

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-05-20-03
ID: P-03-044-K
DATE: MAY 20, 2004
DISPOSITION: DENIED IN PART, SUSTAINED IN PART
TAX TYPE: MOTOR VEHICLE
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held before the Administrative Law Judge on November 18, 2003, in accordance with the request of the Protestant, COMPANY.

FINDINGS OF FACT

Upon review of the file and records, including the record of the hearing, the exhibits received into evidence and the respective pre and post-hearing pleadings of the parties, the undersigned finds:

A. The parties stipulate to the following:

Citations issued by Division

The parties stipulate that four tickets have been issued to COMPANY by the Division and each ticket was paid under protest by COMPANY.

1. Ticket #1 was issued to COMPANY on February 3, 2003, for exceeding the authorized laden weight of ninety thousand pounds (90,000). The amount of the ticket was Four Hundred Sixty Dollars (\$460.00).¹
2. Ticket #2 was issued to COMPANY on December 4, 2001, for exceeding the authorized laden weight of ninety thousand pounds (90,000). The amount of the ticket was Two Hundred Forty Dollars (\$240.00).²
3. Ticket #3 was issued to COMPANY on December 19, 2001, for exceeding the authorized laden weight of ninety thousand pounds (90,000). The amount of the ticket was Eighty Dollars (\$80.00).³
4. Ticket #4 was issued to COMPANY on October 30, 2003, for exceeding the authorized laden weight of ninety thousand pounds (90,000). The amount of the ticket was Two Hundred Dollars (\$200.00).⁴

The parties agree and stipulate that the above tickets are at issue before the court.

Assessment for Special Mobilized Machinery

5. The two units that were assessed as Special have Commercial Oklahoma tag numbers TAG#1 and TAG#2.⁵

6. The notice of assessment on the two Specials [sic] was mailed to COMPANY on September 9, 2003 and COMPANY timely protested the assessment on November 4, 2003.⁶

B. Additional Findings regarding COMPANY and the two units at issue in this cause:

1. COMPANY consists of a group of companies that service the oil and gas industry.

2. The COMPANY group operates intrastate, interstate and internationally.

3. The two units at issue consist of a drop deck trailer and a coil tubing apparatus.

4. A coil tubing apparatus is used to place various diameters of pipe into an oil and/or gas well to keep the well in production.

5. According to MANAGER, COMPANY purchased the completed units; i.e., the drop deck trailers with the coil tubing apparatuses permanently affixed to the trailers.⁷

6. The drop deck trailers were manufactured by XYZ MANUFACTURER (Unit 1) in 1992 and 123 MANUFACTURER (Unit 2) in 2001.

7. The trailers were then sent to the coil tubing apparatus manufacturer who secured the apparatus to the trailers as required by federal regulation for load securement.

8. It was admitted that the units as configured were not designed for carrying persons or property and they derive no revenue from the transportation of persons or property.

9. It was also admitted that the useful revenue producing service of the units is performed at well sites.

C. Additional findings regarding the citations and proposed assessment:

1. The two units were registered by COMPANY in the State of Oklahoma as commercial trailers.⁸

2. MANAGER testified that he discussed the registration of the units ADMINISTRATOR'S predecessor in office and was advised registration of the units as commercial trailers was allowed.⁹

3. He testified that although the units met the definition of special mobilized machinery as defined by Title 47 of the Oklahoma statutes, COMPANY elected under the elective provisions of Section 1129 of Title 47 to register the units as commercial trailers.

4. He stated that the power units were registered pursuant to the International Registration Plan and that they were registered at the maximum combined laden weight of 90,000 pounds.

5. He further stated that although the units cannot be registered as commercial trailers and be operated as special mobilized machinery under the Department of Public Safety ("DPS") rules, each unit had been issued an annual special mobilized machinery overweight permit by DPS pursuant to Section 14-118(G)(2) of Title 47.

6. He further testified that none of the units had been issued a permit by DPS to exceed the combined registered laden weight of the units.

7. ADMINISTRATOR testified that the units were cited for exceeding the combined laden registration weight of the units.

8. He stated that COMPANY should have applied for an overweight permit from DPS which would have allowed the units to travel with the provisional weight carried pursuant to Section 14-116 of Title 47.

9. He further stated that whether each of the units had an annual special mobilized machinery overweight permit does not affect his opinion regarding the citation since the units were registered as commercial trailers, not special mobilized machinery.

10. He also testified that special mobilized machinery are not registered by weight.

11. He further testified that nothing in Section 1133(J) of Title 47 prohibits the citation of a commercial vehicle which is registered at the maximum combined laden weight of 90,000 pounds if the combined laden weight of the commercial vehicle exceeds 90,000 pounds.

