. Here, Signature did not meet these requirements because it was not a licensed motor fuel distributor, and it charged the United States Military for the full amount of motor fuel and prepaid state tax. JSF ¶¶ 15, 27.

64.

Finally, even if Signature did meet the requirements of O.C.G.A. § 48-8-30(j), prepaid state tax was properly imposed under Department Rule 560-9-1-.10(3)(b). As discussed above, this rule imposes prepaid state tax at the time motor fuel is sold to a person who is not tax exempt like a

licensed motor fuel distributor, even if that person later resells the motor fuel. GA. COMP. R. & REGS. r. 560-9-1-.10(3)(b). The Tribunal finds that Signature was just such an unlicensed purchaser, and that it is not owed a refund of prepaid state tax under this rule.

C. Waiver Under O.C.G.A. § 48-9-18

65.

Petitioners argue alternatively that even if the transactions at issue here were properly subject to motor fuel tax and prepaid sales tax, Petitioners are entitled to the relief in O.C.G.A. § 48-9-18, and should receive a refund of all motor fuel tax and prepaid state tax less the 10% penalty set out in this statute. As discussed above, PAFCO does not meet the requirements for relief under O.C.G.A. § 48-9-18, and neither does Signature.

66.

Three conditions must be met for the discretionary relief under O.C.G.A. § 48-9-18: (1) the person requesting relief must be required to hold a distributor's license; (2) the person must have engaged in business as a distributor; and (3) the person must have incurred tax liability because the person was unlicensed. Signature does not meet all of these conditions because it incurred no tax liability and was never required to hold a motor fuel distributor's license under Chapter 9, Article 1. As discussed above, unlike a retail sales tax that imposes tax on the customer at the time of retail sale, motor fuel tax is incurred when motor fuel is first sold in Georgia by a distributor. O.C.G.A. §§ 48-9-3(a)(l) (2014), 48-9-14 (2014). The incidence of this tax is imposed upon the distributor selling the fuel and not the purchaser. O.C.G.A. § 48-9-3(a)(l) (2014). The motor fuel tax here was incurred when PAFCO sold jet fuel to Signature, and the tax was imposed on and paid by PAFCO and not Signature. JSF ¶¶ 22, 24. The fact that PAFCO then billed Signature for this tax is immaterial – as a matter of law, Signature incurred no motor fuel tax and

there is no tax liability for which it can claim relief under O.C.G.A. § 48-9-18. Likewise, prepaid sales tax is collected and remitted by the distributor even if the motor fuel is resold by the purchaser. O.C.G.A. §§ 48-8-30(k), 48-9-14(b)(2) (2014).

67.

Signature was also not a "person required by [Chapter 9, Article 1] to hold an uncanceled distributor's license" when it purchased and resold jet fuel. O.C.G.A. § 48-9-18. A distributor's license is required for any person who produces motor fuel in Georgia, imports motor fuel into Georgia, or exports motor fuel from Georgia. See O.C.G.A. §§ 48-9-2(5), 48-9-4(a). An entity like Signature which simply resells motor fuel within Georgia "may elect" to become licensed as a motor fuel distributor but is not required to do so. O.C.G.A. § 48-9-5(b) (2014); see also O.C.G.A. § 48-9-2(5)(F). This is reflected in Department Rule 560-9-l-.10(3), which states that a fixed base operator that resells jet fuel would be exempt from motor fuel tax and prepaid sales tax if it is licensed but does not require all such fixed base operators to become licensed. Signature was not required to hold a motor fuel distributor's license under Chapter 9, Article 1, and it is not the type of person that qualifies for relief under O.C.G.A. § 48-9-18.

68.

Even if Signature were eligible for relief under O.C.G.A. § 48-9-18, the Tribunal finds that Petitioners have presented no evidence demonstrating that the Department abused its discretion in denying Petitioners' waiver request.[7] Specifically, the Department found that Signature "should have known" that it needed a motor fuel distributor's license to be exempt from motor fuel tax and prepaid sales tax and denied their refund claims on that basis. Petitioners claim that this conclusion

[7] Although the Department issued its September 16, 2013 denial letter in response to PAFCO's 2009 and 2010 refund claims, the Departments decision considered both PAFCO and Signature, and the Department determined that Signature was not eligible for a refund. JSF ¶ 43.

was unreasonable and an abuse of discretion. Petition ¶ 13. Even assuming O.C.G.A. § 48-9-18 can be applied here, Petitioners' claim is without merit because: (1) O.C.G.A. § 48-9-18 vests the Department with discretion to determine when to grant a waiver, and (2) the Department made its decision based on undisputed facts that were provided by Petitioners themselves and the standards set out in O.C.G.A. § 48-9-18.

69.

