

Letter of Findings: 65-20200110
Indiana Overweight Proposed Assessment
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 Indiana Department of Revenue's (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 provided sufficient evidence that it should not be assessed the full penalty for being overweight.

ISSUE

I. Motor Vehicles - Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-6-11; IC § 9-20-18-7; IC § 9-20-18-14.5; *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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment of overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana based trucking company. On August 31, 2018, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation. As a result, the Department issued Taxpayer a proposed assessment for being overweight in the form of a "No Permit Civil Penalty." Taxpayer protested the assessment of the penalty. The Department held an administrative hearing, and this Letter of Findings results. Further facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

Taxpayer was hauling agricultural commodities on an Indiana highway. ISP cited Taxpayer and the ISP report showed that Taxpayer was transporting a load over the statutorily allowed gross total weight in violation of IC § 9-20-4-1. Taxpayer argues they should not have to pay the "No Permit Civil Penalty" because they have already paid the fine from the traffic stop. Taxpayer argues that that would constitute double jeopardy.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he 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).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty . . ." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

IC § 9-20-4-2 provides the following:

(a) Section 1 of this chapter relating to vehicle weight, section 3 of this chapter assessing a penalty for transporting a load in excess of the registered limit of the load for the transporting vehicle, and section 3 of this chapter prohibiting a person from moving a transported vehicle with an excess load until a penalty is paid do not apply to a vehicle or combination of vehicles that transports:

- (1) farm commodities from the place of production to the first point of delivery where the commodities are weighed and title to the commodities is transferred if the weight of the vehicle with load or combination of vehicles with load does not exceed the gross weight limit by more than ten percent (10%); or
- (2) logs, wood chips, bark, and sawdust if the weight of the vehicle with load does not exceed either:
 - (A) the gross weight limit; or
 - (B) the axle weight limit;by more than ten percent (10%).

(b) The exemptions in subsection (a) do not apply to the following:

- (1) Weight limits imposed for bridges or sections of highways under [IC 9-20-1-3](#).
- (2) A vehicle operated on any part of an interstate highway.

In this case, the Department issued Taxpayer a "No Permit Civil Penalty." According to the ISP report, Taxpayer transported agricultural commodity that was more than the amount allowed under IC § 9-20-4-2. The Department offers an overweight commodities permit that allows a Taxpayer to transport a gross weight heavier than the statutory limit. Taxpayer conceded that they failed to obtain a permit and did not know a permit was available. The Department imposed a civil penalty in accordance with IC § 9-20-18-14.5 because Taxpayer failed to obtain the required permit under IC Art. 9-20. Taxpayer argues that they did not intend to be overweight and the reasons for being overweight were not their fault. Ultimately, Taxpayer argues that its actual weight was only 3 percent over the permitted weight and asks that the Department to forgive the penalty.

Taxpayer argues that their truck was overweight because they used test bushel method. The test bushel method is an industry standard, which Taxpayer argues varies 8-10 percent from the actual weight dependent on the quality and moisture of the commodity. Taxpayer also argues that not having a full size working scale on their farm added to being overweight. They contend that farms that size are unable to afford to have an effective scale.

The Indiana Code anticipates that there may be cases when agricultural loads are slightly overweight. IC § 9-20-4-2(a) allows agricultural loads to be up to ten percent over the maximum limit. However, IC § 9-4-20-2(b) states that the ten percent margin allowed by IC § 9-20-4-2(a) does not apply to loads transported on any interstate. In this case, ISP stopped Taxpayer on Interstate 69. Thus, the ten percent margin does not apply in this case and the maximum weight without a permit remained at 80,000 pounds.

Taxpayer argues that because it paid the ISP fine they should not have to pay the civil penalty because it would be double jeopardy. First, the Department notes that Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. This allows the Department to provide Taxpayer a route safe for transport. Second, IC § 9-20-18-14.5 provides that a civil penalty issued by the Department under IC Art. 9-20 is (1) in addition to and separate from any other civil penalties issued under Titles 8 and 9 and (2) in addition to any

ines imposed by a court. Therefore the claim of double jeopardy does not apply here because of this statutory provision that allows the Department to impose fines in addition and separate from other fines for the same violation. In this case, Taxpayer failed to obtain a permit before transporting cargo that required a permit; therefore, it is appropriate for Taxpayer to receive a No Permit Civil Penalty.

However, the Department understands Taxpayer's position that it relied the test bushel method, an established industry standard, and may reduce the Permit Violation Civil Penalty amount. In addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized by its statutory discretion and this Letter of Finding.

FINDING

Taxpayer's protest is sustained in part and denied in part. Sustained to the extent that the initially assessed amount is not due, but denied to the extent that there is still a penalty due.

May 12, 2020

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