DEPARTMENT OF STATE REVENUE

42-20090932.LOF

Letter of Findings Number: 09-0932
International Fuel Tax Agreement (IFTA)
and Special Fuel Tax
Tax Years: 2006 – 2009

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ISSUE

I. IFTA – Assessment.

Authority: IC § 6-6-4.1-2; IC § 6-6-4.1-4; IC § 6-6-4.1-6; IC § 6-6-4.1-14; IC § 6-6-4.1-20; IC § 6-6-4.1-24; IC § 6-8.1-3-14; IC § 6-8.1-5-4; 45 IAC 13-2-2; IFTA Articles of Agreement § R245 (2007); IFTA Articles of Agreement § R700 (2007); IFTA Articles of Agreement § R810 (2007); IFTA Articles of Agreement § R820 (2007); IFTA Articles of Agreement § R830 (2007); IFTA Articles of Agreement § R840 (2007); IFTA Articles of Agreement § R1000; IFTA Audit Manual § A730 (2007); IFTA Procedures Manual § P540 (2007).

Taxpayer protests the assessment of additional tax.

II. Special Fuel Tax – Assessment.

Authority: 26 U.S.C.A. § 4041; 26 U.S.C.A. § 4082; IC § 6-6-2.5-8.5; IC § 6-6-2.5-22; IC § 6-6-2.5-28; IC § 6-6-2.5-30; IC § 6-6-2.5-31; IC § 6-6-2.5-32; IC § 6-6-2.5-39; IC § 6-6-2.5-41; IC § 6-6-2.5-62; IC § 6-8.1-5-1.

Taxpayer protests the assessment of additional tax.

STATEMENT OF FACTS

Taxpayer is an Indiana based motor carrier. Taxpayer's operations include an excavation business, a limousine service, a charter bus service, a shuttle bus service, and a school bus service for charter schools. Taxpayer was assessed additional motor carrier fuel tax as a result of an International Fuel Tax Agreement ("IFTA") audit of the 2006 through 2008 tax years. Taxpayer was also assessed additional special fuel tax as a result of a special fuel tax audit of the 2008 year and the first quarter of 2009. The audit determined that the Taxpayer did not maintain sufficient documentation to arrive at a conclusive determination of their fuel tax liability. Taxpayer protests the assessment of additional tax.

I. IFTA – Assessment.

DISCUSSION

Taxpayer protests the Department's assessment of Indiana motor carrier fuel taxes under IC 6-6-4.1 and IFTA.

Tax assessments of motor carrier fuel tax 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; IFTA Audit Manual § A730. 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); IFTA Articles of Agreement § R700.

If a motor carrier consumes motor fuel on an Indiana Highway, there is an excise tax on this fuel usage pursuant to IC § 6-6-4.1-4(a) called the motor carrier fuel tax. This is further clarified in IC § 6-6-4.1-4(b) & (c), which states that:

> (b) The amount of motor fuel consumed by a carrier in its operations on highways in Indiana is the total amount of motor fuel consumed in its entire operations within and without Indiana, multiplied by a fraction. The numerator of the fraction is the total number of miles traveled on highways in Indiana, and the denominator of the fraction is the total number of miles traveled within and without Indiana.
> (c) The amount of tax that a carrier shall pay for a particular quarter under this section equals the product of the tax rate in effect for that quarter, multiplied by the amount of motor fuel consumed by the carrier in its operation on highways in Indiana and upon which the carrier has not paid tax imposed under IC 6-6-1.1 or IC 6-6-2.5.

IC § 6-6-4.1-2(b) provides that:

> This chapter does not apply to the following:
> ...
> (2) A school bus (as defined by the laws of a state) operated by, for, or on behalf of a:
> (A) state;
> (B) political subdivision (as defined in IC 36-1-2-13) of a state; or
> (C) private or privately operated school.
> (3) A vehicle used in casual or charter bus operations.

45 IAC 13-2-2 further provides that:

> The following commercial motor vehicles are exempt from the application of IC 6-6-4.1:
> ...

