DEPARTMENT OF STATE REVENUE

41-20080132.LOF

Letter of Findings: 08-0132
International Fuel Tax Agreement (IFTA)
For Tax Periods Including 2005 and 2006

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ISSUES

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 § R1210.300 (1998); IFTA Procedures Manual §§ P540, 550 (1998); IFTA Audit Manual § A550.100 (1998).

Taxpayer argues that the Department of Revenue's 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.

I. Interest/Ten-Percent Negligence Penalty.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-10-1(a); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(a)(4); IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer states that he is entitled to abatement of the ten-percent negligence penalty and the accumulated interest assessed against taxpayer following the audit of taxpayer's records.

STATEMENT OF FACTS

Taxpayer operates a trucking business both within the state and within neighboring states. The Department of Revenue (Department) conducted an audit of the taxpayer's records for the periods at issue. The audit determined that taxpayer did not maintain documentation sufficient to arrive at a conclusive determination of taxpayer's fuel tax liability. In the absence of that documentation, the audit based its determination of the additional fuel tax liability upon the "best information available." Taxpayer disagreed with the additional assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone and this Letter of Findings results.

I. Fuel Tax Assessment.

DISCUSSION

IFTA (International Fuel Tax Association) is an agreement between various United States jurisdictions and Canada allowing for the equitable 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 jurisdictions in which taxpayer operated its trucks based upon the amount of fuel consumed while traveling in each of those taxing jurisdictions.

Taxpayer maintains that the assessment of additional information was erroneous because the Department mistakenly relied upon the "best information available" and that use of the four-mile-per-gallon standard constituted "extortion, or theft." In addition, Taxpayer states that the Department failed to correctly credit him for fuel tax previously paid.

A. "Best Information Available."

Taxpayer states that the audit's methodology was "horrific, and it should be criminal." The audit report states that, "The scope of this audit was limited by the inadequate or non-existent records presented by licensee." The audit report further states that, "[S]ome 'audited' figures may be the result of the examiner using estimates from the limited records, the use of a statutory or average MPG, or the use of reported figures."

Each taxpayer is required to maintain and preserve accurate and complete records that can be made available during an audit. 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 (1998).

The Department assumes that "source documents" referred to above consist of the original records of the transaction which give evidence that a particular business transaction occurred. At a minimum, a source document would include the date, the amount, and a description of the particular transaction. When practical – and beyond these minimum requirements – source documents should include the name and address of the

parties to the transaction and indicate whether tax was paid.

In this case, and in the absence of complete "source documents," the audit relied upon the "best information available" consisting of limited "reported figures," and the "average MPG," eventually completing a final "Audit Summary" based upon the "best information available."

IC § 6-8.1-5-1(b) states that, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department."

There is nothing in the audit report or in the information provided by taxpayer which refutes the audit's decision to prepare its report based upon the "best information available" an avenue statutorily available pursuant to IC § 6-8.1-5-1(b). There is nothing in the audit report or in the information provided by taxpayer which refutes the conclusion that the audit "reasonably" concluded that taxpayer owed additional fuel tax.

B. 4.00 MPG Fuel Consumption Calculation.

Taxpayer states that the audit erred in using a standard four miles-per-gallon (4.00 MPG) as the basis for determining fuel consumption. Taxpayer argues that, "There are no more 4 mile to the gallon trucks out on the road, at least not working trucks feeding families." Taxpayer concludes that the audit's use of the 4.00 MPG calculation was "criminal to say the least."

International Fuel Tax Association (IFTA) Audit Manual § A550.100 (1998) requires that in the absence of adequate records, a standard 4.00 MPG rate can be used to compute total fuel consumption. Given the absence of source records to establish mileage and fuel consumption the use of standard rate was an appropriate method of calculation by the audit. In addition, the Department refers to IFTA Articles of Agreement § R1210.300, 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. (*Emphasis added*).

Any injury taxpayer sustained by the audit was self-inflicted stemming from the failure to provide source documents at the time the audit was completed. There is nothing to indicate that the auditor acted arbitrarily or would have excluded or ignored whatever source documents the taxpayer chose to provide whether those documents indicated that taxpayer consumed 4, 10, or 20 miles-per-gallon in his vehicle. The audit was both reasonably and legally entitled to employ the 4.00 MPG estimate it used.

C. Mileage/Taxes Paid.

Taxpayer argues that the Department's audit failed to properly credit him with "pre-paid" taxes which are those motor fuel taxes paid at pump. In addition, taxpayer states that the Department failed to properly apportion "in-state" and "out-of-state" miles. As a threshold issue, it is the taxpayer's burden to refute the audit's conclusion.

IFTA Articles of Agreement § R1210.300 (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." (*Emphasis added*). That standard is echoed in IC § 6-8.1-5-1(b) which states in part that, "The notice of proposed assessment is prima facie evidence that the department'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 wrong." (*Emphasis added*).

Taxpayer has provided two sets of documents which purport to disprove the audit's conclusion as to the amount of fuel tax owed. Taxpayer has provided copies of the original fuel purchase receipts arguing that it should be given credit for the motor fuel taxes previously paid. In addition, taxpayer has provided a financial spreadsheet which includes "mileage," "actual mileage," "destination," and various other categories of information. In the case of the fuel purchase receipts, the Department agrees that these particular documents constitute "source documents" and should be reviewed to determine the amount of previously paid taxes. The Audit Division is requested to review these particular source documents and make whatever adjustment to the assessment is warranted.

However, in the case of the financial spreadsheet, the Department is unable to agree that the spreadsheet represents an original source document. In the absence of the source documents underlying the spreadsheet information, the Department is unable to make the mileage adjustments requested.

FINDING

Taxpayer's objection to the audit methodology is denied. Taxpayer's submission of the original fuel purchase receipts is accepted and the Audit Division is requested to make the appropriate adjustment to the assessment. Taxpayer's submission of the financial spreadsheet is rejected.

II. Interest/Ten-Percent Negligence Penalty.

DISCUSSION

Taxpayer believes that it is entitled to abatement of the ten-percent negligence penalty because it had a reasonable cause for its position.

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)(4) 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.*

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." 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(b), "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 negligence penalty – is presumptively valid.

Taxpayer strongly disagrees with the audit's methodology, the record keeping requirements imposed on his trucking business, and the Department's decision to impose the penalty based upon the failure to produce records at the time of the audit. Taxpayer states the penalty is "illegal, immoral, improper, and that [Department is] in need of a massive wakeup call...." Nonetheless, the taxpayer's failure to produce the records as originally requested, the strongly-worded correspondence which ensued, and the necessity to bring what should have been a routine review of everyday paperwork to administrative review, has extended and complicated the resolution of this matter beyond all reason.

Taxpayer also asks that any interest be abated. Taxpayer's liability for accumulated interest is imposed pursuant to IC § 6-8.1-10-1(a) which states as follows:

> If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Any interest due is imposed by the statute cited, and cannot be waived.

FINDING

Taxpayer's protest is denied. Neither the penalty nor the accumulated interest will be waived.

SUMMARY

The Audit Division is requested to review copies of the original fuel purchase receipts and is requested to adjust the assessment as warranted. In all other respects, taxpayer's protest is denied.

Posted: 07/02/2008 by Legislative Services Agency
An html version of this document.