

LETTER OF FINDINGS: 65-20221641
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 vacated.

ISSUE

I. Motor Vehicles - Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 8-23-1-32; IC § 8-23-1-40; IC § 8-23-4-1; IC § 9-13-2-85; 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 July 23, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation for being overweight on a group of axles. 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 it lacked control when the vehicle was loaded. 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 § 8-23-1-40 defines "state highway system" as "the system of highways and streets that are of general economic importance to Indiana as a whole and for which responsibility is assigned to the [Indiana Department of Transportation]."

IC § 9-13-2-85 defines the term "interstate highway" as "a highway that is a part of the national system of interstate and defense highways (23 U.S.C. as in effect January 1, 1991)."

IC § 8-23-1-32 defines the term "municipal local street system" as "roads and streets used primarily for access to residence, business, or other abutting property and for which responsibility is assigned to the municipal street authority."

IC § 8-23-4-1 provides the following tiered system for highway and streets.

The highway and street system of Indiana consists of the following:

- (1) The state highway system.
- (2) A county arterial highway system in each county.
- (3) A county local highway system in each county.
- (4) A municipal arterial street system in each municipality.
- (5) A municipal local street system in each municipality.

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 3,500 pounds overweight on three axles 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 it lacked control of loading and that the policies of the loaders consistently prevent it from interacting with the loading process. During the hearing, the Taxpayer expanded on its written protest, confirming that, for safety reasons, loading is not within its control. After the hearing, Taxpayer provided documentary evidence from two loaders it has conducted business with, confirming the loading process. It also provided that its policy is to have the loader "trim" the load if it is over gross weight. Taxpayer argued that the trucks pass through the scale with an empty weight and then again when fully loaded. Taxpayer further argued that there are no mechanisms for weighing individual axles.

As part of the protest process, the Department has reviewed the underlying documentation upon which the proposed assessments were based. After review, the Department has determined the facts do not warrant a civil penalty being issued. The ISP documentation provided for this stop was not on a highway but lists 1800 Blk Shamrock Blvd as the location for the stop in Westfield, Indiana. Shamrock Blvd is not a highway under IC § 8-23-4-1. As provided by IC § 9-20-1-2, the civil penalty at issue is imposed on vehicles which are overweight on Indiana highways. Since the only address listed on the ISP report is not an Indiana highway, the penalty at issue was not applicable. Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong. The issued penalty will be vacated.

FINDING

Taxpayer's protest is sustained.

February 17, 2023

Posted: 04/19/2023 by Legislative Services Agency
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