

Executive Hearing Office
Arizona Department of Transportation
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**STATE OF ARIZONA
EXECUTIVE HEARING OFFICE
DEPARTMENT OF TRANSPORTATION**

**IN THE MATTER OF FUEL TAX
REPORTING AND COMPLIANCE,
A.R.S. §§ 28-5601; 28-5702 et seq., 28-5921;
28-5922; 28-5923; and, 28-5924**

IFTA-2258

[REDACTED]
Petitioner.

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

Tax Account No. [REDACTED]

[REDACTED], Administrative Law Judge

Tax Assessments AFFIRMED

Appearances: **[REDACTED], Respondent**
**[REDACTED], Arizona Attorney General Office, Counsel for Revenue and
Fuel Tax Administration, ADOT**

Petitioner Exhibits:

[REDACTED] 1: [REDACTED]

Department Exhibits:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (“Petitioner”) requested a hearing to demonstrate the assessment issued by the Arizona Department of Transportation (the “Department”) was incorrect or contrary to law, pursuant to Arizona Revised Statutes § 28-5924. A hearing convened pursuant to notice on [REDACTED] in the Executive Hearing Office of the, Arizona Department of Transportation in Phoenix, Arizona.

APPLICABLE LAW

The Executive Hearing Office has jurisdiction over this matter pursuant to §§ 28-5921, *et seq.*, A.R.S. §§ 28-5702, *et seq.*, and A.R.S. §§ 28-2231, *et seq.*, and Arizona Administrative Code R17-1-501 *et seq.*

Pursuant to A.R.S. § 28-5924, a written request for a hearing shall include the reasons why the assessment is in error. Further, “[o]nly the reasons set forth in the request for hearing may be raised at the hearing. *Id.*

FINDINGS OF FACT

At the time of the scheduled hearing date and time, all parties were present and ready to proceed. In Petitioner’s Request for Hearing, dated [REDACTED], the reasons as to why the assessment in this matter were in error were, in sum: (1) straight trucks were used during the time frame, meaning money was used for them; (2) the transmission in the truck in question was rebuilt during the time frame and may have altered the mileage; (3) none of the recorded sales during the period involved the truck in question; and (4) the

truck used was possibly used for non-commercial use and not subject to IRP. In Petitioner's Disclosure/Exchange of Information dated [REDACTED], Petitioner reiterated these claims of error, but added as well a tire change that could have affected the mileage recorded, and that the truck was sold long before the audit, limiting Petitioner's ability to rebut the conclusions of the audit. Over the Department's objection, Petitioner, who was unrepresented by Counsel in this matter, the Administrative Law Judge allowed Petitioner to present information on the additional bases of possible error.

At the outset of the hearing, Assistant Attorney General [REDACTED] provided an overview of the basis for the tax calculations by the Department. Specifically, the Department conducted an audit of Petitioner and his company, [REDACTED], under the Interstate Fuel Tax Agreement ("IFTA") and the International Registration Plan ("IRP"). The audit periods for the programs were [REDACTED] 2013 to [REDACTED], 2015 for the IFTA and the registration years of 2015 and 2016 for the IRP. During the audit the Department determined two periods of time that resulted in undocumented mileage on the odometer records of Petitioner's trucks. The resulting tax liabilities determined as a result of these mileage gaps was \$[REDACTED] under the IFTA, and \$1[REDACTED] under the IRP. A Letter of Audit Findings ("LOAF") from the Department on [REDACTED], 2016.

Petitioner operates a moving company under the name of [REDACTED]. Petitioner also contracts with [REDACTED] on interstate moving trips. Petitioner owns and operates several trucks for the purposes of his business, including, during the audit period, a vehicle designated as "Tractor No. [REDACTED]." Petitioner testified the Department notified him of the audit being conducted, and he provided records to auditor [REDACTED] to assist in the audit, including all truck logs. After receiving notice of the audit findings, Petitioner

contacted the auditor to discuss the discrepancies cited in the audit findings. [REDACTED] advised Petitioner there were mileage gaps in his records which indicated additional unreported miles. Petitioner did not initially contest the findings of the auditor, but rather, attempted to determine how the mileage gaps may have originated. As indicated in his hearing request, during the audit period he had a transmission rebuilt in Tractor No. [REDACTED]. Petitioner believed this may have resulted in a mileage jump on the truck. After further review prior to the hearing, Petitioner no longer believes this caused the mileage jump and withdrew that as a possible explanation.

