

Supplemental Letter of Findings: 42-20210092
International Fuel Tax Agreement
For 2nd, 3rd, and 4th Quarters of Tax Year 2017

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

HOLDING

Motor Carrier provided documentation to account for some previously missing fuel records. Motor Carrier's IFTA assessment will be recalculated accordingly.

ISSUE

I. International Fuel Tax Agreement - Fuel Tax Assessment.

Authority: IC § 6-8.1-10-2.1; 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 Articles of Agreement, § R1220.100 (2017); IFTA Procedures Manual, § P550 (2017); IFTA Procedures Manual, § P530 (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. As a result of an audit, the Indiana Department of Revenue ("Department") issued a proposed assessment of fees pursuant to the International Fuel Tax Agreement ("IFTA") for 2nd, 3rd, and 4th quarters of tax year 2017, due to lack of records. Taxpayer disagreed with the Department's proposed assessment and filed a protest. Taxpayer failed to attend the originally scheduled hearing. The Department informed Taxpayer that failure to attend the scheduled hearing constituted a withdrawal of the protest. Taxpayer requested and was granted a rehearing. The Department conducted an administrative rehearing on the appealed proposed assessment. This Supplemental Letter of Findings results. Additional facts will be provided as necessary.

I. International Fuel Tax Agreement - Fuel Tax Assessment.

DISCUSSION

The Department conducted an IFTA audit and determined that Taxpayer owed additional IFTA taxes. The Department's audit concluded that Taxpayer did not provide appropriate and sufficient records to ensure that total and jurisdictional distances and fuel were accurately tracked. Taxpayer leases out that responsibility to a third-party company for calculating distances and fuel. Ultimately, the Department could not audit the distance records due to lack of appropriate and sufficient distance documentation. The audit report noted that internal controls were non-existent. Due to the lack of documentation, the Department assessed tax based upon the best information available to the Department during the audit and in accordance with IFTA.

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 Canadian provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, <https://www.iftach.org/Carriers/> (last visited November 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.

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.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if Taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

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.*

IFTA Articles of Agreement, § R1220.100 (2017) 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.

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.

During the audit, the Department could not verify the fuel or distance records. Additionally, records of all fuel purchased, received, and used were insufficient. Taxpayer claims that if they produced documents for fuel then the Department should make the appropriate adjustment to the distances.

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning Taxpayer's fuel purchases and distances. In the absence of complete and accurate source documentation, the Department's best information available audit assessment is reasonable and supported by law and the IFTA Audit Manual procedures. During the protest, Taxpayer provided new documentation to establish a relationship between itself and the third-party company charged with maintaining fuel and distance records. Thus, the fuel receipts showing tax paid that were presented, which have not previously reviewed by the Department and which are relevant to the tax periods at issue, should be allowed as tax paid credit. Taxpayer has "establish[ed] by a fair preponderance of the evidence that the assessment is erroneous or excessive." IFTA Articles of Agreement, § R1210.300 (2017).

As required by IFTA Procedures Manual § P530, the records maintained by a licensee 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. Because the of the newly provided documentation, the Department will recalculate the amount of unreported fuel and will issue a revised assessment. Taxpayer has partially met the burden imposed by IFTA § R1210.300 and by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained to the extent explained above but denied as Taxpayer is not entitled to the full amount.

November 30, 2021

Posted: 03/30/2022 by Legislative Services Agency
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