

Letter of Findings: 65-20220001
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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; in addition, the Department did not agree that Carrier presented or explained mitigating circumstances which would have justified 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 intermodal transportation services to customers throughout the United States. Publicly available information establishes that Taxpayer provides its customers "drayage, container yard management, maintenance and repair, domestic container, and intermodal flatbed" solutions. That same public information indicates that Taxpayer operates between 800 and 900 power units and employs approximately the same number of drivers.

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

In April 2021, Taxpayer had occasion to transport an intermodal container on an interstate highway. Taxpayer's vehicle was stopped by the Indiana State Police while traveling on the Indiana portion of the interstate highway. The vehicle and its load were found to weigh 82,900 pounds which exceeded the maximum allowable amount of 80,000 pounds.

The driver and vehicle were given a local citation. Taxpayer pled guilty and paid the \$346.26.

The Indiana Department of Revenue ("Department") subsequently issued a "civil penalty" which the Department, in the notice and proposed assessment sent to Taxpayer, explained that the penalty was imposed for "excessive weight" based on the finding that Taxpayer's vehicle and its container were "2,501-5,000 lbs. over an allowable weight."

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. In its protest, Taxpayer stated that "the assessment charge of \$5,000 [was] unreasonable" and pointed out that it had already paid for the local citation.

Taxpayer asked that the \$5,000 fine "be reversed in full" but that it was willing to pay "\$500 additionally to resolve the matter."

An administrative telephone hearing was scheduled during which Taxpayer's representative was given the

opportunity to further explain the basis for its protest. This Letter of Findings results.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the \$5,000 civil penalty was "unreasonable" and that it has already paid the local civil penalty. The issue here is whether Taxpayer has established that the assessment was unwarranted or that the Department should accept a discounted amount.

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 penalty here at issue is *over and above any other penalty paid to the local jurisdiction*.

In this case, the Department finds little in the way of extenuating circumstances which would lead the Department to abate or modify the amount assessed. The Taxpayer is a large, experienced, and sophisticated motor carrier which is fully capable of monitoring the weight of its vehicles and knowing and following Indiana's oversize/overweight rules. The conclusion here is straightforward; Taxpayer made a mistake allowing this vehicle to travel without the necessary permit and that - despite its objections - Taxpayer has failed to meet its statutory burden of establishing that the assessment was wrong.

FINDING

Taxpayer's protest is respectfully denied.

February 15, 2022

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