

**Letter of Findings Number: 08-0672****IFTA****For Tax Years 2006-07**

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**ISSUES****I. IFTA–Audit Method.**

**Authority:** IFTA A550; IFTA R1210.

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

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

**Authority:** IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of interest and 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 2006 and 2007, along with penalties and interest. Taxpayer explained that most of its records had been destroyed by an employee. Due to the substantial lack of records, the Department used the best information available to reach its proposed assessments. After the Department issued its initial audit report, Taxpayer provided the Department with additional information which Taxpayer believed would reduce the assessments. The Department conducted a supplemental audit which did reduce the assessments, but did not eliminate the assessments. Taxpayer requested an administrative hearing to protest the imposition of the remaining IFTA taxes, interest, and penalties. 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 years 2006 and 2007. The Department conducted an audit and determined that taxpayer owed additional IFTA taxes for those years. The Department based its decision on the best information available to it, since taxpayer had incomplete records to review. Later, after the Department issued its initial audit report and proposed assessments, Taxpayer provided additional documents which resulted in a supplemental audit which reduced the amount of proposed IFTA taxes.

Taxpayer argues that the fuel consumption calculations used in the audit determination were incorrect. IFTA A550.100 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.

The Department refers to IFTA 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.

At hearing, Taxpayer provided total sheets explaining where its trucks operated during the years at issue. Taxpayer also provided documents which explain that one truck was purchased during the audit period. Taxpayer states that this means that the truck could not have been used during the entire audit period and that the assessments should be reduced correspondingly.

After review of the total sheets and documents regarding the truck purchased during the audit period, the Department cannot agree with Taxpayer. There is no documentation supporting the total sheets or explaining how the total sheets affect the audit numbers. There is also no documentation supporting Taxpayer's position that the truck which was purchased during the audit period would reduce the audited amount of total miles driven or fuel purchased by Taxpayer's company. There is still insufficient documentation to establish the amount of miles driven or fuel purchased. The Department has already conducted a supplemental audit using what documentation Taxpayer was able to provide. No new documents regarding miles driven or fuel purchased were provided in the hearing process. Taxpayer has not met the burden imposed by IFTA R1210.300.

**FINDING**

Taxpayer's protest is denied.

**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 interest. As provided by IC § 6-8.1-10-1(e), the

Department may not waive interest. Also, 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\(a\)](#). 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.

#### **FINDING**

Taxpayer's protest is denied.

#### **CONCLUSION**

Taxpayer is denied on Issue I. Taxpayer is denied on Issue II.

*Posted: 06/24/2009 by Legislative Services Agency*

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