(2) a commercial motor vehicle that has a seating capacity for more than nine (9) passengers, excluding the driver, which is used to transport school children to and from school, and to and from school athletic games or contests or other school functions, operated on behalf of a state or political subdivision of a state as defined in IC 36-1-2-13, or a private or privately operated school;

(3) a commercial motor vehicle used in casual bus operations if:

(A) the vehicle is operated by or on behalf of an organization which is exempt under section 501(c) of the Internal Revenue Code; or

(B) the vehicle is privately owned and is operated for recreational purposes;

–EXAMPLE–

A bus is owned by a church and is used to transport its members to and from various church activities. The bus is exempt from the provisions of IC 6-6-4.1 because it is used in casual bus operations.

(4) a commercial motor vehicle used in charter bus operations and not in operations covering regularly scheduled routes:

(A) if a vehicle is used only in operations covering regularly scheduled routes, it is subject to the provisions set forth in IC 6-6-4.1;

(B) if a vehicle is used in both charter bus operations and in operations covering regularly scheduled routes, only its operations attributable to the regularly scheduled routes are subject to the provisions set forth in Indiana Code 6-6-4.1.

Taxpayer contends that all of its buses that operated solely within Indiana are charter buses, and were thus exempt from motor carrier fuel tax. This includes buses used for: normal charter bus operations, where Taxpayer was hired by the general public to transport a group of people on a single trip to a specific destination; school bus operations, where Taxpayer transported students pursuant to a contract with a charter school; and shuttle bus operations, where Taxpayer transported steel mill workers from a pick-up location to the steel mill pursuant to a contract with the steel mill. Taxpayer's position is that because all of these operations are negotiated by contract, that this makes them charter operations.

Taxpayer's school bus operations, where Taxpayer transported students pursuant to a contract with a charter school, are exempt from motor carrier fuel tax, but not for the reasons that Taxpayer put forth. The school buses were exempt under IC § 6-6-4.1-2(b)(2)(C) and 45 IAC 13-2-2(2) because the school buses were operated on behalf of a private or privately operated school. They would not be charter buses that are used "in operations covering regularly scheduled routes" for purposes of 45 IAC 13-2-2(4). On the other hand, Taxpayer's regular charter buses, used by Taxpayer when hired by the general public to transport a group of people on a single trip to a specific destination, were actually exempt from motor carrier fuel tax because they fall within the ambit of IC § 6-6-4.1-2(b)(3) and 45 IAC 13-2-2(3).

However, the steel mill shuttle buses used by Taxpayer in performance of the contract with the steel mill would not be considered charter buses. Since the shuttle buses were commercial motor vehicles that were used "in operations covering regularly scheduled routes" under 45 IAC 13-2-2(4), the shuttle buses would not be considered charter buses, and, therefore, are not exempt from motor carrier fuel tax.

Notwithstanding, as an IFTA licensee, Taxpayer was also subject to IFTA, which 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.

IFTA Articles of Agreement § R810 states that:

.100 Tax reporting under this Agreement shall be for qualified motor vehicles as defined in this Agreement.

.200 No member jurisdiction may require tax reporting or trip permitting for any vehicles based in any other member jurisdiction, other than qualified motor vehicles as defined in IFTA Articles of Agreement R245.

IFTA Articles of Agreement § R245 states that:

Qualified Motor Vehicle means a motor vehicle used, designed, or maintained for transportation of persons or property and:

.100 Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or

.200 Having three or more axles regardless of weight; or

.300 Is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle or registered gross vehicle weight.

Qualified Motor Vehicle does not include recreational vehicles.

All of the audited vehicles are considered "Qualified Motor Vehicles" for purposes of IFTA.

IFTA Articles of Agreement § R820 goes on to state that "All motor fuel acquired that is normally subject to consumption tax is taxable unless proof to the contrary is provided by the licensee. The licensee must report all fuel placed in the supply tank of a qualified motor vehicle as taxable on the tax return."

IFTA Articles of Agreement § R830 provides that:

.100 A member jurisdiction may exempt from taxation any use of motor fuel within its jurisdiction.

.200 **Fuel use defined as exempt by a particular jurisdiction must be reported under this Agreement**. For reporting tax-exempt miles or kilometers, the licensee is required to obtain the definition of operations that qualify for tax-exempt status from the jurisdictions of the Agreement.

.300 Licensees must submit claims for refund for tax paid on tax-exempt fuel directly to the respective jurisdiction. (See IFTA Articles of Agreement Sections R1000 and R1100.) (**Emphasis added**).

