

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24976
Petitioner.)
DECISION
_____)

On March 26, 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 Registration Plan (IRP) audit and proposed additional registration fees, penalty, and interest in the total amount of \$1,413.87 for registration years 2011 and 2012 (base periods July 1, 2008 through June 30, 2010). The petitioner is a September registrant.

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 (IRP, Article II, see below) and reports all distance traveled on the annual registration application. The petitioner reports and pays fees due each jurisdiction based on each jurisdiction’s registration fees and apportionment percentage. The apportionment percentage is the ratio of jurisdictional distance divided by total distance.

The petitioner has two IRP apportionable vehicles (IRP, Article II, see below) and primarily [Redacted] throughout the United States. The auditor held an [Redacted] audit concurrently with the IRP 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 months within two test quarters (one test quarter for each registration year): fourth quarter

2008, and second quarter 2010. The auditor was only able to test distance in the fourth quarter 2008. There were no trip records available for second quarter 2010. The second quarter 2011 could not be used because it was not within the IRP audit period, and was selected for [Redacted] audit only.

After reviewing the records, the auditor determined that the petitioner did not maintain the records in the manner required by IRP, but were sufficient for audit. The auditor adjusted 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 liability of the petitioner for each jurisdiction. The auditor denied credit of fees due in both registration years as a result.

The petitioner asserts that it was not informed of the IRP recordkeeping requirements. The petitioner states that it was not able to show proof of its actual registration fee 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

IRP is a multijurisdictional agreement which allows carriers to register with one base jurisdiction. A business with vehicles is a carrier, but until the carrier is registered it is not a registrant. The carrier may apply for registration for travel only in the state in which it registers, or register under IRP for travel in multiple states. When the carrier applies for registration under IRP it must apply each fleet of apportionable vehicle(s) to one base jurisdiction. More than one jurisdiction may qualify as a base jurisdiction for a carrier. For business reasons the carrier may

register fleets in more than one jurisdiction, but each fleet may only have one base jurisdiction.

IRP Article II states, in part:

REGISTRANT — “Registrant” means a Person in whose name a Properly Registered Vehicle is registered.

BASE JURISDICTION — “Base Jurisdiction” means the Member Jurisdiction, selected in accordance with Section 305, to which an Applicant applies for apportioned registration under the Plan or the Member Jurisdiction that issues apportioned registration to a Registrant under the Plan.

APPORTIONABLE VEHICLE — “Apportionable Vehicle” means (except as provided below) any Power Unit that is used or intended for use in two or more Member Jurisdictions and that is used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property, and:

- (i) has two Axles and a gross Vehicle weight or registered gross Vehicle weight in excess of 26,000 pounds (11,793.401 kilograms), or
- (ii) has three or more Axles, regardless of weight, or
- (iii) is used in combination, when the gross Vehicle weight of such combination exceeds 26,000 pounds (11,793.401 kilograms).

A Recreational Vehicle, a Vehicle displaying Restricted Plates, a bus used in the transportation of chartered parties or a government-owned Vehicle, is not an Apportionable Vehicle; except that a Truck or Truck Tractor, or the Power Unit in a Combination of Vehicles having a gross Vehicle weight of 26,000 pounds (11,793.401 kilograms), or less, and a bus used in the transportation of chartered parties, nevertheless may be registered under the Plan at the option of the Registrant.

Idaho Code §49-435 states in part that a carrier that registers under the IRP must maintain the records required by the IRP. It also states that the Commission will audit the records of the registrant.

49-435. Proportional registration of commercial vehicles. (1) Any owner engaged in operating one (1) or more fleets of commercial vehicles may, in lieu of the registration fees imposed by section 49-434, Idaho Code, register each fleet for operation in this state by filing an application with the department which shall contain the information required by the international registration plan (IRP) agreement. Any owner who makes application for proportional registration under the provisions of the international registration plan shall comply with the terms and conditions of the IRP agreement.49-439. Audit guidelines. (1) The state tax commission on behalf of the department may audit an owner of motor vehicles subject to fees pursuant to this chapter.

The IRP Article X, Part 1010 states in part that records must be maintained according to the IRP Audit Procedures Manual (APM). If records are not maintained as required an assessment may be imposed.

1010 REGISTRANT'S FAILURE TO MAINTAIN OR PRODUCE RECORDS

The Base Jurisdiction may impose an assessment on a Registrant that fails to maintain records in accordance with the APM or that fails to provide records within 30 calendar days of the issuance of a written request by the Base Jurisdiction. Such an assessment shall be based on the Base Jurisdiction's estimate of the Registrant's true liability as determined from evidence furnished by the Registrant or available to the Base Jurisdiction from its own or other sources.

The list of the records required is shown in Part 401 and 402 of the APM. Although the APM allows a jurisdiction to waive either routes of travel or odometer readings, Idaho does not waive either.

401. Adequacy of Records

(a) A Registrant's distance accounting system must consistently produce the information required by the Audit Procedures Manual as necessary to evaluate the accuracy of Vehicle movement and to substantiate the Registrant's application for apportioned registration under the Plan. The Registrant's source documents must contain sufficient detail that Vehicle movement may be traced.

