

Letter of Findings: 42-20221582
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department was unable to agree with Motor Carrier that the assessment of IFTA tax should be either abated or adjusted; Motor Carrier failed to provide any documentation or relevant information which would have justified the request.

I. International Fuel Tax Agreement - Record Keeping Responsibilities and Assessment.

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](#); 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).

Taxpayer argues that the Department's assessment of additional IFTA tax was incorrect or excessive.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier which operates a number of dump trucks and provides rock, dirt, and sand transportation services. According to the Department's audit report, the majority of carrier services were provided in Indiana. However, Taxpayer's vehicles travel both interstate and intrastate highways in providing its transport 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 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. However, Taxpayer's representative did not take part in the hearing. As a result, this Letter of Findings is based on the original audit report and Taxpayer's protest submission.

I. International Fuel Tax Agreement - Record Keeping Responsibilities and Assessment.

DISCUSSION

A. Indiana's Audit Findings.

The Department conducted a fuel tax and mileage review of Taxpayer's total and jurisdictional miles - miles traveled in Indiana and miles traveled in potentially any other reporting jurisdiction. That review resulted in an assessment of additional IFTA tax. That assessment was attributed to the audit's conclusion that Taxpayer's "records presented for audit were not compliant and . . . rated as inadequate." The audit report states that the Department relied on "discovery sampling . . . to determine the adequacy of records presented for audit."

The audit pointed out what it regarded as additional deficiencies in Taxpayer's record keeping practices. For example, the audit report indicates that Taxpayer had no "internal controls" to verify reported mileage or fuel consumption and had provided no "appropriate and sufficient distance records." In the absence of records, the

audit disallowed "[a]ll tax-paid fuel." In the absence of any records, Taxpayer's "reported MPG's were adjusted to 4.00 in each quarter of the audit period. Reported total distance was divided by the 4.00 audited MPG to calculate audited total fuel in each quarter of the audit period."

The audit report recommended certain internal control improvements in order to assure that the correct fuel and mileage was recorded and reported during each quarter. As explained in the report, "A very low MPG/KPL could be an indication of missing distance and a very low MPG/KPL could be an indication of missing fuel."

The audit resulted in an assessment of approximately \$35,000 in IFTA tax, interest, and penalty.

As noted, Taxpayer challenged the assessment by submitting a "Protest Submission Form" in which Taxpayer asked for a "[f]inal determination with a hearing." The protest was accepted, an administrative hearing scheduled, and the hearing date came and went without a further response from Taxpayer.

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, 291 (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 January 3, 2023). 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 its dump trucks in Indiana and other jurisdictions. 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 the 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, § 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.

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

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

Other than submitting the "Protest Submission Form" and asking for an administrative hearing, Taxpayer has provided no further documentation and has not explained in any fashion the reasons underlying its protest.

E. Analysis and Conclusion.

Taxpayer has not challenged anything in the IFTA audit other than to submit an undocumented objection to the assessments. In addition, Taxpayer failed to take advantage of the administrative hearing scheduled for the purpose of allowing Taxpayer to explain the basis for the protest first submitted in June 2022.

In the absence of additional documentation or explanation, the Department acted in compliance with its enforcement of the IFTA requirements. Taxpayer failed to provide any documentation or analysis to conclusively establish the proposed assessments were wrong, as required by [IC 6-8.1-5-1\(c\)](#). Therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest respectfully denied.

January 17, 2023

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