

Letter of Findings Number: 08-0695
International Fuel Tax Agreement (IFTA) and
International Registration Plan (IRP)
Tax Years: 2005-2006

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ISSUES

I. IFTA – Sufficiency of Documentation.

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-14(a); IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-5-4(a); IFTA Articles of Agreement § R1210.300 (1998).

Taxpayer protests the findings of the audit and requests a re-audit.

II. IRP – Assessment.

Authority: IC § 6-6-4.1-14; IC § 6-8.1-3-14.

Taxpayer protests the assessment, which was based on the same information that produced the IFTA assessment.

III. Tax Administration – Ten Percent Negligence Penalty.

Authority: IC § 6-6-4.4-23(a); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer protests the imposition of the negligence penalty.

IV. Tax Administration – Interest.

Authority: IC § 6-8.1-10-1(a); IC § 6-8.1-10-1(e).

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation that is a subsidiary of an Illinois corporation. They are in business as a common carrier, transporting, among other things, steel coils, bars, and sheets.

Taxpayer was assessed fuel tax as a result of an International Fuel Tax Agreement ("IFTA") audit of the 2005 and 2006 tax years and an International Transportation Plan ("IRP") audit of the 2006 tax year. The audit determined that the Taxpayer did not maintain documentation sufficient to arrive at a conclusive determination of their fuel tax liability. Taxpayer protests the assessment of fuel tax based on the lack of documentation. Taxpayer states that the documentation was not provided to the auditor because the employee who had provided the documentation to the auditor was suffering from a mental illness and did not fully comprehend what he needed to provide. Taxpayer now has documentation to establish its actual fuel purchases and consumption for the audit period.

I. IFTA – Sufficiency of Documentation.

DISCUSSION

Taxpayer protests the Department's imposition of motor carrier fuel 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 § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated trucks in Indiana. As such, it operated on Indiana highways and consumed motor fuel. Therefore, the Taxpayer was subject to motor carrier fuel IFTA taxes. IC § 6-6-4.1-4(a).

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. The taxpayer has a 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 Department conducted an audit and determined that Taxpayer owed additional IFTA fuel taxes for that year. Taxpayer did not provide sufficient records. Due to the lack of documentation, the Department assessed tax based upon the best information available. Taxpayer argues that the employee who provided the records to the Department was suffering from a mental illness, which caused him to not fully comprehend what he was supposed to provide to the Department. Taxpayer has now provided additional records to show that there was additional fuel purchased that was not accounted for in the audit, which Taxpayer believes will change the assessment amount.

A review of the receipts provided after the hearing shows that Taxpayer did provide additional fuel receipts that were not accounted for in the audit. However, Taxpayer only provided mileage sheets for one month in 2006. The Department will require Taxpayer to provide mileage sheets for the entire sample quarter in 2006, as well as

mileage sheets for the 2005 sample quarter. If Taxpayer has any additional fuel receipts for the 2005 sample quarter, they should also be provided. The Department will further require a statement from the Taxpayer's representative explaining where their "Exhibit 15" originated and an explanation of how it works. Once the Department has this information, 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 Articles of Agreement § R1210.300 (1998). Taxpayer has provided documentation and analysis in support of its protest, however the documentation and analysis is incomplete to substantiate Taxpayer's full assertion. Taxpayer will have thirty (30) days to organize the mileage reports and provide the statement described above. If Taxpayer fails to meet the thirty day deadline for submitting this information, the Department will conduct a supplemental audit based solely on the purchase of the additional fuel receipts.

FINDING

Taxpayer's protest is sustained pending a supplemental audit.

II. IRP – Assessment.

DISCUSSION

Taxpayer protests the imposition of IRP fees for the tax year 2006. The IRP is a program for registering commercial vehicles that operate within member jurisdictions, including Indiana. The Indiana Code permits Indiana to join the IRP agreement via IC § 6-6-4.1-14 and IC § 6-8.1-3-14. IC § 6-6-4.1-14(a) states in relevant part:

The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter...

IC § 6-8.1-3-14 states in relevant part:

The department, on behalf of the state, may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements providing for the imposition of motor fuel taxes on an apportionment or allocation basis with the proper authority of any state...

Taxpayer claims that the information provided to support their position as to the result of the IFTA audit assessment will also change the assessment amount in the IRP audit. Therefore, as long as Taxpayer provides the mileage documentation in support of its protest mentioned in Issue I of this Letter of Findings within thirty (30) days, the Department will conduct a supplemental IRP audit as well.

FINDING

Taxpayer's protest is sustained pending a supplemental audit, should Taxpayer provide this documentation.

III. Tax Administration – Ten Percent 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 § 6-6-4.4-23(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. If the assessments described in Issues I & II are reduced via supplemental audit, the penalties will be recalculated based on the new assessments.

FINDING

Taxpayer's protest is respectfully denied.

IV. Tax Administration – Interest.

DISCUSSION

Taxpayer protests the interest assessed. Taxpayers who fail to file a return, to pay taxes, or who "incurs a deficiency upon a determination by the department," are subject to interest on the nonpayment. IC § 6-8.1-10-1(a). Interest continues to accrue until final payment is made. IC § 6-8.1-10-1(e) does not allow the waiver of interest by statute.

Taxpayer has not provided documentation in support of its protest of the imposition of interest, but more importantly, the Department is not authorized to waive interest under IC § 6-8.1-10-1(e). As such, the Department finds the assessment of interest proper and denies the interest protest.

FINDING

Taxpayer's protest is respectfully denied.

CONCLUSION

Taxpayer is sustained on Issues I & II, pending submission of additional information, and the completion of a supplemental audit. Taxpayer is denied on Issues III & IV.

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