

Letter of Findings: 41-20200310; 42-20200311
International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP) Assessments
Including 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 verifiable, consistent, and reliable documentation sufficient to allow Indiana to accurately apportion IFTA taxes and IRP fees owed to the various jurisdictions in which Motor Carrier's vehicles traveled. The Department disagreed with Motor Carrier that the supplemental documentation Motor Carrier provided was sufficiently reliable to justify abating the IFTA and IRP audit assessment or issue Motor Carrier a refund of IFTA taxes previously paid.

ISSUE

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax, Penalty, and Fee Abatement.

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-14; 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; IC § 9-28-4-6; IFTA Procedures Manual, § P510 (2017); IFTA Procedures Manual, § P530 (2017); IFTA Procedures Manual at § P550.100 (2017); IRP § 1005 (2019); IRP § 1015 (2018); *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); International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/>.

Taxpayer asks the Department to reduce or eliminate the assessment of taxes and fees on the ground that the additional documentation provided following the audit justifies the adjustments.

STATEMENT OF FACTS

Taxpayer is an Indiana, multi-state motor carrier which - according to publicly available information - hauls general freight, dry bulk commodities, and paper products. Taxpayer provides year-round services to customers in Indiana and outside Indiana.

Taxpayer employs 41 drivers and operates numerous trucks. Depending on the source documentation available, Taxpayer operates between 17 and 115 trucks. Whether the actual figure is 17 or 115, the audit noted that Taxpayer's fleet "was growing rapidly." Taxpayer's vehicles travel both interstate and intrastate highways in providing Taxpayer's hauling services.

In addition to providing general freight hauling services, Taxpayer also rents, sells, leases, and repairs trucks.

Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA") and for purposes of the International Registration Plan ("IRP"). The Indiana Department of Revenue ("Department") conducted an IFTA and IRP audit, which resulted in the assessment of additional 2017 IFTA taxes and additional IRP fees for the period October 2018 to September 2019. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest amounts.

Taxpayer disagreed with the IFTA and IRP assessments on the ground that this was Taxpayer's first audit and that its personnel "had a misunderstanding with the auditor about the recordkeeping requirements of the audit." Taxpayer asked for and was granted additional time in which to supply additional documents including trip sheets, bills of lading, list of vehicles, and fuel purchase receipts.

Taxpayer subsequently provided the additional documentation which was reviewed by the Department's Motor Carrier Division. However, the Department declined to adjust the original assessments because it found the additional documentation unreliable and incomplete.

An administrative hearing was conducted by telephone during which Taxpayer's representatives again stated their objections to the assessments. This Letter of Findings is written to set out the facts, issues, law, and conclusions.

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax, Penalty, and Fee Abatement.

DISCUSSION

A. Indiana's IFTA Audit Findings.

The IFTA tax assessment was attributable to the Department's finding that Taxpayer's "records presented for audit were not compliant and . . . rated as inadequate." Taxpayer indicated that its employees who previously processed travel records and determined distance totals were no longer employed. Taxpayer's representative was unaware of any internal controls in place to verify the available reporting records.

During the course of the audit, Taxpayer provided "Vehicle Moving Reports and Rate Confirmation Records" for the first quarter of 2018. Those records - for that one period - recorded the truck number, dates, load origins, load destinations, and the products being hauled. However, the audit report noted certain record-keeping shortcomings.

The records did not record all vehicle movements. They did not record where the trucks started and ended each trip, the dates when the trucks moved, trip odometer readings, routes of travel, fuel stops, other interim stops, a breakdown of jurisdictional distances for each trip and total trip distances.

The audit report also noted that Taxpayer "was unable to provide vehicle fuel and distance summaries that corresponded to reported totals." The audit found what it labeled as "significant variances" between the summaries originally reported and the summaries provided during the audit.

The audit explains the authority for the assessment of additional IFTA taxes.