Petitioners bear the burden to demonstrate that the Department's decision was arbitrary and capricious, and they face a high bar to do so. See, e.g., Lasseter v. Ga. Pub. Serv. Comm'n, 253 Ga. 227, 231 (1984) ("The court in reviewing administrative decisions shall not substitute its judgment for that of the [Department] if there is any evidence to support its findings."). Agency decisions like the Department's decision cannot be disturbed based on a mere difference in opinion – a person challenging a decision must show as a matter of law that the decision was an abuse of discretion or arbitrary and capricious. Strickland v. Douglas County, 246 Ga. 640, 642-43 (1980). An agency decision must be upheld where the agency can demonstrate a "rational basis" for the decision made. Sawyer v. Reheis, 213 Ga. App. 727, 729 (1994). Any question about an agency's use of discretion "is not a jury question but a question of law for the court." Strickland, 246 Ga. at 643; see also Sawyer, 213 Ga. App. at 729 ("If arbitrary and capricious action is alleged the superior court must determine whether a rational basis exists for the decision made. This is a question of law.") (citations omitted).

70.

A reviewing court is required to abide by the well-established principle that administrative agency decisions which have a rational basis and are neither "arbitrary" nor "capricious" cannot be overturned by the superior court on judicial review. Sawyer, 213 Ga. App. at 727. Even if

other approaches could have been taken by the administrative agency, a reviewing court cannot substitute its judgment for that of the agency if the agency's decision has a reasonable basis to it. See id.

71.

This significant bar is required by the role agencies play in government. "[A]gencies provide a high level of expertise and an opportunity for specialization unavailable in the judicial or legislative branches. Agencies are able to use these skills, along with the policy mandate and discretion entrusted to them by the legislature, to make rules and enforce them in fashioning solutions to very complex problems." Strickland, 246 Ga. at 642 (quoting Bentley v. Chastain, 242 Ga. 348, 350 (1978) (internal quotation marks omitted). A broad scope of review would substitute the judgment of a reviewing court with that of the agency and nullify the purpose and benefit of delegation to a specialized agency. Id.

72.

The Tribunal finds that the Department's decision to deny Petitioners' request for refund was authorized under O.C.G.A. § 48-9-18. The Department's discretion under this statute is broad. Where there is qualifying tax liability, "the commissioner *may in his discretion* waive such tax liability" and assess a penalty of 10% of the tax liability instead. Id. (emphasis added). The only limit on the Department's discretion is the automatic denial of waiver for a taxpayer that: (i) failed to become licensed as a distributor prior to operating in Georgia; (ii) "knew or should have known" of the licensing requirement; and (iii) failed to remit taxes due. Id. Notably, there is no limit on discretion in the opposite direction – the Department is not compelled to grant a waiver to any taxpayer for any reason. See id.

73.

Faced with this broad discretion, the Department opted to consider the three factors for automatic denial when ruling on Petitioners' request for waiver. JSF ¶ 32. Based on undisputed facts, the Department found PAFCO had properly remitted all taxes due, but also found that Signature had not possessed a motor fuel distributor's license before it began operating as a distributor. Id. Considering whether Signature "knew or should have known" of the requirement to be licensed, the Department found that Signature should have known about the license requirement based on its experience in the aviation and fuel industries. Id. Nothing in O.C.G.A. § 48-9-18 barred the Department from considering these factors when deciding on Petitioner's request for waiver, and the Department's decision was well within the discretion provided by this statute.

74.

The Department made its determination that Signature "should have known" that it needed to be licensed as a motor fuel distributor to be exempt from motor fuel tax and prepaid sales tax using facts presented by Petitioners' own representatives. When PAFCO filed its protests with the Department on November 15, 2013, it included a letter from its representative, Tracy Sellers, setting out relevant facts and a legal analysis supporting Petitioners' position. JSF ¶ 40; Aff. of Atalski Ex. V. This letter disclosed that: Signature owned a 50% stake in PAFCO; Signature was the world's largest fixed-base operator and distributor of business aviation services, which included fueling; Signature had not possessed a motor fuel distributor's license at the time it purchased fuel from PAFCO; and Signature had been unaware of the distributor's license requirement because it was "not typically" required to be licensed as a distributor in other states.

Id. Petitioners' representatives also remained in communication with the Department while the protests were pending. JSF ¶ 41.

75.

The Department's decision essentially accepted and repeated the facts put forward by Petitioners verbatim. The Department acknowledged that Signature was a 50% owner of PAFCO and was the world's largest fixed base operator and distributor of business aviation services, which included fueling. JSF ¶ 42; Aff. of Atalski Ex. W. The Department also acknowledged Signature's claim that it would have been registered as a motor fuel distributor if it had been aware of the requirements. Id. Based on these undisputed facts, the Department concluded that Signature "'should have known' due to their experience in the Aviation and fuel industries." Id. Moreover, there can be no abuse of discretion where the Department simply applied the facts presented by Petitioners. The Tribunal finds that the Department's decision was legally and factually sound and not an abuse of discretion.

76.

Even if the facts that the Department relied on were not sufficient to support its September 2014 decision, the undisputed evidence here clearly demonstrates that Signature should have known to become licensed as a motor fuel distributor because Signature: (1) had experience operating in different tax jurisdictions; (2) had experience operating in Georgia; (3) had experience selling fuel to government entities and had the opportunity to perform due diligence before it began reselling fuel; and (4) possessed the resources to research and determine whether it needed a Georgia motor fuel distributor's license.

