DEPARTMENT OF STATE REVENUE

42-20200038.LOF

Letter of Findings: 42-20200038
International Fuel Tax Agreement
For the Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 provided documentation to account for some missing fuel records.

ISSUE

I. International Fuel Tax Agreement - Fuel Tax Assessment.

Authority: *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *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*, 697 N.E.2d 289, 292 (Ind. Tax Ct. 2007); IC § 6-8.1-10-2.1; IC § 6-8.1-5-1, IC § 6-6-4.1-14; IC § 6-8.1-5-4; IFTA Articles of Agreement, § R1210.300 (2015); IFTA Articles of Agreement, § R1220.100 (2015); IFTA Procedures Manual, § P550 (2015); IFTA Procedures Manual, § P530 (2015).

Taxpayer protests the assessment of additional fuel tax.

II. International Fuel Tax Agreement - Penalty.

Authority: 45 IAC 15-11-2; IC § 6-8.1-10-1; IFTA Articles of Agreement § R1220.100.

Taxpayer protests the imposition of penalty.

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 Fuel Tax Agreement ("IFTA") taxes plus penalty and interest. Taxpayer protested the assessment of additional IFTA taxes and penalty. Taxpayer elected to proceed without an administrative hearing and this Letter of Findings results. Further facts will be provided as necessary.

DISCUSSION

Taxpayer contends that the Department did not give Taxpayer a credit in 2018 for over 5,015 gallons of fuel. Those gallons are recorded and sent to the Department quarterly for tax purposes. Taxpayer provided fuel receipts from 2018 for 3,034 gallons of fuel. The audit addressed other deficiencies but Taxpayer does not protest the other deficiencies presented by the audit.

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 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 § 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.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if Taxpayer:

> (1) fails to file a return for any of the listed taxes;
> (2) 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;
> (3) incurs, upon examination by the department, a deficiency that is due to negligence;
> (4) fails to timely remit any tax held in trust for the state; or
> (5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

IFTA Articles of Agreement, § R1210.300 (2017) provides the standard for determining whether a proposed assessment may successfully be challenged by Taxpayer. "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*.

IFTA Articles of Agreement, § R1220.100 (2017) states:

> 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.

The IFTA Procedures Manual at § P550 (2017) provides that:

.100 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.
.110 Retail fuel purchases include all those purchases where a licensee buys fuel from a retail station or a bulk storage facility that the licensee does not own, lease, or control.
.200 The base jurisdiction shall not accept, for purposes of allowing tax-paid credit, any fuel record that has been altered, indicates erasures, or is illegible, unless the licensee can demonstrate that the record is valid.
.210 The base jurisdiction shall not allow tax-paid credit for any fuel placed into a vehicle other than a qualified motor vehicle.
.220 The base jurisdiction shall not allow a licensee credit for tax paid on a retail fuel purchase unless the licensee produces, with respect to the purchase:
.005 a receipt, invoice, or transaction listing from the seller,
.010 a credit-card receipt,
.015 a transaction listing generated by a third party, or
.020 an electronic or digital record of an original receipt or invoice.
.300 For tax-paid credit, a valid retail receipt, invoice, or transaction listing must contain:
.005 the date of the fuel purchase
.010 the name and address of the seller of the fuel (a vendor code, properly identified, is acceptable for this purpose)
.015 the quantity of fuel purchased
.020 the type of fuel purchased
.025 the price of the fuel per gallon or per liter, or the total price of the fuel purchased
.030 the identification of the qualified motor vehicle into which the fuel was placed
.035 the name of the purchaser of the fuel (where the qualified motor vehicle being fueled is subject to a lease, the name of either the lessor or lessee is acceptable for this purpose, provided a legal connection can be made between the purchaser named and the licensee)
.400 The licensee shall retain the following records for its bulk storage facilities:
.005 receipts for all deliveries
.010 quarterly inventory reconciliations for each tank
.015 the capacity of each tank
.020 bulk withdrawal records for every bulk tank at each location
.500 The base jurisdiction shall not allow a licensee tax-paid credit for fuel withdrawn by the licensee from its bulk fuel storage facilities unless the licensee produces records that show:
.005 the purchase price of the fuel delivered into the bulk storage includes tax paid to the member jurisdiction where the bulk storage is located, or
.010 the licensee has paid fuel tax to the member jurisdiction where the bulk storage is located.
.600 The licensee shall produce for audit records that contain the following elements for each withdrawal from its bulk storage facilities:
.005 the location of the bulk storage from which the withdrawal was made
.010 the date of the withdrawal
.015 the quantity of fuel withdrawn
.020 the type of fuel withdrawn
.025 the identification of the vehicle or equipment into which the fuel was placed
.700 When alternative fuels are purchased or stored in bulk, these same requirements shall apply, in so far as they are practicable. In instances where, with respect to an alternative fuel, a licensee cannot practicably comply with these requirements, the licensee must maintain records that fully document its purchase, storage, and use of that alternative fuel.
.800 A licensee's reporting of fuel may deviate slightly from a calendar quarterly basis provided that:
.005 the beginning and ending dates of the licensee's reported fuel reflects a consistent cut-off procedure,
.010 the deviations do not materially affect the reporting of the licensee's operations,
.015 the deviations do not materially delay the payment of taxes due,
.020 the cut-off dates are the same for distance and fuel, and
.025 the base jurisdiction can reconcile the fuel reported in the period through audit.

