

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22489
[Redacted],)	
)	DECISION
Petitioner.)	
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On September 28, 2009, the Fuels Tax Audit Section (FTA) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioner) proposing additional fuel use tax, penalty, and interest for the period of January 1, 2006, through December 31, 2008, in the total amount of \$39,692.58.

A timely protest and petition for redetermination was filed by the petitioner. An informal hearing was held on June 3, 2010, with [Redacted] at the Commission's [Redacted] Idaho, office. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

During the audit period, the petitioner was based [Redacted] and operated more than 30 International Fuel Tax Agreement (IFTA) qualified motor vehicles. [Redacted].

The petitioner's records were audited for his IFTA license and International Registration Plan (IRP) applications. The petitioner's mileage records consisted of quarterly summaries and weekly logs. The quarterly summaries were based on two documents. One document contained total miles and fuel by unit. The miles were from the beginning and ending odometer readings on logs and the fuel from entries on the logs. The other documents were the master route listings, which only documented the total on-road miles claimed for each route, including the individual trip distance multiplied by the total trips. All other miles were not documented and were assumed to be nontaxable off-highway miles. The weekly logs were used to document

daily travel. The logs had spaces for the driver to record his name, unit number, and the beginning and ending odometer reading. The drivers tested seldom completed the odometer reading for both the beginning and end of the week unless it was during the beginning or end of the quarter.

The petitioner's fuel records consisted of the driver recorded purchases on weekly logs and the vendor issued fuel statements/receipts.

The petitioner's system did not adequately follow the IFTA requirements to ensure proper mileage and fuel reporting. The review of load tickets and driver recorded number of loads was adequate to ensure all loads were reported. Not all travel of the vehicle was recorded on the logs however. All travel was assumed instead to follow roundtrip routes from jobsites to [Redacted] locations. This did not account for variances in standard routes or daily travel. The odometers were used for total miles, but reported jurisdictional miles were only based on map miles. With the assumption of standard routes and lack of driver documented travel routes, this did not ensure that taxable miles were properly reported and did not provide any documentation to verify the off-road miles claimed. The fuel system also lacked proper controls. Driver recorded fuel totals were used to report fuel without ensuring that the recorded information matched fuel receipts.

The petitioner's total miles were audited using the summaries and odometer readings. Audited total miles were based on the sample of quarterly odometer readings. In the original NOD, a unit in which the odometer readings represented a four-month period, the sample for total miles was reduced by that unit's trip miles for the last month which should not have been reported. In this decision, the NOD has been modified to remove the unit from the total miles sample only and made a one-time adjustment to total miles for that quarterly return.

The petitioner's taxable miles were determined using the weekly logs, summaries, and supporting documentation for off-road miles. Idaho taxable miles were verified [Redacted] for documented routes from jobsite [Redacted]. Idaho off-road claims were verified to the extent verifiable from supporting documentation. Remaining Idaho miles claimed as off-road were treated as taxable miles due to a lack of documentation.

A one-time adjustment was used to account for the missing fuel receipts for claimed Idaho tax-paid purchases in January 2007. This was the only occurrence in the test periods in which a vendor's monthly statement was not available to verify tax-paid claims. The remaining findings were treated using the adjustment factors from the test periods.

The IFTA PROCEDURES MANUAL outlines the type of records an IFTA licensee is required to maintain for distance records, fuel records, and tax-paid fuel purchases.

The IFTA PROCEDURES MANUAL P540 DISTANCE RECORDS states in part:

.100 Licensees shall maintain detailed distance records which show operations on an individual-vehicle basis. The operational records shall contain, but not be limited to:

.005 Taxable and non-taxable usage of fuel;

.010 Distance traveled for taxable and non-taxable use; and

.015 Distance recaps for each vehicle for each jurisdiction in which the vehicle operated.

.200 An acceptable distance accounting system is necessary to substantiate the information reported on the tax return filed quarterly or annually. A licensee's system at a minimum, must include distance data on each individual vehicle for each trip and be recapitulated in monthly fleet summaries. Supporting information should include:

.005 Date of trip (starting and ending);

.010 Trip origin and destination;

.015 Route of travel (may be waived by base jurisdiction);

.020 Beginning and ending odometer or hubodometer reading of the trip (may be waived by base jurisdiction);

.025 Total trip miles/kilometers;

.030 Miles/kilometers by jurisdiction;

- .035 Unit number or vehicle identification number;
- .040 Vehicle fleet number;
- .045 Registrant's name; and
- .050 may include additional information at the discretion of the base jurisdiction.

