

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

**BEFORE THE SECRETARY  
OF REVENUE**

**IN THE MATTER OF:** )  
)  
The Motor Fuels Destination State )  
Penalty Assessment Proposed )  
January 27, 2003 by the Secretary of )  
Revenue of North Carolina )  
)  
vs. )  
)  
[Taxpayer] )

**FINAL DECISION**  
Docket No. 2003-175

This matter was heard before the undersigned Assistant Secretary of Administrative Hearings, Eugene J. Cella, in Raleigh, North Carolina on April 29, 2003. [Taxpayer Representative] represented Taxpayer. Tax Investigator D. R. Farmer, Investigations Supervisor Martin Barrow, and Christopher E. Allen, Division Counsel, represented the Motor Fuels Tax Division.

**ISSUE**

Whether the Secretary should waive the \$1,500.00 civil penalty assessment issued by the Division on January 27, 2003 pursuant to G.S. 105-449.115(f)(2) against Taxpayer for delivering motor fuel to a destination state other than that shown on the shipping document.

**EVIDENCE**

The following items were introduced into evidence by the parties:

1. Civil Penalty Assessment for \$1,500.00 issued by the Division against Taxpayer dated January 27, 2003.
2. Letter dated January 27, 2003 from Donnie Farmer, Investigator to Mr. Don Fink.
3. Status Report dated January 27, 2003 prepared by D. R. Farmer.
4. Letter dated February 24, 2003 from [Taxpayer Representative] on behalf of Taxpayer to D. R. Farmer requesting a waiver of the assessed penalty, or an appeal of the matter, and copy of check for \$1,500.00.
5. Letter dated March 31, 2003 from Eugene J. Cella to Taxpayer scheduling a hearing for April 16, 2003.

6. Memorandum dated May 16, 2001 from Secretary Tolson to Mr. Eugene J. Cella authorizing Mr. Cella to conduct administrative tax hearings.

Brief for Tax Hearing submitted by the Division in support of the assessment.

### **FINDINGS OF FACT**

Based upon the forgoing evidence of record, the Assistant Secretary for Administrative Tax Hearings makes the following findings of fact:

1. During all times relevant to the audit and assessment herein [Taxpayer] was a "motor carrier" as defined by G.S. 105-449.37.
2. Taxpayer was also registered with the Motor Fuels Tax Division ("Division") as a motor carrier subject to the International Fuel Tax Agreement (IFTA) pursuant to N.C.G.S. 105-449.47.
3. Taxpayer operated one (1) IFTA-qualified vehicle during the audit period to haul Christmas trees to a retail lot in [an out of state location] and to transport horses and equipment.
4. The auditor informed Taxpayer of the audit, the audit date, periods under audit, sample quarters and discussed the scope of the audit by telephone on April 12, 2001
5. The auditor conducted an opening conference on June 18, 2001 and discussed the audit procedures with Taxpayer.
6. Taxpayer agreed to the audit being conducted on a sampling basis.
7. Taxpayer maintained no odometer records for the audit period to support any miles reported to the Division on Taxpayer's quarterly IFTA returns.
8. Taxpayer calculated mileage by taking the miles derived from [an internet website] for a round trip from [a city in North Carolina] to [an out of state location].
9. Taxpayer did not maintain trip sheets or logs for each trip.
10. Taxpayer multiplied the number of miles for a trip as determined by [an internet website] by the number of trips taken during each quarter to determine reportable IFTA jurisdictional miles.
11. Taxpayer reported IFTA miles in the fourth quarter of 1998, 1999, and 2000.
12. Taxpayer could not produce any records to document the actual number of trips taken in any audited quarter. Other quarters were reported as either all North Carolina miles or no operations.

13. The audit was completed on December 17, 2001, and on March 14, 2002, the Division issued an assessment for tax, penalty and interest totaling \$1,670.06 plus accrued interest.
14. Taxpayer's vehicle repair history obtained during the audit indicated actual odometer readings, establishing that Taxpayer traveled a total of 77,868 miles from January 31, 1996 to April 4, 2001.
15. The auditor calculated the per-day average mileage for the vehicle and applied this number to the number of days in each quarter of the audit period.
16. The auditor then allocated the miles to North Carolina,[and two other states] based upon mileage percentages from a round trip taken from [a city located in North Carolina] to [an out of state location] run on [a type of software].
17. PC Miler is a standard software program used by the trucking industry to calculate operational miles.
18. Taxpayer stated that it purchased all fuel from retail locations, and submitted monthly credit card statements showing only a date, location and dollar amount of each purchase.
19. The auditor disallowed this information, as these records failed to comply with the requirements of G.S. 105-449.39 and 17 NCAC 09I. 0200.0201 (now codified as 17 NCAC 12A 0200.201) for a valid purchase invoice.
20. Taxpayer determined total and jurisdictional gallons used by simply taking total miles operated as indicated by [an internet website] program and dividing that figure by a factor of 6.00 miles per gallon (mpg).
21. Taxpayer maintained no odometer records to substantiate a 6.00-mpg average for its vehicle, but used this figure for IFTA reporting purposes.
22. Later in the audit process, on November 27, 2001, Taxpayer obtained fuel receipts from the home office of its vendor representing four (4) quarters totaling 3757 gallons, an increase of 331 gallons over what was actually reported for these periods.
23. Taxpayer provided no records for quarters for which it filed a no operations or all North Carolina operations quarterly IFTA return.
24. The auditor disallowed Taxpayer's reported mpg factor of 6.00 and applied the IFTA-authorized 4.00 mpg to the audit pursuant to Section A550.100 of the International Fuel Tax Agreement (IFTA) Audit Manual.
25. Taxpayer filed a timely objection to the assessment by letter dated March 25, 2002.
26. On April 5, 2002, the Division acknowledged receipt of the objection, requested copies of the additional records mentioned in Taxpayer's letter, and the parties mutually agreed to postpone the hearing pending review of the additional information in possession of Taxpayer.

