

DEPARTMENT OF STATE REVENUE

65-20221649.LOF

**LETTER OF FINDINGS: 65-20221649
Indiana Overweight Civil Penalty
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 June 16, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation for being overweight on an axle. As a result, the Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment for an overweight violation in the form of an "overweight on axles" civil penalty under the authority of 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 the underlying traffic stop resulted in a warning rather than a ticket and fine, and there was no way of knowing that the vehicle was over the allowable axle weight at the time of the stop. Taxpayer provided a bill of lading, the original ISP warning, other corresponding mitigating factors, and other arguments to support the mitigating factors. During the hearing the Taxpayer provided the same arguments in support of its position.

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, 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 when (1) a motor carrier that has obtained a permit under IC Art. 9-20 violates the permit IC Art. 9-20 ("Permit Violation Civil Penalty"); (2) the motor carrier fails to obtain a permit required under IC Art. 9-20 ("No Permit Civil Penalty"); or (3) the motor carrier is oversize or overweight under IC Art. 9-20 and there is no permit 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.

Taxpayer's gross vehicle weight was 66,000 pounds. ISP cited Taxpayer's vehicle for being 2,000 pounds overweight on a tri-axle group 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 Taxpayer was more than the legal tri-axle weight of 50,000.

Taxpayer asserted that the scales at the gravel pits are the full length of the vehicle, and there was no reason to believe the tri-axle weight would be over the allowable limit. Taxpayer noted that its regular practice is to make sure it is compliant with the law. Taxpayer also argued that the load was loose sand aggregate that tends to move and settle as the vehicle moves. Taxpayer asserted that it is common practice at gravel pits to prohibit the drivers from exiting their vehicles. Arguing that this was the case here, it therefore could not inspect the load or assist in loading.

Taxpayer's arguments and supporting documents does not eliminate the fact it was over the allowable tri-axle weight by 2,000 pounds. 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 13, 2023

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