

Letter of Findings: 65-20210146
Indiana Overweight Proposed Assessment
For the Year 2021

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 entire assessed oversize/overweight penalty was unwarranted; however, the Department agreed that there were mitigating circumstances justifying the reduction of the oversize/overweight 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 out-of-state trucking company which provides transportation and logistics services to customers in the United States, Canada, and Mexico. Publicly available information indicates that Taxpayer has 32 employees and provides conventional and specialized truckload services, utilizing a fleet of flatbed, tank, dump, and oversized trucks.

Taxpayer's vehicles routinely transport its customers' cargoes on intrastate and interstate highways both within Indiana and outside Indiana.

In March 2021, Taxpayer had occasion to operate one of its vehicles on an interstate highway in Indiana. In doing so, Taxpayer's vehicle was carrying a load of lime and was stopped by the Indiana State Police while traveling on US Route 12. The vehicle and its load were found to weigh 137,200 pounds which exceeded the permitted weight of 134,000 pounds.

Taxpayer had previously obtained an Indiana "special weight" permit which designated the route to be traveled and specified that, while operating on US Route 12, the maximum weight allowed was 134,000 pounds. The permit provided the following detail:

- Single axle weight must not exceed 18,000 pounds per axle;
- No axle in any axle combination may exceed 13,000 pounds per axle [except] one tandem group that may weigh 16,000 pounds or a total of 32,000 pounds.

The Indiana Department of Revenue ("Department") issued a "civil penalty" which the Department, in its notice and proposed assessment sent Taxpayer, the Department explained that the penalty was "the maximum civil amount that may be imposed by Indiana law" The penalty was based on the finding that each of the vehicle's seven axles was overweight.

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. In its protest, Taxpayer stated that the driver has an "impeccable three-year driving abstract," that this was the driver's first oversize/overweight penalty, and that "[a]mid these trying times, equity demands first-time mistakes be

considered in a different [equitable] light."

An administrative telephone hearing was scheduled during which Taxpayer's representative explained the basis for its protest. This Letter of Findings results.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the civil penalty was disproportionate in light of the driver's exceptional driving history, that it has already paid the local jurisdiction's penalty, and that the incident was a simple mistake attributable to the unusual "never-before-seen strain on [] all truckers."

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, "[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 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 other words, the civic penalty at issue is *over and above any other penalty paid to the local jurisdiction*.

The Department acknowledges that Taxpayer and its drivers may well be working under pressure and unusual circumstances. However, Taxpayer's vehicle weighed 3,200 pounds in excess of what was permitted. Taxpayer's vehicle was over the weight limit by 3,200 pounds - a not insubstantial amount of slightly more than one and one-half tons.

However, in addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. This provision allows verified and relevant mitigating circumstances. Taxpayer has provided such verification and the circumstances are relevant. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory discretion and this Letter of Findings.

FINDING

Taxpayer's protest is sustained in part and denied in part.

November 2, 2021

Posted: 03/02/2022 by Legislative Services Agency
An [html](#) version of this document.