

10-2084
TAX TYPE: IFTA AND IRP
TAX YEARS: IFTA-2007, 2008
IRP- 2008, 2009, AND 2010
DATE SIGNED: 6-17-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>TAXPAYER</p> <p>Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p> | <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 10-2084</p> <p>Tax Type: IFTA Account No. ##### Audit Period: 01/01/07 - 12/31/08</p> <p>Tax Type: IRP Account No. ##### Audit Period: 10/01/08 - 09/30/10</p> <p>Judge: Chapman</p> |
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, (by telephone)
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 26, 2013. Per Commission request, Auditing Division (the "Division") submitted a post-hearing brief and exhibits on March 14, 2013 to explain its assessments of interest. TAXPAYER ("Petitioner" or "taxpayer") was given an opportunity to respond to the Division's post-hearing brief, but did not do so. Based upon the evidence and testimony, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. At issue are taxes and fees that the Division has assessed to the taxpayer under the International Fuel Tax Agreement (“IFTA”) and the International Registration Plan (“IRP”).

2. On June 16, 2010, the Division issued a Statutory Notice – International Fuel Tax Agreement for the period January 1, 2007 through December 31, 2008, in which it imposed additional IFTA taxes of \$\$\$\$ and interest (calculated through July 16, 2010) of \$\$\$\$\$, for a total IFTA assessment of \$\$\$\$\$ (Exhibit R-1).

3. Also on June 16, 2010, the Division issued a Statutory Notice – International Registration Plan for the period October 1, 2008 through September 30, 2010, in which it imposed additional IRP fees, additional Utah property tax, and interest (calculated through July 16, 2010)¹ for a total IRP assessment of \$\$\$\$\$ (Exhibit R-2), as follows:

| <u>Tax Type</u> | <u>Tax or Fee</u> | <u>Penalties</u> | <u>Interest</u> | <u>Total</u> |
|-------------------|-------------------|------------------|-----------------|-------------------|
| IRP Fees | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ |
| Utah Property Tax | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ | <u>\$\$\$\$\$</u> |
| | | | | \$\$\$\$\$ |

4. The taxpayer appealed both the IFTA assessment and the IRP assessment to the Tax Commission. The appeals were combined into the above-captioned matter. An Initial Hearing was scheduled in this matter for May 16, 2011, which the taxpayer did not attend. Because the taxpayer did not attend the Initial Hearing, the Commission issued an Order of Default in which the taxpayer was given notice that it could request a Formal Hearing. The taxpayer requested to proceed to a Formal Hearing.

5. The taxpayer operated a trucking business that was registered under IFTA and IRP, with Utah as the base jurisdiction. The taxpayer filed IFTA and IRP returns for the periods at issue. The taxpayer, which

¹ Interest assessed under both the IFTA audit and the IRP audit continues to accrue until the amounts of the liabilities are paid.

is primarily owned by REPRESENTATIVE FOR TAXPAYER, closed the trucking business more than two years ago.

6. The Division claims that when it audited the taxpayer's IFTA and IRP returns for the periods at issue, it discovered that the taxpayer did not have complete records concerning its fuel purchases and had not kept mileage records that complied with Utah law (such as odometer records and information about the routes traveled). As a result, the Division stated that the miles per gallon ("MPG") ratios that the taxpayer had determined and reported on his IFTA returns could not be verified. In addition, the Division stated that it could not verify the mileages that the taxpayer had reported for each state for both the IFTA and IRP returns.

7. REPRESENTATIVE FOR TAXPAYER acknowledged that he does not have the information the Division requested and that he has not kept complete records. He stated that he had two accountants review the Division's audit assessments and that neither of them could figure the assessments out. The only evidence the taxpayer submitted was two pages from the Division's IFTA assessment (Exhibit P-1). With this information, he contested the Division's decision to reduce the MPG ratios that it had calculated for two of eight quarters at issue in the IFTA audit (which will be discussed in greater detail below). Nevertheless, REPRESENTATIVE FOR TAXPAYER states that that he is confident that his bookkeeper properly determined and reported the taxpayer's mileages between states, the gallons of fuel used, and the MPG ratios for each audit period. For these reasons, the taxpayer asks the Commission to reverse both the IFTA assessment and the IRP assessment.

