

**Letter of Findings: 42-20181658
International Fuel Tax Agreement
For the Year 2016**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

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

ISSUE

I. International Fuel Tax Agreement - Fuel Tax 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, § R530.100 (2013); IFTA Articles of Agreement, § R1210.300 (2013); Procedures Manual, § P510 (2013); IFTA Procedures Manual, § P540 (2013); IFTA Procedures Manual, § P550 (2013).

Taxpayer protests the assessment of additional tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state 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 Indiana Department of Revenue ("Department") conducted an audit which resulted in the assessment of additional IFTA 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 - Fuel Tax Assessment.

DISCUSSION

The Department conducted an audit and determined that Taxpayer owed additional 2016 IFTA 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. 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 taxes under the IFTA. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under the 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).

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.

In reviewing Taxpayer's documentation, the Department's audit found that Taxpayer failed to perform or maintain the following internal controls:

- Taxpayer failed to verify trip reports for continuity of dates, travel points, or odometer readings;
- Taxpayer failed to analyze miles-per-gallon records;
- Taxpayer failed to verify the accuracy of mileage;
- Taxpayer failed to verify the continuity between jurisdictions;
- Taxpayer failed to verify that reported mileage and fuel consumption took place in the same quarter;
- Taxpayer failed to account for bulk fuel purchases.

The Department's audit noted that Taxpayer was unable to produce source documents accounting for its mileage

and fuel reports. As explained in the audit report:

No compliant source documents were provided for the audit period. This included both mileage and fuel documents to support the reported miles and fuel from the quarterly IFTA returns. No equipment list was provided as requested [in] the follow up letter.

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). 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.

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 points out that it is a motor carrier that has rapidly expanded its business operations, that many of the shortcomings noted in the audit report were attributable to sister companies that were allowed to use Taxpayer's vehicles but failed to maintain or produce mileage and fuel records, that it has remedied many of the deficiencies pointed out in the audit report, and that it has improved its record-keeping procedures.

The Department is not unsympathetic to the issues raised by Taxpayer. However, the only 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). In doing so it is fair to point out that it is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. In the absence of complete and accurate source documentation, the Department's best information available audit assessment is reasonable, supported by law, and supported by 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 respectfully denied.

October 10, 2018

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