DEPARTMENT OF STATE REVENUE

65-20200231.LOF

Letter of Findings: 65-20200231
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 overweight civil penalty. Motor Carrier's constitutional claims are beyond the scope of an administrative hearing.

ISSUES

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 § 9-20-18-14.5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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 protests the assessment of an overweight civil penalty.

II. Tax Administration - Constitutionality.

Authority: *Timbs v. Indiana*, 139 S. Ct. 682 (2019); *Jones v. Flowers*, 547 U.S. 220 (2006); *United States v. Bajakajian*, 524 U.S. 321 (1998); *Austin v. United States*, 509 U.S. 602 (1993); *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996); *Clifft v. Indiana Dep't of State Revenue*, 660 N.E.2d 310 (Ind. 1995); *Ennis v. Dep't of Local Gov't Fin.*, 835 N.E.2d 1119 (Ind. Tax Ct. 2005); Ind. Const. art. III, § 1.

Taxpayer protests the constitutionality of the imposition of an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is a trucking company that was hauling milk within Indiana. On November 13, 2018, the Indiana State Police ("ISP") examined Taxpayer's commercial motor vehicle and issued an overweight violation. Later, ISP informed the Department of the violation. As a result, the Department issued Taxpayer a proposed assessment for being overweight without a permit in the form of a "No Permit Civil Penalty." Taxpayer protested the assessment of the civil 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

ISP reported that Taxpayer needed but did not obtain an overweight permit. Taxpayer was 2,820 pounds over the statutorily allowed limit for gross weight on the Interstate System.

As a threshold issue, it is a 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 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, 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]."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Taxpayers 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.

In this case, the Department issued Taxpayer a "No Permit Civil Penalty." According to the ISP report, Taxpayer transported milk at a weight that was more than the amount allowed under IC § 9-20-4-1. Taxpayer concedes that it failed to obtain a permit but argues that the penalty is improper.

Taxpayer also argues that the penalty amount should be reduced because of the circumstances around the incident. Specifically, Taxpayer states that it did not know the vehicle was overweight and the reasons for the extra weight were beyond its control. It argues that the driver did not believe he was carrying an oversized load and thus the No Permit Civil Penalty is excessive. The truck in question was prefilled for the driver and the load is indivisible so an accurate weight was unobtainable. The driver believed he was under the weight and Taxpayer claims it would have obtained a permit as it always does when there is a possibility that the load might be overweight.

The Department notes that, first, 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. In this case, however, Taxpayer believed that their vehicle was below the statutory weight limit. Taxpayer did not have a permit on their vehicle at the time of the traffic stop, and therefore was correctly assessed a No Permit Civil Penalty. However, the Department understands Taxpayer's position that it relied on a third party to accurately load the vehicle in question and carried an indivisible load of milk.

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.

II. Tax Administration - Constitutionality.

DISCUSSION

At the hearing, Taxpayer made note of arguments made by Owner-Operator Independent Drivers Association ("OOIDA"). Although, only specifically mentioning OOIDA's argument that the fine is excessive, the Department will address multiple OOIDA arguments.

The United States Supreme Court recently issued an opinion in *Timbs v. Indiana*, 139 S. Ct. 682 (2019) which found that the Eighth Amendment's Excessive Fines Clause is incorporated by the Due Process Clause of the

Fourteenth Amendment. This means that the Department, like the IRS and other Federal agencies, is constitutionally limited in its ability to impose sanctions as punishment for an offense. *United States v. Bajakajian*, 524 U.S. 321, 327-28 (1998). A civil sanction is considered a punishment for an offense when it "cannot fairly be said *solely* to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes . . . ." *Austin v. United States*, 509 U.S. 602, 621 (1993)(*emphasis in original*)(*internal quotations omitted*).

