

Letter of Findings: 65-20200444
Indiana Overweight Proposed Assessment
For the Year 2020

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department did not agree that Motor Carrier's overweight penalty should be abated based on Motor Carrier's argument that the failure to obtain permission to transport an overweight housing unit was both inadvertent and harmless.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-11; 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 an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is transportation company associated with a business that sells manufactured housing. Taxpayer transports housing units to customers located in its home state and other states.

In March 2020, Taxpayer operated one of its vehicles on an Indiana highway. The vehicle was transporting a manufactured (mobile home) unit. The vehicle was stopped by the Indiana State Police which found that the vehicle was overweight. While the vehicle had a permit to transport the oversize housing unit, the vehicle was overweight. Although Taxpayer was permitted to transport 53,000 pounds, the vehicle was 4,200 pounds over the permitted weight.

The Indiana Department of Revenue ("Department") issued a "civil penalty" which the Department, in the notice and proposed assessment sent Taxpayer, described as the "maximum civil penalty that may be imposed by Indiana law"

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. In its protest submission, Taxpayer stated that it was unaware that the housing unit weighed more than the housing manufacturer stipulated. Taxpayer further explained that it had nothing to gain by transporting an overweight load and that it could have easily obtained - at no additional cost - a permit which would have allowed it to transport a unit which weighed up to 80,000 pounds.

This Letter of Findings is written to respond to Taxpayer's substantive objections to the penalty.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that it was unaware that the housing unit weighed more than what the manufacturer had reported to Taxpayer. As explained by Taxpayer, "We had called the factory that built the manufactured home and had them give us the weight of the home and we added the weight of our truck to get the permit for the actual amount we believed our load to be." Taxpayer speculates that the manufacturer provided them the wrong weight.

"We do not know if the factory added parts to the load after calculating the weight"

Taxpayer further explains that it could easily have obtained permission to move overweight loads at no extra cost because it already obtained permission to carry oversize loads.

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, 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 also 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.

Taxpayer argues that it had previously paid the citation issued by the state police and that the additional overweight penalty is unwarranted. However, 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 effect, Taxpayer asks the Department to abate the penalty on the ground that Taxpayer's failure to obtain permission to transport an overweight housing unit was inadvertent. The Department is unable to agree with that argument. Although the Department does not ascribe any bad faith or ill intent to Taxpayer, IC § 9-20-1-1 is clear on its face that motor carriers may not operate a vehicle on Indiana highways that exceeds the size or weight permitted under the law.

The Department recognizes Taxpayer's intention to "make corrections to prevent [the error] from happening again" and has no reason question Taxpayer's argument that it is "very diligent in making sure we are compliant with all regulations." However, the Department is unable to agree that Taxpayer has met its statutory burden of establishing that the penalty should be abated because the penalty was "wrong."

FINDING

Taxpayer's protest is respectfully denied.

February 19, 2021

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