

Letter of Findings: 65-20221562
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 that the overweight civil penalty should be vacated.

ISSUE

I. Motor Vehicles - 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 9-20-18-14.5](#); *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*, 876 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Motor Carrier protests the assessment of overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana-based trucking company. On May 12, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation. As a result, the Indiana Department of Revenue ("Department") issued a proposed assessment in the form of a civil penalty for being overweight. Taxpayer protested the assessment of the penalty. 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 of one of its trucks. Taxpayer's vehicle was cited for being overweight on five different axles. Taxpayer argues that the truck was not overweight and due to the circumstances of the roadway, its driver was required to raise certain axles in order to safely clear a roundabout.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence the Department's claim for the unpaid tax is valid. [IC 6-8.1-5-1\(c\)](#). The burden of proving the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.*; *See e.g. 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).

A taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "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 within this decision are 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]."

Under [IC 9-20-1-2](#), the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway 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](#) allows the Department to impose civil penalties against motor carriers that obtain a permit under IC Art. 9-20 and violate the permit parameters ("Permit Violation Civil Penalty") or are required to obtain a permit but fail to do so ("No Permit Civil Penalty").

[IC 6-8.1-1-1](#) states that fees and penalties assessed for overweight vehicles under IC Art. 9-20 are a "listed tax." 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. [IC 9-20-18-14.5\(a\)](#).

ISP cited Taxpayer's vehicle for being overweight on axle 2, axle 3, axle 6, axle 7, and axle 8. Because Taxpayer had previously obtained a valid permit, the Department imposed a "Permit Violation Civil Penalty" in accordance with [IC 9-20-18-14.5\(b\)](#) because Taxpayer violated the conditions of the permit.

In support of the protest, Taxpayer provided a copy of the permit issued by the Department, receipts and Bills of Lading from the loading/weighing of the steel coils, and an affidavit from its driver.

Taxpayer explained that this truck was hauling two steel coils. Taxpayer's receipts from loading showed the weight of the steel coils as 78,750 pounds. The permit obtained by Taxpayer allowed a gross weight of 120,000 pounds. Additionally, Taxpayer explained that the route required to deliver the steel coils from the manufacturer to the intended destination included travel through a roundabout. Taxpayer's driver stopped prior to the roundabout to raise the axles for safe travel through the roundabout. ISP stopped the truck immediately after driver exited the roundabout before the driver could lower the axles.

As part of the protest process, the Department has reviewed the documentation provided and upon which the proposed assessments were based. After review, the Department has determined that Taxpayer was following the Department's designated route and only raised the axles for the express purpose of traversing the roundabout, without the opportunity to relower the axles, so the facts do not warrant a civil penalty being issued. Therefore, the assessed civil penalty will be vacated.

FINDING

Taxpayer's protest is sustained.

April 21, 2023

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