IFTA Articles of Agreement § R840 states that:

The licensee may include fuel purchases and travel by qualified motor vehicles operated exclusively within a jurisdiction by obtaining IFTA decals for the intrajurisdictional vehicle(s). Once decaled, the **intrajurisdictional vehicle(s) must continue to be reported until such time as the decal becomes expired or the vehicle(s) are no longer under the licensee's authority**. (**Emphasis added**).

As an IFTA licensee, Taxpayer was required to report all fuel and mileage for its commercial motor vehicles that traveled intrastate, regardless of whether the vehicles were exempt under Indiana law. Taxpayer did not report the mileage for any of the intrastate travel made by its commercial motor vehicles during the years in question. The audit also determined that Taxpayer did not maintain sufficient records on any of the subject vehicles. 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**).

Taxpayer maintained some trip sheets and some DOT logs for the charter buses, but only for some of the quarters audited and not for all trips made by Taxpayer. There were also no mileage records for the shuttle buses or for a dump truck used for Taxpayer's excavation business. Finally, there were no fleet summaries of mileage or fuel. Due to the lack of documentation, the Department assessed tax based upon the best information available. Following the hearing, Taxpayer was able to provide quarterly summaries to the Department in support of its protest. However, the summaries were handwritten, appeared to be rounded, and there was no accompanying supporting documentation. Thus, they were deemed inadequate.

The major cause of the increase in motor carrier fuel taxes was related to Taxpayer's steel mill shuttle buses. The shuttle buses were converted school buses. They ran routes exclusively for the steel mill 24 hours a day, seven days a week. Although there were a total of 30 buses that were used during the entire period of the contract, Taxpayer contends that only thirteen buses, at most, were owned at any given time. Further, Taxpayer contends that only eight of those thirteen shuttle buses were running each day, and the rest were backups in case of maintenance problems. Taxpayer argues that it was continually forced to discard the shuttle buses because the steel dust from the steel mills caused the buses to wear down prematurely.

Since Taxpayer did not believe that the shuttle buses were subject to IFTA, he did not report the mileage of these vehicles. Therefore, the auditor had to adjust the total miles based on the information in Taxpayer's records. Since there were no mileage records for the shuttle buses, odometer readings were used instead. Multiple odometer readings could be taken from only one of the shuttle buses, which meant that the information for this bus became the best information available to extrapolate average daily mileage and impute mileage information to the other shuttle buses. Further, Taxpayer failed to maintain records as to which buses were running at what times. Taxpayer did not keep information that showed when a shuttle bus was purchased and when it was scrapped. Thus, the auditor concluded that the shuttle bus was running during the entire period of the contract.

Taxpayer does not believe that the shuttle buses were subject to motor carrier fuel taxes, but contends that even if they were, it is unfair to factor in more than eight buses running per day in computing the audited mileage. Following the hearing, Taxpayer was asked to provide documentation showing when each steel mill bus was purchased and when it was scrapped. However, Taxpayer declined to do so, because Taxpayer was certain that

the steel mill buses were exempt from motor carrier fuel taxes. Since the steel mill buses are without question subject to motor carrier fuel tax pursuant to IC § 6-6-4.1-2, and are not exempt pursuant to 45 IAC 13-2-2(4), Taxpayer has failed to meet its burden of proof under IC § 6-6-4.1-24(b). Therefore, the conclusions of the audit must stand with regard to the mileage adjustments made from the records of the shuttle buses.

Taxpayer believes that even if the conclusions of the audit were correct, Taxpayer already paid the taxes at the time of purchase, which Taxpayer takes to mean that the Department is charging tax twice. Taxpayer also believes that it is entitled to credit for taxes paid in Indiana on fuel used outside of the state. However, Indiana does not allow for "tax paid credit" on fuel purchased in Indiana that is consumed out of state. IC § 6-6-4.1-6 provides that:

(a) A carrier is entitled to a credit against the tax imposed under section 4 of this chapter if the carrier... has:

(1) paid the tax imposed under IC 6-6-1.1 or IC 6-6-2.5 on motor fuel purchased in Indiana;

(2) consumed the motor fuel outside Indiana; and

(3) **paid a gasoline, special fuel, or road tax with respect to the fuel in one (1) or more other states or jurisdictions**.

