

**Letter of Findings: 65-20191062P
Indiana Oversize/Overweight Proposed Assessment
For the Year 2018**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 operating while overlength. The Department determined that Motor Carrier should not have been assessed the civil penalty they were assessed. Therefore, Motor Carrier's protest is sustained.

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 § 9-20-3-4; 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 an oversize/overweight civil penalty.

STATEMENT OF FACTS

Motor Carrier is a Michigan business engaged in transporting bulk commodities through Indiana. On March 19, 2018, Motor Carrier's commercial motor vehicle was cited by the Indiana State Police ("ISP") for an overlength violation. As a result, the Department issued Motor Carrier a proposed assessment for an oversize/overweight ("OS/OW") civil penalty. Motor Carrier disagreed with the assessment of penalty and submitted a protest to that effect. At Motor Carrier's request, the Department held a hearing on this matter. 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 a penalty imposed on oversize vehicles. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed Motor Carrier was transporting a load over the statutorily allowed length. Department records show Motor Carrier did not have a permit to transport a load over the statutorily allowed length. Motor Carrier argued that the infraction was minor and, therefore, undeserving of a civil penalty.

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), "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*, 897 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]."

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." According to IC § 9-20-18-14.5(3), 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 for being overlength in violation of IC § 9-20-3-4. Department records, however, demonstrate that the Department did not issue a permit to Motor Carrier. As a matter of clarity, because Motor Carrier's length was nine feet and five inches beyond what IC § 9-20-3-4 allows, Motor Carrier should have obtained a permit before operating a vehicle at that length.

Still, Motor Carrier contended that it should not have received a Permit Violation Civil Penalty because the violation was minor and, therefore, undeserving of a civil penalty. Motor Carrier similarly argued the civil penalty amount was excessive given its violation. Motor Carrier also argued that the ISP is the authorized agency to determine whether a violation is a dangerous enough threat to warrant a financial penalty. Motor Carrier is incorrect, as IC Art. 9-20 authorizes the Department to impose a civil penalty for OS/OW violations. OS/OW penalties are established by statute - not by ISP - and are not based on any determination of danger.

As referenced above, the Department issues civil penalty amounts as prescribed by IC § 9-20-18-14.5. IC § 9-20-18-14.5(b) authorizes the Department to impose not more than a \$500.00 civil penalty for a first violation and not more than \$1,000.00 for each subsequent violation. In this case, the Department has imposed \$1,000.00 for a Permit Violation Civil Penalty. IC § 9-20-18-14.5(c) authorizes the Department to impose not more than a \$5,000.00 civil penalty for not possessing a permit when required under IC Art. 9-20.

After review of the circumstances in this case, the Department should have issued Motor Carrier a No Permit Civil Penalty rather than a Permit Violation Civil Penalty. The proposed assessment addressed to Motor Carrier states "The maximum civil penalty that may be imposed for this violation under Indiana law is \$1,000.00," which identifies the civil penalty as a Permit Violation Civil Penalty; the maximum No Permit Civil Penalty amount, which is the relevant civil penalty to the facts in this case, is \$5,000.00. As shown above, the Department may issue a civil penalty when a permit is violated or when a carrier did not obtain a permit when required. Here, the Department penalized Motor Carrier for violating a permit that Motor Carrier should have obtained. Due to this error, Motor Carrier has met the burden of proving the proposed assessment wrong, as required by IC § 9-20-18-14.5(c).

FINDING

Motor Carrier's protest is sustained.

August 9, 2019

Posted: 12/25/2019 by Legislative Services Agency
An [html](#) version of this document.