

## DEPARTMENT OF STATE REVENUE

65-20221568.LOF

**LETTER OF FINDINGS: 65-20221568  
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 civil penalty should be reduced.

**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 § 9-20-18-7; 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 assessment of an overweight civil penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana-based trucking company. On May 24, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation for being overweight on an axle tandem. As a result, the Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment for an overweight violation under IC § 9-20-18-14.5(d).

Taxpayer protested the assessment. The Department held an administrative hearing with the Taxpayer. 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 there was a lack scales at the loading location and that it lacked control of loading. Taxpayer provided a written explanation before the hearing. Post-hearing, Taxpayer provided copies of loading policies from two companies.

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):

The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid, including during an action appealed to the tax court under this chapter. 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"). The Department may also impose a civil penalty for vehicles or loads in excess of the size or weight limits provided in IC Art. 9-20 and for which no permit is available for the excess size or weight ("No Permit Available Civil Penalty").

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 settlement or agreement made with a local court or political subdivision regarding the traffic stop.

IC § 9-20-18-7 provides defenses which taxpayers may rely on when they submit their protest to the Department.

ISP cited Taxpayer's vehicle for being 12,450 pounds overweight 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 there is no permit is available for instances where axles are overweight.

Taxpayer argued that the loading location was a school, which did not have a scale, a private company loaded the vehicle, and Taxpayer did not have any control over the loading. The ISP inspection report shows that the driver did not have "his tag down." This refers to the tag axle that would have distributed the weight onto an extra axle. After the hearing, the Taxpayer provided documentation showing policies from two companies it works with that restrict loading for safety reasons. Taxpayer argues that these policies show loading was not within its control.

Taxpayer's arguments and supporting documents do not eliminate the fact that the vehicle was 12,450 pounds over the allowable weight for an axle tandem. However, IC § 9-20-18-14.5 provides "not more than" language for the Department to consider when generating a proposed assessment amount. Considering Taxpayer's history of compliance at the time of this inspection and information gathered during the protest process, 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 23, 2023

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