JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2004-01-15-10 / PRECEDENTIAL**
ID: **MV020022**
DATE: **01-15-04**
DISPOSITION: **SUSTAINED IN PART / DENIED IN PART**
TAX TYPE: **MOTOR VEHICLE / IRP**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Protestant, a corporation, has its principal business headquarters in ANONYMOUS, Virginia.

2. Protestant's principal business is the transportation of vehicles between auto actions, auto dealers and other customer locations.

3. Protestant's primary operations, over eighty-two percent (82%) of its total annual mileage, is conducted in seven (7) states located along the eastern seaboard of the United States, including Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida.

4. Protestant filed an International Registration Plan Original Application for proportional registration of its vehicles and trailers (base plated) with the State of Virginia in February, 1996.

5. On July 20, 2000, Protestant filed an International Registration Plan Original Application for proportional registration of a Freightliner tractor acquired by Protestant on July 18, 2000, for the 2000 registration year (base plated) with the State of Oklahoma.

6. In years prior to the 2000 registration year and for the 2000 registration year, Protestant filed International Registration Plan Renewal Applications for proportional registration of its remaining tractors and trailers with the State of Virginia, which renewal application for registration year 2000, expired effective February 28, 2001.

7. The 2000 registration year application filed with the State of Oklahoma used estimated mileage.

8. The 2000 registration year application was filed on behalf of Protestant by XXX, a registration agent, and was accepted by the Tax Commission.

9. THE ADMINISTRATOR of the Audit Division, IFTA/IRP Section, testified that the Tax Commission did not question the 2000 registration year application of Protestant when it was filed with the State of Oklahoma and did not seek to revoke the proportional registration.

10. The 2000 registration year application sought proportional registration for the Freightliner in 49 jurisdictions and reported a total estimated mileage for all jurisdictions of 389,977 miles.

11. THE President of Protestant, admitted that the Freightliner could not have traveled the mileage reported on the 2000 registration year application in the five or six months remaining in the year.

12. According to PROTESTANT'S PRESIDENT, the estimated mileage reported on Schedule B of the application was not provided by Protestant, but was supplied by the registration agent.

13. The explanation reported on the 2000 registration year application for the scope of Protestant's operation covering any estimated mileage was: "This is a new Motor Carrier in Oklahoma. Mileage is estimated. Initial operations are anticipated to be concentrated in the states of OK, TX, NM & LA. Miles in all other states based on going in & out of each state 1 time during the year."

14. PROTESTANT"S PRESIDENT testified that Protestant formed ZZZ Transport, d/b/a ZZZ Truck & Trailer Sales, a limited partnership, in February, 2000.

15. THE PRESIDENT stated that ZZZ Transport was a separate operation from the operation of Protestant in Virginia and was located in Texas with its principal business headquarters in Fort Worth.

16. She testified that ZZZ Transport is principally in the business of selling tractors, trailers and car carriers and secondarily in the business of transporting vehicles between auto auctions and dealers.

17. She stated that ZZZ Transport could not generate any business in the area and no contracts were awarded the operation in 2000.

18. She further testified that Protestant transported for ZZZ Transport in August and September, 2000 and that the tractors were proportionally registered under Protestant's name because at that time, Protestant, not ZZZ, had the ICC authority to operate the tractors.

19. She further stated that Protestant accrued no Oklahoma miles until April, 2000 when one of its vehicles traveled 258 miles in Oklahoma and that the Oklahoma miles were accrued in connection with hauling for ZZZ Transport.

20. Protestant filed several International Registration Plan Supplemental Applications for proportional registration during the 2000 registration year, all of which applications utilized the same estimate of mileage as reported on its International Registration Plan Original Application for the 2000 registration year and all of which applications were all accepted by the Tax Commission.

21. The first Supplemental Application was filed July 28, 2000, and sought the proportional registration of a 1998 Volvo tractor, which was purchased by Protestant that same day.

22. The second Supplemental Application was filed August 7, 2000, and sought the proportional registration of a 2000 Freightliner tractor and a 2000 Cottrell trailer.

23. The third, fourth and fifth Supplemental Applications were filed September 8, 2000, October 3, 2000 and November 6, 2000, respectively, and sought the proportional registration of two (2) tractors and fourteen (14) trailers, nine (9) of which trailers had been previously registered by Protestant with the State of Virginia, but which proportional registrations were set to expire.

