

Letter of Findings: 65-20220004
Indiana Overweight Proposed Assessment
For The Year 2021

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 § 9-20-18-14.5; *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 November 16, 2021, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation for being overweight on an axle as provided by IC § 9-20-18-14.5(d). As a result, the Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment for an overweight violation in the form of a "No Permit Available Civil Penalty."

Taxpayer protested the assessment. An administrative hearing was held. 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 because its truck falls under the "no permit" provision of Indiana statutes and because the gross weight of the truck was not over the maximum allowed weight, there was no way for its truck to be over on an individual axle group. Taxpayer provided a "Summary of Indiana Size and Weight Laws" and a copy of "Federal Bridge Laws" to support its explanation. Post-hearing, Taxpayer provided a summary of a conversation Taxpayer had with an ISP Supervisor.

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." *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]."

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").

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.

Taxpayer's gross vehicle weight was 59,600 pounds. ISP cited Taxpayer's vehicle for being 1,100 pounds overweight on one axle 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 in excess of the legal per axle weight. Under IC § 9-20-18-14.5(d) no permit is available for instances where axles are overweight.

Taxpayer argued that there is a discrepancy between the maximum load amounts in materials provided by the Department and specifics in the statute. Taxpayer provided associated documents and explanation regarding how a triaxle truck works. In essence, a triaxle truck has a movable axle to be used depending on whether the truck bed is full or empty. If the movable axle is engaged (i.e., down with tires on the road), the system works on "air bags" that put pressure on the tires to even out the load. Additionally, per Taxpayer, the ISP Supervisor advised that the ISP trooper did not use leveling blocks under the front tandem axle while weighing the vehicle. However, these points do not establish that the weight of the axle was under the allowed weight.

While Taxpayer has not established that the axle 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.

October 17, 2022

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