

STATE OF NORTH CAROLINA

**BEFORE THE
SECRETARY OF REVENUE**

WAKE COUNTY

IN THE MATTER OF:

The Two (2) Proposed Assessments of)
Motor Fuels Tax for the period)
January 1, 2004 through June 30, 2005)
and Denial of Refunds of Sixteen (16))
Civil Penalty Assessments issued by the)
Secretary of Revenue of the State of)
North Carolina)

FINAL DECISION
Docket No. 2006-153 S

vs.

[Taxpayer], Taxpayer

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in Raleigh, North Carolina on November 30, 2006, upon application for an administrative tax hearing by [Taxpayer], hereinafter referred to as "Taxpayer," pursuant to G.S. 105-241.1. Taxpayer requested a hearing with regard to two (2) proposed motor fuels tax assessments resulting from International Fuel Tax Agreement, hereinafter referred to as "IFTA," audits. Taxpayer also objected to sixteen (16) civil penalty assessments for violations of G.S. 105.449.52(a)(2) for being unable to account for identification markers issued by the Secretary of Revenue. Although Taxpayer never requested a hearing with regard to the sixteen civil penalty assessments, the parties agreed that the civil penalty assessments could be included as an additional item at the hearing. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1. Taxpayer was represented at the hearing by [representative] of [consulting company] and [attorney], Attorney for the Taxpayer. Tamika Williams, Tax Auditor; Clint Hester, Field Audit Supervisor; and Janice Davidson, Staff Attorney, appeared on behalf of the Motor Fuels Tax Division, hereinafter referred to as "Division."

ISSUES

I.

Whether the sixteen (16) civil penalty assessments, each in the amount of one hundred dollars (\$100.00), issued by the Division on February 21, 2006 against Taxpayer for failure to account for identification markers (decals) pursuant to N.C.G.S. § 105.449.52(a)(2) were proper.

II.

Whether the Division properly calculated Taxpayer's operational miles and fuel consumption resulting in the proposed IFTA assessment for tax, penalty, and interest issued March 8, 2006 totaling \$16,344.07, plus subsequently accruing interest.

III.

Whether the Division properly calculated Taxpayer's operational miles and fuel consumption resulting in the proposed SME IFTA assessment for tax, penalty, and interest issued March 8, 2006 totaling \$8,791.04, plus subsequently accruing interest.

EVIDENCE

The following items were introduced as evidence by the parties at or subsequent to the hearing and made part of the record:

Submitted by the Division:

The Division submitted a Hearing Brief and the following documents, which are certified copies from the Division's files, unless otherwise indicated, into the record:

- MF-1 Screen print from the Division's VISTA system with regard to Taxpayer's "01" account showing Taxpayer's credential information for tax years 2004 through 2005.
- MF-2 Screen print from the Division's VISTA system with regard to Taxpayer's "99" account showing Taxpayer's credential information for tax years 2004 through 2005.
- MF-3 Decal reconciliation sheet indicating the number of IFTA decals issued minus the number of IFTA decals on units, indicating the number of unaccounted for or missing IFTA decals for Taxpayer's "01" account.
- MF-4 Decal reconciliation sheet indicating the number of IFTA decals issued minus the number of IFTA decals on units, indicating the number of unaccounted for or missing IFTA decals for Taxpayer's "99" account.
- MF-5 Computer-generated copy of letter dated October 26, 2005 from Tamika Williams, Division auditor, to [Taxpayer's fleet manager], which confirmed the audit date, outlined the planned methodology, and requested information and records of Taxpayer.
- MF-6 Civil Penalty Assessment dated February 1, 2006 for one unaccounted for identification marker for 2005.
- MF-7 Civil Penalty Assessment dated February 1, 2006 for eight unaccounted for identification markers for the regular qualified vehicles for 2004.

