

Letter of Findings: 41-20210111; 42-20210110
International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP) Assessments
For the Years 2018, 2019, and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department was unable to agree that Motor Carrier was entitled to an abatement of additional IRP fees and IFTA tax; Motor Carrier failed to meet its statutory burden of establishing that records provided during and after the conclusion of the original audit adequately documented the Motor Carrier's mileage or fuel consumption.

ISSUE

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

Authority: IC § 6-6-4.1-4; IC § 6-6-4.1-14; IC § 6-6-4.1-20; IC § 6-6-4.1-24; IC § 6-8.1-3-14; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 9-28-4-6; IFTA Procedures Manual, § P510 (2017); IRP § 1005 (2019); IRP § 1015 (2019); *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.

Taxpayer argues that it is entitled to an abatement of the IFTA tax and IRP fees because the audit assessments were unwarranted.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier in the business of transporting steel. Taxpayer's vehicle travels Indiana highways and interstate highways in providing those steel hauling services. In its protest, Taxpayer explained that its vehicle is driven "the same route on the special weight permit in Indiana" and the vehicle is "fuel[ed] only in Indiana on the special permit route."

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 2018 IFTA taxes and additional 2019 and 2020 IRP fees. 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 the Department did not consider or review additional documentation made available during the course of the audit.

Taxpayer submitted a protest outlining its objections. Along with its protest submission, Taxpayer provided additional documentation which - according to Taxpayer - was not considered during the initial audit review. That documentation included "special weight permits for 2018," "special weight route information," a "[c]opy of a permit that has the route printed on it from 2016," first-quarter 2018 logbooks, and "copies of the corresponding fuel receipts."

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax 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." The audit report states that Taxpayer did not "provide appropriate distance records [and] distance could not be audited." In addition, "[V]alid odometer readings and routes of travel were not available to determine the accuracy of the trip distance [and] ensure that distance and fuel were reported in the same quarter and conduct a valid MPG analysis."

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately determine the proper amount of tax owed Indiana or any of the other jurisdictions in which Taxpayer traveled or may have traveled during 2018.

The audit report explains the rationale for assessing additional IFTA taxes:

In accordance with IFTA Article P570.100 Inadequate Records Assessment . . . the reported MPGs were multiplied by 20[percent] to determine the MPG reductions. The MPG reductions were subtracted from the reported MPGs to determine the audited MPGs for each quarter.

As a result, and based upon the limited information available, the Department concluded that Taxpayer owed approximately \$1,800 in additional IFTA tax. Along with that tax, the Department also assessed approximately \$300 in interest and \$180 in penalties.

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

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

2. IFTA Requirements and Taxpayer's Responsibilities Under That Agreement.

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, <https://www.iftach.org/manual2020.php>. (last visited July 8, 2021). 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 at least one vehicle 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 belabor the point but as an Indiana licensee, Taxpayer is subject to the specific, detailed reporting requirements under the 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).

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 IFTA Assessment and Request to Abate that Assessment.

Taxpayer maintains that it "reached out numerous times . . . to check on the progress of the audit [but] the auditor never requested any additional documents." Taxpayer further explains that it has been in the business of hauling steel along the same route for 35 years and only purchases fuel at locations along that Indiana route. As such, Taxpayer assumes that it should not be liable for additional IFTA tax.

B. Indiana's IRP Audit Findings.

The Department conducted a fuel and mileage tax audit of Taxpayer's travel records and determined that Taxpayer owed additional 2019 and 2020 IRP fees. The assessment of the approximately \$600 amount was attributed to Taxpayer's failure to "provide appropriate distance records"

The IRP audit report explained that Taxpayer's "trip reports" did not contain the necessary information and this absence of complete information "substantially impacted the audit processes."

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(b) 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 a vehicle in Indiana and other states, 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 April 2019 to March 2020 as the registration year to audit. The Department determined that Taxpayer owed additional IRP fees based upon the documentation provided. § 1005 of the Plan (2019) 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 a result, the Department's audit resorted to § 1015 of the Plan (2019) to impose a 20 percent assessment of the apportionable IRP fees.

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

It should be pointed out that, "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. Conclusions.

The Department has reviewed the documentation provided along with Taxpayer's protest submission. Unfortunately, and despite Taxpayer's diligence in assembling the information, most of what Taxpayer provided was reviewed during the course of the original audit but, like then, still falls short of the mark. For example, the Department of Transportation logs did not include travel routes. Some of what Taxpayer provided relates to restricted, specified routes traveled to Detroit, Michigan and, although the Department is reasonably confident Taxpayer traveled those specified routes, there is nothing to indicate the routes taken on return to Indiana. Although Taxpayer was restricted to specified routes in traveling to Michigan, it was not so restricted while returning to Indiana. In other words, for at least half of the miles, the Department is unable to assume Taxpayer's empty vehicle traveled the same number of miles.

Taxpayer argues that the Department audited its records previously and, according to Taxpayer, was told to

continue conducting its business as it had done previously. Perhaps so, but Taxpayer must bear in mind that the 20 percent MPG reduction penalty did not exist at that time and that the only penalty available would have been to reduce the MPG to 4 MPG. Given Taxpayer's claimed mileage, the reduction would have been irrelevant since Taxpayer was reporting 3 MPG. In addition, an "inadequate" IRP finding would have resulted in an additional 80 percent penalty something which the Department found was "quite harsh."

The Department here refers to the specific findings set out in that earlier audit:

No recommendations are being prepared since the [T]axpayer has complied with all record-keeping requirements and is accurately tracking and reporting the activity and fuel usage.

In other words, the circumstances, IFTA, and IRP have changed; the Department found Taxpayer's current record keeping inadequate, and Taxpayer has failed to meet its statutory or regulatory burden of establishing otherwise. The Department does not agree that the IFTA or IRP liabilities should be abated.

FINDING

Taxpayer's protest is respectfully denied.

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