

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE SECRETARY
OF REVENUE

IN THE MATTER OF:)
)
The Proposed Assessment of)
Motor Fuels taxes for the period)
April 1, 2000 through March 31,)
2003 Issued by the Secretary of)
Revenue of the State of North)
Carolina in the amount of)
\$205,870.67)
against)
)
[Taxpayer])

AMENDED
FINAL DECISION
(Docket No. 2004-103)

This matter was heard before Eugene J. Cella, Assistant Secretary for Administrative Tax Hearings, at the North Carolina Department of Revenue in Raleigh, North Carolina on August 11, 2004 upon Taxpayer's request for an administrative hearing. Taxpayer's representative, together with several employees represented Taxpayer. Scotty Miller, Division Auditor and Christopher E. Allen, General Counsel represented the Motor Fuels Tax Division.

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 and interest issued December 3, 2003 in the amount of \$205,870.67 plus subsequently accruing interest.

EVIDENCE

Presented by the Division:

1. Screen prints from Division's computer system (VISTA) showing registration and credential information for years 2000 through 2004.
2. Field Audit Report dated October 10, 2003.
3. Notice of Tax Assessment dated December 3, 2003 for tax and interest totaling \$205,870.67.
4. Letter dated July 8, 2003 from the Division notifying Taxpayer of the upcoming audit of its motor fuels (IFTA) operation.
5. Letter dated December 31, 2003 from Taxpayer to the Division objecting to the assessment and requesting a Division review.
6. Letter from Eugene J. Cella to Taxpayer dated March 18, 2004 scheduling a hearing of this matter for June 9, 2004.
7. Letter from Eugene J. Cella to Taxpayer dated June 7, 2004 rescheduling the hearing of this matter for August 11, 2004.
8. Jurisdictional Mileage Worksheet prepared by Division auditors.
9. International Fuel Tax Agreement (IFTA) Procedures Manual, record keeping requirements, P500 through P660.
10. Memorandum dated May 16, 2001 from E. Norris Tolson to Eugene J. Cella delegating authority to conduct administrative tax hearings pursuant to G.S. 105-260.1.

Presented by Taxpayer:

TP-1.

FINDINGS OF FACT

From the evidence of record the undersigned Assistant Secretary 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, and was 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.

2. Taxpayer operated a retail grocery chain with locations in various jurisdictions.
3. Taxpayer utilized approximately five hundred and twenty-two (522) IFTA-qualified diesel-powered units throughout the audit period, and maintained seven (7) distribution centers in various IFTA jurisdictions.
4. The Division notified Taxpayer by letter dated July 8, 2003 that the audit would commence August 18, 2003, although the audit actually began August 20, 2003.
5. In the course of the audit Division auditors discovered that Taxpayer's mileage and fuel records were only marginally acceptable, and it could not provide a large portion of the necessary jurisdictional mileage records.
6. Additionally, a substantial amount of Taxpayer's bulk fuel withdrawal records were missing.
7. The audit was completed on October 29, 2003, and the Division proposed the assessment herein on December 3, 2003.
8. Taxpayer filed a timely protest to this assessment by letter dated December 31, 2003 and also requested further review.
9. The Division agreed to conduct a pre-hearing conference, and the Division auditor and general counsel met with Taxpayer's representatives at Taxpayer's corporate headquarters on April 16, 2004.
10. This matter remained unresolved following this meeting, and it was referred to the Secretary's office for an administrative hearing, which was scheduled for June 9, 2004.
11. The parties mutually agreed to continue the hearing and the matter was rescheduled for August 11, 2004 by letter dated June 7, 2004.
12. In the course of the audit, Division auditors performed a total and jurisdictional mileage audit using selected sample periods and vehicles as previously discussed and agreed during the opening conference on August 20, 2004.
13. During all times relevant to the audit period, Taxpayer used an electronic global positioning system (GPS) to record and report vehicle odometer readings.
14. The auditors could only verify the accuracy of the system from 2nd quarter of 2002 forward, as that is when the system automatically recorded the odometer readings at state line crossings.

