

**Letter of Findings: 65-20220033  
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department did not agree that Indiana Motor Carrier established that the imposition of a \$2,500 oversize/overweight penalty was entirely unwarranted; however, the Department agreed that there were mitigating circumstances justifying the reduction of the \$2,500 penalty.

### ISSUE

#### **I. Motor Vehicles - Oversize/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 § 9-20-6-11; 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 oversize/overweight civil penalty.

### STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of providing transportation and hauling services. Publicly available information indicates that Taxpayer operates a single truck and employs between one and three drivers. That same public information indicates that Taxpayer transports building and construction materials.

Taxpayer's vehicle routinely transport its customers' loads on both Indiana and out-of-state highways.

In January 2022, Taxpayer had occasion to operate its vehicle on Indiana State Road 38 when the vehicle was stopped by an Indiana State Police officer. The truck was carrying a load of gravel on behalf of a road construction company. Taxpayer's vehicle was found to be overweight. According to the state police report a weight slip, issued by the road construction company's quarry, indicated the truck weighed 68,520 pounds "when the truck was allowed max[imum] of 68,000 weight." As a result of the officer's own examination, "I also found truck heavier than on paper on gross and way overweight on axle group." Specifically, the officer's report indicated that the truck's "overall gross weight was 69,050" which was 1,050 pounds overweight. However, the report also indicated that the vehicle's "[r]ear tandem actual weight [was] 40,600" pounds which was 6,600 pounds overweight.

As [a] break I cited for overweight showing on weight slip from [road construction company] and warned for overweight on axle group.

The Indiana Department of Revenue ("Department") issued a \$2,500 "civil penalty" which the Department, in its notice and proposed assessment sent Taxpayer, described as "the maximum civil amount that may be imposed by Indiana law . . . ."

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. In its protest, Taxpayer asked for a "[f]inal determination without a hearing." Nonetheless, Taxpayer was provided an opportunity to explain the basis for its protest on June 2, 2022, during a phone conference. Taxpayer took that opportunity to further explain the basis for the protest. This Letter of Findings results and is based on Taxpayer's protest letter, the documentation within the Department's protest file, and the representative's phone conference.

Taxpayer admits that its truck left the quarry overweight. However, Taxpayer points out that the officer chose to issue only a "warning" for the axle overweight violation. Further, Taxpayer explains that it is not possible to know the weight of any particular axle "and that there is no scale in any quarry in this country that scales individual axles . . . ." As a result, Taxpayer argues that any portion of the penalty associated with the overweight axle issue should be removed because axle weight "is completely out of our control . . . ."

Taxpayer also challenges the \$2,500 penalty on equitable grounds. "We are just trying to make a living as a sole proprietorship, and it would take all month to pay this penalty." Taxpayer concludes that the \$2,500 penalty should be reduced to \$1,000.

## **I. Motor Vehicles - Oversize/Overweight Penalty.**

### **DISCUSSION**

Taxpayer argues that, as noted above, the \$2,500 penalty was excessive and unwarranted under the circumstances and that the penalty should be reduced to \$1,000.

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. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *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, "[W]hen [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]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

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(d) authorizes the Department to impose civil penalties against Motor Carriers that transport vehicles or loads in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excess weight or dimension.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These 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. In other words, the \$5,000 penalty at issue is *over and above any other penalty paid to the local jurisdiction*.

The Department acknowledges Taxpayer's concerns arising from difficulties verifying individual axle weight. Although both the vehicle and particular load are entirely within the control of and responsibility of Taxpayer, the manner in which gravel is loaded into the vehicle is within the control of the quarry. The Department also acknowledges that this type of load may be particularly susceptible to weight variances.

Nonetheless, both Taxpayer and the Department acknowledge that the vehicle left the quarry exceeding the vehicle's gross weight limitation.

However, in addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory

**FINDING**

Taxpayer's protest is sustained in part and denied in part.

June 29, 2022

*Posted: 04/26/2023 by Legislative Services Agency*

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