

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

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

**IN THE MATTER OF:** )  
)  
The Proposed Motor Fuels Tax )  
Assessment Issued August 19, 2003 )  
by the Secretary of Revenue of North )  
Carolina, totaling \$18,853.26, plus )  
accrued interest, )  
)  
vs. )  
)  
[Taxpayer] )

**FINAL DECISION**  
Docket No. 2003-181

This matter was conducted before the undersigned Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in Raleigh, North Carolina on August 19, 2003. Neither taxpayer nor anyone representing Taxpayer appeared at the hearing. Appearing on behalf of the Motor Fuels Tax Division were Lisa Gaskins, Division Auditor and Christopher E. Allen, General Counsel.

**ISSUE**

**Whether the Division properly calculated Taxpayer's operational miles and fuel consumption resulting in the proposed International Fuel Tax Agreement (IFTA) assessment for tax, penalty, and accrued interest issued on August 19, 2002 totaling \$18,853.26.**

**EVIDENCE PRESENTED BY THE DIVISION**

Evidence presented by the Division included the following exhibits. Taxpayer did not appear nor present any information to refute the assessment.

1. Screen print from the Division's VISTA system showing Taxpayer's account information.
2. Screen prints from the Division's VISTA system showing Taxpayer's contact information and the Division's activity notes.
3. Division 's filed audit report dated July 15, 2002.
4. Notice of Tax Assessment issued by the Division on August 19, 2002 totaling \$18,853.26.

5. Letter dated September 3, 2002 from [Vice President of Taxpayer] to the Director of the Division requesting a hearing, together with copies of Taxpayer's IFTA returns.
6. Letter dated April 7, 2003 from Christopher E. Allen to [Vice President of Taxpayer] referring the matter to the Office of the Secretary of Revenue for hearing.
7. Letter date April 7, 2003 from Eugene J. Cella to [Vice President of Taxpayer] scheduling an administrative tax hearing for May 13, 2003.
8. Certified letter dated June 28, 2002 from Lisa Gaskins to [Vice President of Taxpayer] requesting records by July 15, 2002 returned "refused."
9. Letter dated June 18, 2003 rescheduling an administrative tax hearing for August 19, 2003.
10. Memorandum dated May 16, 2001 from E. Norris Tolson, Secretary of Revenue, delegating to Eugene J. Cella the authority to conduct any Chapter 105 administrative hearings.
11. Copies of fuel purchase receipts submitted by Taxpayer prior to the hearing of this matter.

### **FINDINGS OF FACT**

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

1. Taxpayer was, during all times relevant to the audit and assessment herein, a "motor carrier" as defined by G.S. 105-449.37(a)(1).
2. Taxpayer was also registered with the Division as an International Fuel Tax Agreement (IFTA) carrier pursuant to N.C.G.S. 105-449.47 and operated one (1) IFTA-qualified vehicle road tractor registered for 80,000 pounds with an apportioned plate.
3. The auditor first telephoned [Vice President of Taxpayer], on May 14, 2002 to discuss the upcoming IFTA audit and the records needed to perform the audit.
4. [Vice President of Taxpayer] responded by stating that he was in the process of moving, that a large portion of his records were destroyed by the flood, and that the records that survived the flood were located out of state.
5. However, the referenced flood was presumably from Hurricane Floyd, which occurred in 1999, well before the beginning date of the audit period (January 1, 2000) and Taxpayer's records for that period should not have been impacted by that event.
6. The auditor was finally able to reach [Vice President of Taxpayer] and a meeting was set for June 21, 2002 where [Vice President of Taxpayer] was to provide the requested records to perform the audit, but [Vice President of Taxpayer] failed to attend this scheduled meeting.

7. The auditor left numerous messages after that meeting, and sent a certified letter dated June 28, 2002 requesting the required records by July 15, 2002. This letter was returned marked "refused."
8. The audit proceeded upon the best information available pursuant to G.S. § 105-241.1(a) and the IFTA Audit Manual, since Taxpayer presented no records upon which the auditor could rely.
9. Taxpayer obtained four (4) IFTA decals for 2000, nine (9) decals for 2001, and fifteen (15) decals for 2002. However, the auditor based the audit on the operation of only one (1) vehicle for the period rather than using the presumption contained in G.S. 105-449.44(c) of one vehicle for each decal.
10. The auditor first accepted the total miles and total fuel reported by the Taxpayer on its IFTA returns, as it reported "all ops" (all operations in North Carolina) for the quarters 00/01 and 01/01.
11. The auditor accepted these miles and determined the average reported mileage for the seven (7) additional quarters of the audit period was 29,245 miles per quarter.
12. The miles attributed to North Carolina for the two quarters for which Taxpayer reported "all ops" were applied to this State.
13. Then, employing the procedures outlined in the IFTA Audit Manual for BIA audits, all credit for tax paid jurisdictional fuel reported during the audit period was disallowed, since no properly documented records were ever produced to substantiate these purchases.
14. Finally, the auditor applied the IFTA-standard of 4.00-mpg to determine Taxpayer's total fuel requirements for the audit period.
15. The auditor completed an IFTA audit for the stated audit period on July 15, 2002 and the Division issued the resultant notice of tax assessment on August 19, 2002.
16. Taxpayer requested a hearing of this matter by letter dated September 3, 2002 and the Division placed the matter on hold pending further review.
17. Taxpayer failed to provide any information prior to the hearing tending to refute the proposed assessment and the Division referred this matter to the Secretary of Revenue on April 7, 2003.
18. An administrative tax hearing was scheduled for May 13, 2003, but was rescheduled at the request of Taxpayer.
19. Taxpayer presented fuel purchase receipts after the hearing was rescheduled, but these receipts lacked sufficient information as required by G.S. §105-449.39, therefore the auditor denied credit for these purchases.

20. Taxpayer failed to attend the hearing of this matter on August 19, 2003, and did not present any evidence or argument to refute the proposed assessment.

### **CONCLUSIONS OF LAW**

Based upon the evidence of record, the undersigned enters the following conclusions of law:

1. During all times relevant to the assessments issued herein, Taxpayer was a "motor carrier" as defined by G.S. § 105-449.37(a)(1), and was subject to the motor fuels tax laws of this State and the International Fuel Tax Agreement.
2. Taxpayer failed to properly maintain records as required under the State Revenue Act and the International Fuel Tax Agreement.
3. Taxpayer also failed to appear at the hearing or present sufficient verifiable evidence to refute the assessment issued herein.
4. The Division properly calculated Taxpayer's operational miles and fuel consumption resulting in the proposed International Fuel Tax Agreement (IFTA) assessment for tax, penalty, and accrued interest issued on August 19, 2002 totaling \$18,853.26.

### **DECISION**

**WHEREFORE**, the undersigned Assistant Secretary of Revenue **HEREBY AFFIRMS** in all respects the assessment proposed herein for \$13,544.56 tax, \$3,386.14 penalty, and interest of \$3,954.16 through November 30, 2003, for a total of \$20,884.86, plus accrued interest at the rate of \$4.51 per day at the statutory rate of one percent (1%) per month until paid.

This the 17<sup>th</sup> day of November, 2003.

Signature \_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Revenue