12. The notice of assessment proposed an aggregate amount due of \$5,340.25, consisting of registrations fees and registration fee penalties of \$4,424.00 on the 1992 XYZ MANUFACTURER (Unit 1) and the 2001 123 MANUFACTURER (Unit 2) for the years 2002 and 2003 and excise tax and excise tax penalty on the 2001 123 MANUFACTURER (Unit 2) of \$916.25.

ISSUE AND CONTENTIONS

The issue presented for decision is whether COMPANY was entitled to elect pursuant to Section 1129 of Title 47 of the Oklahoma statutes to register the units as commercial trailers rather than special mobilized machinery. In the event it is determined that COMPANY was entitled to elect to register the units as either commercial trailers or

special mobilized machinery, the Division concedes the proposed assessment is erroneous and contends the issuance of the citations was proper. In support of this contention, the Division argues that because COMPANY registered the units as commercial trailers, the annual special mobilized machinery overweight permits were inapplicable. The Division argues that COMPANY should have applied for the overweight permit authorized for commercial vehicles under Section 14-116 of Title 47. In the event it is determined that COMPANY was not entitled to register the units as commercial trailers, the Division concedes the issuance of the citations was erroneous and contends the proposed assessment was proper. In support of this contention, the Division argues that because the units do not meet the definition of commercial trailers, the only provision applicable for registration of the units was Section 1129 as special mobilized machinery.

COMPANY contends that the assessment is improper because it was authorized to elect to register the units as either commercial trailers or special mobilized machinery. In support of this contention, COMPANY cites the language of Section 1129. COMPANY further contends that the citations were improperly issued because the units met the definition of special mobilized machinery and they were issued the proper overweight credentials. COMPANY further asserts that it could not register the units for more than the maximum combined laden weight of 90,000 pounds.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 2001, §§ 207 and 221(D).
2. The registration of a commercial trailer or semitrailer is set forth in Section 1133(C) of Title 47 of the Oklahoma statutes wherein it provides:

In addition to the fees required by subsection A of this section, there shall be paid a registration fee of Forty Dollars (\$40.00) upon the first registration in this state after July 1, 1985, and upon the transfer of ownership of any rental trailer, commercial trailer or semitrailer designed to be pulled and usually pulled by a truck or truck-tractor.

Thereafter, a fee of Four Dollars (\$4.00) shall be paid annually for each rental trailer, commercial trailer or semitrailer. The fee of Four Dollars (\$4.00) shall be due and payable on January 1 of each year and shall be the only fee due on any rental trailer, commercial trailer or semitrailer registered under this section.

Upon the payment of the registration fee of Forty Dollars (\$40.00), a nonexpiring registration certificate and identification plate shall be issued for each rental trailer, commercial trailer or semitrailer. The nonexpiring identification plate shall remain displayed on the rental trailer, commercial trailer or semitrailer for which the identification plate is issued until such trailer or semitrailer is sold or removed from service.

A receipt shall be issued upon the payment of the annual fee. The receipt shall show the total fee paid for one or more rental trailers, commercial trailers or semitrailers. The receipt shall be retained by the owner of any rental trailer, commercial trailer or semitrailer for a period of three (3) years and shall be subject to audit by the Oklahoma Tax Commission.

Any commercial trailer or semitrailer licensed pursuant to this section shall not be permitted to be operated on the highways of this state when such commercial trailer or semitrailer is being operated by a resident of this state, or is being operated by a person operating a vehicle or vehicles domiciled in this state and required by law to be licensed in Oklahoma, unless the pulling truck or truck-tractor has been licensed pursuant to this section. In no event shall any truck, truck-tractor, trailer, or semitrailer used in the furtherance of any commercial enterprise be permitted to operate on the highways of this state or register at a smaller license fee than that prescribed in this section except as provided in this section.

3. A "commercial trailer" for purposes of the Oklahoma Vehicle License and Registration Act¹⁰ is defined to mean "any trailer, as defined in Section 1-180¹¹ of this title, or semitrailer, as defined in Section 1-162¹² of this title, when such trailer or semitrailer is used primarily for business or commercial purposes". 47 O.S. 2001, § 1102(5).

4. The registration of special mobilized machinery is set forth in Section 1129 of Title 47 of the Oklahoma statutes wherein it provides:

A. Special mobilized machinery shall not be subject to any section or provision of the Oklahoma Vehicle License and Registration Act, Section 1101 et seq. of this title, except the provisions of this section.

Special mobilized machinery shall be permitted the use of the highways of this state when proper registration and permits, as provided in this section, are in the possession of the operator.

B. Owners of qualifying equipment hereunder may elect to register such equipment either under this section or under other applicable provisions of this act. Application covering qualifying equipment may be made to the Oklahoma Tax Commission or their authorized agents for registering special mobilized machinery. Upon payment of a registration fee of Twenty-five Dollars (\$25.00), the applicant shall be granted a certificate of registration in acknowledgment of qualification by the Commission. The certificate of registration must at all times be carried with the equipment and be available for inspection by an investigating officer.