- MF-8 Civil Penalty Assessment dated February 1, 2006 for seven unaccounted for identification markers for the qualified special mobile equipment for 2004.
- MF-9 Notice of Tax Assessment dated February 21, 2006 for motor fuels civil penalties totaling \$1,600.00.
- MF-10 Fax sheet from [Taxpayer's fleet manager] requesting a review of the civil penalties.
- MF-11 IFTA Field Audit Report for Taxpayer's "01" account dated February 23, 2006 and posted March 8, 2006.
- MF-12 IFTA Field Audit Report for Taxpayer's "99" account dated February 23, 2006 and posted March 8, 2006.
- MF-13 Notice of Tax Assessment dated March 8, 2006 for Taxpayer's "01" account for tax, penalty, and interest totaling \$16,344.07.
- MF-14 Notice of Tax Assessment dated March 8, 2006 for Taxpayer's "99" account for tax, penalty, and interest totaling \$8,791.04.
- MF-15 Letter dated March 24, 2006 from [representative of consulting company] which attached a Power of Attorney and Declaration of Representative form, requested an extension of time to review and possibly submit addition data, requested a formal hearing if the matter were not resolved by administrative review, and asked to meet with Division auditors.
- MF-16 Letter dated May 8, 2006 from Division attorney Janice Davidson to Taxpayer's representative acknowledging receipt of hearing request, agreeing to a 30 to 60 day extension of time to review the audits and provide additional information, and confirming that discussions with Division auditors were in progress.
- MF-17 Letter dated May 17, 2006 from Eugene J. Cella, Assistant Secretary of Revenue, to Taxpayer's representative scheduling an administrative tax hearing for August 17, 2006 at 1:00 p.m. in Raleigh, North Carolina.
- MF-18 Letter dated July 19, 2006 from Division attorney to Taxpayer's representative requesting additional Taxpayer information and agreeing to a continuance of the August hearing.
- MF-19 Letter dated July 29, 2006 from Taxpayer's representative informing the Division that Taxpayer had retained an attorney and requesting a continuance of the August hearing.
- MF-20 Letter dated August 14, 2006 from Eugene J. Cella, Assistant Secretary of Revenue, to Taxpayer's attorney re-scheduling an administrative tax hearing for October 25, 2006 at 2:00 p.m. in Raleigh, North Carolina.
- MF-21 Taxpayer's concerns summarized in "[Taxpayer] (*sic*) Meeting with State on September 8, 2006."

- MF-22 Letter dated September 11, 2006 from Division attorney to Taxpayer's representatives which summarized the September 8, 2006 meeting and which listed the additional information that Taxpayer's representatives had agreed to provide to the Division.
- MF-23 Letter dated September 19, 2006 from Taxpayer's attorney transmitting additional information for Division auditors to consider.
- MF-24 Re-worked audit for Taxpayer's "01" account dated October 11, 2006 which was prepared by Division auditor Tamika Williams using figures provided by Taxpayer's representatives, which figures had not been verified by the Division.
- MF-25 Re-worked audit for Taxpayer's "99" account dated October 12, 2006 which was prepared by Division auditor Tamika Williams using figures provided by Taxpayer's representatives, which figures had not been verified by the Division.
- MF-26 Email correspondence, including four attachments, dated October 23, 2006 from Taxpayer's attorney to the Division attorney that shows the calculations of Taxpayer's representatives.
- MF-27 Email correspondence dated October 24, 2006 from Division attorney to Sandra Pfeifer, OIC/Special Projects Manager in the NC Department of Revenue Collections Division, which inquires about OIC procedures.
- MF-28 Email response of Sandra Pfeifer dated October 24, 2006.
- MF-29 Forward of Sandra Pfeifer's email response to Eugene J. Cella, Assistant Secretary of Revenue, and to Taxpayer's attorney.
- MF-30 Taxpayer's attorney's letter dated October 25, 2006 requesting a continuance of the October 25, 2006 hearing.
- MF-31 Letter dated October 26, 2006 from Eugene J. Cella, Assistant Secretary of Revenue, to Taxpayer's attorney re-scheduling the administrative tax hearing to November 30, 2006 at 1:00 p.m. in Raleigh, North Carolina.
- MF-32 Copy of IFTA Audit Manual, Section A550.100.
- MF-33 Copy of IFTA Audit Manual, Section A730.
- MF-34 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.
- MF-35 Taxpayer's decal inventory records.
- MF-36 Taxpayer's usage reports for vehicles numbers 261, 248, and 255.

Submitted by Taxpayer:

Taxpayer submitted a Hearing Brief and the following documents into the record:

TP-1 Taxpayer's Articles of Incorporation

TP-2 Taxpayer's General Ledger 08/01/02 to 12/31/02

TP-3 Binder which includes the following:

1. Basis for [Taxpayer's representative's] adjustments,
2. [Taxpayer's representative's] adjustment schedules,
3. [Taxpayer's representative's] workpapers,
4. State of NC audit,
5. IFTA tax returns,
6. Equipment list, and
7. Sworn affidavits.

