

LETTER OF FINDINGS: 65-20220055
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 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department did not agree that the out-of-state Motor Carrier established that the imposition of the assessed oversize/overweight penalty was wrong; however, the Department agreed that the Motor Carrier presented credible mitigating circumstances justifying the reduction of the oversize/overweight penalty.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-18-7; 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 Department of Revenue's assessment of a \$5,000 oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing its customers with transportation and transportation-related services. According to the Taxpayer, it operates five "power units" (trucks) to provide those services. Publicly available information indicates that these trucks are operated by - at various times - between three to nine employee/drivers.

Taxpayer was contacted by a freight dispatcher who had undertaken to locate a suitable motor carrier on behalf of a potential customer. The customer was a retailer and wholesaler of forest products. Taxpayer and freight dispatcher came to an arrangement in which Taxpayer agreed to accept responsibility for transporting lumber and wood products from Missouri to New Jersey. The dispatch confirmation document specified that Taxpayer was responsible for delivering twelve pallets loaded with customer's wood products. In addition, Taxpayer was responsible for also transporting "48 pieces [of] extra surplus" items.

The dispatch confirmation specified that Taxpayer's vehicle was delivering 2,160 items having a weight of 48,000 pounds.

According to Taxpayer, when the driver arrived at the Missouri customer's location, most of the items had been placed on pallets and shrink wrapped. The "48 pieces [of] extra surplus" items were apparently not contained on a pallet.

The pallets and miscellaneous items were loaded on Taxpayer's flatbed truck. For some reason, the Missouri customer made an error; instead of one set of "48 pieces [of] extra surplus" items, there were actually two sets of forty-eight surplus items the customer wanted delivered. Taxpayer's driver left Missouri with the palletized products and the 96 (not 48) surplus items. Since the "dispatch confirmation" indicated the entire load would weigh 48,000 pounds and the driver knew the truck weighed between 14,000 to 16,000 pounds (depending on the amount of fuel being carried), the driver assumed the vehicle would be underweight at 62,000 and 64,000 pounds.

While traveling on an Indiana highway, Taxpayer's vehicle was stopped by the Indiana State Police. Using portable scales, the officer determined that the vehicle's gross weight was 81,640 pounds making it 1,640 pounds

over the 80,000-pound limit. That determination led to the Department's decision to assess the \$5,000 penalty here at issue.

Taxpayer disagreed with the assessed penalty and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the \$5,000 penalty was excessive and should be abated in whole or in part because the violation resulted from errors, misrepresentations, and circumstances which were not entirely within Taxpayer's or its driver's control. The issue here is whether Taxpayer has met its burden of establishing that the Department's assessment was unwarranted and/or excessive.

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).

The Department notes that "when [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 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"). Specifically, 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"

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 other words, the \$5,000 penalty at issue is over and above any other penalty paid to the local jurisdiction.

However, IC § 9-20-18-7 provides in part:

A court shall determine the extent of liability of the driver, carrier, shipper, or other party shown to be liable.

(b) The *department of state revenue* shall determine the extent of the civil penalties assessed under *section 14.5* of this chapter.

(c) It is a criminal or civil defense if a party can show that the party:

- (1) could not reasonably have known the actual weight of the load involved;
- (2) had no access to or control of the loading of an overweighted load[.] (*Emphasis added*).

The Department here agrees that IC § 9-20-18-7(c) is relevant in assessing an oversize/overweight violation. In this case, Taxpayer indicates that it "had no control over the loading of the [customer's] trailer or its contents" under IC § 9-20-18-7(c) because verifying the content and weight was the responsibility of the Missouri company and - in part - the obligation and responsibility of the dispatcher which had documented the weight of the pallets and miscellaneous items.

Taxpayer has presented an explanation and made arguments which are not unreasonable. The Department notes Taxpayer's argument that the driver had no control over the weight of the load placed in the vehicle. Taxpayer points to the customer's error in determining - at the last moment - that it expected Taxpayer to transport not 48 "surplus items" but instead 96.

Except for the dispatcher's written confirmation order, Taxpayer has provided no documentation which substantiates the driver's inability to monitor or verify the trailer's contents or weight. Thus, the Department is unable to entirely disregard the officer's determination and conclude that Taxpayer has met its statutory burden under of IC § 6-8.1-5-1 establishing that the penalty was *wrong*. The Department respectfully declines to abate the penalty. Taxpayer is a long-time carrier more than able to comport with Indiana's oversize/overweight provisions.

Nonetheless, in addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides the Department "not more than" language when generating a proposed assessment amount. This provision allows consideration and weighing of verified and relevant mitigating circumstances. Taxpayer has explained what it believes are mitigating circumstances, and the Department agrees that these are relevant. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory discretion and this Letter of Findings.

FINDING

Taxpayer's protest is sustained in part and denied in part.

February 20, 2023

Posted: 04/19/2023 by Legislative Services Agency
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