DEPARTMENT OF STATE REVENUE

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Letter of Findings: 42-20221639
International Fuel Tax Agreement (IFTA) Interest and Penalty
For the Year 2018

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 it was entitled to an abatement of penalties associated with an audit assessment of additional IFTA tax. The Department had no authority to abate the interest charges.

I. International Fuel Tax Agreement - Penalties and Interest.

Authority: 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 6-8.1-10-1; IC 6-8.1-10-2.1; IFTA Articles of Agreement, § R1210 (2017); IFTA Articles of Agreement, § R1210 (2017); *International Fuel Tax Agreement*, https://www.fin.gov.on.ca/en/tax/ifta/; IFTA Procedures Manual, § P510 (2017); IFTA Procedures Manual, § P530 (2017); IFTA Procedures Manual, § P540 (2017); IFTA Procedures Manual § P550 (2017); IFTA Procedures Manual § P570 (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); 45 IAC 15-11-2.

Taxpayer argues that it is entitled to an abatement of interest and penalty charges.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of distributing heating oil, motor fuel, lubricants, and the like to its customers. In order to do so, Taxpayer owns and operates various commercial vehicles including dump trucks, tanker trucks, and semitrucks.

These vehicles travel both interstate and intrastate highways in providing Taxpayer's distribution services.

Indiana is Taxpayer's 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 2018 IFTA taxes. Along with the assessment of the tax, the Department also imposed penalty and interest charges.

Taxpayer disagreed with the assessment of penalties and interest and submitted a protest to that effect. An administrative hearing was scheduled in order to provide Taxpayer the opportunity to further explain the basis for its protest. This Letter of Findings is based on a review of the documents available to the Department, the original audit report, and Taxpayer's written protest letter.

I. International Fuel Tax Agreement - Penalties and Interest.

DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that it is entitled to an abatement of interest and penalty charges.

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 each of the other reporting jurisdictions. In addition, the Department reviewed Taxpayer's fuel consumption, vehicle odometer readings, all of which were intended to "ensure [Indiana] jurisdictional distance was accurately reported."

According to the audit report, the Department found several records and record keeping shortcomings including in part as follows:

- [Taxpayer] had clerical errors where staff did not accurately report figures on the quarterly distance and fuel summaries.
- [Taxpayer] had incorrect and estimated jurisdictional tax paid fuel figures in all quarters of the audit period.
- Taxpayer's records revealed "variances present between the quarterly summary and reported total distance."

After reviewing Taxpayer's records and making adjustments to Taxpayer's fuel and distance reports, the Department determined that Taxpayer owed approximately $8,600 in additional tax, approximately $2,000 in interest, and approximately $900 in penalties.

Taxpayer argues that the penalty and interest charges should be abated on the ground that Taxpayer diligently reported accurate mileage and fuel consumption, they "have plenty of prepaid tax gallons," Taxpayer's IFTA returns were filed and timely paid, and because Taxpayer "did not willfully or negligently" fail to comply with its tax obligations.

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

As a threshold issue, it is Taxpayer's responsibility to establish that the proposed assessments of interest and penalty are either incorrect or that it is entitled to an abatement of those charges. 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.

The interest and penalty charges stem from the assessment of additional tax, pursuant to IFTA. 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 December 21, 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.

As noted above, assessments of motor carrier fuel tax, interest, and penalties under IFTA are presumed valid. IC 6-6-4.1-24(b). Those charges are related to and stem from Taxpayer's 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.

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.

IFTA Procedures Manual, § P570.100 (2017) provides that:

> 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 out 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 fleet MPG to 4.00 or 1.70 KPL; or
> .010 reducing the licensee's reported MPG or KPL by twenty percent. (**Emphasis added**).

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**).

The IFTA allows licensees to maintain these records in various ways. However, it is important to note here that Taxpayer does not challenge the IFTA assessment but only the interest and penalties associated with that assessment.

The Department - representing Indiana as Taxpayer's "base jurisdiction" - conducted the audit in order 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 additional tax but also the interest and penalty charges.

D. Analysis of Taxpayer's Objections to the Interest and Penalty Assessments.

Upon review of the information available, the Department does not agree that Taxpayer has met its statutory burden under IC 6-8.1-5-1(c) of establishing that the original assessment of penalty and interest was simply *wrong*. The IFTA penalty was assessed under authority IFTA Articles of Agreement, § R1210 (2017) which provides:

> The base jurisdiction may assess the licensee a penalty of $50.00 or 10 percent of delinquent taxes, whichever is greater, for failing to file a tax return, filing a late tax return, underpaying taxes due. Penalties paid by the licensee shall be retained by the base jurisdiction. Nothing in the Agreement limits the authority of a base jurisdiction to impose any other penalties provided by the laws of the base jurisdiction.

IC 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id*.

Departmental regulation 45 IAC 15-11-2(c) requires that 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 . . . ."

It bears repeating here that IC 6-8.1-5-1(c) provides, "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the penalty and interest charges - is presumptively valid.

In reviewing Taxpayer's argument, the Department takes note of not only the record keeping shortcomings but also recognizes Taxpayer's efforts to fulfill its record keeping obligations.

- The sample vehicle's distance records had sufficient and appropriate information to support the distances listed on the quarterly summary.
- [Taxpayer] had fuel records that were easily imported into a database for review and a full examination could be efficiently completed.
- [Taxpayer] had a process in place to record quarterly and ending odometer readings for fleet vehicles and calculate total distance for the fleet and by vehicle[.]
- [Taxpayer] had processes in place for bulk fuel [and] provided invoicing documentation to support this process. Internal controls over bulk fuel were strong.
- [Taxpayer] had processes in place to review and print monthly reports that summarized out of state travel for the fleet vehicle that had a vehicle tracking system in place.

E. Conclusions.

As pointed out at the outset, the Department found various discrepancies in weaknesses in Taxpayer's record keeping and reporting such as "incorrect and estimated jurisdictional tax fuel figures in all quarters of the audit period."

The Department recognizes the shortcomings and deficiencies pointed out in the audit. However, there is insufficient information to establish that Taxpayer's various deficiencies represented or suggested "willful neglect" on the Taxpayer's part. Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the penalty should be abated.

The Department is unable to address Taxpayer's request to abate the interest charges. IC 6-8.1-10-1(e) provides that "[e]xcept as provided by IC 6-8.1-3-17(c), IC 6-8.1-3-17(e), IC 6-8.1-5-2, and section 2.1(k) of this chapter, the department may not waive the interest imposed under this section." The interest charges are imposed under Indiana law, and the Department has no authority under these circumstances to mitigate or abate those interest charges.

FINDING

Taxpayer's protest is sustained in part and denied in part.

January 3, 2023

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An html version of this document.