IFTA Audit

8. The IFTA audit period consists of the eight quarters comprising the 2007 and 2008 calendar years. The taxpayer filed returns showing its mileages and gallons of fuel for all jurisdictions or states. Based on the totals of these state amounts, the taxpayer determined MPG ratios for each quarter, as follows:

| |
|--------------------------------------|
| Taxpayer's Return Information |
|--------------------------------------|

| Quarter | Total Mileage | Total Gallons | MPG (Total Mileage / Total Gallons) |
|------------------------|----------------------|----------------------|--|
| 1st Q 2007 | ##### | ##### | ##### |
| 2 nd Q 2007 | ##### | ##### | ##### |
| 3 rd Q 2007 | ##### | ##### | ##### |
| 4 th Q 2007 | ##### | ##### | ##### |
| 1st Q 2008 | ##### | ##### | ##### |
| 2 nd Q 2008 | ##### | ##### | ##### |
| 3 rd Q 2008 | ##### | ##### | ##### |
| 4 th Q 2008 | ##### | ##### | ##### |

9. The Division argued at the hearing that it only made changes to the MPG ratios for two quarters and that these two changes accounted for all of the IFTA assessment. The Division’s audit assessment, however, shows differently. Based on a sample audit of two quarters (the 2nd and 3rd quarters of 2008), the Division increased both the mileages and the gallons of fuel that the taxpayer reported for all eight quarters (see Division’s new estimates in Columns #2 and #3 in the chart below). The Division used its new mileage and gallons of fuel numbers to determine new MPG ratios for each quarter (see Column #4 in the chart below). The Division then determined that two of the MPG ratios that it had derived from its revised mileage and gallons of fuel numbers were “outliers,” specifically the a ##### and ##### MPG ratios that it had derived for the 4th quarters of 2007 and 2008. As a result, the Division changed the MPG ratios for these two quarters to ##### MPG (see Column #5 in the chart below). In the audit assessment, the Division explained that it determined the ##### MPG rate from the total mileage and gallons of fuel that it had revised for the other six quarters. The taxpayer specifically objected to the Division’s reducing its MPG ratios for the 4th quarters of 2007 and 2008 to ##### MPG.

| Division’s Audit Changes | | | | |
|---------------------------------|----------------------|----------------------|---|------------------------------------|
| Column #1 | Column #2 | Column #3 | Column #4 | Column #5 |
| Quarter | Total Mileage | Total Gallons | Division’s Calculated MPG Ratios (Col. 2 / Col. 3) | Division’s Final MPG Ratios |

| | | | | |
|------------------------|-------|-------|-------|-------|
| 1st Q 2007 | ##### | ##### | ##### | ##### |
| 2 nd Q 2007 | ##### | ##### | ##### | ##### |
| 3 rd Q 2007 | ##### | ##### | ##### | ##### |
| 4 th Q 2007 | ##### | ##### | ##### | ##### |
| 1st Q 2008 | ##### | ##### | ##### | ##### |
| 2 nd Q 2008 | ##### | ##### | ##### | ##### |
| 3 rd Q 2008 | ##### | ##### | ##### | ##### |
| 4 th Q 2008 | ##### | ##### | ##### | ##### |

10. With its new mileage numbers (Column #2 of the chart above) and its final MPG ratios (Column #5 of the chart above), the Division calculated the number of gallons of fuel that would have been necessary to drive these new mileage amounts for each state for each quarter. The Division used these gallons of fuel amounts to determine whether the taxpayer had underpaid or overpaid its fuel tax liability to each state for each quarter. Exhibit R-1, Sch. 1.