15. Prior to the second quarter of 2002 (02/02), mileage was recorded when the driver pushed a button as the vehicle crossed state lines, and the system then stamped that reading into the system.
16. After that time the system automatically recorded mileage at state-line crossings. The auditors could not audit the system prior to 2nd quarter 2002 (when the system required the driver to push the button at state line crossings), as this information was lost and was not available to the auditors.
17. Taxpayer thus derived total and jurisdictional reported miles from odometer readings that were recorded by a GPS system that either automatically or manually stamped an odometer reading when the truck started and when it stopped for more than three minutes, or upon crossing jurisdictional boundaries.
18. Total mileage information was retrieved by downloading each unit's GPS information at the conclusion of each trip.
19. The information was downloaded in the format of a comprehensive trip report and a trip report summary.
20. Each report contained a beginning and ending odometer reading, and Taxpayer employed these reports to create a mileage summary that was used to report total jurisdictional miles on their IFTA tax returns.
21. The auditors reviewed these reports and compared unit odometer readings with the figures found on the mileage report summary and applicable IFTA tax returns.
22. Taxpayer reported 2,745,558 total miles for the audit period, while the auditors found 2,745,953 total audited miles, for a difference of only 395 miles, or 0.01% error rate, and the auditors thereby concluded that Taxpayer had reported total miles correctly.
23. Taxpayer reported jurisdictional miles based on their GPS downloads into the system software which created two types of reports; a comprehensive trip report and a trip report summary.
24. The comprehensive trip reports detailed trip origin and destinations, beginning and ending odometer readings, and odometer readings at state line crossings.
25. The trip report summary detailed beginning and ending odometer readings, trip origin, odometer readings at state line crossings, and a breakdown of miles traveled in each jurisdiction.
26. The taxpayer keyed the jurisdictional mileage breakdown to create a summarized report that totaled the miles traveled in each jurisdiction by unit and by month.

27. This report was then used to report jurisdictional miles on the taxpayer's IFTA tax returns.
28. As noted *Supra*, prior to the Second Quarter of 2002 (02/02), the odometer readings that were recorded at state line crossings were dependent upon the driver manually pushing a button when the unit crossed state lines.
29. From 02/02 through March 31, 2003 (the end of the audit period) Taxpayer's GPS system automatically recorded odometer readings at state line crossings.
30. Based upon the information created from the taxpayer's GPS system and the manner in which the taxpayer used this information to report jurisdictional miles, the process had to be audited in two separate parts:
 - (a) A review of the comprehensive trip reports to verify the accuracy of the odometer readings at state line crossings, and
 - (b) A review of the trip summary reports to verify the accuracy of the taxpayer's keying process.
31. The auditors reviewed the comprehensive trip reports for each of the selected sample units during the selected sample quarters and found that the taxpayer's GPS system was accurately recording odometer readings at state line crossings.
32. However, the auditors could only verify the accuracy of the system from Quarter 02/02 forward (when the system automatically recorded the odometer readings at state line crossings).
33. The auditors could not audit the system prior to this time (when the system required the driver to push the button at state line crossings), as this information was not provided to the auditors.
34. According to Taxpayer, this information was either lost or misplaced and could not be retrieved.
35. The auditors thus had to adjust jurisdictional miles based on a percentage change between the represented jurisdictions from the 1st quarter 2002 (The last quarter of the manual process) and the 2nd quarter 2002 (The first quarter of the automated process).
36. The percentage change in total miles between these two quarters was 3.09%, which the auditors then used as the tolerance level in which a jurisdiction's reported mileage could change between the two quarters.

