DEPARTMENT OF STATE REVENUE

42-20220005.LOF

Letter of Findings: 42-20220005
International Fuel Tax Agreement (IFTA)
For the Year 2018

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Motor Carrier failed to meet its burden of establishing that the Department's audit assessment of additional IFTA tax was wrong; Motor Carrier admittedly failed to maintain accurate and up-to-date fuel and mileage records for its vehicles and Motor Carrier's alternative.

I. International Fuel Tax Agreement - Tax and Penalty Assessments.

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; IFTA Articles of Agreement, § R1210 (2017); IFTA Articles of Agreement, § R1220 (2017); International Fuel Tax Agreement, https://www.fin.gov.on.ca/en/tax/ifta/; IFTA Procedures Manual, § P510 (2017); IFTA Procedures Manual, § P530 (2017); IFTA Procedures Manual, § P540 (2017); IFTA Procedures Manual § P550 (2017); IFTA Procedures Manual § P570 (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); 45 IAC 15-11-2.

Taxpayer argues that the Department's assessment of additional IFTA tax was incorrect because the Department failed to review documents and incorporate information submitted subsequent to the Department's audit.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier which - according to publicly available information - is "primarily a contract" carrier specializing in providing both "controlled and 'dry' freight" transport services for its customers. Taxpayer provides these year-round services to customers in all the lower 48 states.

Taxpayer employs approximately 90 total employees including approximately 50 drivers. Drivers operate approximately 50 power units including its own trucks (power units) and those of independent owner-operators.

Those vehicles travel both interstate and intrastate highways in providing Taxpayer's hauling services.

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

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was scheduled. That hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. International Fuel Tax Agreement - Tax and Penalty Assessments.

DISCUSSION

A. Indiana's Audit Findings.

The Department conducted a fuel tax audit of Taxpayer's records. In doing so, the audit "stratified" Taxpayer's company vehicles and the vehicles operated by "owner-operators." Thereafter, the Department prepared a "sample" of Taxpayer's vehicles. According to the audit report, "A random number generator was . . . used in

order to select . . . sample vehicles." Again, according to the audit report, Taxpayer had "no objection to the sampling procedures."

To determine "total distance" figures, the Department considered a "sample" of 17 vehicles. To determine "jurisdictional distance", the Department considered a "sample" of that same number of vehicles. The audit eventually determined that Taxpayer owed additional 2018 IFTA fuel tax. The assessment was attributable to the Department's finding that "10-18[percent] of the [vehicle's] distance was not reported for each unit." The audit report explains:

> It was . . . discovered that the route that the dispatch program predicted was often not the route the unit traveled. This was especially noticeable for trips to the west coast and New England area. It was also discovered that some units were missing fuel.

The audit report summarizes Taxpayer's own "internal controls" and found certain shortcomings in those controls.

> [Taxpayer] stated that they check the dispatch total distance for the trip with the odometer total distance and made adjustments as necessary. Examination of the distance for the sample showed *no evidence of this being done*. [Taxpayer] stated that fuel stops are added in to make sure if there was fuel in a jurisdiction [in which] there was distance.
>
> . . . .
>
> Examination of the distance and fuel records for the sample showed instances where fuel was purchased in a jurisdiction and there was *no distance reported*. (*Emphasis added*).

As a result of these various observed shortcomings, the audit made two adjustments. The first adjustment was to Taxpayer's "total distance." As explained in the audit report:

> The total distance error rate was calculated by dividing the variance between reported and audited total distance. The total distance error rate was then multiplied by the reported total distance to determine the projected distance.

The second adjustment was to the "total fuel" amount.

> [A] sample of company units and owner/operators was selected. The fuel was adjusted for this sample. Only a portion of the units were found to have adequate fuel to cover the distance traveled. The average MPG for these units was 5.88 MPG. When looking at the units on monthly or per trip basis, it clearly showed that there was missing fuel for the distance traveled between fuel purchase dates.
>
> . . . .
>
> A total fuel post adjustment was made by taking the additional total distance and dividing it by the calculated average MPG of 5.88 for the units that had adequate fuel. The additional total distance was calculated by taking the audited total distance and subtracting the reported total distance. The reason for this post adjustment was to impute fuel for the large amount of distance that was not reported . . . The reported fuel was added to the total fuel post adjustment to calculate the audited fuel.

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately apportion the proper amount of tax owed to the various member jurisdictions in which Taxpayer's vehicles traveled during the period under review. Instead, the audit resulted in a recalculation of both the total distance and total fuel originally reported.

As a result, and based upon the limited information available, the Department concluded that Taxpayer owed approximately $51,000 in additional IFTA tax. Along with that tax, the Department also assessed approximately $13,000 in interest and $5,000 in penalties. Taxpayer disagrees with the assessment of additional tax.

B. Taxpayer's Burden of Establishing That Tax Assessment Should be Abated or Modified.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessments of interest and penalty are 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).

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

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.fin.gov.on.ca/en/tax/ifta/ (last visited March 12, 2020). 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 trucks 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).

Taxpayer, as an IFTA licensee, is subject to the record-keeping rules of 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**).

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 that of 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.

The Procedures Manual allows licensees to maintain these records in various ways. However, Taxpayer does not disagree the third-party's mileage tracking records were deficient. In such cases, in the absence of a functional, verifiable "tracking system," IFTA Procedures Manual, § P540.100 (2017), provides:

> Distance records produced by a means other than a vehicle-tracking system that substantially document the fleet's operations and contain the following elements shall be accepted by the base jurisdiction as adequate under this article:

.005 the beginning and ending dates of the trip to which the records pertain
.010 the origin and destination of the trip
.015 the route of travel
.020 the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the trip
.025 the total distance of the trip
.030 the distance traveled in each jurisdiction during the trip
.035 the vehicle identification number or vehicle unit number.

