

Letter of Findings: 65-20200418
Indiana Overweight Proposed Assessment
For the Year 2019

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 (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 a \$1,000 oversize/overweight penalty was unjustified. Any mitigating circumstances raised in Motor Carrier's defense did not overcome the plain facts and law which led to imposition of the penalty.

ISSUE

I. Motor Vehicles - Oversize/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 § 9-20-6-11; 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 an Indiana company which runs a "milling contractor" business. As a milling contractor, it removes asphalt, concrete, and earth. It also provides excavating and construction services. In doing so, it routinely transports its milling equipment within Indiana and outside Indiana.

In November of 2019, Taxpayer had occasion to operate one of its vehicles on a state road and an interstate highway. In doing so, it was carrying an asphalt milling machine and stopped at a weigh station. The vehicle and its load were found to weigh 123,080 pounds which was 3,080 pounds over the permitted weight.

The Indiana Department of Revenue ("Department") issued a \$1,000 "civil penalty" which the Department, in its notice and proposed assessment sent Taxpayer, described as "the maximum civil amount that may be imposed by Indiana law"

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. In its protest submission, Taxpayer noted that the written citation erroneously indicated the vehicle's load was "more than 5,000 pounds over the allowable gross weight." In addition, Taxpayer complained that it had "paid for 2 permits to satisfy our weight [requirements]" This Letter of Findings was written after considering the Taxpayer's protest letter and the documents accompanying the citation.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that the vehicle was "not more than 5,000 pounds over the amount" allowed under Indiana law and that it later obtained a second oversize/overweight permit allowing its vehicle to operate on Indiana roads as originally intended.

Taxpayer further explains that it "works diligently to permit appropriately as required" and that it is a "small business that works hard to maintain the infrastructure of our great state."

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), "[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." *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, "[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 contained within this decision, as well as the preceding audit, 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 person "who 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 person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

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 this case, Taxpayer denies that the vehicle was 5,000 pounds overweight, that it obtained two costly successive oversize/overweight permits, and that it is a small company doing its best to comply with Indiana law.

The Department has no reason to quarrel with many of the Taxpayer's arguments; its vehicle was 3,080 pounds over the amount permitted and not 5,000 pounds over the limit. Taxpayer did indeed subsequently obtain a second permit allowing its vehicle to travel at its originally intended weight. In addition, the Department has nothing to indicate that Taxpayer has done anything other than its best to comply with Indiana's vehicular size and weight requirements.

However, the plain fact is that Taxpayer's vehicle was - on this occasion - overweight by a not insubstantial number. The imposition of the \$1,000 penalty was justified by both the facts and law, and the Department finds no compelling evidence to find otherwise.

FINDING

Taxpayer's protest is respectfully denied.

June 14, 2021

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