11. Next, the Division summed the additional amounts due and the credits obtained for each state for each quarter. The Division determined that the taxpayer owed additional amounts of fuel tax to some states and that the taxpayer was owed a refund or credit from other states. When the amounts due and credits for all states were totaled, the Division determined that the taxpayer owed \$\$\$\$ of additional tax.

12. The Division also imposed interest in its IFTA assessment. The Division explained that in accordance with the IFTA agreement, interest is imposed on underpayments for each state for which additional amounts of tax were due. On the other hand, interest is not calculated on overpayments to any state where the taxpayer received a tax refund or credit, except for Utah, because the IFTA agreement does not contain a provision for refund interest. Also in accordance with the IFTA agreement, interest is calculated at %%% for all states except Utah. The Division determined that the taxpayer was due a credit for taxes that were overpaid to Utah. Interest associated with the Utah overpayment was calculated with the Utah state rates, which, in this instance, was %%% through December 31, 2008, %%% during 2009, and %%%

after December 31, 2009. When the Division summed the interest amounts that had been determined for each state using these procedures, it determined that the taxpayer owed \$\$\$\$ of interest.

13. REPRESENTATIVE FOR TAXPAYER admitted that he does not have documentation to support the mileages, the gallons of fuel, and the resulting MPG ratios that the taxpayer reported on its returns. He also admitted that he estimated trip mileages from his own knowledge instead of keeping odometer records and that receipts for some fuel purchases were lost and not reported. However, he asked the Commission to accept the taxpayer's IFTA returns as filed instead of sustaining the Division's audit.

14. REPRESENTATIVE FOR TAXPAYER specifically criticized the Division's reduction of the MPG ratios it calculated for the 4th quarters of 2007 and 2008 to ##### MPG. REPRESENTATIVE FOR TAXPAYER contends that the MPG ratio that a truck gets changes from one period to the next for various reasons, including the length and destination of the trips. REPRESENTATIVE FOR TAXPAYER also explained that MPG ratios could fluctuate if a driver "steals" fuel by selling it to another trucker. REPRESENTATIVE FOR TAXPAYER, however, could not remember any dates that an employee stole fuel during the IFTA audit period.

15. REPRESENTATIVE FOR TAXPAYER also explained that some drivers get better gas mileages than other drivers depending on their driving habits. REPRESENTATIVE FOR TAXPAYER, however, did not give any examples of when more efficient drivers may have been driving to justify the higher MPG ratios for certain quarters.

16. REPRESENTATIVE FOR TAXPAYER stated that the 4th quarter 2007 and 2008 MPG ratios that the Division derived and determined to be outliers may have been high because the types of trips his trucks made were different in the 1st and 4th quarters of the year than in the 2nd and 3rd quarters. However, this statement does not explain why the 4th quarter MPG ratios are the highest ratios and the 1st quarter ratios are

among the lowest ratios. If REPRESENTATIVE FOR TAXPAYER'S reasoning were correct, the taxpayer's 1st quarter MPG ratios should also be higher.

17. The Division asks the Commission to sustain its decision to reduce the MPG ratios it derived for the 4th quarters of 2007 and 2008 because Utah law and the IFTA agreement allow it to "default" to a ##### MPG ratio if a taxpayer does not have adequate records to support its reported mileages and MPG ratios. The Division argued that its MPG ratios, including the two it reduced to ##### MPG, are beneficial to the taxpayer because the Division spent the time to try to estimate accurate MPG ratios from the little information available instead of defaulting to the ##### MPG ratio.

IRP Audit

18. The IRP audit period, like the IFTA audit period, was for two years. Unlike the IFTA audit, where the two years consist of eight quarters, the IRP consists of two annual periods, specifically: 1) the registration year beginning October 1, 2008 and ending September 30, 2009 ("year ending September 30, 2009"); and 2) the registration year beginning October 1, 2009 and ending September 30, 2010 ("year ending September 30, 2010"). The only portion of the IFTA audit period that is also part of the IRP audit period is October 1, 2008 through December 31, 2008 (the 4th quarter of 2008).

