

**STATE OF NORTH CAROLINA**  
**COUNTY OF WAKE**

**BEFORE THE**  
**SECRETARY OF REVENUE**

**IN THE MATTER OF:**

The Motor Fuels Tax Assessment            )  
Proposed Against                            )  
  )  
  ) vs.    )  
  )  
[Taxpayer]                                        )

**FINAL DECISION**  
Docket No. 2001-420

This matter was heard before the undersigned Assistant Secretary of Revenue in Raleigh, North Carolina by written communication at the request of [Taxpayer]. The Motor Fuels Tax Division (hereinafter "Division") issued a notice of proposed assessment on January 25, 2001 for \$1,410.94. Taxpayer filed a timely protest of the proposed assessment on February 28, 2001. On March 8, 2001, the Division responded to the taxpayer by letter stating that the matter was being referred to the auditors for review, agreeing to postpone administrative proceedings pending review, and requesting additional information tending to refute the findings of the audit. By letter dated June 22, 2001, the Division notified Taxpayer that it was referring the matter to the Secretary of Revenue for hearing, and Taxpayer was notified by letter dated June 25, 2001 that the hearing was scheduled for September 12, 2001. The matter was rescheduled at the request of Taxpayer for November 27, 2001, and thereafter Taxpayer requested that the hearing be conducted by written communication.

**ISSUE**

Whether the Motor Fuels Tax Division properly calculated Taxpayer's operational miles and fuel consumption resulting in the proposed assessment for tax, penalty, and interest for the stated audit period.

**EVIDENCE**

1. Notice of Assessment dated January 25, 2001.
2. Motor Fuels Tax Division Field Audit Report dated January 5, 2001.
3. International Fuel Tax Agreement (IFTA) Returns, 2nd Quarter 1998 through 3<sup>rd</sup> Quarter 2000.
4. IFTA Audit Manual, Sections A530 through A 550, mandating that all IFTA audits will be conducted on a sampling basis, and that in the absence of adequate records, a standard of 4.00 MPG factor will be used in such audits.

5. Letter from [Taxpayer] to the Motor Fuels Tax Division dated February 28, 2001 requesting a hearing on the assessment.
6. Letter from Christopher E. Allen to [Taxpayer] dated March 8, 2001 responding to the February 28, 2001 letter, and informing Taxpayer that the matter was being referred to the auditors for review, agreeing to postpone administrative proceedings pending review of the matter, and requesting any additional information tending to refute the assessment.
7. Letter from Christopher E. Allen to [Taxpayer] dated June 22, 2001 stating that since no additional information was forthcoming from the taxpayer and a prehearing conference was not requested, that the matter was being referred to the Secretary of Revenue for an administrative tax hearing.
8. Letter from Eugene J. Cella to [Taxpayer] dated June 25, 2001 scheduling an administrative Tax Hearing for September 12, 2001 at 10:00 a.m.
9. Letter from Eugene J. Cella to [Taxpayer] dated September 12, 2001 rescheduling the administrative Tax Hearing for November 27, 2001 at 10:00 a.m.
10. Letter from Eugene J. Cella to [Taxpayer] dated November 27, 2001 confirming Taxpayer's request that the hearing be resolved by written communication.
11. Letter from [Taxpayer] to Eugene J. Cella dated December 5, 2001 objecting to the MPG factor of 4.00 employed by the Division auditor.
12. Memorandum from E. Norris Tolson to Eugene J. Cella delegating authority to conduct administrative tax hearings on behalf of the Secretary of Revenue pursuant to G.S. 105-241.1.

### **FINDINGS OF FACT**

1. Taxpayer was at all times relevant to this matter an IFTA motor carrier as defined by G.S. 105-449.37 and 105-449.47, respectively, and was registered with the Division and filed quarterly reports required by G.S. 105-449.45.
2. Taxpayer was engaged in cutting and hauling timber during the audit period, operating two to three trucks, and maintained off-road timber cutting and loading equipment.
3. Taxpayer used a fifty-five gallon fuel drum on a pickup truck to fuel his off-road equipment.
4. Taxpayer maintained fuel receipts, but had no records to support either his mileage or miles-per-gallon (mpg) reported on his IFTA quarterly returns (Form Gas 1276).
5. During the audit opening conference, Taxpayer agreed to install hubometers on his vehicles and track and record his mileage for a two-month period, but failed to do so.
6. Taxpayer reported his mileage to the Division by multiplying his fuel consumption as indicated by his receipts and invoices by his estimated mpg factor of 5.00, but failed to

maintain actual mileage records as required by statute and the International Fuel Tax Agreement (IFTA).

7. The auditor examined all of Taxpayer's available fuel receipts during the audit period, allowing credit for each purchase in which the date, state, and number of gallons could be determined.
8. The auditor disallowed a number of receipts that lacked the requisite information.
9. Taxpayer did not maintain total mileage records, and the auditor applied a mpg factor of 4.00 in accordance with the IFTA Articles of Agreement and the IFTA Audit Manual.
10. Taxpayer has not offered any documentation or other information to support its assertion that the Division's recalculation based upon Taxpayer's reported operation was incorrect.
11. A proposed tax assessment issued by the Department of Revenue is presumptively correct and it is incumbent upon the taxpayer to refute the assessment by the preponderance of credible evidence.
12. Taxpayer has not presented any evidence to refute the assessment proposed herein, other than his unsupported assertions that his vehicles routinely get 5.00 mpg.

### **CONCLUSIONS OF LAW**

Based upon the foregoing findings of fact, the undersigned makes the following conclusions of law:

1. Taxpayer was during all times relevant to the matter herein a motor carrier required to timely and correctly file quarterly IFTA returns to the Motor Fuels Tax Division pursuant to G.S 105-449.37, 105-449.47, and 105-449.45.
2. Taxpayer failed to maintain proper mileage records as required under the International Fuel Tax Agreement to support his assertion that his vehicles averaged 5.00 mpg.
3. Taxpayer presented no evidence to refute the assessment proposed against him, and it is therefore deemed correct.
4. Taxpayer was properly assessed \$979.08 tax, \$244.77 penalty, and accrued interest through February 28, 2002 of \$314.37.

### **DECISION**

**WHEREFORE**, the Assistant Secretary of Revenue hereby affirms in its entirety the proposed assessment for tax, penalty and interest in the amount of \$1,538.22, plus interest at the rate of 1% per month as specified in the International Fuel Tax Agreement Articles of Agreement, or \$.32 per day.

This the 14<sup>th</sup> day of February, 2002.

Signature \_\_\_\_\_

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings  
North Carolina Department of Revenue