STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-30

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:	:	**International Fuel Tax Agreement**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing as the result of a Notice of Hearing and an Appointment of Hearing Officer dated September 19, 2014 and issued to the above captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on November 13, 2014. The Division was represented by counsel and the Taxpayer was *pro se*. The parties rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 31-36.1-1 *et seq.*, *Division of Taxation Regulation AHP 97-01 Administrative Hearing Procedures*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings.*

III. ISSUE

Whether the Taxpayer owes the taxes assessed under the International Fuel Tax Agreement ("IFTA").

IV. MATERIAL FACTS AND TESTIMONY

Revenue Agent I, testified on behalf of the Division. He testified that he performed a random IFTA audit of the Taxpayer which covered the period of the second quarter of 2011 to the first quarter of 2014. See Division's Exhibits One (1) (audit letter sent to Taxpayer); Two (2) (Taxpayer's IFTA license application in May 1996); Three (3) (Taxpayer's pre-audit questionnaire). He testified that the Taxpayer is in the business of the sale and service of trucks. He testified he reviewed the Taxpayer's daily driver logs and over-the road receipts for gas purchases and the Taxpayer's records were incomplete.

testified that for the audit he reviewed the fuel receipts, the total miles, and the jurisdiction miles. He testified that for the fuel, he looked at the Taxpayer's receipts for the fourth quarter of 2012 and the second quarter of 2013 and most of them did not have the required vehicle unit number and were missing the miles per gallon. He testified that when he compared the full receipts to what was reported to IFTA, it was inconclusive and he could not determine the deficiency. He testified that he was unable to calculate the total miles because there was no odometer readings for the IFTA miles. He testified that he kept the total miles reported but because of the inadequate recordkeeping applied the mileage reduction. He testified for the jurisdictional miles he looked at the fourth quarter 2012 and the second quarter of 2013 and the records were missing the total miles and odometer miles and only listed miscellaneous miles. He testified that he applied the reported jurisdiction miles to mapping software and there were discrepancies in the miles. He testified that every IFTA slip needs to be recorded so miscellaneous miles cannot be accepted. See Division's Exhibits Five (5) (examples of

Taxpayer's fuel receipts, daily driver logs, IFTA returns); Six (6) (audit work papers); Eight (8) (audit report); and Nine (9) (inter-jurisdictional audit report).

testified that pursuant to IFTA, he applied the miles per gallon reduction of 1.5 miles across the board for all fuel purchases because of the Taxpayer's incomplete records. He testified the mileage reduction added more fuel to the audit that the Taxpayer was not able to take credit for which caused a Notice of Deficiency to be issued. He testified that the miscellaneous fuel was taxed at the Rhode Island rate and the miles listed for Connecticut and Massachusetts were taxed at those states' rates. He testified the Notice of Deficiency was issued on July 25, 2014. See Exhibit Ten (10) (Notice of Deficiency). He testified that interest was added but under IFTA rules it had been reduced during the audit period from 12% to 5%.

On cross-examination, testified that he reduced the miles per gallon allowed because of the inadequate records.

The Taxpayer's owner testified on behalf of the Taxpayer. He testified that the record keeping requirements are crazy and that he just filed 250 miscellaneous miles for each quarter. He testified that he knows he is supposed to write the route but only lists the miles because there is too much paper work for the small amount of time that is spent on driving the trucks. He testified that he is not in the trucking business.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute

is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Fuel Use Tax

Pursuant to R.I. Gen. Laws § 31-36.1-1, the purpose of the fuel use tax is to assure the payment of tax on fuel consumed by motor carriers on the public highways in Rhode Island. R.I. Gen. Laws § 31-36.1-5 states as follows:

> Imposition of tax. – There is levied and imposed upon motor carriers a tax at the rate specified in § 31-36-7 on the use of fuel for the propulsion of qualified motor vehicles on the public highways within this state. The tax, with respect to fuel purchased instate, shall be paid at the time of purchase as provided in chapter 36 of this title. The tax, with respect to fuel purchased outside this state shall be paid when the quarterly returns required in § 31-36.1-11 are filed with the administrator.

