

Exhibit 7: [REDACTED]
[REDACTED]
Exhibit 8: [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] 2017 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.*, and A.R.S. §§ 28-5702, *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.*”

At the time of the scheduled hearing date and time, all parties were present and ready to proceed. Petitioner’s Request for Hearing, received by the Executive Hearing Office on or about [REDACTED] 2016 detailed several reasons as to why the assessment in this matter was in error. Generally, Petitioner alleged its records were sufficient and allowable to create an accurate accounting of the amounts owing for the tax years of [REDACTED] [REDACTED] 2013 through [REDACTED] of 2016. Accordingly, the scope of the hearing was limited to these specific claims of error.

FINDINGS OF FACT

Petitioner is a small trucking company, currently running two trucks, with mostly intrastate miles, but with a portion of the total miles run in various states surrounding Arizona. Prior to [REDACTED], Petitioner ran a single truck for trips outside the state of Arizona. As part of its operations, Petitioner was licensed by the State of Arizona under the International Fuel Tax Agreement (“IFTA”) beginning in September 2013. Truck No. [REDACTED] was used for interstate and intrastate travel beginning at that time. In early 2014 Petitioner purchased a second truck, No. [REDACTED]. This truck was also licensed under IFTA, but was used exclusively intrastate as until July 2015.

As an IFTA Licensee, Petitioner is required to keep specific records of its trip distance records. [REDACTED], managing member of the Petitioner signed the original Record Keeping Agreements with the Department pursuant to its initial IFTA registration in 2013 and 2014. *See* Exhibit [REDACTED]. Specifically, for each trip made by a qualified vehicle, Petitioner was required to maintain records to include all the following information on trip records:

1. Registrant name;
2. Fleet number;
3. Operator Equipment Number (OEN);
4. Dates of trip (beginning and ending);
5. Trip origin and destination;
6. Intermediate trip stops;
7. Routes or highway numbers traveled;
8. Beginning and ending odometer/hubometer readings for the trip;
9. Total trip miles;
10. Miles travelled in each jurisdiction;
11. Driver’s name or ID;
12. Over the road fuel purchases and fuel withdrawal records from bulk storage.

See Exhibit [REDACTED]. *See also* IFTA Procedures Manual P540.200. Each Record Keeping Agreement also contains a declaration stating, “The undersigned has read this document and agrees to prepare, maintain records and report all information in accordance with IRP registration and IFTA reporting requirements.” *Id.* Petitioner testified neither he nor any

authorized officer signed the record keeping agreements in 2015 and 2016, although Agreements were filed on behalf of the company for those years.

From the time of initial registration through the audit period, Petitioner did not submit reports to the Department detailing mileage amounts travelled, taxable gallons of fuel, tax paid, and taxes due. ██████████ testified that prior to 2015 when the Company vehicles operated out of the state of Arizona it did so under fuel permits purchased at the time of the interstate travel. However, copies of these permits were not provided at the time of the audit or at the hearing. See Exhibit █████ and Exhibit █████. Accordingly, mileage amounts were recreated using Petitioner's documentation at the time of the audit and verified using the ProMiles© mileage program. Exhibit 1. The mileage amount determinations were made from reconstructed quarterly and annual summaries, and reconstructed trip summaries. *Id.* The Department determined that the internal controls used by Petitioner prior to the audit were "assessed as marginal but auditable." *Id.*

Using the reconstructed miles including interstate and intrastate mileage as reported by Petitioner, the Department then attempted to reconstruct the fuel purchased and taxes paid for fuel as required by the IFTA. Petitioner did not maintain complete records of fuel records of all motor fuel purchased, received, and used in the conduct of its business. Petitioner did maintain information regarding fuel purchased and consumed through credit card receipts and statements. See Exhibits 3 and 4. These records were submitted to the Department at the time of the audit.

Using the reconstructed miles and using a standard miles per gallons amount of 5.6 miles per gallon, to which Petitioner agreed at the time of the audit, the Department determined the gallons used to travel the various miles in each jurisdiction. Exhibit █████ The Department then attempted to reconstruct the gallons purchased and the taxes paid to the

various jurisdictions by Petitioner using the credit card statements and fuel purchase receipts presented by Petitioner. *Id.* and Exhibits ██████████

At an initial audit conference held on ██████████ 2016, attended by ██████████ on behalf of Petitioner and ██████████ on behalf of the Department, ██████████ used “Dept. of Energy regional weekly fuel prices and determined ave [sic] fuel price per gallon to determine # or [sic] gallons.” Exhibit ██████████ In so doing, ██████████ accepted all fuel purchase documentation provided by Petitioner to determine a potential total tax exposure of \$█████████ during the audit period. *Id.*

On or about ██████████, 2017, an updated closing conference was held with ██████████ being present on behalf of the Department and ██████████ on behalf of Petitioner. At that conference, it was disclosed to ██████████ that only fuel purchases supported by sufficiently detailed fuel invoices from fuel pumps, not credit card statements, would be accepted to determine the taxes due. Accordingly, the amount due under IFTA would increase to \$█████████.

