DEPARTMENT OF STATE REVENUE

41-20210104.LOF
42-20210105.LOF

Letter of Findings: 41-20210104; 42-20210105
International Fuel Tax Agreement (IFTA) and
International Registration Plan (IRP) Assessments
For the Years 2018, 2019, and 2020

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department agreed that Motor Carrier provided sufficient documentation a reduction in the original assessments based on allowing Motor Carrier allowing additional prepaid fuel credits.

ISSUES

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax and Fee Adjustment.

Authority: IC § 6-6-4.1-4; IC § 6-6-4.1-14; IC § 6-6-4.1-20; IC § 6-6-4.1-24; IC § 6-8.1-3-14; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 9-28-4-6; IFTA Procedures Manual, § P510 (2017); IRP § 1005 (2017); IRP § 1015 (2017); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.,* 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue,* 867 N.E.2d 289 (Ind. Tax Ct. 2007); International Fuel Tax Agreement.

Taxpayer argues that it is entitled to an adjustment of the IFTA tax and IRP fees because it can now provide additional, relevant documentation of its fuel purchases.

II. International Fuel Tax Agreement Tax - Penalties.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; IFTA Articles of Agreement § R1220.100; 45 IAC 15-11-2.

Taxpayer seeks abatement of the penalties associated with the imposition of additional IFTA tax.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier in the business of providing 24-hour towing and recovery services. Taxpayer's vehicles travel Indiana highways and interstate highways in providing the towing and recovery services. Those services may include "specialized, flatbed, or heavy haul driving." According to publicly available information, Taxpayer works with 22 "truck drivers as owner operators or company drivers."

Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA") and for purposes of the International Registration Plan ("IRP"). The Indiana Department of Revenue ("Department") conducted an IFTA and IRP audit, which resulted in the assessment of additional 2018 IFTA taxes and additional 2019 and 2020 IRP fees. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest amounts.

Taxpayer submitted a protest outlining its objections to the additional assessment of taxes and fees. Taxpayer disagreed with the IFTA and IRP assessments on the ground that the Department did not then have access to additional documentation which it can now produce.

Along with its protest submission, Taxpayer provided additional documentation which - according to Taxpayer - was not considered during the initial audit review. That documentation included "a fuel report for the 1st Qtr. of 2018" which - according to Taxpayer "should reduce the amount of tax we owe." The information was provided in the form of two Excel spreadsheets. One spreadsheet was obtained from a company which provides Taxpayer a fuel credit card and which Taxpayer's drivers used to purchase fuel and supplies at various truck stops. That first

spreadsheet included "expenses other than fuel." The second spreadsheet "shows only the 1st quarter of 2018."

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax and Fee Abatement.

DISCUSSION

A. Indiana's IFTA Audit Findings.

The IFTA tax assessment was attributable to the Department's finding that Taxpayer's "records presented for audit were not compliant and . . . rated as inadequate." Although about one-half of Taxpayer's truck fleet was equipped with GPS ("Global Positioning System") equipment, Taxpayer was unable to provide the data from that equipment. The remainder of Taxpayer's fleet utilized manual records to record fleet distance. However, Taxpayer was "unable to provide adequate documentation for 5 of the 11 units using manual logs." In addition, of the manual logs that were presented, the logs "did not include all the required data."

The audit report concluded that "[d]ue to the absence of distance records for the majority of [Taxpayer's] fleet, the reported figures could not be verified."

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately determine the proper amount of tax owed Indiana or any of the other jurisdictions in which Taxpayer traveled or may have traveled during 2018.

The audit report explains the rationale for assessing additional IFTA taxes:

> In accordance with IFTA Article P570.100 Inadequate Records Assessment . . . the reported MPGs in the 2nd and 4th quarters and the calculated MPG in the 1st and 3rd quarters were multiplied by 20[percent] to determine the MPG reductions. The MPG reductions were subtracted from the reported MPGs for the 2nd , and 4th quarters. The calculated MPG was reduced by 20[percent] to determine the audited MPG for the 1st and 3rd quarters.

