

Executive Hearing Office
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**STATE OF ARIZONA
EXECUTIVE HEARING OFFICE
DEPARTMENT OF TRANSPORTATION**

**IN THE MATTER OF AN
INTERSTATE USER FUEL TAX
ASSESSMENT: A.R.S. §§ 28-5702 et seq.,
28-5921; 28-5922; and, 28-5924:**

IFTA-2295

[REDACTED]

Petitioner.

(IFTA License # [REDACTED])

**FINDINGS OF FACT
CONCLUSIONS OF LAW
DECISION AND ORDER**

[REDACTED], Administrative Law Judge

Bond Requirement AFFIRMED

Appearances: [REDACTED], [REDACTED]
[REDACTED], Assistant Arizona Attorney General, Counsel for ADOT
[REDACTED], Accounting Specialist, Fuel Tax Reporting ADOT

Exhibit 1: [REDACTED]
Exhibit 2: [REDACTED]
Exhibit 3: [REDACTED]
Exhibit 4: [REDACTED]

Pursuant to the authority of Arizona Revised Statutes § 28-5924, a hearing was convened pursuant to notice on [REDACTED] 2017 in the Executive Hearing Office of the, Arizona Department of Transportation in Phoenix, Arizona. The purpose of that hearing

was to allow the Respondent to show cause, if any, as to why the bond requirement issued by the Department against Petitioner's International Fuel Tax Agreement (IFTA) license should not be upheld. Petitioner's request for hearing requested the bond requirement be lifted as the company was unaware the report for the quarter ending on [REDACTED] 2016 was not properly filed, and system corrections were in place to avoid problems in the future. Pursuant to A.R.S. § 28-5924, the hearing was limited to a review of the reasons set forth in Petitioner's hearing request

FINDINGS OF FACT

The Arizona Department of Transportation issued Petitioner an IFTA License [REDACTED] allowing Petitioner to pay fuel taxes to the Department for distribution to other states in which Petitioner may owe fuel taxes. IFTA licensees are required to file quarterly reports detailing their driving activity, whether or not there is activity during that quarter. Reports are due to the Department within thirty days of the last day of the preceding quarter. The second quarter of 2016 ended on June 30, 2016. IFTA reports were due to the Department on or before July 31, 2016.

Petitioner failed to submit a report for the second quarter 2016 by July 31, 2016. On [REDACTED] 2016, the Department sent a letter to Petitioner at the address on file. The letter, entitled Notice of Delinquent IFTA Quarterly Report (Exhibit 1) advised Petitioner it had not filed a report for the quarter ending [REDACTED] 2016. The Notice advised Petitioner the report was due on or before [REDACTED] 2016 to avoid an additional bond requirement and possible IFTA license revocation. *Id.* In conjunction with the mailing of the Notice, Accounting Specialist [REDACTED] reviewed Petitioner's filing history for

the past twelve quarters and determined Petitioner had also submitted late reports on the last quarter of [REDACTED], and the first and second quarters of [REDACTED] (Exhibit 2).

No report was received from Petitioner by the Department before the grace period deadline of [REDACTED] 2016. On [REDACTED] 2016 the Department sent a Notice of Requirement to Post Bond. (Exhibit 3). By the Notice, Petitioner was given thirty days to post a surety bond, set at [REDACTED] or to request a hearing. Petitioner's report was ultimately received by the Department on or about [REDACTED], 2016.

Petitioner's Owner, [REDACTED] testified he did not receive the initial Notice dated [REDACTED] and believed he had properly filed his company's Quarterly Report for the second quarter of 2016. Petitioner confirmed the address to which the Notice was sent was correct as of the date of mailing, and had not changed. Petitioner was unable to produce any documentation indicating the report had been timely filed.

CONCLUSIONS OF LAW

The Administrative Law Judge has jurisdiction of the parties and the subject matter in this proceeding pursuant to the authority of A.R.S. § 28- 5924. Pursuant to A.R.S. § 28- 5732, an interstate user is required to submit to the Department quarterly reports stating the amount of use fuel among other required information. Reports are due "on or before the last day of the month after the close of the reporting period." *Id.* Accordingly, Petitioner's quarterly report for the second quarter of 2016 was due to the Department no later than thirty days after June 30, 2017. Petitioner did not file its report within the allowable time frame.

Petitioner was given a 60 grace period by way of the Delinquency Notice of [REDACTED] [REDACTED] Service was proper and complete by the mailing of the Notice to Petitioner's last

known address, and neither personal service nor certified delivery was necessary. Petitioner continued to fail to submit the second quarter report until [REDACTED] 2016.

Both Arizona statutes and the IFTA Articles of Agreement, which bind all IFTA licensees, allow for a surety bond requirement if the interstate user fails to file tax reports or remit taxes in a timely manner. *See* A.R.S. § 28- 5736 (A)(1); IFTA Articles of Agreement Article 1, R120 (governing documents) & R340 (Bond Requirement). The evidence establishes Petitioner failed to file a timely report for the second quarter of 2016, and is therefore subject to the bonding requirements of IFTA. Evidence presented at the hearing also established Petitioner has a history of late filings, further supporting the bond requirement. If a bond is required, it may be in an amount up to \$100,000. A.R.S. § 28- 5736 (B)(3). The Administrative Law Judge finds the amount of \$ [REDACTED] is appropriate and supported by the record.

DECISION AND ORDER

After due and deliberate consideration of the evidence, the Administrative Law Judge finds that the evidence supports the Departments finding that the Respondent has failed to comply with the provisions of A.R.S. § 28-5732. Accordingly, IT IS ORDERED that in lieu of revocation of the Petitioner's IFTA License, Petitioner [REDACTED] IFTA License # [REDACTED] is ordered to post a surety bond with the Department within thirty (30) days of the date of this Order, which satisfies the requirements of A.R.S. § 28- 5736, in the amount of \$ [REDACTED]

It is so ORDERED this [REDACTED] 2017.

[REDACTED]
Administrative Law Judge
Executive Hearing Office

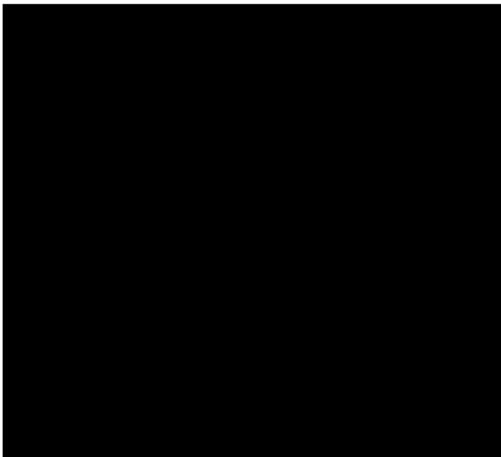
IMPORTANT INFORMATION:

Petitioner may request a re-hearing of this matter in the Executive Hearing Office provided that your request is filed, in writing, with this Office not more than fifteen (15) days after the mailing date of this Order and, further, that your request meets the requirements of Ariz. Admin. Code § R17-1-512.

If a rehearing request is not received within fifteen (15) days, this Decision and Order becomes final.

If the rehearing request is denied or the decision is sustained after rehearing, the Petitioner may file a complaint for judicial review in the Superior Court in accordance with A.R.S. §§ 17-901, *et seq.*

Copy mailed this 1st day of May, 2017, to:



/s/ [Redacted Signature]

[Redacted Title] Case Management Specialist