37. If a jurisdiction's mileage change was within the tolerance no adjustments were made; however, if the jurisdiction's change exceeded the tolerance level adjustments were made accordingly.
38. As a result, the auditors made the following jurisdictional mileage percentage adjustments:
- | | |
|----|------|
| DE | 7.59 |
| GA | 21 |
| KY | 44 |
| MD | 5.62 |
| NC | 6.59 |
| TN | 15 |
39. These error factors were projected from the 2nd quarter 2000 thru the 1st quarter 2002.
40. The auditors only adjusted the jurisdictions with mileage increases, as the Division determined that it would be unfair to penalize the IFTA jurisdictions due to the taxpayer failing to meet IFTA records retention requirements.
41. The auditors also reviewed the trip summary reports to verify the taxpayer's keying accuracy.
42. This review resulted in the discovery that Taxpayer had committed numerous keying errors when transferring the jurisdictional miles from the trip summary reports to their jurisdictional summary report.
43. The auditors considered a portion of these errors to be isolated and these were adjusted accordingly.
44. The remaining errors, however, were determined to be consistent in nature and were adjusted accordingly.
45. Therefore, the auditors made the following jurisdictional percentage adjustments:
- | | |
|-----|---------|
| FL | 02%, |
| GA | 1.83%, |
| KY | 5.66%, |
| MD | 41%, |
| NC, | -.77%, |
| PA | -3.77%, |
| SC | -1.06%, |
| TN | -1.41%, |
| VA | 76%, |
| WV | 51.91% |

46. These errors were projected throughout each quarter of the audit period and in conjunction with the previously stated jurisdictional errors whenever applicable.
47. Taxpayer purchased the majority of its fuel in bulk quantities, and each of their above-enumerated distribution centers maintained bulk fuel storage facilities.
48. Retail fuel purchases were very infrequent, as Taxpayer's drivers fueled at their assigned distribution center prior to beginning their trip.
49. Additionally, most of their trips were not considered to be long distance and did not require that the unit be refueled before returning to their distribution center.
50. Taxpayer's internal controls regarding these bulk fuel facilities consisted of the driver fueling the vehicle and then documenting the date, gallon amount, unit number, and occasionally pump meter readings on individual fuel tickets.
51. These tickets were then keyed into the system to create a summarized report that details total gallons by unit and by month, which was used to report total and jurisdictional fuel purchases on the taxpayer's IFTA tax returns.
52. Along with fueling their qualified units, the taxpayer also fueled non-qualified units and equipment from their bulk fuel facilities.
53. In order to audit Taxpayer's fuel processes and procedures, they first reviewed all fuel tickets for each sample unit during the sample periods, comparing the tickets with the fuel summary report.
54. This process resulted in the discovery that Taxpayer was missing numerous bulk fuel withdrawal tickets.
55. These omissions were found to be consistent with all vehicle units and their respective distribution centers.
56. Taxpayer stated to Division auditors that the retention of the individual fuel tickets was not seen as a business necessity, because they had a summarized report that detailed all of their fuel transactions that contained the vital information required of a legitimate fuel receipt.
57. However, the auditors explained to Taxpayer that according to IFTA requirements the original source documents (fuel tickets) must be maintained, and that even detailed fuel summaries could not serve to replace the individual fuel receipt/ticket.

