

**Letter of Findings: 65-20221460
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 April 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 for being overweight in the form of a civil penalty. 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 argues the truck was not overweight at the time it was loaded. The truck was loaded with rock. Taxpayer explained that its driver was instructed to tell the loading company to load to the front of the truck bed so that the last two feet contained no stone. This would prevent the individual axles from being overweight; however, travel on the roadways may have caused the load to shift. Taxpayer believes the load was loaded per their instructions, but the load shifted during travel, prior to the truck being stopped by ISP, which resulted in the overweight determination.

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, "[W]hen [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 the rear tandem. 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 9-20-18-14.5\(d\)](#) no permit is available for instances where axles are overweight.

Taxpayer argues the proposed assessment should be waived because its driver followed company protocols and had no control over loading the vehicle.

As part of the protest process, the Department has reviewed the underlying documentation upon which the proposed assessments were based. After review, the Department has determined the facts do not warrant a civil penalty being issued. The issued penalty will be vacated.

FINDING

Taxpayer's protest is sustained.

January 27, 2023

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