TP-4 Notice of Tax Assessment dated February 21, 2006 for motor fuels civil penalties totaling \$1,600.00 which indicates the amount of payment made with check stub.

TP-5 Letter from Taxpayer's attorney dated December 29, 2006 with attachments showing first and second quarter mileage for 2006.

FINDINGS OF FACT

From the foregoing evidence of record, testimony presented, and arguments of the parties, the undersigned Assistant Secretary makes the following findings of fact:

1. During all times relevant to the audits, assessments, and penalties herein, Taxpayer was a "motor carrier" as defined by N.C.G.S. §105-449.37.
2. Taxpayer was registered with the Division as a motor carrier subject to the International Fuel Tax Agreement (IFTA) pursuant to N.C.G.S. §105-449.47.
3. Taxpayer's business involves operating as a [Taxpayer's business] in North Carolina [and other states].
4. The Division notified Taxpayer by letter dated October 26, 2005 that the audit would begin on November 14, 2005.
5. Taxpayer changed the start date of the audit to December 5, 2005.
6. January 1, 2004 through June 30, 2005 was selected as the audit period and three sample periods were selected.

7. Due to errors discovered during the audit, the Taxpayer and Division auditors mutually agreed that a 100% audit would need to be conducted rather than using sample periods to ensure greater accuracy.
8. During the audit period, Taxpayer operated eighty-three (83) qualified vehicles – forty (40) qualified over the road vehicles and forty-three (43) qualified SME vehicles – with weights ranging from 30,000 to 80,000 pounds.
9. During the audit period, the Division issued IFTA identification markers or decals to Taxpayer for two fleets of vehicles. One fleet consisted of qualified over the road vehicles while the second fleet consisted of qualified special mobile equipment (SME). In 2004, the Division issued seventy-five (75) decals – forty (40) for qualified over the road vehicles and thirty-five (35) for qualified SME vehicles. One hundred twenty (120) decals – fifty (50) for qualified over the road vehicles and seventy (70) for qualified SME vehicles – were issued by the Division to the Taxpayer in 2005.
10. During decal (identification marker) reconciliation, eight (8) over the road and seven (7) SME decals were unaccounted for during 2004. Thirteen (13) over the road and twelve (12) SME decals were unaccounted for during 2005. The Division allowed the missing over the road and SME decals to be offset for 2005 under the assumption that Taxpayer had mixed up the over the road and the SME decals. This resulted in one (1) missing decal instead of twenty-five (25) missing decals for 2005.
11. Sixteen (16) one hundred dollar (\$100.00) Civil Penalty Assessments for failure to account for decals (identification markers) were issued on February 1, 2006 pursuant to N.C.G.S. § 105-449.52(a)(2).
12. A notice of tax assessment for the civil penalties was issued by the Department on February 21, 2006.
13. On March 15, 2006, Taxpayer faxed a request to the Division to review the sixteen penalty assessments and then paid the penalties in the amount of sixteen hundred dollars (\$1,600.00) on March 17, 2006.
14. Taxpayer did not indicate payment of the civil penalty assessments was made under protest and did not submit a written request for a refund of the sixteen hundred dollars (\$1,600.00) paid, although the parties agreed Taxpayer could object to the penalties during an administrative tax hearing.
15. During the course of the audit, Division auditors found Taxpayer's records to be in poor condition.
16. Taxpayer recorded odometer readings for various vehicles at the time the fuel was purchased and used these figures as well as its knowledge of the various job sites where vehicles were located to arrive at reported mileage.
17. Division auditors used odometer readings as a source for total miles.