58. Rather than projecting the errors found while examining the taxpayer's bulk fuel withdrawal tickets, however, the auditors elected to conduct the fuel audit based upon Taxpayer's bulk fuel availability.
59. This process consisted of an examination of Taxpayer's beginning fuel inventories, bulk fuel purchases, and bulk fuel withdrawals from all of their bulk storage facilities located at their seven (7) respective distribution centers.
60. This effort revealed that the taxpayer had overstated their IFTA fuel credit by 85,974 gallons throughout the audit period; therefore, the auditors adjusted Taxpayer's jurisdictional fuel credit accordingly.
61. The auditors conducted a mpg survey based on total miles and fuel on a unit-by-unit basis and discovered numerous errors involving units reporting miles and no fuel, fuel with no miles, and units with erratic mpg factors.
62. However, due to the large volume of miles traveled and fuel consumed, the errors did not have a significant impact on the taxpayer's reported mpg factors; therefore, the auditors elected to accept the taxpayer's mpg factors as reported.
63. The Taxpayer-reported miles-per-gallon ranged from a low of 5.46 MPG to a high of 6.77 MPG.
64. During the course of the April 16, 2004 pre-hearing conference, taxpayer's representative stated that its fleet averaged between 6.00 to 6.5 MPG.
65. Taxpayer contends that the jurisdictional miles adjustment performed by Division auditors was inappropriate; however, the auditors applied a tolerance level of 3.09 percent to account for discrepancy in the reported verses audited miles for the period in which taxpayer's drivers had to push a button for the system to stamp odometer reading into the automated system.
66. Taxpayer failed to maintain actual trip details for this period, therefore the Division properly applied the 3.09 percent figure, which was the difference between the last quarter for which the manual system was employed and the first quarter that the automated GPS system was used.
67. Taxpayer also contests the bulk fuel portion of the audit, but again, as noted *Supra*, Taxpayer could not account for large amounts of bulk fuel, since it could not locate withdrawal tickets.
68. At the request of Taxpayer, Division auditors launched an examination of Taxpayer's best-documented quarter as selected by Taxpayer.
69. However, it shortly became clear to the auditors that there would be insufficient records for any quarter during the audit period.

70. Division auditors then performed a fuel availability audit, making the assumption that Taxpayer's inventory figures and non-qualified withdrawals were correct and all tickets were available.
71. This process consisted of an examination of Taxpayer's beginning fuel inventories, bulk fuel purchases, and bulk fuel withdrawals from all of their bulk storage facilities located at their seven (7) respective distribution centers.
72. This effort revealed that the taxpayer had overstated their IFTA fuel credit by 85,974 gallons throughout the audit period; therefore, the auditors adjusted Taxpayer's jurisdictional fuel credit accordingly
73. The auditors conducted a mpg survey based on total miles and fuel on a unit-by-unit basis and discovered numerous errors involving units with miles and no fuel, fuel with no miles, and units with erratic mpg factors.
74. However, due to the large volume of miles traveled and fuel consumed, the errors did not have a significant impact on the taxpayer's reported mpg factors; therefore, the auditors elected to accept the taxpayer's mpg factors as reported, which ranged from a low of 5.46 MPG to a high of 6.77 MPG.
75. The Division auditors performed the audit, consisting of the mileage audit, the fuel audit and the MPG analysis according to the methods prescribed by the International Fuel Tax Agreement, and specifically the IFTA Audit manual.
76. Taxpayer did not present any additional records to refute the assessment proposed by the Department.

CONCLUSIONS OF LAW

From the above-enumerated findings of fact the undersigned Assistant Secretary enters the following conclusions of law:

1. Pursuant to the IFTA a licensee is required to preserve the records upon which the quarterly tax return is based for four (4) years from the return date or filing date, whichever is later.
2. Under the Agreement, the failure to maintain both mileage and fuel records upon which the licensee's true liability can be determined, may result in an assessment.
3. IFTA licensees must maintain detailed distance records showing operations on an individual-vehicle basis, including taxable and non-taxable fuel, distance traveled, and recaps for each vehicle for each jurisdiction in which the vehicle operated.

