**DEPARTMENT OF STATE REVENUE**

42-20080015.LOF

**Letter of Findings Number: 08-0015**
**International Registration Plan; Commercial Vehicle Excise Tax; Motor Carrier Fuel Tax**
**For the Tax Periods 2003-2005**

**NOTICE:** Under § IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration – Statute of Limitations.**

**Authority:** IC § 6-8.1-5-2(a); IC § 6-8.1-5-2(f); IC § 6-8.1-5-1.

The Taxpayer argues that the Statute of Limitations bars the assessment of the Motor Carrier Fuel Tax for 2003.

**II. International Registration Plan Fees and Commercial Vehicle Excise Tax – Constitutional Issues.**

**Authority:** U.S. Const. art. I § 8 cl. 3; Ind. Const. art. 4. § 1.

The Taxpayer argues that several of the assessments are barred by the United States Constitution and the Indiana Constitution.

**III. International Registration Plan Fees - Imposition.**

**Authority:** IC § 6-6-4.1-14; IC § 9-28-4-6; IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a). International Registration Plan Audit Procedures Manual § 401.2.

The Taxpayer protests the imposition of International Registration Plan fees.

**IV. Commercial Vehicle Excise Tax – Imposition.**

**Authority:** IC § 6-6-5.5-3(a); IC § 6-6-5.5-3(b).

The Taxpayer protests the imposition of Commercial Vehicle Excise Tax.

**V. Motor Carrier Fuel Tax – Imposition.**

**Authority:** IC § 6-6-4.1-4; IC § 6-8.1-3-14; IC 6-6-4.1-24(b); IC § 6-6-4.1-20; IC § 6-8.1-5-4(a); International Fuel Tax Agreement Audit Manual § 900.3.

The Taxpayer protests the imposition of the Motor Carrier Fuel Tax.

**VI. Tax Administration - Ten Percent Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; IC § 6-6-4.1-23; 45 IAC 15-11-2(b)(c).

The Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

The Taxpayer was an Indiana trucking company during the tax periods 2003-2005. Along with providing trucking services, the Taxpayer provided brokerage services and leased units to other companies. Pursuant to an audit, the Indiana Department of Revenue (Department) assessed additional International Registration Plan Fees (IRP), Commercial Vehicle Excise Tax (CVET), Motor Carrier Fuel Tax (MCFT), interest, and penalty. The Taxpayer protested the assessments and a hearing was held. This Letter of Findings results.

**I. Tax Administration – Statute of Limitations.**

**DISCUSSION**

The Department and the Taxpayer signed an agreement extending the Statute of Limitations to April 30, 2007. The Department reviewed the Taxpayer's records and prepared a Motor Carrier Fuel Tax audit for the tax periods 2003 – 2005. This audit was issued on April 2, 2007. The Department simultaneously issued a Notice of Proposed Assessment based on the audit findings. The Taxpayer submitted a letter protesting the assessment on May 2, 2007. As a result of the issues raised in the protest letter, the Department requested additional documentation. The Taxpayer provided the additional documentation which the Department reviewed. On November 5, 2007, the Department issued a Supplemental Audit and new Notice of Proposed Assessment.

The Department argues that its April 2, 2007, Notice of Proposed Assessment tolled the Statute of Limitations. The Taxpayer disagrees, arguing that the first Notice of Proposed Assessment/Refund merely allowed the Department additional time to complete its audit prior to its issuance of the actual Notice of Proposed Assessment on November 5, 2007, several months after the date required by the Statute of Limitations.

The issue to be determined is whether the Department's April 2, 2007, Notice of Proposed Assessment/Refund tolled the Statute of Limitations.

In the case of Motor Carrier Fuel Tax, the Statute of Limitations requires that assessments be made within three years of the "end of the taxable year which contains the taxable period for which the return is filed." IC § 6-8.1-5-2(a). Extensions of time may be granted if both the Department and Taxpayer agree on the extension period. IC § 6-8.1-5-2(f).

IC § 6-8.1-5-1 sets out the procedure for the issuance of a tax assessment as follows:

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.

In this case, both the Taxpayer and Department agreed to extend the time period for assessment of the 2003 Motor Carrier Fuel Tax to April 30, 2007. The Department argues that it issued the Notice of Proposed Assessment on April 2, 2007, well within the time required by the extension of time.

Although at first blush the issuance of the Notice of Proposed Assessment appears to have been made in accordance with the law and timely, the Taxpayer argues that the April 2, 2007, notice was merely a unilateral extension of time for the Department to complete its auditing procedures. The Taxpayer points out that after the first Notice of Proposed Assessment, an employee of the Department's Audit Division continued reviewing documentation and revised the audit based upon this review.