24. The total 2000 proportional registration fees paid for the vehicles registered by Protestant with the State of Oklahoma were $1,355.30.

25. On December 18, 2000, Protestant filed an International Registration Plan Original Renewal Application for proportional registration of five (5) tractors and thirteen (13) for the 2001 registration year (base plated) with the State of Oklahoma.

26. The 2001 registration year renewal application filed with the State of Oklahoma used estimated mileage.

27. The 2001 registration year renewal application was filed on behalf of Protestant by XXX, a registration agent, and was accepted by the Tax Commission.

28. The 2001 registration year renewal application sought proportional registration in 49 jurisdictions and reported a total estimated mileage for all jurisdictions of 389,977 miles.

29. The explanation reported on the 2001 registration year renewal application for the scope of Protestant's operation covering any estimated mileage was: "This applicant was a new registrant as of 7/20/00. Miles were estimated on original application [sic]. Registrant does not have a full quarter of miles to report. Same estimated miles used on renewal."

30. On or about May 4, 2001, Protestant filed International Registration Plan Supplemental Applications for proportional registration of nineteen (19) vehicles for the 2001 registration year (base plated) with the State of Oklahoma.

31. The Supplemental Applications for the 2001 registration year utilized the same estimate of mileage as reported on the International Registration Plan Original Renewal Application for the 2001 registration year.

32. The Supplemental Applications were all accepted by the Tax Commission.

33. The Supplemental Applications for proportional registration with the State of Oklahoma added the vehicles previously registered by Protestant under the International Registration Plan with the State of Virginia, using actual mileage for the State of Virginia registrations.

34. According to ITS PRESIDENT, PROTESTANT did not file an International Registration Plan Original Renewal Application for the 2001 registration year with the State of Virginia, but instead transferred the tractors expiring under the Virginia registration to the Oklahoma registration.

35. By letter dated September 20, 2001, the Division notified Protestant that it would be audited for the 2000 and 2001 registration years.

36. The letter further notified Protestant that "[t]his account was established in Oklahoma using estimated mileage as a new apportioned registrant. Information provided by the jurisdiction of Virginia indicates previous operations."

37. Pursuant to the International Registration Plan joint audit program, the Commonwealth of Virginia, Department of Motor Vehicles, examined the records of Protestant and conducted an audit for the Virginia IRP account 99999-999 for the 2000 registration year and the Oklahoma IRP account 99999 for the 2000, 2001 and 2002 registration years.

38. The State of Virginia also performed an IFTA audit for Virginia IFTA license VA-99999999999 for the period of July 1, 1999 through December 31, 2001.

39. Protestant reported its fuel purchases and usage on all its vehicles registered under the IRP, including those vehicles registered under the IRP in Oklahoma for 2000 and 2001, through December 31, 2001, to the State of Virginia utilizing its Virginia IFTA license.

40. The audit summary indicates "[t]he carrier's Virginia IFTA license was not renewed for 2002 because no vehicles were registered in Virginia. The carrier has obtained an IFTA license through the jurisdiction of Oklahoma."

41. The audit results were forwarded to Protestant and the Division in April, 2002.

42. By letters dated May 3, 2002, the Division proposed the assessments of net IRP registration fees in the amount of $2,435.65, $15,976.89 and $17.87 for the 2000, 2001 and 2002 registration years, respectively.

43. By letters dated May 31, 2002, Protestant protested the proposed assessments of net IRP registration fees for the 2000 and 2001 registration years.

44. Protestant does not challenge the proposed assessment of net IRP registration fees for the 2002 registration year.

45. The audit report does not reflect any discussion with or contain any documentation provided to the auditor regarding ZZZ Transport.

46. The findings of the audit summary are as follows:

> We found that the miles reported on the Oklahoma IRP applications for registration years 2000 and 2001 were estimated when in fact the licensee had actual operations during the corresponding record year periods. For the period July 1998 through December 2001 we found that the carrier's operations were essentially the same. During that time over eighty-two percent of the carrier's [sic] total miles were operated in seven states along the East Coast (PA, MD, VA, NC, SC, GA and FL). Since the vehicles initially registered in Oklahoma in 2000 and 2001 had no operations during the corresponding IRP record year, the reported 2000 and 2001 registration year miles were adjusted to reflect actual miles traveled by all vehicles operated in the carrier's [sic] Virginia IRP fleet during the corresponding record years.

