

Letter of Findings Number: 08-0564
International Registration Plan
For the Registration Periods 2006 and 2007

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ISSUES

I. International Registration Plan Fees - Imposition.

Authority: IC § 9-28-4-6; IC § 6-8.1-5-1; IC § 6-8.1-5-4.

The Taxpayer protests the imposition of International Registration Plan fees.

II. Tax Administration - Ten Percent Negligence Penalty.

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

The Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state company that owns and operates a trucking business which hauls commodities and freight as well as mail for the U.S. Postal Service. The Indiana Department of Revenue ("Department") conducted two separate International Registration Plan ("IRP") audits of Taxpayer for the years 2006 and 2007 respectively, in addition to an IFTA audit for the years 2004, 2005, and 2006 (discussed in a separate LOF 42-20080563). The Department issued proposed assessments for IRP fees for 2006 and 2007 along with penalty and interest for each of the years. Taxpayer protested the assessments and penalties. A hearing was held on the protest and this Letter of Findings ensues. Additional facts will be provided as necessary.

The 2006 and 2007 audit reports have distinct control numbers, however, the protest of each of the IRP audits was docketed under one protest.

I. International Registration Plan Fees – Imposition.

DISCUSSION

Taxpayer disagreed with the IFTA and two IRP audits. Taxpayer's statement of protest does not specifically reference facts relating to the IRP audits beyond the "gap miles" issue specifically referenced in the IFTA protest which, as stated above, is addressed in a separate Letter of Findings (42-20080563).

The International Registration Plan is an agreement between various United States jurisdictions and Canada allowing for the proportional registration of commercial vehicles and providing for the recognition of such registrations in the participating jurisdictions. The agreement's goal is to promote the fullest possible use of the highway system by authorizing apportioned registration of fleets of vehicles. The agreement itself is not a statute, but was implemented in Indiana pursuant to the authority granted under IC § 9-28-4-6.

All assessments by the Department are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. Taxpayers have the duty to maintain books and records of their affairs and present those to the Department for review upon the Department's request. IC § 6-8.1-5-4(a).

For both the 2006 and 2007 registration years, the registrant stated that some of their vehicles were registered for Indiana IRP and IFTA and other vehicles were registered for Kentucky IRP and IFTA. Going forward, registrant will be reporting in Kentucky as its base jurisdiction. Registrant had included owner-operator vehicles in the reported totals for both IRP years, so the audit made relevant adjustments in both registration years. Taxpayer does not protest these adjustments.

For the IRP fee relating to the 2006 registration year, the audit made minor adjustments to jurisdictional miles based on the "gap miles" issue referenced above as well as other relatively minor adjustments. Since Taxpayer does not specifically protest IRP audit facts other than the IFTA related protest of "gap miles" and since Taxpayer's odometer recordings in the source documentation did indeed contain gaps, the 2006 IRP audit assessment stands.

As for the fees relating to the 2007 registration year, the audit sampled the fourth quarter of 2005 because many of the jurisdictions that the registrant travels in were represented and the quarter was also an IRP mileage reporting quarter for the 2007 IRP. Also, the auditor found that Taxpayer reported actual miles only for Indiana, while the other jurisdictions were reported as estimates – the auditor found actual miles in most of these jurisdictions which resulted in mileage percentage decreases in all but four jurisdictions. However, no refunds were given in jurisdictions where decreases were found due to inadequate mileage records. Similar to 2006, the auditor apportioned jurisdictional miles for each vehicle with gap miles. Since Taxpayer does not specifically protest IRP audit facts other than the IFTA related protest of "gap miles," and since Taxpayer's odometer recordings in the source documentation did indeed contain gaps, the 2007 IRP audit assessment also stands.

FINDING

The Taxpayer's protest is respectfully denied.

II. Tax Administration - Ten Percent Negligence Penalty.

DISCUSSION

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

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.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

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. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer has not shown that its failure to pay the assessed fees was due to reasonable cause rather than negligence.

FINDING

The Taxpayer's protest to the imposition of the penalty is denied.

CONCLUSION

Taxpayer's protest of the IRP registration fees for the years 2006 and 2007 is denied.

Taxpayer's protest of the negligence penalty is denied.

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