DEPARTMENT OF STATE REVENUE

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Letter of Findings: 41-20190217; 42-20190216
International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP)
Penalties
For the Years 2016, 2017, and 2018

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 2016 original source records sufficient to allow Indiana to accurately apportion IFTA taxes owed the various jurisdictions in which Motor Carrier's vehicles traveled; however, the Department agreed with Motor Carrier that it provided sufficient evidence to warrant abating the ten-percent IFTA penalty. Motor Carrier's objections to an IRP 2017 and 2018 penalty was unfounded because no such penalty was assessed.

ISSUE

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

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 (2017); IFTA Procedures Manual, § P510.00 (2015); IFTA Procedures Manual, § P530.100 (2013); IFTA Procedures Manual § P540 (2015); IFTA Procedures Manual at § 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,* 867 N.E.2d 289 (Ind. Tax Ct. 2007); 45 IAC 15-11-2; International Fuel Tax Agreement, https://www.fin.gov.on.ca/en/tax/ifta/.

Taxpayer argues it is entitled to an abatement of any penalty and interest 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 "a leading power only transportation service provider with coverage throughout the continental United States." As a "power only provider," Taxpayer essentially offers only towing services on behalf of its customers; whatever cargo the customer has - livestock, household goods, building materials, animal feed - Taxpayer will arrange to transport that customer's loaded trailer. Taxpayer provides these year-round services to customers in Indiana and 47 other states including those states which are member jurisdictions.

The available information indicates that Taxpayer operates 18 leased power units and employs 18 drivers. 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 2016 IFTA taxes and additional 2017 and 2018 IRP fees. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest charges.

Taxpayer disagreed with the penalty assessments on the ground that "the amount of the tax and penalties is excessive . . ." and that the Department's audit "did not find any blatant attempts to avoid taxation." Taxpayer submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

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

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 2016 IFTA fuel tax. Simultaneously, the Department's audit also found that Taxpayer owed additional 2017 and 2018 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 reported distance could not be verified. Electronic trip reports were generated by routing travel to dispatched load points with a computer routing program. Trip odometer readings, interim stops and actual routes of travel were not recorded and not used to determine reported distance for each trip. The distance records were inadequate and the reported distance could not be verified for accuracy.

. . . .

> The registrant did not record trip odometer readings and interim stops to ensure that all actual distance traveled by the trucks were reported. While trips were routed between dispatched load points, there was no way to verify that the route distance followed the actual routes taken by the truck.

The audit report concluded that the absence of these records "substantially impacted the audit process" because, "While trip reports were provided the necessary information was not contained on them."

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 the years at issue.

As a result and based upon the limited information available, the Department concluded that Taxpayer owed approximately $22,000 in additional IFTA tax. Along with that tax, the Department also assessed approximately $3,400 in interest and $2,200 in penalties. In addition, the Department assessed Taxpayer approximately $4,800 in IRP fees.

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

While generally believing that the assessments are excessive, Taxpayer does not challenge the substantive audit mileage calculations which underlie those amounts. Taxpayer's protest is therefore based on its objections to the $2,200 penalty assessment and $3,400 in interest charges.

Taxpayer previously paid both the entire IFTA assessment and IRP fee amounts in order to avoid the accumulation of additional charges. Taxpayer expects that if its protest is sustained, it will receive a refund of those amounts.

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 and interest 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, § P510.00 (2015) in part, imposes upon licensees the responsibility to preserve verifiable mileage and fuel purchase records:

> 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.

(**Emphasis added**).

The IFTA Procedures Manual at § P550 (2015) imposes upon IFTA licensees the responsibility of maintaining and then providing verifiable fuel purchase and fuel consumption records.

> .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 Procedures Manual allows licensees to maintain these records in various ways but in whatever format maintained, the Manual sets out specific requirements. IFTA Procedures Manual § P540 (2015) provides:

> .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.

However, Taxpayer does not disagree the third-party's mileage tracking records were deficient.

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 and interest amounts.

D. Taxpayer's Objections to the Penalty Assessment.

As noted above, Taxpayer objects to the "taxes, interest, and penalties for IFTA tax and IRP fees" on the ground that the assessments are in excess of what "this case warrants." Taxpayer repeats that the Department's audit found no "blatant attempts to avoid taxation" and that it "did not try to purchase agricultural diesel nor did [Taxpayer] over-report mileage." Taxpayer finds that assessments were entirely attributable to "insufficient record keeping."

Moreover, Taxpayer states that it has "taken steps to avoid problems in the future by installing GPS units in all trucks and to acquire software programs to gather this data accurately."

Finally, Taxpayer states the assessments are "an overt burden on [a] small company and is equivalent to a full year's worth of profit" inhibiting Taxpayer from expanding its business in the future.

E. Penalty Abatement.

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

> .100 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 agrees. Although Taxpayer "missed the mark" in its efforts to maintain, retain, and provide the requested documentation, there is no indication that this failure was "not due to willful neglect . . . ."

In arriving at that conclusion, the Department takes special notice of Taxpayer's efforts to enhance its record-keeping responsibilities by installing the GPS units and acquiring computer software which aids in tracking travel mileage. In doing so, Taxpayer is acting in a fashion which reflects "ordinary business care and prudence . . . ."

As to the issue of the interest charges, Taxpayer has not provided authority and the Department can point to no authority which authorizes abatement of interest. The Department may not abate these charges.

Taxpayer objected to penalties attributable to the assessment of the IRP fees. Presumably, Taxpayer cites to the same objections noted above in the discussion of the IFTA penalties. However, a review of the IRP assessment establishes that no additional penalties was assessed.

FINDING

To the extent that Taxpayer challenged the Department's imposition of the IFTA penalties, Taxpayer's protest is sustained. Because there was no penalty associated with the IRP fee assessments and because the Department may not abate interest charges, Taxpayer's challenge on these issues is moot.

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