(b) The Registrant must maintain Operational Records that support the total In-Jurisdiction Distance and Total Distance traveled everywhere. Operational Records include source documents suitable for verification of Fleet distance as reported on the Registrant's application for apportionment. An acceptable source document for verifying Fleet distance traveled is an "Individual Vehicle Distance Record" (IVDR). A standardized IVDR is suggested and encouraged, but not required. While it is desirable, the necessary information for a trip need not be contained on a single source document. IVDRs shall contain the following information:

- (i) Date of trip (starting and ending);
- (ii) Trip origin and destination;
- (iii) Route of travel (may be waived by Base Jurisdiction);
- (iv) Beginning and ending odometer or hubodometer reading of the trip (may be waived by Base Jurisdiction);
- (v) Total Distance;
- (vi) In-Jurisdiction Distance; and
- (vii) Power Unit number or vehicle identification number.

(c) The Base Jurisdiction may waive either item (iii) or (iv) above, but may not waive both items (iii) and (iv). Also, a Base Jurisdiction may, in its discretion, require an IVDR to include additional information as follows:

- (i) Fleet number;
- (ii) Registrant's name;
- (iii) Trailer number; and
- (iv) Driver's signature and/or name.

402. Monthly, Quarterly, and Yearly Summaries

(a) From the information recorded on IVDRs, the Registrant must prepare and maintain:

- (i) A monthly summary that recaps In-Jurisdiction and Total Distance traveled by each Power Unit operated during the calendar month;
- (ii) A quarterly summary that recaps In-Jurisdiction and Total Distance traveled by the Fleet during each calendar quarter; and
- (iii) A summary of the quarterly recaps used in preparing the application for apportionment.

(b) Summaries are not acceptable at face value and must be supported by source documents such as IVDRs in order to be of any use during an Audit.

Part 1010 and 1065 of the IRP, and Part 603 of the APM states, in part, that the auditor must determine the adequacy of the records provided. If the records are determined to be inadequate, an assessment may be made based on an estimate. The auditor may not apply credits which were a result of the registrant's inadequate records to Member Jurisdictions in the netting process of the audit assessment.

1065 NETTING OF AUDIT ADJUSTMENTS

(a) When an Audit finds a net underpayment by the Registrant, the Base Jurisdiction shall collect the amount of the underpayment from the Registrant pursuant to the Base Jurisdiction's laws and procedures.

(b) Upon collection of any underpayment, the Base Jurisdiction shall transmit the fee changes to each affected Member Jurisdiction within 30 calendar days following the transmittal period during which such payment was received.

(c) If the Base Jurisdiction determines a net underpayment to be uncollectible, any credits due the Registrant, plus any partial payments made by the Registrant, shall be used to offset additional fees due to Member Jurisdictions on a pro-rata basis.

(d) When an Audit finds a net overpayment by the Registrant, the Base Jurisdiction shall refund the amount of the overpayment to the Registrant; except that, if the Registrant failed to make necessary records available for examination or if the records made available were inadequate to conduct an Audit of the

Registrant, the fees netted pursuant to the Audit shall not include credits for the Registrant which arise by virtue of the unavailability or inadequacy of its records.

(e) If the Audit findings indicate a net overpayment by the Registrant, the Base Jurisdiction shall transmit the fee changes to each affected Member Jurisdiction within 30 calendar days following the transmittal period during which the overpayment was refunded.

603. Request for Operational Records

(a) During the preliminary phase of the Audit, the auditor will have made a request for IVDR's and distance summaries that support the apportioned registration application as filed. Operational Records must be adequate and complete for each Vehicle of the Fleet being audited. If the Operational Records are not made available, or if the records made available are inadequate for Audit purposes, an assessment of liability may be imposed in accordance with Article X of the Plan. If an estimate of the Registrant's true liability cannot be determined, the Registrant may be assessed 100% of the original Apportionable Fees for the Base Jurisdiction. Any credits calculated for Member Jurisdictions which are caused by the inadequacy of the Operational Records will not be reflected in the fees netted under Article X of the Plan.

1010 REGISTRANT'S FAILURE TO MAINTAIN OR PRODUCE RECORDS

The Base Jurisdiction may impose an assessment on a Registrant that fails to maintain records in accordance with the APM or that fails to provide records within 30 calendar days of the issuance of a written request by the Base Jurisdiction. Such an assessment shall be based on the Base Jurisdiction's estimate of the Registrant's true liability as determined from evidence furnished by the Registrant or available to the Base Jurisdiction from its own or other sources.

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 of distance and denial of credits to determine the petitioner's IRP registration fee 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 petitioner 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 petitioner's registration fee liability for the period in question.

THEREFORE, the Notice of Deficiency Determination dated March 26, 2012, and directed to [Redacted] is AFFIRMED by this decision.

IT IS ORDERED that the petitioner pay the following amount of registration fees, penalty, and interest:

	<u>FEES</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
REGISTRATION FEES	\$1,403.12	\$5.97	\$12.54	\$1,421.63

Interest is calculated only for Idaho fees due through April 26, 2013, and will continue to accrue until the entire liability has been paid. Penalty and interest is authorized in Idaho Code § 49-439(7).

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

An explanation of the taxpayer'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.
