

Letter of Findings: 42-20220022
International Fuel Tax Agreement (IFTA)
For the Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 met its burden of establishing that its IFTA assessment was likely overstated and that - based on the "weights and measures" inspection report provided - the assessment should be reviewed and recalculated.

ISSUE

I. International Fuel Tax Agreement - Fuel Consumption Calculations.

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; International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/>; IFTA Procedures Manual, § P530 (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).

Taxpayer argues that the Department's assessment of additional IFTA tax was incorrect because the Department relied upon faulty fuel consumption records.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier which operates its vehicles primarily in Indiana and Ohio. Publicly available information indicates that Taxpayer operates three tractors, four trailers, and employs six drivers. However, the Department's audit indicates that Taxpayer - at the time the audit was conducted - was then operating three 80,000-pound vehicles and "hailed grain mainly in Indiana." Taxpayer owns and uses a 4,000 gallon above-ground fuel tank to supply diesel fuel for its vehicles.

Taxpayer's vehicles travel both interstate and intrastate highways in providing its hauling services.

Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA"). The Indiana Department of Revenue ("Department") conducted an IFTA audit, which resulted in the assessment of additional 2019 IFTA taxes. Along with an assessment of approximately \$500 in tax, the Department also imposed nominal penalty and interest amounts.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was scheduled. That hearing was conducted by telephone during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. International Fuel Tax Agreement - Fuel Consumption Calculations.

DISCUSSION

A. Indiana's Audit Findings.

The Department conducted a fuel tax review of Taxpayer's total and jurisdictional miles - miles traveled in Indiana and miles traveled in any other reporting jurisdiction. The Department found that Taxpayer's distance and fuel records were substantially correct. For example, as to jurisdictional miles, the Department found no "differences" between distances reported and distances traveled by "entering the origins and destinations" into the Department's "distance auditing program."

However, the Department found a discrepancy in accounting for fuel credits as follows:

When the fuel reconciliation was conducted, it showed more fuel credits being claim[ed] than tax-paid fuel being purchased.

In other words, Taxpayer was claiming that it had already paid tax on the purchase of fuel, but the audit found a discrepancy between the amount of "credits" being claimed and the amount of tax-paid gallons reported. (e.g. Taxpayer claimed a credit of \$100 in tax paid "at the pump" but the amount of tax-paid fuel purchased did not correspond to the \$100 credit claimed.)

The audit noted that all fuel consumed was "bulk fuel" and that the "[r]ecords used by [Taxpayer] to determine reported fuel" were based on Taxpayer's "[b]ulk tank withdrawal logs."

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 tax, 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 May 23, 2022). 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 Department - representing Indiana as Taxpayer's "base jurisdiction" -sought to accurately apportion the proper amount of tax owed to the various member jurisdictions in which Taxpayer's vehicle traveled during the period under review. The audit resulted in the assessment of the additional tax here at issue.

D. Taxpayer's Objections to the IFTA Assessment and Penalty.

Taxpayer argues that the assessment should be reviewed by the Department because it discovered additional

facts only available after the audit was complete and the IFTA assessment issued. Taxpayer's representative sought assistance from Bartholomew County's office of "Weights & Measures" on the ground that the representative believed the audit's findings were inexact.

As a result, the Bartholomew office issued a "Report of *Gasoline* Pump Test" under the authority of the "Indiana Division of Weights and Measures." The report indicated that Taxpayer's *diesel* tank pump incorrectly measured the amount of fuel being withdrawn from the tanks. The report's explanation follows:

In Testing the pumps on the *diesel* tanks, found in pumping 5 gallons each time in my calibrated test provers at the 0 mark, that both pumps [were] 5 to 6 tenths off on the pump gauge reading. I pumped 10 gallons off of each pump to be sure the reading was right. Each time the pump[] repeated the reading. This indicates that for each 5 gallons pumped the pump is only dispensing around 4 1/5 gallons or less. (*Emphasis added*).

As noted above, Taxpayer used his bulk fuel tank to provide fuel for his trucks and that the audit relied upon Taxpayer's own "[b]ulk tank withdrawal logs" to determine the total reported fuel.

E. Analysis and Conclusion.

Upon review of the information available, the Department agrees that Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) and IC § 6-6-4.1-24(b) of establishing that the original assessment was *wrong*. The information provided by the Bartholomew County official indicates that the pumps were misgauged and that apparently each time Taxpayer withdrew fuel from its bulk tank, the amount of fuel withdrawn was less than reported and recorded. Therefore, the Department is obliged to review its initial calculations and to adjust the assessment based on that review.

FINDING

Taxpayer's protest is sustained subject to the Department's review and recalculation of the original IFTA assessment.

June 13, 2022

Posted: 04/12/2023 by Legislative Services Agency
An [html](#) version of this document.