

## DEPARTMENT OF STATE REVENUE

65-20221707.LOF

**LETTER OF FINDINGS: 65-20221707  
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 overweight civil penalty should be vacated.

**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 an overweight civil penalty.

**STATEMENT OF FACTS**

Taxpayer is a Wisconsin-based trucking company. On June 14, 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 protested the imposition of a penalty for an overweight violation of one of its trucks. Taxpayer stated that the truck was under the maximum gross weight. However, Taxpayer conceded that the rear tandem axle group was overweight.

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 § 9-20-4-1(a) provides:

(2) The weight concentrated on the roadway surface from any tandem axle group may not exceed the following:

(A) Thirty-four thousand (34,000) pounds total weight.

(B) Twenty thousand (20,000) pounds on an individual axle in a tandem group.

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).

The tandem axle on Taxpayer's truck weighed 36,020 pounds, making it 2,020 pounds over the maximum allowable weight of 34,000 pounds. The Department imposed a "No Permit Civil Penalty" in accordance with IC § 9-20-18-14.5(d) because Taxpayer was in excess of the legal weight limit and for which no permit was available to allow for such excess weight. Therefore, Taxpayer is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each issued Indiana state police vehicle examination report.

Taxpayer explained that the rear tandem is adjustable and is supposed to be adjusted by the driver at the scale in order to distribute the weight properly. Taxpayer stated that the driver failed to properly adjust the tandem.

Furthermore, Taxpayer argued that it could not have known it was in violation. However, Taxpayer's driver should have reasonably known the tandem was overweight when weighed; and could have adjusted the tandem accordingly.

As part of the protest process, the Department has reviewed the underlying documentation upon which the proposed assessment was based. After review, the Department has determined that Motor Carrier has not met the burden of proving the proposed assessment wrong as imposed under IC § 6-8.1-5-1(c) and that the facts do warrant a civil penalty being issued.

### **FINDING**

Taxpayer's protest is denied.

February 16, 2023

*Posted: 04/19/2023 by Legislative Services Agency*  
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