47. The auditor used the first quarter 1999 as the sample period for the 2000 Virginia and Oklahoma IRP audits. The results of the sample period were applied to the revised Oklahoma IRP miles and the reported Virginia IRP miles for registration year 2000.

48. The Recap of IRP Fees Liability for the 2000 registration year, based on the first quarter 1999 sample period, does not show any miles traveled in 22 jurisdictions during that period, including the States of Louisiana, New Mexico, Oklahoma or Texas. The fees paid in the 22 jurisdictions were treated as second year estimates and no refund was allowed.

49. The first quarter 2001 was used as the sample period for the 2001 and 2002 Oklahoma IRP audits. The results of the sample were applied to the revised Oklahoma IRP miles for registration year 2001 and the reported Oklahoma IRP miles for registration year 2002.

50. The Recap of IRP Fees Liability for the 2001 registration year, based on the first quarter 2001 sample period, does not show any miles traveled in 19 jurisdictions, including the State of New Mexico. However, the Recap does reflect 1,156 miles traveled in Louisiana, 258 miles traveled in Oklahoma and 2,406 miles traveled in Texas during the sample period.

51. The amount in controversy is $18,411.54.

ISSUES AND CONTENTIONS

Two issues are presented for decision. The first issue is whether Protestant properly used estimated miles for proportional registration of its fleet on the International Registration Plan Original Application filed with the State of Oklahoma for the 2000 registration year. The second issue is whether Protestant properly used estimated miles for proportional registration of its fleet on the International Registration Plan Original Renewal Application filed with the State of Oklahoma for the 2001 registration year.

In regard to the first issue, Protestant contends that its protest to the audit and net registration fee assessment for the 2000 registration year must be sustained because neither Virginia nor Oklahoma was permitted to audit estimated miles for the first registration year under the applicable provisions of the International Registration Plan Uniform Operation Audit Procedure Guidelines. In support of this contention, Protestant argues that it properly used estimated miles on the Oklahoma IRP application for the 2000 registration year since the 1996 Freightliner tractor was newly acquired, no operations were conducted with the Freightliner during the preceding year and it intended to start a new operation with the Freightliner to serve its affiliated company in the State of Texas. Protestant further argues that because the 2000 Oklahoma IRP Original Application was filed utilizing estimated miles, pursuant to 47 O.S. 2001, ϶ 1120(E) it was required to file all its supplemental applications for the 2000 registration year using estimated miles.

In regard to the second issue, Protestant contends that its protest to the audit and net registration fee assessment for the 2001 registration year must be sustained because it was required to use estimated miles in proportionally registering its fleet in Oklahoma. In support of this contention, Protestant cites *OAC*, 710:60-4-15(b) and argues that since it did not operate for ninety (90) days or more during the reporting period, it was required to use estimated miles on its 2001 Oklahoma IRP Original Renewal Application. Protestant further argues that because the 2001 Oklahoma IRP Original Renewal Application was filed utilizing estimated miles, pursuant to 47 O.S. 2001, ϶ 1120(E) it was required to file all its supplemental applications for the 2001 registration year using estimated miles.

In regard to the first issue, the Division contends that the audit and net registration fee assessment for the 2000 registration year should be sustained because Protestant did not qualify under Section 800 of the IRP to use estimated miles on its 2000 Oklahoma IRP Original Application. In support of this contention, the Division argues that Protestant's 2000 Oklahoma IRP Original Application was not its initial application for apportioned registration, but instead its initial application for apportioned registration was submitted to Virginia in February, 1996. In the alternative, the Division argues that assuming ZZZ Transport was a new operation, a point not conceded, the mileage estimate reported on the 2000 Oklahoma IRP Original

Application did not represent estimations of annual mileage in each jurisdiction and therefore, an adjustment to the estimates in the application is authorized under Section 800. The Division further argues that to allow Protestant to use estimated miles for the Freightliner is not supported by the IRP or its commentary and violates the spirit and intent of the IRP since Protestant would have had to use actual miles to register the Freightliner if it had added the Freightliner to its Virginia registration.

