

Letter of Findings Number: 10-0075; 10-0076
Gasoline Tax and
Special Fuel Tax
Tax Years: 2007 – 2009

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ISSUE

I. Gasoline Tax – Assessment.

Authority: IC § 6-6-1.1-103; IC § 6-6-1.1-201; IC § 6-6-1.1-203; IC § 6-8.1-5-1; [45 IAC 12-2-9](#).

Taxpayer protests the assessment of additional tax.

II. Special Fuel Tax – Assessment.

Authority: IC § 6-6-2.5-20; IC § 6-6-2.5-22; IC § 6-6-2.5-23; IC § 6-6-2.5-28; IC § 6-6-2.5-35; IC § 6-8.1-5-1.

Taxpayer protests the assessment of additional tax.

STATEMENT OF FACTS

Taxpayer is an Ohio fuel distributor and retailer. Taxpayer describes itself as an "integrated" fuel operation: it acts as a "jobber," but it also distributes fuel to other fuel companies as well as to its own fueling stations. These stations are both within and outside of the state of Ohio, including Indiana. Taxpayer holds an Indiana gasoline distributor license, a special fuel supplier license, a special fuel importer license, and a transporter license with the Department.

In 2007, Taxpayer entered into a business arrangement with another fuel company ("Company A"). Company A would purchase gasoline or diesel from a fuel terminal ("Company B") using Taxpayer's fuel card. The fuel would then be placed in Company A's vehicle. Taxpayer would then bill Company A for the fuel within twenty-four hours, making a profit on the transaction for the privilege of allowing Company A to use Taxpayer's fuel card to pull fuel from Company B. However, this arrangement was not agreed upon in writing.

The Department conducted a desk examination of Taxpayer's Indiana gasoline tax and special fuel tax returns for 2007, 2008, and 2009. The Department concluded that Taxpayer failed to properly collect and remit gasoline tax and special fuel tax from Company A. Taxpayer was assessed additional gasoline tax and special fuel tax as a result. Taxpayer protests the Department's assessments, claiming that these were transactions that took place entirely in Ohio and therefore the Department cannot apply its taxes to the transactions.

I. Gasoline Tax – Assessment.

DISCUSSION

All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid. Pursuant to IC § 6-8.1-5-1(c), the taxpayer bears the burden of proving that an assessment is incorrect.

A majority of the fuel that Company A purchased using Taxpayer's fuel card was gasoline. IC § 6-6-1.1-201 imposes an excise tax on the sale of gasoline. It provides that:

The **distributor** shall initially pay the tax on the billed gallonage of all gasoline the distributor **receives in this state**, less any deductions authorized by this chapter. The distributor shall then add the per gallon amount of tax to the selling price of each gallon of gasoline sold in this state and collected from the purchaser so that the ultimate consumer bears the burden of the tax. (**Emphasis added**).

IC § 6-6-1.1-103 provides the following definitions:

(d) "Distributor" means a person who first receives gasoline in Indiana. However, "distributor" does not include the United States or any of its agencies unless their inclusion is permitted under the Constitution and laws of the United States.

(e) "Licensed distributor" means a person holding a valid distributor's license issued by the administrator.

Taxpayer has an Indiana gasoline distributor's license for the purposes of the Indiana gasoline tax. This gives Taxpayer the legal obligation to collect and remit gasoline tax to the Department.

IC §§ 6-6-1.1-202 through -207 detail when gasoline is actually received for the purposes of applying the gasoline tax. IC § 6-6-1.1-203 states that "Gasoline is received by the owner at the time it is unloaded in this state if it is imported into this state and placed in storage at a place other than a refinery or terminal."

As Taxpayer explains, although Taxpayer's fuel card is used to purchase the fuel from Company B, the fuel is deposited in Company A's vehicle. Taxpayer's position is that title passes instantaneously from Taxpayer to Company A, since Company A had possession of the fuel.

