

**Letter of Findings: 65-20191384
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 an oversize/overweight civil penalty for not having a permit when required. According to the U.S. Department of Transportation Federal Highway Administration Federal Bridge Table ("Federal Bridge Table"), Motor Carrier did not need a permit. 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 § 9-20-4-1; IC § 9-20-6-8; IC § 9-20-6-11; IC § 9-20-18-14.5; Indiana Department of Revenue Oversize Overweight Vehicle Permitting Handbook (2017); *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 a motor carrier that does business in Indiana. On July 12, 2018, Taxpayer's commercial motor vehicle was cited by the Indiana State Police ("ISP") for an oversize violation. As a result, the Department issued Taxpayer a proposed assessment for an oversize/overweight ("OS/OW") civil penalty. Taxpayer disagreed with the assessment of penalty and submitted a protest to that effect. This Letter of Findings results. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer protests the imposition of a civil penalty. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed that Taxpayer was transporting cargo over the statutory limit provided by IC § 9-20-4-1 on its front tandem axles. During the inspection, the driver adjusted the cargo to be within the legal limit.

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*, 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 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 § 9-20-6-8 provides that: "A permit issued under this article may designate the route to be traversed and contain any other restrictions or conditions necessary for the proper protection of the traffic, highway, or bridge."

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"). 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. IC § 9-20-18-14.5(c) provides that a person "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 of not more than five thousand dollars (\$5,000) for each violation."

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(a)(3), these listed taxes are in addition to any fines imposed by a court.

In this case, the Department issued Taxpayer a No Permit Civil Penalty. According to the ISP report, the vehicle in question was transporting cargo over the allowed axle tandem limit allowed by IC § 9-20-4-1. The ISP gave no indication that the vehicle was over the gross weight allowed by IC § 9-20-4-1. Under certain circumstances, a taxpayer is required to obtain a permit for transporting a divisible load of steel even if the total vehicle gross weight is under 80,000 pounds. A vehicle's weight, axle number, and axle spacing as applied to the Federal Bridge Table determines whether operating a vehicle with a gross weight under 80,000 pounds requires a permit. The Federal Bridge Table is provided on page 22 of the Department's Oversize Overweight Vehicle Permitting Handbook. Specifically, the Federal Bridge Table contemplates a vehicle's total number of axles (including trailer) and the distance in feet between the outer axles of any group of two or more consecutive axles. This data is used to calculate whether the vehicle is at a legal weight for travel. If the Federal Bridge Table shows that a vehicle is not at a legal weight for travel, then the vehicle must have a permit to travel.

Taxpayer supplied the Department with the required axle information for the Department to calculate whether Taxpayer was required to obtain a permit pursuant to the Federal Bridge Table. After applying Taxpayer's measurements, the Department determined that the Federal Bridge Table did not require Taxpayer to obtain a permit to transport the cargo in question. It follows that Taxpayer should not have received a No Permit Civil Penalty.

FINDING

Taxpayer's protest is sustained.

March 18, 2020

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