19. The IFTA audit uses MPG ratios to determine the gallons of fuel used by the taxpayer and the amount of fuel tax that the taxpayer owes. The IRP audit, on the other hand, does not use MPG ratios because the IRP fees (i.e., proportional registration fees) are apportioned on the basis of miles traveled in each jurisdiction or state. The IRP fees are not determined on the basis of gallons of fuel or MPG ratios.

20. To audit the mileage numbers that the taxpayer reported for each state for the two audit years, the Division used the same two sample audit quarters (the 2nd and 3rd quarters of 2008) that it used for the

IFTA audit (even though these two quarters are not part of the IRP audit period). Exhibit R-2, Schedule 3-A-1. The Division again determined that the taxpayer had underreported the mileages for these two sample quarters. The Division applied the underreporting percentages it calculated from the 2nd quarter of 2008 to the taxpayer's IRP year ending September 30, 2009. Similarly, the Division applied the underreporting percentages it calculated from the 3rd quarter of 2008 to the taxpayer's IRP year ending September 30, 2010. Exhibit R-2, Exhibit 3. By so doing, the Division "reallocated" the apportionment percentages that the taxpayer had reported for each state for each of the two years.

21. With these new apportionment percentages, the Division determined that the taxpayer had overpaid his Utah property taxes for the year ending September 30, 2009 by \$\$\$\$\$ and underpaid his Utah property taxes for the year ending September 30, 2010 by \$\$\$\$\$. The Division stated that the \$\$\$\$\$ credit for the first year was disallowed because the taxpayer did not keep adequate records (such as odometer readings and routes of travel) to support the mileages it reported and the apportionment percentages calculated from them.² Exhibit R-2, Schedule 2. Accordingly, the Division assessed the taxpayer additional Utah property taxes of \$\$\$\$\$ plus interest due on these additional taxes.

22. The Division used these same new apportionment percentages to determine whether the taxpayer had properly allocated its registration fees to each jurisdiction. The Division determined that the taxpayer had overpaid its annual registration fees to at least ##### states for each of the two audit years. Again, the Division explained that these credits were not allowed because the taxpayer had not kept adequate records. The Division determined that the taxpayer owed additional registration fees to at least ##### states for

² The taxpayer received the credits the Division calculated for various states in the IFTA audit, but not the IRP audit. At the hearing, the Division stated that credits were not allowed for the IRP audit pursuant to Section E. of Utah Admin. Rule R865-4D-18 ("Rule 18"). Rule 18(E), however, does not apply to the IRP fees or IRP audits. It applies to credits for tax-paid fuel, not credits calculated for property taxes and IRP registration fees. Nevertheless, 603(a) of the IRP Audit Procedures Manual provides that "[a]ny credits calculated for Member Jurisdictions which are caused by the inadequacy of the Operational Records will not be reflected in the fees netted under Article X of the Plan."

each of the years. The sum of the amounts due to each state amounted to \$\$\$\$ for the year ending September 30, 2009 and \$\$\$\$ for the year ending September 30, 2010, for a total of \$\$\$\$\$. The Division charged interest on the \$\$\$\$ of additional fees due to Utah for the year ending September 30, 2010. Exhibit R-2, Exhibit A. The Division explained that it did not charge interest on the amounts due to states other than Utah because the IRP agreement, unlike the IFTA agreement, does not have a provision authorizing the imposition of interest.

23. The taxpayer did not provide any specific information to contest the IRP audit.³ However, REPRESENTATIVE FOR TAXPAYER stated that he was confident that his accountant properly calculated the taxpayer's Utah property tax liability and the registration fees due under IRP for each of the two years at issue. For these reasons, he asks the Commission to accept the taxpayer's IRP returns, as filed, and not to sustain the Division's IRP audit.

