

JURISDICTION: OKLAHOMA TAX COMMISSION  
CITE: 2005-06-07-11 / PRECEDENTIAL  
ID: MV-04-006-H  
DATE: JUNE 7, 2005  
DISPOSITION: DENIED  
TAX TYPE: IRP  
APPEAL: AFFIRMED  
CITE: 2006 OK CIV APP 14, 130 P.3d 302

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### PROCEDURAL HISTORY

A Prehearing Conference was held on May 24, 2004, at 9:30 a.m. The Protestant requested time to provide the Division with additional information. A Status Report was to be filed by June 23, 2004. On June 23, 2004, the Protestant filed a Status Report stating that additional information had been delivered to the Division on May 1, 2004, and June 1, 2004, and that it had additional information to be submitted to the Division. The Protestant had no objection to setting this matter for hearing in August 2004. On June 25, 2004, this office issued a Scheduling Order setting the hearing on August 10, 2004, at 9:30 a.m., with briefs due on or before August 3, 2004. On August 3, 2004, the Division filed its Position Letter.

On August 9, 2004, the Protestant filed an Unopposed Application For A Continuance, on the basis that the Division had requested additional information, which might resolve the protest. The Protestant requested a one (1) week continuance. On August 10, 2004, this office issued an Order Granting Unopposed Application For A Continuance, resetting the hearing for August 17, 2004, at 9:30 a.m.

On August 16, 2004, the Protestant filed another Motion For A Continuance, on the basis that it was still attempting to provide the Division with information that it had previously requested. This office was also advised that the Protestant's Position Statement had not been filed because the parties were still negotiating and that the Protestant could not finalize its position until the Division made final assessments based upon the information which it had submitted.

On August 17, 2004, another Order Granting Application For A Continuance was granted, over the objection of the Division, resetting the hearing for August 25, 2004, at 1:30 p.m. The Protestant was advised in the Order that no further continuances would be granted.

On August 23, 2004, the Protestant filed its Position Letter, along with another Application for Continuance. This application was filed on the basis that the Protestant's representative could not get reservations to Oklahoma to arrive in time for the hearing. On August 23, 2004, this office issued an Order Denying Application For a Continuance and advised the Protestant that the hearing would be held as scheduled on August 25, 2004, at 1:30 p.m.

An open hearing<sup>1</sup> in this matter was held on August 25, 2004, at 1:30 p.m. The Protestant called one witness, PROTESTANT'S WITNESS who testified on its behalf and identified its records. The Protestant's Exhibits 3 through 11 were identified, offered, and admitted into evidence.<sup>2</sup> The Division called one witness, ADMINISTRATOR, IRP/IFTA Section, Audit Division, who testified regarding the records of the Division. The Division's Exhibits A through G were identified, offered, and admitted into evidence. At the conclusion of the hearing, PROTESTANT'S ATTORNEY made an oral Motion To Stay The Proceeding. PROTESTANT'S ATTORNEY was advised that a written motion would have to be filed. On August 26, 2004, the parties' representatives were advised by letter that the Protestant could file a motion in writing by August 30, 2004, and that the Division's response was due September 7, 2004.

On August 30, 2004, the Protestant filed a Motion To Stay Or In the Alternative To Refer Issue To The Dispute Resolution Committee of the IRP. On September 3, 2004, the Protestant filed Notice of Filing With IRP, Inc.<sup>3</sup> On September 7, 2004, the Division filed its Response To Motion To Stay Or In The Alternative To Refer Issue To the Dispute Resolution Committee of the IRP. The Division had no objection to staying this proceeding, pending a decision by the Dispute Resolution Committee of the IRP. On September 9, 2004, an Order Granting Motion to Stay was entered. Pursuant to the order, counsel for the Protestant was directed to file a status report with this office of any determination by the Dispute Resolution Committee at its November 2004 meeting.

On November 9, 2004, the Protestant filed a Notice of Decision of Dispute Resolution Committee. The decision of the Dispute Resolute Committee was as follows:

That the issue be remanded to the base jurisdiction so that the issue can be resolved under the provisions of Section 1608 of the Plan. Once all administrative and appellate procedures have been exhausted in the base jurisdiction, the issue may be submitted to the Dispute Resolution Committee for review.

On December 17, 2004, the transcript of the August 25, 2004, hearing, requested by the Protestant, was provided and the parties were advised that proposed findings could be filed on or

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<sup>1</sup> Counsel for the Protestant waived a confidential hearing pursuant to OKLA. STAT. ANN. tit. 68 § 205, to allow representatives from the Oklahoma Corporation Commission to observe the hearing. Tr. at 1-2. Effective July 1, 2004, all powers, duties and responsibilities under the IRP and International Fuel Tax Agreement ("IFTA") were transferred from the Division to the Oklahoma Corporation Commission ("OCC"). The period of July 1, 2004, through June 30, 2005, is a transitional period in which the OCC shall gradually assume complete administration and management over the IRP and IFTA. 2004 Okla. Sess. Law Serv. Ch. 522 (S.B. 141) (West).