Like the sales and use tax, the fuel use tax and motor fuel tax are complementary taxes. The motor fuel use tax is imposed upon motor carriers on their use of fuel for the travel on Rhode Island's public highways. During this time period, pursuant to R.I. Gen. Laws § 31-36-7, the tax rate was set at 32¢ a gallon. Thus, the fuel use tax and motor fuel tax are set at the same rate. R.I. Gen. Laws § 31-36.1-11 requires all motor carriers

subject to the use tax to file quarterly returns with the Division. Pursuant to R.I. Gen. Laws § 31-36.1-8, motor carriers are required to retain records for four (4) years. R.I. Gen. Laws § 31-36.1-12 provides for the inspection of motor carriers' records by the Division. In terms of the Division computing fuel use tax owed, R.I. Gen. Laws § 31-36.1-13 states in part as follows:

> Computation of tax by administrator. – (a) If the administrator is not satisfied with any report or return of a motor carrier subject to the tax imposed by this chapter, or with the amount of the tax to be paid by the motor carrier, the administrator may compute and assess the amount of the tax on the basis of facts contained in the report and return or on the basis of any other information available to the administrator. One or more deficiency assessments may be made with respect to any return for the tax imposed by this chapter.

C. International Fuel Tax Agreement[1]

R.I. Gen. Laws § 31-36.1-16 authorizes the Tax Administrator to join IFTA which is a Federally mandated intrastate compact designed to facilitate reporting, collecting, and assessing of fuel use tax. Instead of motor carriers filing tax returns and refund requests to all jurisdictions in which they travel, they only need to file with their IFTA base jurisdiction which acts as a "clearing house" by computing and netting out tax over and underpayments to jurisdictions in which they traveled. Under IFTA, a motor carrier may claim tax credits, and tax credits for fuel use taxes that are paid to one jurisdiction may be transferred and used to off-set fuel use tax liabilities in other jurisdictions. Each member jurisdiction is responsible for auditing its IFTA licensees and in doing so acts on behalf of all of the member jurisdictions in which that motor carrier operates. See IFTA Articles of Agreement ("AA") § R130 (purpose of IFTA); § R150 (IFTA is one base jurisdiction;

[1] Administrative Notice was taken of 1) IFTA Articles of Agreement; 2) IFTA Procedures Manual; and 3) IFTA Audit Manual (all effective July 1, 1998 and revised January, 2013 for Articles of Agreement and Procedures Manual and revised January, 2012 for Audit Manual).

one license); § R1120 (credits); and § R1300 (audits). Thus, under IFTA, the base jurisdiction is authorized to collect taxes for other member jurisdictions and IFTA licensees agree by virtue of being licensed to abide by IFTA. AA § R140[2] and AA § R120[3] specifically state that the IFTA Procedures Manual ("PM") and Audit Manual ("AM") are binding on licensees. In applying for an IFTA license, the applicant signs a certification to abide by IFTA rules. PM § P160.[4]

i. IFTA Record Keeping Requirements

Under IFTA, every licensee is to maintain records to substantiate information reported on its tax returns and operational records are to be available for audit in the base

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[2] § R140 states as follows:

> Cooperative Administration. – It is the purpose of this Agreement to enable participating jurisdictions to act cooperatively and provide mutual assistance in the administration and collection of motor fuels use taxes. By virtue of signing an IFTA license application or a renewal containing the certification set out in P160, a person who applies for and operates under an IFTA license agrees to be bound by the duties and obligations of licensees as set forth in the Agreement currently and as it may be amended. The base jurisdiction must enforce those duties and obligations within its jurisdiction. The member jurisdictions may also enforce those duties and obligations within their jurisdictions. The licensee acknowledges that, in addition to the licensee's duties and obligations under the Agreement, the licensee is also subject to the laws, rules and regulations of all jurisdictions in which it operates.

