

**Letter of Findings: 65-20231173
Indiana 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Motor Carrier provided sufficient evidence to establish that the civil penalty should be reduced.

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 9-20-4-1](#); [IC 9-20-4-2](#); [IC 9-20-4-3](#); [IC 9-20-18-7](#); [IC 9-20-18-14.5](#); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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 out-of-state trucking company. On December 13, 2022, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation for being overweight on an axle group. As a result, the Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment for an overweight violation.

Taxpayer protested the assessment, requesting a final determination 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 under [IC 9-20-18-14.5\(d\)](#). Taxpayer argues that its positive history regarding the lack of prior civil penalties, lack of knowledge of the overweight nature of the vehicle, the disposition of the Department's past cases, and the law, should reduce its burden and require the Department to rule in Taxpayer's favor.

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\(c\)](#):

The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid, including during an action appealed to the tax court under this chapter. 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).

The Department notes that, "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 contained within this decision shall be 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]."

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 settlement or agreement made with a local court or political subdivision regarding the traffic stop.

[IC 9-20-18-7](#) provides defenses which taxpayers may rely on when they submit their protest to the Department.

ISP cited Taxpayer's vehicle for being 2,080 pounds overweight on its tandem axle group in violation of [IC 9-20-4-1](#). 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 group weight. Under IC Art. 9-20, no permit is available for instances where axles are overweight.

Taxpayer argues that it does not have a long history of oversize assessments issued by the Department. Taxpayer argues further that the first one it received was paid in full a month prior to its protest. The Department's process is to give a warning letter before a taxpayer receives its first civil penalty assessment. On review of the Department's records, this is the fifth violation, and forth civil penalty. Taxpayer's argument that there is not a long history may be right, in that this has not been a span of several years, but there is still a history here, which put Taxpayer on notice of the weight requirements for its trucks.

Taxpayer argues that it could not have known of the overweight nature of the vehicle at the time of the stop by ISP because its vehicle was loaded and weighed by the shipping company. Taxpayer provides its weight ticket from the shipping company, which shows the tare weight, gross weight, and net weight of the product. Taxpayer argues that its reliance on the shipper for this information means it could not have known that it was overweight on an axle tandem.

Taxpayer argues that the disposition of the Department's past cases, and the law, should reduce all of its burden and require the Department to rule in its favor. Taxpayer provides that "under the new law. . . the Indiana Legislature obviously believes. . . that a bulk moving in a tank trailer that can shift in transit. . . should not be assessed a penalty." The Department believes the change in the law that Taxpayer cites to here is the addition of "aggregate" in [IC 9-20-4-2](#). [IC 9-20-4-2](#) does not apply here because this vehicle was in violation of [IC 9-20-4-2\(c\)\(2\)](#) which provides that the exemption does not apply to vehicles "operated on any part of an interstate highway". Here the location for the stop was recorded as "#55 I-70 WB WAYNE." Therefore, Taxpayer's argument does not apply in this case. Hence, Taxpayers argument about the physical property of the load as an aggregate is not established.

Taxpayer also argues that other areas of law in [IC 9-20](#) should impact the reading of [IC 9-20-18-14.5](#). Taxpayer specifically argues that [IC 9-20-4-3](#) should be taken as a precursor and applied to this particular case, arguing that an axle violation under the law cannot stand because the vehicle would need to first be overweight before the axle weights can be considered. Taxpayer further argues that the combination of laws gives rise to a harmonizing effect, creates conflicts, and does not allow "fair notice." The Department disagrees with this position, primarily because [IC 9-20-4-1](#) plainly states that an overweight tandem axle warrants its own separate weight limit calculation. And [IC 9-20-18-14.5](#) provides the penalties for exceeding those prescribed limits. Taxpayer has not referred to any statutes, regulation, or court case which would compel the Department to ignore the provisions of [IC 9-20-4-1](#) and [IC 9-20-18-14.5](#).

Here there appears to be only one central problem, was the vehicle overweight on an axle group at the time of the stop? The other statutes do not affect the analysis of whether a vehicle was overweight on an axle, as opposed to

Taxpayers assertions.

While Taxpayer has not established that the axle group in question was not over the allowed weight, [IC 9-20-18-14.5](#) provides "not more than" language for the Department to consider when generating a proposed assessment amount. Considering Taxpayer's history of compliance at the time of this inspection and information gathered during the protest process, 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.

October 30, 2023

Finding Replaces: New

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