

08-1737
AUDIT
TAX YEAR: 2005, 2006, 2007, 2008
SIGNED: 01-28-2010
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 08-1737 Account No. ##### - 1 Tax Type: IFTA Audit Period: 1/1/05-6/30/06 Appeal No. 08-1744 Account No. ##### - 2 Tax Type: IRP Audit Period: 10/1/06-9/30/08 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER REP, Accountant
For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, Manager
RESPONDENT REP 3, Auditor
RESPONDENT REP 4, Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on an Initial Hearing pursuant to the provisions of Utah Code §59-1-502.5 on October 26, 2009. Petitioner (Taxpayer) is appealing the findings of an audit of its International Fuel Tax Agreement (IFTA) returns for the period of January 1, 2005 through June 30, 2006, and its International Registration Plan (IRP) returns for the period of October 1, 2006 through September 30, 2008. The Respondent's (Division's) IFTA tax audit deficiency was \$\$\$\$ in tax plus the interest accruing thereon. The Division's IRP audit deficiency was \$\$\$\$ in tax plus the interest accrued thereon. Interest continues to accrue on the unpaid balance. The Division did not assess any penalties.

APPLICABLE LAW

Users of special fuel in the state of Utah are required to report such use, as provided in Utah Code Ann. §59-13-305, as follows:

- (1) Unless exempted by Subsection (5), each user shall file with the commission, on or before the last day of the month following the end of a reporting period, a report on forms prescribed by the commission showing:
 - (a) the amount of fuel purchased and the amount of fuel used during the preceding reporting period by that user in the state; and
 - (b) any other information the commission may require to carry out the purposes of this part.

...

The Commission has issued further guidance regarding the maintenance of records in Administrative Rule R865-4D-18, below:

- A. The records and documents maintained pursuant to Section 59-13-312 must substantiate the amount of fuel purchased and the amount of fuel used in the state and claimed on the special fuel report required by Section 59-13-305(1).
- B. Every user must maintain detailed mileage records and summaries for fleets traveling in Utah, detailed fuel purchaser records, and bulk disbursement records. From this information, an accurate average mile per gallon (mpg) figure can be determined for use in computing fuel tax due. No fuel entering the fuel supply tank of a motor vehicle may be excluded from the mpg computation. Refer to Tax Commission rule R865-4D-2.
- C. Individual vehicle mileage records (IVMRs) separating Utah miles from non-Utah miles must be maintained. Utah miles must be separated further into taxable Utah miles and nontaxable Utah miles.

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Commercial fleet owners may register interstate vehicles under the International Registration Plan pursuant to Utah Code Sec. 41-1a-301 which provides in pertinent part at subsection (1)(a):

An owner or operator of a fleet of commercial vehicles based in this state and operating in two or more jurisdictions may register commercial vehicles for operation under the International Registration Plan or the Uniform Vehicle Registration Proration and Reciprocity Agreement by filing an application with the division.

When the registration under the International Registration Plan is renewed, the registration is based on the requirements at Utah Code Sec. 41-1a-301(2)(c) which provides:

At renewal, the registrant shall use the actual mileage from the preceding year in computing fees due each jurisdiction.

The fleet owner who registers under the International Registration Plan must maintain records pursuant to Utah Code Sec. 41-1a-301(8) as follows:

Any registration whose application for apportioned registration has been accepted shall preserve the records on which the application is based for a period of three years after the close of the registration year.

The IRP registration is an agreement between states and provides certain audit responsibilities for the base jurisdiction at IRP Art. X Sec. 1015:

The purposes of such an audit . . . [is] to assess the accuracy of the distances reported in a Registrant's application for apportioned registration and, where inaccuracies are found to adjust the Registrant's fees accordingly.

DISCUSSION

The Taxpayer's representative explained that most of the audit assumptions they agreed with. However, they did have a dispute with the allocation of miles between STATE 1 and STATE 2. Although the Taxpayer had not kept individual trip records for each of its IRP registered vehicles, the Taxpayer was able to obtain shipping reports from the business that received the deliveries made by the Taxpayer's fleet. These reports showed the number of delivery trips made from the shipyard near CITY 1, STATE 1 to the PLANT 1 in STATE 2. The Taxpayer calculated the actual mileage between its shipping yard and PLANT 1, which was located in CITY 2, STATE 2. The round trip mileage was 54.5 miles.

The Taxpayer's vehicles made numerous trips on this route during the audit periods that are at issue. Petitioner's trucks were loaded up at the shipyard, which was also where the Taxpayer's bulk fuel tank was located. The trucks would fuel there. Then the trucks would drive to the PLANT 1 in STATE 2, make the delivery and return along the same route.

Based on the actual miles from address to address as determined by a Goggle Map with driving and mileage instructions, it was the Taxpayer's position that for these trips, 29% of the miles driven had been STATE 1 miles and 71% were STATE 2 miles. For its audit, the Division had used a different percentage, which allocated more miles to STATE 1 with 34% to STATE 1 and 66% to STATE 2. It was the Taxpayer's assertion that the Division based its percentage on city-to-city miles instead of actual addresses.

