

Letter of Findings Number: 41-20130466, 41-20130467 and 42-20130468
International Fuel Tax Agreement (IFTA) and
International Registration Plan (IRP)
Tax Years: 2009 – 2011

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ISSUES

I. International Fuel Tax Agreement – 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); IFTA Articles of Agreement, § 1210 (2013); IFTA Audit Manual, § A530 (2012); IFTA Procedures Manual, § P510 (2013); IFTA Procedures Manual, § P540 (2013); IFTA Procedures Manual, § P550 (2013).

Taxpayer protests the assessment of additional tax.

II. IRP – Assessment.

Authority: IC § 6-6-4.1-14; IC § 6-8.1-5-1; IC § 9-28-4-6; IRP § 1005 (2013); IRP § 1010 (2013); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment, which was based on the same information that produced the IFTA assessment.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier. Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Agreement ("IFTA") and the International Registration Plan ("IRP"). The Department of Revenue ("Department") conducted an IFTA and IRP audit, which resulted in the assessment of additional IFTA taxes and IRP fees. Taxpayer protested the proposed assessments. A hearing followed, and this Letter of Findings results. Additional facts will be provided as necessary.

I. International Fuel Tax Agreement – Assessment.

DISCUSSION

The Department conducted an audit and determined that Taxpayer owed additional IFTA fuel taxes for the years at issue. 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 stated 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, 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 them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

The IFTA Articles of Agreement, § R1210.300 (2013) 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 evidence that the assessment is erroneous or excessive." *Id.*

Taxpayer, as an IFTA licensee, is subject to the rules of IFTA. According to the IFTA Procedures Manual, § P540 (2013) 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 IFTA Procedures Manual at § P550 (2013) provides that:

- .100 The licensee must maintain complete records of all motor fuel purchased, received, and used in the conduct of its business.
- .200 Separate totals must be compiled for each motor fuel type.
- .300 Retail fuel purchases and bulk fuel purchases are to be accounted for separately.
- .400 The fuel records shall contain, but not be limited to:
 - .005 The date of each receipt of fuel;
 - .010 The name and address of the person from whom purchased or received;
 - .015 The number of gallons or liters received;
 - .020 The type of fuel; and
 - .025 The vehicle or equipment into which the fuel was placed.

The Department conducted an audit and determined that Taxpayer owed additional IFTA fuel taxes for multiple tax years. The Department audited three tax years: 2009, 2010, and 2011. A sample quarter was chosen from each of these tax years: the first quarter of 2009; the second quarter of 2010; and the second quarter of 2011. However, because Taxpayer's records from 2010 were apparently destroyed, the fourth quarter of 2009 was chosen to replace the second quarter of 2010 as the jurisdiction mileage sample quarter. Section A530.100 of the IFTA Audit Manual provides that "[s]ample period(s) must be representative of the licensee's operations."

Taxpayer's recordkeeping was determined to be inadequate. The Department's auditor requested that Taxpayer provide mileage records, which Taxpayer was required to maintain under the IFTA Procedures Manual. While the Taxpayer did maintain some records, they did not contain accurate miles by jurisdiction, because the miles were not always recorded or were not recorded accurately on the trip sheets. Additionally, unit gallon figures for a vendor in the second quarter of 2011 were not provided; thus, the auditor determined that the vehicle fuel summaries were inadequate. Finally, vehicle mileage summaries were rated inadequate because unit jurisdiction mileage figures were not provided during the first quarter of 2009.

The Department utilized error factors for audited jurisdiction mileage, audited tax paid gallons, audited total gallons, and to determine the true liability. Taxpayer argues that the error factor used by the Department resulted in an unfair assessment. Taxpayer maintains that the reported mileage was based off of his GPS reports, and if the audited mileage was also based on his GPS reports, then he shouldn't have an error factor.

The Department's audit recommended that if Taxpayer continues to use the GPS system to report miles that he be able to retrieve the documentation necessary to support the miles reported. Taxpayer apparently did not have the documentation from the third-party GPS provider in order to back up his reported mileage. Taxpayer did not provide this information after the audit, either. Taxpayer has also not shown why the error factors were incorrect.