[3] § R120 states as follows:

> Governing Documents. – The Audit Manual and Procedures Manual authorized by this Agreement are equally expressive of, and constitute evidence of this multijurisdictional agreement. The provisions of all three IFTA documents shall be equally binding upon the member jurisdictions and IFTA licensees and are known as the IFTA governing documents.

[4] In particular, PM § 160 states as follows:

> Certification:
>
> Applicant agrees to comply with tax reporting, payment, recordkeeping, and license display requirements as specified in the International Fuel Tax Agreement. The applicant further agrees that base jurisdiction may withhold any refunds due if applicant is delinquent on payment of fuel taxes due any member jurisdiction. Failure to comply with these provisions shall be grounds for revocation of license in all member jurisdictions; and
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> A statement to the effect that the applicant certifies with his or her signature or electronic submission as deemed acceptable by the base jurisdiction that, to the best of his or her knowledge, the information is true, accurate, and complete and any falsification subjects him or her to appropriate civil and/or criminal sanction of the base jurisdiction. (e.g., perjury).

jurisdiction. AA § R700.[5] Pursuant to PM § P510, licensees are required to preserve records on which quarterly returns are based for four (4) years from the due date or filing date whichever is later. Pursuant to PM § P530,[6] a licensee's failure to maintain or to make records available may result in an assessment and may be grounds for license revocation. Pursuant to AA § R1200,[7] if a licensee fails to keep records from which the

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[5] § R700 states as follows:

> Records Requirements. – Every licensee shall maintain records to substantiate information reported on the tax returns. Operational records shall be maintained or be made available for audit in the base jurisdiction. Recordkeeping requirements shall be specified in the IFTA Procedures Manual.

[6] § P530 states as follows:

> Non-Compliance
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> .100 Failure to maintain records upon which the licensee's true liability may be determined or to make records available upon proper request may result in an assessment as stated in IFTA Articles of Agreement Section R1200.
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> .200 Non-compliance with any recordkeeping requirement may be cause for revocation of the license. The base jurisdiction may defer license revocation if the licensee shows evidence of compliance for future operations.

[7] § R1200 states as follows:

> R1210 Assessment
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> .100 In the event that any licensee
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> 005 fails, neglects, or refuses to file a tax return when due;
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> .010 fails to make records available upon written request by the base jurisdiction; or
>
> .015 fails to maintain records from which the licensee's true liability may be determined, the base jurisdiction shall proceed in accordance with .200 and .300.
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> .200 On the basis of the best information available to it, the base jurisdiction shall:
>
> .005 determine the tax liability of the licensee for each jurisdiction and/or
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> .010 revoke or suspend the license of any licensee who fails, neglects or refuses to file a tax report with full payment of tax when due, in accordance with the base jurisdiction's laws.
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> Both .200.005 and .200.010 may be utilized by the base jurisdiction. For purposes of assessment pursuant to .100.010 or .100.015, the base jurisdiction must issue a written request for records giving the licensee thirty (30) days to provide the records or to issue a notice of insufficient records.
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> .300 The base jurisdiction shall, after adding the appropriate penalties and interest, serve an assessment issued pursuant to .200.005 upon the licensee in the same manner as an audit assessment or in accordance with the laws of the base jurisdiction. The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive.

licensee's true liability can be determined, the base jurisdiction shall determine the tax liability for each jurisdiction (i.e. no credits given because true liability not determined) and can revoke or suspend license.

ii. Fuel Documentation

Pursuant to PM § P550,[8] a licensee must maintain complete records of all motor fuel purchased, received, and used in the conduct of its business, with separate accounting for different types of fuel, and separate accounting for bulk and retail fuel purchases including the date of each receipt, name and address from whom purchased, and number of gallons received, etc. Pursuant to PM § P560,[9] for tax paid retail

