

**Letter of Findings Number: 07-0404**  
**IFTA**  
**For Tax Year 2004**

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**ISSUES**

**I. IFTA–Audit Method.**

**Authority:** IFTA art. A550; IFTA art. VI.A.3.

Taxpayer protests the Department's fuel and mileage calculation method.

**II. Tax Administration–Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a trucking company in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for fuel tax imposed under the International Fuel Tax Agreement ("IFTA") for the tax years 2004 and 2005, along with penalties and interest. Taxpayer does not protest the proposed assessments for 2005. Taxpayer protests that the IFTA tax for 2004 was based on lack of documentation for two months of 2004. Taxpayer states that the documentation was destroyed by a disgruntled employee, but that it now has documentation to establish its actual fuel purchases and consumption for those months. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. IFTA–Audit Method.**

**DISCUSSION**

Taxpayer protests the imposition of IFTA taxes for the tax year 2004. The Department conducted an audit and determined that taxpayer owed additional IFTA taxes for that year. The Department based its decision on the best information available to it, since taxpayer had no records to review for the two months in question. Taxpayer protests that its records were destroyed by a disgruntled employee, and that the records for the rest of the audit period show a consistent purchase and use of fuel at a lower rate.

Taxpayer argues that by its calculations the fuel consumption used in the audit determination was incorrect. IFTA art. A550 provides that in the absence of adequate records, a standard 4.00 miles per gallon (MPG) rate can be used to compute total fuel consumption. Given the absence of records to establish mileage and fuel consumption this was an appropriate method of calculation by the audit.

Taxpayer states that it would be out of business if its trucks got 4.00 MPG. The Department refers to IFTA art. VI.A.3, which states in relevant part:

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 drawn into question, the burden shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive.

At the administrative hearing, Taxpayer explained that during and after the audit there was ongoing litigation with the former disgruntled employee. As a result of that litigation, Taxpayer now has the original fuel receipts and daily logs for the two months in question. A review of the receipts shows that they are not yet organized and summarized for the Department's review. The Department will require Taxpayer to organize the documents with summary sheets which total the fuel purchases by vehicle, by quarter, by fuel (both bulk and on-road) and calculate the miles by jurisdiction and by quarter. Once the Department has the organized receipts and summary sheets listed above, a supplemental audit will review the new documentation and issue new assessments, if appropriate.

Taxpayer has taken the first step of meeting the burden of establishing by a fair preponderance of evidence that the assessments are erroneous or excessive, as required by IFTA VI.A.3. Taxpayer has provided documentation and analysis in support of its protest, however the documentation and analysis is incomplete. The hearing officer will keep the receipts Taxpayer provided for thirty (30) days after the issuance of this Letter of Findings. Taxpayer will be required to pick up the receipts from the hearing officer within those thirty days. Taxpayer will then have thirty (30) days to organize the receipts and create the summary sheets described above. As long as the Department receives the organized receipts and summary sheets within sixty (60) days of the issuance of this Letter of Findings, the Department will conduct a supplemental audit if warranted and issue new assessments if appropriate. If Taxpayer fails to meet the thirty day deadline for retrieval of the receipts or the subsequent thirty day deadline for submitting the organized receipts with summary sheets, the Department will not conduct a supplemental audit and the original assessments will stand as correct.

**FINDING**

Taxpayer's protest is sustained pending Taxpayer's retrieval, organization, summarization, and resubmission of the receipts in question, and pending verification by the audit division that a supplemental audit is justified.

**II. Tax Administration–Negligence Penalty.**

**DISCUSSION**

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which 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.

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

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.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under [IC 6-8.1-10-2.1\(a\)](#). While the assessments discussed in Issue I may be reduced, they may not be eliminated. Also, Taxpayer did have assessments for 2005. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#). The negligence penalty shall not be waived. If the assessments described in Issue I are reduced via supplemental audit, the penalties will be recalculated based on the new assessments.

**FINDING**

Taxpayer's protest is denied.

**CONCLUSION**

Taxpayer is sustained on Issue I, pending completion of organization and summarization, and pending verification by supplemental audit. Taxpayer is denied on Issue II.

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