



Owner-Operator Independent Drivers Association Inc.

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VIA OVERNIGHT DELIVERY

March 5, 2020

Indiana Department of Revenue
Attn: Legal Division, MS 102
100 N. Senate Avenue, Room N248
Indianapolis, IN 46204-2243

Re: Proposed Assessments of Civil Penalties Imposed on Commercial Motor Vehicle Drivers and Carriers by the Indiana Department of Revenue for Oversize/Overweight Violations

To whom it may concern:

I am the President of the Owner-Operator Independent Drivers Association, Inc. (OOIDA). OOIDA is a nationwide not-for-profit trade association of professional truck drivers, including employee drivers and individuals, who own and operate motor vehicle equipment, commonly known as “owner-operators.” OOIDA was founded in 1973 and represents over 160,000 members residing in all fifty (50) states and in Canada. OOIDA members collectively own or operate more than 240,000 individual heavy trucks and small truck fleets, many of whom operate in Indiana.

OOIDA’s members have recently been receiving letters from the Department of Revenue with the subject line “DOR Civil Penalty Proposed Assessment for Oversize/Overweight Violation(s).” These letters purport to provide notice of “proposed assessments” and relate to alleged violations noted during truck inspections that occurred many months—even years—ago.

The DOR letter, attached here as Exhibit 1, provides the recipient with three options. The recipient is given 60 days to either (1) pay the “proposed assessment”—which sometimes exceeds the maximum allowed under law; (2) attempt to negotiate to reduce the amount of the penalty, but only via email exchange, not via telephone; or (3) file a protest with the Indiana Department of Revenue.

OOIDA is concerned that these assessments are improper, fundamentally unfair, and in some cases, unlawful. Among our objections is that the delay between the purported offense and IDOR's "proposed assessment" is unfair and creates unnecessary complications in the driver or carrier's maintenance of accurate books and records. The attachments that accompany IDOR's letters are often unsigned, rendering the "proof" presented by IDOR of insufficient evidentiary value to support the "proposed assessment." The "proposed assessments" all represent the maximum penalty permitted by law, demonstrating no consideration of proportionality to the severity of the underlying offense. Accordingly, the proposed penalties may be unconstitutional.

In at least one case, there is no underlying citation whatsoever. In many cases, there is no acknowledgement by the driver that the vehicle was in fact overweight. In another case, the driver had been issued the requisite permit and he did not exceed the permit's size or weight limitations. In that instance, upon receiving the "purported assessment," the carrier pointed out to IDOR that there was an existing valid permit, and forwarded a copy of the permit to IDOR. IDOR refused to take the valid permit into consideration and refused a settlement offer of \$500—the maximum penalty allowed when the driver has committed a first offense—even though the driver in that instance had committed no offense at all.

In a third case, despite IDOR's statement in the original "purported assessment" letter that the driver had sixty days to pay, settle, or protest, IDOR set an artificial deadline that was three weeks before the actual period expired, and refused to entertain any further settlement discussions, instead advising the driver that the only option remaining to him was to protest the assessment. This despite that it was the driver's first offense, which precludes the imposition of a fine greater than \$500 (as represented on IDOR's website). The driver had already exceeded \$500 in a settlement offer.

These assessments ignore IDOR's own website declaration of the amount of penalties that it intends to assess against someone who violates the Oversize/Overweight limits. As of the date of this letter, on IDOR's website, the following language appears:¹

Oversize/Overweight (OSW) Civil Penalties

An individual with or without an Oversize/Overweight Permit who violates Indiana Code Article 9-20 is subject to the following civil penalties:

- **Not more than \$500 for the first violation,**
- **Not more than \$1,000 for each subsequent violation**

NOTE: These civil penalties are in addition to any fines and/or penalties that may have been separately assessed under Indiana law.

See <https://www.in.gov/dor/4243.htm> (emphasis added)(last visited March 4, 2020).

¹ A PDF of the webpage containing this language is attached as Exhibit 2. The law as written provides that someone who has a permit but violates the weight limitation can be assessed no more than \$500 for a first offense.

Thus, IDOR's own website declares that whether or not the driver has an Oversize/Overweight permit, for a first offense s/he cannot be fined more than \$500. This statement constitutes an expression of IDOR's intent for how it will administer such penalties. Yet the IDOR proposed assessment letters that we have examined ignore that representation on the IDOR website. IDOR cannot now disavow its own guidance as expressed on its official platform of communication. Drivers and companies are entitled to rely on IDOR's representation. Many of the proposed assessments sent to us by our members related to first offenses, but demand payment well in excess of the policy stated on the website.

Further, in *Timbs v. Indiana*, 586 U.S. ___, 139 S. Ct. 682 (2019), the United States Supreme Court held that the Fourteenth Amendment to the United States Constitution incorporates to the States the protection of the Excessive Fines Clause of the Eighth Amendment. *Id.* at 689. Indeed, in its argument to the Supreme Court, Indiana explained that the Indiana Supreme Court "held that the Indiana Constitution should be interpreted to impose the same restrictions as the Eighth Amendment." *See Timbs*, 139 S. Ct. at 689 (citing *Norris v. State*, 271 Ind. 568, 576, 394 N.E.2d 144, 150 (1979)).

Timbs further held that the civil—not criminal—nature of Indiana's civil forfeiture statute did not shield civil forfeitures from scrutiny under the Eighth Amendment. As the *Timbs* court noted,

[F]ines may be employed in a measure out of accord with the penal goals of retribution and deterrence," for "fines are a source of revenue," while other forms of punishment "cost a State money." *Hamelin v. Michigan*, 501 U.S. 957, 979, n. 9 [] (1991) (opinion of Scalia, J.)("it makes sense to scrutinize governmental action more closely when the State stands to benefit.")

Timbs, 139 S. Ct. at 689 (emphasis added).

Precisely that situation exists here. Indiana is exacting fines—long after the offense in question has (1) occurred; (2) been the subject of a citation or not; and (3) been resolved in traffic or criminal court if applicable—that are not for the purposes of retribution or deterrence but rather imposed as a source of revenue. Moreover, the "purported assessments" are, in most cases, far out of proportion to the penalty, if any, imposed by the criminal courts.

If subjected to a court challenge, we believe that the Overweight/Oversize "proposed assessments" currently being issued by Indiana would not pass constitutional muster (and in some cases violate Indiana law), and should be withdrawn. No fines should issue, and no tax should be assessed, that are not proportional to the alleged offense—and there must be an offense to support any fine.

The only good faith solution for IDOR at this time is to charge no more than \$500 for a first offense and no more than \$1,000 for a subsequent violation—whether or not the driver had a permit—for any "proposed assessment," as provided on IDOR's website. In cases where there is no underlying citation, and/or the motor carrier can demonstrate it had an applicable permit which was not exceeded, Indiana should withdraw the fines altogether.

I look forward to your resolution of these issues and your response.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Todd Spencer". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Todd Spencer