

Letter of Findings: 65-20200093
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 operating without a valid permit while over the allowable width on Indiana roads. The Department found that Motor Carrier had a permit for an oversize vehicle, but not for the vehicle being operated at the time of the violation. 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 § 9-20-18-14.5; *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*, 897 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 an Indiana business engaged in transporting bulk commodities. On November 13, 2018, the Indiana State Police ("ISP") cited Motor Carrier's commercial motor vehicle for an oversize violation. As a result, the Indiana Department of Revenue Motor Carrier Services Division 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. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Motor Carrier protested the imposition of a civil penalty for its oversize vehicle. The Department based its proposed assessment on a report provided by ISP. Motor Carrier argues that it believed the vehicle in question had the proper permit for its load and that it immediately corrected the administrative error and obtained the proper permit upon being informed of the error by ISP.

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, the 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]."

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 Motor Carrier "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.

In this case, the Department issued Motor Carrier a Permit Violation Civil Penalty for being oversize in violation of IC § 9-20-3-2 and IC § 9-20-3-5. According to the ISP report, Motor Carrier transported cargo that was wider than allowed by statute. The Department offers a permit allowing a carrier to transport cargo larger than the statutory limit. Motor Carrier had a permit, but not for this particular vehicle.

Motor carrier possessed a valid permit for a rental vehicle, which was used while the vehicle in question was being repaired. After these repairs were complete, Motor Carrier contacted its permit service who informed Motor Carrier that it would "transfer" the permit to the vehicle in question. When ISP informed Motor Carrier that no such transfer had taken place, Motor Carrier immediately reached out to the permit service and obtained a corrected permit.

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. In this case, however, Motor Carrier had a permit for carrying the oversize load that was simply on the wrong vehicle. Motor Carrier's permit service informed it that the permit was on the correct vehicle, and when this fact was proven to be incorrect, it immediately remedied the problem.

Motor Carrier did not have a permit on the correct vehicle at the time of the traffic stop, and therefore was correctly assessed a No Permit Civil Penalty. However, the Department understands Motor Carrier's position that it relied on a third party to transfer its permit from the rented vehicle onto the vehicle in question. The Department also recognizes that Motor Carrier remedied the problem as soon as it was discovered by purchasing the correct permit on the vehicle in question.

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.

May 19, 2020

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