77.

First, Signature has extensive experience operating in different tax jurisdictions. As the world's largest fixed-base operator and distributor of business aviation services, Signature operates in about 120 locations in about 42 states and even has locations in Canada, Europe, the Caribbean, and South America. JSF ¶¶ 3, 8. In most of these states, Signature was required to pay motor fuel taxes on jet fuel during the refund period. JSF ¶ 17. PAFCO would typically bill Signature for motor fuel tax when it sold jet fuel to Signature, but in other states such as California, Signature was required to collect and remit motor fuel tax itself. Id. Signature generally did not pay PAFCO sales tax on purchases of jet fuel during the refund period because it held resale certificates, but it was required to pay prepaid sales tax on jet fuel in California and New York. JSF ¶ 18. Signature also held a motor fuel distributor's license in New York during the Refund Period which covered its sales of jet fuel. JSF ¶ 19.

78.

Second, Signature had experience operating in Georgia. Signature has operated in Georgia for over 20 years, and during the refund period had facilities in Atlanta and at Savannah/Hilton Head International Airport, where it provided services such as fueling, ground handling, lavatory services, cleaning, and catering. JSF ¶ 11.

79.

Third, Signature had experience selling jet fuel to government entities and had the opportunity to determine whether it needed a Georgia motor fuel distributor's license before it began reselling jet fuel. Signature commonly bids on government contracts to provide ground handling and fueling for government aircraft at all of its locations throughout the United States. Dep. of Sherri Miller pp. 6, 23. For the contract sales at issue here, Signature first made an offer

on the United States Military's' solicitation on October 1, 2008, and the parties communicated in January and April of 2009 before the contract was signed on April 28, 2009. JSF ¶ 25; Aff. of Sherri Miller Ex. A.

80.

Fourth, Signature had the resources and expertise to determine whether it needed to obtain a Georgia motor fuel distributor's license. Signature's parent company, BBA Aviation, had a tax division that typically handled Signature's corporate income taxes, sales taxes, excise taxes, and fuel taxes throughout the United States. JSF ¶¶ 9-10. In addition to filing tax reports and returns, these tax experts researched Signature's tax issues and had access to a network called CCH which allowed them to find information on federal and state tax matters and search state regulations by topic. JSF ¶ 10. When more complex issues were encountered, the tax division would turn to outside tax advisors and attorneys. Id.

81.

Signature had the experience, opportunity, and resources necessary to determine whether it needed a Georgia motor fuel distributor's license before it began reselling jet fuel. This was not a difficult question of law – all Signature had to do was look at the publicly available Department Rule titled "Jet Fuel" which states in clear language that "[m]otor fuel excise tax and prepaid state taxes shall be charged on the sale of jet fuel by a licensed motor fuel distributor to any other reseller who is not a licensed motor fuel distributor," and that a fixed base operator like Signature would be exempt from this tax if it possessed a motor fuel distributor's license. GA. COMP. R. & REGS. r. 560-9-1-.10(3). Instead, Signature failed to perform any due diligence before entering into the United States Military contract and reselling jet fuel. JSF ¶ 28 The Department had a reasonable

basis to find that Signature should have known that it needed a Georgia motor fuel distributor's license, and the undisputed evidence before the Tax Tribunal only reinforces that decision.

82.

Finally, Petitioners' own communication shows that Signature staff were aware that Signature needed to obtain a motor fuel distributor's license well before it actually applied for a license. On July 1, 2011, Carolyn Schricker, identified with "(BBA USHQ)" sent Theresa Marshall, identified as a "Regional Account Manager" for Signature, an email stating:

> Regarding the refund of the $.075 state fuel tax, **the Dept of Revenue is saying that we must be a licensed distributor to receive a fuel tax refund on sales to the government.** We are not a licensed distributor. I'm in the process of looking into whether there is a state statute or regulation that says it's a state law that you must be a licensed distributor to apply for a fuel tax refund.

Department's SMF Ex. B (emphasis added). Accordingly, Signature was actually aware of the license requirement from at least July 1, 2011 through the end of the Refund Period. Despite this, Signature did not apply for a license until the spring of 2014. Ultimately, both Signature's actual knowledge of the licensing requirement and its position as the largest fixed-based operation and distribution network for aviation services support the Department's determination that Signature is not entitled to a waiver under O.C.G.A. § 48-9-18.

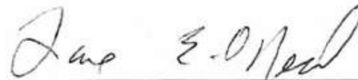
83.

For these reasons, the Tribunal finds that the Department did not abuse its discretion in denying Signature's refund claims based on the waiver set out in O.C.G.A. § 48-9-18.

CONCLUSION

For all the foregoing reasons, the Department's Motion is hereby **GRANTED**, Petitioners' Motions are **DENIED**, and judgment is entered in favor of the Department.

SO ORDERED, this 28 day of JANUARY, 2020.



HONORABLE LAWRENCE E. O'NEAL, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL