

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 1-308-905-472
 [Redacted] ,)
)
 Petitioner.) DECISION
)
 _____)

[Redacted] (petitioner) submitted a timely protest of a Notice of Deficiency Determination (Notice) issued July 22, 2015, by the Fuels Tax/Registration Fee (FTRF) Audit section of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) proposing additional registration fees in the amount of \$6,975.94 for registration years 2014 and 2015 (reporting periods July 1, 2011 through June 30, 2013). The petitioner is an August International Registration Plan (IRP) registrant. The Commission hereby issues its decision based on information contained in the file and from the Idaho IRP Commissioner.

BACKGROUND

The petitioner claims Idaho as its base jurisdiction 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 is a common carrier with three to five IRP apportionable vehicles during the audit period and primarily transports construction materials in the Pacific Northwest and Northern Mid-West United States.

The petitioner holds an International Fuel Tax Agreement (IFTA) license. An IFTA audit was held concurrently with the IRP audit as a convenience to the registrant because the records

required for the audits are similar. The auditor selected the three test months within two test quarters for the IRP audit (one test quarter for each registration year): 2nd Quarter 2012 and 2nd Quarter 2013.

The recordkeeping errors found during the audit were minimal. The majority of the deficiency was due to the miscalculation of the registration fees for the petitioner's registration renewal for registration year 2014; incorrect miles were used to calculate total IRP fleet miles. Idaho Tier 1 fees were incorrectly assessed instead of Idaho Tier 4 fees.

The 2014 IRP registration renewal packet was mailed to the petitioner on May 27, 2013. The accompanying instructions advised the petitioner to return the completed renewal application forms and required documents no later than July 1, 2013, to ensure adequate time for processing prior to the fleet expiration date of July 31, 2013.

The renewal request was received by fax on July 29, 2013, at approximately 8 p.m. in the evening. Processing of the renewal began on the next day. In the week that followed, the petitioner requested a number of changes to his application that were made. The petitioner was required to send additional documents. The renewal process was expedited, so that the petitioner would not have his trucks held at a port of entry for failure to renew his registration by the expiration date. Because the renewal application was received late, and additional changes were made, processing was not completed until August 7, 2013. On that day an invoice was issued for the fees due.

As a result of the audit, the Commission determined that the August 7, 2013, invoice the petitioner received was not accurate; it incorrectly calculated and charged fees in Idaho Fee Tier 1 based on an incorrect average per-vehicle distance. The error was not discovered at the time of registration. The auditor discovered the error during the review of the registration and

determined that the correct average per-vehicle distance was in Idaho Fee Tier 4. The auditor issued the Notice for the additional fees due.

The petitioner sent in a timely protest. In the protest, the petitioner stated that he doubts the accuracy of the corrected registration fees as errors have occurred with previous renewals. However, the petitioner has not provided documentation to support his claim. The file was forwarded for administrative review. The tax specialist sent a letter explaining the petitioner's hearing rights with a power of attorney (POA) form. The form was completed by the petitioner's representative and a hearing was scheduled for January 21, 2016.

A scheduling conflict arose prior to the hearing. The appointed representative for the petitioner was notified of the conflict and asked to reschedule the hearing. Both the petitioner and his appointed representative were contacted in an attempt to reschedule the hearing, but a hearing was not held. Therefore, the Commission issues its decision based on the information in the file and additional information provided by the IRP Commissioner.

PERTINENT LAW

Idaho Code § 49-435 states in pertinent part that when a carrier registers under the IRP, it must follow the requirements of the IRP:

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.**

(2) The department shall register the vehicle so described and identified and may issue license plates or distinctive sticker or other suitable identification device for each vehicle listed in the application upon payment of the fees required under subsections (1) and (8) of section 49-434, Idaho Code, and an additional identification charge of eight dollars (\$8.00) per vehicle. The fees collected for the additional identification shall be deposited to the state highway account. A

registration card shall be issued for each proportionally registered vehicle appropriately identifying it which shall be carried in or upon the vehicle identified at all times. (emphasis added)

Idaho Code § 49-434 states in pertinent part that when a carrier registers under the IRP, fees are based on the Idaho Fee Tier in which the average miles per vehicle falls and is subject to audit:

49-434...(8) There shall be paid on all commercial and farm vehicles having a maximum gross weight in excess of sixty thousand (60,000) pounds, a registration fee based upon the maximum gross weight of a vehicle as declared by the owner and the total number of miles driven on roads and highways in the state, county, city and highway district systems in Idaho, and if registered under the international registration plan (IRP), in all other jurisdictions. The appropriate registration fee shall be determined as follows:

(a) If the owner registers vehicles under the international registration plan (IRP), the appropriate mileage column shall be determined by the total miles an owner operated a fleet of vehicles on roads and highways in the state, county, city and highway district systems in Idaho and in all other jurisdictions in the preceding year, as defined in section 49-117, Idaho Code, and by the maximum gross weight of each vehicle within a fleet.

(b) If the owner registers vehicles under the international registration plan and determines that the average international registration plan fleet miles, calculated by dividing the total IRP fleet miles in all jurisdictions by the number of registered vehicles, is less than fifty thousand one (50,001) miles, the owner may apply to the department for refund of a portion of the registration fees paid, consistent with the fee schedules set forth in this section. The department shall provide an application for the refund. **An owner making application for refund under this section shall be subject to auditing as provided in section 49-439, Idaho Code.**

...

(9)(c) Any owner using any fee schedule other than the highest fee schedule under subsection (8)(c) of this section, shall certify at the time of registration that the miles operated in the preceding year do not exceed the schedule applied for. **Any owner using a fee schedule under subsection (8)(c) of this section that is less than the highest schedule shall maintain records to substantiate the use of the schedule as required by section 49-439, Idaho Code.** (emphasis added)

According to the IRP, Article X, Section 1020, Scope of Audits, inaccuracies are to be corrected when found, and the base jurisdiction shall conduct the audit on behalf of other member jurisdictions:

1020 SCOPE OF AUDITS

(a) The Base Jurisdiction shall Audit the Registrants to which it has issued apportioned registration. **The purpose of such an Audit shall be to assess the accuracy of the distances reported in a Registrant's application for apportioned registration and, where inaccuracies are found, to adjust the Registrant's fees accordingly.**

(b) An Audit of a Registrant performed by the Base Jurisdiction shall be conducted on behalf of all the Member Jurisdictions, and the Base Jurisdiction may make assessments and collections of fees based on its Audit. (emphasis added)

The apportionment percentage for jurisdictions into which apportioned travel is sought according to Article IV, Section 405 of the Plan, is as follows:

405 CALCULATION OF APPORTIONMENT PERCENTAGE

The following method is to be used to calculate the apportionment percentage with respect to a Fleet **for each Member Jurisdiction in which apportioned registration is sought.**

(a) For a Member Jurisdiction in which the Fleet (1) accrued distance during the Reporting Period, or (2) has never been apportioned and did not accrue distance during the Reporting Period:

(i) **determine the total actual distance operated during the Reporting Period in all Member Jurisdictions where Fleet Vehicles were apportioned during the Reporting Period** and where the Registrant desires to renew apportioned registration;

(ii) **estimate the Total Distance to be operated by the Fleet during the Registration Year in all Member Jurisdictions where Fleet Vehicles were neither previously apportioned nor accrued actual distance during the Reporting Period,** but in which the Registrant desires apportioned registration;

and

(iii) add the amount determined in clause (i) to the amount determined in clause

The apportionment percentage for each such Member Jurisdiction is the distance attributed to that Member Jurisdiction divided by the amount determined in clause (iii) of this subsection (calculated to 6 decimal places and rounded to 5 decimal places), times 100.

(b) For a Member Jurisdiction in which the Fleet did not accrue distance during the Reporting Period but in which it has previously been apportioned:

(i) estimate the Total Distance to be operated during the Registration Year in all such Member Jurisdictions; and

(ii) add this amount to the amount determined in clause (iii) of subsection (a).

The apportionment percentage for each Member Jurisdiction is the Estimated Distance attributed to that Member Jurisdiction divided by the amount determined in clause (ii) of this subsection (calculated to 6 decimal places and rounded to 5 decimal places), times 100.

