

Letter of Findings: 65-20220015
Indiana Overweight Proposed Assessment
For the Year 2022

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 to establish that it should not be assessed the full penalty for operating a vehicle that was over the statutorily allowed gross weight and overweight on inner bridge axels.

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 § 9-20-6-11; IC § 9-20-18-14.5; IC § 9-20-4-2; *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 a Michigan based trucking company. On November 1, 2021, 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. Taxpayer requested a final determination without an administrative hearing, and this Letter of Finding results. Further facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

Taxpayer hauled waste sand on an Indiana highway. ISP cited Taxpayer and reported that Taxpayer needed but did not obtain an overweight permit. Additionally, ISP reported that Taxpayer was 42,242 pounds over the statutorily allowed limit for gross weight and 17,250 pounds overweight on the inner bridge axels. Taxpayer argued they should not have to pay the "No Permit Civil Penalty" because Taxpayer had a valid permit, but it was not with the driver at the time of the traffic stop. Taxpayer claims the driver did have a permit and provided documentation in support of its position that the load was under the allowed limit.

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 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 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[percent]); 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[percent]).

(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.

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. A permit issued under IC § 9-20-6-11 for carrying loads in excess of statutory limits shall be carried in or on the vehicle to which the permit refers and be open to inspection by a police officer. Taxpayer did not have a permit on their vehicle at the time of the traffic stop, and therefore were correctly assessed a "No Permit Civil Penalty."

The Department previously issued Taxpayer four actionable violations for separate oversize/overweight violations from 2017-2018. Thus, Taxpayer should have been aware having the permit in the cab is statutorily required. Nonetheless, the Department understands that Taxpayer had a valid permit at the time of the traffic stop and had scale tickets from the loading company certifying the gross weight was less than the 115,000 pounds maximum allowed under the permit. 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 Findings.

FINDING

Taxpayer's protest is sustained in part but denied to the extent that Taxpayer did not prove the entire penalty should be removed.

June 13, 2022