As a result, and based upon the limited information available, the Department concluded that Taxpayer owed approximately $53,000 in additional IFTA tax. Along with that tax, the Department also assessed approximately $10,000 in interest and $5,300 in penalties.

1. Taxpayer's Burden of Establishing That the IFTA Assessment Should be Abated.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed penalty assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

2. IFTA Requirements and Taxpayer's Responsibilities Under That Agreement.

IFTA is an agreement between various United States jurisdictions and Canadian provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, https://www.iftach.org/manual2020.php. (Last visited July 30, 2021). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated its vehicles in Indiana. As such, it operated on Indiana highways and consumed motor fuel while on those highways. Therefore, the Taxpayer was subject to Indiana motor carrier fuel taxes under the IFTA. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). In addressing any challenges to those assessments, the taxpayer bears the burden of proving that any assessment is incorrect. *Id*. The taxpayer has a duty to maintain books and records and present them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

The Department here will not belabor the point but as an Indiana licensee, Taxpayer is subject to the specific, detailed reporting requirements under the IFTA.

According to the IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsibility to maintain verifiable mileage and fuel purchase records:

> The records maintained by a licensee under this article shall be adequate to **enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee** for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate. (**Emphasis added**).

In addition, the IFTA Procedures Manual at § P550.100 (2017) imposes upon IFTA licensees the responsibility of maintaining and then providing verifiable fuel purchase and fuel consumption records.

> The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

One of those record keeping requirements is maintaining specific records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). According to the IFTA Procedures Manual, § P510 (2017) provides in part that:

> A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. **A licensee must preserve all fuel and distance records** for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

(**Emphasis added**).

Exercising its authority and responsibility as the Taxpayer's chosen base jurisdiction, the Department assessed the additional IFTA tax, penalty, and interest.

3. Taxpayer's Objections to IFTA Assessment and Request to Adjust that Assessment.

Taxpayer maintains that it has now - subsequent to the administrative hearing - provided additional documentation justifying a "reduction in the amount of tax we owe."

B. Indiana's IRP Audit Findings.

The Department conducted a fuel and mileage tax audit of Taxpayer's travel records and determined that Taxpayer owed additional 2019 and 2020 IRP fees. The assessment of the approximately $6,500 amount was attributed to Taxpayer's failure to "provide appropriate distance records . . . ."

The IRP audit report explained that Taxpayer's travel records did not contain the necessary information and this absence of complete information "[t]he IRP audit could not be conducted." As noted above, Taxpayer was unable to provide the GPS data from its vehicles and the manual logs provided did not include the necessary trip data.

1. IRP Requirements and Taxpayer's Record Keeping Responsibilities

The Indiana Code permits Indiana to join the IRP agreement ("the Plan") under IC § 6-6-4.1-14 and IC § 9-28-4-6. IC § 6-6-4.1-14(b) states in relevant part:

> The commissioner or, with the commissioner's approval, the reciprocity commission created by IC 9-28-4 may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal

> agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter . . . .

IC § 9-28-4-6 states in relevant part:

> (a) The department of state revenue, on behalf of the state, may enter into reciprocal agreements providing for the registration of vehicles on an apportionment or allocation basis with the proper authority of any state, any commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country.
>
> (b) To implement this chapter, the state may enter into and become a member of the International Registration Plan or other designation that may be given to a reciprocity plan developed by the American Association of Motor Vehicle Administrators.

Although Taxpayer operated a vehicle in Indiana and other states, Taxpayer selected Indiana as its base jurisdiction, pursuant to Article IV of the Plan (2013). In conjunction with the IFTA audit, the Department conducted an IRP audit under the terms of Articles XV and XVI of the Plan (2013) and the International Registration Plans Audit Procedures Manual.

The Department selected April 2019 to March 2020 as the registration year to audit. The Department determined that Taxpayer owed additional IRP fees based upon the documentation provided. § 1005 of the Plan (2017) explains that:

> (a) The Records maintained by a Registrant under Section 1000 shall be adequate to enable the Base Jurisdiction to verify the distances reported in the Registrant's application for apportioned registration and to evaluate the accuracy of the Registrant's distance accounting system for its Fleet.
>
> (b) Provided a Registrant's Records meet the criterion in subsection (a), the Records may be produced through any means, and retained in any format or medium available to the Registrant and accessible by the Base Jurisdiction.

