

**Letter of Findings: 65-20221744
Indiana Overweight Penalty 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department did not agree that Indiana Motor Carrier established that the imposition of the oversize/overweight penalty was wrong or that Motor Carrier presented mitigating circumstances which justified a reduction of the civil penalty.

ISSUE

I. Motor Vehicles - Oversize/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 9-20-6-11](#); [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 oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is a company in the business of providing its customers transportation services. Taxpayer has multiple locations both inside and outside Indiana.

According to the available information, Taxpayer operates 12 "power units" (trucks) and these vehicles are operated by 12 employee drivers.

Taxpayer had occasion to operate one of its vehicles in Indiana. The truck was stopped by the Indiana State Police while traveling on Interstate I-65. The tandem vehicle was found to be overweight. According to the Department's explanation, the violation stemmed from "Excessive weight 1-2500 lbs. over an allowable gross weight." Taxpayer's weight limit was 80,000 pounds but the vehicle's actual weight was 82,280 pounds.

As a result, the Indiana Department of Revenue ("Department") issued a no permit "civil penalty."

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. An administrative hearing was held in order to permit Taxpayer's representative to further explain the basis for the protest.

Taxpayer objects to the civil penalty on the grounds that the violation was inadvertent because it had no control over the weight of the goods loaded onto its vehicle and because there was no opportunity to weigh the vehicle between the point where the vehicle was loaded and the destination location.

In support of its argument, Taxpayer provided copies of its customer "bills of lading." The bill of lading indicated that the customer loaded the truck with bags of cement weighing 46,072 pounds. Taxpayer explains that the bags of cement weighed more than indicated on the bill of lading. Taxpayer explained:

The driver did not have any knowledge that the shipper loaded the incorrect weight to [the driver's] load that was otherwise specified differently prior to him picking up the load.

This Letter of Findings is based on Taxpayer's written protest, the documentation within the Department's file, any

I. Motor Vehicles - Oversize/Overweight Penalty.**DISCUSSION**

Taxpayer argues that, as noted above, the civil penalty is excessive and should be abated in whole or in part because the violation was a result of factors that were not wholly in Taxpayer's control. The issue here is whether Taxpayer has met its burden of establishing that the Department's assessment was unwarranted and/or excessive.

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. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *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]."

According to [IC 9-20-6-11\(b\)](#), "[a] person may not violate the terms or conditions of a special permit."

[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"). [IC 9-20-18-14.5\(c\)](#) provides that 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" According to [IC 9-20-18-14.5\(b\)](#), the Department may also subject a carrier to a civil penalty if the carrier "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by transporting a vehicle or load that is overweight or oversize. In this case, the Department cited to [IC 9-20-18-14.5\(d\)](#) as authorizing the civil penalty.

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.

[IC 6-8.1-1-1](#) states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." 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. In other words, the civil penalty at issue is over and above any other penalty paid to the local jurisdiction.

In implementing and imposing the penalty, [IC 9-20-18-7](#) provides in part:

A court shall determine the extent of liability of the driver, carrier, shipper, or other party shown to be liable.

(b) The *department of state revenue* shall determine the extent of the civil penalties assessed under *section 14.5* of this chapter.

(c) It is a criminal or civil defense if a party can show that the party:

- (1) could not reasonably have known the actual weight of the load involved;
- (2) had no access to or control of the loading of an overweighted load[.] (*Emphasis added*).

The Department here acknowledges that [IC 9-20-18-7\(a\)-\(c\)](#) is relevant in assessing an oversize/overweight

violation. In this case, Taxpayer indicates that it was the cement plant which overloaded the Taxpayer's vehicle. The overweight violation was inadvertent because the matter was not entirely in Taxpayer's control. Taxpayer may well be correct, but there is no documentation conclusively supporting that assertion.

Taxpayer presented an explanation and arguments which are not unreasonable. However, the Department notes that Indiana's oversize/overweight provisions are intended to limit the operation of vehicles which cause excessive damage to roads maintained by and paid for by the state's taxpayers. If the cement bags had been correctly weighed and loaded, it is entirely possible that Taxpayer's vehicle would not have been overweight; however, the cement plant apparently made a mistake and the overweight violation - however inadvertent - occurred.

The Department is unable to disregard the officer's determination and conclude that Taxpayer met its statutory burden under of [IC 6-8.1-5-1](#) establishing that the penalty was *wrong*. Taxpayer is an experienced and knowledgeable motor carrier and well-versed in the requirements of transporting supplies and equipment on the state's roads and highways. On this occasion, it was Taxpayer that was ultimately responsible for the vehicle traveling on I-65.

The Department declines to abate the penalty.

FINDING

Taxpayer's protest is respectfully denied.

November 29, 2023

Finding Replaces: New

Posted: 01/31/2024 by Legislative Services Agency
An [html](#) version of this document.