

**Letter of Findings Number: 42-20150044
International Fuel Tax Agreement (IFTA)
For Tax Years 2011-2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. The document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business owner did not keep adequate records as required by the International Fuel Tax Agreement to demonstrate miles traveled or how much bulk fuel was withdrawn. Therefore, the Department's assessment is correct.

ISSUE

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, § R530 (2010); IFTA Articles XII, § R1210.300 (2010); IFTA Procedures Manual, § P540 (2011); IFTA Procedures Manual, § P570 (2011); IFTA Procedures Manual, § P550 (2011).

Taxpayer protests the assessment of additional tax.

STATEMENT OF FACTS

Taxpayer is an Indiana resident and is an owner/operator of a trucking company. Taxpayer was assessed additional motor carrier fuel tax as a result of an International Fuel Tax Agreement ("IFTA") audit of the 2011-2012 tax years. The Indiana Department of Revenue ("the Department") assessed additional IFTA tax. Taxpayer protested the results of the IFTA audit; an appeal request at the audit review level was denied. Taxpayer now protests the audit's determination and seeks legal review of the audit result.

I. International Fuel Tax Agreement - Assessment.

DISCUSSION

Audit Results

The Department conducted an audit and determined that Taxpayer owed additional IFTA fuel taxes for that year. Taxpayer's trucking company hauled car parts for hire. During the IFTA audit period, Taxpayer owned three subject (Indiana Registration Plan plated) trucks, two of which were used by Taxpayer. Taxpayer also owns a farming operation. Taxpayer maintained three bulk fuel storage tanks from which subject and non-subject vehicles withdrew fuel. The non-subject fleet included three pickup trucks, a tractor, and a non-subject box truck. Taxpayer did not record the non-subject fuel usage. The Department concluded that Taxpayer did not provide adequate records, during the IFTA audit, to determine the audit incorrect. Taxpayer did not provide bulk fuel withdrawal logs showing non-subject withdrawals; Taxpayer relied on estimates. The Department gave Taxpayer tax-paid credit for all fuel usage; however, the amount of unreconciled fuel was so large that, even after the calculated non-subject usage was subtracted, there were still a substantial number of unreconciled gallons to warrant the use of an estimate of 4.0 miles per gallon ("mpg") for Taxpayer's subject usage. In other words, due to the lack of documentation, the Department assessed tax based upon the best information available.

Taxpayer's Response

Taxpayer protests the IFTA audit stating that the Department did not give him credit for the fuel consumed by his non-subject vehicles. Furthermore, Taxpayer stated he provided proof that he paid tax on fuel in the non-subject vehicles. Taxpayer provided additional receipts and invoices that show the shipping origin and destination for two

trucks. Taxpayer then estimated total fuel used for both trucks. Taxpayer used this estimate to project how much fuel was withdrawn from bulk purchase for subject and non-subject vehicles.

Decision

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).

IFTA Article XII, § R1210.300 (2010) 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 (2011) 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).

According to the IFTA Procedures Manual, § P570 (2011) states that:

.100 Bulk fuel is delivered into a storage tank owned, leased or controlled by the licensee and not delivered directly by the vendor into the supply tank of the qualified motor vehicle. Fuel tax may or may not be paid by the licensee to the vendor at the time of the bulk fuel delivery. Copies of all delivery tickets and/or receipts must be retained by the licensee.

.200 Receipts that have been altered or indicate erasures are not accepted for tax-paid credits unless the licensee can demonstrate the receipt is valid.

.300 Bulk fuel inventory reconciliations must be maintained. For withdrawals from bulk storage, records must be maintained to distinguish fuel placed in qualified vehicles from other uses.

.400 A licensee may claim a tax-paid credit on the IFTA tax return for bulk fuel only when the bulk storage tank from which the fuel is withdrawn is owned, leased or controlled by the licensee; the fuel is placed into the fuel tank of a qualified motor vehicle; and either the purchase price of the fuel includes tax paid to the member jurisdiction where the bulk fuel storage tank is located or the licensee has paid fuel tax to the member jurisdiction where the bulk fuel storage tank is located.

The licensee shall maintain the following records:

.005 Date of withdrawal;

.010 Number of gallons or liters;

.015 Fuel type;

.020 Unit number; and

.025 Purchase and inventory records to substantiate that tax was paid on all bulk purchases.

.500 Upon application by the licensee, the base jurisdiction may waive the requirement of unit numbers for fuel withdrawn from the licensee's own bulk storage and placed in its qualified motor vehicles. The licensee must show that adequate records are maintained to distinguish fuel placed in qualified vs. non-qualified motor vehicles for all member jurisdictions.

Taxpayer was not able to provide adequate records during the initial audit. After receiving the audit results, Taxpayer provided fuel receipts and trip reports to the Department. However, the records were still determined to be inadequate, because Taxpayer was not able to provide individual vehicle mileage or fuel summaries.

Taxpayer's records were not adequate to verify miles traveled or fuel used. In addition, much of the bulk fuel purchased was unaccounted for in Taxpayer's record keeping. Also the original audit and supplemental audit used a 4.0 mpg to calculate Audited Total Gallons; apportioning the unreconciled gallons yielded a lower quarterly mpg. 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. Finally, since tax paid purchases exceeded the calculated Audited Total Gallons; Taxpayer was given tax paid credit for all gallons assigned to subject usage.

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 original audit is reasonable and supported by law and IFTA Audit Manual procedures. Taxpayer has not "established by a fair preponderance of the evidence that the assessment is erroneous or excessive." IFTA Articles XII, § R1210.300 (2010).

FINDING

Taxpayer's protest is respectfully denied.

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