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[8] PM § P550 states as follows:

> Fuel Records
> .100 The licensee must maintain complete records of all motor fuel purchased, received, and used in the conduct of its business.
> .200 Separate totals must be compiled for each motor fuel type.
> .300 Retail fuel purchases and bulk fuel purchases are to be accounted for separately.
> .400 The fuel records shall contain, but not be limited to:
> .005 The date of each receipt of fuel;
> .010 The name and address of the person from whom purchased or received;
> .015 The number of gallons or liters received;
> .020 The type of fuel; and
> .025 The vehicle or equipment into which the fuel was placed.

[9] PM § P560 states as follows:

> Tax Paid Retail Purchases
> .100 Retail purchases must be supported by a receipt or invoice, credit card receipt, automated vendor generated invoice or transaction listing, or microfilm/microfiche of the receipt or invoice. Receipts that have been altered or indicate erasures are not accepted for tax-paid credits unless the licensee can demonstrate the receipt is valid.
> .200 Receipts for retail fuel purchases must identify the vehicle by the plate or unit number or other licensee identifier, as distance traveled and fuel consumption may be reported only for vehicles identified as part of the licensee's operation.
> .300 An acceptable receipt or invoice must include, but shall not be limited to, the following:
> .005 Date of purchase;
> .010 Seller's name and address;
> .015 Number of gallons or liters purchased;
> .020 Fuel type;
> .025 Price per gallon or liter or total amount of sale;
> .030 Unit numbers; and
> .035 Purchaser's name (See R1010.300 of the IFTA Articles of Agreement).

purchases, licensees must produce an unaltered receipt identifying the vehicle receiving the fuel, purchase date, seller's name and address, fuel type, number of gallons purchased, vehicle identification, and purchaser's name, etc.

iii. Mileage Documentation

Pursuant to PM § P540,[10] licensees must maintain detailed distance records on an individual vehicle basis, distinguishing taxable and non-taxable usage of fuel, and the distance traveled for both taxable and non-taxable use. Information that must be included is the starting and ending date of the trip, the trip origin and destination, the route of travel, beginning and ending odometer readings, total trip miles, miles by jurisdiction, and vehicle VIN.

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[10] § P540 states as follows:

Distance Records

.100 Licensees shall maintain detailed distance records which show operations on an individual-vehicle basis. The operational records shall contain, but not be limited to:

.005 Taxable and non-taxable usage of fuel;

.010 Distance traveled for taxable and non-taxable use; and

.015 Distance recaps for each vehicle for each jurisdiction in which the vehicle operated.

.200 An acceptable distance accounting system is necessary to substantiate the information reported on the tax return filed quarterly or annually. A licensee's system at a minimum, must include distance data on each individual vehicle for each trip and be recapitulated in monthly fleet summaries. Supporting information should include:

.005 Date of trip (starting and ending);

.010 Trip origin and destination;

.015 Route of travel (may be waived by base jurisdiction);

.020 Beginning and ending odometer or hub odometer reading of the trip (may be waived by base jurisdiction);

.025 Total trip miles/kilometers;

.030 Miles/kilometers by jurisdiction;

.035 Unit number or vehicle identification number;

.040 Vehicle fleet number;

.045 Registrant's name; and

.050 may include additional information at the discretion of the base jurisdiction.

D. Arguments

The Division argued because of the Taxpayer's inadequate recordkeeping in violation of IFTA's recordkeeping requirements, the Division could not complete its audit. The Division argued that as a penalty for the incomplete records, the Taxpayer's miles per gallon was reduced so that the Taxpayer was now using more fuel which caused a deficiency on which tax was owed.

The Taxpayer admitted to recordkeeping violations and apparently argued that the reduction in miles per gallon should be from seven (7) to 6.2 miles per gallon.