As required by the IFTA Procedures Manual, Article P570.100 Inadequate Records Assessment, if the base jurisdiction determines that the records produced by the licensee for audit do not, for the licensee's fleet as a whole, meet the criterion for the adequacy of records set forth in P530, or after the issuance of a written demand for records by the base jurisdiction, the licensee produces no records, the base jurisdiction shall impose an additional assessment by either:

- .005 Adjusting the licensee's reported MPG to 4.00 or 1.70 KPL; or
- .010 Reducing the licensee's reported MPG or KPL by twenty percent. **(Emphasis in original.)**

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately apportion the proper amount of tax owed the various member jurisdictions in which Taxpayer's trucks traveled during 2018.

As a result, and based upon the limited information available, the Department concluded that Taxpayer owed approximately \$52,000 in additional IFTA tax. Along with that fuel tax, the Department also assessed approximately \$6,000 in interest and \$5,000 in penalties.

1. Taxpayer's Burden of Establishing That the IFTA Assessment Should be Abated or Reduced.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessments are 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).

2. 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 September 14, 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 multiple vehicles 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).

The Department here will not dwell on this point but as an Indiana licensee, Taxpayer is subject to the specific, detailed reporting requirements under the IFTA and - according to the Department's audit - fell far short of those requirements.

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.)**

In addition, 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. **(Emphasis added.)**

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

3. Taxpayer's Objections to the IFTA Assessment and Request to Adjust that Assessment.

Taxpayer offers no particular objection to the audit's finding except to argue that the additional documentation subsequently provided justifies a reduction in the amount of the assessment. However, Taxpayer is unsure of the effect of this documentation estimating that the entire assessment should be reduced between 80 to 100 percent or that, alternatively, it should receive a \$300 refund of IFTA tax.

B. Indiana's IRP Audit Findings.

The Department found that Taxpayer's records were not "compliant" and "inadequate." As noted above, the individuals employed to process and maintain the records were no longer with the company and the "current employees could not explain how reported totals were determined for the audit period."

Although Taxpayer did not maintain summaries to support the IRP totals by month, by quarter, or by the distance reporting period, Taxpayer did maintain "a computer software to route the load recorded on the Vehicle Moving Reports." However, in comparing the distances originally reported and the computer records, the audit found "significant variances." The audit found that Taxpayer's "prepared summaries were unreliable and not representative of reported IFTA totals so they were considered unreliable for the IRP audit as well."

Because there were no complete and contemporaneous records to verify the actual miles traveled in each jurisdiction, the Department determined that Taxpayer owed approximately \$9,900 in additional 2018 IRP fees. The audit did so in reliance on "IRP Article X-1015" which imposes a 20 percent "assessment of the apportionable fees . . ." in the case of inadequate records.

1. IRP Requirements and Taxpayer's Record Keeping Responsibilities.

The Indiana Code permits Indiana to join the IRP agreement ("the Plan") under IC § 6-6-4.1-14 and IC § 9-28-4-6. IC § 6-6-4.1-14(a) states in relevant part:

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

IC § 9-28-4-6 states in relevant part:

- (a) The department of state revenue, on behalf of the state, may enter into reciprocal agreements providing for the registration of vehicles on an apportionment or allocation basis with the proper authority of any state, any commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country.
- (b) To implement this chapter, the state may enter into and become a member of the International Registration Plan or other designation that may be given to a reciprocity plan developed by the American Association of Motor Vehicle Administrators.

Although Taxpayer operated vehicles in Indiana and other member jurisdictions, Taxpayer selected Indiana as its base jurisdiction, pursuant to Article IV of the Plan (2013). In conjunction with the IFTA audit, the Department conducted an IRP audit under the terms of Articles XV and XVI of the Plan (2013) and the International Registration Plans Audit Procedures Manual.

The Department selected October 2018 to September 2019 as the registration year to audit. The Department determined that Taxpayer owed additional IRP fees based upon the documentation provided. § 1005 of the Plan (2018) explains that:

- (a) The Records maintained by a Registrant under Section 1000 shall be adequate to enable the Base Jurisdiction to verify the distances reported in the Registrant's application for apportioned registration and to evaluate the accuracy of the Registrant's distance accounting system for its Fleet.
- (b) Provided a Registrant's Records meet the criterion in subsection (a), the Records may be produced through any means, and retained in any format or medium available to the Registrant and accessible by the Base Jurisdiction.