On ██████████ 2016 a Letter of Audit Findings (“LOAF”) issued from the Department indicating Petitioner’s IFTA tax liability as of that date totaled \$█████████. The LOAF indicated that no fuel purchases made and supported solely with ██████████ credit card statements would be considered. As a result, the LOAF reflected no fuel tax paid on much of the mileage attributed to the IFTA registered vehicles.

On or about ██████████, 2017, ██████████ on behalf of Petitioner input his mileage and the taxes he had paid into the electronic filing IFTA system maintained by the Department to allow IFTA licensees to calculate and pay amounts owing under IFTA. By so doing, Petitioner submitted reports for the quarters comprising the audit period. Petitioner maintained the amount reflected in these reports, based on his mileage estimates

and all the fuel purchased for the IFTA vehicles, was an accurate portrayal of the amount of taxes owing for the audit period. *See* Exhibit ■. ■ testified Petitioner paid a total of \$ ■ for outstanding taxes incurred during the audit period.

Subsequent to the issuance of the LOAF, and prior to the hearing, the Department reviewed the documents presented by Petitioner. As a result, the Department determined some additional receipts for fuel purchases, previously provided by Petitioner and listed herein as Exhibit ■ were acceptable records. As a result of this additional review, the Department indicated at the hearing a revised and reduced amount due and owing, as of the date of the hearing, of \$ ■. No additional documentation was submitted or specific testimony as to how this new figure was calculated.

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, Petitioner was required to, but failed to, submit quarterly reports stating total miles driven in each jurisdiction, taxable miles, taxable gallons of fuel purchased, tax paid on the gallons used, and miles per gallon from which a tax liability can be calculated for each jurisdiction. Petitioner failed to comply with these requirements. Consequently, when an audit was conducted, all required information was required to be determined from scratch using information provided by Petitioner. After reviewing the evidence presented, the Administrative Law Judge makes the following conclusions of law:

I. Lack of Signature of a Company Member or Other Authorized Party Does Not Affect Petitioner's Responsibilities under IFTA.

The Administrative Law Judge finds no basis to entertain Petitioner's contention that the Record Keeping Agreements filed on behalf of Petitioner for the years of 2015 and

2016 were signed by unauthorized persons, and therefore Petitioner is not bound by the terms of the Agreement. The Agreement is not required to determine liability under IFTA, and is not a contract, but rather, an informational document for the benefit of registered IFTA members. The Record Keeping Agreement is for informational purposes to allow an IFTA licensee to understand the record keeping requirements, as detailed in the IFTA Articles of Agreement, the Audit Manual, and Procedures Manual, and creates no duty on the part of the Department in this regard. Accordingly, whether or not an authorized person signed the Agreement for the years of 2015 and 2016 on behalf of the Petitioner, Petitioner is not relieved from the reporting requirements of IFTA. In any event, it is not disputed that an authorized person signed on behalf of Petitioner for the 2013 and 2014 tax years. Thus, Petitioner cannot claim any lack of relevant knowledge regarding the reporting and record keeping information required by IFTA.

II. Petitioner Has Failed to Establish the Mileage Used in the Audit, Which Included Mileage Driven by Truck No. [REDACTED] During Periods of Intrastate Only Travel, Resulted in Incorrect Tax Calculations.

Petitioner presented evidence that the Department included in the audited miles intrastate mileage incurred by Vehicle No. [REDACTED] prior to the date that vehicle was used by the Company in interstate travel. A review of the LOAF indicates mileage of Vehicle No. [REDACTED] was included in the audit beginning with the first quarter of 2014. Exhibit [REDACTED] [REDACTED]. The total mileage included the yearly total of Vehicle No. [REDACTED] for each year thereafter based on the odometer readings of Vehicle No. [REDACTED] submitted by Petitioner to the Department.

