

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-02-11-007 / NOT PRECEDENTIAL
ID: MV020027
DATE: 02-11-03
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE / IRP
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 9th day of January, 2003, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. A prehearing conference was scheduled in this matter and notice was sent to REGISTRANT at her last known address. No representative for Protestant appeared for the prehearing conference, scheduled for October 1, 2002. Thereafter, the Motor Vehicle Division ("Division") filed a verified response to the protest setting out the facts and authorities and the Division's position. Protestant was advised by letter of October 8, 2002, that a response could be filed before November 7, 2002, but none was received. This matter was submitted for an examination into the merits of the protest pursuant to 68 O.S. Section 221(D).

Upon review of the file and records in this matter, including the protest filed by Protestant and the brief filed by the Division, the undersigned makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Protestant is a registrant under the International Registration Plan ("IRP") based in the jurisdiction of the State of Oklahoma during the period at issue.

2. The Motor Vehicle Division, Alabama Department of Revenue, conducted a joint audit with the State of Oklahoma of all available records of Protestant for license year 2000, with the audit period covering the 3rd quarter 1998 through the 2nd quarter 1999. The audit revealed that the mileage reported on its 2000 application was not supported by Protestant's records. Protestant reported miles as actual miles in states where the audit revealed that no miles were driven. Those miles were considered as second year estimated miles and are not subject to refund.

3. Based on the audit, the amount of \$144.93 was credited against the additional registration fees¹ determined to be due for the 2000 registration year, which amount represents an overpayment of fees to the State of Texas, and proposed assessment made, by letter dated May 28, 2002, of net registration fees of \$2,502.42 against Protestant for the 2000 registration year.

4. By letter dated June 24, 2002, and received by the Division on July 1, 2002, Protestant filed a timely protest. In the letter, Protestant requested "copys of break down per truck", "reimbursement for states not run in" and "something in writting that shows what kind of action you are takeing against [THE SERVICE AGENT] . . . who took complete control of my tag".

¹ The additional fees determined to be due pursuant to the audit for the 2000 registration year was in the amount of \$2,647.35.

CONCLUSIONS OF LAW

1. The Oklahoma 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.

2. As a registrant under the provisions of the IRP, Protestant is subject to the audit procedures and policies set forth therein. IRP, Art. XVI and IRP, Appendix F, Art. XVI.

3. The audit of a registrant under the IRP shall be conducted by the base jurisdiction, IRP, Art. XVI, Section 1600; however, multiple audits and audits by other jurisdictions are allowed, IRP, Art. XVI, Section 1606.

4. Oklahoma statutes provide for the proportional registration and licensing of trucks, buses and truck-tractors for vehicles engaged in interstate commerce or combined interstate and intrastate commerce; 47 O.S. 1991, Section 1120. The statutes further authorize the Tax Commission to enter into the International Registration Plan² ("Plan") to facilitate this purpose; *Id.* Pursuant to such authorization, Oklahoma has been a signatory to and member of the IRP since January 1, 1978. The Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement and collection of taxes under the IRP and the Oklahoma Motor Vehicle Licensing and Registration Act; *Oklahoma Administrative Code 710:60-40-1 et seq.* Those rules specifically incorporate in their entirety the provisions of the Plan, the IRP Uniform Operation Audit Procedure Guidelines and the IRP Policy and Procedures Manual; *Oklahoma Administrative Code 710:60-4-20.* As such, those provisions have the force and effect of law 75 O.S. 1991, Section 308.2.

5. Under the IRP, registration fees for each jurisdiction are calculated by determining the percentage that the miles actually operated in a jurisdiction during the preceding year bear in proportion to the total miles generated by the fleet in all jurisdictions, and then applying that percentage to each jurisdiction's full registration fee. 68 O.S. 1991, Section 1120(b); IRP Plan Section 300. If a registrant seeks to apportion its vehicles in a jurisdiction where there was no mileage experience in the previous mileage reporting period, apportionment shall be permitted for one year by including the estimated miles in the numerator (in-jurisdiction miles) of the fee apportionment factor and in the denominator (total fleet miles everywhere) of the apportionment factor. IRP Policies and Procedures Manual Section 5020.

6. Apportioned registration using estimated miles may be permitted for a second consecutive year if there are no actual operations in the mileage reporting year. *Id.* However, if the registrant seeks to apportion its vehicles in a jurisdiction where no mileage was accrued for the second mileage reporting period, the apportionment will be permitted only if the estimated mileage is *not* included in the denominator (total fleet miles) for the subsequent registration year. *Id.* In other words, use of estimated miles for apportioned registration in a jurisdiction for the second year in a row automatically results in a taxpayer's payment of registration fees based on more than 100 percent of taxpayer's actual mileage. IRP Policies and Procedures Manual Section 5030(3). Thus, payment of such fees cannot be deemed an overpayment for which a taxpayer can claim either a refund or a credit against underpayments discovered by audit.

7. Refunds (and credits) are allowable when an audit of actual miles of an apportioned registrant indicates an overpayment. IRP Policies and Procedures Manual Section 3030(d).

² The International Registration Plan is a motor vehicle registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of proportional license fees on the basis of total distance operated in all jurisdictions.

8. The burden of proof in all proceedings, unless otherwise provided by law, is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *Oklahoma Administrative Code 710:1-5-47*.

9. Protestant has produced no evidence and cited no authority in support of her protest.

10. The protest should be denied.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the protest be denied.

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.