

Supplemental 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental 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 Proposed 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.in.gov/dor/motor-carrier-services/fuel-tax/>; 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 an audit report prepared by the Indiana Department of Revenue ("Department"), most 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 IFTA 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, Letter of Findings 42-20221582 (January 17, 2023) ("LOF") was issued and based solely on the original audit report and Taxpayer's original protest submission.

The January LOF found that Taxpayer did not meet its statutory burden of establishing that the Department's IFTA assessment was wrong. As explained in the January LOF, the Department found that:

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 [Indiana law].

Taxpayer disagreed with that conclusion and submitted a rehearing request. The rehearing request was granted, and a supplemental hearing conducted by telephone during which Taxpayer's representative explained the basis for its continued protest.

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

DISCUSSION

As in the January LOF, the issue is whether Taxpayer has met its burden of establishing that the Department's IFTA assessment was wrong.

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 indicated 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 MPGs 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.

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.

As noted, the initial protest resulted in the January LOF denying Taxpayer's challenge of the IFTA assessment. The Department notes that, together with the IFTA audit, the Department also conducted an International Registration Plan ("IRP") audit which resulted in an assessment of additional IRP fees. In this instance, the IRP fees were not protested and are not addressed in either the January LOF or this Supplemental Letter of Findings.

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." See also *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*, www.in.gov/dor/motor-carrier-services/fuel-tax/ (last visited June 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 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 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 a first administrative hearing, Taxpayer originally provided no additional documentation supporting its argument and did not explain in any fashion the reasons underlying its protest.

Taxpayer has here attempted to correct those initial omissions by how providing additional documentation intended to bolster its argument. Taxpayer provided:

- Third and fourth quarter 2019 fuel reports;
- 2020 fuel return summary;
- 2019 and 2020 fuel invoices;
- 2020 fuel report;
- Bulk fuel supplier invoices;
- Excel spreadsheet detailing 2019 and 2020 fuel purchases.

E. Analysis and Conclusion.

The Department acknowledges Taxpayer's efforts to "fill in the gaps" made evident during the original audit and the original protest. However, the Department points to certain remaining deficiencies in the supplemental documentation Taxpayer provided. The third and fourth quarter fuel reports did not contain unit (truck) details, the reports contained no fuel information, and the reports did not match the originally filed IFTA returns. For example, in Taxpayer's original third quarter IFTA return, Taxpayer reported approximately 140,000 miles while the supplemental report now indicates approximately 78,000 miles. In Taxpayer's original fourth quarter IFTA return, Taxpayer reported approximately 21,000 miles while the supplemental report now indicates approximately 174,000 miles. In addition to the apparent discrepancies, Taxpayer did not provide any first or second quarter 2019 information.

The Department points out that the supplemental 2020 information provided is not relevant to the 2019 IFTA assessment.

Taxpayer provided only a single 2019 fuel invoice dated December 12, 2019, suggesting that the fuel was consumed in a dump truck during 2020.

A review of the information contained in the spreadsheet raised a number of concerns including references to unleaded fuel being consumed in diesel powered dump trucks. The spreadsheet only addresses purchases made in both 2019 and 2020. The spreadsheet only addresses third and fourth quarter 2019 purchases. To make any useful sense of this documentation, the Department would obviously require verification of the data sufficient to establish the spreadsheet's reliability.

In reviewing Taxpayer's original supplemental arguments, the Department takes an opportunity to point out that the Department audited Taxpayer's IFTA records on two previous occasions. On both occasions, the records were deemed "inadequate," and the Department explained in writing what records would be required in the future. Nonetheless, in the absence of reliable, relevant, current, and verifiable documentation the Department is unable to agree that Taxpayer conclusively established that the proposed IFTA assessments was wrong as required by [IC 6-8.1-5-1\(c\)](#). The Department acted in compliance with its obligation to enforce the IFTA requirements in

imposing the assessment and stands by that decision. Therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest respectfully denied.

June 13, 2023

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