

DEPARTMENT OF STATE REVENUE

65-20221349.LOF

**LETTER OF FINDINGS: 65-20221349
Indiana Oversize 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 did not provide sufficient evidence that the oversize civil penalty should be vacated. However, Motor Carrier did provide sufficient explanation supporting reduction of the civil penalty.

ISSUE**I. Motor Vehicles - Oversize 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 § 9-20-3-3; 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 oversize civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana-based trucking company. On May 25, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an oversize violation. As a result, the Indiana Department of Revenue ("Department") issued a proposed assessment for being oversize 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 - Oversize Penalty.**DISCUSSION**

Taxpayer protests the imposition of a penalty for an oversize violation of one of its trucks. Taxpayer argues that the truck was not oversized at the time it was loaded. Taxpayer argues that the proposed assessment should be waived because its driver thought the load looked too high when being loaded and requested the load be pushed down.

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]."

IC § 9-20-3-3(a) provides, "[a] vehicle may not exceed a total maximum height of thirteen (13) feet, six (6) inches."

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 § 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 vehicle for being oversize in height by eight inches. The Department imposed a "No Permit Civil Penalty" in accordance with IC § 9-20-18-14.5(c) because Taxpayer did not obtain a permit. Under IC § 9-20-18-14.5(c), a carrier that transports vehicles or loads and fails to obtain a permit is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation described in an ISP vehicle examination report.

Taxpayer stated that its driver was concerned that the load was oversized and asked that the load be pushed down to prevent it from being oversized. There was metal sticking out of the top of the truck causing the stop by ISP. The truck's height was measured at 14 feet, 2 inches, while the maximum allowable height is 13 feet, 6 inches. Taxpayer did not have an oversize/overweight permit when stopped. The driver then called Taxpayer and a permit was obtained before continuing on the road. However, because the driver originally had concerns, Taxpayer could have reasonably known the truck was oversized.

As part of the protest process, the Department has reviewed the underlying documentation upon which the proposed assessment was based. The Department has determined that the facts do warrant a civil penalty being issued. 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. While Taxpayer could have reasonably known that the truck was oversized, Taxpayer was not in control of loading the truck and the driver did try to rectify the issue by asking the loader to push down the delivery. Therefore, in this case 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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