27. The Division auditor spoke with Taxpayer several times thereafter, but no records were produced warranting an adjustment to the assessment.
28. The Division referred the matter to the Assistant Secretary for Administrative Tax Hearings, who scheduled the proceeding herein by letter dated November 25, 2002.
29. The administrative hearing was held January 23, 2003.
30. Taxpayer produced three (3) documents purporting to be fuel receipts for purchases of tax-paid fuel during the hearing.
31. Two (2) of these documents failed to meet the criteria for acceptable fuel purchase invoices contained in G.S. 105-449.39 and 17 NCAC 09I. 0200.0201 (now codified as 17 NCAC 12A 0200.201), but credit was allowed for a portion of the purchases totaling 365 gallons of tax-paid fuel.
32. The Division made post-hearing adjustments to the assessment by allowing a tax credit of \$86.82, which reduced the penalty by \$21.70, for a total reduction of \$92.24 in the proposed assessment.

### **CONCLUSIONS OF LAW**

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

1. During all times relevant to the audit and assessment herein Taxpayer) was a "motor carrier" as defined by G.S. 105-449.37 and was properly registered with the Division as required by the International Fuel Tax Agreement (IFTA) and N.C.G.S. 105-449.47.
2. Taxpayer filed IFTA quarterly returns for the audit period of April 1, 1998 through March 31, 2001, and reported IFTA jurisdictional miles for the fourth quarter 1998, 1999, and 2000, but reported either all operations in this State, or no operations for the other quarters.
3. Taxpayer failed to maintain odometer miles or proper fuel purchase records as required by the IFTA, the State Revenue Act and administrative procedures.
4. The Division properly disallowed Taxpayer's fuel purchase records that did not comply with the requirements of G.S. 105-449.39 and 17 NCAC 09I .0200.0201 for valid fuel purchase invoices.
5. Taxpayer failed to maintain proper odometer or other mileage records from which to calculate its miles-per-gallon factor for IFTA reporting purposes, and used instead an "average" 6.00 mpg.
6. In the absence of sufficient verifiable documentation, the Division properly employed the IFTA-authorized 4.00 mpg from which to calculate Taxpayer's fuel consumption pursuant to Section A550.100 of the IFTA Audit Manual, rather than the 6.00 average used by Taxpayer on its IFTA quarterly returns.

7. The Division correctly calculated the operational miles and fuel consumption for Taxpayer's qualified vehicle during the audit period, after allowing credit for properly documented fuel purchase invoices.
8. The Secretary of Revenue is authorized pursuant to G.S. 105-237 to reduce or waive assessed penalties when a taxpayer establishes reasonable cause for such action..

### **DECISION**

The evidence presented at the hearing shows that Taxpayer was properly registered with the Department as an International Fuel Tax Agreement (IFTA) carrier, and was required to file quarterly reports with the Motor Fuels Tax Division. G.S. 105-449.57 allows the Secretary of Revenue to enter into cooperative agreements such as the International Fuel Tax Agreement, along with other jurisdictions, for the efficient collection of motor fuel taxes. Taxpayer filed quarterly reports in the fourth quarter for each of the three years during the audit period showing IFTA jurisdictional miles. During the other quarters, Taxpayer would file either all operations in this State or no operations IFTA returns.

As an IFTA carrier, Taxpayer was required to maintain odometer readings or maintain other records indicating actual operational miles. This it failed to do. The Division auditor was nevertheless able to obtain mileage records from Taxpayer's vehicle repair history for purposes of determining Taxpayer's operational miles. Taxpayer was also required to maintain trip reports for its out-of-state operations, but instead improperly used a computer map and directions software program to determine IFTA-related operations.

Taxpayer was also required to maintain fuel purchase records in order to obtain credit for tax-paid fuel purchases pursuant to G.S. 105-449.39. The Division allowed credit for a portion of Taxpayer's purchases that were sufficiently documented. However, Taxpayer presented credit card invoices that showed only the total purchase price and date of purchase. Credit for these purchases were properly disallowed pursuant to G.S. 105-449.39 and 17 NCAC 09I .0200.0201, since they lacked sufficient verifiable information such and seller's name and address, number of gallons, product type, and vehicle unit number or license plate number.

Taxpayer was also required to maintain adequate records from which its average miles-per-gallon (mpg) factor could be accurately determined. However, with limited verifiable documentation, Taxpayer used a mpg factor of 6.00 to report its IFTA operations to the Division. The auditor properly used 4.00 as the mpg factor for the audit as authorized by Section A550.100 of the IFTA Audit Manual due to the absence of such records.

The Division's calculation of Taxpayer's operational miles and fuel consumption was proper and correct. The undersigned Assistant Secretary believes that Taxpayer acted in good faith and that the failure to accurately maintain and report vehicle mileage was inadvertent and due to a lack of knowledge of the record keeping requirements for an IFTA-qualified vehicle. Therefore, the Assistant Secretary finds reasonable cause to waive the penalty of \$253.57 assessed herein.

**CONCLUSION**

**WHEREFORE**, based upon the above findings of fact and conclusions of law, the undersigned Assistant Secretary of Revenue **HEREBY AFFIRMS** in its entirety the proposed assessment for tax of \$927.46 and accrued interest of \$572.54 through this date for a total of \$15.00.00, plus accrued interest at the rate of one percent (1%) per month or \$ . per day thereafter.

This the 29<sup>th</sup> day of July, 2003.

Signature \_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Revenue