

Letter of Findings: 42-20191398
International Fuel Tax Agreement
For the Year 2017

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 sufficient documentation to account for some of the missing fuel records. The Department will review the new documentation and recalculate the amount of IFTA tax due.

ISSUES

I. International Fuel Tax Agreement - Fuel Tax Assessment.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-6-4.1-14; IC § 6-8.1-3-14; *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*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); IFTA Articles of Agreement, § R1210.300 (2013); IFTA Articles of Agreement, § R1220.100 (2017); IFTA Procedures Manual, § P550 (2017); IFTA Procedures Manual, § P530 (2017); IFTA Procedures Manual, § P550 (2017); International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/>.

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 (2017).

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. Taxpayer protested the assessment of additional IFTA taxes without the addition of miles for unidentified vehicles. Taxpayer is also protesting the additional fuel tax for units that have now been identified as Non-Qualified or under a different IFTA account. The Department held an administrative hearing and this Letter of Findings results. Further facts will be provided as necessary.

I. International Fuel Tax Agreement - Fuel Tax Assessment.

DISCUSSION

The Department conducted an IFTA audit and determined that Taxpayer owed additional IFTA taxes. The Department's audit concluded that Taxpayer did not provide appropriate and sufficient records, so the reported fuel could not be verified. Due to the lack of documentation, the Department assessed tax based upon the best information available to the Department during the audit and in accordance with IFTA. The audit noted that fuel transactions provided for the audit to support the reported fuel totals did not correspond to the reported out-of-period mileage periods. Moreover, the audit notes that the fuel and miles for a trip were not always reported in the same quarter. Fuel purchases were missing for a significant portion of the reported total gallons. In addition, Taxpayer failed to report mileage to the Department regarding fuel purchases for a significant number of units indicating the units were operating. Taxpayer protests that it has additional receipts which establish that its fuel usage was lower than the Department determined. Therefore, Taxpayer argues, the Department's estimates of unreported fuel usage and IFTA taxes due are lower than the proposed assessments. Taxpayer provided

documentation including units and vehicle descriptions from fuel statements. In addition, Taxpayer provided the registration and vehicle information.

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*, 867 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.

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 August 28, 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.

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.

In the course of the audit, the Department could not verify the fuel records. Additionally, records of all fuel purchased, received, and used were insufficient. Taxpayer claims that if they produced documents for fuel then the Department should make the appropriate adjustment to the distances.

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning Taxpayer's fuel purchases and distances. In the absence of complete and accurate source documentation, the Department's best information available audit assessment is reasonable and supported by law and the IFTA Audit Manual procedures. Therefore, in the course of the audit process, Taxpayer had not "establish[ed] by a fair preponderance of the evidence that the assessment is erroneous or excessive." IFTA Articles of Agreement, § R1210.300 (2017).

IFTA Procedures Manual § P540.220 (2017) 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 [sic], engine control module (ECM), or any similar device for the period to which the records pertain. Taxpayer's 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.

In the course of the protest process, Taxpayer provided additional verifiable mileage reports and/or fuel invoices to establish that the amount of fuel subject to IFTA taxes as calculated in the audit report was higher than the actual amount. Therefore, Taxpayer has provided new relevant documentation accounting for some, but not all, of the deficiencies noted in the audit. The new documentation will reduce the IFTA assessments but will not wholly eliminate them. The fuel records and vehicle descriptions provided may account for some of the missing fuel records the Department noted in the audit. Taxpayer has not completely met the burden imposed by IFTA Articles of Agreement § R1210.300 (2017) and by IC § 6-8.1-5-1(c). The Department will adjust the IFTA taxes according to the new documentation provided by Taxpayer.

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 penalty is excessive. The Department refers to IFTA Articles of Agreement § R1220.100 (2017), 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.

Therefore, the negligence standard for imposing a penalty is not if a taxpayer's actions were "grossly negligent" as Taxpayer argues in its protest. Rather, 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 has a good IFTA compliance record with the Department. Taxpayer also provided documentation showing the Department its plan to prevent subsequent underreporting or misreporting that resulted in Taxpayer being assessed the penalty. 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.

FINDING

Taxpayer's protest is sustained.

SUMMARY

Taxpayer's protest is partially denied as to the proposed assessment of IFTA tax but is wholly sustained regarding the imposition of penalty.

September 1, 2020

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An [html](#) version of this document.