

Memorandum of Decision: 42-20200403
International Fuel Tax Agreement
For the Second Quarter of 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. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Motor Carrier provided documentation regarding previously missing fuel records and documentation showing that it timely filed its refund claim and was due a partial refund, although not the full refund requested.

ISSUES

I. International Fuel Tax Agreement - Timeliness

Authority: IC § 6-8.1-5-1; IFTA Articles of Agreement, § R910 (2020); IFTA Articles of Agreement, § R920 (2020); IFTA Articles of Agreement, § R960 (2020); IFTA Articles of Agreement, § R970 (2020); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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); <https://www.in.gov/dor/motor-carrier-services/motor-carrier-deadlines/>.

II. International Fuel Tax Agreement - Fuel Tax Assessment.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-6-4.1-14; IC § 6-8.1-3-14; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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); IFTA Articles of Agreement, § R1210.300 (2017); IFTA Procedures Manual, § P550 (2017); International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/>.

Taxpayer protests the assessment of additional fuel tax.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier. The Indiana Department of Revenue ("Department") denied Taxpayer's claim for refund of International Fuel Tax Agreement ("IFTA") taxes. Taxpayer claimed a refund for the second quarter of 2020 IFTA taxes, but it was denied for late filing. Taxpayer disagreed with this determination and filed a protest. The Department held an administrative hearing, and this Memorandum of Decision results. Further facts will be provided as necessary.

I. International Fuel Tax Agreement - Timeliness.

DISCUSSION

Taxpayer claimed a refund for proportional use credit, via Form MCS-1789, for the second quarter of 2020. The Department issued a letter in response denying Taxpayer's claim for refund citing that the claim for refund and the quarterly report was received late.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of

[the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

IFTA Articles of Agreement, § R910 (2020) provides:

*R910 REPORTING REQUIREMENT The licensee shall file a tax return for the tax reporting period with the base jurisdiction and shall pay all taxes due to all member jurisdictions with the remittance payable to the base jurisdiction by the due date. Jurisdictions may only require payment by guaranteed funds for the same reasons a bond may be required under *R340.

IFTA Articles of Agreement, § *R920 (2020) provides:

*R920 FILING WITH BASE JURISDICTION The timely filing of the tax return and the payment of taxes due to the base jurisdiction for all member jurisdictions discharges the responsibility of the licensee for filing of tax returns and payment of individual taxes to all member jurisdictions.

IFTA Articles of Agreement, § *R960 (2020) provides:

*R960 DUE DATE

.100 The tax return and full payment of taxes shall be due on the last day of the month following the close of the reporting period for which the tax return is due. If a licensee has been granted permission to file tax return annually, the annual tax return shall be due January 31 following the close of the annual tax reporting period. If the last day of the month falls on a Saturday, Sunday, or legal holiday, the next business day shall be considered the due date.

.200 Delivery by National Postal Service or National Delivery Service

.005 Tax return shall be considered received and filed on the date shown on the cancellation mark stamped by the national postal service of the Dominion of Canada, the United Mexican States, or the United States of America, or a national delivery service equivalent, on the envelope that contains the tax return; or the date the envelope was mailed, if proof satisfactory to the base jurisdiction is available to establish the date of mailing. To qualify under this provision, the envelope must be properly addressed to the department designated by the base jurisdiction to receive fuel tax return and have adequate postage affixed.

.010 Tax payments shall be considered received on the date shown on the cancellation mark stamped by the national postal service of the Dominion of Canada, the United Mexican States, or the United States of America, or a national delivery service equivalent, on the envelope that contains the payment; or the date the envelope was mailed, if proof satisfactory to the base jurisdiction is available to establish the date of mailing. To qualify under this provision, the envelope must be addressed to the department designated by the base jurisdiction to receive fuel tax payments and have adequate postage affixed.

.015 When a tax return is hand delivered, the tax return shall be considered received and filed on the date that the tax return is delivered and receipted for by an employee of the department designated by the base jurisdiction to receive tax return.

.020 When a tax payment is hand delivered, the payment shall be considered received on the date that the payment is delivered and receipted for by an employee of the department designated by the base jurisdiction to receive fuel tax payments.

.300 Delivery by Electronic Means

.005 Tax return delivered electronically shall be considered to have been received and filed on the date determined in accordance with the laws of the base jurisdiction.

.010 Tax payments may be made by any method of electronic transfer approved by the base jurisdiction.

.015 Electronic tax payments shall be considered to have been received on the date determined in accordance with the laws of the base jurisdiction.

IFTA Articles of Agreement, § *R970 (2020) provides:

***R970 LATE FILING**

Tax return not filed or full payment of taxes not made by the due date shall be considered late and any taxes due considered delinquent.

Taxpayer provided documentation showing that it timely submitted its claim for refund. Based on the Department's website and the IFTA Article of Agreement *R910 and *R960 the due date for the second quarter of 2020 was July 31, 2020. <https://www.in.gov/dor/motor-carrier-services/motor-carrier-deadlines/>, (last visited October 29, 2021). The envelope was marked on July 31, 2020, thus under IFTA Article of Agreement *R960 Taxpayer timely filed. Taxpayer has met its burden under IC § 6-8.1-5-1(c) regarding this issue.

FINDING

Taxpayer is sustained on the issue of timeliness.

