JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-12-02-06 / NOT PRECEDENTIAL**
ID: **MV020039**
DATE: **12-02-03**
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, 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 Commonwealth of Virginia, Department of Motor Vehicles, performed a joint audit of Registrant for years 1999[1], 2000, 2001 and 2002 with the audit period covering July 1999 through June 2001. For purposes of conducting the audit, the fourth quarter 1997, second and fourth quarters 1999 and the second quarter 2001 were selected as sample periods, since these periods were representative of Registrant's operations during the audit period.

According to the audit report, the mileage reported by Registrant on its 2000 and 2001 Oklahoma IRP applications were estimated miles when Registrant had actual operations during the corresponding record year periods. The reported mileage was adjusted in the applicable jurisdictions to reflect actual miles traveled, the jurisdictions having no actual miles were adjusted to second year estimates, the fees were accepted as reported and no credits were allowed.

Additionally, the mileage reported on the Oklahoma IRP application for registration year 2002 included mileage of an owner/operator whose vehicle was not registered in the fleet during the record year. The mileage was adjusted to reflect the actual miles operated by the vehicles in the fleet. The miles for jurisdictions reported as second year estimates were accepted as reported and the fees for those jurisdictions were adjusted based on the revised actual fleet miles. Fees reported for jurisdictions that had no actual miles were not adjusted, since at the time of the audit the registration year was still open.

[1] For registration years 1997 through 1999, Registrants vehicles were proportionally registered in Virginia and therefore the additional registration fees determined to be for the 1999 registration year will not be considered as a part of this matter.

3. The Division proposed assessment, by letters dated October 2, 2002, of registration fees in the amounts of $524.64, $2,398.91 and $58.56 against Registrant for the 2000, 2001 and 2002 registration years, respectively.

4. By letter dated October 31, 2002, and received by the Division on November 1, 2002, Registrant filed a timely protest expressing concern regarding the amounts due for years 2000 and 2001. Registrant explained in the letter that it had "an agent, XXX Agency, which handled the filing of our Oklahoma license and IFTA Fuel Tax License, and we were unaware of the estimated miles that were reported by them."

5. Registrant employed a private service agent, XXX Agency, 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 and the performance of acts incidental thereto.

6. Registrant contends that its appointed service agent was a Motor License Agent, duly registered and licensed by the Oklahoma Tax Commission, that XXX Agency is the responsible party and, as a Motor License Agent, is responsible for errors in tax or fee computations and collections and should make the payments.

7. Division submitted an affidavit of THE ADMINISTRATOR of Audit, Motor Vehicle Division, Oklahoma Tax Commission. The affidavit stated that "XXX Agency, or XXX individually, is not now, nor ever has been, an appointed or registered Motor License Agent for the State of Oklahoma." Subsequently, an additional affidavit of THE ADMINISTRATOR was submitted. The affidavit provided in part as follows:

> The Oklahoma Tax Commission does not appoint an "Agency" or a "Corporation" as a Motor License Agent. Only an "individual" person may be appointed a Motor License Agent. Therefore, the "XXX Agency" has not been, nor would it ever have been appointed as a Motor License Agent.

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, ϡ 207 and 47 O.S. 2001, ϡ 1120.

2. As a registrant under the provisions of the IRP, Registrant 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 its/his base jurisdiction and/or the commissioners of the several member jurisdictions, IRP, Art. XVI, Section 1600 and 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. 2001, ∋ 1120. The statutes further authorize the Tax Commission to enter into the International Registration Plan[2] ("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 710:60-4-1, et seq.* Those rules specifically incorporate by reference Articles I through XXII of the IRP; *Oklahoma Administrative Code 710:60-4-20(b)(1)*.

5. Rules promulgated pursuant to the Administrative Procedure Act are presumed to be valid. 75 O.S. 2001, ∋ 306(C). They are binding on the persons they affect and have the force of law. 75 O.S. 2001, ∋ 308.2(C).

6. 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. 2001, ∋ 1120(b); IRP Plan ∋ 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 ∋ 5020.

7. 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% of taxpayer's actual mileage. IRP Policies and Procedures Manual ∋ 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.

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

9. 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*.

10. Registrant has produced no evidence, cited no authority and raised no specific objection as to the figures determined by audit. Registrant's contention that XXX and/or the XXX Agency is licensed as a motor license agent by the Tax Commission, is not supported by the evidence and is without merit. Registrant's hiring of an agent does not negate or abrogate its responsibility to be knowledgeable regarding the requirements of the IRP and to ensure the proper registration of its fleet thereunder.

11. 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.