However, other than alleging that over 100,000 of the audited mileage was attributable to Vehicle No. [REDACTED] Petitioner has failed to show that this information resulted in the LOAF being incorrect. The evidence presented established that Vehicle No. [REDACTED] was

registered as an IFTA vehicle owned by the company. The mileage presented was established by the Petitioner's own records, and was accepted by the Department. There is no evidence the Department indicated out of state mileage was incorrectly attributed to Vehicle No. [REDACTED]. See e.g., Exhibit [REDACTED] [REDACTED]). While it is clear from the evidence presented that while Vehicle [REDACTED] may not have been incurred interstate mileage prior to July 2015, as testified by [REDACTED], the vehicle was a registered IFTA vehicle prior to that date. As such, all miles driven are subject to review. Because Petitioner did not file timely reports during the audit period, and no trip permits were submitted as part of the audit, no determinations could be made prior to the audit regarding allocation of the mileage for either vehicle. Thus, the Department did not act improperly in including Vehicle [REDACTED] as part of the audit for periods of time when it was registered under IFTA even though the information presented to the Department later indicated Vehicle No. [REDACTED] may have not incurred interstate mileage during any particular quarter during the audit period.

In any event, other than the mere allegation of the incorrect inclusion of the intrastate mileage of Vehicle No. [REDACTED], Petitioner has failed to establish the ultimate effect on the final tax determination for Petitioner under IFTA for the audit period. As will be noted further below, the determination of the validity of the ultimate tax assessment results not from mileage discrepancies, but rather with the records of fuel purchases. For these reasons the Administrative Law Judge finds insufficient evidence was presented to find error in the tax determinations as detailed in the LOAF as a result of inclusion of mileage attributable to Vehicle No. [REDACTED] prior to the date it was placed in service by the Petitioner for interstate trips.

III. The Evidence is Sufficient Evidence to Establish the Final Tax Determinations of the LOAF Were Incorrect.

The main focus of Petitioner's argument was that Petitioner was not given appropriate credit for fuel purchases for the IFTA vehicles based on the information provided. Again, Petitioner did not provide quarterly reports for mileage and fuel used, and all fuel purchase information was recreated for purposes of the audit. Petitioner submitted [REDACTED] and copies of actual fuel receipts from suppliers to establish the fuel purchases, which were to be applied to the reported mileage. The Department presented no additional evidence or testimony in this regard, but argued that only documentation that fully complied with the requirements of the IFTA Articles of Agreement, the Audit Manual, and Procedures Manual were accepted during the audit. As a result, a large portion of the fuel purchased by Petitioner during the audit period was disallowed.

Pursuant to the IFTA Audit Manual, if a licensee's records are inadequate to determine a licensee's tax liability, the Department has the authority to estimate the fuel use upon factors such as industry averages and "other pertinent information the auditor may obtain or examine." *Id.* at A550. Pursuant to the Record Keeping Agreement, "[f]ailure to . . . provide adequate records for audit will result in an assessment based on an estimated liability using "any information available." *See* [REDACTED]. In this matter, the auditor determined that Petitioner's "internal controls were assessed as marginal but auditable." *See* [REDACTED]. Accordingly, resort to the "any information available" standard was found to be unnecessary by the Department, which would have resulted in the use of 4.0 miles per gallon being assessed, reported mileage increased by a minimum of 25% for all jurisdictions, and all tax paid gallons being disallowed. *See* [REDACTED]. Because the

Department was able to conduct an audit based on the information provided by Petitioner, additional penalties were not assessed as contemplated by the IFTA rules. Conversely, by allowing the audit to continue using the auditable records does not, as Petitioner suggested, establish the sufficiency of the all records presented.

Petitioner argued that the [REDACTED] credit statements should be found to be sufficient to determine fuel purchased by Petitioner during the audit period. In rejecting these records as sufficient to establish actual fuel purchased, the Department cited to Section P560 of the IFTA Manual regarding acceptable support for retail fuel purchases. The Administrative Law Judge agrees with the Department in this regard.

Pursuant to P560.200, acceptable receipts must identify the vehicle by the plate number or other licensee identifier, as distance travelled and fuel consumption may be reported only for vehicles identified as part of the licensee's operation. Further, under P560.300,

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 total amount of sale; .030 Unit numbers; and .035 Purchaser's name

Id. See also P550.400 (fuel record requirements). In reviewing the [REDACTED] statements, the Administrative Law Judge finds these records do not minimally meet the records requirements described.

