

**Letter of Findings: 65-20221643
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 1, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation for being overweight on an axle group. 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 a hearing and 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 protests that there were two civil penalties assessed for a single incident. Post-hearing, Taxpayer provided pictures to support some of its claims.

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 § 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 1,000 pounds overweight on an axle group in violation of IC § 9-20-4-1. Taxpayer's vehicle weighed 35,000 pounds on its axle group. 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 34,000 pounds allowable for an axle group. Under IC Art. 9-20, no permit is available for instances where axles are overweight.

Taxpayer argued that this was its first interaction with ISP, meaning that the other noted civil penalty report that the Department received from ISP was related to same stop. Taxpayer also argues that the ISP portable scales did not match the scales where it loaded cargo, asserting that at the time of leaving the loading location it received a scale ticket. Taxpayer did not provide the scale ticket from that day to support the claim. Taxpayer provided pictures of the loading area and the instructions given to it by the loader.

Taxpayer did not provide any evidence that this was indeed its first interaction with ISP. It claimed that the two inspection reports that the Department has in its records resulted from the same incident. Without proof from the Taxpayer to support its claim about the two civil penalties from the same stop. The claim was not addressed in this Letter of Findings.

While Taxpayer has not established that the axle group in question was not over the allowed weight, 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.

March 20, 2023

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