

Letter of Findings: 65-20200402P
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 an oversize/overweight civil penalty because it failed to obtain an oversize permit when the vehicle was transporting a load exceeding the statutorily allowed dimension.

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 § 9-20-18-14.5; *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 an oversize/overweight civil penalty.

STATEMENT OF FACTS

Motor Carrier is based outside of Indiana. On October 10, 2019, Motor Carrier's commercial motor vehicle was cited by the Indiana State Police ("ISP") for an oversize violation. As a result, the Department 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. This Letter of Findings results. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Based on a report provided by the ISP, the Department assessed Motor Carrier a \$5,000 civil penalty pursuant to [IC 9-20](#) because, while transporting steel on an Indiana public road, the Motor Carrier did not have a permit for transporting an oversize load. The Department noted the following:

LOAD ON TRAILER IN EXCESS OF 53' 6 NO OVERSIZE PERMIT

Motor Carrier protests the imposition of the \$5,000 civil penalty.

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 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)(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, the Department issued Motor Carrier a No Permit Civil Penalty. According to the ISP report, Motor Carrier failed to obtain an oversize permit while it transported steel, which exceeded the dimension (width / height / length) statutorily allowed. The Department offers an oversize permit that allows a carrier to transport more than the statutory limit. Department records, however, show that Motor Carrier did not have a permit at the time of the traffic stop in question.

Motor Carrier disagreed and asserted the following:

we haul the same load meaning, material, size (width, length height) and weight to . . . [the customer in Indiana]. We had hauled this same freight every day for the past 6 years, on average 10 per week The Steel on [the Trailer in question] was 53 [feet] 1 inch as you can see on the [Bill of Lading] we attached. There is no way we can leave the steel mill and stretch the load another 7 inches. We feel the officer miss measured the Steel. Based on doing the same load day in and day out and having multiple inspections over the years at the same scale house we have never has an issue with these loads and never needed an oversize permit.

Motor Carrier further offered the Bill of Lading to support its protest.

Upon review, however, the Department is not able to agree. Specifically, Motor Carrier asserted - but its supporting document failed to establish - that it hauled this same freight every day for the past 6 years, on average 10 per week without any issues. Additionally, Motor Carrier is responsible to secure the load when traveling on the public road and obtain a permit if the load exceeds the statutorily allowed dimension.

Motor Carrier's Bill of Lading showed the Trailer in question was transporting "12 PCS" of "1/4" X 84.0000" X 638.000" Plate A572 Grade 65" when the vehicle was stopped by the police. The ISP noted the following:

LOAD TOTAL LENGTH FROM FRONT TO REAR WAS 53FT 8IN, LOAD WAS SAGGING DOWN MEASURED FROM GROUND TO BOTTOM AT 54IN, LIGHTS MEASURED FROM GROUND TO BOTTOM AT 54IN. DID NOT HAVE OVERSIZE PERMIT. LOAD PROJECTED PAST END OF TRAILER. MORE THAN 4FT NOT MARKED.

Motor Carrier asserted that "[t]here is no way we can leave the steel mill and stretch the load another 7 inches." But Motor Carrier's supporting documentation failed to demonstrate that all 12 PCS of "1/4" X 84.0000" X 638.000" Plate A572 Grade 65" were secured in place within the statutory dimension allowed.

Given the totality of circumstances, in the absence of other verifiable supporting documents, it is, therefore, appropriate for Motor Carrier to receive a No Permit Civil Penalty.

FINDING

Motor Carrier's protest is respectfully denied.

December 21, 2020

Posted: 02/24/2021 by Legislative Services Agency
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