(b) The amount of credit for a quarter is equal to the tax paid under IC 6-6-1.1 and IC 6-6-2.5 on motor fuel that:

(1) was purchased in Indiana;

(2) was consumed outside Indiana; and

(3) **with respect to which the carrier paid a gasoline, special fuel, or road tax to another state or jurisdiction**.

(c) To qualify for the credit, the carrier shall submit any evidence required by the department of payment of the tax imposed under IC 6-6-1.1 or IC 6-6-2.5.

(d) A credit earned by a carrier in a particular quarter shall be applied against the carrier's tax liability under this chapter for that quarter before any credit carryover is applied against that liability under section 7 of this chapter. (**Emphasis added**).

In Taxpayer's case, the tax was not paid to another state or jurisdiction; it was paid in Indiana. Therefore, Taxpayer is not entitled to tax paid credit for fuel purchased in Indiana and used out of state. However, Taxpayer was given some tax paid credit where Taxpayer's records were sufficient to demonstrate that tax was paid as allowed in IFTA Articles of Agreement § R1000.

In conclusion, Taxpayer was an IFTA licensee that operated commercial motor vehicles both in Indiana and outside of Indiana. As such, it operated these vehicles on Indiana highways and consumed motor fuel. Therefore, Taxpayer was subject to motor carrier fuel taxes. IC § 6-6-4.1-4(a). While some of Taxpayer's vehicles were exempt, Taxpayer as an IFTA licensee was required to report all of the mileage and fuel from the subject vehicles on its IFTA returns. Since Taxpayer did not do so, and since much of the fuel purchased was subject to tax, additional motor carrier fuel taxes are owed.

FINDING

Taxpayer's protest is respectfully denied.

II. Special Fuel Tax – Assessment.

Taxpayer argues that the diesel used in the fuel supply tanks of its school buses that transported students pursuant to a contract with a charter school was exempt from the Special Fuel tax. Diesel is considered a "special fuel" under IC § 6-6-2.5-22. Pursuant to IC § 6-6-2.5-28(a):

A license tax of sixteen cents ($0.16) per gallon is imposed on all special fuel sold or used in producing or generating power for propelling motor vehicles except fuel used under section 30(a)(8) or 30.5 of this chapter. The tax shall be paid at those times, in the manner, and by those persons specified in this section and section 35 of this chapter.

IC § 6-8.1-5-1(c) provides that all tax assessments are presumed accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Taxpayer presents two reasons why the fuel was exempt from the Special Fuel tax.

A. Exemption for School Bus Operations.

Taxpayer argues that its school buses used to transport students pursuant to a contract with a charter school should be considered charter bus operations, and thus the purchases of diesel made to power the school buses were exempt from Special Fuel tax.

The exemptions for Special Fuel tax are found in IC § 6-6-2.5-30(a), which states that:

The following are exempt from the special fuel tax:

...

(4) Special fuel sold to a public transportation corporation established under IC 36-9-4 and used for the transportation of persons for compensation within the territory of the corporation.

(5) Special fuel sold to a public transit department of a municipality and used for the transportation of persons for compensation within a service area, no part of which is more than five (5) miles outside the corporate limits of the municipality.

(6) Special fuel sold to a common carrier of passengers, including a business operating a taxicab (as

defined in IC 6-6-1.1-103(l)) and used by the carrier to transport passengers within a service area that is not larger than one (1) county, and counties contiguous to that county.

Taxpayer is not a "public transportation corporation established under IC 36-9-4" for the purposes of IC § 6-6-2.5-30(a)(4), as Taxpayer is not a municipally owned urban mass transit system. Likewise, Taxpayer is also not a "public transit department of a municipality" for the purposes of IC § 6-6-2.5-30(a)(5). Taxpayer has also not demonstrated that its school bus operations could be considered the operations of a "common carrier of passengers" for the purposes of IC § 6-6-2.5-30(a)(6) when it operates its school buses used in transporting students pursuant to a contract with a charter school. Taxpayer merely provided a contract with the charter school, which may establish that Taxpayer was a "contract carrier," but which does not establish that it was a "common carrier." Therefore, Taxpayer has not met its burden of proof to show that special fuel tax was not due on the entirety of the diesel purchased for use in the fuel supply tanks of its school buses.