(c) For purposes of subsection (a), a Fleet shall be considered never to have been apportioned in a Member Jurisdiction if the Registrant has neither (i) owned or Leased Apportioned Vehicles during the 18 months prior to the date of its application for apportioned registration, nor (ii) accrued actual distance by operating Apportioned Vehicles in any Member Jurisdiction during the Reporting Period.

(d) If a Fleet was apportioned in a Member Jurisdiction for no more than the last 90 calendar days of the Reporting Period, the Fleet's apportionment percentage for that Member Jurisdiction may, at the option of the Registrant, be calculated under subsection (a) if, with respect to that Member Jurisdiction, the Fleet otherwise meets the qualifications of subsections (a) and (c). (emphasis added)

DISCUSSION AND CONCLUSION

IRP registration fees are calculated based on the vehicle weight and total miles from a prior reporting period. Estimated miles must also be included for any jurisdictions into which the registrant wants to register for travel but the registrant has no prior travel. This is the total fleet miles and is divided by the number of IRP fleet vehicles. The result is a per-vehicle average miles.

Once the average per-vehicle miles are determined, the percentage of travel by the fleet in each jurisdiction is determined by dividing the jurisdiction miles by the total fleet miles (apportionment percentage.) The apportionment percentage is multiplied by the full fee for each jurisdiction to determine how much of each jurisdiction's fees the registrant will pay.

Idaho is the only state where fees are determined by calculating the per-vehicle average miles, then using one of five mileage fee tiers by vehicle weight.

In the present case, the petitioner traveled in Idaho, Montana, North Dakota, and South Dakota during the reporting period. He wanted to register for travel in Idaho and Washington, but not for Montana, North Dakota, and South Dakota. He estimated his future Washington travel for the coming registration year, since he had no prior travel in Washington. The total

fleet miles were calculated by adding the travel from the actual miles driven in the reporting period (Idaho, Montana, North Dakota, and South Dakota) plus the estimated miles for Washington.

The petitioner originally registered three vehicles, but added a fourth later in the registration year. All vehicles were registered at 106,000 lbs. GVW. Table 1 shows the miles used to calculate the fees from the final application and from the audit. Idaho Fee Tier 1 includes 0-7,500 miles and Idaho Fee Tier 4 includes 35,001 to 50,000 miles

Table 1	Application	Fee %	Audited	Fee %
Idaho	2,464	89.535%	2,234	88.579%
Washington (estimate)	288	10.465%	288	11.421%
Montana	0		22,344	
North Dakota	0		149,187	
South Dakota	0		11,786	
Total	2,752		185,839	
Vehicles Registered	3		4	
Per-Vehicle Ave Miles	917		46,460	

Because the petitioner did not plan to travel in Montana, North Dakota, or South Dakota the apportionment percentage for fees was based only on the miles for Idaho and Washington. The differences in the application and audited apportionment percentages were minimal as evidenced by the additional Washington fees of \$100.89.

The majority of the assessment is due to the change in Idaho fees from Tier 1 (0-7,500 miles) to Tier 4 (35,001 to 50,000 miles). The audit resulted in an assessment of additional Idaho fees of \$6,873.58 and Washington fees of \$100.89 totaling \$6,975.94.

The petitioner claims that he is not liable for the difference in assessed fees, because of the renewal registration miscalculation. The miscalculation is not in dispute; however, the petitioner's late registration contributed to the error. According to Idaho Code § 49-434A, no

registrant can underpay operating fees and is subject to additional penalties. During a current registration year, a vehicle can be seized until the registrant pays the proper registration. After the current registration year has expired, the only opportunity to discover and correct registration fees is during an audit according to Article X, Section 1020 of the IRP.

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 an accurate representation of the petitioner's registration fee liability for the period in question.

THEREFORE, the Notice of Deficiency Determination dated July 22, 2015, and directed to **[Redacted]** is AFFIRMED by this decision.

IT IS ORDERED that the petitioner pay the following amount of registration fees:

	<u>FEES</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
REGISTRATION FEES	\$6,975.94	\$0.00	\$0.00	\$6,975.94

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 _____ 2016.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2016, 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.
