

**Letter of Findings: 65-20221578
Indiana Overweight Proposed Assessment
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Motor Carrier. Motor Carrier provided sufficient evidence to establish 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 a Michigan based trucking company. On April 22, 2022, 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 the auxiliary power unit (APU) exemption applies. Taxpayer provided an argument that invokes [IC 9-20-4-1](#).

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.

ISP cited Taxpayer's vehicle for being 460 pounds overweight on their trailer tandem in violation of [IC 9-20-4-1](#). That citation provided that the actual weight was 34,460 pounds, which is over the allowed 34,000 pounds. 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 the exemptions from [IC 9-20-4-1](#) should cover the weight discrepancy. Taxpayer attributes the difference in weight to the APU weight. The weight discrepancy is 460 pounds. The language in [IC 9-20-4-1\(b\)\(5\)](#) provides that "for purposes of a heavy duty vehicle that is equipped with an auxiliary power unit, the weight limitations provided in subsection (a) are increased by four hundred (400) pounds." Here the vehicle is 60 pounds over the weight allowed by the statute, even accounting for the extra 400 pounds allowed under [IC 9-20-4-1\(b\)\(5\)](#).

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. The Department will reduce the civil penalty accordingly.

December 5, 2022

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