DEPARTMENT OF STATE REVENUE

41-20181729.LOF

Letter of Findings: 41-20181729
International Registration Plan
For October 1, 2015 through September 30, 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Taxpayer protests the assessment of additional fuel tax. Taxpayer did not provide sufficient documentation and analysis to show that the additional fuel tax should not be assessed. Therefore, Taxpayer's protest is respectfully denied.

ISSUE

I. International Registration Plan - Fuel Tax 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; IRP Agreement, Article X-1000; IRP Agreement, Article X-1005; IRP, Article X-1010; IRP Agreement, Article X-1065.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier. The Indiana Department of Revenue ("Department") conducted an audit that resulted in the assessment of International Registration Plan ("IRP") fees from the tax period running from October 1, 2015, through September 30, 2016. 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 Registration Plan - Fuel Tax Assessment.

DISCUSSION

The Department conducted an audit and determined that Taxpayer owed additional IRP fees. 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. Taxpayer protests the Department's assessment of IRP fees.

As a threshold issue, it is Taxpayers' responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The Department first refers to IC § 6-6-4.1-14, which states:

> (a) The commissioner or, with the commissioner's approval, the reciprocity commission created by IC 9-28-4 may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements with the appropriate official or officials from any other state or jurisdiction under which all or any part of the requirements of the Indiana Administrative Code are waived with respect to motor carriers that use

in Indiana motor fuel upon which tax has been paid to the other state or jurisdiction. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent privileges with respect to motor fuel consumed in the other state or jurisdiction and on which a tax has been paid to this state.
(b) 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, including the requirements for trip permits, temporary authorizations, repair and maintenance permits, and annual permits and the payment of fees for permits and authorizations. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent exemptions to motor vehicles licensed in Indiana.

IC § 9-28-4-6 provides:

(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.
(c) The department of state revenue may adopt rules under IC 4-22-2 to carry out and enforce the provisions of the International Registration Plan or any other agreement entered into under this chapter.
(d) If the state enters into the International Registration Plan or into any other agreement under this chapter, and if the provisions set forth in the plan or other agreements are different from provisions prescribed by law, then the agreement provisions prevail.
(e) All payments for the renewal of a fleet of vehicles previously registered under the International Registration Plan are due on or before the fifteenth day of the last month of the registration period preceding the period being renewed.
(f) All payments for billings, other than renewal, issued under the International Registration Plan are due within fifteen (15) days after the mailing date on the billing unless stated otherwise.
(g) This chapter constitutes complete authority for the registration of vehicles, including the registration of fleet vehicles, upon an apportionment or allocation basis without reference to or application of any other Indiana law.
(h) A person who fails to comply with subsections (e) and (f), is subject to the penalties and interest imposed under IC 6-8.1-10.

IC § 6-8.1-5-4 states:

(a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.
(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:
(1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or
(2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.
In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.
(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.
(d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

IRP, Article X-1065 provides:

(a) The Base Jurisdiction shall provide a Registrant at least 30 calendar days from the date the Registrant is notified of the findings of an Audit or a reexamination to file a written appeal of the Audit or reexamination with the Base Jurisdiction. Such an appeal shall proceed in accordance with the administrative and appellate

procedures of the Base Jurisdiction.

(b) Upon the conclusion of the appeal process, the Base Jurisdiction shall notify all affected Member Jurisdictions of the results. If one or more findings of the Audit remain unresolved after these procedures have been exhausted, the Registrant may challenge disputed Audit findings that remain by filing a dispute in accordance with Section 1400.

IRP, Article X-1000 states that:

(a) A Registrant shall retain the Records on which the Registrant's application for apportioned registration is based for a period of three years following the close of the Registration year to which the application pertains, and on request, shall make such Records available for Audit.

(b) Unless a waiver to the statute of limitations is granted by the Registrant, no assessment for deficiency or any refund shall be made for any period for which the Registrant is not required to retain Records.

IRP, Article X-1005 states that:

(a) The Records maintained by a Registrant under Section 1000 shall be adequate to enable the Base Jurisdiction to verify the distances reported in the Registrant's application for apportioned registration and to evaluate the accuracy of the Registrant's distance accounting system for its Fleet.

(b) Provided a Registrant's Records meet the criterion in subsection (a), the Records may be produced through any means, and retained in any format or medium available to the Registrant and accessible by the Base Jurisdiction.

IRP, Article X-1010 states that:

Records containing the following elements shall be accepted by the Base Jurisdiction as adequate under Section 1005(a):

(a) For Records produced by a means other than vehicle-tracking system:
i. the beginning and ending dates of the trip to which the Records pertain;
ii. the origin and destination of the trip;
iii. the route of travel;
iv. the beginning and ending reading from the odometer, hudodometer *[sic]*, engine control module (ECM), or any similar device for the trip;
v. the total distance of the trip;
vi. the distance traveled in each Jurisdiction;
vii. the Vehicle identification number or Vehicle unit number.

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. Taxpayer's method of reporting resulted in Taxpayer violating 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.

IRP, Article X-1015 provides that:

If the Records produced by the Registrant for Audit do not, for the Registrant's Fleet as a whole, meet the criterion in Section 1005(a), or if, within 30 calendar days of the issuance of a written request by the Base Jurisdiction, the Registrant produces no Records, the Base Jurisdiction shall impose on the Registrant an assessment in the amount of twenty percent of the Apportionable Fees paid by the Registrant for the registration of its Fleet in the Registration Year to which the Records pertain. In an instance where the Base Jurisdiction knows that it is the Registrant's second such offense, the Base Jurisdiction shall impose an assessment of fifty percent of the Apportionable Fees paid by the Registrant for the registration of its Fleet in the Registration Year to which the Records pertain. When the Base Jurisdiction knows it is the Registrant's third offense, and on any subsequent offenses of the Registrant known to the Base Jurisdiction, the Base

Jurisdiction shall impose an assessment of 100 percent of the Apportionable Fees paid by the Registrant for the registration of its Fleet in the Registration Year to which the Records pertain.

The Base Jurisdiction shall distribute the amounts of assessment it collects under this Section on a pro rata basis to the other Jurisdictions in which the Fleet was registered.

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 IRP rules for tracking trip miles.

The issue in this Letter of Findings is whether Taxpayer has established that the assessment is "wrong." IC § 6-6-4.1-24(b). It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. Moreover, 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 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 a 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.

After reviewing the Taxpayer-generated logs regarding the fuel purchased during the audit period, the Department cannot agree with Taxpayer's position. IRP § 1005(a) specifically states that the records maintained by a registrant under Section 1000 shall be adequate to enable the base jurisdiction to verify the distances reported in the registrant's application for apportioned registration and to evaluate the accuracy of the registrant's distance accounting system for its fleet. IRP § 1010 establishes that records containing the following elements shall be accepted by the base jurisdiction as adequate under Section 1005(a): the beginning and ending dates of the trip to which the records pertain, the origin and destination of the trip, the route of travel, the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the trip, the total distance of the trip, the distance traveled in each jurisdiction, and the vehicle identification number or vehicle unit number.

In this case, there is no source documentation supporting the Taxpayer-generated logs. There is insufficient documentation to verify the reported amount of miles driven or fuel purchased. No new documents regarding miles driven or fuel purchased were provided in the hearing process. Taxpayer provided no vendor-generated records of its activities. Rather, Taxpayer provided totals it made from records of its activities. The Department does not agree that Taxpayer-generated logs are a valid record to verify Taxpayer-generated IRP returns. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

April 2, 2019

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An html version of this document.