

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE SECRETARY  
OF REVENUE

IN THE MATTER OF: )  
)  
The Motor Fuels tax assessment )  
Proposed against )  
)  
[Taxpayer] )

**FINAL DECISION**  
Docket No. 2003-15

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 June 25, 2003, upon Taxpayer's request for an administrative hearing. Amy Rutledge, Division Auditor and Christopher E. Allen, General Counsel represented the Motor Fuels Tax Division. Taxpayer did not attend the hearing, request a postponement, or submit any evidence.

**ISSUE**

Whether, in the absence of required records, the Division properly calculated Taxpayer's operational miles and fuel consumption resulting in the proposed assessment of tax, penalty, and accrued interest in the amount of \$66,359.50 for the audit period September 1, 1997 through March 31, 2001.

**EVIDENCE**

1. Motor Fuels VISTA System Tax Type and Credential Data screen dated June 23, 2003.
2. Motor Fuels Tax Division Field Audit Report dated August 17, 2001.
3. Auditor's Taxpayer contact notes prepared both before and during the audit.
4. IFTA Articles of Agreement, Section R1200, *Assessment and Collection*.
5. IFTA Audit Manual, Section A550, *Inadequate Licensee Records/Assessment*.
6. Notice of Tax Assessment (IFTA) dated September 21, 2001 in the amount of \$57,660.05.
7. Division case status report prepared by Division auditor.
8. Fifteen (15) Drivers Daily Logs submitted by Taxpayer.
9. Letter from Eugene J. Cella to Taxpayer dated May 29, 2003 scheduling an administrative tax hearing for June 25, 2003 at 10:00 a.m.

10. Memorandum from E. Norris Tolson to Eugene J. Cella dated May 16, 2001 delegating authority to conduct administrative tax hearings on behalf of the Secretary of Revenue pursuant to N.C.G.S. 105-241.1.
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The Division also submitted a brief for the hearing.

The Taxpayer did not appear at the hearing, request an extension or postponement, or present any evidence to refute the assessment proposed below.

### **FINDINGS OF FACT**

Based upon the foregoing 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 "user" as defined by G.S. 105-449.60(41).
2. During all times relevant to the audit and assessment herein, Taxpayer was a "motor carrier" as defined by G.S. 105-449.37.
3. Taxpayer was also registered with the Motor Fuels Tax Division ("Division") as an International Fuel Tax Agreement (IFTA) carrier pursuant to N.C.G.S. 105-449.47.
4. Taxpayer operated as many as three (3) IFTA-qualified vehicles during the audit period.
5. The Division auditor first contacted Taxpayer on December 15, 2000, who replied that he did not have records for the audit.
6. The auditor allowed two weeks for Taxpayer to gather records, but granted an extension, instructing Taxpayer to contact the Wilmington office when the records became available for review.
7. Taxpayer later called and left messages with the Wilmington office on January 23, 2001, and the auditor attempted telephone contact on January 26, 2001 and February 5, 2001.
8. The auditor mailed a certified letter to Taxpayer's residence on May 25, 2001, and the U.S. Post Office made three attempts to deliver the letter before returning it to the Wilmington office stamped "refused."
9. The auditor proceeded to conduct the audit based upon the best information available (BIA) pursuant to G.S. § 105-241.1, the IFTA Articles of Agreement Section R1200, and the IFTA Audit Manual Section A550.
10. For purposes of mileage, the auditor first calculated total mileage using the procedures for a best information audit (BIA), and then used Taxpayer's International Registration Plan (IRP) reports to determine jurisdiction mileage percentages.

11. Taxpayer provided no information for fuel purchases, therefore the auditor assigned a 4.00 miles-per-gallon (MPG) factor authorized by the IFTA to determine fuel usage for each quarter.
12. Using the assigned MPG factor, the auditor determined the number of gallons needed to sustain Taxpayer's operation for the audit period.
13. The auditor then computed the jurisdictional tax due by quarter, and determined the tax, penalty, and interest due each IFTA jurisdiction, for a total then due of \$57,660.05.
14. The auditor concluded the audit by recommending that Taxpayer contact either the Division's Wilmington or Raleigh office within thirty (30) days to file an appeal.
15. The Division issued the resultant notice of tax assessment on September 21, 2001.
16. Apparently, Taxpayer contacted the Division sometime after the assessment was proposed, and the Division subsequently placed the assessment on administrative hold pending a hearing, amended assessment, or an appeal.
17. No record exists documenting that Taxpayer ever requested an administrative hearing.
18. During subsequent review of the assessment, Taxpayer presented the reviewing auditor a set of fifteen (15) Driver's Daily Logbooks for one of Taxpayer's qualified vehicles, number 111.
19. These logbooks, however, presented conflicting information. For example, logbook # 3 shows Taxpayer "off duty" for the period March 14 - 19, 2001 while in logbook # 4 Taxpayer recorded 3044 miles for the same period.
20. Other logbooks also presented conflicted information, and Taxpayer presented no other source documentation from which mileage could be determined.
21. The reviewing auditor correctly concluded that the information contained in the driver's logs warranted no adjustments to the BIA audit.
22. Because this matter remained unresolved, the Division referred this matter to the Secretary's Office for an administrative tax hearing.
23. By letter dated May 29, 2003 the Assistant Secretary notified Taxpayer of the hearing scheduled for June 25, 2003 at 10:00 am.
24. Taxpayer did not appear at the hearing, offer evidence or present argument to refute the assessment.

## CONCLUSIONS OF LAW

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

1. During all times relevant to the matter herein, Taxpayer was properly registered with the Division as an IFTA motor carrier, and was subject to IFTA reporting and records keeping requirements in accordance with G.S. §§105-449.37, .39, .44, .45, .47 and .57.
2. The Division properly used the best information available in accordance with G.S. § 105-241.1 and the IFTA governing documents to determine Taxpayer's operational miles in absence of required records.
3. The Division properly assigned a 4.00 MPG factor in accordance with the IFTA governing documents to determine Taxpayer's fuel usage in light of the absence of required records.
4. Proposed assessments issued by the Department of Revenue are presumptively correct, and it is incumbent upon taxpayers to present sufficient evidence to refute assessments proposed against them.
5. Taxpayer failed to attend the hearing after receiving notice of the time, date, and location of the proceeding.
6. Taxpayer presented no evidence to refute the assessment proposed against him.
7. Division auditors properly concluded that Taxpayer failed to accurately account for total and jurisdictional fuel consumption on its IFTA returns during the audit period.
8. The Division properly calculated the taxpayer's operational miles and fuel consumption resulting in the proposed assessment for tax, penalty, and interest issued September 21, 2001 in the amount of \$57,660.05, plus subsequently accruing interest at the statutory rate.

## CONCLUSION

**WHEREFORE**, the undersigned Assistant Secretary of Revenue **HEREBY AFFIRMS** in all respects the assessment proposed herein for \$39,542.95 tax, \$9,885.74 penalty, and interest of \$21,675.64 through September 19, 2003, for a total of \$71,104.33, plus accrued interest at the rate of \$13.08 per day at the statutory rate of one percent (1%) per month until paid.

This the 23<sup>rd</sup> day of September 2003.

Signature \_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Revenue