

Letter of Findings: 65-20221706
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 wrong; 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 9-20-18-7](#); [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 \$5,000 oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of providing its customers transportation and transportation related services. Publicly available information indicates that Taxpayer offers filtration, reclamation, tank cleaning, fuel transportation, and maintenance services. In addition, Taxpayer serves its customer by providing industrial lubricant and fluids. The available information indicates that Taxpayer "serves customers in the state of Indiana."

According to the available information, Taxpayer operated 14 "power units" (trucks) and that these vehicles are operated by ten employee drivers.

Taxpayer had occasion to operate one of its vehicles in Indiana. The truck was stopped by the Indiana State Police while traveling on highway I-65. The tandem vehicle was 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 group." In particular, the axle weight was 35,240 pounds which was 1,240 pounds over the permitted limit. In addition, the tandem trailer's gross weight was 80,0680 pounds which was 680 pounds over the weight allowed without a permit.

As a result, the Indiana Department of Revenue ("Department") issued a \$5,000 "civil penalty."

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. An administrative hearing was scheduled in order to permit Taxpayer's representative to further explain the basis for the protest.

Taxpayer objects to the \$5,000 penalty on the following grounds:

- On the occasion of the oversize/overweight violation, Taxpayer was transporting a trailer that belonged to one of its customers;
- The trailer had been loaded by the customer, and Taxpayer had no control over the contents of the trailer;
- The trailer's contents were "profiled by the customer as waste with a weight of approximately 8 lbs./gallon" and Taxpayer's driver had no means of verifying the customer's content profile;
- "[Taxpayer] do[es] not have a history of oversize overweight penalties or violations;"
- On a going forward basis, Taxpayer has "changed our procedures to require the driver to check readings of

tank size [and] contents and quantity with customers before leaving the customer location."

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 explanations.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the \$5,000 penalty was excessive and should be abated in whole or in part because the violation "was a result of several factors that were not in [Taxpayer's] control." 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." 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]."

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 particular case, the Department cited to [IC 9-20-18-14.5\(c\)](#) as authorizing the \$5,000 penalty.

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 of not more than five thousand dollars (\$5,000) for each violation. (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 \$5,000 penalty at issue is over and above any other penalty paid to the local jurisdiction.

However, [IC 9-20-18-7](#) provides in part:

A court shall determine the extent of liability of the driver, carrier, shipper, or other party shown to be liable.

(b) The *department of state revenue* shall determine the extent of the civil penalties assessed under *section 14.5* of this chapter.

(c) It is a criminal or civil defense if a party can show that the party:

(1) could not reasonably have known the actual weight of the load involved;

(2) had no access to or control of the loading of an overweighted load[.] (*Emphasis added*).

The Department here agrees that [IC 9-20-18-7\(c\)](#) is relevant in assessing an oversize/overweight violation. In this case, Taxpayer indicates that it "had no control over the loading of the [customer's] trailer or its contents" under [IC 9-20-18-7\(c\)](#) because verifying the contents of the trailer was entirely the responsibility of its customer. Taxpayer may well be correct, but there is no documentation clearly supporting that assertion.

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 verify the trailer's contents or weight. Nevertheless, 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 an 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 explained what it believes are mitigating circumstances, and the Department agrees that these 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 25, 2023

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