The Taxpayer errs in this conclusion. The April 2, 2007, Notice of Proposed Assessment fulfilled the statutory requirements of IC § 6-8.1-5-1. The assessment was based on the best information available to the Department – the results of the April 2, 2007, audit based on a review of the Taxpayer's documentation. Also, it was designated a "Notice of Proposed Assessment/Refund." The notice was an assessment of a proposed tax liability as required to toll the Statute of Limitations pursuant to IC § 6-8.1-5-2(a) and IC § 6-8.1-5-2(f).

After the issuance of the April 2, 2007, audit report and Notice of Proposed Assessment, the Taxpayer protested the Department's findings as authorized by IC § 6-8.1-5-1(c). In response to this protest, the Department requested additional documentation which the Taxpayer provided. After considering the protest and review of the documentation provided, the Department issued the Supplemental Audit, amended the amount of tax due, and issued the second Notice of Proposed Assessment/Refund on November 5, 2007.

The Taxpayer's protest of the April 2, 2007, assessment indicates that at the time, even the Taxpayer considered the first Notice of Proposed Assessment/Refund an actual proposed assessment as required by IC § 6-8.1-5-1 to toll the Statute of Limitations. The Taxpayer continued to act as if the Statute of Limitations had been tolled at that time. The Taxpayer filed a protest and proceeded with the supplemental audit proceedings which resulted in the issuance of the November 5, 2007, supplemental audit. These actions by the Taxpayer also support the Department's position that the April 2, 2007, Notice of Proposed Assessment/Refund was issued in a timely manner.

The Department fulfilled its statutory duty of issuing a proposed assessment based on the best information available to it pursuant to the provisions of IC § 6-8.1-5-2(a) and IC § 6-8.1-5-2(f).

**FINDING**

The Taxpayer's protest is respectfully denied.

**II. Tax Administration – Constitutional Issues.**

**DISCUSSION**

The Taxpayer argues that the International Registration Plan Fees (IRP) and Commercial Vehicle Excise Tax (CVET) assessments are barred by the United States Constitution. Specifically, the Taxpayer argues that the 100 percent apportionment of International Registration Plan Fees to Indiana and 100 percent assessment of Commercial Vehicle Excise Tax violate the Commerce Clause of the U.S. Const. art. I, § 8, cl. 3. The Taxpayer also argues that the Indiana General Assembly's delegation of legislative authority to the International Registration Plan is unconstitutional. Finally, the Taxpayer argues that since the Indiana General Assembly has not adopted the changes made to IRP since Indiana first adopted it on March 1, 1987, the Department's reliance on provisions of the IRP violates the Ind. Const. art. 4, § 1.

An administrative hearing at the Indiana Department of Revenue is not the proper forum to determine the constitutionality of an Indiana statute.

**FINDING**

The Taxpayer's protest is respectfully denied.

**III. International Registration Plan Fees -Imposition.**

**DISCUSSION**

The International Registration Plan (IRP) is an agreement between various United States jurisdictions and Canada allowing for the proportional registration of commercial vehicles and providing for the recognition of such registrations in the participating jurisdictions. The agreement's goal is to promote the fullest possible use of the highway system by authorizing apportioned registration of fleets of vehicles. The agreement itself is not a statute, but was implemented in Indiana pursuant to the authority granted under IC § 6-6-4.1-14 and IC § 9-28-4-6.

All assessments by the Department are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. Taxpayers have the duty to maintain books and records of their affairs and present those to the Department for review upon the Department's request. IC § 6-8.1-5-4(a).

The Taxpayer reported its miles on a commercial software program and kept original paper records for back up. The Department evaluated the Taxpayer's original records backing up the miles reported on the software program. The Department was unable to correlate the Taxpayer's original records with the miles as reported on the commercial software program. Although the Taxpayer did not have odometer readings to compare to the commercial software program for the entire audit period, the Taxpayer did have backup odometer readings for portions of the audit period. The odometer readings the Taxpayer actually had for portions of the audit period indicated that significantly more miles were driven than reported on the commercial software program. These

problems rendered the Taxpayer's records inadequate for the Department to determine the percentage of the miles that the Taxpayer's trucks were driven in Indiana as opposed to miles driven in other states. Therefore, in accordance with the International Registration Plan Audit Procedures Manual § 401.1, the Department considered the trucks to have been driven only in Indiana. The Department imposed IRP fees based on the presumption that all of the trucks in the Taxpayer's fleet were driven only in Indiana. The Taxpayer was unable to sustain its burden of proving that this method of determining the IRP fees resulted in an incorrect conclusion.

**FINDING**

The Taxpayer's protest is respectfully denied.

