

Letter of Findings Number: 09-0933
International Fuel Tax Agreement (IFTA)
Tax Years: 2006 – 2007

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ISSUE

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); 49 CFR § 395.1; 49 CFR § 395.8; IFTA Audit Manual § A550.100 (2007); IFTA Procedures Manual § P540 (2007).

Taxpayer protests the assessment of additional tax.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. Taxpayer is an owner/operator and is in the business of hauling materials. 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. 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.

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 claims that the auditor requested that he provide daily logbooks to document mileage. Taxpayer explains that it did not keep copies of its daily logbooks, which would have shown mileage figures, because the United States Department of Transportation does not require drivers to keep daily logbooks if they do not travel outside of a 100 mile radius. Pursuant to 49 CFR § 395.8(a), a motor carrier must require their drivers to keep a record of duty status by entering it into a daily logbook entries or by using an onboard recording device. 49 CFR § 395.1(e)(1) does state that:

[a] driver is exempt from the requirements of [§] 395.8 if:

- (i) The driver operates within a 100 air-mile radius of the normal work reporting location;
- (ii) The driver, except a driver-salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;
- (iii) (A) A property-carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty;
(B) A passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty;
- (iv) (A) A property-carrying commercial motor vehicle driver does not exceed 11 hours maximum driving time following 10 consecutive hours off duty; or
(B) A passenger-carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and
- (v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:
 - (A) The time the driver reports for duty each day;
 - (B) The total number of hours the driver is on duty each day;

- (C) The time the driver is released from duty each day; and
- (D) The total time for the preceding 7 days in accordance with §395.8(j)(2) for drivers used for the first time or intermittently.

As Taxpayer maintains, he never kept a logbook, and his employer only required a time sheet be filled out. Taxpayer claims that the auditor requested that Taxpayer provide daily logbooks in order to show mileage, which Taxpayer argues conflicts with DOT regulations.

While it doesn't appear that the federal regulations would require Taxpayer to keep a daily logbook, Taxpayer, as an IFTA licensee, is also subject to the rules of IFTA. 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. (**Emphasis added**).

The audit report has no mention of the auditor requesting daily logbooks, but rather the auditor requested daily "trip reports" that Taxpayer was required to maintain under the IFTA Procedures Manual. Taxpayer was not able to provide daily trip reports or any other documentation that showed: the starting and ending date of the trip; trip origins and destinations; beginning/ending of trip odometer readings and/or routes of travel; and the total trip miles. Therefore, the record keeping was determined to be inadequate. Taxpayer was also not able to provide quarterly or monthly fleet summaries.

Taxpayer also maintains that it is not possible that his trucks operated at four miles per gallon, which was what was reflected in the audit. The reason that the audit used the four miles per gallon standard is that without any adequate mileage records, the Department was unable to audit miles. 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 divided by four miles per gallon 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 four miles per gallon, there was a variance between the reported total gallons and the audited total gallons. This variance resulted in the taxable gallons total being higher.

Following the hearing, Taxpayer's representative was able to provide quarterly summaries to the Department in support of its protest. The Department will conduct a supplemental audit if warranted and issue new assessments if appropriate.

FINDING

Taxpayer's protest is sustained pending the results of a supplemental audit.

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