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BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Review of an)	<u>D E T E R M I N A T I O N</u>
Application Denial of:)	
)	No. 18-0036
)	
...)	Registration No. . . .
)	

RCW 82.04.4496(8)(c): CLEAN ALTERNATIVE FUEL COMMERCIAL VEHICLE TAX CREDIT APPLICATION – UNTIMELY SUBMISSION OF REQUIRED MATERIALS. Taxpayers that apply for the Clean Alternative Fuel Commercial Vehicle Tax Credit must submit required materials within fifteen calendar days of receipt of vehicles included in the application.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Stojak, T.R.O. – A residential and commercial solid waste collection service company petitions for review of the denial of its application for Clean Alternative Fuel Commercial Vehicle (“CAFCV”) tax credits. The Department of Revenue (“Department”) denied its application after concluding that the company failed to submit the final documentation required to qualify for the credit within fifteen days of receiving the vehicles included in its application as required by statute. The company asserts that the Department should accept its application because it submitted the final documentation within fifteen business days from receiving the vehicles We deny the petition.¹

ISSUES

Does RCW 82.04.4496(8)(c) provide taxpayers fifteen “business” or “calendar” days from receiving the vehicles included in a CAFCV tax credit application to submit the final documentation required to qualify for the credit?

...

FINDINGS OF FACT

... (“Taxpayer”) provides residential and commercial solid waste collection services. Taxpayer is in the process of converting its fleet of garbage collection vehicles from operating on diesel fuel to operating on compressed natural gas (“CNG”). As part of this effort, Taxpayer submitted applications with the Department for CAFCV tax credits in early 2017 for a number of vehicles it anticipated purchasing.

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

The CAFCV tax credit application process includes three distinct steps. There are three different “Parts” to the application that correspond with these three distinct steps. The first step includes submitting specific information and documentation regarding the vehicles for which an applicant seeks to receive the CAFCV tax credit. After the Department receives Part One of a CAFCV tax credit application, it must notify the taxpayer whether any credit remains for the year. Notification from the Department that credit remains available triggers a requirement for the applicant to file Part Two of the application. Part Two includes providing notice of intent to claim the credit and more specific information regarding the vehicle included in the application. Part Three of the application entails submitting final paperwork for the vehicle included in the application upon the vehicle’s receipt.

On January 5, 2017, Taxpayer contacted the Department by telephone and reported that it experienced difficulties in submitting Part One of the application. On January 12, 2017, a Department employee sent Taxpayer a secure email that stated the following:

We are advised that you are trying to access the application and cannot due to system issues. We do have all credit currently available for the 2017 year and we will make allowances for the extra time taken to submit your applications, and will not penalize you for delay in submitted applications due to our system issue.²

On this same date, January 12, 2017, Taxpayer successfully submitted Part One of the CAFCV tax credit application with the Department for eleven different CNG vehicles it anticipated purchasing. Taxpayer indicated a delivery date of the vehicles of January 2, 2017. On January 16, 2017, Taxpayer submitted Part One of the CAFCV tax credit application for nine different CNG vehicles. Taxpayer also reported January 2, 2017, as the date of delivery for the vehicles included in the application. On January 19, 2017, the Department approved Part One of the application submitted by Taxpayer for all twenty of the vehicles included in its January 12 and 16 applications.

On January 25, 2017, Taxpayer submitted Part Two of the CAFCV tax credit application for all of the vehicles included in Part One of the applications previously submitted. Part Two of the application submitted indicated an anticipated delivery date of January 25, 2017, the same day Taxpayer submitted Part Two of the application. On January 26, 2017, the Department approved Part Two of the application submitted.

On February 15, 2017, Taxpayer submitted Part Three of the application. Taxpayer reported January 30, 2017, as the possession date on Part Three of the application submitted. The cost documented on an invoice submitted by Taxpayer with Part Three of the application for one of the vehicles exceeded the cost indicated on the face of the application by \$ The Department contacted Taxpayer to discuss the discrepancy. . . . Taxpayer explained that the discrepancy related to the incremental difference in cost between a diesel chassis and a CNG chassis. . . . , Taxpayer sent a letter to the Department stating that it intended to forego the \$. . . price difference and apply for the amount indicated on the application for the relevant vehicle.

. . . [T]he Department denied Part Three of the CAFCV tax credit application submitted by Taxpayer as untimely. The Department’s records indicate that one of Taxpayer’s employees told the Department . . . that the vehicles included in Taxpayer’s application were delivered on January 25, 2017. Taxpayer petitioned for review on April 4, 2017. In its petition, Taxpayer argues that the Department’s CAFCV

² Email from Kathryn Wakeman, Senior Excise Tax Examiner to . . . , Subject: Alternative Fuel Commercial Vehicle Credit system issue, January 12, 2017.

tax credit application instructions fail to clarify whether a taxpayer must submit Part Three of the application within fifteen calendar or business days from the date of delivery of the vehicle. Taxpayer argues that it submitted its application within fifteen business days of the vehicle's delivery date, and therefore, its application should be accepted as timely. . . . Taxpayer also bases its position that the Department erred in rejecting its application on the email it received from the Department on January 12, 2017, regarding the technical difficulties it experienced submitting Part One of the application. Taxpayer asserts that the Department's denial of its application runs contrary to the employee's statement in the email that the Department would "make allowances" for extra time taken to submit applications due to its "system issue."

