JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-11-05-015 / NOT PRECEDENTIAL**
ID: **MV020008**
DATE: **11-05-02**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE / IRP**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 6th day of September, 2002, the above styled and numbered cause comes on for decision pursuant to a hearing held on August 15, 2002. REGISTRANT is represented. The Audit Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

The Division filed a "Prehearing Conference Report" in lieu of the Prehearing Conference scheduled in this cause for May 1, 2002, requesting a thirty (30) day continuance to allow the Registrant time to review documentation regarding the audit. The Division's request was granted by letter dated April 29, 2002. On May 31, 2002, the Division by memorandum advised that the Registrant had failed to forward any additional information and requested that a hearing be scheduled to consider the Registrant's protest. The hearing was originally scheduled for July 1, 2002, but was continued to August 15, 2002, to allow the parties additional time to discuss possible stipulations. A hearing was held in this cause on August 15, 2002. The Registrant failed to appear at the hearing.

Upon review of the file and records, including the record of the proceedings held on August 15, 2002, and the exhibits received into evidence, the undersigned finds:

1. That in accordance with the provisions of the International Registration Plan ("IRP") and 47 O.S. 2001, Section 1120, the Registrant licensed and registered on a proportional basis three (3) power units with the State of Oklahoma during the 1999 and 2000 registration years.

2. That the Registrant is in the business of hauling general freight.

3. That prior to the 1999 IRP registration year, the Registrant registered its power units with the State of Maine.

4. That during the audit period, the 1999 and 2000 IRP registration years, the Registrant registered its power units with the State of Oklahoma.

5. That in December of 2000, the Registrant registered its power units with the State of Maine.

6. That at all times relevant, the Registrant's power units were located and operated as one fleet out of its principal place of business in Maine.

7. That on or about November 14, 2001, an IRP audit of actual miles traveled was conducted by a revenue agent employed by the State of Maine International Registration Plan Section.

8. That according to the audit report, the third quarter of 1997 and the first quarter of 1999 were selected as sample periods for purposes of comparison with the Registrant's reported mileage since these periods included all IRP jurisdictions and were indicative of the business for the entire audit period.

9. That according to the audit report, the Registrant admitted the 1999 and 2000 IRP registrations filed with the State of Oklahoma were based on actual miles.

10. That the audit was forwarded to the Division for review and comparison with the mileage reported by the Registrant on its 1999 and 2000 IRP registrations.

11. That the Registrant had reported and paid registration fees in the total amounts of $1,686.31 and $1,290.18 on its 1999 and 2000 IRP registrations, respectively.

12. That as a result of the review and comparison of the audited miles with the reported miles, the Division determined that in addition to the registration fees previously reported and remitted by the Registrant, fees of $2,384.65 and $2,920.24 were due for the 1999 and 2000 IRP registration years, respectively.

13. That based on the audit, the Division credited the amounts of $803.08 and $969.27 against the additional registration fees determined to be due for the 1999 and 2000 registration years, respectively, which amounts represent overpayments of fees to several states, and by letters dated January 26, 2002, proposed the assessment of net registration fees of $1,581.57 and $1,950.97 against the Registrant for the 1999 and 2000 registration years.

14. That the total amount in controversy is $3,532.54.

15. That by letter dated February 25, 2002, the Registrant filed a protest to the proposed assessments, which protest disputed any and all allegations of fees or penalties of any kind due the Oklahoma Tax Commission and suggested the matter be looked into further.

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, Protestant 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, however, multiple audits and audits by other jurisdictions are allowed, **IRP**, Art. XVI, Sec. 1606; 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 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 of the REGISTRANT 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.