Executive Hearing Office
Arizona Department of Transportation
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ADOT
Executive Hearing Office

STATE OF ARIZONA
EXECUTIVE HEARING OFFICE
DEPARTMENT OF TRANSPORTATION

IN THE MATTER OF AN INTERSTATE USER FUEL TAX ASSESSMENT: A.R.S. §§ 28-5601; 28-5702 et seq., 28-5921; 28-5922; 28-5923; and, 28-5924:	**IFTA-2350**
[redacted] **(Owner)**	**FINDINGS OF FACT CONCLUSIONS OF LAW DECISION AND ORDER**
Respondant	
IFTA Account No. [redacted]	

[redacted], Administrative Law Judge

Assessment AFFIRMED

Appearances: [redacted].
[redacted], Assistant Arizona Attorney General, Counsel for State of Arizona, Revenue and Fuel Tax Administration, ADOT
[redacted], Witness, Revenue and Fuel Tax Administration, ADOT

Exhibit 1: [redacted]
Exhibit 2: [redacted]
Exhibit 3: [redacted]
Exhibit 4: [redacted]
Exhibit 5: [redacted]

[redacted] ("Petitioner") requested a hearing to demonstrate the assessment issued by the Arizona Department of Transportation "ADOT") 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*., 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*.

At the time of the scheduled hearing date, all parties were present and ready to proceed. The purpose of this hearing was to afford Petitioner an opportunity to present any and all evidence necessary to establish the error in the Departments Audit Assessment. In Petitioner's Request for Hearing, dated [redacted], 2017 (Exhibit 5), the reason Petitioner alleged as to why the assessment in this matter is incorrect because of "an error in the amount of miles found in the audit." *Id*.

Accordingly, the scope of the hearing was limited to this specific claim of error.

Prior to the hearing Petitioner presented a "bankers box" with voluminous discovery not previously disclosed. The notice of hearing required that discovery be provided to the other party at least 30 days prior to the hearing. The notice of hearing was mailed certified [redacted] 2017, and signed as received by Petitioner on [redacted] 2017.

Counsel for the State indicated they would not have time to adequately review the material the day of the hearing, opposed a continuance in the matter, and requested the previously undisclosed discovery be precluded as evidence. Based on Petitioner's lack of appropriate disclosure, despite sufficient time for the proper disclosure, the discovery material was precluded from being presented as evidence. Precluding the introduction of the discovery was the least onerous remedy available at the time of the hearing.[1]

FINDINGS OF FACT

Petitioner is in the construction business, doing business as "[redacted]." As part of his operations, Petitioner was licensed by the State of Arizona under the International Fuel Tax Agreement ("IFTA"). Petitioner owns and operates multiple trucks as well as the business. As an IFTA Licensee, Petitioner was required to keep specific records of his trip mileage. 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 IFTA Procedures Manual P540.200.

Starting on [redacted] 2016, Petitioner was subject to an ADOT IFTA audit for the period from [redacted], 2013 to [redacted] 2016. [redacted] represented Petitioner in the audit at the direction of Owner, [redacted]. Petitioner testified that he

[1] Additionally, during the course of the hearing the discovery material was described as fuel purchase receipts. This evidence is not relevant to the scope of the hearing because the scope of the hearing was limited solely to the determination of whether or not there was an error in the calculation of miles.

was not contacted directly by ADOT regarding the audit but was aware of the audit request. He testified he gave receipts to his employee, [redacted], who then handled the audit. Accordingly, he was not present at the time and place set for the initial audit. Petitioner testified his employee told him the matter was "handled." Thereafter, Petitioner received the letter informing him of the liability. (Exhibit [redacted]) Petitioner consequently requested the hearing contesting the amount of miles calculated in the audit. (Exhibit [redacted])