In regard to the second issue, the Division contends that the audit and net registration fee assessment for the 2001 registration year should be sustained because Protestant was required by the IRP and *OAC*, 710:60-4-15(b) to use actual mileage on its 2001 Oklahoma IRP Original Renewal Application. In support of this contention, the Division argues that because Protestant had registered vehicles under the IRP in Virginia since 1996, it was not "new" in 2001. The Division further argues that Protestant had operations for ninety (90) days or more during the mileage reporting period of the preceding year since it was operating its vehicles registered with Virginia during this period. Further, the Division contends that the IRP Uniform Operation Audit Procedure Guidelines do not preclude the audit and assessment for the 2001 registration year. In support of this contention, the Division argues that since Protestant had operated vehicles registered with Virginia under the IRP since 1996, Protestant was not a "new operation" in 2001 and Protestant had actual miles traveled during the preceding year. The Division further argues that Protestant's 2001 Oklahoma fleet was the result of Protestant's elimination of its Virginia fleet.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vest in the Commission. 68 O.S. 1991, ϶ 221(D). See, Article XVI, ϶ 1608 of the International Registration Plan ("*IRP*").

2. 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. 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*, The International Registration Plan Uniform Operation Audit Procedure Guidelines and The International Registration Plan Policy and Procedures Manual. *OAC*, 710:60-4-20(b)(1), (2) and (3).

4. 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. At the time Protestant filed the 2000 IRP Original Application with the State of Oklahoma, Art. VIII, ∋ 800 of the *IRP* provided:

APPLICATION FOR INITIAL REGISTRATION

> Initial application for apportioned registration shall state the mileage data in all jurisdictions for the preceding year with respect to such vehicle or vehicles. If no operations were conducted with such vehicle or vehicles during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in each of the jurisdictions. the registrant shall determine the in-jurisdiction and total mileage to be used in computing the proportional registration fee for the vehicle or vehicles. The base jurisdiction Commissioner may adjust the estimate in the application if the base jurisdiction Commissioner is not satisfied with its correctness.[1]

The Division argues that Protestant was not authorized to use Section 800 of the *IRP* to estimate mileage on its 2000 Oklahoma IRP Original Application because Protestant initial application for apportioned registration was filed with the State of Virginia in 1996. The Division's argument cannot be sustained. The official commentary to Section 800 of the *IRP* provides that "[t]his Article authorizes the registrant to estimate anticipated mileage for the upcoming license year if no mileage history exists because 'new operations' are contemplated."

The Division also argues that Protestant did not contemplate "new operations" in 2000. The evidence, however, proves that Protestant not only contemplated "new operations" during the 2000 license year, but in fact, had "new operations". Accordingly, Protestant was authorized to estimate anticipated mileage for the upcoming license year on its 2000 Oklahoma IRP Original Application.

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[1] Art. VIII, ∋ 800 was amended effective October 1, 2000 to provide:

> An initial application for apportioned registration shall: 1) state the estimated mileage to be traveled in each jurisdiction; 2) justify the estimated mileage; or 3) the applicant will use the actual mileage for the preceding year if the mileage was accrued by the applicant. The base jurisdiction Commissioner may accept an estimate by the registrant if the base jurisdiction Commissioner is satisfied with documentation supplied by the registrant as to the proposed method of operation. If the base jurisdiction Commissioner does not accept the registrant's estimate or the registrant does not submit an estimate, the base jurisdiction shall estimate the mileage. Based on actual miles other carriers traveled, the base jurisdictions shall determine the annual in-jurisdiction and total annual mileage to be used in computing the proportional registration fee for the vehicle(s) with the aid of mileage charts, computer estimating programs, or other resources available at the time of registration.

The Division also argues that notwithstanding whether Protestant contemplated "new operations", the base jurisdiction Commissioner is authorized under Section 800 to adjust the estimate when the base jurisdiction Commissioner is not satisfied as to its correctness. Again, the Division's argument cannot be sustained. Section 800 authorizes the base jurisdiction Commissioner to review the application for proportional registration and to adjust the estimate if the base jurisdiction Commissioner is not satisfied with the correctness of the estimate. Once an application for proportional registration for "new operations" based on estimated mileage is accepted as filed, the estimated mileage may not be audited as to the accuracy of the mileage for the first registration year. See, Article VII, Section D, Audit Procedure, *IRP* Uniform Operation Audit Procedure Guidelines.