<sup>2</sup> The Protestant did not offer into evidence exhibits numbered one (1) and two (2). The Protestant's Exhibit 5 was admitted with the deletion of the right column of figures inserted by the Protestant's counsel.

<sup>3</sup> The Protestant filed two (2) Dispute Resolution Forms. The issue on the first form was stated as "If a fire and/or flood destroys the operating records of a registrant, may a base jurisdiction under an audit net the credits against the debits?" The issue on the second form was stated as "Is a registrant, which is an equipment leasing company, required to maintain operating records for truck-tractors which it leases to carriers or may the carriers maintain the operating records?"

before January 7, 2005. At that time, the record in this matter would be closed and the case submitted for decision.

On December 21, 2004, the Protestant filed an Application For A Continuance to extend the due date of the proposed findings, on the basis that counsel would be out of state during the time the proposed findings were due. On December 22, 2004, an Order Granting Application For A Continuance was issued, extending the due date for proposed findings to January 14, 2005.

On January 14, 2005, the Division filed its Proposed Findings of Fact and Conclusions of Law. On January 14, 2005, the Protestant faxed a letter to this office advising that the computer in his office had been down for two (2) days, and requested an extension to January 18, 2005. There being no objection by the Division, the extension was granted and noted in the court file.

On January 18, 2005, the Protestant filed its Proposed Findings of Fact and Conclusions of Law. On January 18, 2005, the record in this matter was closed and this case submitted for decision.

## FINDINGS OF FACT

### FINDINGS OF FACT ADOPTED BY THE PROTESTANT

In its Position Letter filed on August 23, 2004, the Protestant states:

**EQUIPMENT LEASING COMPANY adopts the Statement of Facts and Legal Authority portion of the Position Letter of the Motor Vehicle Division<sup>4</sup> as supplemented and amended herein.** (Emphasis Added)

1. The State of Oklahoma, Oklahoma Tax Commission, is authorized by statute to enter into the International Registration Plan ("IRP") and promulgate rules, forms and records to carry the act into effect. Title 47 O.S. §§ 1120, 1149. The State of Oklahoma was admitted to the IRP on January 1, 1978, and has been a continuing member to this date. Appendix B, Roster of Member Jurisdictions IRP.

2. EQUIPMENT LEASING COMPANY was a registrant in the jurisdiction of the State of Oklahoma for registration years 2000, 2001 and 2002. The fundamental principle and purpose of the IRP is to allow a registrant to base plate where it maintains a place of business and the registration plates and cards will be recognized and accepted by all other member jurisdictions. Article I, Section 102, IRP and Article II, Section 212, IRP.

3. EQUIPMENT LEASING COMPANY was a registrant in the jurisdiction of Oklahoma during the above stated registration years and was subject to audit and assessment by the jurisdiction of Oklahoma. Article XVI, Audits, Section 1600, *et seq.*, IRP. No trip or truck level detail was provided by EQUIPMENT LEASING COMPANY to the auditor.

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<sup>4</sup> The Division's Position Letter was filed August 3, 2004. The Division's Statement of Facts and Legal Authority are set out verbatim, with the exception of the paragraph numbering. Paragraph Number 7 is omitted from the Division's Position Letter.

EQUIPMENT LEASING COMPANY submitted six quarters of International Fuel Tax Agreement (“IFTA”) reports which were utilized by the auditor as the best records available. As a result of the audit, the Division issued assessments for registration years 2000, 2001, and 2002 in the amounts of \$97,599.18, \$7,306.80 and \$10,434.74, respectively. Notice of the assessments were [sic] mailed to EQUIPMENT LEASING COMPANY on March 25, 2004. Exhibit “A”.

Subsequent to the initial assessment, EQUIPMENT LEASING COMPANY submitted an additional six quarters of IFTA reports. The Division used the IFTA reports submitted by EQUIPMENT LEASING COMPANY to revise the assessed fees for the registration years 1999 [sic] and 2000 to \$24,442.77 and \$12,784.50, respectively. Notice of the revisions was mailed to EQUIPMENT LEASING COMPANY on June 1, 2004. Exhibit “B”.

4. EQUIPMENT LEASING COMPANY timely objected to the initial assessments stating, “I anticipate receiving additional documentation that has not yet been considered by the OTC.” Exhibit “C”.

#### LEGAL AUTHORITY ADOPTED BY PROTESTANT

5. The Division incorporates the preceding cited Statutes, Articles and Exhibits as authority to conduct an audit of and assess EQUIPMENT LEASING COMPANY.

6. The Oklahoma Tax Commission is vested with jurisdiction over EQUIPMENT LEASING COMPANY and the subject matter of this action. Title 68 O.S. § 207; Title 47 O.S. § 1120 and Article XVI, Section 1608, IRP.

7. EQUIPMENT LEASING COMPANY did not make records available as required by Article XV, Section 1500, IRP. Division based its assessments on the best information available. Article XV, Section 1502, IRP.

