

**Letter of Findings: 65-20221728**  
**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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); *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 July 12, 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 \$10,000 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 of 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). 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 \$10,000 penalty pursuant to [IC 9-20-18-14.5](#)(d). Based on the July 12, 2022, ISP report, Motor Carrier failed to comply with the maximum weight restrictions as statutorily required under [IC 9-20-4-1](#).

Motor Carrier, in this instance, stated that it or its driver - an independent contractor owner-operator - "did not know or could not have known that the trailer[] was [over axle weight] at the time of inspection by the Indiana State Police, despite the exercise of diligence." Motor Carrier asserted that the penalty assessment imposed financial hardship on it or its driver and that both it and its driver "did not have access to, or control of, the load when it was loaded." Motor Carrier explained that "[t]here are several contributing factors, such as the way the product was loaded, the shifting of product during transportation, and differences in scales that could have led to the trailer being [over axle weight] at the time it arrived at the scale located [in] Indiana."

Motor Carrier asserted that its driver "transported dry bulk product[], which [was] free flow[ing] within the trailer[, and] the simplest move can shift the axle weight of these products." Motor Carrier further stated the following:

[D]uring the trip from Georgia to Indiana, the driver was stopped at state scales in Tennessee and Kentucky, both of which gave him the green light to continue, further supporting the [Motor Carrier's] position that it could not have reasonably known of any [over axle weight] issue. However, even if the driver was made aware of being over axel weight at the scales in Tennessee and Kentucky, there is no way to safely re-adjust dry bulk product in a sealed trailer because the vessel hatches are not accessible, and the driver cannot manually move the product around to adjust the shifting of the weight.

Motor Carrier simply provided a bill of lading, a delivery ticket, and a split weight ticket (due to the fact that both truck and trailer could not simultaneously fit on one scale) to support its protest.

Upon review, Motor Carrier's reliance on its supporting documentation is misplaced. 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 May 25, 2023).

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.

A review of the Department's records showed that previously, the Department issued several notices and assessments on similar violations. Motor Carrier thus was made aware of a series of violations. Motor Carrier, however, provided nothing to substantiate that it or its driver exercise due diligence.

Motor Carrier also referenced several tickets, including a split ticket, to support its protest. However, Motor Carrier's supporting documentation was not consistent. Motor Carrier in this instance voluntarily contracted with its customer to deliver the product. As such, Motor Carrier has certain control over the product to be delivered, how it delivered, as well as how the item was to be delivered pursuant to the contractual arrangement. Otherwise, Motor Carrier would have declined the offer and negotiated for different terms and conditions. The Department thus is not able to agree that Motor Carrier affirmatively established that it or its driver did not have access or control.

Finally, it should be noted that each state, such as Indiana, has its own jurisdiction and legal authority. Likewise, legislature of other states may impose different restrictions as they see fit. As such, Motor Carrier erred in asserting that its driver had a green light "at the scales in Tennessee and Kentucky" without any verifiable supporting evidence. Whether or not Motor Carrier's driver had a green light in other states is irrelevant and beyond the scope of this protest.

In conclusion, given the totality of circumstances, in the absence of other verifiable supporting documents, it is appropriate for Motor Carrier to receive a \$10,000 penalty.

### **FINDING**

Motor Carrier's protest is respectfully denied.

June 16, 2023

*Posted: 08/30/2023 by Legislative Services Agency*

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