

Court Upholds IFTA Liability Against Motor Carrier with Inadequate Records

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A three-judge panel of the Commonwealth Court has upheld the results of an audit conducted by the Pennsylvania Department of Revenue under the International Fuel Tax Agreement, which imposed a substantial tax liability against a brokerage company that failed to comply with IFTA mileage and fuel documentation requirements.

R & R Express v. Commonwealth, No. 533 F.R. 2007 (February 8, 2012). The taxpayer, R & R Express, has appealed the panel's decision, and argument before the full Court has tentatively been scheduled for June 2012.

R & R Express is a brokerage company that uses owner operators to haul steel and other commodities throughout the United States. All fuel used in the company's motor carrier operations is purchased at retail locations. An IFTA audit conducted by the PA Department of Revenue resulted in an additional tax liability of over \$300,000, plus interest. The company's owner/operators did not consistently turn in trip reports and fuel receipts for their activity. Since the company did not maintain adequate mileage and fuel records, the determination of additional tax liability was based, in part, on estimates of unreported miles and fuel consumption. In addition to disallowing credit for tax paid on all fuel purchases that were not properly documented, the auditor imposed the statutory 4.0 m.p.g. factor in cases where the calculated m.p.g. factor was determined to be too high or where mileage had been traveled but no fuel had been reported.

R & R Express essentially contended that the audit deficiency should be stricken because it had already paid tax on all fuel used in its motor carrier operations (at the time of purchase), and the Department's audit methodology therefore resulted in double taxation. In the alternative, the company asserted that it should be permitted to have its tax for the audit period recomputed based on data from reporting periods subsequent to the audit period. The company argued that, since its record-keeping procedures had improved after the audit, the data from later reporting periods represented the "best information available" to compute its additional tax due for the audit period.

Although the Court seemed sympathetic to the taxpayer's situation, it agreed with the Commonwealth that strict compliance with the reporting framework set forth in the tax statute, the IFTA Agreement, and accompanying regulations and guidelines, is required. The Court stated: "The relevant and controlling law explicitly requires documentation, not estimates of the sort proposed by Taxpayer, no matter how

accurate we may believe such estimates to be, nor how sympathetic we may be to Taxpayer's plight."

The Court's decision in *R & R Express* demonstrates that a motor carrier's failure to properly maintain mileage and fuel records for IFTA reporting purposes could have a devastating impact in the event of an audit. The taxpayer's appeal in this case may not be finally resolved until sometime next year. In the meantime, it remains to be seen how this decision will impact settlement negotiations for IFTA audit appeals filed by other taxpayers.

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