

**Letter of Findings: 65-20220021
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 potatoes through Indiana. On November 23, 2021, the Indiana State Police ("ISP") examined Taxpayer's commercial motor vehicle and issued an overweight violation. 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 \$1,000. 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

Taxpayer exceeded the statutorily allowed maximum axle/axle group weight by 2,600 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 \$1,000. According to the ISP report, Taxpayer transported a load of potatoes at a weight over one of the axle groups that was more than the amount allowed under IC § 9-20-4-1(a)(2). Taxpayer concedes that it was overweight but maintains that it should not be required to pay the penalty.

Taxpayer argues that it is facing hardship and is unable to pay the penalty. It also states that expenses were already incurred to "ensure that the driver received all support and training to prevent reoccurrence of the violation."

The Department notes that Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. IC § 9-20-4-1. These limits allow the Department to provide Taxpayer a route safe for transport. Taxpayer claims that it has educated its driver to avoid future violations and that it is unable to pay for the violation. However, Taxpayer failed to provide evidence supporting either of these claims.

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 \$1,000. 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.

November 7, 2022

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