

Letter of Findings: 65-20210144
Indiana Oversize/overweight Proposed Assessment
for the Year 2021

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

STATEMENT OF FACTS

Motor Carrier is based outside of Indiana. On April 6, 2021, Motor Carrier's commercial motor vehicle was involved in an accident and was cited by the Indiana State Police ("ISP") for an oversize/overweight violation in addition to other traffic violations. 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." 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, stating, in relevant part:

On [April 6, 2021], Our driver [], was given a citation violation According to the officer that issued the citation and what is explained on it, our driver failed to carry current permit. He first presented an expired permit but after the officer explained it was expired he found the correct one and presented it to [the officer] on his phone as he [i.e., the driver] only had a digital copy of it at the time. Attached is the permit (was presented digitally during investigation by our driver) which would have covered the load at the time of the investigation[.]

The Department issued the proposed assessment based on various reports provided by the ISP, including Indiana Officer's Standard Crash Report and Driver/Vehicle Examination Report. The ISP reports noted that Motor Carrier was transporting an overweight load in excess of the gross weight allowed under IC § 9-20-4-1 at the time of the accident. In addition to various traffic violations, the driver had a permit that expired on April 5, 2021.

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 stating that he "first presented an expired permit but after the officer explained it was expired he found the correct one and presented it to [the officer] on his phone as he only had a digital copy of it at the time."

Based on the ISP reports, the Department issued Motor Carrier a \$5,000 Civil Penalty because Motor Carrier's vehicle was involved in a traffic accident, and it was transporting the overweight load on an Indiana highway without a valid Indiana oversize/overweight permit at the time of accident. The ISP reports specifically note that there was "no proof of annual inspection" of the vehicle since January 2020. The reports also note that the driver had a track record of driving more than eight-hour drive-time without taking a break and "failed to maintain lane." The reports further note:

[The] driver presented me with permit # [] 851, which expired on 4/5/2021, when I first got there. When I pointed out that it was expired later, he stated that his boss [is] sending him the correct one.

It should be noted that the permit, Form M-233P, in relevant part, states:

Important Information

This permit is valid only for transporting commodities under the company name shown on this permit or as stated in the lease agreement between the lessee and lessor.

All provisions of the Transporting Company Agreement and the General Provisions (www.in.gov/dor/mcs/pdfs-forms/m204.pdf) are incorporated by reference into this permit and are as binding upon the permit holder as if they had appeared on the face of this permit. ***This permit is void if the General Provisions are not carried with this permit.*** The Indiana Department of Revenue disclaims any responsibility in relation to the correctness in the transmitting of this permit as a whole or any part thereof, including General or Special Provisions. (***Emphasis added***).

Form M-204, the General Provisions of an Oversize/Overweight Vehicle Permit, available at <https://www.in.gov/dor/files/m204.pdf>, further mandates the following:

Vehicle Operators

...

- *Drivers must have the vehicle permit in possession during transport and must show permit, on demand, to any police officer, motor carrier inspector, or any authorized employee of the State of Indiana. (***Emphasis added***).*

...

Other Provisions

...

- Any violation of this permit shall automatically cause the permit to be void. Upon violation the police officer or motor carrier inspector will have the authority to withdraw your permit.

In other words, only when the police officer pointed out that the above permit expired on April 5, 2021 at the scene of the accident - on April 6, 2021 - Motor Carrier responded that he was getting a copy of the permit from his boss. The Motor Carrier subsequently obtained a digital copy of the permit by means of mobile phone at the scene of the accident.

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 22, 2022

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