

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2003-05-27-04 / NOT PRECEDENTIAL  
**ID:** MV020042  
**DATE:** 05-27-03  
**DISPOSITION:** DENIED  
**TAX TYPE:** MOTOR VEHICLE / IRP  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT

Now on this 25th day of April, 2003, the above styled and numbered cause comes on for decision pursuant to Rule 710:1-5-38 of the *Oklahoma Administrative Code* ("OAC"). The REGISTRANT was initially represented by THE Executive Vice President ("VP") of the Registrant and is currently represented by AN Attorney. 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.

A prehearing tele-conference was held in this matter on January 29, 2003, at which conference, the Registrant was represented by THE VP. Pursuant to the prehearing conference, the parties were direct to file a status report indicating how they intended to proceed in this cause. By facsimile sent February 3, 2003, THE VP advised this office that the Registrant had retained counsel and requested additional time for the purpose of discussing and deciding with counsel how they intended to proceed in this matter.

By letter dated February 13, 2003, REGISTRANT'S ATTORNEY entered an appearance in this matter on behalf of the Registrant, requested copies of all correspondence and other relevant documents and advised that a formal written protest to the audit and registration fee assessment would be subsequently submitted. By letter dated February 14, 2003, the Registrant was directed to submit on or before March 3, 2003, its formal written protest (supplemental).

The Registrant's formal written protest (supplemental) was filed in this cause on February 25, 2003. A Notice of Hearing scheduling the protest for trial on April 2, 2003, was forwarded to the parties on March 5, 2003. The Notice also directed the parties to submit on or before March 26, 2003, position letters or memorandum briefs in support of their respective positions.

Pursuant to the Notice of Hearing, the parties submitted their position letters on March 26, 2003. Attached to the Registrant's position letter was a copy of an indictment wherein it is alleged that two Tax Commission employees "generated a fraudulent OTC bill" and, along with help from REGISTRATION AGENT XYZ, INC., collected monies from this Registrant and converted to their personal use a large portion of the funds which were designated by this Registrant for payment of its registration fees. Attached to the Division's position letter were copies of the letter of assessment and interjurisdictional audit report, identified as Exhibit A; the letter of protest dated November 26, 2002, identified as Exhibit B; and the formal written protest dated February 21, 2003, identified as Exhibit C.

By letter dated April 1, 2003, the Registrant requested that the hearing scheduled for April 2, 2003, be canceled and the issues involved in its protest be decided based on the parties' written submissions. The Division agreed with the Registrant's request. Whereupon, this cause was submitted for decision based on the parties' written submissions.

Upon review of the parties written submissions and exhibits, the undersigned finds:

1. That for the registration year 2001, the Registrant utilized the State of Oklahoma as its base jurisdiction for licensing and registering on a proportional basis its vehicles engaged in interstate commerce.
2. That the OTHERSTATE Department of Motor Vehicles audited the apportioned registration application of the Registrant for the 2001 registration year.
3. That the Registrant's operational records for the first quarter of 2002 were reviewed and used as the test period for verifying the Registrant's 2001 apportioned registration application.
4. That the audit found the Registrant should have reported "actual" miles on its 2001 IRP application rather than "estimated" miles since the Registrant had actual operations during the corresponding record year periods.
5. That the audit also found discrepancies between the audited jurisdictional miles and reported jurisdictional miles.
6. That the reported miles were adjusted to reflect actual miles operated and the jurisdictions having no actual miles were adjusted to second year estimates, and the fees paid were accepted as reported with no credits allowed.
7. That as a result of the audit, the Division on November 13, 2002, caused to be issued against the Registrant an assessment of net registration fees due of [\$\$\$].
8. That by letter dated November 26, 2002, the Registrant timely protested the findings

of the audit and requested a hearing.

9. That the Registrant's registration agent was X of REGISTRATION AGENT XYZ, INC. who assisted the Registrant in filing its 2001 proportional registration application with the State of Oklahoma.

10. That according to Count IX of the Indictment in State of Oklahoma v. A, B, C, D, and X, Case No. CF-02-9999:

[o]n or about February 5, 2001, OTC employees A and C processed an application for the proportional registration of trucks belonging to REGISTRANT, of BIGCITY, OTHERSTATE, and generated a fraudulent OTC bill in the amount of [\$\$]. On or about DATE1, 2001, X dba REGISTRATION AGENT XYZ, INC. submitted an invoice to REGISTRANT for [\$\$\$] in registration fees purportedly due the OTC. REGISTRATION AGENT XYZ, INC. received payment of those monies from REGISTRANT on or about DATE2, 2001. REGISTRATION AGENT XYZ, INC. paid the fraudulent OTC bill on or about DATE3, 2001. The difference [\$] was converted to the personal use of one or more of the above-named Defendants.

11. That the Registrant contends that it is not responsible and should not have to pay additional registration fees for the illegal and criminal acts conducted by OTC employees in producing fraudulent bills and embezzling the monies it intended to be used to pay the registration fees, that if it owes anything it only owes the difference between what it originally remitted to its agent and the audited bill and that this proceeding should be stayed pending a determination of whether the guilty individuals are required to pay restitution for the embezzled funds.

### 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, § 221(D) and Article XVI, § 1608 of the International Registration Plan ("*IRP*"); 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* ("*OAC*"); that the audit of a registrant under the IRP may be conducted by its/his base jurisdiction and/or the commissioners of the several member jurisdictions, *IRP*, Article XVI, Sections 1600 and 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), incorporated by reference, *OAC*, 710:60-4-20(b)(3); that an assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, *OAC* 710:1-5-47; See, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl.

1988); that the liability for the registration fees is the obligation of the Registrant, not its agent nor any co-conspirators, *In re Mitchell*, 101 B.R. 278 (Bkrcty. W.D. Okla. 1988); that although the Registrant may have paid the appropriate fees to its agent, until payment is actually made to the State, the responsibility for the payment of the fees lies with the Registrant, See, *U.S. v. Garami*, 184 B.R. 834 (M.D. Fla. 1995); that the State cannot be estopped and is not liable for the acts or omissions of its employees, especially where the employee is acting outside the scope of his employment, which includes corruption or fraud, *Burdick v. Independent School Dist. No. 52 of Oklahoma County*, 702 P.2d 48 (Okla. 1985), 51 O.S. 2001, §§ 153 and 152(9); that "restitution" is defined to mean "the sum to be paid by the defendant to the victim of the criminal act to compensate the victim for \* \* \* the amount of the economic loss suffered as a direct result of the criminal act of the defendant", 22 O.S. 2001, § 991f(A)(1); that the "victim" is "any person, partnership, corporation or legal entity that suffers an economic loss as a direct result of the criminal act of another person, 22 O.S. 2001, § 991f(A)(2); that here the victim of the criminal act is the Registrant whose funds were converted; that the Registrant's request to stay these proceedings pending a determination whether restitution of the converted funds is ordered is denied; and that the Registrant's protest to the assessment is denied.

#### DISPOSITION

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