

**Letter of Findings: 65-20221664
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

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 an Indiana based trucking company. On August 10, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation for being over the maximum allowable axle weight. As a result, the Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment for an overweight violation under [IC 9-20-18-14.5\(d\)](#) in the form of a "No Permit Available Civil Penalty."

Taxpayer protested the assessment. Taxpayer submitted a protest requesting a final determination without a hearing. 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 regarding one of its trucks. Taxpayer argues the assessment should not be \$1,000.00 and, in fact, should be waived completely. In support of its position, Taxpayer provided two scale tickets, one obtained at the pickup location (prior to the stop by ISP) and one obtained at the delivery location of the load.

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." See also *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 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.

In the instant case, Taxpayer's gross vehicle weight was 68,850 pounds. ISP cited Taxpayer's vehicle for being 850 pounds overweight on one axle in violation of [IC 9-20-4-1](#). 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 and no permit is available for instances where axles are overweight.

Taxpayer argued that there is a discrepancy between the weights at other locations and the ISP ticket weight. Taxpayer provided associated documents and explanation regarding how the stop was conducted and what was said during the stop. In essence, Taxpayer disagrees with ISP's scales and therefore argues the assessment should be waived completely. Taxpayer argues that the industry norm is to weigh the whole truck and not individual axles as the ISP officer did in this case. Taxpayer has not overcome the burden set by [IC 6-8.1-5-1\(c\)](#).

While Taxpayer has not established that ISP was wrong when it weighed the vehicle, [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 waived.

January 23, 2023

Posted: 06/28/2023 by Legislative Services Agency
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