APPLICABLE LAW

1. Utah Code Ann. §59-13-501 (2008)⁴ provides that the Tax Commission may enter into interstate fuel tax agreements, as follows in pertinent part:

(1) The commission may enter into cooperative agreements with other states for the exchange of information and auditing of users of motor fuel and special fuels used in fleets of motor vehicles operated or intended to operate interstate. Any agreement, arrangement, declaration, or amendment is not effective until stated in writing and filed with the commission.

(2) Any agreement may provide for:

(a) determining the base state for users;

(b) users' records requirements;

(c) audit procedures;

....

(h) specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting; . . .

....

(4) Any agreement may provide for each state to audit the records of persons based in the

3 The taxpayer's only evidence were two pages from the IFTA audit that he used to show that he disagreed with the Division's reduction to two MPG ratios that are used to calculate fuel tax.

4 Cites are to the 2008 version of Utah law, unless otherwise specified.

state, to determine if the motor fuel or special fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state to each state in which the person has taxable use of motor fuels and special fuels. For persons not based in this state and who have taxable use of motor fuels or special fuels in this state, the commission may serve the audit findings received from another state, in the form of an assessment, on the person as if the audit were conducted by the commission.

(5) Any agreement entered into pursuant to this section does not preclude the commission from auditing the records of any person covered by the provisions of this chapter.

....

(7) If the commission enters into any agreement under the authority of this section, and the provisions established in the agreement are in conflict with any rules promulgated by the commission, the agreement provisions prevail.

2. UCA 59-13-502 addresses the compliance procedures associated with interstate fuel tax agreements entered into by the Tax Commission, as follows:

(1) After the commission's membership in an agreement provided for under Section 59-13-501 becomes effective, a taxpayer shall, for vehicles powered by special fuel qualifying under the agreement, be required to pay the special fuel tax at the rate established under Part 3 in accordance with the provisions of the agreement.

....

(3) The statutory notice procedures of this chapter, penalty provisions of Section 59-1-401, and adjudicative procedures in Title 63G, Chapter 4, Administrative Procedures Act, are applicable to this part.

3. Utah Admin. Rule R865-4D-23 ("Rule 23") explains that Utah is a state that participates in IFTA, as follows:

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.

4. Utah Code Ann. §59-13-305 provides for users of special fuel in the state of Utah to report such use, as follows in pertinent part:

(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.

....

5. UCA §59-13-312⁵ provides for records involving fuel purchases to be kept and to be available

for inspection by the Tax Commission, as follows in pertinent part:

- (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.

....

6. The Commission has issued further guidance regarding the maintenance of fuel records and

mileage records in Utah Admin. Rule R865-4D-18 (“Rule 18”), as follows in pertinent part:

- 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

5 In 2009, Subsection (1) of Section 59-13-312 was deleted.

the amount of liability due. Such estimate shall take 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 request, the credits will be disallowed.

7. Section R1230 of the IFTA Articles of Agreement provides for the imposition of interest, as

follows:

The base jurisdiction, for itself and on behalf of the other jurisdictions, shall assess interest on all delinquent taxes due each jurisdiction except taxes collected directly by other jurisdictions in accordance with IFTA Procedures Manual Sections P1000 and P1120.300.

.100 U.S. Jurisdiction Interest Rate

For a fleet based in a U.S. jurisdiction, interest shall accrue at a rate of one percent per month.

....

.300 Computation of Interest

....

.010 Audits

Audit interest shall be calculated separately for each jurisdiction. . . . An overpayment for one jurisdiction shall have no effect on the interest calculation for any other jurisdiction.

8. UCA §41-1a-301 provides that owners or operators of commercial fleets may register commercial vehicles under the IRP, as follows in pertinent part:

(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.

....

(8) (a) Any registrant 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.

(b) The records shall be made available to the division upon request for audit as to accuracy of computations, payments, and assessments for deficiencies, or allowances for credits.

.....

