

Letter of Findings: 65-20210148
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Motor Carrier provided sufficient evidence that it should not be assessed a penalty for being overweight.

ISSUE

I. Motor Vehicles - Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-2; IC § 9-20-6-11; IC § 9-20-18-14.5; IC § 6-8.1-1-1; IC § 9-20-4-1; *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*, 876 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Motor Carrier protests the assessment of overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana based trucking company. On June 2, 2021, the Indiana State Police ("ISP") cited Taxpayer's commercial motor vehicle for an overweight violation. As a result, the Indiana Department of Revenue ("Department") issued a proposed assessment for being overweight in the form of a civil penalty. Taxpayer protested the assessment of the penalty, and an administrative hearing was held. 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. Taxpayer argues the vehicle was not overweight and under the 120,000 pound limit provided in its permit.

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*, 876 N.E.2d 289, 292 (Ind. Tax Ct. 2007). "[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 within this decision are 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]."

Under IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

A special permit may be granted for the transportation of heavy vehicles and/or loads that do not comply with the requirements of IC Art. 9-20. IC § 9-20-6-2(a). A person may not violate the conditions of a special permit. IC § 9-20-6-11(b).

IC § 9-20-18-14.5 allows the Department to impose civil penalties against motor carriers that obtain a permit under IC Art. 9-20 and violate the permit parameters ("Permit Violation Civil Penalty") or are required to obtain a permit but fail to do so ("No Permit Civil Penalty"). A person who transports vehicles or loads under a permit issued under IC Art. 9-20 is subject to a civil penalty of not more than \$500 for the first violation and not more than \$1,000 for each subsequent violation. IC § 9-20-18-14.5(b) (2017).

IC § 6-8.1-1-1 states that fees and penalties assessed for overweight vehicles under IC Art. 9-20 are a "listed tax." 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.

Taxpayer argues the proposed assessment was assessed in error because the truck was not overweight under the guidelines of the permit. Taxpayer provided a copy of the permit, truck weight tickets, Bills of Lading, and photos.

On May 24, 2021, Taxpayer obtained an "Overweight Commodity Single Trip" permit, valid from May 25, 2021, to June 7, 2021. The permit allowed Taxpayer to transport a load of steel coils weighing no more than 120,000 pounds along a designated route. On June 2, 2021, ISP stopped Taxpayer's vehicle because the "tires on the truck and trailer were pinched and looked overweight." After using portable scales, ISP determined the vehicle was overweight by 42,100 pounds.

Taxpayer claims the load was not overweight, and ISP's use of the portable scales was not performed per the manufacturer's requirement. Taxpayer also said during the hearing that ISP calculated the overweight measurement based on the non-permit allowed weight of 80,000 pounds. See IC § 9-20-4-1(a)(1).

A review of the citation issued by ISP supports Taxpayer's assertion as to how the total weight was calculated. ISP stated the allowed weight was 80,000 pounds, and the weight determined with the portable scales was 122,100 pounds. Calculating the overweight measurement using 80,000 pounds as a starting point resulted in a determination that Taxpayer's vehicle was 42,100 pounds over the allowed weight.

Taxpayer's truck was carrying a load of two steel coils. Taxpayer provided documentation that the empty truck weighed 30,520 pounds. Documentation also showed the weight of each of the steel coils - 43,520 pounds and 44,850 pounds. Total weight of the truck and two coils was 118,890 pounds. Taxpayer's permit was valid for a load of 120,000 pounds. Documentation shows the load was 1,060 pounds under the permit limit.

Thus, while the Department is authorized to issue assessments for overweight penalties under IC § 6-8.1-1-1 and IC § 9-20-18-14.5, the Department also appreciates and acknowledges the effort Taxpayer has gone to in providing supporting documentation showing the truck was not overweight. Based on this clear and convincing evidence, Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment is wrong.

FINDING

Taxpayer's protest is sustained.

February 25, 2022

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