§ 1015 of the Plan (2017) goes on to provide in part that:

> If the Records produced by the Registrant for Audit do not, for the Registrant's Fleet as a whole, meet the criterion in Section 1005(a), or if, within 30 calendar days of the issuance of a written request by the Base Jurisdiction, the Registrant produces no Records, the Base Jurisdiction shall impose on the Registrant an assessment in the amount of **twenty percent of the Apportionable Fees** paid by the Registrant for the registration of its Fleet in the Registration Year to which the Records pertain.

(**Emphasis added**).

As with the IFTA tax audit noted above, Department's audit found that Taxpayer's records "were not compliant and have been treated as inadequate." As a result, the Department's audit resorted to § 1015 of the Plan (2017) to impose a 20 percent assessment of the apportionable IRP fees.

2. Taxpayer's Burden of Establishing that the IRP Fees Should be Abated.

It should be pointed out that, "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for tax by reviewing those books and records." IC § 6-8.1-5-4(a). In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times."

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. In the absence of complete, detailed source documentation, the Department's additional assessment of IRP fees, based upon § 1015 of the Plan (2017), assessment is reasonable and supported by law and the Plan and its Audit Procedures Manual. The taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square,* 867 N.E.2d at 292.

C. Conclusions.

The Department has reviewed the documentation provided subsequent to the administrative hearing and agrees that this data is sufficient to allow Taxpayer to "regain taxpaid credit gallons." In other words, the assessment will be adjusted to account for the fuel on which Taxpayer paid tax at the delivery point.

FINDING

Taxpayer's protest is sustained subject to the adjustment called for in this Letter of Findings.

II. International Fuel Tax Agreement Tax - Penalties.

DISCUSSION

Taxpayer asks the Department to exercise its authority to abate the penalties associated with the IFTA assessment. Taxpayer states that it "was making every effort to pay our IFTA taxes correctly." Taxpayer explains that it originally hired an individual who claimed to understand the ins-and-outs of the IFTA requirements. Taxpayer later realized she was not familiar with those requirements. Since then, Taxpayer claims it has hired a replacement employee responsible for IFTA compliance and that Taxpayer has "worked hard to get this company back on track . . . ."

As with any assessment made by the Department, it is a taxpayer's responsibility to establish that the assessment was wrong. IC § 6-8.1-5-1(c) provides, "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the negligence penalty - is presumptively valid.

In addressing Taxpayer's request, the Department refers to IFTA Articles of Agreement § R1220.100, which states:

> The base jurisdiction may assess the licensee a penalty of $50.00 or 10 percent of delinquent taxes, whichever is greater, for failing to file a tax return, filing a late tax return, underpaying taxes due.

45 IAC 15-11-2(b) further states:

> "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard, or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in 45 IAC 15-11-2(c), as follows:

> The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to **reasonable cause** and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised **ordinary business care** and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:
> (1) the nature of the tax involved;
> (2) judicial precedents set by Indiana courts;
> (3) judicial precedents established in jurisdictions outside Indiana;
> (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
> (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

(**Emphasis added**).

IC § 6-8.1-10-2.1(d) explains that "[i]f a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the

penalty."

"Reasonable cause" is a fact sensitive question and thus is dealt with according to the particular facts and circumstances of each case.

The Department commends Taxpayer for its efforts to correct its record-keeping shortcomings. However, in this case, the Department concludes that Taxpayer has failed to establish that, for the years at issue, it "exercised ordinary business" in maintaining the records required under either the IFTA or Indiana's own record keeping requirements.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

The Department agrees that the additional records provided justify an adjustment account for the fuel on which Taxpayer paid tax at the delivery point. In other respects, Taxpayer's protest is denied.

August 17, 2021

Posted: 11/24/2021 by Legislative Services Agency
An html version of this document.