

08-2092  
AUDIT  
TAX YEARS: 2005, 2006, 2007  
SIGNED 06-08-09  
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 08-2092</p> <p>Account No. #####</p> <p>Tax Type: IFTA</p> <p>Tax Year: April 2005 – March 2007</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearing:**

For Petitioner: PETITIONER REP, PETITIONER  
For Respondent: RESPONDENT REP 1, Assistant Attorney General  
RESPONDENT REP 2, Auditing Division  
RESPONDENT REP 3, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on February 11, 2009. Taxpayer is appealing the findings of an audit of its International Fuel Tax Agreement (IFTA) returns for the April 2005 through March 2007 periods. The Division's audit assessed additional tax in the amount of \$\$\$\$\$. Interest was assessed in the amount of \$\$\$\$\$ through October 17, 2008, and continues to accrue. The Division did not assess any penalties.

APPLICABLE LAW

The Commission is bound to comply with the International Fuel Tax Agreement, as set forth in Administrative Rule R865-4D-23, below:

- A. Pursuant to Section 59-13-501, the commission entered into the International Fuel Tax Agreement ("IFTA") effective January 1, 1990.

- B. Participation in IFTA is intended to comply with 49 U.S.C. 31705.
- C. This rule incorporates by reference the 2003 edition of the IFTA:
  - 1. Articles of Agreement;
  - 2. Procedures Manual; and
  - 3. Audit Manual.

Utah Admin. Code R865-4D-24 (2005-2007).

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.
- (2) The report shall be signed by the user or a responsible representative. This signature need not be notarized, but when signed is considered to have been made under oath.
- (3) A penalty is imposed under Section 59-1-401 for failure to file reports as provided in this section for each report not filed, regardless of the imposition of other penalties under this part.
- (4) (a) Each user that has a registered special fuel-powered motor vehicle other than a qualified motor vehicle and has facilities for bulk storage of special fuels shall declare special fuel tax liability for any nonqualified motor vehicle on the user report required by Subsection.
  - (b) Credit shall be given on the report for any special fuel taxes paid on purchases for any nonqualified vehicle. Purchase records must be maintained to substantiate the amount of any credit claimed.
- (5) (a) The following users are exempt from the filing requirements of Subsections (1) and (2) for the motor vehicles specified:
  - (i) a user who purchases a special fuel user trip permit for all of its operations for qualified vehicles for the reporting period, except a user having a special fuel user permit under Subsection 59-13-303(1)(a);
  - (ii) a user that has a registered special fuel-powered motor vehicle other than a qualified motor vehicle and does not have facilities for bulk storage of special fuels;

- (iii) a user of special fuel, for which the tax imposed by this chapter has already been paid; or
  - (iv) a user that has a motor vehicle powered by special fuel for which the tax is paid under an interstate fuel tax agreement under Section 59-13-502.
- (b) (i) The exemption under Subsection (5)(a)(iii) applies only when the user retains records verifying that all special fuel purchases for the exempt vehicle were taxed as required under this part.
- (ii) The commission may at the time of application or renewal of a special fuel user permit under Section 59-13-303 require that the user certify:
- (A) that the user qualifies for an exemption under Subsection (5)(a)(iii); and
  - (B) whether the user has facilities for bulk storage of special fuel.

Utah Code Ann. §59-13-305 (2005-2007).

The Commission is authorized to examine the special fuel reports, as provided in Utah Code Ann. §59-13-312, below:

- (1) Each user, supplier, and any other person importing, manufacturing, refining, dealing in, transporting, or storing fuel shall keep a record, in the form prescribed by the commission, of all deliveries, removals, purchases, receipts, sales, meter readings, inventories, and distribution of special fuel. The records shall include copies of all invoices or bills of all sales, and are subject to inspection by the commission or its authorized representative during regular business hours. All records shall be preserved for a period of three years.
- (2) Any user claiming a refund for taxes paid to a supplier shall retain on file a receipt of invoice, or a microfilm or microfiche of the receipt or invoice, evidencing the purchase of special fuel and the payment of the tax. The commission may require the user to furnish summaries or copies of original documentation substantiating the amount of refund claimed.
- (3) (a) The commission or its authorized representative may examine the books, papers, records, and equipment of any supplier, user, or person dealing in, transporting, or storing special fuel and may investigate the character of the disposition which any person makes of special fuel in order to determine whether all taxes due are being properly reported and paid.
- (b) The fact that the books, papers, records, and equipment are not maintained in this state at the time of demand does not cause the commission to lose any right of

