DEPARTMENT OF STATE REVENUE

42-20200214.LOF
41-20200215.LOF

Letter of Findings: 42-20200214; 41-20200215
International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP) Penalties
For the Years 2017, 2018, and 2019

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was unable to provide 2017, 2018, and 2019 original source records sufficient to allow Indiana to accurately apportion IFTA taxes owed the various states in which Motor Carrier's vehicles traveled, and the Department disagreed with Motor Carrier that it provided sufficient evidence to warrant abating the ten-percent IFTA penalty. Motor Carrier's objections to an IRP penalty was unfounded because no such penalty was assessed.

ISSUE

I. International Fuel Tax Agreement and International Registration Plan - Penalties.

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 § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(d); IFTA Articles of Agreement, § R1210 (2017); IFTA Articles of Agreement, § R1220.100 (2017); IFTA Procedures Manual, § P510 (2017); IFTA Procedures Manual, § P530 (2017); IFTA Procedures Manual, § P530.100 (2017); IFTA Procedures Manual, § P530.100 (2013); IFTA Procedures Manual, § P540.100 (2017); IFTA Procedures Manual § P550 (2017); *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,* 867 N.E.2d 289 (Ind. Tax Ct. 2007); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c); International Fuel Tax Agreement, https://www.fin.gov.on.ca/en/tax/ifta/.

Taxpayer argues it is entitled to an abatement of the penalty charges attributable to the Department's assessments of additional IFTA tax and IRP fees.

STATEMENT OF FACTS

Taxpayer is an Indiana, multi-state motor carrier which - according to publicly available information - is dedicated to moving plastic injection molds or tooling to and from its related manufacturing facility for its customers. Taxpayer provides year-round services to customers in Indiana and outside Indiana.

Taxpayer employs approximately 10 company drivers, operates 3 tractors, and 3 trailers. Taxpayer's drivers travel both interstate and intrastate highways in providing Taxpayer's hauling services. Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA"). The Indiana Department of Revenue ("Department") conducted an IFTA and IRP audit, which resulted in the assessment of additional 2017 IFTA taxes and additional 2018 and 2019 IRP fees. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest amounts.

Taxpayer disagreed with the IFTA and IRP penalties on the ground that, (1) the "penalties [were] harsh and excessive," (2) because its own "GPS system mileage reports" were accurate, (3) Taxpayer had a "very high level of confidence that all tax was accurately and timely paid," and (4) that Taxpayer did not know that its [GPS] vendor "did not keep the necessary documentation required for an audit." Moreover Taxpayer states that it has "since implemented corrective actions that will correct all findings of this audit."

Taxpayer submitted a protest outlining its objections. In its protest submission, Taxpayer asked the Department to issue a "[f]inal determination without a hearing." As requested, no hearing was conducted and this Letter of Findings results from a review of Taxpayer's protest letter and the two audit reports.

I. International Fuel Tax Agreement and International Registration Plan - Penalties.

DISCUSSION

A. Indiana's Audit Findings.

The Department conducted a fuel and mileage tax audit of Taxpayer's travel records and determined that Taxpayer owed additional 2017 IFTA fuel tax. Simultaneously, the Department's audit also found that Taxpayer owed additional IRP fees.

The assessment was attributable to the Department's finding that Taxpayer's "records presented for audit were not compliant and . . . rated as inadequate."

The audit explains the reasons for finding that Taxpayer's records were inadequate.

> The licensee used a GPS provider to keep track of their distance[s]. The licensee did not maintain the records for the vehicle tracking system, their GPS provider only kept these for one year. The licensee changed their GPS provider prior to the start of this audit. The driver's daily logs did not contain beginning and ending trip odometer readings, routes of travel, and jurisdictional distance. The licensee also did not maintain inventory readings [of] their on-road bulk storage tanks.

The audit report concluded that the absence of these records "substantially impacted the audit process."

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately apportion the proper amount of tax owed to the various state jurisdictions in which Taxpayer traveled during 2017.

As a result and based upon the limited information available, the Department concluded that Taxpayer owed approximately $4,500 in additional IFTA tax. Along with that tax, the Department also assessed approximately $700 in interest and $450 in penalties. In addition, the Department assessed Taxpayer approximately $2,400 in additional IRP fees.

The IRP audit report notes that the additional IRP fees were also attributable to "inadequate records."

Taxpayer's protest is therefore based on its objections to the $450 penalty assessment.

