

DEPARTMENT OF STATE REVENUE

41-20181902.LOF
42-20181901.LOF**Letter of Findings: 41-20181902 & 42-20181901
International Fuel Tax Agreement
For the Year 2014**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Motor Carrier Company was unable to establish that the Department's assessment of additional International Fuel Taxes, based on the best information available, was incorrect; Motor Carrier Company did not maintain accurate or complete records and the Department was unable to conduct a true mileage audit.

ISSUES**I. International Fuel Tax Agreement - Assessment.**

Authority: IC § 6-6-4.1-4; 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; IFTA Articles of Agreement, § 1210 (2013); IFTA Audit Manual, § A530 (2013); IFTA Procedures Manual, § P510 (2013); IFTA Procedures Manual, § P540 (2013); IFTA Procedures Manual, § P550 (2013).

Taxpayer protests the assessment of additional tax.

II. International Registration Plan - Assessment.

Authority: IC § 6-6-4.1-14; IC § 6-8.1-5-1; IC § 9-28-4-6; IRP Agreement, Article X-1000 (2013); IRP Agreement, Article X-1005 (2013); IRP Agreement, Article X-10065; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier. The Indiana Department of Revenue ("Department") conducted an audit which resulted in the assessment of additional International Fuel Tax Agreement ("IFTA") and International Registration Plan ("IRP") fuel taxes.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. International Fuel Tax Agreement - Assessment.**DISCUSSION**

The Department conducted an audit and determined that Taxpayer owed additional 2014 IFTA and 2014 IRP fuel taxes. The Department's audit concluded that Taxpayer was unable to provide the complete necessary records. Due to the lack of documentation, the Department assessed tax based upon the best information available to the Department during the audit and the IFTA and IRP agreements. Taxpayer protests the Department's assessment of motor carrier fuel taxes pursuant to IFTA and IRP.

IFTA is an agreement between various, participating 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. IRP is also an agreement between several participating United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor carrier fuel taxes. IRP's stated goal is to simplify the taxing, licensing,

and reporting requirements of interstate motor carriers such as Taxpayer. Neither the IFTA agreement nor IRP themselves are statutes but were 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 taxes under the IFTA and IRP. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under the IFTA and IRP 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).

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."

Taxpayer, as an IFTA licensee, is subject to the rules of IFTA and IRP. According to the IFTA Procedures Manual, § P510 (2013) states that:

A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments.

A licensee must preserve all fuel and distance records for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

On request, the licensee shall make such records available for audit to any member jurisdiction.

According to the IFTA Procedures Manual, § P530 (2013) states that:

The records maintained by a licensee under this article shall be adequate to enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet.

The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate.

Provided a licensee's records are adequate under this definition, the records may be produced through any means, and retained in any format or medium available to the licensee and accessible by the base jurisdiction. If records are presented in a format or in a manner in which the base jurisdiction cannot audit them, they have not been made available as required.

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's audit noted that Taxpayer had drivers record trips taken for each unit on monthly trip reports. The date of the trip and the origin and destination, including zip code, were recorded. Origins and destinations - as designated by zip codes - were put through a computerized mileage routing program to determine the reported miles. The drivers recorded the fuel purchases based on the software-generated monthly trip report and the fuel receipts were attached to each trip report. The Taxpayer's method of reporting resulted in the Taxpayer violating the IFTA and IRP by failing to verify trip reports for continuity of dates; failing to verify travel points; failing to verify routes of travel; failing to verify jurisdictional trip miles; beginning and ending trip odometer readings; or total trip miles; and failing to verify the accuracy of reported mileage.

Part of the requirements of being an IFTA licensee is maintaining records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2013). 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.

IFTA Procedures Manual § 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."

IFTA Articles of Agreement, § R1210 (2013) states that:

- .100 In the event that any licensee
 - .005 fails, neglects, or refuses to file a tax return when due;
 - .010 fails to make records available upon written request by the base jurisdiction; or
 - .015 fails to maintain records from which the licensee's true liability may be determined,**the base jurisdiction shall proceed in accordance with .200 and .300.
- .200 On the basis of the best information available to it, the base jurisdiction shall:
 - .005 determine the tax liability of the licensee for each jurisdiction and/or
 - .010 revoke or suspend the license of any licensee who fails, neglects or refuses to file a tax report with full

payment of tax when due, in accordance with the base jurisdiction's laws.

Both .200.005 and .200.010 may be utilized by the base jurisdiction. For purposes of assessment pursuant to .100.010 or .100.015, the base jurisdiction must issue a written request for records giving the licensee thirty (30) days to provide the records or to issue a notice of insufficient records. (**Emphasis added**).

Taxpayer protests the Department's position that Taxpayer's computerized mileage routing program does not accurately calculate and verify total trip miles; Taxpayer also protests the fairness of IFTA and IRP rules for tracking trip miles.

The issue in this Letter of Findings is whether or not Taxpayer has established that the assessment is "wrong." IC § 6-6-4.1-24(b). Taxpayer's computerized mileage routing program simply reflected routes from zip code to zip code rather than tracking total origin and destination miles. The former method lacks the precision produced by the latter method and required by IFTA and IRP rules. It is the Department's position that the sole use of Taxpayer's computerized mileage routing program to determine the reported miles from zip code to zip code is not an acceptable reporting system. If computerized mileage routing programs are used, they are to be used as a tool to verify the driver's recorded miles. As stated previously, Taxpayer's computerized system did not allow for any checks of the accuracy of the miles reported or the continuity of trips and jurisdictions. In the absence of complete and accurate source documentation, the Department's best information available audit assessment is reasonable and supported by law and the IFTA Audit Manual procedures. Taxpayer has not "establish[ed] by a fair preponderance of the evidence that the assessment is erroneous or excessive." IFTA Articles of Agreement, § R1210.300 (2013).

FINDING

Taxpayer's protest is denied.

II. International Registration Plan - Assessment.

DISCUSSION

Taxpayer protests the imposition of IRP fees for the tax year 2013-2014. 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 2013-2014 as the registration years to audit. The Department determined that taxpayer owed additional IRP fees based upon the same documentation that was provided, or lack thereof, to calculate the IFTA assessment.

§ 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.

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). As stated above in Issue I, Taxpayer did not maintain adequate records to show that the mpg was higher than the assessed amount.

FINDING

Taxpayer's protest is denied.

SUMMARY

Taxpayer is denied on Issue I for reasons stated above. Taxpayer is denied on Issue II for the reasons stated above.

December 18, 2018

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