- examination under this part when and where the records become available.
- (4) If the payer of this tax or the person dealing in special fuel does not maintain records in this state so that an audit of the records may be made by the commission or its representative, that person may be required to:
    - (a) forward the necessary records to the commission for examination; or
    - (b) pay the necessary expenses for an auditor of the commission to travel to the location of the records outside of this state to make an examination.
  - (5) Any funds collected under this section shall be deposited with the state treasurer and are dedicated credits for the commission.

Utah Code Ann. §59-13-312 (2005-2007).

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 miles 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. An adequate IVMR will contain the following information:
  1. starting and ending dates of trip;
  2. trip origin and destination;
  3. route of travel, beginning and ending odometer or hubometer reading, or both;
  4. total trip miles;
  5. Utah miles;
  6. fuel purchased or drawn from bulk storage for the vehicle; and
  7. other appropriate information that identifies the record such as unit number, fleet number, record number, driver's name, and name of the user or operated of the vehicle.
- D. If the user fails to maintain or provide adequate records from which the user's true liability can be determined, the Tax

Commission shall, upon giving written notice, estimate the amount of liability due. Such estimate shall taken into consideration any or all of the following:

1. any available records maintained and provided by the user;
  2. historical filing information;
  3. industry data;
  4. a flat or standard average mpg figure.
    - a) The standard average mpg normally applied is four mpg for qualified motor vehicles and six miles per gallon for nonqualified motor vehicles.
- E. Section 59-13-312(2) requires that the user be able to support credits claimed for tax-paid fuel with documents showing payment of the Utah special fuel tax. If documents and records showing payment of the Utah special fuel tax are not maintained or are not provided upon requires, the credits will be disallowed.

Utah Admin. Code R865-4D-18 (2005-2007).

#### DISCUSSION

Taxpayer operates a trucking operation that is required to report in accordance with IFTA. The Division audited Taxpayer for the April 2005 through March 2007 periods. The Division issued a Statutory Notice of its audit findings on September 17, 2008. The audit assessed additional tax in the amount of \$\$\$\$\$, and interest in the amount of \$\$\$\$\$ through October 17, 2008. No penalties were assessed.

The Division first met with Taxpayer's representative in February of 2008 to acquire fuel and mileage records for two sample quarters. Taxpayer provided fuel and mileage records for the fourth quarter of 2005 and the third quarter of 2006. The Division used the records to determine the fuel tax or credit due, for those quarters and to estimate the tax liability for the remainder of the audit period. The Division did not use the results from the audit of the fourth quarter of 2005 in its estimate of the tax due for the remaining audit period because there was a significant discrepancy between the reported and audited miles and fuel purchases. The Division could not determine conclusively if the apparent underreporting was repeated in other quarters, and therefore did not use this quarter in calculating its projection factors. The Division's representative stated that the Taxpayer was given the opportunity to contest the results from the two sample quarters.

Taxpayer's representative stated that after she received the findings of the Division's audit, she carefully went back over their documentation, and calculated that there was an additional balance due of \$\$\$\$\$ for the fourth quarter of 2005. With her Petition for Redetermination, the Taxpayer submitted an IFTA tax return for the fourth quarter of 2005, with

her “audit check” calculations of the tax liability. However, the Taxpayer did not provide any amended returns for the other periods at issue, or copies of receipts, dates of trip, origin/destination, traveled routes, beginning and ending odometer readings, miles per jurisdiction.