9. Section 703(a) of the IRP Audit Procedures Manual, as found at <http://www.irponline.org/?page=theplan>, addresses “sample periods” for an IRP audit, as follows:

(a) After completing the review of internal controls, the auditor should discuss proposed sample periods and Operational Records with the Registrant. **Source documents/IVDR’s and distance summaries for no less than three representative months of the Reporting Period for the Registration Year being audited will be selected for Audit with respect to Jurisdictional distance and other attributes required by Article IV of the APM.** After the auditor reconciles the distance summary (ies), differences should be summarized and included as a part of the Audit file. Generally, Audits are to be conducted on a sampling basis. However, a complete Audit of the Registrant’s distance records for the twelve-month period or actual months of operation may be necessary if tests of internal controls reveal major weaknesses in the Registrant’s reporting system, or if there is an absence of distance summaries (emphasis added).

10. Section 603(a) of the IRP Audit Procedures Manual, as found at <http://www.irponline.org/?page=theplan>, addresses credits that are calculated, as follows:

During the preliminary phase of the Audit, the auditor will have made a request for IVDR’s and distance summaries that support the apportioned registration application as filed. Operational Records must be adequate and complete for each Vehicle of the Fleet being audited. If the Operational Records are not made available, or if the records made available are inadequate for Audit purposes, an assessment of liability may be imposed in accordance with Article X of the Plan. If an estimate of the Registrant’s true liability cannot be determined, the Registrant may be assessed 100% of the original Apportionable Fees for the Base Jurisdiction. **Any credits calculated for Member Jurisdictions which are caused by the inadequacy of the Operational Records will not be reflected in the fees netted under Article X of the Plan** (emphasis added).

11. Article X, Section 1065 of the IRP (revised January 1, 2011, as found at www.irponline.org), provides for the “netting of audit assessments,” as follows:

1065 NETTING OF AUDIT ADJUSTMENTS

(a) When an Audit finds a net underpayment by the Registrant, the Base Jurisdiction shall collect the amount of the underpayment from the Registrant pursuant to the Base Jurisdiction’s laws and procedures.

(b) Upon collection of any underpayment, the Base Jurisdiction shall transmit the fee changes to each affected Member Jurisdiction within 30 calendar days following the transmittal period during which such payment was received.

(c) If the Base Jurisdiction determines a net underpayment to be uncollectible, any credits due the Registrant, plus any partial payments made by the Registrant, shall be used to offset additional fees due to Member Jurisdictions on a pro-rata basis.

(d) When an Audit finds a net overpayment by the Registrant, the Base Jurisdiction shall refund the amount of the overpayment to the Registrant; except that, if the Registrant failed to make necessary records available for examination or if the records made available were inadequate to conduct an Audit of the Registrant, the fees netted pursuant to the Audit shall not include credits for the Registrant which arise by virtue of the unavailability or inadequacy of its records.

(e) If the Audit findings indicate a net overpayment by the Registrant, the Base Jurisdiction shall transmit the fee changes to each affected Member Jurisdiction within 30 calendar days following the transmittal period during which the overpayment was refunded.

12. UCA §59-1-1417 (2013) provides that the burden of proof is upon the Petitioner in proceedings before the Commission, with limited exceptions as follows:

(1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency. . . .

CONCLUSIONS OF LAW

1. **IFTA Audit.** Section 59-13-312 and Rule 18 require a taxpayer to maintain records, including detailed mileage records and detailed fuel purchaser records, such as copies or invoices of all purchases. The taxpayer admitted that he had not kept complete records as set forth in Utah law. Rule 18(D) provides that “[i]f the user fails to maintain or provide adequate records from which the user’s true liability can be determined, the Tax Commission shall . . . estimate the amount of liability due.” In accordance with Rule

18(D), the Division has taken those records that the taxpayer does has, audited them, and determined that the taxpayer owes additional IFTA tax.

2. REPRESENTATIVE FOR TAXPAYER criticized the Division's IFTA assessment because he believes that his accountant filed the taxpayer's IFTA returns correctly. The taxpayer has the burden of proof in this matter and has provided no information to show that the taxpayer's IFTA returns for the IFTA audit period are correct.