**IV. Commercial Vehicle Excise Tax – Imposition.**

**DISCUSSION**

The Department assessed commercial vehicle excise tax (CVET) pursuant to IC § 6-6-5.5-3(a). The tax assessment was based upon one hundred percent of the Taxpayer's miles. The Taxpayer protested the assessment contending that the tax should only have been apportioned and only imposed on the Taxpayer's Indiana miles.

The authority to apportion Indiana miles for CVET purposes is found at IC § 6-6-5.5-3(b) as follows:

> Owners of commercial vehicles paying an apportioned registration to the state under the International Registration Plan shall pay an apportioned excise tax calculated by dividing in-state actual miles by total fleet miles generated during the preceding year. If in-state miles are estimated for purposes of proportional registration, these miles are divided by total actual and estimated fleet miles.

The statute ties the apportionment of CVET to the apportionment of IRP fees. If the Taxpayer pays apportioned IRP fees, the Taxpayer is statutorily allowed to pay apportioned CVET. If the Taxpayer does not pay apportioned IRP fees, the Taxpayer is not allowed to apportion its CVET. In this case, the Department properly disallowed the apportionment of the Taxpayer's IRP fees as discussed in Issue III of this Letter of Findings. Therefore, the Taxpayer cannot apportion for purposes of CVET and compute its tax due based only on its Indiana miles. The Department properly imposed CVET on all of the Taxpayer's miles.

**DISCUSSION**

The Taxpayer's protest is respectfully denied.

**V. Motor Carrier Fuel Tax – Imposition.**

**DISCUSSION**

The Taxpayer protests the Department's imposition of motor carrier fuel taxes (MCFT) pursuant to IC § 6-6-4.1-4. The Taxpayer has two bases for this protest. First, the Taxpayer asserts that certain trucks were not subject to the tax. Secondly, the Taxpayer protests the assessment of MCFT on all of the Taxpayer's miles rather than the apportioned Indiana miles in conformity with the International Fuel Tax Agreement (IFTA).

After the original audit, the Taxpayer protested the assessment of MCFT on a certain group of trucks. After the audit, the Taxpayer submitted documentation supporting this protest. The Department reviewed the documentation. Based upon this review, the Department removed several motor vehicles from the group on which MCFT was assessed. The MCFT, interest, and penalties associated with the motor vehicles that were removed from the original assessment were not included in the Department's supplemental audit. The Taxpayer did not offer any additional information to sustain its burden of proving that the remainder of the motor vehicles in this group should be exempt from the imposition of MCFT and removed from the assessment at this time.

The Taxpayer also protests the assessment of MCFT on all of the Taxpayer's miles rather than the apportioned Indiana share of miles pursuant to IFTA. The Taxpayer operated trucks in Indiana. As such, it operated on Indiana highways and consumed motor fuel. Therefore, the Taxpayer was subject to MCFT. IC § 6-6-4.1-4(a).

The issue to be determined is whether the Department should have apportioned the Taxpayer's miles pursuant to IFTA and only assessed on the Indiana apportioned share of miles.

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor carrier fuel taxes. The agreement's goal is to simplify the tax, licensing, and reporting requirements of interstate motor carriers such as the Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-8.1-3-14.

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id*. Taxpayers have the duty to maintain books and records and present those to the Department for review upon the Department's request. IC 6-6-4.1-20; IC § 6-8.1-5-4(a).

The Taxpayer's records posed the same problems for purposes of IFTA as they did for IRP. The Taxpayer reported its miles on a commercial software program. The Taxpayer did not have adequate back up records for the Department to ascertain that the commercial software program fairly tallied the Taxpayer's total miles or Indiana miles. Again, for periods during the tax year that the Taxpayer did provide backup records, the documentation indicated that the commercial software program significantly understated the mileage driven. Pursuant to the International Fuel Tax Agreement Audit Manual § 900.3, if the Taxpayer's records are inadequate, the entire mileage will be assigned to the Taxpayer's home state. In this case, the Taxpayer's records did not

support the Taxpayer's mileage reported based on the commercial software program. Therefore, the Department properly imposed MCFT on all the Taxpayer's miles pursuant to IC § 6-6-4.1-4.

**FINDING**

The Taxpayer's protest is respectfully denied.

**VI. Tax Administration** - **Ten Percent Negligence Penalty.**

**DISCUSSION**

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1 and IC § 6-6-4.1-23. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

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.

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2(c) as follows:

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. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;
(2) judicial precedents set by Indiana courts;
(3) judicial precedents established in jurisdictions outside Indiana;
(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer had a duty to maintain adequate records to support its tax returns. The Taxpayer breached this duty. This constitutes negligence and the penalty was properly imposed.

**FINDING**

The Taxpayer's protest to the imposition of the penalty is denied.

**CONCLUSION**

All the Taxpayer's protests are respectfully denied.

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