

Letter of Findings: 42-20200449
International Fuel Tax Agreement (IFTA) Tax
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

After reviewing Motor Carrier's continued objections to the Department's assessment of additional International Fuel Tax Agreement ("IFTA") taxes, the Department concluded that Motor Carrier was unable to establish that the assessment was wrong; Motor Carrier's intuitive belief that the assessment was overstated was an insufficient basis on which to adjust the assessment.

ISSUE

I. International Fuel Tax Agreement - Audit Assessment.

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 § 6-8.1-5-4(a); IC § 6-8.1-5-1(c); IFTA Articles of Agreement, § R1210 (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 § 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); International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/>.

Taxpayer argues that the Department's assessment of additional IFTA tax was incorrect because the Department failed to review and incorporate all documents submitted subsequent to the Department's audit.

STATEMENT OF FACTS

Taxpayer is an industrial cleaning company which operates wet and dry vacuum trucks, roll-off trucks, semi-tractors, snowplows, salt spreaders, sewer jetters, flusher trucks, street sweepers, and pick-up trucks. Taxpayer also operates off-road equipment such as water blasters and forklifts. According to the IFTA audit report, Taxpayer operated both "subject and non-subject vehicles." In addition, Taxpayer leased/rented "both subject and non-subject vehicles."

Taxpayer's fleet operated in multiple locations across the country. However, the vehicles primarily traveled to job sites where they operated at that location for extended periods before being relocated to another job site.

Taxpayer's vehicles (both subject and non-subject) were fueled at both retail locations and bulk plants. Taxpayer's drivers were issued fuel cards usable at various retail locations.

Publicly available information - originally published by Taxpayer - claims that Taxpayer "is one of the largest industrial cleaning contractors in the U.S.," that it serves "[o]ver 1,500 customers in a broad range of industries," that it operates "20 locations nationwide," and that it has "[o]ver 2,000 employees."

Taxpayer's vehicles travel both interstate and intrastate highways in providing Taxpayer's cleaning services. Taxpayer chose Indiana as its base jurisdiction for purposes of the IFTA. The Indiana Department of Revenue ("Department") conducted an IFTA audit, which resulted in the assessment of additional 2017 IFTA taxes. Along with the assessment of the tax, the Department also imposed penalty and interest amounts.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was scheduled in order to provide Taxpayer's representative an opportunity to further explain the specific basis for the protest. The hearing was conducted by telephone during which Taxpayer's representative set out its concerns and

objections. This Letter of Findings results.

I. International Fuel Tax Agreement - Audit Assessment.

DISCUSSION

A. Indiana's Audit Findings.

The Department conducted a fuel tax audit of Taxpayer's records and determined that Taxpayer owed additional 2017 IFTA fuel tax. The assessment was attributable to the Department's finding that "[t]he distance records presented for audit were not compliant and . . . rated as inadequate." The audit report explains:

The licensee did not provide a list of all subject and non-subject trucks that were leased or rented and reported under . . . generic unit numbers during the audit period that detailed the description of the trucks, the unit numbers, the combined gross vehicle weights, and the lease periods.

. . . .
The mileage records for sample units in the 3rd quarter of 2017 were reviewed. The mileage records were incomplete. Mileage records were not provided for five of the sample units selected. While odometer readings were recorded, the total jurisdictional miles for each trip were not recorded. Origins and destinations by city and state for each trip were not recorded. All movements of the subject vehicles could not be traced with the available records. The mileage records were determined to be inadequate and could not be audited.

. . . .
[Taxpayer] did not maintain and did not provide separate reported retail and bulk diesel gallon figures for each unit in each quarter of the audit period. Since this information was needed for the audit, an estimate of the reported taxable diesel bulk fuel usage was determined for each quarter of the audit period.

The audit report noted that Taxpayer's record-keeping shortcomings "substantially impacted the audit processes" and the ability to complete a routine IFTA audit because Taxpayer was unable to produce distance records and provided "inadequate or non-existent bulk fuel records"

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 member jurisdictions in which Taxpayer traveled during the period under review.

As a result, and based upon the limited information available, the Department originally concluded that Taxpayer owed approximately \$72,000 in additional IFTA tax. Along with that tax, the Department also assessed approximately \$14,000 in interest and penalties. Taxpayer disagreed with the assessment of additional tax. As a result, the Department reviewed Taxpayer's various concerns and the supplemental documentation provided following the original audit. Prior to the hearing, the Department adjusted Taxpayer's IFTA assessment to approximately \$52,000 in tax, \$3,200 in surtax, and approximately \$4,000 in interest charges.

Taxpayer continued to disagree with the results of the supplemental review on the ground that the total liability should be reduced to approximately \$35,000.

B. Taxpayer's Burden of Establishing That Tax Assessment Should be Abated or Modified.

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

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 that of 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 Procedures Manual, § P530.100 (2017) goes on to provide 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 interest and penalty amounts.

D. Taxpayer's Objections to the IFTA Assessment.

Taxpayer disagreed with the IFTA assessment explaining that the audit failed to differentiate between vehicles it owned and vehicles it leased, that it used Excel spreadsheets to accurately track its mileage and fuel consumptions, that the majority of its vehicles did not travel cross-country but were primarily located - and used - in one location. In these cases, any fuel consumed by the stationary vehicle would not be subject to tax. In addition, Taxpayer believes that it fully explained its position during the course of the audit but that the final audit report did not incorporate those explanations.

Even following the supplemental audit adjustment, Taxpayer believes that the Department mismanaged the approximately 15,000 pages of documents it provided.

All-in-all, Taxpayer believes that, if the audit had properly considered the issues and reviewed all the pertinent documents, the assessment should be reduced to \$35,000.

E. Analysis and Conclusion.

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

Taxpayer believes the assessment should be reduced because it was ill-served by the Department's audit. However, when questioned as to the specific reasons for reducing the assessment by approximately \$17,000, Taxpayer was unable to point to any specific reason for doing. Instead, Taxpayer's representative explains that it has a "gut feeling" the correct assessment should be approximately \$35,000. Unfortunately, Taxpayer's non-specific doubts and concerns do not form the basis for an authoritative adjustment to the assessment. The Department does not agree that Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that the assessment, resulting from the Department's supplemental review of Taxpayer's initial objections, is wrong.

FINDING

Taxpayer's protest is respectfully denied.

January 27, 2021

Posted: 03/31/2021 by Legislative Services Agency
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