JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **99-05-10-013 / NOT PRECEDENTIAL**
ID: **P9500236**
DATE: **05-10-99**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE LICENSE FEE**
APPEAL: **SUP CT 93,167. / OTC DECISION AFFIRMED**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The parties stipulate to the following:

1. The Commission has issued certain tickets to PROTESTANT for operating commercial vehicles in excess of the laden weight for which registered.

2. The following listed tickets are the basis for the protest, and neither the Commission nor PROTESTANT are aware of any other tickets:

DATE	TICKET NUMBER	PENALTY AMOUNT
07-20-94	A	$ 200.00
07-20-94	B	100.00
04-25-95	C	140.00
08-02-95	D	60.00
10-23-95	E	60.00
02-03-97	F	160.00
03-04-97	G	80.00
04-03-97	H	460.00
04-30-97	I	100.00
04-30-97	J	220.00
06-16-97	K	140.00
07-15-97	L	180.00
TOTAL		$1,900.00

3. PROTESTANT purchases a "refuse permit" which allows an increase in weight allowance up to 15%. The permit is issued pursuant to 47 O.S. § 14-109.

4. The commercial vehicle license fees shall be paid annually to the Commission upon registration of the vehicles per 47 O.S. § 1133. That if any vehicle is operated upon any street, road or highway of this state with a laden weight in excess of that for which it is licensed, the license fee for such increased laden weight shall become due, and the owner of the vehicle shall be required to immediately re-register the vehicle at the increase rate.

5. Title 47 O.S. § 14-109 [Sic] regulates the maximum load in pounds carried on any group of two (2) or more consecutive axles, and provides an exception on certain vehicles, namely a "refuse collection vehicle." The exception is calculated on the "Gross Vehicle Weight." However, the weight on individual axles must not exceed the manufacturer's component ratings. The registration of commercial trucks as provided in 47 O.S. § 1133, is based on the "laden weight" of the vehicle as defined in 47 O.S. § 1102. The formula for determining "laden weight" is based on the manufacturers rated carrying capacity.

6. PROTESTANT Issues Presented: PROTESTANT protested ticket No. D by letter dated August 10, 1995. All of the tickets listed in paragraph 2 are to be determined in this protest. The protest is based upon the fact that by paying the $100.00 for the 15% allowance, and then having to re-register the vehicle at that increased rate is not only redundant but renders the refuse permit under 47 O.S. § 14-109, a nullity. PROTESTANT feels that the statutory requirements are met when registration is completed and the permit obtained for 15% increase in weight allowance above registered weight.

7. Commission Issues Presented: The Commission maintains Title 47 O.S. § 14-109, $100.00 overload permit, is enforced and under the jurisdiction of the Department of Public Safety. The permit has no effect or validity, as to the Commission, requiring the registration fee, as provided by Title 47 O.S. §1133, on the combined laden weight of the vehicle.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the purchase of annual special overload permits for refuse collection vehicles excepts said vehicles from the increased license fees and penalties attributable to exceeding the registered laden weight of the vehicles.

Protestant contends that the annual special overload permit allows a refuse collection vehicle to operate in excess of the weight for which it is registered and licensed. In support of this contention, Protestant argues that to construe the provisions of Sections 14-109(E) and 1133(E) of Title 47 of the Oklahoma Statutes otherwise would create a nullity in the statutory framework and there would be no reason for purchasing the special overload permit.

The Division contends that the statutory provisions providing for an annual special overload permit are separate and distinct from the statutory provisions providing for the proper registration of commercial vehicles by laden weight or combined laden weight. In support of this contention, the Division argues that the provisions of Section 14-109 are restricted to legal load limits of vehicles whereas the provisions of Section 1133 are concerned with the registration of vehicles according to laden weight.

APPLICABLE LAW

An annual license fee is required to be paid upon the registration of each commercial vehicle. 47 O.S. Supp. 1993, § 1133(A). The license fee shall be computed and assessed based on the combined laden weight of the vehicle or combination of vehicles. Id.

A "commercial vehicle" is defined to mean any vehicle with a combined laden weight over eight thousand (8,000) pounds and used primarily for business or commercial purposes. 47 O.S. Supp. 1993, § 1102(7). "Combined laden weight" is defined to mean "the weight of [the vehicle] and its cargo or payload transported thereon, or the weight of [the vehicle] plus the weight of any trailers or semitrailers together with the cargo or payload transported thereon." 47 O.S. Supp. 1993, § 1102(4). The laden weight of the vehicle shall in no event be less than the unladen weight of the vehicle fully equipped for use, plus the manufacturer's rated carrying capacity. 47 O.S. Supp. 1993, § 1102(11). The cargo or payload declared by the owner or carrying capacity shall not be less than the minimum tonnage capacity fixed, listed or advertised by the manufacturer. 47 O.S. Supp. 1993, § 1102(1).