Example (5) of [45 IAC 12-2-9](#) is fairly on point:

Taxpayer A operates a bulk storage facility located outside Indiana. Taxpayer B operates a service station located in Indiana and does not hold a valid Indiana gasoline distributor's license. Taxpayer A passes title to

gasoline to Taxpayer B outside the state of Indiana. The gasoline to which Taxpayer B has title is imported into Indiana for the account of Taxpayer B and is unloaded at Taxpayer B's service station. Since title to the gasoline is held at the time of importation by Taxpayer B who does not hold a valid gasoline distributor's license and since the gasoline is imported for the account of Taxpayer B, the gasoline is received by Taxpayer B at the time of unloading. (See [\[45 IAC 12-2-9\(b\)\]](#)). It should be noted that although Taxpayer B has incurred liability to the state of Indiana for the per gallon gasoline tax, Taxpayer B is not in compliance with [\[45 IAC 12-4-1](#) and [45 IAC 12-4-2\]](#) and therefore must notify and report to the state as required under [\[IC § 6-6-1.1-504\]](#) to avoid criminal sanctions.

Although Taxpayer is not the facility operating a bulk storage facility, if title passes outside Indiana, then Taxpayer, even as an Indiana licensed gasoline distributor, would not be legally obligated under Indiana law to collect and remit gasoline tax on the sale of gasoline in Ohio.

FINDING

Taxpayer's protest is sustained.

II. Special Fuel Tax – Assessment.

All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid. Pursuant to IC § 6-8.1-5-1(c), the taxpayer bears the burden of proving that an assessment is incorrect.

Company A used Taxpayer's fuel card to purchase diesel at Company B's terminal. IC § 6-6-2.5-28(a) imposes an excise tax on the sale of special fuel. Special fuel basically refers to most combustible fuel that is not considered gasoline, which includes diesel. 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 § 6-6-2.5-35 provides in subsection (a) that "[t]he tax on special fuel received by a **licensed supplier** in Indiana that is imposed by section 28 of this chapter shall be collected and remitted to the state by the supplier who **receives** taxable gallons in accordance with subsection (b)" (**Emphasis added**). Taxpayer is a licensed special fuel supplier for purposes of the Indiana special fuel tax. IC § 6-6-2.5-23 defines "supplier" as:

a person that imports or acquires immediately upon import into Indiana special fuel by pipeline or marine vessel from within a state, territory, or possession of the United States into a terminal or that imports special fuel into Indiana from a foreign country, or that produces, manufactures, or refines special fuel within Indiana, or that owns special fuel in the pipeline and terminal distribution system in Indiana, and is subject to the general taxing or police jurisdiction of Indiana, and in any case is also registered under Section 4101 of the Internal Revenue Code for transactions in taxable motor fuels in the bulk distribution system. A terminal operator shall not be considered a supplier merely because the terminal operator handles special fuel consigned to it within a terminal.

As for the definition of "received," IC § 6-6-2.5-20 provides in pertinent part that "[a]s used in this chapter, "received" means the removal from any refinery or terminal in Indiana, or the entry into Indiana of any special fuel for consumption, use, sale, or warehousing, except for transfers in bulk into or within a terminal in Indiana between registered suppliers."

IC § 6-6-2.5-28(d) provides that "[t]he tax imposed by subsection (a) on special fuel imported into Indiana, other than into a terminal, is imposed at the time the product is entered into Indiana and shall be measured by invoiced gallons received at a terminal or at a bulk plant." IC § 6-6-2.5-35(i) goes on to state that:

Except as provided in subsection (e), the tax imposed by section 28 of this chapter on special fuel imported from another state shall be paid by the licensed importer who has imported the nonexempt special fuel not later than three (3) business days after the earlier of:

- (1) the time that the nonexempt special fuel entered into Indiana; or
- (2) the time that a valid import verification number was assigned by the department under rules and procedures adopted by the department.

There was no precollection agreement between Taxpayer and Company A. Since the diesel was imported into Indiana by Company A, the tax would have been imposed when the diesel entered Indiana. Therefore, Taxpayer was likewise not required under Indiana law to collect special fuel tax when the diesel was sold to Company A in Ohio.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer's protest of the gasoline tax liabilities is sustained. Taxpayer's protest of the special fuel tax liabilities is also sustained.