

**Letter of Findings: 65-20221663
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 it should not be assessed the full penalty for operating a vehicle that was over the statutorily allowed weight on an axle group.

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 8, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation. The Indiana Department of Revenue ("Department") issued a proposed assessment for an overweight violation under [IC 9-2-18-14.5\(d\)](#). Taxpayer protested the assessment and requested resolution 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 of one of its trucks. Taxpayer's commercial motor vehicle was cited for being overweight on axles 4 and 5. The Department issued a "No Permit Civil Penalty" pursuant to [IC 9-20-18-14.5\(d\)](#). In its written explanation accompanying the protest, Taxpayer explained:

When loaded this product is loaded by a large loader which makes the effort to distribute the load evenly on the 40 foot trailer. The total weight of the product is approximately 42000 lbs., per the portable scale. With these facts in place, these [sic] weight on this report indicate that Over [sic] 90[percent] of this load was on the rear of the truck. If this was possibly the case, there would have been a flow over of product over the edge of the trailer, which did not happen nor was found by the inspecting officer. This lead [sic] to believe the portable scales did not produce an accurate weight of this unit.

Because of these factors, Taxpayer believes the civil penalty should be vacated.

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 that the Department's claim for the unpaid tax is valid. [IC 6-8.1-5-1\(c\)](#). The burden of proving that 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).

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 subject to the size and weight limits provided in IC Art. 9-20 for which no permit is available ("No Permit Available Civil Penalty"). [IC 9-20-18-14.5\(d\)](#).

[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 axles 4 and 5. ISP noted the allowed weight was 34,000 pounds while axles 4 and 5 weighed 38,800 pounds, an overage of 4,800 pounds. 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. Under IC Art. 9-20, no permit is available for instances where individual or tandem axles are overweight.

Taxpayer argues that because it did not load the truck, its driver had no way of knowing the truck was overweight. Taxpayer notes that its driver "weighed in" before loading and "weighed out" after loading. This process showed a gross weight under the legal limit. Taxpayer failed to provide any documentation related to the vehicle's gross weight. Information that Taxpayer did not load its own vehicle may be a mitigating factor but is not dispositive that a civil penalty should not have been assessed.

While Taxpayer has not fully met the burden imposed under [IC 6-8.1-5-1\(c\)](#) of proving the proposed assessment wrong, [IC 9-20-18-14.5](#) provides "not more than" language to the Department when generating a proposed assessment amount. In this case 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 removed.

April 20, 2023

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