

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 24975
[Redacted])
)
Petitioner.)
)
) DECISION
)
_____)

On March 23, 2012, the Fuels Tax/Registration Fee (FTRF) Audit section of the Sales and Fuels Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted].[Redacted] The Notice was based on a routine International Fuel Tax Agreement (IFTA) audit, and proposed additional fuels tax, penalty, and interest in the total amount of \$2,654.46 for taxable periods October 1, 2008 through June 30, 2011.

The petitioner filed a timely appeal and petition for redetermination on April 19, 2012. The petitioner waived an informal hearing.

BACKGROUND

The petitioner claims Idaho as its base jurisdiction (see below) and reports all distance traveled and fuel purchased on quarterly reports. The petitioner reports fuel tax due to each jurisdiction based on each jurisdiction’s fuel tax rate, fleet distances per gallon (MPG), and the jurisdictional distances.

The petitioner has two IFTA qualifying vehicles (see below) and primarily transports [Redacted] throughout a majority of the United States. The auditor held an International Registration Plan (IRP) audit concurrently with the IFTA audit. The audits are held concurrently as a convenience to the taxpayers because the records required for the audits are similar. The auditor selected the three test quarters: fourth quarter 2008, second quarter 2010, and second

quarter 2011. The auditor was able to test fuel in all three quarters, but was only able to test distance in the fourth quarter 2008, and second quarter 2011. There were no trip records available for second quarter 2010.

After reviewing the records, the auditor determined that the petitioner did not maintain the records in the manner required by IFTA, but they were auditable. The auditor adjusted fuel and distance where the available records suggested adjustments were required. Adjustments were both in the petitioner's favor and against the petitioner. As a result of his review, the auditor determined the petitioner's records were insufficient to determine the true tax liability of the petitioner for each jurisdiction in which distance accrued. As a result, the auditor estimated distance, denied tax-paid credits where receipts were missing, and denied credits in the quarters and for jurisdictions.

The petitioner asserts that it was not informed of the IFTA recordkeeping requirements. The petitioner states that it was not able to show proof of its actual tax liability when it states in the protest, "The audit is not accurate based on the fact that what was not shown by our paper records was guesstimated." The petitioner states that records were missing, lost, or destroyed, but it was not at fault.

PERTINENT LAW

The governing documents for IFTA, Inc. can be found at <http://www.iftach.org>. IFTA is a multijurisdictional agreement which allows carriers to have one license and one base jurisdiction according to IFTA Articles of Agreement, Article I, Part R150. A business with vehicles is a carrier, but until the carrier is licensed it is not a licensee. The carrier which accrues travels with qualifying motor vehicles in more than one jurisdiction may license and travel under the authority of IFTA according to IFTA Articles of Agreement, Article II, Parts R212 and R245.

R150 ONE LICENSE AND ONE BASE JURISDICTION

It is the purpose of this Agreement to establish and maintain the concept of one fuel use license and administering base jurisdiction for each licensee and to provide that a licensee's base jurisdiction will have the primary responsibility for administering this Agreement and executing its provisions with respect to such licensee.

R212 Base Jurisdiction means the member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and

.100 Where the operational control and operational records of the licensee's qualified motor vehicles are maintained or can be made available; and

.200 Where some travel is accrued by qualified motor vehicles within the fleet. The commissioners of two or more affected jurisdictions may allow a person to consolidate several fleets that would otherwise be based in two or more jurisdictions.

R245 Qualified Motor Vehicle means a motor vehicle used, designed, or maintained for transportation of persons or property and:

.100 Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or

.200 Having three or more axles regardless of weight; or

.300 Is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle or registered gross vehicle weight. Qualified Motor Vehicle does not include recreational vehicles.

The IFTA Procedures Manual governs the records requirements to support distance, fuel, and tax-paid fuel purchases reported. Part P540 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 hub odometer 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 further governs in what manner information for IFTA reporting requirements may be recorded when it 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 Part P550 further governs fuel records maintenance and 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 Part P560 further governs tax-paid retail fuel purchases and 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 IFTA Audit Manual Part A550 states that the auditor may estimate the tax liability of an IFTA licensee for which records are insufficient to determine its true tax liability.

.100 Fuel Use Estimation If the licensee's records are lacking or inadequate to support any tax return filed by the licensee or to determine the licensee's tax liability, the base jurisdiction shall have authority to estimate the fuel use upon (but is not limited to) factors such as the following:

- .005 Prior experience of the licensee;
- .010 Licensees with similar operations;
- .015 Industry averages;
- .020 Records available from fuel distributors; and
- .025 Other pertinent information the auditor may obtain or examine.

Unless the auditor finds substantial evidence to the contrary by reviewing the above, in the absence of adequate records, a standard of 4 MPG/1.7KPL will be used.

.200 Tax Paid Fuel Credits When tax paid fuel documentation is unavailable, all claims for tax paid fuel will be disallowed.

The IFTA Article of Agreement Part R1100 states that credits may be denied if a tax liability has not been satisfied to all affected jurisdictions.

R1100 CREDITS AND REFUNDS A licensee shall receive full credit or refund for tax-paid fuel used outside the jurisdiction where the fuel was purchased. The base jurisdiction shall allow credits and issue refunds for all of its licensees on behalf of all member jurisdictions. Refunds to licensees will be made only when all tax liability, including audit assessments, have been satisfied to all member jurisdictions.

DISCUSSION AND CONCLUSION

The petitioner has not provided the Commission with sufficient factual information to establish that the amount asserted in the Notice is incorrect. Therefore, the Commission upholds the auditor's estimation and denial of credits to determine the petitioner's IFTA tax liability.

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), and the burden is on the taxpayer to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.) Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the taxpayer's fuel tax liability for the period in question.

THEREFORE, the Notice dated March 23, 2012, and directed to [Redacted] is AFFIRMED by this decision.

IT IS ORDERED that the taxpayer pay the following amount of tax, penalty, and interest:

| | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL DUE</u> |
|-----------|------------|----------------|-----------------|------------------|
| FUELS TAX | \$2,036.45 | \$203.65 | \$659.16 | \$2,899.26 |

Interest is calculated through April 23, 2013, and will continue to accrue until the entire liability has been paid. Penalty and interest is authorized in Idaho Code § 63-2442A(2) and IFTA Articles of Agreement, Article XII.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this _____ day of _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, 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.