18. During the mileage audit, Division auditors found that twenty (20) qualified over the road vehicles and eighteen (18) qualified SME vehicles had broken odometers.
19. Division auditors proceeded to use the best information available by using the vehicles that had working odometers to arrive at the average monthly mileage figures by adding total miles according to the odometer readings and dividing by the total number of vehicles used to gather this information. This was done separately for each of the two fleets.
20. The average quarterly miles for qualified over the road vehicles was determined to be 1,733 miles per qualified over the road vehicle. The miles were applied to the respective qualified over the road vehicles that had broken odometers, which resulted in an increase of 34,660 miles each quarter for the qualified over the road vehicles. Missing miles were allocated based on jurisdictional percent of total miles.
21. The average quarterly miles for qualified SME vehicles was determined to be 684 miles per qualified SME vehicle. The miles were applied to the respective qualified SME vehicles that had broken odometers, which resulted in an increase of 15,048 miles each quarter for the qualified SME vehicles. Missing miles were allocated based on jurisdictional percent of total miles.
22. Division auditors reviewed all fuel purchased during the audit period. Auditors verified the date of purchase, number of gallons, fuel type, seller, jurisdiction, and tax-paid status.
23. Division auditors compared individual receipts to credit card receipts to ensure that all gallons were captured.
24. Division auditors determined that there were missing gallons.
25. In some instances, fuel receipts did not indicate whether the fuel was for an over the road or an SME vehicle. In an attempt to be fair to both fleet accounts, Division auditors applied missing gallons based on total as well as jurisdictional percent totals of both accounts.
26. Division auditors disallowed all fuel credits because of the poor condition of Taxpayer's records.
27. A miles per gallon (mpg) analysis was not conducted by Division auditors because of the poor condition of Taxpayer's records.
28. Due to the absence of adequate records for both fleets, the qualified vehicles in each fleet were placed on a 4.0 mpg.
29. Division auditors performed the audits, consisting of the mileage audit, the fuel audit, and the mpg analysis according to the methods prescribed by the International Fuel Tax Agreement, the IFTA Audit Manual, and the IFTA Procedures Manual.

30. The two IFTA audits – one for Taxpayer’s qualified over the road vehicles and one for Taxpayer’s qualified SME vehicles – were completed on February 23, 2006 and notices of tax assessment were issued on March 8, 2006.
31. Taxpayer’s representative requested a hearing and an extension of time to review and possibly submit additional data by letter dated March 24, 2006.
32. Taxpayer’s representative met with Division examination manager and staff attorney on April 18, 2006.
33. On May 4, 2006, Taxpayer’s representative had a conference call with Division auditor and Division field audit supervisor.
34. A hearing was scheduled for August 17, 2006.
35. Taxpayer hired an attorney and by letter dated July 29, 2006 indicated that a request would be made to continue the hearing, which was re-scheduled for October 25, 2006.
36. On September 8, 2006 a pre-hearing conference was held during which Taxpayer’s concerns were summarized and Taxpayer agreed to provide to the Division the following additional information: copies of fuel receipts not originally provided to Division auditors, equipment in-service dates, copies of 2004 and 2005 registrations, and detailed documentation concerning out-of-service equipment.
37. The Division received additional information from the Taxpayer by letter dated September 19, 2006 that included information which grouped vehicle miles according to vehicle type and use.
38. Taxpayer also sent information with regard to the first and second quarters of 2006, which are periods beyond the audit period.
39. In response to the additional information provided by Taxpayer, Division auditors re-worked both the over the road and the SME audits using the figures provided by Taxpayer’s representatives which grouped vehicle miles according to vehicle type and use.
40. Taxpayer’s evidence of 2006 mileage was not included in the re-worked audits by Division auditors because it was not within the audit period.
41. Although prepared in the form of audits, amended audits were not officially completed pending information from Taxpayer concerning the origin of the figures submitted by Taxpayer and whether information from outside the audit period was included in these figures.
42. The Division’s re-worked audit of Taxpayer’s qualified over the road vehicles consisted of tax, penalty, and interest due in the total amount of \$9,314.50.

43. The Division's re-worked audit of Taxpayer's qualified SME vehicles consisted of tax, penalty, and interest due in the total amount of \$6,487.35.
44. The combined total of the two re-worked audits as of October 12, 2006 was \$15,801.85.
45. Division's re-worked audits were shared with Taxpayer's attorney during a pre-hearing conference held on October 12, 2006.
46. At that meeting, Taxpayer's attorney discussed preparing an Offer in Compromise (OIC) for the OIC Committee so as to by-pass the hearing process and requested an OIC meeting with the Division, which was scheduled for October 17, 2006.
47. By telephone conversation on October 16, 2006, the Division cancelled the OIC meeting as the Division believed it was improper for the OIC Committee to review a matter that was not in collection, had not been final billed, and was scheduled for an administrative tax hearing.
48. On October 23, 2006, Taxpayer's attorney sent an email to Division staff attorney that discussed Taxpayer's position in the matter and which included schedules prepared by Taxpayer's representative.
49. On October 23, 2006, Taxpayer's attorney called to inform Division staff attorney that he had spoken with the Assistant Secretary for Administrative Tax Hearings concerning holding the hearing in abeyance while he took the case before the OIC Committee.
50. On October 24, 2006. Division staff attorney discussed OIC procedures with the Assistant Secretary for Administrative Tax Hearings and sent an email to the OIC/Special Projects Manager in the NC Department of Revenue's Collection Division, which inquired about OIC procedures with regard to a matter that was scheduled for a hearing. The email specifically asked whether a case in hearing status would be referred back to the Division to proceed with an administrative tax hearing or heard by the OIC Committee.
51. The email response received on October 24, 2006 stated that under OIC procedures, a case in hearing status would be referred back to the Division for an administrative tax hearing rather than being considered by the OIC Committee, which response was forwarded to Taxpayer's attorney and the Assistant Secretary on the same date.
52. By letter faxed and dated October 25, 2006, Taxpayer's attorney requested a continuance of the October 25, 2006 hearing, which was re-scheduled for November 30, 2006.
53. The matter remained unresolved after the Division reviewed the additional information provided by Taxpayer's attorney on October 23, 2006, so the matter was heard at an administrative tax hearing on November 30, 2006.