During the audit, the Department could not verify the fuel records. Records of all fuel purchased, received, and used were insufficient. The Department's audit noted that Taxpayer had no internal controls. Taxpayer totaled fuel by quarter through a vendor. Fuel spreadsheets for the fleet and retail fuel receipts for unit 141 were provided for the audit period. The fuel was totaled by jurisdiction and compared to reported IFTA totals for the fleet. This analysis could not be made by unit since no unit fuel summaries were provided for the audit. The greater of computed jurisdiction gallons or reported jurisdiction gallons for each quarter were included in computed fuel totals for each quarter. Any reported or missing fuel totals were entered into the database under unknown unit 999. In the course of the protest process, Taxpayer has provided some receipts for unknown unit 999.

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning Taxpayer's fuel purchases. Moreover, Taxpayer had no internal controls. It is unclear whether Taxpayer has instituted internal controls since filing this protest.

IFTA Procedures Manual § P550 provides, "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." Taxpayer failed to produce these records during the audit but has provided them as evidence to this protest.

The Department's adjustments were appropriate but will now make appropriate adjustments after receiving the receipts for unknown unit 999. Taxpayer has partially met the burden imposed by IFTA § R1210.300 and by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained to the extent explained above but denied as Taxpayer is not entitled to the full amount.

II. International Fuel Tax Agreement - Penalty.

DISCUSSION

Taxpayer protested the Department's imposition of penalty because the mistakes were not willful or grossly negligent, and Taxpayer claims the fine is excessive. The Department refers to IFTA Articles of Agreement § R1220.100, which states:

> 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.

In this case, the Department concludes that Taxpayer's conduct did not rise to the level of negligence provided in 45 IAC 15-11-2. The Department may waive a negligence penalty as provided in 45 IAC 15-11-2(c), as follows:

> The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. 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 this section. Factors which may be considered in determining reasonable cause include, but are not limited to:
> (1) the nature of the tax involved;
> (2) judicial precedents set by Indiana courts;
> (3) judicial precedents established in jurisdictions outside Indiana;
> (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
> (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.
> Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2(b) further states:

> "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a

taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard is whether a taxpayer exercised ordinary business care in executing its tax duties. In this case, Taxpayer did exercise ordinary business care. Taxpayer provided records, albeit after the Department made adjustments. Moreover, Taxpayer has a good record with the Department. Based on these reasons, the Department will waive the assessed penalty. The Department would finally note that Taxpayer is on constructive notice that a waiver may not be warranted if a similar issue transpires again.

Additionally, Taxpayer protests the Department's imposition of interest on its tax liability. IC § 6-8.1-10-1(e) explains that the Department is not permitted to waive interest. Therefore, waiver of interest is inappropriate.

FINDING

Taxpayer's protest is sustained regarding the waiver of penalty but denied in regards to waiving interest.

SUMMARY

Taxpayer's protest sustained to the extent described above regarding IFTA penalty. Taxpayer is denied regarding waiver of interest.

August 25, 2020

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An html version of this document.