The Division further argues that to permit Protestant to use estimated miles on the 2000 Oklahoma IRP Original Application is not supported by the *IRP* or its commentary and violates the spirit and intent of the *IRP* since Protestant would have had to use actual miles to register the Freightliner if it had added the Freightliner to its Virginia registration. Again, the Division argument cannot be sustained. Protestant contemplated "new operations" with the Freightliner. Therefore, according to the official commentary to Article VIII of the *IRP*, Protestant would have been authorized to "estimate anticipated mileage for the upcoming license year" for the Freightliner on its Virginia application for proportional registration.

Protestant argues that because the 2000 Oklahoma IRP Original Application was filed using estimated mileage, it was required to use estimated mileage on all of its supplemental applications for the 2000 registration year. The undersigned agrees. Section 1120(E) of Title 47 of the Oklahoma Statutes provides:

> Vehicles subsequently added to a proportionally registered fleet after commencement of the registration year shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular fees due with respect to such vehicle for the remainder of the registration year.

Accordingly, Protestant properly used estimated miles for proportional registration of its fleet on the 2000 Oklahoma IRP Original and Supplemental Applications. See, *IRP*, Art. VIII, ϑ 800 and 47 O.S. 1991, ϑ 1120(E). Once the applications were accepted as filed, the applications could not be audited as to accuracy of mileage for the first registration year. See, Article VII, Section D, Audit Procedure, *IRP* Uniform Operation Audit Procedure Guidelines. Therefore, the assessment of net registration fees for the 2000 registration year must be denied.

6. "In the case of any inconsistency or duplication between the requirements of those provisions incorporated by reference in this Section, and the rules set out in this Subchapter, the provisions incorporated by reference shall prevail, except where the rules in this Subchapter are more particular." *OAC*, 710:60-4-20(d). Further, "[t]he provisions incorporated by reference are subject to any limitations provided by Oklahoma law." *Id.*

7. "If an applicant for proportional registration is new, or the applicant did not operate for ninety (90) days or more during the reporting period, estimated miles must be filed for all jurisdictions for which proration is sought." *OAC*, 710:60-4-15(b). "Mileage reporting period" or "mileage year" is defined to mean "the period of twelve (12) consecutive months immediately prior to July 1 of the year preceding the year of registration or license." *OAC*, 710:60-4-2. The mileage reporting period in this cause was July 1, 1999 to June 30, 2000. Since Protestant did not open a prorate account in Oklahoma until after July 1, 2000, for those vehicles Protestant registered on the 2001 Oklahoma IRP Original Renewal Application, it was required to use estimated miles. Further, since Protestant used estimated miles on the 2001 Oklahoma IRP Original Renewal Application, it was required to use estimated miles on each of the 2001 Oklahoma IRP Original Supplemental Applications. See, 47 O.S. 1991, ∋ 1120(E).

Protestant argues that because it was required to use estimated miles on the 2001 Oklahoma IRP Original Renewal and Original Supplemental Applications, the audit and assessment of net registration fees for the 2001 registration year is fundamentally unfair. Notwithstanding Protestant's argument, nothing in the *IRP* precludes the audit and assessment especially considering Protestant's elimination of its Virginia fleet. See, Article VII, Section D, Audit Procedure, *IRP* Uniform Operation Audit Procedure Guidelines. Accordingly, although Protestant properly used estimated miles on the 2001 Oklahoma IRP Original Renewal and Original Supplemental Applications, the mileage was subject to audit and assessment under normal audit criteria.

8. Protestant's protest to the audit and assessment of net registration fees for the 2000 registration year should be sustained. Protestant's protest to the audit and assessment of net registration fees for the 2001 registration year should be denied.

DISPOSITION

Based on the above and foregoing findings and conclusions, it is DETERMINED that the protest be sustained in part and denied in part. It is further DETERMINED that the net IRP registration fees for the 2001 registration year in the amount of $15,976.89, be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION