**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

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| In the Matter of the Protest of<br><br>[Redacted],<br><br>Petitioner. | )<br>)<br>)<br>)<br>)<br>) | DOCKET NO. 39272<br><br><br>DECISION |

[Redacted] (petitioner) submitted a timely protest of a Notice of Deficiency Determination (Notice) issued on December 5, 2014, by the Idaho State Tax Commission (Commission) proposing additional fuel tax, penalty, and interest in the total amount of $2,531.16 for the audit period of October 1, 2012, to September 30, 2014. The Notice was issued when the petitioner did not provide any records and it was based on an inadequate records assessment applying a 4.0 fleet miles per gallon (MPG) to all quarters during the audit period. The petitioner protested the inadequate records assessment and provided records. The auditor used the records to revise the Notice. The petitioner did not withdraw the protest in favor of the revised Notice. The Commission hereby issues its decision based on information contained in the file.

**BACKGROUND**

The petitioner is a common carrier transporting [Redacted] and [Redacted] in Idaho, [Redacted] using two vehicles weighing over 26,000 lbs. GVW, which qualified the carrier to license under the International Fuel Tax Agreement (IFTA).

IFTA is a multijurisdictional agreement which allows licensed carriers to pay the fuel tax liability accrued by qualifying vehicles in any participating jurisdiction through one base jurisdiction. In this case, the petitioner licensed with Idaho, claiming Idaho as its base jurisdiction. The petitioner reports to Idaho all miles (fleet miles) traveled by its IFTA qualifying vehicles and fuel (fleet gallons) placed in the supply tanks of the IFTA qualifying vehicles. The fleet MPG is calculated by dividing the fleet miles by the fleet gallons. The petitioner computes taxable gallons for each jurisdiction by dividing the taxable miles by the fleet MPG. Tax-paid gallons purchased in each jurisdiction are subtracted from taxable gallons in that jurisdiction, leaving net taxable gallons by jurisdiction (either a negative number or positive number). The net taxable gallons per jurisdiction are multiplied by the jurisdiction's tax rate. The result is either a tax due or credit for each jurisdiction. When the jurisdiction's tax due or credit is netted against the other jurisdictions, the licensee owes additional tax or is due a credit of tax from its base jurisdiction. The base jurisdiction transfers the taxes or credits due to all the jurisdictions in which its licensees have traveled.

The Commission participates in IFTA as required by Section 63-2442A, Idaho Code. The Commission selects 3 percent of the active accounts from the previous year and selects audit candidates on a stratified basis as required by the IFTA Audit Manual Sections A310 and A320. Each licensee is generally selected for audit randomly, in conjunction with the carrier's International Registration Plan (IRP) registration. A licensee may also be selected for audit if errors are discovered on its IFTA returns

The Fuels Tax/Registration Fee Audit Section (FTRF) scheduled the petitioner for audit, selected an audit period, and sent an audit notification letter. When adequate records were not provided, a Notice was issued based on the 4.0-MPG allowed in the IFTA Audit Manual. The petitioner protested the Notice. After the protest was received, the petitioner provided records that were adequate to revise the Notice.

The auditor revised the Notice by selecting three sample quarters from the records provided. The sample quarters were the 1st Quarter 2012, 2nd Quarter 2013, and

1st Quarter 2014. Additional miles were discovered for Idaho and [Redacted]. The auditor also discovered records for an unreported trip which included [Redacted] miles. Additional tax-paid fuel receipts were provided for [Redacted].

The auditor determined error rates for recurring mileage and gallon errors and projected the error rates over the quarters of the audit period. One-time adjustments were made for nonrecurring errors. Taxes due were adjusted using the audited miles and gallons.

When the petitioner did not accept the revised Notice, the file was referred, with the Plan file, to the Legal/Tax Policy Division for administrative review. The petitioner was sent a letter explaining the methods available for redetermining a protested Notice. A hearing was held on April 21, 2015. The policy specialist explained the protest procedure and requested additional information. The petitioner expressed the belief that the additional tax due was a result of miles added by the auditor and requested weigh station print-outs to verify the increased miles that resulted in the increased deficiency.

Weigh station records were not provided because they were not part of the audit. In addition, according to the IFTA Audit Manual A540.200, the burden of proof is on the licensee. The Commission is also allowed to sample the records according to the IFTA Audit Manual A530. In the present case, the additional tax is due to the tax-paid fuel receipts provided by the petitioner. The increased gallons provided by the petitioner resulted in a decreased MPG. A lower MPG requires more fuel tax-paid gallons and increases the tax due.

## PERTINENT LAW

Idaho is required to participate in IFTA according to Section 63-2442A, Idaho Code:

> 63-2442A.INTERNATIONAL FUEL TAX AGREEMENT AND OTHER AGREEMENTS BETWEEN JURISDICTIONS. (1) The commission may enter into cooperative agreements with other jurisdictions for exchange of information and auditing of distributors, dealers and users of motor fuels. The commission

The Commission audits approximately 3 percent of the IFTA licensees a year as required by the IFTA Audit Manual, Section A310:

> *A310 NUMBER OF AUDITS
> **Base jurisdictions will be held accountable for audits and will be required to complete audits of an average of 3 percent per year of the number of IFTA accounts required to be reported by that jurisdiction on the annual reports filed pursuant to the IFTA Procedures Manual, Section P1110.300.005 excluding new licensees,** for each year of the program compliance review period, other than the jurisdiction's IFTA implementation year. Such audits shall cover at least one license year. This does not preclude audits of individual licensees several times during the program compliance review period. However, audits for a licensee selected that cover multiple license years, fuel types, or both shall be counted as one audit for program compliance review purposes. (Emphasis added)

The IFTA Procedures Manual governs the records requirements to support distance, fuel, and tax-paid fuel purchases reported. Section 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.

When records adequate for audit are provided, they were sampled using three sample periods as required by the IFTA Audit Manual Sections A520 and A530:

*A520 STANDARD APPROACH
Audit emphasis should be placed on evaluation of the licensee's distance accounting system, as distance allocation by jurisdiction is the basis for determining the licensee's fuel consumption and tax obligation for each jurisdiction. It is suggested, but not required, that fleet miles/kilometers be verified to source documentation for at least three representative quarters. The auditor shall also verify that the total miles/kilometers have been properly distributed to the various jurisdictions.

To determine if the licensee's distance accounting system properly accumulates all distance generated by units identified to the licensee's operation, not less than three representative months should be selected for audit with respect to computations of jurisdiction distance via routes traveled and to assure that all miles/kilometers are reported into the system. In the event that an auditor is unable to determine any reasonable method to assign or allocate unreported miles/kilometers, such miles/kilometers shall be assigned to all jurisdictions on the basis of each jurisdiction's audited percentage of total distance. Any audit adjustment to total fleet miles/kilometers of individual jurisdictions will require recomputation of the licensee's miles per gallon/kilometers per liter and, consequently, the fuel tax obligation to various jurisdictions.

A530 SAMPLING
Unless a specific situation dictates, all audits will be conducted on a sampling basis.
.100 Sample period(s) must be representative of the licensee's operations.
.200 Sample period(s) may be different for member jurisdictions due to seasonal operations.
.300 The licensee should be allowed input into sample selection if legitimate reasons exist.
.400 An agreement that the sampling methodology is appropriate should be signed by the licensee and the auditor.

*A540 VERIFICATION OF LICENSEE RECORDS
.100 If the licensee's operational records are not located in the base jurisdiction and the base jurisdiction's auditors must travel to where such records are maintained, the base jurisdiction may require the licensee to pay the base jurisdiction per diem and travel expenses incurred by the auditor(s) in performance of such an audit.
.200 The audit will be completed using the best information available to the base jurisdiction. The burden of proof is on the licensee.

.300 The auditor will make any reasonable attempt to verify information reported on the tax returns.
.400 If the base jurisdiction utilizes a distance reporting software program to verify the records of the licensee, that software program shall be used as an audit tool. The auditor must use discretion when verifying the licensee's records. All documentation required to be maintained in accordance with Section P540 of the IFTA Procedures Manual, and any other records used by the licensee to substantiate its distance traveled, must be considered by the auditor(s) in determining an acceptable distance reporting system and the accuracy of reported distance traveled.

## DISCUSSION AND ANALYSIS

The petitioner reported travel in Idaho, Oregon, and Washington. Tax-paid fuel was purchased in Oregon. The total tax due for Idaho and Washington was reported and paid each quarter. The totals for the audit period as reported by the petitioner were as follows:

| Jurisdiction | Tax | Taxable Miles | Taxable Gallons | Tax-Paid Gallons | Net Taxable Gallons | Total Tax Due |
|---|---|---|---|---|---|---|
| Idaho | 0.25 | 12,961 | 2,063 | 0 | 2,063 | $516 |
| [Redacted] | 0 | 112,876 | 18,010 | 18,002 | 8 | 0 |
| [Redacted] | 0.375 | 53,073 | 8,461 | 0 | 8,461 | $3,173 |
| TOTAL | | 178,910 | 28,534 | 18,010 | 10,532 | $3,689 |

Fleet miles are the total miles traveled by the IFTA qualified vehicles, whether subject to tax or not. Fleet gallons are the total gallons placed into the main fuel supply tanks of the IFTA qualified vehicles, whether tax-paid or not. Reported fleet miles divided by reported fleet gallons equals the fleet MPG. The petitioner reported fleet miles for all quarters of the audit period totaling 178,910 miles and fleet gallons totaling 28,521 gallons. The petitioner reported a fleet MPG for all quarters of the audit period totaling 6.27 MPG.

