

Letter of Findings: 65-20221283
Indiana Oversize/Overweight Proposed Assessment
For the Year 2022

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 the vehicle failed to comply with the Indiana statutory requirements when traveling on an Indiana public 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); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); Indiana Department of Revenue, Notice, <https://www.in.gov/dor/motor-carrier-services/oversizeoverweight-osw/osw-notice/>.

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

STATEMENT OF FACTS

Motor Carrier is based outside of Indiana. On April 20, 2022, 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 of penalty and 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

Based on a report provided by the ISP, the Department assessed Motor Carrier a \$1,000 civil penalty pursuant to [IC 9-20](#) on the ground that the Motor Carrier failed to comply with the statutory requirements. The Department explained, in relevant part:

Indiana Code section 9-20-18-14.5(d): A carrier transporting vehicles or loads in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excess weight or dimension is subject to a civil penalty not more than \$10,000 for each issued report.

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). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

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"). Specifically, IC § 9-20-18-14.5, in relevant part, provides:

(a) The civil penalties imposed under this section are in addition to the other civil penalties that may be imposed under [IC 8](#) and [IC 9](#). Notwithstanding section 12 of this chapter, a civil penalty imposed under this section:

- (1) is imposed on the carrier transporting the vehicle or load;
- (2) shall be deposited in the motor carrier regulation fund established by [IC 8-2.1-23-1](#);
- (3) is in addition to any fees or fines imposed by a court; and
- (4) is assessed and determined by the department of state revenue in accordance with the procedures in [IC 6-8.1-5-1](#).

(b) A carrier transporting vehicles or loads under a permit issued under this article that is violated with respect to this article subjects the carrier to a civil penalty of not more than one thousand dollars (\$1,000) for the first violation and not more than one thousand five hundred dollars (\$1,500) for each subsequent violation.

(c) A carrier that 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 described in an Indiana state police vehicle examination report.

(d) A carrier that transports vehicles or loads subject to this article in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excess weight or dimension is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each issued Indiana state police vehicle examination report.

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. In this case, the Department issued Motor Carrier a \$1,000 penalty pursuant to IC § 9-20-18-14.5(d). Based on the April 20, 2022, ISP report, Motor Carrier failed to comply with the maximum weight restrictions as statutorily required under IC § 9-20-4-1. The ISP incident report noted the following:

WHEN I TOLD DRIVER ABOUT O/W HE SAID HE HAS A BAD TAG AXLE VALVE AND HAS ONE ON ORDER SAID HE COULD NOT PUT ANY MORE AIR IN IT TO TAKE WEIGHT OF THE DRIVE AXLE// I SAW ON RAMP WIM THAT THE TRUCK HAD O/W PROBLEM SO I SPLIT THE AXLE ON SCALE 2 AND 3[.]

(ALL CAPS in original).

Motor Carrier stated that to provide transportation services, it entered into lease agreements with many independent contract vehicle owners, such as the driver's company in this case. Motor Carrier thus claimed that "it has no knowledge or control over an independent contractor driver who was cited by the Indiana State Police for violating IC § 9-20-4-1." Motor Carrier offered a payment receipt to demonstrate that the driver was responsible for the violation and the driver had paid the fine stated in the ticket issued by the ISP. Motor Carrier however did not provide any contract to support its position.

Motor Carrier further referenced an April 14, 2022 inspection result, asserting that prior to the ISP inspection, it was not aware that the truck in question had any mechanical issue. Motor Carrier maintained that when the driver picked up the load at the customer's location in Maryland on April 19, 2022, the driver did not report any issue concerning the weights of items to be delivered.

During the protest process, the Department may consider the following factors to address the penalty imposed.

- whether the motor carrier (Carrier) does or does not have a history of oversize/overweight civil penalties, including violations that resulted in warning letters;

- if the Carrier and DOR have entered into previous agreement(s) to settle civil penalties, whether the Carrier is current on the terms of the settlement agreement(s) or has fulfilled the terms of the settlement agreement(s);
- whether the civil penalty will result in a financial hardship;
- whether, despite the exercise of due diligence, the Carrier did not know, or could not have known, that the vehicle was oversize or overweight at the time of inspection by the Indiana State Police;
- whether, despite the exercise of due diligence, the Carrier did not know, or could not have known, that an oversize/overweight permit was required;
- whether the Carrier had no access to, or control of, the load when it was loaded;
- the extent to which the vehicle was oversize/overweight.

Indiana Department of Revenue, Notice, available

<https://www.in.gov/dor/motor-carrier-services/oversizeoverweight-osw/osw-notice/> (last visited September 6, 2022). Nevertheless, the Department's assessment is presumed to be correct. As such, there is a rebuttal presumption, and the Motor Carrier bears the burden to establish and document the existence of any defense or mitigating factors.

Upon review, however, Motor Carrier's reliance of its supporting documentation is misplaced. Specifically, in this instance, customers employed Motor Carrier and paid for the services Motor Carrier provided. Motor Carrier accepted the customer's payment and agreed to provide the services. Motor Carrier thus remained responsible for the delivery even when it subsequently decided to outsource the tasks and contract others to fulfill its obligations owed to its customers. As such, Motor Carrier is deemed to maintain certain control over its contractors and is not relieved of its obligations. Motor Carrier's April 14, 2022, inspection report - although the details were not legible - demonstrated that the driver's truck was required to be periodically inspected by Motor Carrier's designated facility. The fact that the driver and Motor Carrier communicated prior to pick-up and subsequently after delivery, also supported that Motor Carrier exercised its control over the contractor.

Finally, the ISP report noted that the driver was aware of certain issues concerning an axle valve and weight of the drive axle. However, Motor Carrier's April 14, 2022, inspection report was not legible and was therefore insufficient to support that Motor Carrier fulfilled its due diligence. As such, Motor Carrier is liable for the violation because the truck was used to deliver on behalf of Motor Carrier under Motor Carrier's authorization. Given the totality of circumstances, in the absence of other verifiable supporting documents, it is, therefore, appropriate for Motor Carrier to receive a \$1,000 penalty.

FINDING

Motor Carrier's protest is respectfully denied.

September 19, 2022

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An [html](#) version of this document.