

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:)
)
The Motor Fuels tax assessment)
Proposed against)
)
[Taxpayer])

FINAL DECISION
Docket No. 2002-666

INTRODUCTION

This matter was heard before the undersigned Assistant Secretary of Administrative [Tax] Hearing in Raleigh, North Carolina on November 12, 2002, upon application for hearings by [Taxpayer]. Taxpayer protested the assessment of tax and interest for the period July 1, 1999 through December 31, 2001 by undated letter.

By letter dated October 11, 2002, the undersigned Assistant Secretary notified the Taxpayer of the time, date, and location of the hearing scheduled for 10:00 am November 12, 2002 in Room 135 of the Revenue Building at 501 North Wilmington Street in Raleigh. Representing the Motor Fuels Tax Division (hereinafter "Division") at the hearing was JoLisa Ellis, Motor Fuels Tax Auditor and Christopher E. Allen, Division Counsel. Taxpayer did not attend the hearing, request a postponement, or submit any evidence.

ISSUES

Whether the Division properly calculated the taxpayer's operational miles and fuel consumption resulting in the above-referenced proposed assessment for tax and interest on March 14, 2002 for stated audit period.

EVIDENCE

1. Motor Fuels VISTA System Account Tax Type Data screen dated November 7, 2002.
2. Motor Fuels VISTA System Account Tax Return Summary Journal screen dated November 7, 2002
3. Motor Fuels Tax Division Field Audit Report dated February 22, 2002.
4. Notice of Tax Assessment (IFTA) dated March 14, 2002 in the amount of \$3,394.29.
5. Undated letter from [Taxpayer] received by the Director, Motor Fuels Tax Division contesting the assessment.

6. Letter from Christopher E. Allen to [Taxpayer] dated May 2, 2002.
7. Letter from Eugene J. Cella to [Taxpayer] dated October 11, 2002 scheduling an administrative tax hearing for November 12, 2002 at 10:00 a.m.
8. Memorandum from E. Norris Tolson to Eugene J. Cella dated May 16, 2001 delegating authority to conduct administrative tax hearings on behalf of the Secretary of Revenue pursuant to N.C.G.S. 105-241.1.

The Division submitted a Brief for Tax Hearings to the Assistant Secretary.

Taxpayer presented no evidence for inclusion into the record.

FINDINGS OF FACT

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

1. Taxpayer was during all times relevant to the audit and assessment herein a “user” as defined by N.C.G.S. 105-449.60(41).
2. Taxpayer was registered and licensed as an International Fuel Tax Agreement (IFTA) carrier pursuant to N.C.G.S. 105-449.47.
3. Taxpayer operated three (3) IFTA-qualified vehicles—two (2) tow trucks and one (1) road tractor registered for 80,000 pounds bearing an International Registration Plan (IRP) apportioned plate during the audit period.
4. The auditor completed the audit on February 22, 2002 and issued the notice of tax assessment on March 14, 2002.
5. Taxpayer timely requested a hearing by undated letter and the Division and Taxpayer mutually agreed to postpone the hearing pending additional information tendered by Taxpayer.
6. After further review and receiving no information from Taxpayer, the Division referred the matter to the Assistant Secretary for hearing scheduled for November 12, 2002.
7. The proposed assessment by the Division is presumed correct, and it is incumbent upon a Taxpayer to offer evidence to refute a proposed assessment.
8. Taxpayer did not appear at the hearing or present any evidence tending to refute the assessment proposed against him.

CONCLUSIONS OF LAW

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

1. Taxpayer was issued a proposed assessment and timely filed a request for hearing.
2. Taxpayer received notice of the time, date, and location of the hearing of this matter.
3. Taxpayer did not appear, request a postponement, or submit any evidence.
4. Taxpayer was properly assessed \$2,693.88 tax and \$691.31 interest through November 2002 for a total of \$3,385.19.
5. Additional interest of \$80.33 has accrued from November 12, 2002 through February 2003 for a total now due of \$3,465.52.

DECISION

Taxpayer operated three (3) IFTA-qualified vehicles during the audit period noted above, and failed to maintain adequate records as required by Article 36B of Chapter 105 of the General Statutes and the International Fuel Tax Agreement. The Motor Fuels Tax Division properly calculated Taxpayer's operational miles, fuel consumption, and prepared a miles-per-gallon analysis of taxpayer's operation. Based upon Taxpayer's audited operation, the Division issued the presumptively correct assessment herein for tax and interest. The burden is upon a taxpayer that takes exception to an assessment to overcome that presumption. Notice of the time and place for hearing was mailed to Taxpayer's last known address by first class mail, postage paid, on October 11, 2002, and was not returned by the postal service. Taxpayer, receiving notice of the hearing, did not appear, nor did anyone representing Taxpayer. No evidence was presented at the hearing tending to contradict the assessment of overcome the presumption of correctness.

WHEREFORE, the undersigned Assistant Secretary of Revenue **HEREBY AFFIRMS** in all respects the assessment proposed herein for \$3,465.52 through February 28, 2003, including accrued interest at the rate of \$.89 per day at the statutory rate of one percent (1%) until paid.

This the 12th day of February, 2003

Signature _____

Eugene J. Cella
Assistant Secretary of Revenue