Further research into the issue lead Petitioner to believe a change in tire size may have resulted in the mileage gaps reported. In August, 2012 Petitioner replaced the tires on Tractor No. [REDACTED], changing the original size to a size meant to match the tires of all trucks he had in operation. The radius of the new tires resulted in a different revolution rate than that of the previous tires, specifically the revolutions per mile. As a result, Petitioner determined, the change in tires resulted in at least a 5% increase in the odometer mileage of the truck due over a period of time. The method used by Petitioner in determining miles per trip caused actual trip mileage to be underreported.

Petitioner described his methodology in route system calculation. Petitioner would map out a route using Microsoft maps, which indicates the total point to point mileage of a trip, and miles within each state that make up that route. At the conclusion of the trip, Petitioner would enter the actual mileage from his truck odometer into his logs. Over time, Petitioner believed, the mileage reported was significantly different from the actual mileage. Petitioner testified this was the difference between the reported mileage and the

actual mileage, and that he was unaware about the differential numbers until his research revealed the mileage differential after the audit.

Petitioner attempted to account for other possible causes of the unreported mileage using records of truck trips and fuel purchases. After examining these records (Exhibit ■■■), Petitioner believed he may have discovered the reason for the shortfall, which he related to the Department ■■■■■ during a phone call in April. After further review, however, Petitioner determined that the truck at issue was not included in the trip records, and he discounted this as a reason for the shortfall. By the time the Department conducted the audit, the truck at issue had been sold, and further physical inspection of the vehicle was not possible. After discounting all other possible explanations, Petitioner was left with the tire revolution discrepancy as the sole possible explanation for the discrepancy, about which he had no way of knowing, and could not verify as the truck was no longer available for inspection.

■■■■■ conducted the audit on behalf of the Department and kept a log of her interactions with the Petitioner. Exhibit ■■■. ■■■■■ met with Petitioner and other company representatives on ■■■■■ 2016 and obtained records and information regarding the business. After reviewing the records provided, ■■■■■ determined there were two gaps in mileage in reference to Tractor No. ■■■■■ based on the trip records submitted.

The first gap in time was discovered in trips taken on ■■■■■ 2013 and ■■■■■ 2013. Exhibits ■■■■■. This gap shows the ending mileage on ■■■■■, 2013 being 741,569, and the beginning mileage on ■■■■■, 2013 being 742,154: a difference of 585 miles. A second gap was discovered between the ■■■■■

■, 2013 ending of 742,777 and the ■, 2014 beginning mileage of 747,256, a difference of 4,479 miles. *Id.* and Exhibit ■

On ■ 2016, ■ and Petitioner had a telephone call wherein they discussed the discrepancies and Petitioner provided information regarding fuel purchases made during this period. Petitioner detailed fuel purchases correlated to mileage, showing 420 miles for ■, 320 miles for ■, 1135 miles for ■, 120 miles for ■, 590 miles for ■ 2014, and 870 for ■ 2014. These mileage figures were attributed to Arizona miles, but did not account for the total shortfall in mileage noted in the trip reports. ■ applied these mileage figures to the audit figures.

■ compiled an IFTA Audit Report noting total taxable gallons of fuel of 585, and a reported amount of 584, a difference of 1 gallon. Exhibit ■. An IFTA tax due of \$ ■ plus penalty and interest brought the amount to \$ ■. *Id.* Using the information provided by Petitioner and his records, ■ calculated a significant under reporting of Arizona logged miles in 2015 and over reporting of other state mileages. Exhibit ■. A total additional fee in 2015 of \$ ■ was indicated by the audit figures. *Id.* Interest of \$ ■ was added to the figure for a total amount owing in 2015 for IRP fees of \$ ■. Exhibit ■ The audit revealed no additional fees due for IRP in 2016. *Id.* On ■ the Department issued a LOAF detailing the results of the audit. Exhibit D-2.

CONCLUSIONS OF LAW

The Administrative Law Judge has jurisdiction of the parties and the subject matter in this proceeding under the IFTA and IRP pursuant to the authority of A.R.S. §§ 28-5703,

28-5922 and 28-2232. The purpose of IFTA is to allow registered members to pay fuel taxes for all jurisdictions in which they operate to a single home state department, rather than requiring individual reports and payments to each jurisdiction. The IRP allows registered members to pay a single registration fee for their vehicles in the home state, portions of which would be paid to other jurisdictions in which the vehicle operates based on the total miles travelled in each jurisdiction as a percentage of the whole. Application of the IRP in the State of Arizona is by virtue of the Title 28, Chapter 7, Articles 7 and 8. Pursuant to such, the Director is authorized to adopt rules necessary to administer and enforce such Articles. Audits under the IFTA and IRP are statutorily authorized under A.R.S. §§ 28-5703 and 28-2238 respectively. Interest on unpaid amounts under the IRP accrues at the rate of 12% per annum. A.R.S. §28-2238. A 25% penalty and interest of 1% per month may be assessed against unpaid amounts under IFTA. A.R.S. §§ 28-5721.

