

**Letter of Findings: 42-20200343
International Fuel Tax Agreement
For the Year 2020**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 able to provide sufficient documentation and analysis to establish that waiver of penalty and interest is warranted.

ISSUE

I. International Fuel Tax Agreement-Fuel Tax Assessment.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-6-2 IC § 6-6-4.1-14; IC § 6-8.1-10-1; IFTA Articles of Agreement, § R960 (2020); IFTA Articles of Agreement, § R970 (2020); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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 45-15-11-2](#); March 31, 2020 Indiana Department of Revenue Commissioner's Directive.

Taxpayer protests the imposition of a late filing penalty and interest.

STATEMENT OF FACTS

Taxpayer is a motor carrier that does business in Indiana. The Indiana Department of Revenue ("Department") assessed penalty and interest for late filing. Taxpayer disagreed with the assessment of penalty and interest and submitted a protest to that effect. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as necessary.

DISCUSSION

The Department issued an assessment for penalty and interest related to late filing of Taxpayer's first quarter 2020 International Fuel Tax Agreement ("IFTA") return. The 2020 first quarter return was due on May 31, 2020. Taxpayer filed on June 1, 2020.

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), "[T]he 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.

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.

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.

IFTA Articles of Agreement, § R910 (2020) provides:

***R910 REPORTING REQUIREMENT** The licensee shall file a tax return for the tax reporting period with the base jurisdiction and shall pay all taxes due to all member jurisdictions with the remittance payable to the base jurisdiction by the due date. Jurisdictions may only require payment by guaranteed funds for the same reasons a bond may be required under R340. *

IFTA Articles of Agreement, § R920 (2020) provides:

***R920 FILING WITH BASE JURISDICTION** The timely filing of the tax return and the payment of taxes due to the base jurisdiction for all member jurisdictions discharges the responsibility of the licensee for filing of tax returns and payment of individual taxes to all member jurisdictions.

IFTA Articles of Agreement, § R960 (2020) provides:

R960 DUE DATE

.100 The tax return and full payment of taxes shall be due on the last day of the month following the close of the reporting period for which the tax return is due. If a licensee has been granted permission to file tax return annually, the annual tax return shall be due January 31 following the close of the annual tax reporting period. If the last day of the month falls on a Saturday, Sunday, or legal holiday, the next business day shall be considered the due date.

.200 Delivery by National Postal Service or National Delivery Service

.005 Tax return shall be considered received and filed on the date shown on the cancellation mark stamped by the national postal service of the Dominion of Canada, the United Mexican States, or the United States of America, or a national delivery service equivalent, on the envelope that contains the tax return; or the date the envelope was mailed, if proof satisfactory to the base jurisdiction is available to establish the date of mailing. To qualify under this provision, the envelope must be properly addressed to the department designated by the base jurisdiction to receive fuel tax return and have adequate postage affixed.

.010 Tax payments shall be considered received on the date shown on the cancellation mark stamped by the national postal service of the Dominion of Canada, the United Mexican States, or the United States of America, or a national delivery service equivalent, on the envelope that contains the payment; or the date the envelope was mailed, if proof satisfactory to the base jurisdiction is available to establish the date of mailing. To qualify under this provision, the envelope must be addressed to the department designated by the base jurisdiction to receive fuel tax payments and have adequate postage affixed.

.015 When a tax return is hand delivered, the tax return shall be considered received and filed on the date that the tax return is delivered and receipted for by an employee of the department designated by the base jurisdiction to receive tax return.

.020 When a tax payment is hand delivered, the payment shall be considered received on the date that the payment is delivered and receipted for by an employee of the department designated by the base jurisdiction to receive fuel tax payments.

.300 Delivery by Electronic Means

.005 Tax return delivered electronically shall be considered to have been received and filed on the date determined in accordance with the laws of the base jurisdiction.

.010 Tax payments may be made by any method of electronic transfer approved by the base jurisdiction.

.015 Electronic tax payments shall be considered to have been received on the date determined in accordance with the laws of the base jurisdiction.

IFTA Articles of Agreement, § R970 (2020) provides:

R970 LATE FILING

Tax return not filed or full payment of taxes not made by the due date shall be considered late and any taxes due considered delinquent.

The Department issued a March 31, 2020 Commissioner's Directive explaining the extended filing deadlines, the letter provides in relevant part:

On March 6, 2020, Governor Eric J. Holcomb issued Executive Order 20-02 declaring a public health disaster emergency in Indiana due to the Novel Coronavirus (COVID-19). Furthermore, on March 23, 2020, Governor Holcomb issued Executive Order 20-09, automatically extending the expiration of any state agency-issued license, certification or permit that has expired or is set to expire during the public health emergency, to Friday, May 22, 2020. In support of these declarations, the Indiana Department of Revenue (DOR) exercises its authority under Indiana Code 6-8.1, 6-6-4.1, and 9-18.1-13. . . . Indiana based IFTA licensees - IFTA licensees that file quarterly motor carrier fuel tax return may delay the first quarter's return normally due April 30, 2020 to May 31, 2020. In addition, in accordance with IFTA's recommendation, DOR waives the requirements to display or possess IFTA credentials until May 22, 2020. Roadside enforcement should refrain from the issuance of citations to licensees for failure to display an IFTA decal or possessing an IFTA cab card between and including March 22, 2020, and June 30, 2020. . . .

IC § 6-8.1-6-2 explains that if a due date falls on a Saturday or a Sunday, the act that must be performed by that date is timely if performed by the next succeeding day that is not a Saturday, Sunday, or a holiday.

Taxpayer filed their return and paid on June 1, 2020 and argues that it was filed timely as governed by the March 31, 2020 Commissioner's Directive and IC § 6-8.1-6-2. The Department agrees. The May 31, 2020 date fell on a Sunday. Therefore, according to IC § 6-8.1-6-2 filing on the succeeding business day, June 1, 2020 is timely. Taxpayer met its burden imposed by IC § 6-8.1-5-1(c) and is entitled to a waiver of penalty. Also, while IC § 6-8.1-10-1(e) explains that the Department may not waive interest, in this case the filing deadline was extended by March 31, 2020 Commissioner's Directive and by IC § 6-8.1-6-2 and the return was not late. Therefore, interest is not due.

FINDING

Taxpayer's protest is sustained.

March 5, 2021

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