

**Letter of Findings: 65-20221306
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 to establish that it should not be assessed the full penalty for operating a vehicle that was over the statutorily allowed weight on an axle or axle group.

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 § 9-20-18-14.5; *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*, 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 March 14, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation. The Indiana Department of Revenue ("Department") issued a proposed assessment for an overweight violation under IC § 9-2-18-14.5(d). Taxpayer protested the assessment 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 protests the imposition of a penalty for an overweight violation of one of its trucks. Taxpayer's commercial motor vehicle was cited for being overweight on either an axle or an axle group. The Department issued a "No Permit Civil Penalty" pursuant to IC § 9-20-18-14.5(d). In its written explanation accompanying the protest, Taxpayer explained that this particular truck was hauling stone used at a power plant, and the stone is loaded by a "large loader which makes the effort to distribute the load evenly." Taxpayer states that if the vehicle was loaded as reported, then the majority of the load was in the rear of the truck. Thus, "flow over" of the load would have occurred. The driver was issued a warning under IC § 9-20-4-1 "Violation of Maximum Weight Restrictions." Because of these factors, Taxpayer believes the civil penalty should be vacated.

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 that DOR's claim for the unpaid tax is valid. IC § 6-8.1-5-1(c). The burden of proving that 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).

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 subject to the size and weight limits provided in IC Art. 9-20 for which no permit is available ("No Permit Available Civil Penalty"). IC § 9-20-18-14.5(d).

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

ISP cited Taxpayer's vehicle for being overweight on an "axle/axle groups." ISP noted the allowed weight was 34,000 pounds and the "actual weight" was 36,500 pounds; however, ISP did not provide any details regarding which specific axle or axles were overweight. The Department imposed a "No Permit Available Civil Penalty" in accordance with IC § 9-20-18-14.5(d) because Taxpayer was in excess of the legal per axle weight. Under IC Art. 9-20, no permit is available for instances where individual or tandem axles are overweight.

Taxpayer argued that because its driver only received a warning from ISP that a civil penalty should not have been issued. As noted above, a civil penalty is a listed tax. This is separate and distinct from any warning issued by ISP.

While Taxpayer has not fully met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong, 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 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.

March 14, 2023

Posted: 05/24/2023 by Legislative Services Agency

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