C. In addition to the registration fee, the Commission shall collect at time of registration an additional fee of Five Hundred Fifty Dollars (\$550.00) per unit for equipment qualifying under the terms of this section. This fee of Five Hundred Fifty Dollars (\$550.00) shall include the constitutional ad valorem tax and shall be allocated by the Commission in the same manner and percentage as registration and permit fees are presently allocated under the provisions of this act. Payment of this fee shall be due on January 1 of each calendar year and must be paid in no event later than February 1 of each calendar year. The penalty for noncompliance with this provision shall be a double fee in the amount of One Thousand One Hundred Dollars (\$1,100.00). For qualifying equipment purchased during the calendar year, the Commission shall collect a fee which shall be pro rata of the annual fee as hereinbefore defined. Provided, however, the fee for qualifying equipment registered in another state and utilized for emergency or temporary service, not to exceed thirty (30) days, shall be calculated in the same manner as set forth in subsection A of Section 1122 of this title.

D. Other provisions of this section relating to registration and other laws of this state relating to registration, fees, or licensing shall not apply to such special mobilized equipment when the same is manufactured in Oklahoma and sold for delivery and exclusive use without the state or when returned temporarily for modification or repair. This subsection shall in no way exempt the equipment described herein from the levy of ad valorem taxes.

5. "Special mobilized machinery" for purposes of the Oklahoma Vehicle License and Registration Act is defined to mean

"special purpose machines, either self-propelled or drawn as trailers or semitrailers, which derive no revenue from the transportation of persons or property, whose use of the highway is only incidental, and whose useful revenue producing service is performed at destinations in an area away from the traveled surface of an established open highway"¹³. 47 O.S. 2001, § 1102(24).

6. COMPANY contends that pursuant to § 1129(B) it had a choice of registering the units at issue as special mobilized machinery or as commercial trailers. Section 1129(B) provides that owners of qualifying equipment may elect to register such equipment as special mobilized machinery or under other applicable provisions of the Oklahoma Vehicle License and Registration Act.

"Applicable" is neither defined by the Oklahoma Vehicle License and Registration Act nor the Oklahoma Highway Safety Code. Terms in a statute are given their plain and ordinary meaning, except when a contrary intention plainly appears. *Neer v. Oklahoma Tax Commission*, 1999 OK 41, 982 P.2d 1071 (1999). Applicable is defined as "capable of or suitable for being applied: APPROPRIATE." Webster's Ninth New Collegiate Dictionary 97 (1983).

Here, the evidence presented proves that the units at issue do not fall within the definition of "commercial trailer" because the units were not "designed for carrying persons or property". See, 47 O.S. 2001, § 1102(5) and §§ 1-180 and 1-162. It is presumed that the Legislature intends what it expresses. *Neer, supra.* at ¶ 15. Accordingly, the commercial trailer or semitrailer registration provisions of § 1133(C) were not applicable for the registration of the units at issue.

7. The burden of proof in all administrative proceedings is upon the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *OAC*, 710:1-5-47. See, *Continental Oil Company v. Oklahoma Tax Commission*, 570 P.2d 315 (Okla. 1977). A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 768 P.2d 359 (Okla. 1988). If, upon hearing, the taxpayer fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the taxpayer to the requested relief. *OAC*, 710:1-5-47.

Here, COMPANY failed to prove that any registration provision of the Oklahoma Vehicle License and Registration Act, other than the provisions for the registration of special mobilized machinery, 47 O.S. 2001, § 1129, were applicable for the registration of the units at issue. Accordingly, the proposed assessment of the units as special mobilized machinery was proper.

8. COMPANY'S protest to the proposed assessment of additional registration fees, excise taxes and delinquency penalties on the units at issue should be denied.

9. Based on the determination that the units at issue were improperly registered as commercial trailers instead of special mobilized machinery, the Division concedes that the issuance of the citations against the units for exceeding the registered combined laden weight of 90,000 pounds was erroneous because the citations were predicated on the fact that the units were properly registered as commercial trailers. Therefore, COMPANY'S protest of the citations should be sustained.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, COMPANY, to the proposed assessment of additional registration fees, excise taxes and delinquency penalties, be denied. It is further ORDERED that the protest of Protestant, COMPANY, to the issuance of the citations for exceeding the registered combined laden weight of 90,000 pounds, be sustained. It is further ORDERED that the assessed amount of \$5,340.25, consisting of registrations fees and registration fee penalties of \$4,424.00 on the 1992 XYZ MANUFACTURER (Unit 1) and the 2001 213 MANUFACTURER (Unit 2) for the years 2002 and 2003 and excise tax and excise tax penalty on the 2001 123 MANUFACTURER (Unit 2) of \$916.25, less the amounts paid under protest by

Protestant, COMPANY, because of the citations, 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 cases may be determined on a case-by-case basis.

