

Letter of Findings: 65-20221321
Overweight Civil Penalty
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 denied Carrier's protest of the civil penalty imposed against Carrier. Carrier established that the civil penalty amount should be lowered.

ISSUE

I. Motor Vehicles - Overweight Civil Penalty.

Authority: [IC 6-8.1-1-1](#); [IC 6-8.1-5-1](#); [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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Carrier protests the assessment of overweight civil penalty.

STATEMENT OF FACTS

On May 5, 2022, the Indiana State Police ("ISP") cited the Carrier's commercial motor vehicle ("vehicle") for an overweight violation. ISP found that the vehicle was "[e]xcessive weight - 1-2500 lbs over on an axle/axle groups" and stated, regarding the violation, "52400 lbs/50000 lbs [t]riaxle group." As a result of the overweight violation, the Department issued Carrier a "DOR Civil Penalty Proposed Assessment for Oversize/Overweight Violation(s)" in the amount of \$1,000. Carrier filed a protest; an administrative telephonic hearing was held. Additional facts will be provided below, as necessary.

I. Motor Vehicles - Overweight Civil Penalty.

DISCUSSION

Carrier states in its protest letter that it does "not agree with" the civil penalty. Specifically, Carrier states:

When our trucks are loaded at the quarry, we do not have the control of knowing exactly how the stone will fall or come to rest in the bed of the truck. It was not intentional and OS/OW permits are not required for the dump trucks and the stone that we haul daily.

Turning to the law, pursuant to [IC 6-8.1-1-1](#), the "fees and penalties assessed for overweight vehicles ([IC 9-20-4](#) and [IC 9-20-18](#))" are a listed tax. Thus, as a threshold issue, it is a taxpayer's responsibility to establish that the existing tax 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). Consequently, 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).

The Department's proposed assessment, mailed to Carrier on July 18, 2022, states in pertinent part (**emphasis in the original**):

Indiana Code section 9-20-18-14.5(d): A carrier transporting vehicles or loads in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excessive weight or dimension is subject to a penalty not more than \$10,000 for each issued report.

DOR is proposing an assessment of the maximum civil penalty amount of \$1,000 ("Proposed Assessment")

[IC 9-20-18-14.5](#), in its entirety, states:

(a) *The civil penalties imposed under this section are in addition to the other civil penalties that may be imposed under [IC 8](#) and [IC 9](#). Notwithstanding section 12 of this chapter, a civil penalty imposed under this section:*

(1) is imposed on the carrier transporting the vehicle or load;

(2) shall be deposited in the motor carrier regulation fund established by [IC 8-2.1-23-1](#);

(3) is in addition to any fees or fines imposed by a court; and

(4) is assessed and determined by the department of state revenue in accordance with the procedures in [IC 6-8.1-5-1](#).

(b) A carrier transporting vehicles or loads under a permit issued under this article that is violated with respect to this article subjects the carrier to a civil penalty of not more than one thousand dollars (\$1,000) for the first violation and not more than one thousand five hundred dollars (\$1,500) for each subsequent violation.

(c) A carrier that 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 described in an Indiana state police vehicle examination report.

(d) A carrier that transports vehicles or loads subject to this article in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excess weight or dimension is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each issued Indiana state police vehicle examination report.

(e) The department of state revenue may not assess a penalty under this section after more than one (1) year has passed from the date the department is notified of a violation described under subsection (b), (c), or (d).

(f) A carrier against whom a civil penalty is imposed under this section may protest the civil penalty and request an administrative hearing. If a carrier protests a civil penalty, the department of state revenue shall allow the carrier an opportunity to present information as to why the civil penalty should not be assessed or reduced pursuant to a defense provided under section 7 of this chapter.

(g) The department of state revenue's notice of proposed assessment under [IC 6-8.1-5-1](#) is presumptively valid. (*Emphasis added*).

Thus, pursuant to [IC 9-20-18-14.5\(a\)\(1\)](#), the civil penalty is imposed on the carrier; and in the instant case, the Department issued a proposed assessment for \$1,000 pursuant to [IC 9-20-18-14.5\(d\)](#).

After the administrative hearing, Carrier sent the Department an e-mail stating that its "truck drivers are not allowed to exit their vehicle while being loaded at the stone quarry." Carrier also stated that the "scales do not have the ability to weigh the axles . . . there is no way for the driver to know that information before leaving the quarry[.]" Carrier sent an attachment with the e-mail with information from the "MSHA.gov" which is the federal government's Mine Safety and Health Administration. Of relevance from that MSHA information, are the admonitions to "stay in your truck," that "[r]emaining in a truck is the single best thing a driver can do to protect themselves at a mine," and that if "a driver does get out of a truck, wear hard hats, safety glasses, vests, and other protective equipment."

In the present case, Carrier provided no analysis to show that the ISP report was inaccurate or that the Department misapplied the law. Thus, Carrier has failed to meet its burden of proof outlined in [IC 6-8.1-5-1\(c\)](#) regarding there having been a violation of the law. However, Carrier has established that the assessment should be lowered. The Department is authorized to lower the assessment pursuant to the "not more" language found in [IC 9-20-18-14.5\(d\)](#) (namely, "a civil penalty of not more than ten thousand dollars (\$10,000)"). An examination of Carrier's records with the Department shows that—at the time of the violation—Carrier did not have a history of oversize and overweight violations (although Carrier did previously receive a warning letter from the Department). Given Carrier's history, and the mitigating factors outlined *supra*, the Department finds that the civil penalty should be reduced.

FINDING

Carrier's protest is denied but the civil penalty should be reduced.

June 6, 2023

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