

Letter of Findings: 07-0005
International Fuel Tax
For the Years 2003, 2004, 2005, 2006

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ISSUES

I. International Fuel Tax Agreement – Assessment.

Authority: IC § 6-6-4.1-24; IC § 6-8.1-3-14; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IFTA Articles of Agreement, R1210.300 (1998); IFTA Procedures Manual, P540, 550 (1996).

Taxpayer protests the imposition of IFTA assessments for 2003, 2004, 2005, and 2006.

II. Tax Administration – Negligence Penalty.

Authority: IC § 6-6-4.1-23; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer owned and operated a trucking business, originally formed with a partner, that primarily transported heavy steel parts. The Indiana Department of Revenue ("Department") conducted an International Fuel Tax Agreement ("IFTA") audit of Taxpayer. The Department issued proposed assessments for fuel tax imposed under the IFTA for the tax years 2003, 2004, 2005, and 2006, along with penalty and interest for each of the years. Taxpayer protested the assessments and penalties (at the time of the protest Taxpayer was in a bankruptcy proceedings). Prior to hearing Taxpayer provided some additional documentation which the Department reviewed and determined not to be conclusive of Taxpayer's protest. A hearing was held on the protest and this Letter of Findings ensues. Additional facts will be provided as necessary.

It should be noted that Taxpayer did not obtain his Indiana IFTA license until April 2003. In 2002, Taxpayer operated under another IFTA license belonging to an unrelated entity. The Department's audit found some fuel purchase invoices for the first quarter of 2003 and therefore concluded that Taxpayer was operating in this quarter. Taxpayer agreed that the first quarter of 2003 should be included in the audit.

I. International Fuel Tax Agreement – Assessment.

DISCUSSION

Taxpayer generally protested the imposition of additional IFTA taxes for the tax years at issue, which the Department assessed under the authority of IC § 6-6-4.1-24(a).

IFTA (International Fuel Tax Agreement) 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 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 § 6-6-4.1-24(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, revised 2007), provides in part that, "[T]he burden shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive." (Emphasis added).

For the years at issue Taxpayer owned and operated two trucks: unit 2281 which operated during the entire audit period, and unit 2107 which Taxpayer acquired in the 4th quarter of 2004. For most of the audited quarters, Taxpayer traveled a route to and from Indiana and Texas. Mostly, however, Taxpayer leased trucks and drivers from third parties – primarily from one party in particular. The third party paid for fuel and kept the records for these loads, insisting that it needed the records to substantiate tax deductions for the fuel costs it incurred.

Taxpayer argues the following in its December 12, 2007 brief in support of its protest:

- (1) Taxpayer's records demonstrate lower jurisdictional miles than calculated by the audit's sampling method, and that the proposed assessment should be lowered accordingly.
- (2) The method used by the audit in its "routing" of miles from Taxpayer's records is not explained with enough specificity in the audit summary to determine whether the method is reliable. Taxpayer requests that the Department either substantiate its methodology or disregard the sampling procedure in favor of calculations from Taxpayer's actual records, as produced by Taxpayer.
- (3) The Department's calculations as to the 1st quarter of 2003, for which no return was filed, should be adjusted downward to correspond with Taxpayer's typical activity in the other quarters – as evidenced by Taxpayer's records and Taxpayer's business circumstances.

Taxpayer furthermore states that it kept detailed records of all trips taken during the audit period. Taxpayer states that the records consist of the written invoices, trip confirmations, driver logs, fuel receipts for the two units that Taxpayer owned and operated, and some receipts for the third party's loads. Taxpayer provided its 2003 records along with the its brief. Taxpayer admits that he does not have some records but that his available records sufficiently document his loads and activity during the audit periods. Taxpayer argues that the unavailability of some records is due predominantly to events beyond his control, including his former partner keeping many records when the partnership severed, and the third party keeping fuel receipts because it paid for fuel, and some unreliability in the drivers keeping complete logs and other records during loads. Taxpayer admits he owes some tax, but does not believe he should be unfairly punished by the Department's "speculative sampling" procedure that resulted in an assessment far in excess of what is fairly due. After the hearing, Taxpayer summarized miles reported based on the records provided showing that the miles were increased from what Taxpayer had originally reported, but lower than what the Department assessed.

The Department rated Taxpayer's IFTA mileage and fuel records as inadequate.

The Department's audit did state that some drivers in some quarters maintained DOT logs for some units. The DOT logs did not record a breakdown in jurisdiction miles, routes of travel, or beginning and ending trip odometers. Some drivers in some quarters maintained trip sheets for some units. And, while some drivers recorded routes of travel on the trip sheets, most did not. Trip odometers were not recorded. The Department also stated that Taxpayer maintained pay reports and invoices that recorded ship dates, the driver's name, the unit number, load origins and load destinations. According to Taxpayer, the reported miles were computed using internet routing programs. However, the Department found that there was no documentation maintained to support what miles were generated for each trip.

The Department's audit states that Taxpayer recorded miles and gallons by unit on Great Lake Services worksheets for each quarter. Great Lakes Services then completed the IFTA 101's from the worksheet totals. The worksheets served as mileage and fuel summaries for Taxpayer; however, jurisdiction trip totals were not maintained for most units in most quarters therefore there was no way to trace reported trip totals to the worksheets. Also, activity was found for some units in some quarters where no worksheets were found. Thus, the Department rated fuel and mileage records as inadequate even though the totals that were recorded did generally reconcile to reported totals on the IFTA 101.

