

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2003-05-22-05 / NOT PRECEDENTIAL  
**ID:** MV020014  
**DATE:** 05-22-03  
**DISPOSITION:** DISMISSED  
**TAX TYPE:** MOTOR VEHICLE / IRP  
**APPEAL:** NO APPEAL TAKEN

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

NOW on this 25th day of March, 2003, the *Motion to Dismiss* filed by the Motor Vehicle Division of the Tax Commission ("Division") in the above styled and numbered cause comes on for decision pursuant to a hearing held on February 26, 2003. REGISTRANT is represented by ITS President. The Division is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

#### **FINDINGS OF FACT**

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 an IRP audit for the 2001 registration year was conducted by the Division.
2. That the Division's auditor dealt exclusively with the Registrant regarding the performance of the audit.
3. That for purposes of the audit, the Registrant forwarded copies of all of its trip sheets for all units for the period of July 1, 1999 through June 30, 2000 and its Alabama IFTA reports for the third and fourth quarters, 1999 and first and second quarters, 2000.
4. That only the IFTA reports were utilized in performing the audit since the trip sheets did not reflect total trip miles or miles by jurisdiction.
5. That as a result of the audit, the Division, by letter dated and mailed January 28, 2002, caused to be issued against the Registrant an assessment of net registration fees due for the 2001 registration year in the amount of \$78,429.28.
6. That the letter of assessment was forwarded to the Registrant's last-known address as reflected by the files and records of the Division.
7. That the Registrant did not ask for or receive an extension of time within which to file a written protest to the assessment.
8. That by letter dated February 28, 2002, the Registrant protested the audit findings and assessment of net registration fees.

9. That on January 8, 2003, the Division caused to be filed in this matter a **Motion to Dismiss** the Registrant's protest, asserting as the grounds and reasons for the dismissal, the Registrant's failure to file a timely protest to the assessment.

10. That the **Motion** was heard on February 26, 2003.

11. That the Registrant was present at the hearing.

12. That the Registrant contends the protest should not be dismissed citing the provisions of Section 1614 of the International Registration Plan. In support of this contention, the Registrant argues that he was defrauded by ANONYMOUS REGISTRATION AGENT, his registration agent, with respect to the original 2001 application for proportional registration.

13. That the amount in controversy is \$78,429.28.

### CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. That the Tax Commission is vested with jurisdiction to consider the **Motion to Dismiss**. 68 O.S. 1991, § 221(E). See, 710:1-5-46 of the **Oklahoma Administrative Code** ("OAC") and Article XVI, § 1608 of the International Registration Plan ("*IRP*").

2. That the State of Oklahoma entered into and is a member of the IRP which provides for the registration and licensing of vehicles engaged in interstate commerce or combined interstate and intrastate commerce on a proportional basis commensurate with the use of Oklahoma highways. 47 O.S. 2001, § 1120(A).

3. That pursuant to statutory authority, 47 O.S. 2001, § 1149, the Tax Commission promulgated rules with respect to the administration, enforcement and collection of taxes under the IRP and the Oklahoma Motor Vehicle Licensing and Registration Act, 47 O.S. 2001, § 1101 et seq.; which rules incorporate by reference Articles I through XXII of the *IRP*. OAC, 710:60-4-20(b)(1).

4. That rules promulgated pursuant to the Administrative Procedures Act, 75 O.S. 2001, § 250 et seq., § 301 et seq., are presumed to be valid and binding on the persons they affect and have the force of law. 75 O.S. 2001, § 308.2(C).

5. That assessments based on audit are required to be made in accordance with the statutes of the jurisdiction involved with the audit of the registrant. *IRP*, Article XVII, § 1702.

6. That upon completion of the audit of a registrant, the audit findings shall be provided to the registrant and to all member jurisdictions in which the registrant was apportioned or in which it accrued miles. *IRP*, Article XVI, Section 1604.

7. That the registrant shall have thirty days from the date it is notified of the findings of the audit to file a written appeal of the audit. *IRP*, Article XVI, Section 1608.

8. That the time period specified in Section 1608 shall begin with the date on which the final audit findings are mailed to the registrant and to the other member jurisdictions. *IRP*, Article XVI, Section 1604.

9. That the findings of the audit shall be final as to member jurisdictions and the audited registrant, if they do not act as specified in Sections 1608 and 1610 except in conditions of fraud. *IRP*, Article XVI, Section 1614.

10. That the provisions of Section 1614 concerns an action of fraud committed with respect to the audit itself. It provides a mechanism whereby the audit can be thrown out if, and only if, it is determined at some latter date that the final audit findings are erroneous due to some fraudulent action whether such action is the submission of false records by the registrant or collusion between the registrant and the auditor.

11. That the Registrant does not contend that the audit is fraudulent in any manner. Therefore, the exception to the audit becoming final after thirty days from the date of mailing the findings without an appeal thereof does not apply.

12. That the Registrant did not timely appeal the final audit findings. Accordingly, the protest is 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.