JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-07-15-04 / NOT PRECEDENTIAL**
ID: **MV020043**
DATE: **07-15-03**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE / IRP**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. For registration years 2000, 2001 and 2002, 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. The Division and the State of Maine, Bureau of Motor Vehicles, performed a joint audit of Registrant for the 2000, 2001 and 2002 registration years. According to the audit report, the fourth quarter of 1999 and the second quarters of 1999 and 2001 were selected as sample periods for complete mileage review because these periods included all IRP jurisdictions and were indicative of the record keeping throughout the audit period. After review of the second quarters of 1999 and 2001, it was determined that the fourth quarter of 1999 need not be reviewed. The audit data was obtained from Protestant's Trip Cost Report envelopes. Discrepancies in the total and jurisdictional miles reviewed in the sample periods were found to be *de minimus*, but there were numerous misstatements of mileage on the submitted registration mileage.

3. Based on the audit, the amount of $11,630.05 was credited against the additional registration fees[1] determined to be due for the 2000 registration year, which amount represents an overpayment of fees to several states, and proposed assessment made, by letter dated November 7, 2002, of net registration fees of $12,971.49 against Protestant for the 2000 registration year.

4. Based on the audit, the amount of $8,743.37 was credited against the additional registration fees[2] determined to be due for the 2001 registration year, which amount represents an overpayment of fees to several states, and proposed assessment made, by letter dated November 7, 2002, of net registration fees of $20,210.65 against Protestant for the 2001 registration year.

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[1] For the 2000 registration year, the additional registration fees determined to be due were in the amount of $24,601.54.

[2] For the 2001 registration year, the additional registration fees determined to be due were in the amount of $28,954.02.

5. The audit for the 2002 registration year resulted in no change.

6. By letter dated December 5, 2002, and received by the Division on December 9, 2002, Protestant filed a timely protest. Protestant does not challenge the accuracy of the audited mileage or the calculation of the additional fees due for jurisdictions in which actual mileage was accrued. Rather, Protestant argues that because of "gross negligence and malicious intent" their service agent "submitted faulty mileage reports to the [Oklahoma Tax Commission] for their own economic benefit" and should be "responsible for the fees due because of their unethical practices." Further, Protestant argues that the mileage it submitted to the service agent was not that which was forwarded to the Tax Commission and the amounts paid for truck registrations for the years in question were greater than the amounts the service agent remitted to the Tax Commission on its behalf.

ADDITIONAL FINDING OF FACT

Registrant employed a private service agent for the purpose of licensing and base registering Registrant's vehicles in Oklahoma. Registrant appointed the service agent as Registrant's agent and attorney-in-fact in regard to the licensing and registration of Registrant's vehicles, the reporting of mileage traveled by them, and the performance of acts incidental thereto.

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, ϶ 207 and 47 O.S. 1991, ϶ 1120.

2. 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, ϶ 1120. The statutes further authorize the Tax Commission to enter into the International Registration Plan[3] ("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, ϶ 308.2.

[3] 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.

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

4. An 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, Art. XVI, Sections 1600 and 1606.

5. An assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *Oklahoma Administrative Code 710:1-5-47*. See, *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 768 P.2d 359 (Okl. 1988).

6. 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 (Bkrtcy. W.D. Okl. 1988).

7. 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).

8. Protestant has produced no evidence, cited no authority and raised no specific objection as to the figures determined by audit. The objection raised by Protestant concerned the actions of its agent in not forwarding to the Tax Commission the mileage records or amount of payment submitted by Protestant to its agent.

ADDITIONAL CONCLUSION OF LAW

Assuming without deciding that the Registrant's allegations regarding the service agent are true, it still remains that a principal, here the Registrant, is responsible for his agent's defalcations. *See, Routh v. Fitzgibbon*, 162 P. 702, 63 Okla. 49 (1917). Accordingly, any loss occasioned by the agent's misappropriation of the principal's funds, received with authority to pay the principal's obligations but having failed to do so, falls upon the principal. *Id.* Where a loss is inflicted on one of two innocent parties (in this case, the State or the IRP Registrant), by the fraud or misfeasance of a third party (the registration agent), the material question is which of the parties he was agent for, as his principal must bear the loss. *Fish v. Bloodworth,* 129 P. 32, 36 Okla. 586 (1912).

9. The protest should be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, 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.