

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:)
)
Motor Fuels Tax proposed assessment)
)
 vs.)
)
 [Taxpayer])

FINAL DECISION
Docket No. 2001-223

This matter was heard before the Assistant Secretary of Revenue in Raleigh, North Carolina by written communication at the request of [Taxpayer]. The Motor Fuels Tax Division issued a notice of proposed assessment on November 9, 2000 in the amount of \$333.57. Taxpayer filed a timely protest of the proposed assessment on December 4, 2000.

ISSUE

Whether the Motor Fuels Tax Division properly recalculated Taxpayer’s MPG factor reported on its IFTA Quarterly Report for the period ending September 2000, based upon Taxpayer’s own reported operation for the period.

EVIDENCE

1. Notice of Assessment dated November 9, 2000.
2. International Fuel Tax Agreement (IFTA) Return for the period ending September 2000.
3. Letter from [Taxpayer’s Representative] to Christopher Allen dated December 4, 2000 requesting a hearing on the proposed assessment.
4. Letter from Christopher Allen to [Taxpayer’s Representative] dated December 13, 2000 responding to the December 4, 2000 letter and informing Taxpayer that the matter was being referred to the auditors for review, and agreeing to postpone administrative proceedings pending review of the matter.
5. Screen print from the Division’s VISTA system documenting contemporaneous recordation of Taxpayer’s statement of how he computed his MPG factor.
6. Letter from Christopher Allen to [Taxpayer’s Representative] dated January 16, 2001 explaining the basis for the assessment and affording Taxpayer an opportunity to present additional information.

7. Letter from [Taxpayer's Representative] to Christopher Allen dated February 14, 2001 requesting a hearing on the proposed assessment.
8. Letter from Christopher Allen to [Taxpayer's Representative] dated March 5, 2001 explaining the basis for the assessment and informing Taxpayer that the matter would be referred to the Secretary for hearing.
9. Memorandum from E. Norris Tolson to Eugene J. Cella delegating authority to conduct administrative tax hearings pursuant to G.S. 105-241.1 on behalf of the Secretary of Revenue.

FINDINGS OF FACT

1. Taxpayer was at all times relevant to this matter an IFTA motor carrier as defined by G.S. 105-449.37 and 449.47, respectively, and was registered with the Division and filed quarterly reports required by G.S. 105-449.45.
2. On October 30, 2000, Taxpayer filed its Third Quarter 2000 IFTA return with the Division indicating that it was entitled to a credit of \$61.24.
3. On Schedule A of this return, Taxpayer reported that its total IFTA jurisdictional miles operated during the quarter was 41,430 miles.
4. However, Taxpayer reported on line 7, column C that its total taxable IFTA jurisdictional miles was 40,839 miles.
5. Taxpayer also reported 7,901 gallons of diesel fuel consumed, and reported that its average miles-per-gallon (MPG) factor was 6.35.
6. Based upon Taxpayer's own reported miles operated, the Division recalculated Taxpayer's MPG factor and assigned a recomputed average MPG of 5.17.
7. The recalculated MPG factor resulted in an assessment for tax due the Department of \$278.01 rather than a credit of \$61.24 as indicated by Taxpayer on its September 2000 IFTA Return.
8. Taxpayer timely filed a protest of the proposed assessment on December 4, 2000 and requested a hearing of the matter.
9. On December 13, 2000, Christopher E. Allen responded to the Taxpayer on behalf of the Division stating that the matter was turned over to Division auditors for review, and agreeing to postpone administrative proceedings pending this review.
10. On January 16, 2001, Christopher E. Allen contacted Taxpayer by letter, set out the basis for the proposed assessment, and afforded Taxpayer an opportunity to present additional information documenting 6.35 MPG for its vehicle.
11. Taxpayer has not offered any documentation or other information to support its assertion that the Division's recalculation based upon Taxpayer's reported operation was incorrect.

12. A proposed tax assessment issued by the Department of Revenue is presumed to be correct and it is incumbent upon the taxpayer to refute the assessment by the preponderance of credible evidence. Taxpayer has not presented any evidence to refute the assessment proposed herein.

CONCLUSIONS OF LAW

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

1. Taxpayer was during all times relevant to the matter herein a motor carrier required to timely and correctly file quarterly IFTA returns to the Motor Fuels Tax Division pursuant to G.S 105-449.37, 449.47, and 449.45.
2. Taxpayer incorrectly stated its operation on the Third Quarter 2000 the factor report, indicating a MPG factor of 6.35 when based upon its own reported operation was actually 5.17.
3. Taxpayer improperly reported a credit of \$61.24 when the total tax due at the time was \$278.01.
4. Taxpayer was properly assessed \$278.01 tax, \$50.00 penalty, and accrued interest.

DECISION

WHEREFORE, the Assistant Secretary of Revenue hereby affirms in its entirety the proposed assessment for \$278.01 tax, \$50.00 penalty and \$36.14 interest in the amount of \$364.15.

This the 14th day of November, 2001.

Signature _____

Eugene J. Cella
Assistant Secretary of Revenue