

Letter of Findings: 65-20221508
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department denied Carrier's protest of the civil penalty imposed against the Carrier. Carrier did establish that the civil penalty amount should be lowered.

ISSUE

I. Motor Vehicles - Overweight Civil Penalty.

Authority: [IC 6-8.1-1-1](#); [IC 6-8.1-5-1](#); [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).

Carrier protests the assessment of overweight civil penalty.

STATEMENT OF FACTS

On March 21, 2022, the Indiana State Police ("ISP") cited the Carrier's commercial motor vehicle ("vehicle") for an overweight violation. ISP found that the vehicle was "O/W GROSS 88,000/80,000," that the vehicle had "[e]xcessive weight - 2501-5000 lbs over on an axle/axle groups O/W DRIVE TANDEM 38,300/34,000," and that the vehicle was "[e]xcessive weight - 2501-5000 lbs over on allowable gross weight O/W TRAILER TANDEM 36,600/34,000[.]" As a result, the Department issued Carrier a "DOR Civil Penalty Proposed Assessment for Oversize/Overweight Violation(s)" in the amount of \$5,000. Carrier filed a protest; an administrative telephonic hearing was held. Additional facts will be provided below, as necessary.

I. Motor Vehicles - Overweight Civil Penalty.

DISCUSSION

Carrier states in its protest letter that the protest is of the "DOR Civil Penalty" that Carrier "received for not having an OSW permit." Carrier's protest letter requests that the Department take into account mitigating factors in determining the penalty:

- (1) that the Carrier has been in business for twenty-five (25) years that the Carrier does not "have a history of overweight violations;"
- (2) that Carrier "keep[s] current on all related permits with the state of Indiana;" and
- (3) that due to "Covid related delays" the new piece of equipment that Carrier had ordered had not been delivered at the start of a job. Carrier states that the "dealership then loaned an [piece of equipment] to me to start the work. When the job was completed, the dealership did not have a driver available to pick up the loaned [piece of equipment]. My driver was already at the job site and worked it out with the dealership to deliver the [piece of equipment] back as a favor. The dealership had told us the size of the machine was the size/weight of a 200, which we are permitted for with our annual permit. My driver took the word of the dealership and delivered it back when he was ticketed. He was unaware of an oversize/overweight permit to haul the load correctly.

In summary, Carrier's mitigating factors are that it has been in business for a long time without a history of overweight violations, that the Carrier stays current on all State permits, and that Carrier's driver relied upon the dealership regarding the weight of the piece of equipment.

Turning to the law, pursuant to [IC 6-8.1-1-1](#), the "fees and penalties assessed for overweight vehicles ([IC 9-20-4](#) and [IC 9-20-18](#))" are a listed tax. Thus, as a threshold issue, it is a taxpayer's responsibility to establish that the existing tax 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. 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[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).

The Department's proposed assessment, mailed to Carrier on May 25, 2022, states in pertinent part (**emphasis in the original**):

Indiana Code section 9-20-18-14.5(c): A carrier failing to obtain a permit required under Indiana Code 9-20 is subject to a civil penalty not more than \$5,000 for each violation.

DOR is proposing an assessment of the maximum civil penalty amount of \$5,000 ("Proposed Assessment")

[IC 9-20-18-14.5](#), in its entirety, states:

(a) *The civil penalties imposed under this section are in addition to the other civil penalties that may be imposed under [IC 8](#) and [IC 9](#).* Notwithstanding section 12 of this chapter, a civil penalty imposed under this section:

- (1) *is imposed on the carrier transporting the vehicle or load;*
- (2) *shall be deposited in the motor carrier regulation fund established by [IC 8-2.1-23-1](#);*
- (3) *is in addition to any fees or fines imposed by a court; and*
- (4) *is assessed and determined by the department of state revenue in accordance with the procedures in [IC 6-8.1-5-1](#).*

(b) A carrier transporting vehicles or loads under a permit issued under this article that is violated with respect to this article subjects the carrier to a civil penalty of not more than one thousand dollars (\$1,000) for the first violation and not more than one thousand five hundred dollars (\$1,500) for each subsequent violation.

(c) *A carrier that transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation described in an Indiana state police vehicle examination report.*

(d) A carrier that transports vehicles or loads subject to this article 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 of not more than ten thousand dollars (\$10,000) for each issued Indiana state police vehicle examination report.

(e) The department of state revenue may not assess a penalty under this section after more than one (1) year has passed from the date the department is notified of a violation described under subsection (b), (c), or (d).

(f) A carrier against whom a civil penalty is imposed under this section may protest the civil penalty and request an administrative hearing. If a carrier protests a civil penalty, the department of state revenue shall allow the carrier an opportunity to present information as to why the civil penalty should not be assessed or reduced pursuant to a defense provided under section 7 of this chapter.

(g) The department of state revenue's notice of proposed assessment under [IC 6-8.1-5-1](#) is presumptively valid.

(Emphasis added).

Thus, pursuant to [IC 9-20-18-14.5\(a\)\(1\)](#), the civil penalty is imposed on the carrier; and in the instant case, the Department issued a proposed assessment for \$5,000 pursuant to [IC 9-20-18-14.5\(c\)](#).

During the telephonic administrative hearing, Carrier conceded that the vehicle was overweight and in violation of the law. Carrier provided no analysis to show that the ISP report was inaccurate or that the Department misapplied the law. Thus, Carrier has failed to meet its burden of proof outlined in [IC 6-8.1-5-1\(c\)](#) regarding there having been a violation of the law. However, Carrier has established that it should not be assessed the maximum amount under [IC 9-20-18-14.5\(c\)](#). An examination of Carrier's records with the Department shows that Carrier does not have a history of oversize and overweight violations (other than the March 21, 2022, violation addressed

herein, Carrier received a warning letter in 2021). Given Carrier's history, and the mitigating factors (e.g., the driver's reliance on the dealership for the weight of the piece of equipment) and unusual circumstances that led Carrier to be returning a loaned piece of equipment, the Department finds that the civil penalty should be reduced.

FINDING

Carrier's protest is denied but the civil penalty should be reduced.

December 6, 2022

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An [html](#) version of this document.