Only some fuel purchase invoices were maintained for some units. Also, some of the drivers who completed trip sheets did record fuel purchases, but Taxpayer did not maintain the fuel receipts. Taxpayer stated that the owner/operators of the units did not always provide him with receipts.

The Department's audit made four IFTA adjustments:

- (1) Audited Total Miles – for each quarter of the audit period, audited total miles were determined by summing the audited jurisdiction miles in each quarter. The audited total miles were carried to the IFTA 55.
- (2) Audited Jurisdiction Miles – Jurisdiction miles were audited for the 2nd, 3rd, and 4th quarters of 2003 and the 1st and 4th quarters of 2004. Travel recorded on the DOT logs, trip sheets, invoices and on-road fuel purchase invoices was routed in each quarter for each unit. The routed miles were compared to the reported jurisdiction miles for each unit. The greater of the routed or reported jurisdiction miles became the audited jurisdiction miles for that unit as there was no justification found to reduce the miles reported for a jurisdiction. The audited jurisdiction miles for all units in each of the quarters were summed to determine audited jurisdiction miles for the fleet. As for the 1st quarter of 2003, Taxpayer did not maintain any mileage records. And while some fuel invoices were found, since fuel invoices were missing for other quarters, there was no reason to believe that these invoices represented all of Taxpayer's purchases. Therefore, to determine audited jurisdiction miles for the 1st quarter of 2003, the audited jurisdiction miles for the remaining 2003 quarters were averaged. The 2nd and 3rd quarters of 2004 audited jurisdiction miles resulted from combined jurisdiction miles error factors which were calculated from the reported and audited jurisdiction mileage totals for the 1st and 4th quarters of that year. The combined jurisdictional mile error factors were carried to the IFTA 54s and multiplied times reported jurisdiction miles to calculate audited jurisdiction miles for the two quarters. The audited jurisdiction miles were carried to the IFTA 54s.
- (3) Audited Total Gallons – A census audit of total gallons was completed. The on-road fuel purchase invoices and on-road fuel purchases recorded on the trip sheets that had no matching fuel purchase invoice

were totaled in each quarter of the audit period. These totals were compared to reported jurisdiction gallon totals. A fuel and mileage analysis was completed for each unit in each sample quarter and the fleet in the non-sampled quarters. Fuel purchase invoices were missing or unaccounted for in all but the 1st, 2nd, and 3rd quarters of 2004. The audited total gallons were carried to the IFTA 55s.

(4) Audited Jurisdiction Tax Paid Gallons – A census audit of jurisdiction tax paid gallons was completed. All on-road fuel purchases with a valid fuel purchase invoice were totaled by jurisdiction in each quarter of the audit period. The audited jurisdiction totals were carried directly to the IFTA 54s.

As a preliminary matter, this Letter of Findings addresses Taxpayer's complaint that the Department's sampling method was "highly speculative." Initially, the Department chose one quarter from each of the years at issue as the basis for a full audit. Due to high error factors, the Department then added an additional quarter from each year, and then further added a third quarter for 2003 because it had particularly high error factors. In the end, the Department audited all three quarters of 2003 for which records were available, and two of the four quarters of 2004. The Department's sampling of quarters was exceedingly fair to Taxpayer, therefore, the Department must disagree with Taxpayer's complaint that the sampling method was "highly speculative."

Subsequent to the audit and prior to hearing on its protest, Taxpayer provided some modified Comdata sheets to document fuel purchases on certain dates, however none of the supporting invoices were provided. The Department determined that the data provided did not change the audit results. Taxpayer's protest thus proceeded to hearing.

After the hearing, Taxpayer provided additional documentation that consisted of quarterly summaries of loads that listed departure and destination points and miles for each load. For most of the quarterly summaries Taxpayer attached drivers' daily logs for a handful of the loads listed in the summary load report to support the mileage reported on the load summary report. However, it did not appear that even the daily logs of total mileage supported the miles listed on Taxpayer's load summary report. Taxpayer acknowledged at hearing that the drivers' logs contained additional information. Clearly, Taxpayer has tried to provide as much information as possible to support its protest, but without supporting source documentation it is difficult for Taxpayer to support its adjusted numbers.

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. In the absence of complete source documentation, the Department's original audit is reasonable and supported by law and IFTA Audit Manual procedures. Taxpayer has not "established by a fair preponderance of the evidence that the assessment is erroneous or excessive." IFTA Articles of Agreement, R1210.300 (1998).

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Negligence Penalty.

DISCUSSION

The Department assessed the ten percent negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty due to reasonable cause for Taxpayer's failure to properly report tax due, namely that the third party paid for all of the fuel and therefore is responsible for payment of the IFTA taxes.

The Department refers to IC § 6-6-4.1-23, which states:

(a) If a person:

- (1) fails to file a return for the tax due under this chapter on or by the due date for the return;
- (2) fails to pay the full amount of tax shown on the person's return on or by the due date for the payment; or
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;

the person is subject to a penalty.

(b) The penalty for a failure described in subsection (a) is the penalty calculated under the penalty provisions of the International Fuel Tax Agreement entered into by the department under [IC 6-8.1-3-14](#).

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 § 6-6-4.1-23. 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.

FINDING

Taxpayer's protest is respectfully denied.

CONCLUSION

Taxpayer's protest of the IFTA assessments is denied.

Taxpayer's protest of the negligence penalty is also denied.

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