

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25228
)
)
Petitioner.) DECISION
)
_____)

On July 30, 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] (Petitioner)[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 \$25,838.22 for taxable periods April 1, 2009 through March 31, 2012. The petitioner filed a timely appeal and petition for redetermination on August 20, 2012. The informal hearing was waived by the petitioner. Additional information was provided and the Notice was adjusted as outlined below by the auditor.

IFTA is a multijurisdictional agreement which allows carriers to license with one base jurisdiction. The petitioner claims Idaho as its base jurisdiction, and reports all distance traveled and fuel purchased on quarterly reports. The petitioner reports fuel tax due each jurisdiction based on each jurisdiction’s fuel tax rate, fleet distances per gallon (MPG), and the jurisdictional distances.

The petitioner is a [Redacted] provider from whom customers purchase or lease equipment. The petitioner operates [Redacted] IFTA units in three fleets. During the audit, the auditor found minor record keeping errors with a majority of the vehicles. Leased vehicles are organized as Fleet [Redacted] and transported when under contract to the customer. The auditor found the petitioner registered Fleet [Redacted] vehicles under the International Registration

Plan (IRP), but did not report these vehicles on its IFTA return. The auditor determined that the petitioner was required as lessor to report the distance and fuel purchased for Fleet [Redacted] vehicles. The determination was based on IFTA R510.200 (see below) which states that the lessor, who regularly engaged in leasing vehicles, is required to report the distance and gallons for leased vehicles unless the lessee is designated in the lease contract as the responsible party and the lessor retains a copy of the lessee's IFTA license. The lease contract did not state the lessee was required to report the distance and gallons on its IFTA return. The petitioner also did not maintain the IFTA required distance and fuel records for Fleet [Redacted].

The petitioner asserts that it is not required to report the distances and fuel use on its IFTA return, or keep records required by IFTA for Fleet [Redacted], because the contract it has with its customer relieves it of the responsibility. It also is not required to report distance and fuel, because it did not accrue a fuel use obligation when the Fleet [Redacted] vehicles are transported on trailers to the customer. The petitioner also asserts, if there were a fuel use obligation, and if it were responsible for any taxes, there should be no taxable fuel use accrued, because the Fleet [Redacted] units are used on construction sites where the distance accrued would be nontaxable.

PERTINENT LAW

Article V of the IFTA Articles of Agreement (below) contains sections that identifies whether a lessor or lessee is required to report the distances and fuel use.

Part *R510 Rental/Leasing of the Agreement states:

.100 Short-Term Leases. In the case of a short-term motor vehicle rental, by a lessor regularly engaged in the business of leasing, or renting motor vehicles without drivers, for compensation to licensees or other lessees of 29 days or less, the lessor will report and pay the fuel use tax unless the following two conditions are met:

- .005 The lessor has a written rental contract which designates the lessee as the party responsible for reporting and paying the fuel use tax; and
- .010 The lessor has a copy of the lessee's IFTA fuel tax license which is valid for the term of the rental.
- .200 Long-Term Leases. A lessor regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed to be the licensee, and such lessor may be issued a license if an application has been properly filed and approved by the base jurisdiction.

The official commentary in the Agreement on R510.200 further explains that the requirement for Short-Term Leases also applies to Long-Term Leases.

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. Part P540 of that manual governs distance records and 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 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 Part 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).

DISCUSSION

Under IFTA R510, the lessor is responsible for reporting the distance and fuel use of leased vehicles unless the contract specifies the lessee is required to report the distance and fuel use. The lessor is also required to retain a copy of the lessee's valid IFTA license.

Under IFTA 540.100.010, the licensee is required to maintain detailed records to support distance traveled for taxable and nontaxable use.

The commission upholds the auditor's determination that the petitioner was required to report the distance and fuel use of the leased vehicles based on IFTA R510. The commission denies the claim for nontaxable distance and fuel use because there were no records to support nontaxable distance. However, the commission adjusted the audit results. The auditor determined jurisdictional distance for Fleet 015 based on the IRP apportionment percentage. The petitioner provided vouchers after the protest showing the destination for the delivery of the leased vehicles. The apportionment percentage was adjusted and additional jurisdictions were added and applied to the distance. While examining the vouchers, it was discovered the petitioner charged for fuel that it purchased and was placed in the main supply tank of the leased vehicle if the lessee did not return the vehicle with its tank full. Fuel tax on these purchases was allowed for tax-paid credit.

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 sales and use tax liability for the period in question.

THEREFORE, the Notice of Deficiency Determination dated July 30, 2012, and directed to [Redacted]s adjusted by this decision.

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

	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
FUELS TAX	\$18,761.59	\$1,876.16	\$5,279.00	\$25,916.75

Interest is calculated through April 15, 2013, and will continue to accrue until the entire liability has been paid.

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.
