

Letter of Findings: 65-20221471
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 two separate oversize/overweight civil penalties on two separate incidents because both vehicles 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 9-18.1-3-1](#); [IC 9-20-1-1](#); [IC 9-20-1-2](#); [IC 9-20-2-2](#); [IC 9-20-4-1](#); [IC 9-20-4-3](#); [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 oversize/overweight civil penalty assessments regarding two separate inspections conducted by the Indiana State Police.

STATEMENT OF FACTS

Motor Carrier is a "Domestic For-Profit Corporation" based in Indiana. On April 21, 2022, and April 26, 2022, Motor Carrier's commercial motor vehicles were cited by the Indiana State Police ("ISP") for oversize/overweight violations. As a result, the Indiana Department of Revenue ("Department") assessed Motor Carrier two separate oversize/overweight ("OS/OW") civil penalties.

Motor Carrier protested the civil penalty assessments. An administrative hearing was held. This Letter of Findings results based on the documents submitted by Motor Carrier and information within the protest file. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Based on two separate reports provided by the ISP, the Department assessed Motor Carrier a \$1,000 civil penalty and a \$1,500 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 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." See also *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). Also, "all statutes are presumptively constitutional."

Indiana Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 587 (Ind. 2014). 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." *Id.* at 583.

[IC 9-20-1-1](#) provides, "[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 instance, based on the ISP inspection reports, Motor Carrier had no permit when stopped and both vehicles were overweight upon inspections. Pursuant to [IC 9-20-18-14.5\(d\)](#), the Department issued two penalty assessments: (1) a \$1,000 penalty for the April 21, 2022 violation, and (2) a \$1,500 penalty for the April 26, 2022 violation.

A. Inspection Reports

(1) Inspection Report Number IN7429001789

According to the April 21, 2022, ISP report, Motor Carrier failed to comply with the maximum weight restrictions as statutorily required under [IC 9-20-4-1](#). The ISP report, in relevant part, noted the following:

[I] did lev[e]l 2 with weigh first weight seemed off appears [the driver] was fluxing tag pressure affecting rear weights so re weight tri group weigh 51350 allowed 50000

The report further noted that the original weight for the "tri" group was "54600." That is, initially, the vehicle was 4,600 pounds overweight.

(2) Inspection Report Number IN7429001794

Based on the April 26, 2022, ISP report, Motor Carrier failed to comply with the maximum weight restrictions as statutorily required under [IC 9-20-4-1](#). The ISP report, in relevant part, noted the following:

[S]topped because looked heavy by tire squat. . . . scale ticket for sand 70,640

[I] weighed at 70,200 [allowed 68000]. tri group 55200 [allowed 50000] tandem 40500 [allowed 34000]

In this instance, Motor Carrier's own "Material Delivery Ticket" stated "70,640," which showed that Motor Carrier or its driver knew - but did nothing to address - the issue that the vehicle was overweight when the vehicle picked up the material to be delivered.

B. Protest of Motor Carrier

Motor Carrier protested both assessments, arguing that both assessments "should be dismissed."

First, Motor Carrier protested the \$1,000 penalty assessment based on Inspection Report Number IN7429001789 on the ground that (i) Inspection Report Number IN7429001789 erred in marking the violation of "2501-5000lbs over an axle/axle group," (ii) the vehicle in question was within the "allowable gross weight of 68,000lbs," and its driver had "no access to, or control of, the load at the time it was loaded" and had exercised "due diligence," and (iii) the Department should have considered additional allowance for the axle weight pursuant to [IC 9-20-4-3\(b\)](#).

Second, Motor Carrier protested the \$1,500 penalty assessment based on Inspection Report Number IN7429001794, claiming the material was delivered to an Indiana "County Highway Department." As such, Motor Carrier argued that the assessment should be dismissed under [IC 9-20-2-2\(b\)\(1\)](#).

Motor Carrier provided an April 21, 2022, Bill of Lading and its April 26, 2022, Material Delivery Ticket to support its protest of the penalty assessments.

C. Analysis and Conclusion

During the protest process, the Department may consider mitigating factors to address the penalty imposed. Indiana Department of Revenue, Notice, <https://www.in.gov/dor/motor-carrier-services/oversizeoverweight-osw/osw-notice/> (last visited December 29, 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 documents and statutory provisions is misplaced. First, Motor Carrier asserted and provided no documents to substantiate its assertion that Motor Carrier or its drivers exercised "due diligence," and had "no access to, or control of, the load at the time it was loaded." According to publicly available information and Motor Carrier's own documentation, such as Material Delivery Ticket, Motor Carrier owned the vehicles, employed drivers, and established a contractual relationship with its suppliers or its customers. Motor Carrier's Delivery Ticket demonstrated that Motor Carrier and its driver should have known or would have known, but did nothing to address, the issue that the vehicle was overweight when the vehicle picked up the material to be delivered. Therefore, the Department is not able to agree that Motor Carrier exercised "due diligence," and had "no access to, or control of, the load at the time it was loaded."