B. Exemption for Red Dyed Special Fuel.

Taxpayer argues that it used dyed diesel in the fuel supply tanks of its school buses that transported students pursuant to a contract with a charter school, and for this reason the diesel was exempt from Special Fuel tax.

Taxpayer became licensed as a dyed fuel user in March 2008. IC § 6-6-2.5-8.5 defines a "dyed fuel user" as "a person that qualifies for the federal diesel fuel tax exemption under Section 4082 of the Internal Revenue Code to operate motor vehicles on the highways with dyed fuel in the fuel supply tank." IC § 6-6-2.5-41(i) provides that:

The department may require a person that:

(1) is subject to the special fuel tax under this chapter;

(2) qualifies for a federal diesel fuel tax exemption under Section 4082 of the Internal Revenue Code; and

(3) is purchasing red dyed low sulfur diesel fuel;

to register with the department as a dyed fuel user. The department may establish reasonable requirements for the proper enforcement of this subsection, including guidelines under which a person may be required to register and the form and manner of reports a registrant is required to file.

Taxpayer began purchasing and using dyed diesel in the fuel supply tanks of its school buses beginning in January 2008.

26 U.S.C.A. § 4082 establishes a federal requirement that nontaxable fuel be dyed. 26 U.S.C.A. § 4041(a)(1)(C)(iii)(II) provides an exemption from the federal diesel tax for certain school bus and intracity bus transportation. However, while the dyed diesel gallons that Taxpayer purchased may be exempt from the federal diesel fuel tax, it is not exempt from the Indiana Special Fuel tax even when the dyed diesel fuel is purchased for use in the fuel supply tanks of school buses. IC § 6-6-2.5-30(a) states that "[t]he following are exempt from the special fuel tax... (8) Special fuel used for nonhighway purposes, used as heating oil, or in trains." IC § 6-6-2.5-31 goes on to provide that:

(a) Special fuel exempted under section 30(a)(8) of this chapter shall have dye added to it at or before the time of withdrawal at a terminal or refinery rack. At the option of the supplier, the dye added may be either:

(1) dye required to be added pursuant to United States Environmental Protection Agency requirements; or

(2) dye with specifications and amounts as required by the department.

(b) The department may require that special fuel exempted under section 30(a)(8) of this chapter shall have a marker added to the special fuel not later than the time of withdrawal at a terminal or refinery rack. The marker must meet the specifications required by the department.

In accordance with IC § 6-6-2.5-39, "[a]ny person who has consumed tax-exempt dyed or marked special fuel, or both, for a nonexempt purpose, as permitted under section 62 of this chapter, shall remit the tax due by filing a monthly report and remitting the tax due on forms prescribed by the department." IC § 6-6-2.5-62(c) goes on to states that:

No person shall operate or maintain a motor vehicle on any public highway in Indiana with special fuel contained in the fuel supply tank for the motor vehicle that contains dye or a marker, or both, as provided under section 31 of this chapter. This provision does not apply to persons operating motor vehicles that have received fuel into their fuel tanks outside of Indiana in a jurisdiction that permits introduction of dyed or marked, or both, special fuel of that color and type into the motor fuel tank of highway vehicles or to a person that qualifies for the federal fuel tax exemption under Section 4082 of the Internal Revenue Code and that is registered with the department as a dyed fuel user.

The monthly report prescribed by the Department that Taxpayer was required to file pursuant to IC § 6-6-2.5-39 is an SF-900. Taxpayer consistently reported zero taxable gallons on their monthly SF-900 returns. The audit report states that Taxpayer said that it only used the dyed diesel fuel it purchased in the fuel supply tanks of its school buses. Since this was not an exempt use, the audit concluded that the unreported taxable dyed diesel gallons were equal to the audited dyed diesel purchases made during the audit period. Taxpayer presented no legal arguments as to why it is not subject to Indiana Special Fuel tax on the purchase of the dyed fuel. Therefore, Taxpayer has not met its burden of proof.

FINDING

Taxpayer's protest is respectfully denied.

CONCLUSION

In summary, Taxpayer's protests of Issues I and II are denied.

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