II. International Fuel Tax Agreement - Fuel Tax Assessment.

DISCUSSION

In addition to the timeliness matter discussed above in Issue I, Taxpayer's claim for proportional use credits was denied because the Eligible Gallon Consumed on the MCS-1789 exceeded the reported Indiana Gallons Total on the corresponding quarterly return. Taxpayer argues that there was a scribner's error on its return and that the correct numbers support the amount of claimed credits.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

IFTA is an agreement between various United States jurisdictions and certain Canada provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/> (last visited October 29, 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.

The Department first refers to IC § 6-6-4.1-14, which states:

(a) The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements with the appropriate official or officials from any other state or jurisdiction under which all or any part of the requirements of the Indiana Administrative Code are waived with respect to motor carriers that use in Indiana motor fuel upon which tax has been paid to the other state or jurisdiction. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent privileges with respect to motor fuel consumed in the other state or jurisdiction and on which a tax has been paid to this state.

(b) 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, including the requirements for trip permits, temporary authorizations, repair and maintenance permits, and annual permits and the payment of fees for permits and authorizations. An agreement may be made

under this subsection only with a state or jurisdiction that grants equivalent exemptions to motor vehicles licensed in Indiana.

IC § 6-8.1-5-4 states:

(a) 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 that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:

- (1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or
- (2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.

In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.

(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.

(d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

IFTA Articles of Agreement, § R1210.300 (2017) provides the standard for determining whether a proposed assessment may successfully be challenged by Taxpayer. "The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive." *Id.*

The IFTA Procedures Manual at § P550 (2017) provides that:

.100 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.

.110 Retail fuel purchases include all those purchases where a licensee buys fuel from a retail station or a bulk storage facility that the licensee does not own, lease, or control.

.200 The base jurisdiction shall not accept, for purposes of allowing tax-paid credit, any fuel record that has been altered, indicates erasures, or is illegible, unless the licensee can demonstrate that the record is valid.

.210 The base jurisdiction shall not allow tax-paid credit for any fuel placed into a vehicle other than a qualified motor vehicle.

.220 The base jurisdiction shall not allow a licensee credit for tax paid on a retail fuel purchase unless the licensee produces, with respect to the purchase:

- .005 a receipt, invoice, or transaction listing from the seller,
- .010 a credit-card receipt,
- .015 a transaction listing generated by a third party, or
- .020 an electronic or digital record of an original receipt or invoice.

.300 For tax-paid credit, a valid retail receipt, invoice, or transaction listing must contain:

- .005 the date of the fuel purchase
- .010 the name and address of the seller of the fuel (a vendor code, properly identified, is acceptable for this purpose)
- .015 the quantity of fuel purchased
- .020 the type of fuel purchased
- .025 the price of the fuel per gallon or per liter, or the total price of the fuel purchased
- .030 the identification of the qualified motor vehicle into which the fuel was placed
- .035 the name of the purchaser of the fuel (where the qualified motor vehicle being fueled is subject to a lease, the name of either the lessor or lessee is acceptable for this purpose, provided a legal connection can be made between the purchaser named and the licensee)

.400 The licensee shall retain the following records for its bulk storage facilities:

- .005 receipts for all deliveries
- .010 quarterly inventory reconciliations for each tank
- .015 the capacity of each tank
- .020 bulk withdrawal records for every bulk tank at each location

.500 The base jurisdiction shall not allow a licensee tax-paid credit for fuel withdrawn by the licensee from its bulk fuel storage facilities unless the licensee produces records that show:

.005 the purchase price of the fuel delivered into the bulk storage includes tax paid to the member jurisdiction where the bulk storage is located, or

.010 the licensee has paid fuel tax to the member jurisdiction where the bulk storage is located.

.600 The licensee shall produce for audit records that contain the following elements for each withdrawal from its bulk storage facilities:

.005 the location of the bulk storage from which the withdrawal was made

.010 the date of the withdrawal

.015 the quantity of fuel withdrawn

.020 the type of fuel withdrawn

.025 the identification of the vehicle or equipment into which the fuel was placed

.700 When alternative fuels are purchased or stored in bulk, these same requirements shall apply, in so far as they are practicable. In instances where, with respect to an alternative fuel, a licensee cannot practicably comply with these requirements, the licensee must maintain records that fully document its purchase, storage, and use of that alternative fuel.

.800 A licensee's reporting of fuel may deviate slightly from a calendar quarterly basis provided that:

.005 the beginning and ending dates of the licensee's reported fuel reflects a consistent cut-off procedure,

.010 the deviations do not materially affect the reporting of the licensee's operations,

.015 the deviations do not materially delay the payment of taxes due,

.020 the cut-off dates are the same for distance and fuel, and

.025 the base jurisdiction can reconcile the fuel reported in the period through audit.

Taxpayer provided a corrected version of the MCS-1789, which revised the Eligible Gallon Consumed Indiana Gallons Total on the corresponding quarterly return. This documentation supports Taxpayer's refund claim for the 2020 tax year. However, the Department provides proportional use credit refunds on a quarterly basis. The rate of that quarterly refund is a percentage based on calculations for that specific quarter. Therefore, Taxpayer is entitled to the percentage of refund available for that quarter. Taxpayer has partially met its burden under IC § 6-8.1-5-1(c). Taxpayer is sustained to the extent that its amended reported numbers do support its refund claim but is denied in that it will not receive the entirety of the claimed refund. The Department will calculate the amount to be refunded for the second quarter of 2020.

FINDING

Taxpayer's protest is sustained to the extent explained above.

SUMMARY

Taxpayer is sustained on Issue I regarding the timeliness of its return. Taxpayer is partially sustained on Issue II regarding the amount of proportional use credits available.

November 2, 2021

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