JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-03-04-005 / NOT PRECEDENTIAL**
ID: **MV020036**
DATE: **03-04-03**
DISPOSITION: **DISMISSED**
TAX TYPE: **MOTOR VEHICLE / IRP**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the record of the hearing to consider the ***Motion to Dismiss*** and the exhibits received into evidence, the undersigned finds:

1. That by letter dated January 28, 2002, the Division notified the Registrant of its intent to audit the Registrant's mileage records for the 2000 and 2001 registration years.

2. That on May 6, 2002, the Division performed an audit of the Registrant's trip reports per vehicle, quarterly mileage summary statements and IFTA records for the periods of the third quarter 1998 through the second quarter 1999, for the 2000 registration year and the third quarter 1999 through the second quarter 2000, for the 2001 registration year. These records were compared with the minimum mileage required to travel from the trip origins to the trip destinations as documented on the trip sheets using PC Miler and Rand Atlas Miles. Based on this comparison, it was determined that trip mileage was under reported in certain apportioned jurisdictions and over reported in other jurisdictions. As a result of the audit determinations, percentage mileage adjustment factors were applied, on a relative basis, to all applicable IRP jurisdictions.

3. That as a result of the audit, the Division, by letters dated May 7, 2002, caused to be issued against the Registrant adjustments of IRP registration fees due for 2000 and 2001, in the respective net amounts of $7,988.06 and $475.03.

4. That the adjustment letters were forwarded to the Registrant at his last-known address in accordance with 68 O.S. Supp. 1993, ϶ 208.

5. That the Registrant did not ask for or receive an extension of time within which to file a written protest to the adjustment.

6. That by letter to the Division dated July 31, 2002, the Registrant protested the 2000 registration year audit findings and assessment of additional registration fees. The Registrant did not protest the 2001 registration year audit findings or assessment of additional registration fees.

7. That a pre-hearing conference was held in this cause on December 11, 2002.

8. That during said conference, the representative of the Registrant advised that they only contested the audit and assessment for the 2000 registration year.

9. That also during said conference, the Division advised of its intention to file a motion to dismiss the protest, at which time the procedures attendant to and the outcome resultant of a dismissal of the protest were discussed.

10. That on December 17, 2002, the Division caused to be filed a ***Motion to Dismiss*** the Registrant's protest to the 2000 registration year audit and assessment.

11. That dismissal of the protest is requested on the grounds and for the reason that a timely protest to the a was not filed by the Registrant.

12. That a ***Notice to Appear or Respond in Writing***, and show cause why the protest should not be dismissed due to the failure to file a timely protest was mailed to the Registrant at his last-known address.

13. That the Registrant did not respond to the ***Notice*** or appear at the hearing.

14. That the total amount in controversy in this proceeding is $7,988.06.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction to consider the ***Motion to Dismiss***, 68 O.S. 1991, ϗ 207 and Rule 710:1-5-46 of the ***Oklahoma Administrative Code***; that assessments based on audit are required to be made in accordance with the statute of the jurisdiction involved with the audit of the registrant, Art. XVII, ϗ 1702 of the International Registration Plan, Inc. (August 22, 1994), incorporated by reference, Rule 710:60-4-20(b)(1) of the *Oklahoma Administrative Code*; that where the Tax Commission determines the tax disclosed by a report or return is less than the tax disclosed by its examination, it shall in writing propose the assessment of taxes or additional taxes and shall mail a copy of the proposed assessment to the taxpayer at the taxpayer's last-known address, 68 O.S. 2001, ϗ 221(A); that where the taxpayer fails to file a written protest within the thirty (30) day period after the mailing of the proposed assessment, the proposed assessment, without further action of the Commission, shall become final and absolute, 68 O.S. 2001, ϗ 221(E); and the Commission is without jurisdiction to hear the protest, ***Matter of Phillips Petroleum Co.***, 652 P.2d 283 (Okla. 1982); and that here, the records show the Registrant did not file a timely written response to the notice of adjustment, consequently the protest should be dismissed.

DISPOSITION

THEREFORE, it is DETERMINED that the protest of the Registrant be dismissed. 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.