

**Letter of Findings Number: 08-0306
International Fuel Tax Agreement
For the Tax Periods May 2005-2006**

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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. International Fuel Tax Agreement – Imposition.

Authority: IC § 6-8.1-3-14; [IC 6-8.1-5-1\(b\)](#); [IC 6-8.1-5-4](#).

The Taxpayer protests the Department's calculation of tax pursuant to the International Fuel Tax Agreement.

II. 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 is a trucking concern. After an audit, the Indiana Department of Revenue (Department) assessed additional International Fuel Tax Agreement (IFTA) taxes, interest, and penalty against the Taxpayer. The Taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. International Fuel Tax Agreement – Imposition.

DISCUSSION

The Taxpayer protests the Department's imposition of additional taxes pursuant to IFTA.

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.

The taxpayer protests the department's imposition of taxes pursuant to IFTA.

The taxpayer was a trucking concern that was based in Indiana. It operated both in and outside of Indiana. As such, it operated on Indiana and other state highways and consumed motor fuel. Therefore, the taxpayer was subject to IFTA taxes.

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. [IC 6-8.1-5-4](#). 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's first point of protest concerned the assessment of taxes for the time period it operated under a lease agreement with another trucking company. Pursuant to the terms of the agreement, the other company was responsible for the calculation and payment of IFTA taxes. In support of its argument, the taxpayer submitted a letter from the other company stating that the relationship was ended April 30, 2005. The Department's audit started on May 1, 2005. Therefore, the assessment does not include the time period when the taxpayer was leasing its services to the other company.

The taxpayer's second point of protest concerned the taxes assessed for April, May, and part of June 2006 when the taxpayer took an extended vacation. The assessment for the quarter in which the taxpayer took the extended vacation is significantly lower than the other quarters of 2006. Therefore, it appears that the Department did not assess taxes for the period when the taxpayer took his extended vacation.

After the hearing, the taxpayer submitted substantial documentation of its trips during the tax period that had not been submitted during the audit. The department will review this documentation to verify the correct amount of IFTA taxes due for the tax period May 2005-2006.

FINDING

The taxpayer's protest to the assessment of taxes while it leased its trucking service to another company is respectfully denied. The taxpayer's protest to the assessment of taxes during his extended vacation in 2006 is respectfully denied. The taxpayer's newly submitted records will be returned to the Special Tax Division for further review and modification of the assessment if warranted.

II. 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; 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 provided substantial documentation to indicate that its failure to pay the assessed motor carrier tax was due to reasonable cause rather than negligence.

FINDING

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

CONCLUSION

The taxpayer's protest to the assessment of taxes while it leased its trucking service to another company is respectfully denied.

The taxpayer's protest to the assessment of taxes during his extended vacation in 2006 is respectfully denied.

The taxpayer's newly submitted records will be returned to the Special Tax Division for further review and modification of the assessment if warranted.

The taxpayer's protest to the imposition of the negligence penalty is sustained.

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