In this case, [redacted] testified both as to his personal knowledge of the audit and the information that was relayed to him about the audit from [redacted], his employee. "Reliable hearsay is admissible in administrative proceedings and may even be the only support for an administrative hearing." *Wieseler v. Prins*, 167 Ariz. 223, 227, 805 P.2d 1044, 1048 (citing *Begay v. Arizona*, 128 Ariz. 407, 626 P.2d 137 (App. 1981). Hearsay can be relied upon by an administrative law judge if it is of the type that "reasonable men are accustomed to rely [on] in serious affairs." *Begay*, 128 Ariz. at 410, 626 P.2d at 140. Generally, hearsay is unreliable when: "the speaker is not identified, when no foundation for the speaker's knowledge is given, or when the place, date and time, and identity of others present is unknown or not disclosed." *Plowman v. Arizona Liquor Bd.*, 152 Ariz. 331, 337, 732 P.2d 222, 228 (App. 1986). In this case [redacted] knows the foundation for [redacted] knowledge after speaking with her about the audit, identified [redacted] as the witness, and knew the date and time, and identity of the other parties. Therefore the hearsay information is found to be reliable and admissible.

The records provided to the Department by Petitioner were deemed inadequate to conduct an audit due to a failure of Petitioner to maintain and provide records as required

by IFTA. (Exhibit [redacted] As a result of the inadequate records the Department could not properly track the movement of the trucks throughout the country.

When no additional documents were produced by Petitioner, [redacted] of ADOT moved forward with the audit. Due to the inadequate records provided by Petitioner, the Department conducted the audit based on a "Best Information Available" ("BIA") standard. The representative for Petitioner agreed to selected quarterly samples to represent the periods being audited. (Exhibit [redacted] The audit mileage was then calculated. For IFTA purposes, Petitioner's reported mileage was increased by 25%. The total miles were then divided by a standard assessment of 4.0 miles per gallon to determine the total taxable gallons. (Exhibit 4) The audit was completed on or about January 27, 2017. (Exhibit [redacted] A copy of the IFTA Grand Total Report was admitted. *Id*. Penalties in the amount of 25% of the tax due and interest at the rate of 12% per annum was added to the total tax in computing the total amount owing. *Id*. The Department issued a Letter of Audit Findings ("LOAF") on [redacted] 2017. (Exhibit [redacted]

Petitioner did not dispute that the audit of the miles by ADOT was correct based on the information presented at the hearing. Petitioner testified he did not have to provide the mileage, and in fact, some of his vehicles do not have working odometers.

CONCLUSIONS OF LAW

The Administrative Law Judge has jurisdiction of the parties and the subject matter in this proceeding under the IFTA pursuant to the authority of A.R.S. §§ 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 Director has adopted these

policies and procedures in implementing and operating the programs in the State of Arizona. *See* A.R.S. § 28-5703; A.R.S. § 28- 2261. The Administrative Law Judge finds the records requested by the Department were reasonably related to the function and purposes of the IFTA.

After notifying Petitioner of the pending audit, ADOT gave Petitioner an opportunity to provide required records pursuant to the audit and subsequent assessment. The Petitioner assigned an employee to represent [redacted] in the audit as part of the scope and in the course of her employment for the business. During the audit, which was not attended by Petitioner, ADOT determined the records were inadequately maintained.

After Petitioner failed to produce the appropriate records at any time during the audit, the Administrative Law Judge finds Petitioner was audited using the correct procedures used to determine the assessment. The IFTA record keeping specifies:

> Failure to make records available or provide adequate records for audit will result in an assessment based on an estimated liability using "any information available." For IFTA purposes, 4.0 mpg will be assessed, reported miles will be increased by a minimum of 25% for all jurisdictions and all tax paid gallons will be disallowed.

Accordingly, the Administrative Law Judge finds the audit procedures used were appropriate in the absence of adequate records from which the Department could perform a traditional audit. Petitioner has not met the burden of proof to show that there was an error in the calculation in the amount of miles assessed as a result 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] 2017, pursuant to IFTA in the amount of $[redacted] is hereby AFFIRMED.

It is so ORDERED this [redacted], 20117.

[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 IFORMATION:

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(s) mailed this [redacted], 2017, to:

[redacted]

[redacted]

[redacted]

1801 Revenue Audit
1801 W. Jefferson St., Mail Drop 522M
Phoenix, AZ 85007

/s/[redacted]
Case Management Specialist