54. During the hearing, Taxpayer presented three adjustments to the original audits.
55. Taxpayer's Adjustment #1 used the audit information generated by Division auditors and grouped vehicle miles according to vehicle type and use.
56. Taxpayer information from the first two quarters of 2006 was not used in Adjustment #1 calculations.
57. Taxpayer's Adjustment #1, with regard to Taxpayer's qualified over the road vehicles, consisted of tax and interest due in the amount of \$6,414.59.
58. Taxpayer's Adjustment #1, with regard to Taxpayer's qualified SME vehicles, consisted of tax and interest due in the amount of \$9,137.26.
59. As of November 30, 2006, Adjustment #1 resulted in total tax and interest due for both fleets in the amount of \$15,551.85.
60. Both the Division's re-worked audits and Adjustment #1 grouped vehicle miles according to vehicle type and use and excluded information from outside the audit period.
61. Taxpayer's Adjustment #2 used Adjustment #1 as a starting point to further adjust for mileage information obtained during the first two quarters of 2006, which periods are outside the audit period.
62. Taxpayer's Adjustment #2, with regard to Taxpayer's qualified over the road vehicles, consisted of tax and interest due in the amount of \$-1,969.76.
63. Taxpayer's Adjustment #2, with regard to Taxpayer's qualified SME vehicles, consisted of tax and interest due in the amount of \$4,166.69.
64. As of November 30, 2006, Adjustment #2 resulted in total tax and interest due for both fleets in the amount of \$2,196.93.
65. Taxpayer's Adjustment #3 uses Adjustment #2 as a starting point to further adjust the mpg for the over the road fleet to 5.45 mpg.
66. Taxpayer does not object to Division auditors using a 4.0 mpg for the SME fleet.
67. Taxpayer's Adjustment #3, with regard to Taxpayer's qualified over the road vehicles, consists of tax and interest due in the amount of \$-4,781.78.
68. As of November 30, 2006, adding Adjustment #2 for Taxpayer's qualified SME vehicles to Adjustment #3 for Taxpayer's qualified over the road vehicles resulted in taxes and interest due in the amount of \$-615.09.

69. The provisions and requirements of the International Fuel Tax Agreement, the IFTA Audit Manual, and the IFTA Procedures Manual apply to both the Taxpayer and the Division.

CONCLUSIONS OF LAW

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

1. Taxpayer was, at all times relevant to the matter herein, a motor carrier as defined by N.C.G.S. §105-449.37.
2. Taxpayer was, at all times relevant to the matter herein, registered with the Division as a motor carrier subject to the International Fuel Tax Agreement pursuant to N.C.G.S. §105-449.47.
3. IFTA record keeping requirements are detailed at P500 and following in the IFTA Procedures Manual.
4. An IFTA licensee is required to preserve the records upon which the quarterly tax return is based for four (4) years from the tax return due date or filing date, whichever is later.
5. 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.
6. IFTA licensees must maintain detailed distance records showing operations on an individual-vehicle basis, including taxable and non-taxable fuel, distance traveled, and recapitulations for each vehicle for each jurisdiction in which the vehicle operated.
7. At a minimum, mileage records must include distance data on each individual vehicle for each trip and be recapitulated in monthly fleet summaries.
8. The IFTA specifies that supporting mileage information should include date of trip, trip origin and destination, route of travel, beginning and ending odometer or hubometer readings; odometer or hubometer readings when crossing the jurisdiction line, total trip miles, mileage by jurisdiction, vehicle unit number, vehicle fleet number, and licensee's name.
9. It is the licensee's responsibility to maintain records of all operations of all qualified motor vehicles.
10. Taxpayer failed to meet its obligations under the IFTA for mileage record preparation and retention.
11. Division auditors properly used the best mileage information available by using the vehicles that had working odometers to arrive at the average monthly mileage figures