E. Discussion

Pursuant to AA § R1210, an assessment that is made in the base jurisdiction is presumed to be correct, and if challenged, the burden shall be on the taxpayer to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive. The Taxpayer did not dispute and agreed in testimony that it did not keep the records required by IFTA. The Taxpayer did not establish by a fair preponderance of the evidence that the mileage reduction should be .8 miles as the Taxpayer apparently suggested during the hearing.

IFTA was set up to streamline the payment of fuel tax due to many jurisdictions. The Taxpayer in its 1996 IFTA application agreed to abide by these requirements. Failure to abide by the IFTA record keeping requirements results in penalties as set forth by the IFTA agreements.

F. Penalties

AA § R1220 authorizes a base jurisdiction to impose a penalty of $50.00 or 10% on delinquent taxes, whichever is greater and AA § R1330 authorizes the imposition of

interest.[11] AM § 550 AA[12] allows the base jurisdiction (Division) to estimate the fuel usage when a taxpayer's records are inadequate. In this matter, the Taxpayer's records were inadequate so that the Division reduced the miles per gallon by 1.5.[13] § R1220 also provides that IFTA does not limit the authority of the base jurisdiction from imposing any other penalties provided by law.

G. Conclusion

Based on the forgoing, the Division properly assessed the Taxpayer for fuel taxes owed for the audit period as well as the interest and penalties.

VI. FINDINGS OF FACT

1. On or about September 19, 2014, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer. A hearing was held on November 13, 2014 with the parties resting on the record.

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[11] The testimony was that for IFTA reduced its interest during the audit period so that the 2011 second quarter to 2013 second quarter was 12%; 2013 third quarter to 2014 second quarter was 5%.

[12] AM § 550 AA provides as follows:

> Inadequate Licensee Records/Assessments
> .100 Fuel Use Estimation
> If the licensee's records are lacking or inadequate to support any tax return filed by the licensee or to determine the licensee's tax liability, the base jurisdiction shall have authority to estimate the fuel use upon (but is not limited to) factors such as the following:
> .005 Prior experience of the licensee;
> .010 Licensees with similar operations;
> .015 Industry averages;
> .020 Records available from fuel distributors; and
> .025 Other pertinent information the auditor may obtain or examine.
> Unless the auditor finds substantial evidence to the contrary by reviewing the above, in the absence of adequate records, a standard of 4 MPG/1.7KPL will be used.
> .200 Tax Paid Fuel Credits
> When tax paid fuel documentation is unavailable, all claims for tax paid fuel will be disallowed.

[13] Said section provides that all miles per gallon can be reduced to four (4) miles per gallon but in this case the Division chose a lesser reduction of 1.5 miles.

2. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.* and R.I. Gen. Laws § 31-36.1-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 31-36.1-1 *et seq.*, the Division properly assessed the Taxpayer additional fuel use tax under IFTA and properly assessed interest and a penalty on the tax deficiency.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 31-36.1-1 *et seq.*, the Division properly assessed the Taxpayer additional fuel use tax under IFTA and properly assessed the Taxpayer interest and a penalty on the tax liability.

Date: 12/2/14

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

__X__ ADOPT
_____ REJECT
_____ MODIFY

Date: 12/3/14

David Sullivan
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

> **§ 8-8-25 Time for commencement of proceeding against the division of taxation.** – (a) Any taxpayer aggrieved by a final decision of the tax administrator concerning an assessment, deficiency, or otherwise may file a complaint for redetermination of the assessment, deficiency, or otherwise in the court as provided by statute under title 44.
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> (b) The complaint shall be filed within thirty (30) days after the mailing of notice of the final decision and shall set forth the reasons why the final decision is alleged to be erroneous and praying relief therefrom. The clerk of the court shall thereupon summon the division of taxation to answer the complaint.

CERTIFICATION

I hereby certify that on the 3rd day December, 2014, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to the Taxpayer's address on file with the Division of Taxation and by hand delivery to Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Paul Belanger