For a punishment to be considered constitutionally excessive, it must be "grossly disproportional to the gravity of [an] offense." *Bajakajian*, 524 U.S. at 334. In making this determination, substantial deference is given to the authority of state legislatures for determining the appropriate punishment for different types of violations. *Id.* at 336. Furthermore, the inherent imprecision in determining the severity of an offense means that strict proportionality is not required. *Id.*

If Taxpayer were to argue that the penalty at the heart of this case must be analyzed as a punishment and that, when analyzed, the penalty is grossly disproportional to the offense. Taxpayer has submitted no evidence supporting these claims. Taxpayer provided no civil engineering studies, expert witness reports, or other analysis to show the actual damage done by an overweight vehicle on an Indiana highway. Without showing that the penalty in question goes beyond the funds necessary to remedy damage caused by the violation, Taxpayer cannot prove that the penalty is a punishment.

Even assuming that the penalty at issue is a punishment, it is not constitutionally excessive. The Indiana Legislature is given substantial deference in its ability to set penalties for operating an overweight vehicle without a permit. The penalty in this case did not go beyond that statutory authority. Furthermore, Section 1 of this determination modifies the penalty based on the specific facts and circumstances in this case. The Department therefore is issuing an assessment proportionate to Taxpayer's specific violation. By doing so, the Department goes beyond the constitutional requirement to avoid gross disproportionality discussed by the Supreme Court in *Bajakajian*.

Beyond incorporating the Excessive Fines Clause and other Bill of Rights guarantees, the Due Process Clause of the Fourteenth Amendment "requires the government to provide notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Jones v. Flowers*, 547 U.S. 220, 226 (2006)(*internal citations omitted*). This is distinct from actual notice, which is not constitutionally required. *Id.*

The Indiana Supreme Court has previously reviewed the Department's process and found that it provided the opportunity for due process.

> Once assessment occurs, a taxpayer may protest his [] liability to the Department. It, in turn, conducts an administrative hearing within which the taxpayer may present evidence and make his case. [] Some time after the hearing, the Department issues its findings, upon which a dissatisfied taxpayer may base his appeal to the Tax Court.

Clifft v. Indiana Dep't of State Revenue, 660 N.E.2d 310, 317 (Ind. 1995). As applied in the *Clifft* case, the Department's administrative procedures were found to "afford review in a meaningful time and in a meaningful manner which comports with the Fourteenth Amendment." *Id.* at 318.

If Taxpayer were to argue that this case involves several Due Process "concerns" including the length of time between the inspection and the issuance of the Proposed Assessment, the Assessment being sent by standard mail, the lack of a signature or telephone number on the Assessment, and the late hour of the Department's response to Taxpayer's settlement offer. But Taxpayer has not provided any evidence that these claims amount to a violation of Due Process. Indeed, Courts have ruled already that several of these "concerns" do not amount to a Due Process violation. *See, e.g., Clifft* 660 N.E.2d at 318 ("mere postponement of the opportunity to be heard is not a denial of due process if the opportunity ultimately given is adequate.") *and Ennis v. Dep't of Local Gov't Fin.*, 835 N.E.2d 1119, 1123 (Ind. Tax Ct. 2005) (standard mailing not only provides sufficient constitutional notice, but "a presumption arises that such notice is timely received.") Taxpayer in this case did, in fact, receive notice and timely protested the Proposed Assessment. Taxpayer successfully appealed the penalty at issue, engaged in settlement discussions with the Department, attended an administrative hearing, presented its arguments, and will be afforded the opportunity to appeal this decision pursuant to IC § 6-8.1-5-1(h). There would be no support for Taxpayer's claims of a Due Process violation in this case.

Although the Department believes its actions and the relevant statutes are constitutional, that finding is ultimately

outside the scope of this determination. The Department does not have the authority to strike down tax statutes. Ind. Const. art. III, § 1. Indeed, the Indiana Supreme Court has explained that, "[c]onstruing the state and federal constitutions is not the job . . . of the Department of State Revenue." *State v. Sproles*, 672 N.E.2d 1353, 1360 (Ind. 1996). Thus, without the authority to grant the relief requested on these Constitutional claims, the Department denies the Taxpayer's protest.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest is sustained in part and denied in part. The Department will make appropriate adjustments to the penalty and generate a new proposed assessment.

February 26, 2021

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An html version of this document.