

BIRMINGHAM HIDE & TALLOW
COMPANY, INC.
Post Office Box 1596
Birmingham, AL 35201,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MISC. 99-518

FINAL ORDER

The Revenue Department notified Birmingham Hide & Tallow Company, Inc. (APetitioner@) that it intended to revoke the Petitioner's International Fuel Tax Agreement (AIFTA@) license. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-8(a). A hearing was conducted on February 2, 2000. Charles Moses, III represented the Petitioner. Assistant Counsel John Breckenridge represented the Department.

The Petitioner operates a number of trucks that are registered in Alabama pursuant to IFTA. IFTA is an agreement among the various states that requires the owner of a truck to register the truck in the truck's base jurisdiction, or home state. The licensee is required to file quarterly fuel use tax reports with the home state, and pay the tax due. The home state distributes the tax pro rata to the various states in which the truck operated during the quarter.

The Department audited the Petitioner for IFTA purposes. The Petitioner appealed the audit findings to the Department. The issue in this case is whether the Department can revoke the Petitioner's IFTA license because the Petitioner failed to pay the disputed audit liability.

The Department audited the Petitioner for IFTA purposes for the first quarter of 1996 through the third quarter of 1997. The Department forwarded a copy of the audit to the Petitioner on August 31, 1998. The Petitioner responded by letter dated September 29, 1998, indicating it disagreed with the audit and intended to appeal.

The Department responded by letter dated October 1, 1998. That letter advised the Petitioner that it could either request an administrative review with the Motor Vehicle Division's hearing officer, or appeal to the Administrative Law Division. The Petitioner failed to take further action at that time.¹

The Department also audited the Petitioner for IRP motor vehicle tax for 1997, 1998, and 1999. The Department entered final assessments of motor vehicle tax for those three years on April 1, 1999. The Petitioner failed to appeal. However, those final assessments are separate from the IFTA tax in issue, and are not in issue in this appeal.

The Department notified the Petitioner on September 28, 1999 that its IFTA license

¹The Petitioner claims it never received the Department's October 1, 1998 letter. That claim is supported by a December 17, 1998 letter from the Petitioner to the Department which states that "We have filed for an appeal with the IFTA section, from which we have not yet received a response." Taxpayer Ex. 2. However, the Department's October 1, 1998 letter was served on the Petitioner at its proper address, and was not returned by the Postal Service.

would be revoked on October 27, 1999 because it failed to pay the IFTA liability for the seven quarters included in the audit. The Department also notified the Petitioner on October 6, 1999 that its IFTA license was being revoked because the Petitioner failed to pay its second quarter 1999 liability. The Petitioner timely appealed the proposed revocation to the Administrative Law Division.

The Petitioner disputes the IFTA audit and claims it has at all times intended to contest the audit. The Petitioner argues that it has filed all of its quarterly IFTA returns and paid the tax due as reported, and that its IFTA license should not be revoked based on the contested audit findings.

The Department counters that it is entitled to revoke the Petitioner's IFTA license because the Petitioner failed to pay the audit amount. The Department also argues that the Petitioner failed to maintain proper records, and also failed to timely report and pay for several quarters.

The Department's assessment and appeal procedures are contained in Chapter 2A of Title 40. Under those procedures, if the Department audits a taxpayer and the audit is not settled, the Department is required to enter a preliminary assessment for the amount claimed. Code of Ala. 1975, ' 40-2A-7(b)(1)a. The taxpayer is then allowed to file a petition for review and contest the audit. The taxpayer may request, or the Department may schedule, a hearing on the petition for review. Code of Ala. 1975, ' 40-2A-7(b)(4)a. If the preliminary assessment is not settled, the Department may enter a final assessment, which the taxpayer may appeal to either the Administrative Law Division or circuit court. Code of Ala. 1975, ' 40-2A-7(b)(5).

There is a question whether the Chapter 2A assessment procedures apply in IFTA cases. The IFTA agreement, in Article XII, ' R1210, authorizes the base state to determine the liability of the licensee and then ~~serve~~ the assessment on the licensee. However, IFTA contains no assessment procedures. Article XIII governs IFTA audits. Section R1310 therein provides that the base jurisdiction may audit any licensee based in the state.

The IFTA appeal procedures are found in Article XIV. Section R1400 therein specifies that the appeal procedures shall be conducted in accordance with the procedures established by the base jurisdiction. That implies that the Chapter 2A appeal procedures should be followed. However, ' R1410 provides an appeal procedure by specifying that a licensee may appeal an IFTA audit finding within 30 days after receiving the audit results. The Department is then required to hold a hearing on the matter. Section R1450 provides that any further appeal will proceed in accordance with the base jurisdiction's laws.

As indicated, it is unclear if, to what extent, or when the Department should follow the Chapter 2A assessment and appeal procedures in IFTA cases. Chapter 2A governs all taxes administered by the Department, ~~except~~ as otherwise provided by law or by agreement entered into pursuant to lawful authority. Code of Ala. 1975, ' 40-2A-2(2). IFTA is such an agreement. But as indicated, IFTA specifies that the appeal procedures prescribed by the base jurisdiction shall govern.

If the IFTA procedures and Chapter 2A are read together, the Department would conduct an audit and give the licensee an opportunity for a hearing. If the audit was not settled, the Department would enter a preliminary assessment for the additional tax

claimed. The licensee could then petition for a review of the preliminary assessment.² If the matter was not settled at the hearing, the Department could enter a final assessment for the tax due, which the taxpayer could appeal pursuant to ' 40-2A-7(b)(5). The above procedures would comply with both IFTA and Chapter 2A of Title 40.

In any case, an IFTA licensee clearly is entitled to contest an audit amount claimed by the Department. The Petitioner in this case timely appealed the Department's IFTA audit within 30 days. IFTA ' R1410 technically requires a licensee to request a hearing within 30 days. However, the Petitioner's September 29, 1998 letter notifying the Department of its intent to appeal was sufficient to satisfy the appeal requirements. The Department should then have set a hearing on the appeal as required by IFTA ' ' R1420 and 1430. If the matter was not settled, the Department could have assessed the Petitioner, and the Petitioner could have further appealed pursuant to the Department's assessment appeal procedures, presumably those in Title 40, Chapter 2A.³

²The initial hearing required by IFTA and the hearing on the petition for review could perhaps be combined.

³To date, the Department has no regulations governing IFTA audits, assessments, and appeal procedures. The procedures set out herein are only suggested procedures that the Department may adopt. However, any procedures that allow an IFTA licensee due process and a chance to contest the audit findings, or a subsequent final assessment,

The Department is attempting to revoke the Petitioner's IFTA license based on a contingent, contested liability. IFTA ' R1260 authorizes the Department to revoke an IFTA license if a tax delinquency has not been satisfied. However, to revoke the Petitioner's license without giving it an opportunity to contest the audit findings would violate the IFTA appeal procedures, the provisions in Chapter 2A of Title 40, and due process.

The Department's revocation of the Petitioner's IFTA license is denied. The Department should set a hearing on the Petitioner's appeal of the IFTA audit. If the audit is not settled, the Petitioner should be allowed to appeal the audit (or any final assessment based on the audit) as allowed by statute and Department procedures. The Department may revoke the Petitioner's IFTA license only after the Petitioner has exhausted its appeal rights concerning the audit liability, additional tax is determined to be owed, and the Petitioner fails to duly pay the delinquency.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, ' 40-2A-9(g).

Entered February 16, 2000.

BILL THOMPSON
Chief Administrative Law Judge

would be sufficient.

BT:dr

cc: John J. Breckenridge, Esq.
Charles Moses, III
Floyd Atkins