

DEPARTMENT OF STATE REVENUE

65-20220023.LOF

**LETTER OF FINDINGS: 65-20220023
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 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 two axles.

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 § 9-20-18-14.5; *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).

Taxpayer protests the assessment of an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana-based trucking company. On November 10, 2021, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation for being overweight on two axles. The Indiana Department of Revenue ("Department") assessed a civil penalty for an overweight violation under IC § 9-20-18-14.5(d). Taxpayer protested the assessment and requested resolution without a hearing. This Letter of Findings results. Additional facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.**DISCUSSION**

Taxpayer's commercial motor vehicle was cited for being overweight on two axles. The Department issued a "No Permit Available Civil Penalty" pursuant to IC § 9-20-18-14.5(d). In its written explanation accompanying the protest, Taxpayer argued that because it was not responsible for the loading of the truck, Taxpayer had no way to know the load was overweight and/or loaded improperly. Taxpayer also argued that ISP conducted the inspection on a "very hilly and unlevel road," which contributed to the "inconsistencies of the weights on the axels [sic] which are adjacent to each other."

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." See also *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).

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 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"). The Department may also impose a civil penalty for vehicles or loads subject to the size and weight limits provided in IC Art. 9-20 for which no permit is available ("No Permit Available Civil Penalty"). IC § 9-20-18-14.5(d).

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." Under IC § 9-20-18-14.5(a) 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.

ISP cited Taxpayer's vehicle for being overweight on axles 4 and 5 by 400 pounds and 4,500 pounds, respectively. 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 per axle weight. Under IC Art. 9-20, no permit is available for instances where axles are overweight. Taxpayer's gross vehicle weight was 78,220, which is under the allowable gross weight of 80,000 for commercial motor vehicles. See IC § 9-20-4-1(a)(1).

Taxpayer makes two arguments related to the protest. First, Taxpayer argues that its driver had no control over loading the truck. Second, Taxpayer argues that the inspection occurred on a "very hilly and unlevel road."

The fact that Taxpayer was not responsible for loading its own truck is considered a mitigating factor that may support reduction of the civil penalty. Taxpayer failed to provide any documentation related to the condition of the road at the time the inspection was conducted.

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 and denied to the extent that Taxpayer did not prove the entire penalty should be removed.

February 24, 2023

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