

Letter of Findings: 65-20220056
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 weight on an axle tandem.

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; 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 an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is a Tennessee based trucking company. On February 27, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation. As a result, the Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment for being overweight in the form of a "No Permit Available Civil Penalty." Taxpayer protested the assessment of the penalty. Taxpayer requested a final determination without hearing, and this Letter of Findings results. Further facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

Taxpayer was hauling steel on an Indiana highway. ISP cited Taxpayer, and the ISP report showed that Taxpayer was transporting a load in excess of the legal weight limits and for which no permit is available to allow for such excess weight violation of IC § 9-20-18-14.5(d). Taxpayer argues they should not have to pay the "No Permit Available Civil Penalty" because this is Taxpayer's first offense of this nature and the violation was not committed to avoid regulation.

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]." IC § 9-20-18-14.5(d) authorizes the Department to impose civil penalties against Motor Carriers that transport vehicles or loads in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excess weight or dimension.

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%); 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.

Taxpayer was 520 pounds over the statutorily allowed weight limit on an axle tandem in violation of IC § 9-20-4-1. The Department imposed a "No Permit Available Civil Penalty" in accordance with IC § 9-20-18-14.5(d) because Taxpayer was in excess of the legal weight for which no permit is available to allow for such excess weight. Taxpayer argues that although they exceeded the statutorily allowed weight limit, they should not have to pay the "No Permit Available Civil Penalty" because Taxpayer has been compliant in the past and will be compliant in the future.

The Department notes that Taxpayer was issued a warning for a separate oversize/overweight violation that occurred on February 24, 2022. Nonetheless, the Department understands that Taxpayer has instituted remedies to prevent future violations. 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 6, 2022

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