

Letter of Findings: 65-20220006
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 (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 failed to provide evidence that it should not be assessed a civil penalty for being overweight.

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; *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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment of an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is a trucking company hauling gypsum within Indiana. On November 10, 2021, the Indiana State Police ("ISP") examined Taxpayer's commercial motor vehicle and issued an overweight violation. Sometime later, ISP informed the Department of the violation. As a result, the Department issued Taxpayer a "Civil Penalty Proposed Assessment for Oversize/Overweight Violation(s)" totaling \$500. Taxpayer protested the assessment of the civil penalty and waived its right to an administrative hearing. Therefore, this Letter of Findings is based on the documents provided with the protest filing. Further facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

ISP reported that Taxpayer needed, but did not obtain, an overweight permit. Taxpayer exceeded the statutorily allowed maximum axle/axle group weight by 4,000 pounds.

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).

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 a taxpayer that obtains a permit under IC Art. 9-20 and violates IC Art. 9-20 ("Permit Violation Civil Penalty") or is required, but failed, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(d) provides that "[a] carrier that transports vehicles or loads subject to [IC Art. 9-20] in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excess weight or dimension is subject to a civil penalty . . ."

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 this case, the Department issued Taxpayer a "Civil Penalty Proposed Assessment for Oversize/Overweight Violation(s)" totaling \$500. According to the ISP report, Taxpayer transported a load of gypsum at a weight over axles 4 & 5 that was more than the amount allowed under IC § 9-20-4-1(a)(2). Taxpayer concedes that it was overweight and did not obtain a permit but maintains that it did not know the vehicle was overweight and the reasons for the extra weight were beyond its control.

Taxpayer argues that the driver did not believe he was carrying an overweight load and thus the penalty is excessive. Taxpayer notes that his vehicle was within the overall weight limit and was only overweight on 2 axles. These tandem axles were on a dump trailer instead of a freight trailer, making weight adjustments impractical. Taxpayer also explained that the facility which loaded the truck did not have a way to weigh his truck on a per-axle basis.

The Department notes that, first, Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport, regardless of whether the excess weight is over a specific axle or over the entirety of the vehicle. IC § 9-20-4-1. These limits allow the Department to provide Taxpayer a route safe for transport. In this case, Taxpayer believed that their vehicle was below the statutory weight limit and did not have a permit on their vehicle at the time of the traffic stop. The Department understands Taxpayer's position that it relied on a third party to accurately load the vehicle in question with the correct amount of gypsum and that it was unable to weigh each of its axles.

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. The Department is authorized to penalize Taxpayer up to \$10,000 for the violation at issue, yet it chose to penalize Taxpayer only \$500. In this case, the Department has already used its statutory discretion to issue a penalty less than the full allowable amount. Taxpayer has failed to demonstrate that a further reduction in the penalty assessment is justified.

FINDING

Taxpayer's protest is respectfully denied.

September 19, 2022

Posted: 06/07/2023 by Legislative Services Agency

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