¹ Admitted into evidence as Exhibit A to Exhibit ALJ #1 - Joint Motion to Consolidate.

² Admitted into evidence as Exhibit B to Exhibit ALJ #1 - Joint Motion to Consolidate.

³ Admitted into evidence as Exhibit C to Exhibit ALJ #1 - Joint Motion to Consolidate.

⁴ Admitted into evidence as Exhibit D to Exhibit ALJ #1 - Joint Motion to Consolidate.

⁵ Admitted into evidence as Exhibit E to Exhibit ALJ #1 - Joint Motion to Consolidate.

⁶ Admitted into evidence as Exhibit F to Exhibit ALJ #1 - Joint Motion to Consolidate.

⁷ Manager of Transportation for COMPANY. MANAGER'S employment with COMPANY began August 12, 1996. As Manager of Transportation for COMPANY, MANAGER'S duties include ensuring COMPANY'S compliance with all state, federal and international provisions relating to transportation, primarily that of light vehicles, commercial motor vehicles and marine vessels, safety compliance relating to the movement of CPMPANY'S equipment by commercial motor vehicles or marine vessels and registration of COMPANY'S motor vehicles. MANAGER was previously employed by the Oklahoma Highway Patrol. His employment with the Highway Patrol began in August, 1969. He was initially assigned to and employed for nine years in field operations in Stephens County, Oklahoma. Thereafter, MANAGER was promoted to the rank of Second Lieutenant and for a period of five years assumed supervisory responsibilities in Clinton and Ardmore, Oklahoma. Thereafter, he was promoted to First Lieutenant and transferred to Guymon, Oklahoma where he was employed for two years as the Troop Commander of Troop I which was responsible for field operations of the Patrol. In 1987, he transferred to Oklahoma City, Oklahoma and was employed for approximately one year as Troop Commander of Supply Operations of the Highway Patrol. Thereafter, he was employed for approximately eight years as Troop Commander of the Size and Weight Motor Carrier Enforcement Section of the Highway Patrol. As Troop Commander of the Size and Weight Motor Carrier Enforcement Section, he was responsible for enforcement of the state provisions relating to the size and weight of commercial motor vehicles, registration of commercial motor vehicles and enforcement of the federal motor carrier safety regulations which were adopted in the Oklahoma Administrative Code.

⁸ The 1992 XYZ MANUFACTURER (Unit 1) was registered in Oklahoma on March 27, 1995 and an original Certificate of Title to the unit was issued upon payment of \$12.00, consisting of a title fee of \$11.00 and a notary fee of \$1.00. The unit was exempt from the levy of excise tax pursuant to 68 O.S. 1991, § 2103(A)(1) by reason of 68 O.S. 1991, § 2105(b). COMPANY registered the unit in the State of Texas and an original Texas Certificate of Title to the unit was issued May 19, 1992. *Exhibit F to Exhibit ALJ #1.*

The 2001 123 MANUFACTURER (Unit 2) was registered in Oklahoma on September 24, 2001 and an Original Certificate of Title to the unit was issued upon payment of \$22.00, consisting of a title fee of \$11.00, excise tax of \$10.00 and a notary fee of \$1.00. *Exhibit F to Exhibit ALJ #1.*

⁹ ADMINISTRATOR is the Administrator of the Enforcement Section of the Motor Vehicle Division of the Oklahoma Tax Commission. He has been employed in that position since 1997. His duties include the

enforcement of state compliance with commercial motor vehicle under Title 47 of the Oklahoma statutes and supervision of agents of the Tax Commission who write citations.

¹⁰ 47 O.S. 2001, § 1101 et seq.

¹¹ "Trailer" for purposes of the Oklahoma Highway Safety Code, 47 O.S. 2001, § 1-101 et seq., is defined as "[e]very vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle, provided however, the definition of trailer herein shall not include implements of husbandry as defined in Section 1-125 of this chapter. 47 O.S. 2001, § 1-180.

¹² "Semitrailer" for purposes of the Oklahoma Highway Safety Code is defined as "[e]very vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle. 47 O.S. 2001, § 1-162.

¹³ See, the definition of "special mobilized machinery" as defined for purposes of the Oklahoma Highway Safety Code, Section 1-165 of Title 47 of the Oklahoma statutes, wherein the definition further provides that the special mobilized machinery "carry no load other than their own weight, which cannot be divided for all practical purposes" and includes "a truck or truck tractor when used while drawing special mobilized machinery". See, 47 O.S. 2001, § 1-101 which provides that "words and phrases when used in this title shall, for the purpose of this title, have the meanings respectively ascribed to them in this chapter, except when the context otherwise requires or other definitions are provided."