

**Letter of Findings: 65-20190182P
Indiana Oversize/Overweight Proposed Assessment
For the Year 2017**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 sent Motor Carrier a proposed assessment for oversize/overweight civil penalties for violating a permit it obtained from the Department and, in addition, a penalty for failing to obtain a permit. After the hearing, the Department determined that Motor Carrier should not be assessed penalties for both violating a permit and not obtaining a permit. Therefore, Motor Carrier's protest is sustained in part and denied in part.

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 § 9-20-4-1; IC § 9-20-6-11; IC § 9-20-18-7; IC § 9-20-18-14.5; *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).

Motor Carrier protests the assessment of oversize/overweight civil penalties.

STATEMENT OF FACTS

Motor Carrier is an Indiana based trucking business. On November 14, 2017, Motor Carrier's commercial motor vehicle was cited by the Indiana State Police ("ISP") for overweight violations. As a result, the Department issued Motor Carrier a proposed assessment for oversize/overweight ("OS/OW") civil penalties. Motor Carrier disagreed with the assessment of penalties and submitted a protest to that effect. At Motor Carrier's request, the Department held a hearing. This Letter of Findings results. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Motor Carrier protests the imposition of civil penalties. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed that Motor Carrier was transporting a load over the statutorily allowed weight on multiple axles and total gross weight in violation of IC § 9-20-4-1. Motor Carrier argues that they corrected the issue immediately and that have already paid a summons resulting from the traffic stop.

As a threshold issue, it is Motor Carrier'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).

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, "an 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, "[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 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, the Department issued Motor Carrier a Permit Violation Civil Penalty and multiple No Permit Civil Penalties. According to the ISP report, Motor Carrier transported agricultural cargo that was more than the amount allowed under IC § 9-20-4-2. The Department offers an overweight commodities permit that allows a carrier to transport a gross weight heavier than the statutory limit. Department records, however, show that Motor Carrier did not have a permit at the time of the traffic stop in question.

Motor Carrier argued that it "took care of the underlying issue immediately" after the traffic stop by obtaining a permit and has subsequently purchased annual permits through February of 2020. Motor Carrier further states that they have paid a fine resulting from the traffic stop through a county court. Finally, Motor Carrier argues that consistent with industry standard, its agriculture cargo was loaded by a third party according to a test weight and that the total load was overweight due to the test weight being inaccurate. Test weight, in this case, refers to the estimated weight of an agriculture load as measured in pounds per three "test" bushels.

The Department notes that, first, Motor Carrier is required to have a permit for carrying loads that exceed statutory limits at the time of transport. This allows the Department to provide Motor Carrier a route safe for transport. Second, IC § 9-20-18-14.5 provides that a civil penalty issued by the Department under IC Art. 9-20 is (1) in addition to and separate from any other civil penalties issued under Titles 8 and 9 and (2) in addition to any fines imposed by a court.

Motor Carrier failed to obtain a permit before transporting cargo that required a permit; therefore, it is appropriate for Motor Carrier to receive a No Permit Civil Penalty. However, because Motor Carrier did not have a permit at the time of the traffic stop, Motor Carrier should not have been assessed Permit Violation Civil Penalties. Lastly, the third party loader defense that Motor Carrier cites is a criminal liability defense provided by IC § 9-20-18-7 and, therefore, not statutorily determinative in this case, as the matter at hand are civil penalties. However, the Department understands Motor Carrier's position, supported by documentation, that it relied on a third party loader pursuant to an established industry standard and may reduce the Permit Violation Civil Penalty amount.

In addition to providing Motor Carrier an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized by its statutory discretion and this Letter of Finding.

FINDING

Motor Carrier's protest is sustained in part and denied in part.

October 16, 2019

Posted: 12/25/2019 by Legislative Services Agency
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