

Letter of Findings: 42-20190831
International Fuel Tax Agreement
For January 1, 2016 through December 31, 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 protested the assessment of additional fuel tax and requested a final determination without a hearing. 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 Fuel Tax Agreement - Fuel Tax Assessment.

Authority: IC § 6-6-4.1-14; IC § 6-6-4.1-24; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IFTA Articles of Agreement, § R1210 (2015); IFTA Procedures Manual, § P510 (2015); IFTA Procedures Manual, § P530 (2015); IFTA Procedures Manual, § P540 (2015); IFTA Procedures Manual, § P550 (2015); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

STATEMENT OF FACTS

Taxpayer is an Indiana Taxpayer. The Indiana Department of Revenue ("Department") conducted an audit that resulted in the assessment of additional International Fuel Tax Agreement ("IFTA") fuel taxes for January 1, 2016 through December 31, 2016.

Taxpayer disagreed with the assessment and submitted a protest to that effect. This Letter of Findings results. Further facts will be supplied as necessary.

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 to verify the IFTA returns it filed for 2016. Due to lack of documentation, the Department assessed tax based upon the best information available to the Department during the audit and in accordance with IFTA. Taxpayer protests the Department's assessment of Taxpayer fuel taxes pursuant to IFTA.

As a threshold issue, it is Taxpayer's 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 Taxpayers 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 § 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.

IFTA Articles of Agreement, § R1210.300 (2015) 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.*

According to the IFTA Procedures Manual, § P510 (2015) 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 (2015) 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 (2015) 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 (2015) 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 the 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 IFTA 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 (2015). The

IFTA Procedures Manual, § P510 (2015) 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 (2015) further provides 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 (2015) 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 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 Taxpayer's 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 as required by IFTA 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 IFTA. 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 (2015).

IFTA Procedures Manual § P540.220 specifically states that distance records produced wholly or partly by a vehicle-tracking system, including a system based on Global Positioning System ("GPS") must include the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the period to which the records pertain. Taxpayer's GPS reports did not include such information.

As required by IFTA Procedures Manual § P530, the records maintained by a licensee 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. Without beginning and ending odometer readings and without longitudinal and latitudinal information for starting and ending points for the trips, the Department does not consider the remaining information verified or verifiable. The Department's adjustments were appropriate. Taxpayer has not met the burden imposed by IFTA R1210.300 and by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

October 16, 2019

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