

DISCUSSION

Petitioner operates two fleets that are required to report in accordance with (X) standards. As a member of (X), Petitioner is subject to periodic audit. In the course of an audit, the Division found that Petitioner was unable to provide adequate documentation to support its reported fuel use for one of the fleets, so the Division devised a method to estimate the tax liability and allocations, as required by Utah law. Petitioner proposes a different method for estimating the tax liability. The parties agree on an allocation method, so that is not an issue here. Based on the first quarter information, the allocation is calculated at 12.7% to STATE 1, 77.95% to Utah, and 9.34% to STATE 2.

The difference of opinion concerns the estimate of gallons for each of the quarters in the audit period. The audit of the first quarter indicated a 2.21% increase over the gallons reported for the period. Because the gallons were under reported in the first quarter, Petitioner proposed applying a 2.21% adjustment factor to all quarters to estimate the tax-paid gallons purchased.

The Division credited Petitioner with the additional tax-paid gallons discovered in the audit but it states that it is inappropriate to assume that the gallons were under reported by 2.21% in each quarter. The Division argues that the reporting for this fleet is already in error and it is unwilling to apply a factor that may tend to increase the risk of error. Any additional error would work to the disadvantage of STATE 1 and STATE 2 as well as Utah. The Division agreed to accept any additional documentation that the Petitioner can produce that would indicate additional credit for taxes paid.

DECISION AND DECISION

The Commission agrees that Petitioner should receive credit for any tax-paid gallons for which documentation can be provided. However, the burden of proving that a credit is due is on Petitioner. The methodology that Petitioner suggests here has a very tenuous foundation. It does not substantially meet the Petitioner's burden of proof. Therefore, the Commission affirms the assessment as amended by the Division.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

Dated _____, 2006.

Irene Rees, Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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