4. At a minimum, these records must include distance data on each individual vehicle for each trip and be recapitulated in monthly fleet summaries.
5. The IFTA specifies that supporting information should include date of trip, trip origin and destination, route of travel, beginning and ending odometer readings, total trip miles, unit number or vehicle identification number (VIN), vehicle fleet number, and registrant's name.
6. Taxpayer properly used a GPS system during all times relevant to the audit period, and as noted above, prior to the second quarter of 2002, state-line odometer readings were dependent upon the driver pressing a button to activate the system in order to record odometer readings.
7. After that period a fully automated system was used, but this period could not be audited, as Taxpayer failed to maintain trip details as required by the IFTA.
8. The auditors therefore properly adjusted miles based upon the percentage change between the first quarter 2002 (the last quarter of the manual process) and the second quarter of 2002 (the first quarter of the automated system), which was 3.09%.
9. An IFTA licensee is likewise required by the Agreement to maintain complete records of all fuel purchased, received, and used in the conduct of its business, and these fuel records must contain, at a minimum, the date of each receipt of fuel, name and address of the person from whom the fuel was purchased, number of gallons received, type of fuel, and the specific vehicle or equipment into which the fuel was placed.
10. Taxpayer failed to meet its obligation under the IFTA for fuel records retention.
11. Taxpayer's bulk fuel facilities could not account for a large percentage of their withdrawals during the audit period.
12. Nevertheless, rather than project the error factors over the period, the auditors properly elected to perform a fuel availability audit.
13. This methodology assumed that Taxpayer's inventory figures and non-qualified fuel withdrawals were correct and that all fuel purchase tickets were available; however, this was simply not the case.
14. Taxpayer has failed to meet its burden of maintaining sufficient documentation of its operation, and has not produced records sufficient to refute the assessment proposed by the Department.

DECISION

Taxpayer first contends that the jurisdictional miles adjustment performed by Division auditors was inappropriate. As noted above, the auditors applied a tolerance level of 3.09 percent to account for discrepancy in the reported versus audited miles for the period in which taxpayer's drivers had to push a button for the system to stamp odometer reading into the automated system. Taxpayer failed to maintain actual trip details for this period, therefore the Division properly used the 3.09 percent figure, which was the difference between the last quarter for which the manual system was employed and the first quarter that the automated GPS system was used.

Taxpayer also contests the bulk fuel portion of the audit. Again, as noted *Supra*, Taxpayer could not account for large amounts of bulk fuel, since it could not locate withdrawal tickets. At the request of Taxpayer, Division auditors launched an examination of Taxpayer's best-documented quarter as selected by Taxpayer. However, it shortly became clear to the audit team that there would be insufficient records for any quarter during the audit period. Division auditors then performed a fuel availability audit, making the assumption that Taxpayer's inventory figures and non-qualified withdrawals were correct and all tickets were available. The auditors performed this function to determine what, if any, credit Taxpayer would receive, and discovered that Taxpayer had overstated its IFTA fuel credit by 85,974 gallons throughout the audit period. The credit was thereafter properly adjusted accordingly.

Pursuant to the IFTA, a licensee is required to preserve the records upon which the quarterly tax return is based for four (4) years from the return date to filing date, whichever is later. (*See* IFTA Procedures Manual, § P510.100). Under the agreement,

the failure to maintain records upon which the licensee's true liability may be determined may result in an assessment. These include both mileage and fuel records. Licensees must maintain detailed distance records showing operations on an individual-vehicle basis, including taxable and non-taxable fuel, distance traveled, and recaps for each vehicle for each jurisdiction in which the vehicle operated. At a minimum, these records must include distance data on each individual vehicle for each trip and be recapitulated in monthly fleet summaries. Supporting information should include date of trip, trip origin and destination, route of travel, beginning and ending odometer readings, total trip miles, unit number or vehicle identification number (VIN), vehicle fleet number, and registrant's name. Taxpayer failed to maintain its burden of records maintenance and retention as specified under the International Fuel Tax Agreement, and has not produced records sufficient to refute the assessment proposed herein.

WHEREFORE, the undersigned Assistant Secretary of Revenue **HEREBY AFFIRMS** in all respects the International Fuel Tax Agreement (IFTA) assessment proposed herein for \$155,562.14 tax, and accrued interest of \$67,420.37 through November 30, 2004 at a rate of \$1,555.62 per month or \$51.854 per day at the statutory rate of one percent (1%) per month until paid.

This the 19th day of November 2004.

Eugene J. Cella
Assistant Secretary of Revenue
North Carolina Department of Revenue