DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 09-0649P
International Fuel Tax Agreement (IFTA)
Tax Years: 2006 – 2007

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ISSUES

I. IFTA – Assessment.

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 Audit Manual § A550.100 (2007); IFTA Procedures Manual § P540 (2007).

Taxpayer protests the assessment of additional tax.

II. 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.

III. Tax Administration – Interest.

Authority: IC § 6-6-4.1-22; IC § 6-8.1-10-1; IFTA Articles of Agreement § R1230 (2008); IFTA Articles of Agreement § R1260 (2008).

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. Part of Taxpayer's operations included hauling logs. Taxpayer was assessed additional motor carrier fuel tax as a result of an International Fuel Tax Agreement ("IFTA") audit of the 2006 and 2007 tax years and an International Transportation Plan ("IRP") audit of the 2007 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 some of the documentation that was provided to the auditor was not considered, and that the fuel tax that it reported was accurate for the audit period and additional tax should not be assessed.

I. IFTA – Assessment.

DISCUSSION

Taxpayer protests the Department's assessment 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 taxing, 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 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. The Department concluded that Taxpayer did not provide sufficient records. Due to the lack of documentation, the Department assessed tax based upon the best information available.

Taxpayer explains that maintenance reports were used to calculate mileage when Taxpayer calculated how much IFTA fuel tax it owed. Taxpayer claims that the mileage figures from the maintenance reports were obtained from the hubometers on the trucks, which Taxpayer states are "99 percent accurate." Additionally, Taxpayer argues that fuel receipts were provided to the auditor, but that the auditor did not allow some of these receipts for various reasons. Taxpayer believes that the information that was used to report the tax was accurate, the tax was reported accurately, and that the tax has been paid. Therefore, Taxpayer concludes that the additional tax should not be assessed.

A. Mileage Records

The Department found the mileage records to be inadequate because no mileage records were provided to the Department for audit purposes. According to the IFTA Procedures Manual, § P540 states that:

.100 Licensees shall maintain detailed distance records which show operations on an individual-vehicle basis. The operational records shall contain, but not be limited to:

.005 Taxable and non-taxable usage of fuel;

.010 Distance traveled for taxable and non-taxable use; and

.015 Distance recaps for each vehicle for each jurisdiction in which the vehicle operated.

.200 An acceptable distance accounting system is necessary to substantiate the information reported on the tax return filed quarterly or annually. A licensee's system at a minimum, must include distance data on each individual vehicle for each trip and be recapitulated in monthly fleet summaries. Supporting information should include:

.005 Date of trip (starting and ending);

.010 Trip origin and destination;

.015 Route of travel (may be waived by base jurisdiction);

.020 Beginning and ending odometer or hubodometer reading of the trip (may be waived by base jurisdiction);

.025 Total trip miles/kilometers;

.030 Miles/kilometers by jurisdiction;

.035 Unit number or vehicle identification number;

.040 Vehicle fleet number;

.045 Registrant's name; and

.050 may include additional information at the discretion of the base jurisdiction.

The Department found that since mileage records were not provided, the starting and ending date of the trip; trip origins and destinations; beginning/ending of trip odometer readings and/or routes of travel; and total trip miles could not be determined. The recordkeeping was therefore determined to be inadequate. There were also naturally no monthly fleet summaries by unit or daily trip reports.

Without any mileage records, the Department was unable to audit miles, and the reported mileage figures were not changed. However, when an auditor finds that there is an "absence of adequate records, a standard of 4 MPG/1.7KPL will be used." IFTA Audit Manual § A550.100. The total taxable miles that Taxpayer reported were then divided by 4.0 mpg to arrive at the audited total taxable gallons for each quarter of the audit period. As the reported average miles per gallon was higher than 4 MPG, there was a variance between the reported total gallons and the audited total gallons, which made the taxable gallons total higher.

In addition to Taxpayer's position that the mileage figures came from the hubometers on the trucks, Taxpayer argues that most of the miles driven were not on highways, but farmers' fields and country roads. Taxpayer further argued that most drivers logged ten hour days, and could only be traveling at most 200 miles a day, and that the drivers would often switch trucks during the day.

The Department concludes that since Taxpayer failed to provide any mileage documentation to substantiate its figures, either during the audit or at the hearing, the standard of 4 MPG was properly used to calculate the audited total taxable gallons. Taxpayer has failed to show that the assessment was either erroneous or excessive.

B. Fuel Records

Taxpayer argues that fuel receipts were provided to the auditor, but that some of these receipts were not allowed by the auditor. Taxpayer explains that some of the receipts did not show the date that the fuel was purchased, they were hand-written, they did not reflect mileage, or they were unsigned.

According to the IFTA Procedures Manual, § P550 states that:

.100 The licensee must maintain complete records of all motor fuel purchased, received, and used in the conduct of its business.

.200 Separate totals must be compiled for each motor fuel type.

.300 Retail fuel purchases and bulk fuel purchases are to be accounted for separately.

.400 The fuel records shall contain, but not be limited to:

.005 The date of each receipt of fuel;

.010 The name and address of the person from whom purchased or received;

.015 The number of gallons or liters received;

.020 The type of fuel; and

.025 The vehicle or equipment into which the fuel was placed.

Taxpayer was not able to provide all of the receipts to substantiate the tax-paid credit that was claimed on the IFTA-101. Also, many of the receipts provided by Taxpayer did not list the unit number into which the fuel was placed. For both of these reasons, the Department determined the retail fuel purchase records were inadequate, which also warranted the use of the standard of 4 MPG in accordance with IFTA Audit Manual § A550.100. However, Taxpayer received the tax-paid credit for all the valid receipts from the audit period that Taxpayer provided to the Department. The valid service station purchase receipts that Taxpayer provided to the Department were totaled to arrive at the audited tax-paid gallons. After taking into account the tax-paid credits and any other credits or refunds that should be applied, the difference resulted in the adjusted tax due.

Taxpayer provided examples of fuel receipts after the hearing. It appears that some of these receipts had not been presented to the auditor prior to the hearing. An adjustment will be made where valid purchases can be substantiated, thus decreasing Taxpayer's liability.

FINDING

Taxpayer's general protest to the additional assessment of tax is denied. Taxpayer is sustained in part to the

extent that an adjustment will be made based on the additional valid fuel receipts that have been provided.

II. 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 6-6-4.4-23(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 respectfully denied.

III. Tax Administration – Interest.

DISCUSSION

Taxpayer protests the interest assessed. A Taxpayer who "incurs a deficiency upon a determination by the department" is subject to interest on the nonpayment. IC § 6-6-4.1-22 and IC § 6-8.1-10-1(a). The interest for incurring such a deficiency "is the rate of interest calculated under the interest provisions of the International Fuel Tax Agreement entered into by the department under IC 6-8.1-3-14." IC § 6-6-4.1-22(b). Since Taxpayer is based in a US jurisdiction "interest... accrue[s] at a rate of one percent per month." IFTA Articles of Agreement § R1230.100.

Interest continues to accrue until final payment is made. IFTA Articles of Agreement § R1230.300.010. IC § 6-8.1-10-1(e) does not allow the waiver of interest, and section R1260.100 of the IFTA Articles of Agreement states that to waive the interest for any other jurisdiction, "the base jurisdiction must receive written approval from the other jurisdiction."

Taxpayer has not provided documentation in support of its protest to 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 denied in part and sustained in part on Issue I; Taxpayer is denied as to Issues II & III.

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