JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-09-26-008 / NOT PRECEDENTIAL**
ID: **MV020006**
DATE: **09-26-02**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE / IRP**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 22nd day of August, 2002, the above styled and numbered cause comes on for decision pursuant to Section 221(d) of the ***Uniform Tax Procedure Code***. REGISTRANT appears pro se. The Motor Vehicle Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

The Registrant did not appear at the Prehearing Conference scheduled in this cause for April 3, 2002. Thereafter, notice was served on the parties that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division. The Registrant did not respond to this notice.

Upon review of the file and records, including the January 16, 2002 proposed assessment of IRP fees, the letter of protest dated January 29, 2002, and the Division's ***Verified Response to Protest***, the undersigned finds:

1. That in accordance the provisions of the International Registration Plan ("IRP") and 47 O.S.2001, Section 1120, the Registrant's motor vehicles were licensed and registered on a proportional basis by the State of Oklahoma during the 2001 license year.

2. That the Division conducted an audit for the period of the third quarter of 1999 through the second quarter of 2000 for the 2001 IRP license year. The records reviewed for purposes of the audit were the reported state mileages and quarterly fuel reports for the first and second quarters of 2000.

3. That the Registrant had reported on its 2001 IRP application for proportional registration actual mileage traveled in 49 states.

4. That the audit revealed the Registrant experienced actual mileage in only twelve (12) states.

5. That as a result of the audit, the Division treated the miles reported as actual in those states where no mileage was generated for a second consecutive year as second year estimated miles and eliminated those miles from the denominator (total fleet miles) of the mileage percentages factor, thus increasing (nine (9) states) and decreasing (three (3) states) the proportional registration fees due in those states in which the Registrant had mileage experience and denying the refund of the proportional registration fees paid in those states in which the Registrant did not have any mileage experience.

6. That as a result of the audit findings, the Division by letter dated January 16, 2002, proposed the assessment of additional proportional registration fees against the Registrant for the 2001 registration year in the amount of $2,228.85.

7. That the Registrant filed a timely protest to the proposed assessment, but did not assert any errors alleged to have been committed by the Division's audit.

8. That the amount in controversy is $2,228.85.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. 1991, Section 207 and 47 O.S. 1991, Section 1120; that as a registrant under the provisions of the IRP, the Registrant is subject to the audit procedures and policies set forth therein, **IRP**, Appendix F, Art. XVI, incorporated by reference, Rule 710:60-4-20(b)(1) of the *Oklahoma Administrative Code*; that the audit of a registrant under the IRP shall be conducted by its/his base jurisdiction, **IRP**, Art. XVI, Sec. 1600; that the mileage percentages factor of a registrant may be recalculated as a result of an audit of the registrant's apportioned registration file, **IRP**, *Policies and Procedures Manual*, Sec. 5030(4); that a registrant is permitted to estimate miles for a second consecutive year if there are no actual operations in the mileage reporting year, however, where no mileage is experienced in a jurisdiction for the second mileage reporting period, the estimated mileage shall not be included in the denominator (total fleet miles) of the mileage percentages factor for the subsequent registration year, **IRP**, *Policies and Procedures Manual*, Sec. 5020; that the refund of proportional registration fees is permitted under the IRP in certain specific circumstances, in particular to the three (3) states in this cause, where "[a]n audit of actual miles of an apportioned registrant indicates an over-payment", **IRP**, *Policies and Procedures Manual*, Sec. 3030(d); that the IRP refund provisions do not permit the refund of registration fees apportioned to a jurisdiction where such fees are based on an estimation of miles and the registrant does not experience any miles in that jurisdiction during the reporting period, *Id.*, Sec. 3030; that an assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, Rule 710:1-5-47 of the Oklahoma Administrative Code; See, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988); and that the Registrant has failed to come forward with any evidence to show the assessment is erroneous in any respect, accordingly the Registrant's protest to the assessment should be denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest be denied. It is 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.