Part of the requirements of being an IFTA licensee is maintaining records per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2013). According to the IFTA Procedures Manual, § P510 (2013) states that:

- .100 The licensee is required to preserve the records upon which the quarterly tax return or annual tax return is based for **four years from the tax return due date or filing date, whichever is later**, plus any time period included as a result of waivers or jeopardy assessments.
- .200 Failure to provide records demanded for audit purposes extends the four year record retention requirement until the records are provided.
- .300 Records may be kept on microfilm, microfiche, or other computerized or condensed record storage system acceptable to the base jurisdiction. **(Emphasis added).**

§ P530.100 (2013) goes on to provide that: "Failure to maintain records upon which the licensee's true liability may be determined or to make records available upon proper request may result in an assessment as stated in IFTA Articles of Agreement Section R1200."

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 audit assessment is reasonable and supported by the law and the IFTA Audit Manual procedures. Therefore, Taxpayer has not "established by a fair preponderance of the evidence that the assessment is erroneous or excessive."

FINDING

Taxpayer's protest is respectfully denied.

II. IRP – Assessment.**DISCUSSION**

Taxpayer protests the imposition of IRP fees for the tax year 2010. The IRP is a program for registering commercial vehicles that operate within member jurisdictions, including Indiana. The Indiana Code permits Indiana to join the IRP agreement ("the Plan") via IC § 6-6-4.1-14 and IC § 9-28-4-6.

IC § 6-6-4.1-14(a) states in relevant part:

The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter . . .

IC § 9-28-4-6 states in relevant part:

(a) The department of state revenue, on behalf of the state, may enter into reciprocal agreements providing for the registration of vehicles on an apportionment or allocation basis with the proper authority of any state, any commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country.

(b) To implement this chapter, the state may enter into and become a member of the International Registration Plan or other designation that may be given to a reciprocity plan developed by the American Association of Motor Vehicle Administrators.

Taxpayer operated "units" in Indiana and other states, but Taxpayer selected Indiana as its base jurisdiction, pursuant to Article IV of the Plan (2013). In conjunction with the IFTA audit, the Department conducted an IRP audit under the terms of Articles XV and XVI of the Plan (2013) and the International Registration Plan Audit Procedures Manual.

The Department selected 2010 as the registration year to audit, but the fourth quarter of 2009 was chosen as a replacement since Taxpayer's records in the first and second quarter of 2010 were destroyed. The Department determined that taxpayer owed additional IRP fees based upon the same documentation that was provided to calculate the IFTA assessment. Taxpayer had estimated mileage in several jurisdictions where actual travel was not reported as actual miles on the IRP Schedule B, and therefore mileage was converted to actual miles by the Department's auditor. If the jurisdiction was not reported at all, the auditor assessed prior fees that were owed.

§ 1005 of the Plan (2013) provides that:

(a) The Base Jurisdiction shall require a Registrant to preserve all Operational Records on which the Registrant's application for apportioned registration is based for a period of **3 years following the close of the Registration year to which the application pertains and to make these records available for examination by the Base Jurisdiction at its request.**

(b) Records may be kept on microfilm, microfiche, or other computerized or condensed record storage system acceptable to the Base Jurisdiction. **(Emphasis added).**

§ 1010 of the Plan (2013) goes on to provide that:

The Base Jurisdiction may impose an assessment on a Registrant that fails to maintain records in accordance with the APM or that fails to provide records within 30 calendar days of the issuance of a written request by the Base Jurisdiction. Such an assessment shall be based on the Base Jurisdiction's estimate of the Registrant's true liability as determined from evidence furnished by the Registrant or available to the Base Jurisdiction from its own or other sources.

Taxpayer argues that he overpaid the Department when he obtained his plates. Taxpayer overestimated the mileage when he applied for plates from the Department. However, Taxpayer does not explain how the audit's adjustments of the estimated mileage were incorrect. Taxpayer similarly does not sufficiently explain how the auditor's review of the information from the GPS reports was incorrect, or provide any additional evidence to dispute the auditor's findings. 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 audit assessment is reasonable and supported by the law, and the Plan, and the Plan's Audit Procedures Manual. The taxpayer bears the burden of proving that any assessment is incorrect, and Taxpayer has failed to meet that burden. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

FINDING

Taxpayer's protest is respectfully denied.

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