DEPARTMENT OF STATE REVENUE

42-20080253.LOF

Letter of Findings: 08-0253
International Fuel Tax Agreement
For the Year 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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. International Fuel Tax Agreement – Assessment.

Authority: IC § 6-8.1-3-14; IC § 6-8.1-5-4; IFTA Articles of Agreement, R1210.300; IFTA Procedures Manual, P540, 550.

II. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana-based truck owner and operator. 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 year 2006, along with penalty and interest. Taxpayer protested the assessment. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. International Fuel Tax Agreement – Assessment.

DISCUSSION

Taxpayer protests the imposition of IFTA taxes for the tax year 2006. The Department's audit sampled the fourth quarter of 2006 because this was the quarter in which Taxpayer had the most mileage records. Taxpayer owned two trucks, Unit 54 and Unit 55. Both were selected for audit. The audit summary states that Taxpayer did not provide complete mileage and fuel records for at least one of the units in the sample quarter. A miles-per-gallon (mpg) analysis was not completed and continuity of dates, jurisdictions, travel points or odometer readings could not be verified.

IFTA (International Fuel Tax Association) is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of 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.

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." Id.

It is the taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases. As set out in 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 (1996).

The Department's proposed assessment of additional fuel tax, under IC § 6-8.1-5-1(b), is deemed to be "prima facie evidence that the department's claim for the unpaid tax is valid." That same section of the Indiana Code goes on to state that "the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." As noted above, IFTA Articles of Agreement, R1210.300 (1998), provides in part that, "[T]he 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).

Taxpayer initially protested that Unit 54 was not in use for a period in 2006. Taxpayer later conceded that the calculations used to establish audited miles appeared to be accurate. Two other points of protest remain.

A. Audited Miles - Odometer Reading

First, Taxpayer specifically protests the audit's determination of mileage traveled by Unit 55 in the third quarter of 2006.

Audited Total Miles were determined by subtracting Unit 55's beginning quarterly odometer reading from its ending quarterly odometer in the 4th quarter of 2006. Since beginning and ending quarterly odometer readings were not available during any other quarter of the audit period, average miles per day calculations were performed using each unit's available odometer readings during a particular period. The odometer miles during the period were divided by the number of days during the same period to determine an average miles per day.

Each unit's average miles per day were multiplied by the number of days during the quarter or the period of time each unit was plated or a part of the IFTA fleet to determine Audited Total Miles for both units in the 1st and 2nd quarters of 2006 and Audited Unit Miles for Unit 54 in the 3rd and 4th quarters of 2006. Audited Unit Miles for each Unit 54 and Unit 55 were summed to determine Audited Total Miles.

Taxpayer showed that the auditor received trip sheets for the fourth quarter which established that Unit 55 had an odometer reading of 557,671 on October 1, 2006 and of 589,454 on December 31, 2006. Therefore, the average miles traveled per day by Unit 55 in the fourth quarter was 349.264. This average was used to estimate that the total number of miles traveled by Unit 55 during the third quarter from July 24, 2006 (the day the unit was purchased) to October 1, 2006 were 24,099 miles. The Department therefore estimated that the odometer reading for Unit 55 on July 24 would have been 533,572 miles. Taxpayer provided a copy of the "Warranty Acknowledgement" from the dealership from which the unit was purchased. The "Warranty Acknowledgement" reported the odometer reading on July 24, 2006 was 539,593 miles. Taxpayer argues that the adjusted audited miles, therefore, need to be altered to reflect a higher beginning reading on the odometer, therefore reducing the Total Audited Miles.

Taxpayer is correct, the "Warranty Acknowledgement" establishes that Unit 55 had approximately 6,000 less miles than the audit calculated based on the best information available to the Department at the time.

B. Audited Gallons - Fuel Receipts

Second, Taxpayer protests the audit's calculation of gallons consumed and provides additional fuel receipts in support of its protest.

Audited Total Gallons were determined by summing on-road fuel receipt gallons in each quarter of the audit period. Also summed were gallons listed on available trip sheets during the audit period. An mpg analysis was performed for each unit in every quarter of the audit period. The analysis determined that each unit was missing fuel in certain quarters. Therefore, periods of time were found when each unit was not missing fuel to compute an audited mpg. Each unit's audited mpg was applied to each unit during quarters when they were missing fuel to compute Audited Total Gallons. Audited Tax Paid Gallons were determined by summing valid on-road fuel invoice gallons during each quarter of the audit period.

The Department's auditor informed Taxpayer that if additional documentation were provided, Taxpayer's assessment might be reduced. Subsequent to protest, Taxpayer provided 2006 fuel receipts that were not available at the time of the audit in order to provide accurate fuel information for Unit 55 from August through December of 2006, which according to Taxpayer represents the full use of the unit.

Taxpayer's provision of additional fuel receipts is subject to verification by audit that a supplemental audit is justified.

FINDING

Taxpayer is sustained as to its protest of Audited Miles (subpart A).

Taxpayer is sustained subject to verification by audit that a supplemental calculation of Audited Gallons is justified (subpart B).

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 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). Taxpayer should have maintained better records.

The negligence penalty shall not be waived. If the assessments described in Issue I are reduced via supplemental audit, the penalties will be recalculated based on the new assessments.

FINDING

Taxpayer's protest is denied.

CONCLUSION

As to Issue I: (1) Taxpayer is sustained on his protest of Audited Miles having shown that the odometer of Unit 55 started at 539,593 miles (subpart A); (2) Taxpayer is sustained on his protest of Audited Gallons subject to verification by audit that a supplemental audit is justified (subpart B).

As to Issue II: Taxpayer is denied on its protest of the negligence penalty. However, if the assessments described in Issue I are reduced via supplemental audit, the penalties will be recalculated based on the new assessments.

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