The documentation that the Taxpayer provided to support the number of trips its trucks made between these two locations was the Supplier Payment Summaries which indicated each delivery to the PLANT 1 for the second quarter of 2005 and the first quarter of 2006. For the

second quarter of 2005, the report did not list out which vehicle made the delivery, but did document every trip made. The report for the first quarter of 2006 did list the carrier or truck number for every load. Each truck also made a trip into CITY 3, STATE 1 for maintenance each quarter, which the Taxpayer took into account.

From the PLANT 1 Plant records and maintenance trips, the Taxpayer was able to confirm all but 523 of the 16,258 miles traveled and reported on the IFTA filings. The Taxpayer asked that its percentage of the miles between STATE 2 and STATE 1 be used on its confirmed miles for that quarter. For the 2006 year, the Taxpayer made a similar calculation from the actual trips made to PLANT 1 and maintenance trips. Of the 19,698 miles it had claimed on its IFTA return, it was able to confirm all but 1,873. Again the Taxpayer asked that its percentages be applied to allocate based on the confirmed miles between STATE 1 and STATE 2. Taxpayer also argued that its confirmed miles showed the allocations the Taxpayer had claimed on its IFTA returns were more accurate than the audit assessment.

The Taxpayer stated that because all the trucks used to deliver loads to PLANT 1 Power had been IRP registered vehicles the fact that the PLANT 1 records did not list the specific truck number for each delivery for the 2005 period was irrelevant. The Taxpayer did not know what tax dollar difference would result in the audit deficiency from its requested change on the percentages between STATE 1 and STATE 2.

The Division argued that the Taxpayer had failed to maintain sufficient records as is required by Utah Code Sec. 59-13-305 and Utah Admin. Rule R865-4D-18(A) for the IFTA provisions and Utah Code Sec. 41-1a-301 for the IRP filings. Although the Division indicated that there had been information retained in summary, when it looked at the detail information during its audit of the Taxpayer's records, the details did not add up. The Division points out that Utah is the base jurisdiction for the Taxpayer. As the base jurisdiction, it has a statutory responsibility to assess the accuracy of the distances reported in the Taxpayer's IRP registration and to adjust the fees accordingly between the participating jurisdictions.¹ Regarding the IFTA filing, the base jurisdiction must determine the proper amount of tax to distribute among the different states. The Division did not offer any evidence to refute the actual mileage between the shipyard near CITY 1 and the PLANT 1, nor provide evidence that supported its allocation percentages of the miles between STATE 1 and STATE 2 used in the audit. The Division estimated the miles and appeared to have applied the same mileage allocation percentage over the entire audit periods.

¹ The Division cites to IRP Art. X Secs. 1015, 1065.

After reviewing the evidence submitted in this matter, the only real dispute was the allocation of miles between the origination point and the destination point. The Taxpayer has provided better evidence of how the miles should be allocated. There was no evidence provided by the Division that contradicted how many miles from the point of origination to the state border and how many miles from the state border to the point of destination. The Division did not argue that the vehicles were driving somewhere else. Therefore the Taxpayer has been able to confirm with sufficient detail the miles driven between STATE 2 and STATE 1. Based on the information before the Commission, the Taxpayer's allocation of 29% of the miles to STATE 1 and 71% to STATE 2 is more accurate than the allocation estimate made by the Division. As the Division's estimate of the STATE 2 and STATE 1 miles was applied over the course of the audit periods, the Commission concludes that it will accept the Taxpayer's allocation of miles and apply it to the entire audit period for the miles traveled as indicated in the IFTA audit.

Regarding the IRP filing, although the audit period at issue is October 1, 2006 through September 30, 2008, the IRP filing is to be based on the allocation of miles from the prior year. Utah Code Sec. 41-1a-301(2)(c) provides that the registrant shall use the actual mileage from the preceding year to compute the fees due in each jurisdiction. The information provided by the Taxpayer for both the fourth quarter of 2005 and the first quarter of 2006 would fall within the preceding year for the first IRP audit year which was October 1, 2006 through September 30, 2007. Regarding the STATE 1 and STATE 2 miles claimed on the IRP return, the Commission accepts the Taxpayer's allocation of 29%/71% for the October 1, 2006 through September 30, 2007 period. There was no information provided that was applicable to the subsequent IRP audit year and the Taxpayer simply did not provide information that would indicate that it was traveling the same routes in the period relevant for the next fiscal IRP filing. It is the Commission's duty to determine the accurate amount of miles in each state. The Taxpayer has provided documentation verifying the amount of miles between STATE 1 and STATE 2 for the first fiscal year in the IRP audit. Should the Taxpayer provide the same detail for the following fiscal year, the Division should consider that information and make an adjustment.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Appeal Nos. 08-1737 & 08-1744

Based on the foregoing, the Commission orders the Division to adjust the IFTA audit on the basis of the Taxpayer's 29% allocation to STATE 1 and 71% to STATE 2. For the IRP audit, the Division is to adjust the mileage for the first fiscal year. It is so ordered.

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 this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

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