- by adding total miles according to the odometer readings and dividing by the total number of vehicles used to gather this information.
12. Division auditors properly calculated mileage information separately for each of the two fleets.
 13. An IFTA licensee is required by the Agreement to maintain complete records of all fuel purchased, received, and used in the conduct of its business.
 14. At a minimum, fuel records must contain the date of purchase, name and address of the seller, number of gallons purchased, type of fuel purchased, price per gallon, unit number of the vehicle into which the fuel was placed or license plate number, and purchaser's name.
 15. Taxpayer failed to meet its obligation under the IFTA for maintaining a complete record of all fuel purchases.
 16. Division auditors properly disallowed all fuel credits because of the poor condition of Taxpayer's fuel records.
 17. A miles per gallon (mpg) analysis was properly omitted by Division auditors because of the poor condition of Taxpayer's records.
 18. Division auditors properly placed the qualified vehicles in each fleet on a 4.0 mpg due to the absence of adequate records for both fleets.
 19. Division auditors properly performed the audits, consisting of the mileage audit, the fuel audit, and the mpg analysis according to the methods prescribed by the International Fuel Tax Agreement, the IFTA Audit Manual, and the IFTA Procedures Manual.
 20. Taxpayer has failed to meet its burden of maintaining sufficient documentation of its operations and has not produced records sufficient to refute the assessment proposed by the Department.
 21. In certain circumstances, grouping vehicle miles according to vehicle type and use, could be an acceptable alternate method of determining mileage information, as was done by Division auditors in their re-worked audits and by Taxpayer in Alternate #1.
 22. Information prior to or after the audit period was properly excluded from the Division's re-worked audits and from Taxpayer's Alternate #1.
 23. The sixteen (16) one hundred dollar (\$100.00) Civil Penalty Assessments for failure to account for decals (identification markers) were properly issued pursuant to N.C.G.S. § 105-449.52(a)(2).

DECISION

Division auditors have properly conducted their IFTA audits with regard to Taxpayer's qualified over the road and SME vehicles. However, Division auditors were willing to re-work their audits based on information provided by Taxpayer that grouped vehicle miles according to vehicle type and use. Division auditors believed this would be an acceptable alternate method of determining mileage information in the specific circumstances of this case, provided information outside the audit period was not used. At hearing and in its brief and exhibits, Taxpayer verified that the similar calculations in its Alternate #1 were based on information which grouped vehicle miles according to vehicle type and use and that such information was obtained within the audit period. Therefore, I will allow the figures used in Taxpayer's Alternate #1 to be used to amend and update the IFTA audits for both the over the road and SME fleets.

Taxpayer's Alternate #2 is rejected since it relies on information outside the audit period.

Taxpayer's Alternate #3 which attempts to increase the mpg for the over the road vehicles to 5.45 mpg is rejected. Due to Taxpayer's poor records, Division auditors properly used a 4.0 mpg for both the over the road and SME vehicles.

The sixteen (16) one hundred dollar (\$100.00) Civil Penalty Assessments for failure to account for decals (identification markers) were properly issued pursuant to N.C.G.S. § 105-449.52(a)(2).

For good cause shown, the two negligence penalties assessed against the Taxpayer should be waived.

Wherefore, the undersigned Assistant Secretary of Revenue hereby denies refund of the \$1,600.00 paid in civil penalties, waives the two negligence penalties, and based on the information contained in Taxpayer's Alternate #1 determines:

1. The IFTA assessment for the qualified over the road vehicles shall be in the amount of \$5,184.89 tax plus accrued interest through April 30, 2007 in the amount of \$1,565.29 for a total of \$6,750.18. Interest accrues at the rate of \$51.85 per month until paid.
2. The IFTA assessment for the qualified SME vehicles shall be in the amount of \$7,619.51 tax plus accrued interest through April 30, 2007 in the amount of \$1,996.12 for a total of \$9,615.63. Interest accrues at the rate of \$76.20 per month until paid.

This the 30th day of March, 2007.

Eugene J. Cella
Assistant Secretary of Revenue