DEPARTMENT OF STATE REVENUE

65-20200443.LOF

Letter of Findings: 65-20200443
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

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 § 9-20-4-2; 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: IC § 6-8.1-5-1; *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 soybeans from Michigan to Indiana. On January 27, 2020, 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 1,350 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 a load of soybeans 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 provides several arguments claiming that the penalty is improper.

Taxpayer claims that the Department published guidance on its website that contradict its actions in this case. In a letter provided with its protest, Taxpayer quoted the Department's website, which Taxpayer claims should bind the Department to a maximum of a $500 penalty:

> Oversize/Overweight (OSW) Civil Penalties
>
> An individual with or without an Oversize/Overweight Permit who violates Indiana Code Article 9-20 is subject to the following civil penalties:
>
> • Not more than $500 for the first violation,
> • Not more than $1,000 for each subsequent violation . . . .

Taxpayer claims that the phrase "with or without" requires the Department to reduce the penalty in this case. The Department notes that Taxpayer has not completely and accurately reproduced the above quote from the Department's website, as denoted with ellipses. In fact, a review of the Department's records establishes that the website included three bullet points explaining the civil penalties and read as follows:

> Oversize/Overweight (OSW) Civil Penalties
>
> An individual with or without an Oversize/Overweight Permit who violates Indiana Code Article 9-20 is subject to the following civil penalties:
>
> • Not more than $500 for the first violation,
> • Not more than $1,000 for each subsequent violation, and
> • Not more than $5,000 for each violation for failure to obtain a permit.

The Department's website stated that a $5,000 penalty is the maximum for each violation for a failure to obtain a permit, regardless of the number of prior or subsequent violations. The Department recognized the potential for confusion arising from this joint discussion of the penalties for permit violation and penalties for the failure to obtain a permit. To add clarity, the Department modified the language on its website in March of 2020 to read as follows:

> Under Indiana Code (IC) 9-20-18-14.5(b), a person (or company) who obtains an OSW permit and violates

> Indiana Code 9-20 (including violation of permit guidelines) is subject to a civil penalty of not more than $500 for the first violation and not more than $1,000 for each subsequent violation.
>
> Under IC 9-20-18-14.5(c), a person (or company) who transports vehicles or loads under Indiana Code 9-20 and fails to obtain the required permit(s) is subject to a civil penalty not more than $5,000 for each violation.
>
> https://www.in.gov/dor/motor-carrier-services/oversizeoverweight-osw (Last Visited 03/29/2021 at 10:19am).

This new language makes it clearer that the $500 and $1000 penalties are for violations of already-obtained OSW permits. That clarification, however, does not change the meaning of the previous language, which separately states the penalty for "each violation for failure to obtain a permit." The Department is bound by the Indiana Code and its regulations, not by quotes pulled from its website and modified to fundamentally change their meaning.

Taxpayer also argues that the penalty amount should be reduced because of the circumstances around the incident. Specifically, Taxpayer provided documents showing that its vehicle was weighed after the soybeans were loaded at its point of origin. The total weight after loading was 78,660 pounds, which is below the threshold requiring an overweight permit. Upon learning that the vehicle was overweight, the driver notified the company at the point of origin that its scale was inaccurate. Taxpayer argues that the driver could not have known that he was carrying an oversized load and thus the No Permit Civil Penalty is excessive. Although soybeans can vary in weight due to moisture, weather, size, and density, the driver in this case did not rely on an estimate, but on a third-party scale. Taxpayer also notes that the driver would have been within Indiana's weight limit safe harbor agricultural goods if he had been carrying the load on roads other than an interstate highway.

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 and relied on a third-party scale. 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 weigh the vehicle in question. Taxpayer is also correct that it would not have required a permit for travel on roads other than an interstate highway, because the load was less than 10 percent over the statutory weight limit. IC § 9-20-4-2. However, Taxpayer elected to travel on an interstate highway.

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 multiple arguments claiming that the Department had violated the United Stated Constitution. Specifically, Taxpayer claimed that the Proposed Assessment issued by the Department and the subsequent administrative procedure resulted in a violation of the Eighth Amendment Excessive Fines Clause and the Fourteenth Amendment Due Process Clause. Each of these arguments will be addressed in turn.

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.*

Taxpayer argues 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. But 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.

Taxpayer states 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 Ind. Code § 6-8.1-5-1(h). There is 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 assessment.

March 30, 2021

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An html version of this document.