

**Letter of Findings: 65-20221727
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 did not agree that Indiana Motor Carrier established that the imposition of the assessed oversize/overweight penalty was unwarranted; however, the Department agreed that there were mitigating circumstances justifying the reduction of the oversize/overweight penalty.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: [IC 6-8.1-1-1](#); [IC 6-8.1-5-1](#); [IC 9-20-1-1](#); [IC 9-20-1-2](#); [IC 9-20-6-11](#); [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 a \$10,000 oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing its customers transportation services. Publicly available information indicates that Taxpayer transports "perishable commodities for customers from coast to coast[.]" Taxpayer explains that it "is one of the largest temperature-controlled truckload carriers in the United States." Taxpayer provides services by operating more than 3,000 intermodal trailers. Taxpayer operates these vehicles on both Indiana and out-of-state highways.

Taxpayer had occasion to operate one of its vehicles in Indiana. The truck was stopped by the Indiana State Police while traveling on an Indiana highway. The vehicle and its load were found to be overweight. According to the Department's explanation the violation stemmed from, "Excessive weight - 1-2,500 Lbs. over on an axle/axle groups." OVERWEIGHT TRAILER TANDEM AXLE 35,440/34,000."

The officer determined that the truck was overweight "on both axle[] groups and [overweight] on gross weight." The officer found that the vehicle's tandem axle weight was 35,440 pounds which was 1,440 pounds over the allowable weight of 34,000 pounds.

The Indiana Department of Revenue ("Department") issued a \$10,000 "civil penalty."

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. Taxpayer and the Department engaged in discussions to settle the \$10,000 penalty. Their efforts to settle the matter were unsuccessful.

Given the failure to settle the disputed penalty, this Letter of Findings was prepared to address Taxpayer's concerns, the circumstances surrounding the purported oversize/overweight violation, and the reasons Taxpayer has offered which justify a reduction or abatement of the \$10,000 penalty.

Taxpayer objects to the \$10,000 penalty on the following grounds:

- Taxpayer does not "have a history of oversize/overweight violations"; although admitting that it had four previous violations. Taxpayer argued that the four earlier violations was "not an excessive amount which would warrant the \$10,000 penalty."

- The driver did not load the trailer and the shipper would not allow the driver to watch the trailer being loaded.
- The driver had an equipment issue with the trailer which "may have contributed to the load being overweight on axles."
- Taxpayer is a large company which has an Indiana presence, is a "tax paying business," and actively recruits and trains Indiana residents as drivers.
- Since Taxpayer has a "large presence in Indiana the chances of them getting cited for an overweight citation is greater than other carriers that do not [do] as much business in Indiana."

This Letter of Findings is based on Taxpayer's written protest, the documentation within the Department's file, any documentation presented by Taxpayer, and consideration of Taxpayer's written explanation.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the \$10,000 penalty was excessive and should be abated in whole or in part. The issue here is whether Taxpayer has met its burden of establishing that the Department's assessment was unwarranted and/or excessive.

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. 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]."

According to [IC 9-20-6-11\(b\)](#), "[a] person may not violate the terms or conditions of a special permit."

[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 9-20-18-14.5\(c\)](#) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to [IC 9-20-18-14.5\(b\)](#), the Department may also subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize. In this case, the Department cited to [IC 9-20-18-14.5\(d\)](#) as authorizing the \$10,000 penalty.

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. (Effective: July 1, 2021).

[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 other words, the \$10,000 penalty at issue is over and above any other penalty paid to the local jurisdiction.

Taxpayer has presented an explanation and made arguments which are not unreasonable. The Department notes

Taxpayer's argument that the driver had no control over the weight of the load placed in the vehicle. Although possible, Taxpayer has provided no documentation which substantiates the driver's inability to monitor or adjust the vehicle's weight. Nonetheless, the Department is unable to entirely disregard the officer's determination and conclude that Taxpayer has met its statutory burden under of [IC 6-8.1-5-1](#) establishing that the penalty was *wrong*.

The Department respectfully declines to abate the penalty. Taxpayer is a large, experienced carrier more than able to comport with Indiana's oversize/overweight provisions. Nonetheless, in addition to providing Taxpayer an opportunity to protest, [IC 9-20-18-14.5](#) provides the Department "not more than" language when generating a proposed assessment amount. This provision allows consideration and weighing of verified and relevant mitigating circumstances. Taxpayer has provided such verification, and the circumstances presented are relevant. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory discretion and this Letter of Findings.

FINDING

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

January 3, 2023

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