§ 1015 of the Plan (2019) goes on to provide in part that:

If the Records produced by the Registrant for Audit do not, for the Registrant's Fleet as a whole, meet the criterion in Section 1005(a), or if, within 30 calendar days of the issuance of a written request by the Base Jurisdiction, the Registrant produces no Records, the Base Jurisdiction shall impose on the Registrant an assessment in the amount of **twenty percent of the Apportionable Fees** paid by the Registrant for the registration of its Fleet in the Registration Year to which the Records pertain. **(Emphasis added.)**

As with the IFTA tax audit noted above, Department's audit found that Taxpayer's records "were not compliant and have been treated as inadequate." As further explained in the audit report, "The documentation presented for audit did not support the reported distances" and "[t]rips could not be checked for jurisdictional continuity or travel in all quarters of the audit period."

As a result, the Department's audit resorted to § 1015 of the Plan (2019) to impose an additional 20 percent additional assessment of the apportionable IRP fees.

2. Taxpayer's Burden of Establishing that the IRP Fees Should be Adjusted or Abated.

As with the IFTA assessment, "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 tax by reviewing those books and records." IC § 6-8.1-5-4(a). In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times."

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. In the absence of complete, detailed source documentation, the Department's additional assessment of IRP fees, based upon § 1015 of the Plan (2019), assessment is reasonable and supported by law and the Plan and its Audit Procedures Manual. The taxpayer bears the burden of proving that any assessment is incorrect, and Taxpayer has failed to meet that burden. IC § 6-8.1-5-1(c); *Lafayette Square*, 867 N.E.2d at 292.

C. Taxpayer's Supplemental Documentation.

Taxpayer believes that the supplemental documentation provided is sufficient to justify substantially reducing or entirely eliminating the IFTA and IRP assessments. Most optimistically, Taxpayer believes that the supplemental documentation warrants receiving a refund of approximately \$300 of IFTA tax. That additional documentation was reviewed by representatives of the Department's Motor Carrier Division.

While noting that the newly provided trip reports - presumably prepared by Taxpayer's drivers - did contain many of the reporting elements required by IFTA and IRP, the odometer readings on the sheets provided only reported mileage at the beginning of each month and at the end of each month.

After reviewing the supplemental documents, the Department noted substantial variations between the miles originally reported and miles recorded on the trip sheets. During one of the 2018 quarters, the trip sheets indicated a distance of more than 200,000 miles less than the reported miles. Based on that discrepancy, the Department found "there are [still] a substantial number of trip sheets missing from what had been sent us." For example, Taxpayer provided a trip sheet for one truck for May 2018 and one for July 2018 but not for June 2018. In addition, the Motor Carrier Division noted that Taxpayer provided fuel receipts for two trucks that were not on the list of 48 trucks Taxpayer stated it operated during the period.

During that same quarter, Taxpayer listed 48 trucks in operation while Taxpayer provided trip sheets for 25 trucks. (During the phone hearing, Taxpayer indicated that it was operating 115 trucks during this period). The Department's review concluded that "trip reports were only provided for about 52[percent] of the trucks that were in the list of active trucks for the quarter."

The audit notes that during 2018, Taxpayer had applied for and obtained 109 IFTA decals. Again, there is a discrepancy between the number of trucks reported and the number of trucks accounted for in the trip sheets.

In response to and after reviewing the supplemental documentation, the Department's Motor Carrier Division concluded:

[Taxpayer] failed to provide quarterly by-unit distance and fuel summaries. Such summaries are required. The summaries should indicate miles traveled and fuel bought, by truck, for each quarter. The lack of summaries prevents [the Department] from sampling trucks to determine accuracy of miles or even what trucks make up their reported amount. It also prevents [the Department] from reconciling the differences we find.

The Department is unable to agree that Taxpayer has met its burden of establishing that the original IFTA and IRP assessments are wrong because both the original documentation and the supplemental documentation are either unreliable, contradictory, or incomplete.

FINDING

Taxpayer's request is respectfully declined.

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