

DEPARTMENT OF STATE REVENUE

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Letter of Findings: 41-20221644; 42-20231159
International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP)
Assessments
For the Years 2018 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 correctly determined that Motor Carrier's mileage and fuel consumption records were "inadequate," because the Department was unable to verify the Carrier's mileage records and fuel consumption amounts.

ISSUE

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Assessment and Penalty.

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); IFTA Procedures Manual § P530 (2017); IFTA Procedures Manual § P540 (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, <https://www.iftach.org/manual2020.php>; *Solera Omnitrac*s, <https://www.omnitrac.com/technology/electronic-logging-devices>; *EFS Fleet Card*, <https://www.efslc.com/fuel-card/efs-fleet-card>.

Taxpayer argues that the Department erred in assessing Taxpayer additional International Fuel tax and additional IRP fees.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier which transports general freight, provides transportation logistic services, and provides vehicle maintenance services. The Indiana Department of Revenue's ("Department") audit report indicates that Taxpayer operates eleven vehicles and leases ten vehicles to another carrier. For purposes of IFTA, Taxpayer reported mileage on behalf of the other carrier while the other carrier reported for purposes of the IRP. In both instances, publicly available information indicates that Taxpayer's vehicles traveled Indiana highways and interstate highways in providing these transportation services.

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 2019 IFTA taxes and an additional 2018 and 2019 IRP fees. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest amounts.

Taxpayer does not agree with the IFTA and IRP assessments amounts. Taxpayer maintains that the Department's audit did not fully consider the documentation provided and, instead, assessed tax based solely on the Department's determination that Taxpayer maintained "inadequate records."

In its protest letter, Taxpayer explained that it did maintain "adequate records" and that the information provided the Department's audit was both accurate and complete. According to Taxpayer, after the Department wrongly concluded that its records were "inadequate," Department compounded the error by relying on estimates of the amount of fuel purchased and the routes and mileage its vehicles operated.

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Assessment and Penalty.

DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that the assessments of tax and fees were wrong on the grounds that Taxpayer's fuel and mileage records were not inadequate.

As in any other disputed assessment, it is Taxpayers' responsibility to establish that the IFTA and IRP assessments were wrong. 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).

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 explains as follows:

[Taxpayer] could not capture and check required trip information for appropriate content; verify the accuracy of the trip distance; check the trip information for continuity of dates, travel points, and odometer readings or check for jurisdictional continuity.

The audit report concludes that Taxpayer's record keeping practices exhibited "internal control weaknesses" such as failing to ensure that both distance and fuel consumption were reported during each quarter. In addition, the Department faulted Taxpayer for failing to "conduct[] an MPG/KPL analysis."

IFTA Tax requires that Indiana determine the amount of fuel purchased and determine in which state or jurisdiction that fuel was consumed. Each state or jurisdiction is entitled to receive the tax on fuel that was consumed on each state or jurisdictions' roads.

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - found that it was unable to accurately determine the exact amount of tax owed Indiana or any of the other jurisdictions in which Taxpayer's vehicles traveled or may have traveled during the years under review.

The audit report cites to the authority for assessing additional IFTA taxes on the grounds that Taxpayer failed to accurately document where fuel was purchased where that fuel was consumed:

As required by the IFTA Procedures Manual, Article P570.100 Inadequate Records Assessment, if the base jurisdiction determines that the records produced by licensee for audit do not, for the licensee's fleet as a whole, meet the criterion for the adequacy of records set forth in P530, or after the issuance of a written demand for records by the base jurisdiction, the licensee produces, the base shall impose an additional assessment by either:

- .005 Adjusting the licensee's reported MPG to 4.00 or 1.70 KPL; or
- .010 Reducing the licensee's reported MPG or KPL by **twenty percent. (Emphasis added).**

The audit report explains the results:

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. **(Emphasis added).**

As a result, and based upon the information available, the Department concluded that Taxpayer owed approximately \$24,000 in additional IFTA tax. Along with that tax amount, the Department also assessed approximately \$4,000 in interest and \$2,000 in penalties.

B. 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.iftach.org/manual2020.php> (last visited January 12, 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 is headquartered in Indiana and plainly operated vehicles in Indiana. As such, Taxpayer 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\(a\)](#).

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 IFTA Procedures Manual, § P530 (2017) in part, specifies licensees' responsibility of maintaining 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 making available 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). 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**).

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.

Exercising its authority and responsibility as the Taxpayer's chosen base jurisdiction, the Department assessed the additional IFTA tax, penalty, and interest.

C. 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 2020 IRP fees. The assessment of the approximately \$3,000 was made because "[t]he records presented for audit were not compliant and have been rated as inadequate."

The IRP audit report explained why it found that the records provided were "inadequate.":

The [Taxpayer] did not retain their [Electronic Logging Device's] logs for the distance reporting period. Therefore, [Taxpayer] could not capture and check required trip information for continuity of dates, travel

points, and odometer readings; or check for jurisdictional continuity.

D. 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 vehicles in Indiana and other states, Taxpayer specifically chose 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 Plan's Audit Procedures Manual.

The Department selected July 2018 to June 2019 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 again 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.

E. Taxpayer's Arguments.

Taxpayer states that it cooperated fully with the Department's audit personnel. Specifically, it provided documentation "of all mileage driven and fuel purchased by our company during these periods." Taxpayer concludes that it "accounted for all mileage driven in each state and every gallon of fuel purchased in each state."

