

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Motor Fuels Tax)
Assessment by the Secretary of Revenue)
of North Carolina)
)
vs.)
)
[Taxpayer])

FINAL DECISION
Docket No. 2002-138

This matter was heard before the undersigned Assistant Secretary of Revenue in Raleigh, North Carolina on March 27, 2002 at the request of [the President of Taxpayer]. The Motor Fuels Tax Division (hereinafter "Division") issued a notice of proposed assessment on January 22, 2001 for \$11,069.63. Thereafter, Taxpayer tendered additional receipts for which the Division auditor allowed credit against the original assessment. The Division then issued an amended assessment for \$7,828.58 on March 9, 2001. Taxpayer filed a timely objection to the amended audit on April 3, 2001. The parties mutually agreed to postpone this matter pending submittal of additional records and further review. By letter dated February 1, 2002, the Division notified Taxpayer that it was referring the matter to the Secretary of Revenue for hearing. Taxpayer was notified by letter dated February 5, 2002 that the hearing was scheduled for March 27, 2002. The hearing was conducted on that date, and was held open for an additional thirty (30) days to allow Taxpayer to present additional evidence.

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 22, 2001 of \$11,069.63.
2. Motor Fuels Tax Division Field Audit Report dated December 27, 2000.
3. International Fuel Tax Agreement (IFTA) returns, 4th Quarter 1997 through 3rd Quarter 2000, some of which were delinquent.

4. Auditor's contemporaneous notes of telephone conversations made while conducting the audit; Results of auditor's International Registration Plan (IRP) investigation establishing Taxpayer's IRP registration in 1996 only.
5. IFTA Audit Manual, Sections A530 through A550 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 to be used in such audits.
6. Amended Motor Fuels Tax Division Field Audit Report and amended assessment of \$7,828.58 dated March 9, 2001.
7. Facsimile letter from [the President of Taxpayer] to the Secretary of Revenue dated April 3, 2001 requesting a hearing.
8. Letter from Christopher E. Allen to [the President of Taxpayer] dated April 10, 2001 responding to the April 3, 2001 letter, requesting the basis for the objection to the assessment, informing Taxpayer that the matter was being referred to the auditors for review, and agreeing to postpone administrative proceedings pending review of the matter.
9. Letter from Christopher E. Allen to [the President of Taxpayer] dated February 1, 2002 stating that since no additional information was forthcoming and a prehearing conference was not requested, that the matter was being referred to the Secretary of Revenue for an administrative tax hearing.
10. Letter from Eugene J. Cella to [the President of Taxpayer] dated February 5, 2002 scheduling an administrative Tax Hearing for March 27, 2002 at 10:00 a.m.
11. 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 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 business as an interstate carrier during the audit period, operating three qualified motor vehicles weighing 26,0001 pounds or more.
3. The Division auditor scheduled and rescheduled the audit a total of four (4) times before meeting with Taxpayer to conduct the audit.
4. Taxpayer stated to the auditor that he could not find any mileage records, and the auditor computed average miles driven per quarter for the audit period based upon his gross receipts from a contract between Taxpayer and [a company].

5. Using information provided by Taxpayer that he received \$44,920 in 1999 and \$131,275.00 in tax year 2000, and he made \$70.00 per forty (40) mile round trip, the auditor estimated 25,005 miles were driven per quarter.
6. The auditor estimated that Taxpayer's vehicles averaged 5.68 MPG (miles per gallon) during the relevant periods.
7. Based upon the IFTA (International Fuel Tax Agreement) Audit Manual, the auditor could have applied a MPG factor of 4.00 due to the lack of available records to substantiate Taxpayer's vehicle miles.
8. During the tax years 1997 through 2000, Taxpayer obtained 12, 15, 30, and 20 decals respectively, while operating only three (3) qualified motor vehicles.
9. Pursuant to G.S. 105-449.52, the Division could have assessed Taxpayer based upon the number of decals issued to Taxpayer, for a total of seventy-seven (77) vehicles, but did not do so.
10. The Auditor could only find IRP (International Registration Plan) records for tax year 1996, which showed that Taxpayer operated a total of 88,000 miles, or an average of 22,000 miles per quarter during that year.
11. Taxpayer provided fuel receipts for tax year 2000, and was allowed credit for all documented purchases except for one in which the date of purchase could not be determined.
12. Taxpayer provided no other record of fuel purchases for the audit period.
13. After the original audit was completed, Taxpayer submitted additional records in the form of fuel receipts for tax year 1999, and the Division allowed credit for all receipts in which the jurisdiction and date of purchase could be determined.
14. Taxpayer also provided trip sheets to the Division, but these were not considered in preparing the amended audit, as these records lacked date, jurisdiction, vehicle number, or other verifiable information and were not maintained in any order.
15. Taxpayer stated that he had many owner/operators working for him but did not produce records showing the number of trucks operated or when they operated during the audit period.
16. During the hearing of this matter taxpayer stated that he could provide copies of lease agreements and additional records, and the hearing was held open for thirty days to allow for submittal of this additional evidence.
17. Taxpayer did not present any additional information for inclusion into the record.

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, -449.47, and -449.45.
2. Taxpayer failed to maintain proper mileage records as required under the Revenue Laws of this State and the International Fuel Tax Agreement.
3. Taxpayer failed to maintain proper fuel records as required under the Revenue Laws of this State and the International Fuel Tax Agreement.
4. Taxpayer presented no evidence tending to refute the assessment proposed against it, and the assessment is therefore deemed correct.
5. Taxpayer was properly assessed \$5,031.90 tax, \$1,257.98 penalty and \$1,538.70 accrued interest through March 27, 2001.
6. Additional interest of \$805.10 has accrued from March 2001 through July of 2002 for a total now due of \$8,633.68.

DECISION

WHEREFORE, the undersigned Assistant Secretary of Revenue **HEREBY AFFIRMS** in its entirety the proposed assessment for tax, penalty and interest in the amount of \$8,633.68 plus interest at the rate of 1% per month as specified in the International Fuel Tax Agreement Articles of Agreement, or \$1.68 per day.

This the 25th day of July, 2002.

Signature _____

Eugene J. Cella
Assistant Secretary of Revenue