B. Taxpayer's Burden of Establishing That the Penalty Assessment Should be Abated.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed penalty 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*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

C. IFTA Requirements and Taxpayer's Responsibilities Under That Agreement.

IFTA is an agreement between various United States jurisdictions and certain Canadian provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, https://www.fin.gov.on.ca/en/tax/ifta/ (last visited March 12, 2020). 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 while on those highways. Therefore, the Taxpayer was subject to Indiana motor carrier fuel taxes under the IFTA. 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). In addressing any challenges to those assessments, 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).

Taxpayer, as an IFTA licensee, is subject to the record-keeping rules of IFTA. According to the IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsibility to maintain verifiable mileage and fuel purchase records:

> 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.

(**Emphasis added**).

The IFTA Procedures Manual at § P550.100 (2017) imposes upon IFTA licensees the responsibility of maintaining and then providing verifiable fuel purchase and fuel consumption records.

> The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

One of those record keeping requirements is maintaining specific records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). According to the IFTA Procedures Manual, § P510 (2017) provides in part 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.

The Procedures Manual allows licensees to maintain these records in various ways. However, Taxpayer does not disagree the third-party's mileage tracking records were deficient. In such cases, in the absence of a functional, verifiable "tracking system," IFTA Procedures Manual, § P540.100 (2017), provides:

> Distance records produced by a means other than a vehicle-tracking system that substantially document the fleet's operations and contain the following elements shall be accepted by the base jurisdiction as adequate under this article:
>
> .005 the beginning and ending dates of the trip to which the records pertain
> .010 the origin and destination of the trip
> .015 the route of travel
> .020 the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the trip
> .025 the total distance of the trip
> .030 the distance traveled in each jurisdiction during the trip
> .035 the vehicle identification number or vehicle unit number.

In the absence or failure to provide mileage and fuel records, IFTA Procedures Manual, § P530.100 (2013) states 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 (2017) in relevant part, 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**).

Exercising its authority and responsibility as the Taxpayer's chosen base jurisdiction, the Department assessed the additional IFTA tax and the now disputed penalty amount.

D. Taxpayer's Objections to the Penalty Assessment.

As noted above, Taxpayer objects to the $450 penalty because it was "harsh and excessive," that its GPS system was "accurate," that it has since "implemented corrective actions," because "it take[s] its responsibilities serious," that it has already paid any taxes and fees that were due," and that the penalty (or penalties) should be abated.

E. Penalty Abatement.

IFTA Articles of Agreement, § R1220.100 (2017) provides as follows:

> The base jurisdiction may assess the licensee a penalty of $50.00 or **10 percent of delinquent taxes**, whichever is greater, for failing to file a tax return, filing a late tax return, underpaying taxes due. .200 Penalties paid by the licensee shall be retained by the base jurisdiction. .300 Nothing in the Agreement limits the authority of a base jurisdiction to impose any other penalties provided by the laws of the base jurisdiction.

(**Emphasis added**).

In the absence of specific guidance provided under either the IFTA Articles of Agreement or the IFTA Procedures Manual and because the ten-percent penalty is "retained by the base jurisdiction," the Department turns to Indiana's own statutory and regulatory regime for direction.

IC § 6-8.1-10-2.1(a)(3) requires that a penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the ten-percent IFTA penalty - is presumptively valid.

Nonetheless, Taxpayer maintains that for the reasons stated above, that under IC § 6-8.1-5-1(c) it has established that the IFTA penalty assessment was wrong and that the penalty should now be abated. The Department must respectfully disagree.

Although Taxpayer relied on its GPS vendor to maintain and provide the necessary distance and mileage records,

it is ultimately Taxpayer's own responsibility to maintain those original source records in order to assure that Indiana - as the base jurisdiction - was able to accurately apportion taxes among the various jurisdictions in which Taxpayer's vehicles traveled. In this case, the Department's audit was hamstrung by the absence of those detailed mileage and fuel source records and was required to resort to alternative - and potentially less precise - methods of fulfilling that responsibility.

In passing, Taxpayer objected to penalties attributable to the assessment of the IRP fees. Presumably, Taxpayer cites to the same objections noted above. However, a review of the IRP assessment establishes that no additional penalties (or interest) was assessed.

FINDING

Taxpayer's request is respectfully declined.

May 20, 2020

Posted: 07/29/2020 by Legislative Services Agency
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