

**Letter of Findings: 65-20200179
Indiana Oversize/Overweight Proposed Assessment
For the Year 2019**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Motor Carrier was responsible for the oversize/overweight civil penalty because Motor Carrier failed to obtain a valid oversize/overweight permit while operating an oversize/overweight commercial motor vehicle on Indiana highway.

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*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Motor Carrier protests the assessment of oversize/overweight civil penalty.

STATEMENT OF FACTS

Motor Carrier is based outside of Indiana. On May 9, 2019, Motor Carrier's commercial motor vehicle was cited by the Indiana State Police ("ISP") for an oversize/overweight violation. As a result, the Indiana Department of Revenue ("Department") assessed Motor Carrier an oversize/overweight ("OS/OW") civil penalty.

Motor Carrier protested the assessment. Motor Carrier requested that the Department make the "final determination without a hearing" without offering additional support. This Letter of Findings results based on the information available within the protest file. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Motor Carrier protests the imposition of \$5,000 civil penalty. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed that Motor Carrier was transporting an oversize load in excess of the gross weight allowed under IC § 9-20-4-1.

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), "[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]."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that 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 fails to obtain a permit required.

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," such as a traffic stop.

In this case, Motor Carrier protested the assessment without providing additional information to support its protest. Based on the ISP report, the Department issued Motor Carrier a No Permit Civil Penalty. In particular, the ISP report noted that Motor Carrier's vehicle was transporting the load approximately "149,000 pounds [and] 10.5 feet wide" on Indiana highway without a valid Indiana oversize/overweight permit. In other words, according to the ISP report, Motor Carrier transported cargo in excess of the gross amount allowed under IC § 9-20-4-1.

Given the totality of the circumstances, *in the absence of other supporting documentation*, the Department is not able to agree that Motor Carrier met its burden demonstrating that the assessment was incorrect.

FINDING

Motor Carrier's protest is denied.

June 19, 2020

Posted: 09/30/2020 by Legislative Services Agency

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