Taxable gallons are determined by the petitioner when completing the IFTA return by dividing the taxable miles by the fleet MPG. The total jurisdictional miles for all quarters of the period divided by the 6.27 fleet MPG resulted in 28,534 jurisdiction total taxable gallons. There is a 13 gallon difference between the fleet gallons and the jurisdiction total taxable gallons, which is attributed to rounding errors. There is also a difference between the total tax-paid gallons per jurisdiction and reported fleet gallons of over 10,000 gallons. Since fleet gallons are a total of all the gallons of fuel placed into the main supply tanks of the IFTA qualified vehicles, it should match the tax-paid gallons. This means that the petitioner either did not report all tax-paid gallons during the audit period or petitioner reported the fleet gallons incorrectly. Changes in the fleet MPG would change the taxable gallon computation for each jurisdiction.

Since the petitioner purchased all the tax-paid gallons in Oregon, there was no tax-paid credit to apply to the Idaho or Washington tax due. The petitioner paid this tax each quarter when he filed his quarterly IFTA return.

Because the petitioner did not provide any records when they were requested, the Notice was issued based on the 4.0-MPG allowed by A550.100.025. The miles were accepted as reported and the fleet gallons were increased by 16,205. The following is a comparison of the fleet gallons:

| Fleet | Miles | Gallons |
|---|---|---|
| 4.0-MPG | 178,910 | 44,726 |
| Reported | 178,910 | 28,521 |
| Difference | 0 | 16,205 |

When the 4.0-MPG was applied by jurisdiction, the total jurisdictional tax and net tax due (after allowing for any tax that was previously paid) is as follows:

| Jurisdiction | Tax | Taxable Miles | Taxable Gallons | Tax Due | Tax Previously Paid | Net Audited Tax Due |
|---|---|---|---|---|---|---|
| Idaho | 0.25 | 12,961 | 3,240 | $810.00 | 515.75 | $294.25 |
| [Redacted] | 0 | 112,876 | 28,218 | $0 | $0 | $0 |
| [Redacted] | 0.375 | 53,073 | 13,268 | $4,975.53 | $3,172.91 | $1,802.62 |
| TOTAL | | 178,910 | 44,726 | $5,785.53 | $3,688.66 | $2,096.87 |

Fleet and jurisdictional miles were not increased. The decreased MPG resulted in increased fleet gallons and increased jurisdictional taxable gallons. The tax due increased because the MPG decreased. After allowing for tax that was previously paid, an additional $2,096.87 fuel tax was due (not including penalty and interest).

When the auditor received records that were adequate for audit, he selected the three quarters for the sample quarters. The miles and gallons were adjusted based on the error rates and one-time adjustments. The unreported [Redacted] miles and gallons were treated as one-time adjustments. The following is a comparison of the reported and audited fleet miles and gallons:

| Fleet | Miles | Gallons | MPG |
|---:|:---:|:---:|:---:|
| Audited | 189,012 | 47,206 | 4.00 |
| Reported | 178,910 | 28,521 | 6.27 |
| Difference | 10,102 | 18,685 | |

The increase in the fleet miles and gallons resulted in a decrease in MPG from 6.27 to 4.00. The jurisdictional totals are as follows:

| Jurisdiction | Tax | Taxable Miles | Taxable Gallons | Tax Due | Tax Previously Paid | Net Tax Due |
|---|:---:|:---:|:---:|:---:|:---:|:---:|
| California | 0.453 | 368 | 82 | $37.15 | $0 | $37.15 |
| Idaho | 0.25 | 14,149 | 3,514 | $878.50 | 515.75 | $362.75 |
| Nevada | 0.27 | 537 | 119 | $32.13 | $0 | $32.13 |
| Oregon | 0 | 120,885 | 30,457 | $0 | $0 | $0 |
| Washington | 0.375 | 53,073 | 13,031 | $4,886.66 | $3,172.91 | $1,713.75 |
| TOTAL | | 189,012 | 47,203 | $5,834.44 | $3,688.66 | $2,145.78 |

There were increases in taxable miles for California, Idaho, Nevada, and Oregon. The taxable gallons increased for all jurisdictions because of the decrease in MPG. Tax due was increased in all jurisdictions, except Oregon (where the IFTA tax rate is $0.00).

## CONCLUSION

The petitioner incorrectly believes that the additional tax due is the result of additional miles included by the auditor. However, the increase in tax due is a direct result of the petitioner's failure to report all the Oregon gallons purchased for the qualifying IFTA vehicles during the audit period. The petitioner has not provided the Commission with sufficient factual information to establish that the amount asserted in the Notice is incorrect.

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 revised deficiency to be a reasonably accurate representation of the petitioner's fuel tax liability for the period in question.

THEREFORE, the Notice directed to [Redacted] dated December 5, 2014, as modified by this decision[Redacted] is AFFIRMED.

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

| | TAX | PENALTY | INTEREST | TOTAL DUE |
|---|---|---|---|---|
| FUELS TAX | $2,145.78 | $214.58 | $321.16 | $2,681.52 |

Penalty for an International Fuel Tax Agreement (IFTA) is calculated based on a tax liability. Interest for an IFTA audit is calculated based on jurisdictions with a tax liability.

Interest is calculated through November 30, 2015, 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 ___________________ 2015.

IDAHO STATE TAX COMMISSION

_____________________________________________
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this ________ day of ___________________ 2015, 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.

_____________________________________________