DEPARTMENT OF STATE REVENUE

41-20210123.LOF
42-20210122.LOF

Letter of Findings: 41-20210123; 42-20210122
International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP)
Assessments
For the Years 2018 and 2019

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Although recognizing Motor Carrier's failure to maintain the detailed and specific records required under both the IFTA and the IRP, the Department agreed to abate the penalty associated with IFTA assessment because Motor Carrier's shortcomings were not due to intentional, willful neglect.

ISSUE

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Assessment and Penalty.

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 § 6-8.1-10-2.1; IC § 9-28-4-6; IFTA Articles of Agreement § R1220.100; IFTA Procedures Manual § P510 (2017); IFTA Procedures Manual § P530 (2017); IFTA Procedures Manual § P550.100 (2017); IFTA Procedures Manual § P540 (2017); IRP § 1005 (2019); IRP § 1015 (2019); *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); 45 IAC 15-11-2; International Fuel Tax Agreement, https://www.iftach.org/manual2020.php.

Taxpayer seeks abatement of the penalties associated with the imposition of additional IFTA tax and any fines or penalties associated with the IRP fees.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier which transports wood products such as mulch, lumber, and pallets. On occasion, Taxpayer also transports agricultural grains and fertilizer. Publicly available information indicates that Taxpayer owns 15 trucks, 26 trailers, and employs 10 drivers. Taxpayer's vehicles travel Indiana highways and interstate highways in providing these hauling services.

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 2019 IFTA taxes and additional 2019 IRP fees. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest amounts.

Taxpayer did not disagree with the IFTA and IRP assessment amounts. In its protest letter, Taxpayer explained "we acknowledge and take full responsibility for our mistakes." For both the IFTA and IRP assessments, Taxpayer asks that a portion of the "fine[s] be forgiven."

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Assessment and Penalty.

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." The audit report states that Taxpayer's "distance records were incomplete and internal controls could not be tested to verify the distance processes." The audit report explains further:

> While the licensee had internal controls in place to record vehicle travel, the licensee did not have trip odometer readings that could be used for calculating total distances to compare to the recorded jurisdictional distances. There were no internal controls in place to verify the reported total and jurisdictional distances.

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

The audit report cites to the authority for assessing additional IFTA taxes:

> As required by the IFTA Procedures Manual, Article P570.100 Inadequate Records Assessment, if the base jurisdiction determines that the records produced by licensee for audit do not, for the licensee's fleet as a whole, meet the criterion for the adequacy of records set forth in P530, or after the issuance of a written demand for records by the base jurisdiction, the licensee produces, the base shall impose an additional assessment by either:
>
> .005 Adjusting the licensee's reported MPG to 4.00 or 1.70 KPL; or
> .010 Reducing the licensee's reported MPG or KPL by **twenty percent**. (**Emphasis added**).

The audit report explains the results:

> In accordance with IFTA Article P570.100 Inadequate Records Assessment . . . the **reported MPGs were multiplied by 20[percent]** to determine the MPG reductions. The MPG reductions were subtracted from the reported MPGs to determine the audited MPGs for each quarter. (**Emphasis added**).

As a result, and based upon the limited information available, the Department concluded that Taxpayer owed approximately $10,000 in additional IFTA tax. Along with that tax amount, the Department also assessed approximately $1,200 in interest and $1,000 in penalties.

• 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 January 12, 2022). 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 is headquartered in Indiana and plainly operated vehicles in Indiana. As such, Taxpayer 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).

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.

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 making available 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). 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.

> **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 IRP fees. The assessment of the approximately $5,000 was made because "[t]he records presented for audit were not compliant and have been rated as inadequate."

The IRP audit report explained:

> Though trip reports were maintained, no process was in place to check them for the required appropriate content. The beginning/ending trip odometer readings, routes of travel and total distance were not recorded by the drivers on the trip reports.

> **• 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 vehicles in Indiana and other states, Taxpayer specifically chose 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 Plan's Audit Procedures Manual.

The Department selected October 2019 to September 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 (2019) 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 (2019) 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 (2019) to impose a twenty percent assessment of the apportionable IRP fees.

C. Penalties.

Taxpayer asks the Department to exercise its authority to abate the penalties ("fines") associated with the IFTA assessment. The penalty is part and parcel with the IFTA assessment. As such, 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).

In considering that request, the Department commends Taxpayer for recognizing its responsibility for failing to maintain the detailed records required under the IFTA. In its representative's own words, "We were not aware we had to have beginning and ending odometer readings and destinations." Nonetheless, Taxpayer has "implemented a new paperwork system to better track [the] necessary information" and compliments the Department for providing it "tremendous help with getting things straightened out."

As with any assessment made by the Department, it is a taxpayer's responsibility to establish that the penalty 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 recognizes Taxpayer's efforts to correct its record-keeping shortcomings but emphasizes again that it is Taxpayer's responsibility to prepare, preserve, and retain those records. IFTA Procedures Manual at § P550.100 (2017). Whatever the obvious shortcomings revealed during the two audits, Department concludes that Taxpayer "exercised ordinary business" in maintaining records required under the IFTA or Indiana's record-keeping requirements. There is no indication that the record-keeping shortcomings were attributable to Taxpayer's "willful neglect." IC § 6-8.1-10-2.1(d).

As to the IRP assessment, there is nothing to indicate that the Department assessed penalties over and above the base assessment. As such, there is nothing over which the Department has the authority to abate.

FINDING

Taxpayer's protest is sustained in part and denied in part.

SUMMARY

The Department agrees that, despite its record-keeping shortcomings, the IFTA penalty assessment should be abated. The Department has no authority to abate any portion of the uncontested IRP fee assessment and finds no reason to adjust the amount of IFTA tax and IRP fees.

January 14, 2022

Posted: 03/30/2022 by Legislative Services Agency
An html version of this document.