If any vehicle is placed or operated upon any street, road or highway of this state with a laden weight in excess of that for which it is licensed, the license fee for such increased laden weight shall become due, and the owner of the vehicle shall be required to immediately reregister the vehicle at the increased rate. 47 O.S. Supp. 1993, § 1133(E).

In addition, a penalty shall be imposed on the owner or operator of the commercial vehicle when the laden weight or combined laden weight of such vehicle is found to be in excess of that for which it is registered. 47 O.S. Supp. 1993, § 1133(J). The penalty shall be Twenty Dollars ($20.00) when such vehicle exceeds the laden weight or combined laden weight by 2,001 pounds. Thereafter, an additional Twenty Dollars ($20.00) shall be imposed for each additional one thousand pounds or fraction thereof of weight in excess of the registered laden weight or combined laden weight. The penalty shall be imposed each and every time a vehicle is found to be in violation of the registered laden weight or combined laden weight. Id.

Section 14-109 of Title 47 of the Oklahoma Statutes sets forth the total gross weight in pounds which may be imposed on any road or highway by a vehicle or combination of vehicles depending on the configuration of its axles. 47 O.S. Supp. 1996, § 14-109(A)(2). Refuse collection vehicles used by counties, cities and towns or by private companies contracted by counties, cities and towns are excepted from the provisions of Section 14-109(A)(2) provided: (1) the calculation of weight shall be "Gross Vehicle Weight"; (2) the "Gross Vehicle Weight" may not exceed the otherwise applicable weight by more than fifteen percent (15%); (3) the weight on individual axles shall not exceed the manufacturer's component ratings; (4) the vehicle shall not be allowed to operate on interstate highways; and (5) an annual special overload permit is purchased for the vehicle. 47 O.S. Supp. 1996, §§ 14-109(E)(1) and (F).

Special overload permits are not valid until all license taxes due the State of Oklahoma have been paid. 47 O.S. Supp. 1995, § 14-116(D). Any motor carrier, shipper or other person who willfully or knowingly transports a load having a capacity greater than the axle or gross weights authorized by statute or special permit, upon conviction, is guilty of a misdemeanor. 47 O.S. Supp. 1995, § 14-119. See, 47 O.S. Supp. 1993, § 14-101(A).

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. An annual license fee is required to be paid upon the registration of each commercial vehicle depending on the combined laden weight of the vehicle or combination of vehicles. 47 O.S. Supp. 1993, § 1133(A).

3. The "laden weight" or "combined laden weight" of any commercial vehicle consists of the weight of the vehicle which in no event shall be less than the unladen weight of the vehicle fully equipped for use together with the cargo or payload transported thereon which shall not be less than the minimum tonnage capacity fixed, listed or advertised by the manufacturer and, if applicable, the weight of any trailers or semitrailers. 47 O.S. Supp. 1993, § 1102(1), (4) and (11).

4. If any vehicle is placed or operated upon any street, road or highway of this state with a laden weight in excess of that for which it is licensed, the license fee for such increased laden weight shall become due, and the owner of the vehicle shall be required to immediately reregister the vehicle at the increased rate. 47 O.S. Supp. 1993, § 1133(E).

5. When the laden weight or combined laden weight of any commercial vehicle is found to be in excess of that for which it is registered, a penalty shall be imposed upon the owner or operator of the vehicle. 47 O.S. Supp. 1993, § 1133(J). The penalty shall be imposed each and every time a vehicle is found to be in violation of the registered laden weight or combined laden weight. Id.

6. The total gross weight which may be imposed on any road or highway by a vehicle or combination of vehicles depending on the configuration of its axles is provided by 47 O.S. Supp. 1996, § 14-109(A)(2).

7. A annual special overload permit may be purchased by refuse collection vehicles provided the "Gross Vehicle Weight" shall not exceed the otherwise applicable weight by more than fifteen percent (15%), the weight on individual axles does not exceed the manufacturer's component ratings and the vehicle is not operated on interstate highways.

8. The mandates, objectives and requirements of the provisions of Chapter 14 of the Highway Safety Code and the Oklahoma Vehicle License and Registration Act are separate and distinct. Section 14-109 clearly restricts the total gross weight which may be imposed on a road or highway by a vehicle or combination of vehicles depending on its axle configuration. Section 1133 requires the payment of an annual license fee on a commercial vehicle based on the combined laden weight of the vehicle or combination of vehicles.

9. The annual special overload permit which may be purchased for refuse collection vehicles does not allow the vehicle to be operated at a laden weight in excess of that for which it is registered without the reregistration of the vehicle at the increased laden weight and payment of the license fee at the increased weight. The annual special overload permit merely allows a refuse collection vehicle, dependent on axle configuration, to be operated at a weight which exceeds the otherwise applicable weight which may be imposed on any road or highway by not more than fifteen percent (15%).

10. Protestant's protest to the license fee and penalty citations should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest be denied. It WAS further DETERMINED that the amount in controversy be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.