Idaho Motor Fuels Tax Administrative Rule 35.01.05.420.03 states in part:

- f.** Hubometer or odometer readings from the beginning and ending of each trip and at the crossing of each jurisdiction's border. Interstate motor vehicles that, for certain time periods, do not cross jurisdiction borders need only record daily hubometer or odometer readings for those time periods; (7-1-98)
- g.** Complete routes of travel, including pick up and delivery locations;(7-1-98)

The IFTA PROCEDURES MANUAL *P550 FUEL RECORDS states:

- .100 The licensee must maintain complete records of all motor fuel purchased, received, and used in the conduct of its business.
- .200 Separate totals must be compiled for each motor fuel type.
- .300 Retail fuel purchases and bulk fuel purchases are to be accounted for separately.
- .400 The fuel records shall contain, but not be limited to:
 - .005 The date of each receipt of fuel;
 - .010 The name and address of the person from whom purchased or received;
 - .015 The number of gallons or liters received;
 - .020 The type of fuel; and
 - .025 The vehicle or equipment into which the fuel was placed.

The IFTA PROCEDURES MANUAL *P560 TAX PAID RETAIL PURCHASES states:

- .100 Retail purchases must be supported by a receipt or invoice, credit card receipt, automated vendor generated invoice or transaction listing, or microfilm/microfiche of the receipt or invoice. Receipts that have been altered or indicate erasures are not accepted for tax-paid credits unless the licensee can demonstrate the receipt is valid.
- .200 Receipts for retail fuel purchases must identify the vehicle by the plate or unit number or other licensee identifier, as distance traveled and fuel consumption may be reported only for vehicles identified as part of the licensee's operation.
- .300 An acceptable receipt or invoice must include, but shall not be limited to, the following:

- .005 Date of purchase;
- .010 Seller's name and address;
- .015 Number of gallons or liters purchased;
- .020 Fuel type;
- .025 Price per gallon or liter or total amount of sale;
- .030 Unit numbers; and
- .035 Purchaser's name (See R1010.300 of the IFTA Articles of Agreement).

The findings show [Redacted] did not fully comply with the IFTA requirements. Odometer readings and routes were incorporated into mileage calculations as required. However, odometer readings are required on daily trip sheets as opposed to the monthly or even quarterly readings that were previously requested of drivers. The routes documented should also be expanded to include all travel of the vehicle, as opposed to the previous use of only standard routes for miles determined to be on-highway miles from jobsites to mill locations. The use of assumed off-road miles is not permissible for travel in Idaho by an IFTA licensee.

In the petitioner's protest letter dated October 28, 2009, [Redacted] stated that after reviewing the results of the audit [Redacted] they felt there were some errors that needed to be addressed. [Redacted] stated that their fuel cards were assigned to each truck and sometimes a driver would have broken or misplaced a fuel card and used the audited driver's card. [Redacted] stated that it would not show on the statement that the driver borrowed the card. [Redacted] stated that they found instances where fuel was used on an audited card that was used in an alternate vehicle. Therefore, [Redacted] deemed it a non-reported fuel usage. [Redacted] stated where trucks fueled more than once in a day and then the driver added fuel sums together the separate fueling was determined to be unreported. [Redacted] stated that while they did admit there were probably some unreported dead-head miles, they did not feel that the fines were fair. [Redacted] stated that [Redacted] method [Redacted] system to judge highway miles and the estimations of the off-road miles were not correct. [Redacted] stated the off-road locations were not always the same when

receiving [Redacted] their trucks. [Redacted] the locations or where the trucks entered taxable miles and that he used his best estimate. [Redacted] stated they were formally protesting this review and asked for the FTA's reconsideration.

The FTA sent the petitioner a letter dated November 5, 2009, in which [Redacted] stated:

Your letter of protest dated October 28, 2009, is a timely petition for redetermination of the amount asserted in your International Fuel Tax Agreement (IFTA) Notice of Deficiency Determination dated September 28, 2009. Your protest will be retained in the audit section so that we may review the additional information you may be submitting in regards to your fuel purchases, mileage records, and off-road mile estimates which could cause adjustments to your recent IFTA audit. The auditor will review your additional information for possible adjustments to the audit findings, and notify you of the results of the redetermination.