Taxpayer explains that it relied on its vendors to provide accurate mileage figures and fuel consumption. Taxpayer states that it uses "Omnitracs ELD's for most of our trucks." ELDs are "Electronic Logging Devices that digitally record a driver's record of Duty Status replacing paper logbooks." *Solera Omnitracs*,

<https://www.omnitracs.com/technology/electronic-logging-devices>, (Last visited January 13, 2023). The ELDs "track and record regulated drivers' compliance with Hours of Services requirement to ensure operations adhere to proper safety standards." *Id.* The ELD enabled tracking devices "allow drivers to communicate and fleet operators to remain aware of the movement of their fleet." *Omnitracs ELD Device Review 2022*, <https://elddevices.net/omnitracs-eld-device> (Last visited January 13, 2023).

In addition, Taxpayer explains that its drivers purchase fuel exclusively by means of an "EFS Fuel Card" assigned each driver. According to the card company, "[U]se of its fleet card allows a carrier to maintain "control and security over fuel and cash." *EFS Fleet Card*, <https://www.efslc.com/fuel-card/efs-fleet-card> (Last visited January 13, 2023).

Taxpayer explains that once it receives the vendors' fuel and mileage reports, "We simply entered the figures into the IFTA website [which] calculated the tax and we paid each quarter." In addition, Taxpayer states that it "never took mileage off for maintenance [but] counted every mile that each truck drove."

According to Taxpayer, the audit disallowed or minimized the accuracy of the vendors' records because that the ELD reports "didn't have sufficient latitudes and longitudes and enough pings . . ." The Department here points out that the audit report contains no information either verifying or discounting Taxpayer's explanation.

Subsequent to the hearing, Taxpayer provided a sample of the records on which it based its original mileage and fuel consumption. Taxpayer provided:

- "1st Quarter Mileage data taken from Omnitracs Portal [which] show Truck ID, Beginning and Ending Odometer, Total Mileage for each truck, and in each state;"
- Driver logs for one of its vehicles;
- "Fuel Tax Report. 1st Quarter fuel report of Skyler run trucks. We use the EFS fuel Cards. Each truck is assigned a fuel card so that we can track the fuel each truck is using;"
- An Omnitrac report for one of its vehicles which includes "pings on the truck listing longitude."

F. Analysis, Conclusions, and Results.

In both the IRP and IFTA audit issue, the question turns on the accuracy and reliability of Taxpayer's records. In particular, the issues turn on the adequacy of Taxpayer's ELD tracking system and the records available by use EFS fuel Cards.

There is no dispute that Taxpayer bought and paid for use of an ELD reporting system offered by Omnitrac and that Taxpayer's trucks were fueled by means the EFS credit cards. There is nothing to suggest that Taxpayer failed to provide those reports to the Department's audit. However, the audit concluded that the mileage and fuel consumption records presented were "inadequate." That conclusion resulted in the assessment of both the IFTA tax and IRP fees.

The inadequacies are summarized in the audit report as follows:

The [Taxpayer] did not retain their ELD logs or maintain vehicle fuel summaries for the IFTA period. Therefore, the [Taxpayer] could not capture and check required trip information for appropriate content; verify the accuracy of the trip distance; check the trip information for continuity of dates, travel points, and odometer reading; or check for jurisdictional continuity. Also the internal control weaknesses including not ensuring distance and fuel were reported in the same quarter and not including an MPG/KPL analysis.

In reviewing the documentation provided during the course of the audit, the Department agrees with that summary and - for illustrative purposes - points to these three instances buttressing that conclusion.

- For one trip between a location in Indiana and a location in Kentucky, the "Driver Log" indicated a total distance of 394 miles. However, the Omnitrac odometer/summary report indicated that the same trip covered 514 total miles. When the Department reviewed the route in its "audit routing software," the distance indicated was 105 miles. As near as can be determined, the Department concluded that not all travel locations were listed meaning that between 238 to 363 travel miles were unaccounted for.
- In another trip between two locations within Indiana, the Driver Log reported 238 miles traveled. However, when the Department reviewed the route in its "audit routing software," the travel distance indicated was 0 miles because all the reported locations were in the same Indiana location. In contrast, the reported Omnitrac summary includes 308 miles traveled in Kentucky. Again, this leaves the Department with the responsibility of determining where the unaccounted-for miles were traveled.
- In a third specific example, the driver log showed 367 total miles, the odometer/summary report specified

505 total miles, but the Department's routing software program indicates 105 miles between locations. The Department was unable to account for 262 and 400 miles traveled.

The Department concludes that the ELD logs were inherently unreliable when reporting the jurisdictional distance traveled. While the ELD logs were intended to report "Hours of Services," the ELD logs do not accurately or reliably report mileage and routes traveled. Even if the ELD logs were entirely reliable, the Department notes that neither Taxpayer nor Omnitrac retained records for the periods under audit review and the Department would have had to rely on an estimated extrapolation of current jurisdictional mileage traveled to the periods under review.

The Department was required to determine miles traveled and to report those miles to the jurisdiction in which fuel was consumed. The Department was unable to fulfill that responsibility and correctly determined that Taxpayer's records were "inadequate." Taxpayer has not met its burden under [IC 6-8.1-5-4](#) of establishing that the Department's assessments were wrong.

FINDING

Taxpayer's protest is respectfully denied.

May 3, 2023

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