Taxpayer took issue with the manner in which the audit was conducted. It is the Taxpayer’s position that it is unfair of the Division to estimate the tax liability based on an inspection of records for only one quarter. She testified that she requested the Division do an actual audit for all of the periods involved, rather than using a sampling and estimating the liability for the remaining periods, but that the Division refused.

For the Division, RESPONDENT REP 2 explained the procedure he used to conduct the audit of the Taxpayer. He first met with the Taxpayer’s representative and was provided copies of trip envelopes, fuel receipts, routes of travel and Department of Transportation (DOT) logs for the sample quarters. RESPONDENT REP 2 used PC Miler to determine the minimum map miles for the routes of travel. He also compared the audited gallons to the reported gallons. Using the audit miles and audited gallons, RESPONDENT REP 2 calculated the miles per gallon (MPG), and used an estimated 5.00 MPG based on the unit weight of the taxpayer’s fleet in its audit calculations. RESPONDENT REP 2 stated that the Taxpayer’s representative was given an opportunity to contest the Division’s findings for the sample quarters. Further, he noted that the Division had reviewed the additional information provided by the Taxpayer on the fourth quarter of 2005.

Copies of the Division’s audit findings were provided, which show a breakdown of the quarter, jurisdiction, additional tax or credit, the cumulative net tax balance, IFTA interest, and the total IFTA amount due, or credit. Tax was calculated for the STATE 1, STATE 2, STATE 3, STATE 4, STATE 5, STATE 6, STATE 7, and Utah jurisdictions. The audit determined an additional tax liability totaling \$\$\$\$\$, broken down as follows: \$\$\$\$\$ for STATE 1; \$\$\$\$\$ for STATE 2; \$\$\$\$\$ for STATE 3; \$\$\$\$\$ for STATE 4; \$\$\$\$\$ for STATE 5; \$\$\$\$\$ for STATE 7; and \$\$\$\$\$ for Utah. The Division assessed interest at the IFTA rate of 12% at \$\$\$\$\$ total, broken down as follows: \$\$\$\$\$ for STATE 1; \$\$\$\$\$ for STATE 2; \$\$\$\$\$ for STATE 3; \$\$\$\$\$ for STATE 4; \$\$\$\$\$ for STATE 5; \$\$\$\$\$ for STATE 6; \$\$\$\$\$ for STATE 7; and \$\$\$\$\$ for Utah.

Taxpayer is required under Utah Code Ann. §59-13-305 to file a report showing the amount of fuel purchased and used for each period. Under Utah Code Ann. §59-13-312, the Taxpayer is required to keep records, that are subject to inspection by the Commission. The Commission is further authorized to determine from those records whether all taxes due are being

properly paid and reported. The Commission has issued Administrative Rule R865-4D-18 to provide additional guidance on the records required to be maintained, and the Commission's procedure for determining tax liability in the absence of adequate records. Among the information required to be maintained are records of the starting and ending dates of trips; trip origin and destination; route of travel; beginning and ending odometer readings; total trip miles; Utah miles; fuel purchased or drawn from bulk storage; and other appropriate information such as the unit number, fleet number, record number, driver's name, and the name of the user or operator of the vehicle. The Division initially met with the Taxpayer's representative, and obtained the Taxpayer's records for two sample quarters. The Division determined that the Taxpayer did not have adequate records from which to determine the Taxpayer's liability. The Commission finds that the Division made estimates of the Taxpayer's tax liability for the periods at issue in accordance with Rule R865-4D-18, relying upon the records provided by the Taxpayer. Other than the fourth quarter of 2005, the Taxpayer did not provide any amended returns, receipts, mileage records, or other basis that would support a reduction of the audit tax liability by the Commission.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the additional assessments of tax and interest on the Taxpayer's IFTA filings for the April 2005 through March 2007 periods. 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 \_\_\_\_\_, 2009.

\_\_\_\_\_  
Jan Marshall  
Administrative Law Judge

Appeal No. 08-2092

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 \_\_\_\_\_, 2009.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
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.

*JM/08-2092.int*