The [REDACTED] statements list only a transaction date, a location of purchase, and the total amount purchased, as well as a spending category. There is fundamental lack of information in these records sufficient to meet the requirements of IFTA. The records include purchases made for other non-IFTA registered vehicles, including what appear to be personal vehicles, as well as purchases that are listed as "gasoline" which were clarified

by Petitioner to be food or other non-fuel related purchases. *See e.g.*, [REDACTED]. [REDACTED]. Despite the fact the Department determined that Petitioner's records were auditable, that determination does not require the Department to forego all record requirements and reconstruct fuel usage and taxes paid solely from Petitioner's unsupported statements. Neither is the Department required to engage in estimations based on inadequate records merely on the fact that Petitioner's vehicles "do not run on water," or that their vehicles "could not fit in at a non-commercial vehicle island" at a fuel station. [REDACTED] For these reasons, the Administrative Law Judge does not find error in the Department's refusal to recognize the [REDACTED] statements as sufficient proof of fuel purchases or taxes paid for that fuel.

Petitioner is then left with the copies of actual fuel purchase receipts included as Exhibit 4. Petitioner argued that all receipts were sufficient to establish the fuel purchased and taxes paid in these transactions. The Department argued that although full credit was given for certain purchases, citing specifically the [REDACTED] receipt dated 11/11/2015 ([REDACTED] [REDACTED] others lacked all information required by the IFTA requirements. Again Petitioner argued that sufficient evidence was supplied in each of receipts, in when viewed in light of additional information provided by Petitioner, to allow for acceptance of the amounts listed and application to establish fuel used and taxes paid on all the fuel station receipts supplied to the Department and the taxes paid.

The Department noted that since the time of the issuance of the LOAF, the auditor had reviewed again the fuel station receipts and determined in fact, additional credits were owed on the tax assessment as additional fuel station receipts were determined to be acceptable. Accordingly, the Department presented at the hearing a revised tax assessment, as of the date of hearing, of \$ [REDACTED] after application of the downward

credit and updated interest. The Department noted that credit was not given for all fuel receipts as some of the receipts were insufficient to tie the purchase to a specific vehicle.

The issue before the Tribunal in this matter whether Petitioner has met its burden to show that the tax assessment made in this matter was incorrect. The ultimate determination is not whether the Petitioner is entitled to a significant decrease in the amount of taxes, penalties, or interest due, or that all arguments made by the Petitioner establish error. Rather, the sole issue is whether error is established, sufficient to overcome the assumption of validity. In this matter, the Administrative Law Judge finds that the tax assessment in this matter at the time the LOAF was issued was incorrect.

The LOAF indicates that “tax paid gallons for all jurisdictions except Arizona were disallowed as the purchases as shown on the discover card statements could not be tied to a specific vehicle.” [REDACTED] In reviewing the receipts required as part of [REDACTED] receipts were included from jurisdictions outside Arizona and credit may be due to Petitioner for such. Further, the LOAF indicates all “tax paid gallons for Arizona were disallowed for all quarters except the quarters ending June 2014, March 2015, June 2015, and December 2015.” [REDACTED] Again, in reviewing the receipts in [REDACTED] there are receipts included for time frames outside the listed quarters that could meet the minimum requirements to be accepted by the Department to establish tax paid gallons and credits due Petitioner. No information is included in the LOAF to detail which receipts were specifically lacking sufficient information for the remaining quarters of the audit period. Finally, the Department has since the time of the issuance of the LOAF determined, on its own review, that the tax assessment as listed was not correct, and that additional credits were due to Petitioner after further review of the documents contained in [REDACTED] The

details as to which additional receipts were deemed sufficient for purposes of reducing the tax liability were not presented at the hearing.

For these reasons, the Administrative Law Judge finds that the tax assessment as detailed in the LOAF was incorrect at the time it was issued, and Petitioner has met its burden to overcome the *prima facie* evidence of the validity of the claim of the State.

DECISION AND ORDER

After due and deliberate consideration of the evidence, the Administrative Law Judge finds that the evidence supports the Petitioner's contention that the tax assessment pursuant to IFTA issued by the Department on [REDACTED] 2017 was incorrect at the time it was issued.

The Department is directed to issue a new assessment appropriately crediting Petitioner for fuel purchases and taxes paid pursuant to the fuel receipts provided, exclusive of the credit card statements as detailed herein, and the mileage information previously provided.

It is so ORDERED this [REDACTED].

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

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 [REDACTED], 2017, to:

[REDACTED]
[REDACTED]
[REDACTED]

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

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