

Commonwealth Court to Consider Impact of Failure to Comply with IFTA Documentation Requirements

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The Commonwealth Court has tentatively scheduled oral argument for the week of November 14, 2011, in *R & R Express v. Commonwealth*, No. 533 F.R. 2007. The case deals with the tax impact of a motor carrier's failure to comply with IFTA mileage and fuel documentation requirements.

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 a liability of over \$300,000 in tax, 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 auditor increased the company's reported mileage, imposed the statutory 4.0 m.p.g. factor for at least some vehicles and disallowed credit claimed for reported tax-paid fuel purchases.

R & R Express contends that (1) the audit deficiency should be stricken because the methodology used by the Department of Revenue improperly allows the state to collect tax twice on the same gallons of fuel, first at the time of purchase and again at audit, and (2) in the alternative, the company should be permitted to have its tax for the audit period recomputed based on data from reporting periods subsequent to the audit period. In its brief, the company argues that, since its recordkeeping procedures improved after the audit, the data from later reporting periods represents the "best information available" to compute its additional tax due for the audit period.

The Commonwealth, on the other hand, asserts that Pennsylvania is not at liberty to compromise the recordkeeping requirements that the IFTA Agreement imposes on member states and licensees and that granting the requested relief would place Pennsylvania out of compliance with the Agreement. The Commonwealth argues that double taxation does not exist because the two taxes imposed on the company apply to different objects – the tax paid at the retail fueling station is imposed on the sale of the fuel and the second tax is imposed on the consumption of the fuel on public highways. Furthermore, the two taxes imposed on a motor carrier might not be imposed by the same taxing jurisdiction since the fuel could be purchased in one jurisdiction and "consumed" in another jurisdiction. With respect to the taxpayer's second argument, the Commonwealth argues that the IFTA Audit Manual requires the base jurisdiction to use a 4.0 m.p.g. factor in the absence of the required documentation.

The decision issued by the court in this case could have far-reaching effects on the resolution of IFTA audit appeals for Pennsylvania-based motor carriers.

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