ANALYSIS

RCW 82.04.4496 provides a B&O tax credit for businesses that purchase clean alternative fuel commercial vehicles or for businesses that pay to retrofit commercial vehicles to mainly run on clean alternative fuel. RCW 82.04.4496(3) limits the credit to "two hundred fifty thousand dollars or twenty-five vehicles per person per calendar year." RCW 82.04.4496(5) limits the total annual statewide credit available to all taxpayers to six million dollars and provides that the credits "are available on a first-in-time basis."

RCW 82.04.4496(8) establishes three distinct steps that taxpayers seeking the CAFCV tax credit must follow in order to receive the credit. Each step entails a deadline for providing the Department with specific documentation and information pertaining to the vehicles for which a taxpayer seeks the credit. At issue here is the third statutory required step which requires taxpayer to provide "final documentation within fifteen days of receipt" of the vehicles:

(8) To claim a credit under this section, the person applying *must*:

...

(c) Provide final documentation *within fifteen days of receipt of the vehicle*, including:

- (i) A copy of the final invoice for the vehicle;
- (ii) A copy of the factory build sheet or equivalent documentation;
- (iii) The vehicle identification number of the vehicle;
- (iv) The incremental cost of the alternative fuel system;
- (v) Attestations signed by both the seller and purchaser of the vehicle attesting that the incremental cost of the alternative fuel system includes only the costs necessary for the vehicle to run on alternative fuel and no other vehicle options, equipment, or costs; and
- (vi) Any other information deemed necessary by the department to support administration or reporting of the program.

RCW 82.04.4496(8)(c) (emphasis added).

RCW 82.04.4496(10) states that "[i]f a person fails to supply the information as required in subsection (8) of this section, the department *must* deny the application." (Emphasis added).

...

[When it submitted Part Three of the CAFCV application on February 15, 2017, Taxpayer reported receipt of the vehicles on January 30, 2017, which was sixteen calendar days earlier.] Taxpayer argues that it timely submitted Part Three of its CAFCV tax credit application because it submitted Part Three within fifteen business days from the delivery date of the vehicles included in its credit application.

To support this argument, Taxpayer highlights the fact that the CAFCV tax credit application instructions fail to clarify whether taxpayers must submit Part Three of the application within fifteen calendar days or business days from the date of delivery of the relevant vehicles.

[The plain language of RCW 82.04.4496 mandates that we reject Taxpayer’s position.] A review of Title 82 of the Washington Statutes indicates that in instances where the legislature intended to peg a deadline to the passing of business days as opposed to calendar days, it expressly stated this intent. *See e.g.* RCW 82.38.160 (stating that a fuel distributor must remit fuel tax owed on a fuel purchase to a fuel supplier no later than within seven business days); RCW 82.42.220 (stating that the department [of licensing] must pay interest on aircraft fuel tax refunds issued more than thirty state business days after the receipt of claim is properly claimed and filed); and RCW 82.26.220(3) (stating that the license suspension for a tobacco products distributor’s or retailer’s first offense must be for a period of not less than thirty consecutive business days). Here, we infer from the legislature’s omission of the word “business” in front of “days” in RCW 82.04.4496 that it intended the ordinary meaning of “days” to apply as opposed to business days.³ . . .

Taxpayer does not dispute that it failed to submit Part Three of the CAFCV tax credit application within fifteen calendar days from the date it received the vehicles included in its application. The plain language of RCW 82.04.4496 states that the consequence of this failure is the denial of Taxpayer’s application. RCW 82.04.4496(8)(c) states that in order to the claim the CAFCV tax credit, applicants “*must*” provide final documentation within fifteen days of receipt of the relevant vehicles. RCW 82.04.4496(11) states that the Department *must deny* an application if the applicant fails to provide the information “*as required* in subsection (8).” (Emphasis added). Pursuant to these provisions, the Department is without discretion, and must deny a taxpayer’s application if the taxpayer fails to submit the information required by subsection (8) within the statutory timeline for doing so.

...

Finally, we address Taxpayer’s position regarding the Department’s January 12, 2017, email that it received after unsuccessfully attempting to submit Part One of the CAFCV tax credit application. Although this email stated that the Department would “make allowances for the extra time taken to submit” the CAFCV tax credit application, it further stated that it would not penalize Taxpayer for a “delay in submitting applications *due to* our system issue.” Ultimately, Taxpayer successfully submitted, and the Department accepted, Part One of Taxpayer’s CAFCV tax credit application. Accordingly, the Department did not penalize Taxpayer for the delay in submitting its application due to the Department’s system issue. The Department based its ultimate denial of Taxpayer’s application on its failure to timely submit the final documentation required by RCW 82.04.4496(9)(d). The Department resolved the system issues that hindered Taxpayer’s efforts to submit Part One of its

³ [This plain language interpretation of the meaning of “days” is supported by *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007), which, in its analysis of the 3-day notice provision in RCW 59.12, noted:

The statute does not specify whether “day” means a business day, court day, or calendar day. There are no time calculation provisions in chapter 59.12 RCW. The ordinary meaning of “day” is a 24 hour period beginning at midnight. *See Webster's Third New International Dictionary* 578 (2002) (defining “day” as a “CIVIL DAY [] *among most modern nations*: the mean solar day of 24 hours beginning at mean midnight”); *id.* at 316 (defining “calendar day” as “a civil day: the time from midnight to midnight”); *see also* 74 Am.Jur.2d *Time* § 10 (2001) (“[a] ‘day’ generally means a calendar day”). Using the ordinary meaning of day, weekends and holidays would be included in the calculation of the three day notice period.]

application long before Taxpayer submitted Part Three. Accordingly, we find no merit to Taxpayer's position regarding the implications of the January 12, 2017, email.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 5th day of February 2018.