

Letter of Findings: 65-20210145
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 an oversize/overweight civil penalty because it failed to obtain a permit when the vehicle was transporting a load exceeding the statutorily allowed weight.

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 an Indiana company. On March 29, 2021, Motor Carrier's commercial motor vehicle was cited by the Indiana State Police ("ISP") for an overweight violation. As a result, the Indiana Department of Revenue ("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 a commodity on an Indiana public road, the Motor Carrier did not have a permit for transporting an overweight load. The Department noted the following:

exceeding 80,000 lbs. gross weight without an Ind. Dept. of Revenue O.W. Permit (317-615-7320). 93,600 / 80,000 (13,600 lb violation)

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 overweight permit while it transported the commodity, which exceeded the weight (93,600 / 80,000 - 13,600 lb. violation) statutorily allowed. The Department offers an overweight 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, in part, the following:

We . . . **do[] not deny the overweight claim**, however, we do have an issue with the amount of the assessment.

. . .

Our company record and the record of our drivers has been very satisfactory. This particular driver has been with us 13 years and has not had a company infraction. We notified the elevator immediately after receiving the citation to let them know this truck shouldn't have been overloaded. Their reply was that due to COVID, they were not fully staffed and oversight was lacking.

As you realize, companies are at the mercy of their drivers and the locality that loads them. No matter how thorough as a company we are, mistakes can and do happen on the road that do not represent what we as a company instruct our drivers and clients.

In this instance, Motor Carrier admitted that the ISP report was correct, which is the basis of the Department assessment. Motor Carrier asserted several reasons as justifications for the violation, but it failed to establish or document that it was not responsible for the penalty. Motor Carrier could have resolved the situation and avoided the penalty by applying for and obtaining a permit before its driver traveled on the Indiana public roads. 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.

June 22, 2022

Posted: 04/26/2023 by Legislative Services Agency
An [html](#) version of this document.