THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 2014-001170

South Carolina Department of
Motor Vehicles

Appellant,

vs.

Russo Dumpster, Inc., Respondent.

FINAL BRIEF OF RESPONDENT

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ISSUE 1: THE ALC DID NOT ERR IN UPHOLDING THE HEARING OFFICER'S RESCISSION OF RESPONDENT TAXPAYER'S IFTA AUDIT SUSPENSION ON THE GROUNDS THAT THE APPELLANT FAILED TO DISCHARGE ITS DUTY IMPOSED BY IFTA TO INFORM THE TAXPAYER OF THE RECORD KEEPING REQUIREMENTS IT WAS TRYING TO ENFORCE.

STATEMENT OF FACTS

The Respondent is a licensee with the Appellant under the IFTA. The Appellant is responsible for South Carolina's discharge of duties and obligations owed under the IFTA. The IFTA imposes certain record keeping requirements on licensees and responsible jurisdictions. The IFTA requires the Appellant to provide notice to the Respondent of the record keeping requirements it will impose under the IFTA. The Appellant is charged under the IFTA with the obligation to conduct audits to ensure compliance with the IFTA.

Beginning with an opening conference on November 14, 2011, the Appellant conducted an audit of the Respondent. The Audit covered the period January 1, 2008 to December 31, 2009. (R. p. 160)

On November 2, 2009, Appellant adopted MC-7, Agreement to Prepare/Maintain Records. (R. p. 78, line 16) This document provides detailed information on the specifics of the records to be kept and maintained by the licensee under IFTA. The Respondent has maintained records in compliance with the requirements set forth in the MC-7 since receiving it.

On January 6, 2011, Respondent signed MC-7 for the first time. (R. p. 78, line 20) There is no evidence in the record that the Appellant provided notice to the Respondent of the specific record keeping requirements under the IFTA prior to this date in 2011.

The Appellant after completing the audit found the records of the Respondent to be "unacceptable." (R. p. 167)

At time of hearing, Russo claimed she had documents which would show some of the information Appellant was looking for.

The Appellant issued an assessment for an additional tax of $49,667.05 and ultimately suspended the Respondent's license for its failure to pay the assessment.

DISCUSSION

The Department has no problems addressing the Respondent's duties under the IFTA, in terms of record keeping. The Department fails to address its failure to comply with the IFTA's mandates to communicate the record keeping requirements to the Respondent. The two duties are connected. As the evidence shows in this case, Compliance by the Department with the IFTA's requirements to communicate the records requirement to licensee such as the Respondent is key to allowing the licensees to maintain the records to meet an audit.

The case arises out of an audit of the Respondent conducted under the provisions of the International Fuel Tax Agreement (IFTA). The Administrative Law Judge's Order gave an excellent explanation of the IFTA and South Carolina's involvement with IFTA and reference is made thereto. Basically, the IFTA is an interstate agreement on collecting and distributing fuel use taxes paid by motor carriers. 49 U.S.C.A. § 31701 (3). Even though the IFTA is not a federal law, the federal government requires that all states engaging in fuel tax collections follow the IFTA provisions. 49 U.S.C.A. § 31705. South Carolina participates in the IFTA pursuant to S.C. Code Ann. § 5-11-20. South Carolina, like all government jurisdictions who agree to participate with the IFTA agrees to comply with its provisions. IFTA, Articles I, R120.

The Respondent is a licensee and operates under a license issued by the Appellant. Licensees, such as the Respondent, are required under the IFTA to maintain certain records to substantiate the information they file on fuel tax returns. IFTA, Article VII, R700. The record keeping is designed to verify taxable and non-taxable use for each jurisdiction in which the vehicle was operated.

One of the requirements imposed by the IFTA on jurisdictions such as the Appellant is the duty to conduct audits of its licensees on behalf of all member jurisdictions. IFTA, Article III, 1310. Accordingly, South Carolina law gives the Appellant authority to conduct the audits. S.C. Code Ann. § 56-11-40. A licensee's failure to maintain proper records can result in a revocation of its IFTA license. IFTA, Procedures V. P530.

The Appellants' revocation of the Respondent's license following an audit and resulting finding that the Respondent did not maintain adequate records is the act which generated the matter coming to the attention of this court.

The IFTA also provides that:

> Each jurisdiction shall provide licensees and prospective licensees with all information required to enable them to comply with all the terms of the [IFTA]. When credentials are issues to a new licensee information shall be provided to the licensee which completely describes the requirements of [IFTA]. This should include, but not be limited to:
> ...300 Tax reporting and recordkeeping requirements.
>
> IFTA, Article III, R360.

Effective November 2009, the Appellant began to use a document referenced as form MC-7 to communicate this information, even though the IFTA recordkeeping requirements have been in effect since July 1, 1998.

The Department did not present this form to the Respondent until January 6, 2011.

The Appellant vigorously contended below that the Respondent's certification made in its yearly application to comply with IFTA record keeping requirements relieved the Appellant of its duty to comply with any requirement under the IFTA to provide notice of the record keeping requirements to the licensees such as the Respondent. However, as the Administrative Law Judge concluded, the promise by the Respondent to comply with the record keeping requirements does not relieve the Appellant of its duty to communicate the requirements to the Respondent. As the Administrative Law Judge concluded, the two provisions of the IFTA, the duty by the Respondent to comply with record keeping requirements and the duty to comply with the duty by the Appellant to inform the licensees of the requirements are related. As the Administrative Law Judge held, "Together, the two provisions ensure parties are aware of IFTA's requirements to better realize the cooperative spirit and purpose of IFTA, which is 'to promote and encourage the fullest and most efficient possible...administration of motor fuels use taxation laws.' IFTA Articles I, R130"

The facts of this case illustrate the connection between the two complimentary duties. Once the Appellant provided notice of the requirements to the Respondent in 2011 by providing the MC-7 form to it, the Respondent complied with the record keeping requirements. Not surprisingly, a through explanation of the specific record keeping requirements by the taxing authority to the taxpayer lead to the taxpayer's successful efforts in complying with the requirements.

The effect of the Administrative Law Judge's order upholding the revocation of the suspension of the Respondent's license is that it required the Appellant, the taxing authority, to comply with its responsibilities under a taxing scheme as a condition to the imposition of taxes or penalties under the scheme. Courts routinely require taxing authorities to comply with their obligations under taxing legislation as a condition to the government pursing penalties under the taxing scheme. For example, South Carolina Courts have required strict compliance with requisite statutory conditions in tax sale situations. *Tanner Florence County Treasurer, 336 S.C. 552, 563, 521 S.E.2d 153, 158 (1999)*. Similarly, it was held that where a taxing authority's notice was untimely, it was barred from collecting taxes for that period of time.

South Carolina Nat'l Bank v. South Carolina Tax Com.,297 S.C. 279, 280,376 S.E.2d 512, 513,1989 S.C. LEXIS 1, 1(S.C.1989)

CONCLUSION

The Administrative Law Judge's Order dated March 24, 2014 was a correct application of the law and the duties of the Appellant under the IFTA. The Respondent respectively prays this Court to affirm the Order.

Date: December 4, 2014

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CERTIFICATE OF COMPLIANCE
OF RULE 211(b)

Respondent certifies that its final brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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Respectfully submitted this 4th day of December, 2014.

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