Unless the issues you raise involve the need to seek legal interpretation, it is my intention to complete the audit redetermination within the audit section. Your post-audit review has been assigned [Redacted]. If you and he are unable to reach a mutually acceptable agreement on the redetermination, or on any specific part of it, I will be available to review the issues and make a determination.

Please send [Redacted] your additional supporting documentation, which shows that the deficiency determination is not accurate, by November 18, 2009. After the redetermination is complete, [Redacted] will advise you of the results by letter. The letter will also explain your appeal rights, in the event you feel you cannot accept the result of our redetermination.

If you have any additional questions concerning the review and redetermination process, please refer them [Redacted].

The petitioner did not provide any additional documentation by the deadline.

In a letter from the FTA dated December 7, 2009, [Redacted] stated:

This letter is in response to your request for redetermination in your letter of protest dated October 28, 2009. In the response of the letter sent to you on November 5, 2009, a request for additional information was made [Redacted], fuels tax manager, with a return date of November 18, 2009. During our additional phone conversations request was again made for all documentation supporting your disagreement with the audit findings.

I have reviewed your audit file concerning your statements of additional tax-paid fuel purchases, additional off-road miles, and incorrect audited taxable miles. As we discussed in our last phone conversation, I have not received any additional

information supporting these conversations. Due to the lack of documentation, no adjustments were made to the original audit findings. As discussed, I will forward your audit file for review of your request for an informal hearing. You will be contacted by the assigned personnel to determine the schedule for the completion of your protest.

If you have any questions concerning your appeal rights and the informal hearing process, they can be addressed by the personnel assigned. If you have questions prior to the reassignment of your protest, I can be reached at the numbers below. Thank you for all of your time and assistance during the audit and redetermination.

On January 25, 2010, the tax policy specialist (policy specialist) sent the petitioner a letter to inform him of the alternatives for redetermining a protested NOD.

In a letter to the policy specialist dated February 25, 2010, [Redacted] stated that, regarding his protest on October 28, 2009, and their discussion on February 8, 2010, he wished to have a hearing and to appear [Redacted] to submit further documentation in support of his claim.

A hearing was held on June 3, 2010, [Redacted] at the Commission's office in [Redacted], Idaho. [Redacted] did not provide any new documentation at the hearing but claimed the auditor did not double the off-road miles in the audit that were provided [Redacted]. By doubling the [Redacted] off-road miles on the mileage worksheet, [Redacted] felt that he had accounted for all of the nontaxable miles. Based on his claim, [Redacted] thought the Commission might owe him a refund.

The policy specialist contacted [Redacted] by phone on July 3, 2010, to inform him that the auditor had already doubled the off-road [Redacted] miles in the audit. [Redacted] stated that he would drive the routes with the county sheriff to substantiate the correct mileage.

A letter was sent to [Redacted] on October 23, 2010, that requested he provide his additional documentation by November 1, 2010.

[Redacted] called the policy specialist and requested additional time, to February 1, 2011, to provide additional documentation for his off-road mileage.

On October 29, 2010, a letter was sent to [Redacted] which included a waiver of the requirement to issue a decision within 180 days of the petitioner's hearing. [Redacted] signed and returned the waiver on November 9, 2010.

At this time, the Commission has not received any additional documentation from [Redacted] and, therefore, issues its decision based on the information currently in the file.

The petitioner has not provided the Commission with information to establish that the amounts asserted in the NOD, as adjusted, are incorrect. As a result, the Commission will uphold the NOD, as adjusted. A determination of the State Tax Commission is presumed to be correct. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The burden is on the petitioner to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, the Notice of Deficiency Determination dated September 28, 2009, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1/1/06-12/31/08	\$26,685.57	\$2,668.56	\$7,111.14	\$ 36,465.27
			PAYMENT	<u>(39,692.58)</u>
			TOTAL REFUND	<u>(\$ 3,227.31)</u>

Interest is computed through October 26, 2009.

The petitioner has paid the total amount asserted on the original Notice of Deficiency Determination; and therefore, should receive **the REFUND shown above.**

An explanation of the petitioner's right to appeal this decision is enclosed.

DATED this _____ day of February 2011.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of February 2011, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.