

Letter of Findings: 65-20191277
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 two oversize/overweight civil penalties for violating a permit it should have obtained from the Department and, in addition, for failing to obtain a permit. The Department determined that Motor Carrier should only be assessed a penalty for not obtaining a permit rather than for both not obtaining a permit and violating the terms of the 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§ 9-20-3-2; IC§ 9-20-6-11; 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).

Taxpayer protests the assessment of two oversize/overweight civil penalties.

STATEMENT OF FACTS

Taxpayer is a motor carrier based outside of Indiana. On June 21, 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 two oversize/overweight ("OS/OW") civil penalties. Taxpayer disagreed with the assessment of penalties 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 two civil penalties. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed that Taxpayer was transporting a load in excess of the cargo width allowed under IC § 9-20-3-2. Taxpayer contends that its driver did not check the load under the assumption that Taxpayer does not transport oversize loads. Taxpayer states that all loads are to be checked going forward and that all necessary permits will be obtained.

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, in relevant part, "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 § 9-20-6-1 I(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 of not more than five thousand dollars (\$5,000) for each violation." 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(a), 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 Taxpayer a Permit Violation Civil Penalty and a No Permit Civil Penalty. According to the ISP report, Taxpayer transported cargo in excess of the cargo width allowed under IC § 9-20-3-2. The Department offers an oversize permit that allows a carrier to transport more than the statutory limit. Department records, however, show that Taxpayer did not have a permit at the time of the traffic stop in question.

It is, therefore, appropriate for Taxpayer to receive a No Permit Civil Penalty. However, because Taxpayer did not have a permit at the time of the traffic stop, Taxpayer should not have been assessed a Permit Violation Civil Penalty. Based on this review, the Department will generate an updated bill for Taxpayer.

FINDING

Taxpayer's protest is sustained in part and denied in part.

March 5, 2020

Posted: 07/01/2020 by Legislative Services Agency
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