

**Letter of Findings: 65-20191473
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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. Based on Motor Carrier's cargo and the route in question, Motor Carrier was required to possess an overweight permit; therefore, Motor Carrier's protest is denied.

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 § 9-20-4-2; IC § 9-20-6-8; 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 an oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is a motor carrier that does business in Indiana. On July 5, 2018, Taxpayer's commercial motor vehicle was cited by the Indiana State Police ("ISP") for an overweight 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. Taxpayer waived its right to an administrative hearing. 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 the vehicle in question was transporting a farm commodity at a gross weight 6,900 lbs. above the statutory limit of 80,000 lbs. Under IC § 9-20-4-2, farm commodities, not being transported on an interstate highway, are exempt from this statutory limit if the total gross weight is less than ten percent more than the statutory weight 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-ll (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"). 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.

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 and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, Taxpayer was transporting farm commodities. Taxpayer's total gross weight was 86,900 lbs., which fits within the ten percent buffer created by IC § 9-20-4-2. However, despite the inspection occurring outside the interstate highway network, the ISP officer observed Taxpayer exiting Interstate Highway 69 before stopping Taxpayer for an inspection, as documented in the vehicle examination report created by the ISP. Because Taxpayer was observed transporting farm commodities on an interstate highway, the exemption provided by IC § 9-20-4-2 does not apply. Rather, the standard statutory limit of 80,000 lbs. contained in IC § 9-20-4-1 applies. Therefore, because the gross weight in question exceeded 80,000 lbs. while being transported on an interstate highway, Taxpayer was required to obtain an overweight commodities permit. As a result of the ISP inspection, the Taxpayer was correctly issued a No Permit Civil Penalty under IC § 9-20-18-14.5(c).

Finally, Taxpayer contends that the company name contained on the ISP vehicle examination report and other correspondence is the name of a now defunct organization. In subsequent correspondence, the Department will contact Taxpayer through the current company name provided by Taxpayer.

Taxpayer has not established that the registration numbers or other identifying information has changed from the previous company name to the current company name. Therefore, the Department is not convinced that merely changing the name of the company is determinative in this case.

FINDING

Taxpayer's protest is denied.

March 2, 2020

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