3. REPRESENTATIVE FOR TAXPAYER, however, criticized one of the decisions that the Division made in its IFTA audit. Specifically, REPRESENTATIVE FOR TAXPAYER criticized the Division's decision to reduce the MPG ratios that the Division had calculated for the 4th quarters of 2007 and 2008 (as shown in Finding of Fact #9). He stated that the higher MPG ratios that the Division calculated should be used for these quarters because MPG ratios can vary from one quarter to the next because of variables such as the types of trips run, differences in drivers, and employee theft. The taxpayer's reported MPG ratios for these two quarters are also higher than the other six quarters of the audit period (as shown in Finding of Fact #8). Nevertheless, the taxpayer does not have sufficient records to show that the ##### MPG ratio the Division used for these two quarters is too low. In fact, the ##### MPG ratio is higher than the ##### MPG ratio the taxpayer reported for the 4th quarter of 2007. Furthermore, the ##### MPG ratio is also higher than the "flat or standard" average MPG prescribed in Rule 18(D)(4)(a). For these reasons, the MPG ratios used by the Division in its IFTA to estimate the taxpayer's liability have not been shown to be incorrect.

4. Pursuant to Section 59-1-1417, the taxpayer has the burden of proof in this matter. The taxpayer did not challenge any of the other audit choices made by the Division to estimate the taxpayer's mileages and gallons of fuel for each state for each quarter and to estimate the taxpayer's additional tax liability. The Division has also provided information to show that its calculation of interest for the IFTA

assessment is based on provisions in the IFTA agreement and Utah law. For these reasons, the taxpayer has not met its burden to show that the Division's IFTA assessment is incorrect. Accordingly, the Commission should sustain the Division's IFTA assessment in its entirety.

5. **IRP Audit.** Section 41-1a-301 requires a taxpayer to maintain records and provide them to the Division for audits to determine the accuracy of the taxpayer's computations and payments. The taxpayer admitted that he had not kept complete records concerning its mileages. The taxpayer provided the limited information it had to the Division, and the Division performed an IRP audit as allowed under Utah law.

6. REPRESENTATIVE FOR TAXPAYER criticized the Division's IRP assessment because he believes that his accountant filed the taxpayer's IRP returns correctly. The taxpayer has the burden of proof in this matter and has provided no information to show that the taxpayer's IRP returns for the IRP audit period are correct.

7. Although REPRESENTATIVE FOR TAXPAYER criticized the MPG ratios the Division used in its IFTA audit, these ratios were not used by the Division in its IRP audit and are not used to determine how to allocate registration fees and property taxes between states. Accordingly, the correctness of the MPG ratios has no bearing on the correctness of the IRP assessment.

8. Pursuant to Section 59-1-1417, the taxpayer has the burden of proof in this matter. The taxpayer did not challenge any of the other audit choices made by the Division to estimate the taxpayer's mileages for each state for each registration year and to estimate the taxpayer's liability for IRP fees and property taxes. It is curious that the Division used two sample periods prior to the IRP audit period to estimate mileages for the IRP audit. One wonders if such a decision is advisable, given the instructions in Section 703(a) of the IRP Audit Procedures Manual. However, the taxpayer did not challenge this audit choice of the Division. Furthermore, the taxpayer provided no information to show whether the IRP assessment would have been higher or lower had sample periods within the IRP audit period been used instead. As a result, the

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Commission should not be inclined to find that the Division's actions concerning the sample periods were incorrect or that they invalidate the audit. Lastly, the Division has provided information to show that its calculation of interest for the IRP audit is based on provisions in the IRP agreement and Utah law. For these reasons, the taxpayer has not met its burden to show that the Division's IRP assessment is incorrect. Based on the foregoing, the taxpayer's appeal should be denied in its entirety.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's IFTA and IRP assessments and denies the taxpayer's appeal. It is so ordered.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.