DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 03-0138
International Fuel Tax Agreement (IFTA)
For the Tax Periods 1999, 2000, and 2001

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ISSUE

I. Fuel Tax Assessment.

Authority: IC 6-8.1-3-14; IC 6-8.1-5-1(b); IC 6-8.1-5-4(a); IFTA Articles of Agreement, R1210.200 (1998); IFTA Procedures Manual, P540, 550 (1996); IFTA Audit Manual, A100 (1998).

Taxpayer argues that the Department of Revenue (Department) audit of taxpayer's fuel purchase records resulted in an erroneous assessment of additional fuel tax; according to taxpayer, the additional assessment was based upon incorrect information.

STATEMENT OF FACTS

Taxpayer is in the business of hauling general freight. It owns a number of trucks and occasionally leases others. The Department conducted an audit of taxpayer's fuel records and determined that it owed additional fuel tax. The taxpayer argued that the assessment of additional tax was incorrect. Taxpayer submitted a protest, an administrative hearing was held, and this Letter of Findings results.

DISCUSSION

I. Fuel Tax Assessment.

IFTA is an agreement between various United States jurisdictions and Canada allowing for the apportionment of previously collected motor fuel taxes. The agreement's goal is to simplify the tax, 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 granted under IC 6-8.1-3-14.

As taxpayer's home jurisdiction, Indiana audited taxpayer's records to determine the amount of fuel taxpayer used, the amount of taxes paid on that fuel, the states in which taxpayer operated its trucks, and the number of miles driven in each of those states. Thereafter, the amount of fuel tax paid was apportioned among the states in which taxpayer operated its trucks based upon the number of miles driven in each of those state taxing jurisdictions.

Taxpayer's drivers buy fuel two different ways. The first way is to buy fuel from an authorized local supplier. Each driver is assigned authorization cards. These authorization cards allow the driver to buy fuel from two different "fuel networks." The fuel networks are groups of associated suppliers which provide taxpayer a centralized billing service. As far as the driver is concerned, the authorization card works like a credit card. After each purchase, the local supplier gives the driver a copy of the invoice. When the driver returns to taxpayer's location, the driver collects the invoices and places them into a "trip envelope."

After the driver turns in a trip envelope, taxpayer's "log audit clerk" enters the fuel purchase information into the taxpayer's own computer system. However, taxpayer pays the fuel networks on the basis of a faxed invoice received directly from the fuel network.

The second way a driver can buy fuel is to pay for cost from his own pocket and turn the bill over to the log audit clerk. The clerk enters that amount on taxpayer's computer system and arranges for the driver to be reimbursed. According to taxpayer, this happens rarely because of the inconvenience to the driver.

The amount of purchased fuel recorded on taxpayer's computer system should equal the amount of invoices received from the fuel networks plus the amounts reimbursed to the drivers. In a perfect world, it would be possible to justify all these amounts, determine the total amount of fuel purchased, determine the jurisdictional miles, and determine the exact amount of any tax due.

During the audit of taxpayer's 1999 through 2001 records, it was determined that the faxed invoices received from the fuel networks, the invoices received from the individual drivers, the information written on the trip envelope, and the information contained within taxpayer's computer system could not be reconciled.

The issue raised by taxpayer stems from 76 fuel purchases recorded on taxpayer's computer system. The audit's assessment of additional fuel tax is based on these 76 purchases. Taxpayer argues that the 76 fuel purchases should be removed from the audit report because there is no record of these purchases elsewhere. According to taxpayer, the 76 purchases are simply "entry errors." Taxpayer argues that the 76 entries should be deleted because none of the entries correspond to any of the invoices received from the fuel networks and do not correspond to any of the recorded reimbursements paid individual drivers. According to taxpayer, none of the 76 entries have an invoice number and it cannot find any documentation which corresponds to these particular 76 entries.

Taxpayer comes to the conclusion that the 76 entries should be deleted because, "An audit that improperly includes purchases of fuel that the vendor generated purchase records don't include is not an accurate audit conducted in a professional manner as required by IFTA standards." *See* IFTA Audit Manual, A100.

IFTA Articles of Agreement, R1210.200 (1998) provides the standard for determining whether a proposed assessment may successfully be challenged by the licensee. "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 of proof shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive."

It is the taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases. As set out in IC 6-8.1-5-4(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. *See also* IFTA Procedures Manual, P540, 550 (1996).

The Department does not agree with taxpayer's conclusion that it has established, by a preponderance of the evidence, that the 76 entries should be deleted from the audit report. The 76 entries were not invented by the audit; the entries were obtained from taxpayer's own records. There is nothing inherently incredible or plainly erroneous about the information contained within the 76 entries; the dates, gallons purchased, state jurisdictions, vehicle numbers are all entirely credible and comport substantively with information accepted by both taxpayer and the audit. Although taxpayer has not been able obtain documents which further substantiates the 76 entries, neither has it been able to produce information which would explain where these entries came from or information which confirms that the purchases did not occur.

Taxpayer asks the Department to choose between different sets of conflicting fuel purchase records, ignore entirely certain of those records, and select those records which provide taxpayer the most beneficial result. The Department is unable to accept taxpayer's invitation to do so because it is not up to the Department to refute, corroborate, or explain the information contained within taxpayer's own records. The proposed assessment of additional fuel tax is "prima facie evidence that the department's claim for the unpaid tax is valid." IC 6-8.1-5-1(b). "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Id. *See also* IFTA Articles of Agreement, R1210.200. Taxpayer has not met this burden.

FINDING

Taxpayer's protest is respectfully denied.

DK/JM/MR – 030506