

**Letter of Findings: 65-20221348
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 (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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 provided sufficient evidence to establish its position that it should not be assessed the full 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 9-20-1-2](#); [IC 9-20-4-1](#); [IC 9-20-4-2](#); [IC 9-20-4-4](#); [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 corn within Indiana. On April 8, 2022, the Indiana State Police ("ISP") examined Taxpayer's commercial motor vehicle and issued a violation for an overweight axle group. Later, ISP informed the Department of the violation. As a result, the Department issued Taxpayer a civil penalty for being overweight. Taxpayer protested the assessment and waived its right to an administrative hearing. This decision therefore relies on evidence submitted alongside Taxpayer's protest. Further facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

ISP reported that Taxpayer was 500 pounds over the statutorily allowed limit for a tandem axle. As a threshold issue, it is a 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. 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 "when [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, as well as the preceding audit, shall be entitled to deference.

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 9-20-4-1](#) provides the formula for determining a vehicle's gross weight limit and lists specific tandem axle weight limits. These weight limits are administered by the Department. [IC 9-20-4-4](#).

[IC 9-20-18-14.5\(d\)](#) authorizes the Department to impose civil penalties against a taxpayer that transports a loaded

vehicle over the legal weight limit. [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)" for the overweight violation. According to the ISP report, Taxpayer transported a load of corn with more weight over the tandem drive axle than allowed under [IC 9-20-4-1](#). A weight violation for which no permit is available is subject to a civil penalty of not more than \$10,000. [IC 9-20-18-14.5\(d\)](#).

Taxpayer did not apply for or hold any overweight permits in 2022 but does not claim a permit negates this violation. Instead, it argues that the driver did not believe he was carrying an oversized load and that ISP did not issue a citation, thus the penalty is excessive. Taxpayer also notes that the terminal where the truck was loaded does not have the ability to weigh each axle of the vehicle.

Taxpayer was overweight on its tandem axle and therefore was correctly assessed a civil penalty. However, 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 corn. Moreover, Taxpayer would not have required a permit for travel if its vehicle were not on an interstate highway, because the load was less than 10 percent over the statutory weight limit. [IC 9-20-4-2](#).

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. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized by its statutory discretion and this Letter of Finding.

FINDING

Taxpayer's protest is sustained in part and denied in part.

January 13, 2023

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