04-0252 Audit Signed 03/13/2006

For Respondent

Division

# BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,		)	ORDER FRO	OM INITIAL HEARING
Petitioner,		)	Appeal No.	04-0252
V.		)	Account No.	#####
AUDITING DIVISION, UTAH STATE TAX COMMISSION, Respondent.		) ) )	Tax Type: Audit Period	IFTA 1/1/00 – 12/31/01
		)	Judge:	Rees
Presiding:	Irene Rees, Administrative Law Judge			
Appearances: For Petitioner	PETITIONER	REPRES	SENTATIVE, Se	nior Accountant, PETITION

# **BACKGROUND**

RESPONDENT REPRESENTATIVE, Audit Manager, Auditing

Petitioner appeals an audit report issued January 30, 2004. The audit report was amended on July 15, 2005 as a result of agreements between the parties. Petitioner filed an appeal concerning the remaining unresolved issues. This matter came before the Commission in an Initial Hearing on February 6, 2006.

# APPLICABLE LAW

- 1. Utah Code Ann. §59-12-313 requires the Commission to administer and enforce the fuel tax provisions. If there is reason to question the report filed or the amount of tax paid to the state, the Commission may determine the amount due based on the best information available.
- 2. Utah Admin. Rule R865-4D-18 requires the purchaser to maintain records to substantiate the fuel purchased. Failure to maintain adequate records will result in the Commission estimating the liability. A fuel user who is claiming a credit for tax paid must provide records to support the claim. Otherwise, the credit will be disallowed.

# **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	, 20	, 2006.			
	Irene Rees, Admir	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			