

**LETTER OF FINDINGS: 65-20221334**  
**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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**

Motor Carrier provided sufficient evidence that the overweight civil penalty should be reduced.

**ISSUE**

**I. Motor Vehicles - 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 § 9-20-4-1; 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*, 876 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Motor Carrier protests the assessment of overweight civil penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana-based construction company. On May 24, 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 a proposed assessment for being overweight in the form of a civil penalty. Taxpayer protested the assessment of the penalty 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 protests the imposition of a penalty for an overweight violation of one of its trucks. Taxpayer argues that the truck was not overweight at the time it was loaded. Taxpayer's truck was weighed at the time of loading. According to Taxpayer's scale ticket, the truck was weighed at 12:00 p.m., and the truck's gross weight was 72,460 pounds. Less than an hour later, Taxpayer's truck was pulled over at 12:49 p.m. ISP determined Taxpayer's vehicle weighed 76,650 pounds.

Taxpayer provided documentation that showed the loading company's scales had been calibrated on May 17, 2022. The scale ticket did not provide weights of each of the truck's five axles. In addition to the reported gross weight, ISP's examination report states that two axles were overweight by over 5,000 pounds and the other three axles are over by 1-2,500 pounds. However, ISP did not report the exact weights of each axle.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence the Department's claim for the unpaid tax is valid. IC § 6-8.1-5-1(c). The burden of proving the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.*; *See, e.g., 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).

A taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "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 within this decision are 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]."

Under IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway 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 allows the Department to impose civil penalties against motor carriers that obtain a permit under IC Art. 9-20 and violate the permit parameters ("Permit Violation Civil Penalty") or are required to obtain a permit but fail to do so ("No Permit Civil Penalty").

IC § 9-20-4-1(c) states:

The weight limits . . . for any highway that is not designated as a heavy duty highway under [IC 9-20-5](#) are the following:

- (1) The total gross weight, with load, in pounds of a vehicle or combination of vehicles may not exceed seventy-three thousand two hundred eighty (73,280) pounds.
- (2) The total weight concentrated on the roadway surface from a tandem axle group may not exceed sixteen thousand (16,000) pounds for each axle of a tandem assembly.

IC § 6-8.1-1-1 states that fees and penalties assessed for overweight vehicles under IC Art. 9-20 are a "listed tax." 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 § 9-20-18-14.5(a).

ISP cited Taxpayer's truck for being overweight on both gross weight and all axles. 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 § 9-20-18-14.5(d), no permit is available for instances where axles are overweight.

Taxpayer argues that the proposed assessment should be lowered because its scale ticket stated that Taxpayer's truck was under the gross weight at which a permit would be required an hour before ISP weighed the truck. Thus, Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong, regarding the gross weight of the vehicle. However, the scale ticket did not provide the weight of each axle, and Taxpayer did not provide any further documentation regarding the weight of each axle either. Thus, Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong, regarding the axle weights of the vehicle.

As part of the protest process, the Department has reviewed the underlying documentation upon which the proposed assessments were based. The Department has determined the facts warrant the civil penalty be reduced. Taxpayer did not meet the burden of proving that the axles were not overweight. However, Taxpayer was able to show that the gross weight of the vehicle was underweight. The issued penalty will be reduced.

## FINDING

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

February 16, 2023

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