IFTA Procedures Manual, § P570.100 (2017) provides that:

> If the base jurisdiction determines that the records produced by the licensee for audit do not, for the licensee's fleet as a whole, meet the criterion for the adequacy of records set out in P530, or after the issuance of a written demand for records by the base jurisdiction, the licensee produces no records, the base jurisdiction **shall impose an additional assessment** by either:
>
> .005 adjusting the licensee's reported fleet MPG to 4.00 or 1.70 KPL; or
> .010 reducing the licensee's reported MPG or KPL by twenty percent. (**Emphasis added**).

IFTA Articles of Agreement, § R1210 (2017) in relevant part, states that:

> .100 In the event that any licensee
> .005 fails, neglects, or refuses to file a tax return when due;
> .010 fails to make records available upon written request by the base jurisdiction; or
> **.015 fails to maintain records from which the licensee's true liability may be determined**, the base jurisdiction shall proceed in accordance with .200 and .300.
> .200 On the basis of the best information available to it, the base jurisdiction shall:
> .005 determine the tax liability of the licensee for each jurisdiction and/or
> .010 revoke or suspend the license of any licensee who fails, neglects, or refuses to file a tax report with full payment of tax when due, in accordance with the base jurisdiction's laws.
>
> Both .200.005 and .200.010 may be utilized by the base jurisdiction. For purposes of assessment pursuant to .100.010 or .100.015, the base jurisdiction must issue a written request for records giving the licensee thirty (30) days to provide the records or to issue a notice of insufficient records. (**Emphasis added**).

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

D. Taxpayer's Objections to the IFTA Assessment and Penalty.

Taxpayer disagrees with the IFTA assessment in part and agrees in part. Taxpayer explains as follows:

> • We are in agreement that our reliance on using "computer generated miles, and fully auditing those trips, may have led us underreporting mileage on our IFTA returns."
>
> • [W]e entered fuel based on a trip start date versus the actual fuel purchase date. This caused a difference between the amount of fuel purchased and the amount of fuel reported due to overlaps. We actually reported 10,916.52 gallons more on our IFTA returns that was actually purchased for the period.
>
> • We feel the Auditor's use of 5.88 MPG (applied to the fleet) to determine fuel used based on the new projected miles is incorrect. All fuel purchases were made using either a Comdata or EFS fuel card. [Taxpayer's supplemental information] support our claim of actual gallons purchased compared to the Auditor's calculated fuel used. When applying the actual fuel purchased to the Auditor's projected and adjusted miles the fleet MPG is 6.38. This was well within[] industry norms for the period.

In summary, Taxpayer agrees that its "methods of calculating mileage may have led us to underreport mileage on our IFTA returns" but does not agree "that more fuel was used based on a calculation the Auditor made . . . ." Taxpayer does not agree with the audit's calculation because the information supplied by its fuel card companies' records supports its argument and that Taxpayer actually "reported more fuel on [its] IFTA returns that we actually purchased . . . ."

E. Analysis and Conclusion.

1. Tax Assessment.

The reporting errors indicated in the audit report are not insignificant. The "total fuel" adjustment was attributable to a substantial underreporting of mileage traveled during this period. The audit's conclusion was that Taxpayer underreported its mileage by approximately 800,000 miles - equivalent to about two round trips to the moon. During the hearing, Taxpayer indicated that the underreporting was largely attributed to errors made by its owner operators. The audit does not support this position because the errors detected were not isolated to Taxpayer's vehicles or the owner-operators' vehicles. The underreporting was "fleet-wide."

As an alternative, Taxpayer suggests that the assessment should be revised to reflect the amount of fuel indicated by purchases made on its Comdata/EFS records. Even if the Department were able to make such an adjustment, the results would remain largely unchanged. The Department's audit reviewed the Comdata/EFS data, and that data does not support Taxpayer's argument that it actually over-reported fuel on its original returns.

Upon review of the information available, the Department does not agree that Taxpayer has met its statutory burden under IC 6-8.1-5-1(c) of establishing that the original assessment was *wrong*. Taxpayer's arguments to the contrary are insufficient to justify a wholesale revision of the original assessment because any such revision would be speculative. In other words, the Department is unable to calculate an assessment here which would be any more or less accurate than the assessment calculated by the original audit.

2. Penalty Assessment.

IFTA Articles of Agreement, § R1220 (2017) provides as follows:

> 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. .200 Penalties paid by the licensee shall be retained by the base jurisdiction. .300 Nothing in the Agreement limits the authority of a base jurisdiction to impose any other penalties provided by the laws of the base jurisdiction. (**Emphasis added**).

In the absence of specific guidance provided under either the IFTA Articles of Agreement or the IFTA Procedures Manual and because the ten-percent penalty is "retained by the base jurisdiction," the Department turns to Indiana's own statutory and regulatory regime for direction.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "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."

IC § 6-8.1-10-2.1(d) states that, "If 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."

Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation 45 IAC 15-11-2(c) requires that 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 IC § 6-8.1-5-1(c), "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 ten percent IFTA penalty - is presumptively valid. IC § 6-6-4.1-24.

All parties here involved agree that Taxpayer erred in failing to maintain the detailed, accurate mileage and fuel records necessary for Indiana - as the base jurisdiction - to apportion the proper amount of tax owed the various member jurisdictions. In this case, the Department does not agree that Taxpayer "exercised ordinary business care and prudence" indicated by its failure to maintain the required records.

FINDING

Taxpayer's protest is respectfully denied.

March 28, 2022

Posted: 05/25/2022 by Legislative Services Agency
An html version of this document.