Second, Motor Carrier referenced [IC 9-20-4-3\(b\)](#), arguing that it should be allowed additional "one and one-half percent (1 1/2 [percent]) of the registered weight" when the Department issued the \$1,000 penalty assessment. Motor Carrier, however, did not offer any supporting documents to substantiate that it qualified for [IC 9-20-4-3\(b\)](#).

Upon further review, [IC 9-20-4-3\(b\)](#) is not applicable in this instance and Motor Carrier's reliance of [IC 9-20-4-3\(b\)](#) is misplaced. Specifically, [IC 9-20-4-3](#) is to address violations which are deemed to be criminal in nature and which arise from failing to comply with the declared weight as registered under [IC 9-18.1-3-1\(a\)\(4\)\(D\)](#). To qualify for [IC 9-20-4-3\(b\)](#) and avoid the criminal penalty under (c), Motor Carrier must first satisfy the requirements outlined in [IC 9-20-4-3\(a\)](#), which states:

The gross weight declared by an applicant in an application for registration under this title determines and fixes the limit of the load, including the unladen weight of the vehicle or combination of vehicles fully equipped for service, that may be transported by a vehicle or combination of vehicles on the highways for the period for which the registration or license is granted. **Except as provided in subsection (b), the transportation of a load on a registered and licensed vehicle or combination of vehicles in excess of the limit fixed in the application for registration subjects the person violating a provision of this title to the penalty provisions in this title or to the revocation of the license for the vehicle, or both.**

(Emphasis added).

[IC 9-20-4-3\(c\)](#) further provides the following:

A person who violates this section commits a Class C infraction. In addition, the person shall pay the difference between the fee paid for registration of the vehicle and the fee for the registration of the vehicle plus a maximum load of a weight equal to the excess load being transported. Until the fee is paid, the person transporting the excess load is not permitted to move the transporting vehicle.

(Emphasis added).

Motor Carrier in this instance did not provide any documentation to substantiate that it applied "for registration under this title determines and fixes the limit of the load . . . that may be transported by [its] vehicle . . . on the highways for the period for which the registration or license is granted" as required under [IC 9-20-4-3\(a\)](#). Motor Carrier also failed to demonstrate that the weight at issue was within "one and one-half percent (11/2 [percent]) of the registered weight . . . including load[,]" as statutorily required.

Motor Carrier claimed that Inspection Report Number IN7429001789 erred in marking the violation of "2501-5000lbs over an axle/axle group." It should be noted that the civil penalty assessment at issue here was based on the frequency of Motor Carrier's violation, not based on "2501-5000lbs over an axle/axle group." Previously, the Department issued a warning letter and provided notice to Motor Carrier. As such, the marking of "2501-5000lbs over an axle/axle group" did not affect the \$1,000 penalty assessment. Additionally, according to the ISP report, the original weight for the "tri" group was "54600," which was initially 4,600lbs overweight. The ISP report further noted that the driver "was fluxing tag pressure affecting rear weights." The officer presumably gave the driver the benefit of a second chance and reweighed. Even if, for the sake of argument, the marking was an error, it did not change the fact that the vehicle was overweight, and the penalty assessed remains valid. Based on the report, the vehicle in question was 1,350lbs overweight after reweighed. Motor Carrier in its own statement also admitted that even after it considered the additional "one and one-half percent" allowance, it would still "leave 600lbs over weight." As such, the Department must decline Motor Carrier's invitation to dismiss the \$1,000 penalty assessment because the facts and circumstances are clear - Motor Carrier's vehicle was overweight.

Finally, [IC 9-20-2-2\(b\)\(1\)](#) is not applicable in this instance. Specifically, publicly available information showed that Motor Carrier is registered as a "Domestic For-Profit Corporation." As such, Motor Carrier's "Material Delivery Ticket" alone without additional verifiable supporting documents, at best, only established that, on April 26, 2022, Motor Carrier, a "Domestic For-Profit Corporation" used its own vehicle to deliver the material "sold to" the customer, a County Highway Department. In short, Motor Carrier failed to document and substantiate that its vehicle met the statutory requirement that "[m]achinery or equipment used in highway construction or maintenance by the Indiana . . . counties" The Department thus is not able to dismiss the \$1,500 penalty assessment as well.

In conclusion, given the totality of circumstances, in the absence of other verifiable supporting documentation, there is no question that both vehicles were overweight at the time of inspection. Motor Carrier failed to provide verifiable supporting documentation to meet its burden of proof as required under [IC 6-8.1-5-1\(c\)](#). It is, therefore, appropriate for Motor Carrier to receive both penalty assessments pursuant to [IC 9-20-18-14.5\(d\)](#).

FINDING

Motor Carrier's protest is respectfully denied.

December 30, 2022

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