

Letter of Findings: 65-20221715
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 vacated.

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 9-20-18-14.5](#); *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).

Taxpayer protests the assessment of an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana-based trucking company. On June 23, 2022, the Westfield Police Department stopped Taxpayer's commercial motor vehicle for an overweight violation. Indiana State Police ("ISP") then assisted the Westfield Police Department in weighing the vehicle. ISP cited Taxpayer's vehicle for being overweight on the tandem axle. The Indiana Department of Revenue ("Department") assessed a civil penalty for an overweight violation under [IC 9-20-18-14.5\(d\)](#). Taxpayer protested the assessment and requested resolution without a hearing. The Department required additional information and discussed the matter with Taxpayer. This Letter of Findings results. Additional facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

Taxpayer's commercial motor vehicle was cited for being overweight on the tandem axle. The Department issued a "No Permit Available Civil Penalty" pursuant to [IC 9-20-18-14.5\(d\)](#).

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).

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"). The Department may also impose a civil penalty for vehicles or loads in excess of the size or weight limits provided in IC Art. 9-20 and for which no permit is available for the excess size or weight ("No Permit Available 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 arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

ISP cited Taxpayer's vehicle for being overweight on the tandem axle. 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 individual axles are overweight.

Taxpayer provided additional details, including a statement from its driver, in support of the protest. The driver's statement detailed what occurred with the two police departments during the inspection. While the Department is authorized to issue assessments for overweight penalties under [IC 6-8.1-1-1](#) and [IC 9-20-18-14.5](#), the Department has determined there were issues with the methodology employed and how this inspection was conducted, as well as conflicting information as to whether this truck was actually overweight. Based on the documentation provided, Taxpayer has met the burden imposed by [IC 6-8.1-5-1\(c\)](#) of proving the proposed assessment is wrong and providing a full defense.

FINDING

Taxpayer's protest is sustained, and the civil penalty will be vacated.

January 20, 2023

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