As previously noted herein, Petitioner's claim of error was not based on the computing methods or ultimate conclusions of the LOAF. Rather, Petitioner's stated reasons were that he was unaware of mileage discrepancies which may have resulted from his change in tires in 2012. Within the parameters of this claim of error, the Administrative Law Judge finds insufficient evidence to void or modify the assessment, and it must be affirmed. The available records do not support the contention that mileage shortfalls were attributable to a tire change in 2012, nor do the legal requirements under the IFTA provide relief for Petitioner even if mileage differences resulted from a tire change.

Petitioner's argument regarding the tire change in 2012 resulting in a mileage capture that was different from the actual mileage is not supported by the audit or the evidence presented at the hearing. A modification to the tire circumference in 2012 would

necessarily result in a standard deviation of all mileage reported throughout the audit periods. However, the records presented show only underreporting of actual mileage totals in reference to in state Arizona trips. See Exhibit [REDACTED]. All other state travel indicates an overage of the reported mileages. *Id.* Nor were there any mileage discrepancies reported in the 2016 registration year. See Exhibit [REDACTED]. A mileage differentiation due to a tire change would be uniform over all mileage reported. As the records fail to account for this standard deviation from actual mileage, the Administrative Law Judge finds insufficient evidence to support Petitioner's claim in this regard.

Likewise, the mileage gaps as detailed in the trip reports presented cannot be attributable to a change in tire size. The reported gaps in mileage between the end mileage of one trip and the beginning mileage of the next reported trip were not explained by a change in tire size, but rather, are indicative of non-reported miles on the vehicle, specifically Tractor No. [REDACTED] during the gap between the reported trips. Petitioner presented no plausible evidence to explain how the tire size issue related to the gap mileage. See Exhibits [REDACTED].

Administration of Both the IFTA and IRP depend on detailed and specific records of mileage travelled and fuel used in each jurisdiction. As noted by the Department in the hearing, carrier responsibilities under the IFTA include a requirement to recalibrate an on-board computing device, which would include an odometer, "when the tire size changes, the vehicle drive train is modified, or any modifications are made to the vehicle which affects the accuracy of the on-board computing device." IFTA Procedures Manual, Section P670.100. Thus, even if the evidence supported Petitioner's position with regard to the mileage discrepancy, the requirements of the IFTA would preclude Petitioner's claim of

ignorance with regard to potential problems resulting in the tire size change in 2012. *See* IFTA Articles of Agreement, Section R120 (IFTA Audit Manual and Procedures Manual binding upon IFTA licensees). As an IFTA licensee, Petitioner is responsible to conduct operations in compliance with the IFTA regulations. In this matter, compliance with these regulations would have resolved the stated mileage discrepancies years before the audit took place. Accordingly, the Administrative Law Judge finds Petitioner was on notice of the carrier responsibilities with regard to modifications to the vehicle that could affect the mileage recording device, and his ignorance of these responsibilities does not provide relief from the findings of the audit

DECISION AND ORDER

In light of the Petitioner's inability to meet his burden in this case, the assessment issued by the Department on [REDACTED] pursuant to the IFTA and IRP in the amount of \$ [REDACTED] hereby AFFIRMED.

It is so ORDERED this 3rd day of November, 2016.

[REDACTED]
[REDACTED]
Administrative Law Judge
Executive Hearing Office

NOTE: The assessment or civil penalty ordered herein must be paid not later than thirty (30) days from the date of this Order. The check or money order is to be made payable to the Arizona Department of Transportation, Motor Vehicle Division and mailed to:

Arizona Department of Transportation
Revenue and Fuel Tax Administration
Collections Unit
PO Box 2100
Mail Drop 529M
Phoenix, AZ 85001-2100
(602) 712-8745

IMPORTANT INFORMATION:

Respondent can request a re-hearing of this matter provided the rehearing request is in writing; states with specifically the grounds upon which the rehearing request is based and is filed in the Executive Hearing Office within ten (10), days after the date of mailing, above.

If a rehearing request is not received within ten (10) days, this Decision and Order becomes final.

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

Copy mailed this 14th day of November, 2016 to:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

/s/ [REDACTED] _____
[REDACTED], Case Management Specialist