

**Letter of Findings: 65-20210115
Indiana Overweight Proposed Assessment
For the Year 2021**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 failed to provide sufficient evidence that it should not be assessed the full civil 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 § 9-20-18-14.5; *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 a trucking company which was hauling a forklift from Kentucky to Indiana. On February 2, 2021, 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 in the form of a "No Permit Civil Penalty." Taxpayer protested the assessment of the civil penalty and waived its right to an administrative hearing. This Letter of Findings results from the documentation submitted with the protest filing. 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's rear axle was 5,420 pounds over the statutorily allowed limit.

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, 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]." IC § 9-20-4-1 imposes these limitations on overall gross weight and weight over an individual axle.

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 forklift with more weight on the rear axle than the amount allowed under IC § 9-20-4-1. Taxpayer concedes that too much weight was distributed to the rear axle but contends that it could not redistribute the load at the time of the ISP inspection and that steps were taken to remedy the problem. The driver states that he contacted the Department and obtained a permit to make his load compliant before leaving the weigh station. Taxpayer also notes that this is its first violation and asks that the penalty be waived.

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. 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. Although Taxpayer did remedy the violation by obtaining a permit after the citation was issued, this does not negate the Taxpayer's responsibility to correctly load and weigh its vehicle. The Taxpayer offered no reasons why it could not accurately determine its vehicle's weight and axle distribution prior to beginning transit. In fact, the notes provided to the Department by ISP suggest that the driver knew there was a problem prior to the vehicle being inspected. Therefore, the Department denies Taxpayer's request for a reduced penalty.

FINDING

Taxpayer's protest is respectfully denied.

October 29, 2021

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