8. An audit and assessment are presumed correct and EQUIPMENT LEASING COMPANY 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) and Oklahoma Administrative Code, Rule 710:1-5-47.

9. By letter dated June 25, 2004, the Administrative Law Judge requested a Position Letter be filed on or before August 3, 2004, and a hearing of the matter set on August 10, 2004. Exhibit “D”.

#### ADDITIONAL FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings and the exhibits received into evidence, the undersigned finds:

1. PROTESTANT'S WITNESS was the principal and controlling person of the Protestant, ABC TRUCKING and XYZ TRUCKING during the 2000, 2001, and 2002 registration years ("Audit Periods").<sup>5</sup>

2. During the Audit Periods, the Protestant leased motor vehicle equipment to ABC TRUCKING and XYZ TRUCKING.<sup>6</sup> The Protestant does not operate equipment it owns.<sup>7</sup>

3. On April 10, 2002, the Division notified the Protestant of its intent to conduct an audit. The pertinent part of the letter is as follows:

This office will conduct an audit of the operational records which support applications for registration submitted under the above referenced IRP account. This is a routine audit selected on a random basis. The audit will cover the 2000 & 2001 & 2002 registration year(s). Please complete the enclosed questionnaire by answering the applicable areas. Return the questionnaire within 30 days of the date of this letter along with a signed copy of this letter and the mileage records (which includes mileage summaries and drivers trip reports) for the record periods of:

July 1, 1998 to June 30, 1999

July 1, 1999 to June 30, 2000

July 1, 2000 to June 30, 2001<sup>8</sup>

4. On May 10, 2002, the Division received the IRP Pre-Audit Questionnaire, stating that the [Protestant] "is a leasing co. only. [Protestant] operates no equipment. Lease only." MANAGER, signed the questionnaire on behalf of the Protestant on April 29, 2002. The Protestant provided no records.<sup>9</sup>

5. The Protestant did not maintain any records during the Audit Periods.<sup>10</sup>

6. On August 15, 2003, the Division assigned the audit of the Protestant to AUDITOR.<sup>11</sup>

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<sup>5</sup> Tr. at 16.

<sup>6</sup> Tr. at 10. During the 2000 registration year the Protestant registered 104 vehicles, 106 vehicles during the 2001 registration year, and 86 vehicles during the 2002 registration year. Division's Exhibits E, F, and G.

<sup>7</sup> Tr. at 11.

<sup>8</sup> Division's Exhibit E consists of thirty-six (36) pages and contains numerous documents pertinent to the audit of the 2000 registration year.

The letter was sent to the Protestant at P.O. Box 99999, BIG CITY, OK 99999. This was the address of the Protestant's service agent, SERVICE AGENT. CONTACT was listed as the contact person.

<sup>9</sup> Division's Exhibit E. Tr. at 29-30.

<sup>10</sup> Tr. at 17-18.

7. On August 19, 2003, AUDITOR sent a letter to the Protestant, which referenced the previous correspondence,<sup>12</sup> and advised that the Division had assigned AUDITOR to perform the audit. The letter requested a contact person for the Protestant, since its service agent's office had closed, and requested a summary of the Protestant's IFTA filings for the Audit Periods to compare the mileages reported to the Division for IRP purposes. The Protestant was advised that the Division would verify the correctness of the summaries on a sample basis.<sup>13</sup>

8. On September 24, 2003, AUDITOR sent the Protestant another letter, the pertinent part of which is as follows:

Last month I wrote in regard to records requested for the IRP audit announced earlier. To date, no response has been received. I need to have an immediate response with the three years IFTA report copies requested (reports years 2000-2001-2002) which cover mileages incurred from July 1, 1998 through June 30, 2001 for the vehicles you registered with Oklahoma prorated tags. Without a response, a default assessment will be made.<sup>14</sup>

9. On November 17, 2003, the Division's auditor sent a letter to MANAGER, ABC TRUCKING. The letter referenced MANAGER'S recent response for backup documentation for the 2000, 2001, and 2002 registration years. The letter also advised MANAGER that the IFTA summaries provided were for the calendar years, not the registration years, so only the first half of the information could be used. The Division specifically requested IFTA summaries covering July 1, 1998, through December 31, 1999.<sup>15</sup>

10. The Division conducted an audit of the Protestant for the 2000 registration year based upon the difference between the apportioned fees paid Oklahoma and the full Oklahoma fees due.<sup>16</sup>

11. The audit of the Protestant for the 2001 registration year was based upon copies of ABC TRUCKING IFTA reports to the State of Alabama for the first and second quarters of

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<sup>11</sup> Division's Exhibit E.

<sup>12</sup> The Division's letter dated April 10, 2002, and the IRP Pre-Audit Questionnaire returned to the Division by MANAGER.

<sup>13</sup> Division's Exhibit E.

<sup>14</sup> Division's Exhibits E, F, and G.

Division's Exhibit F consists of forty (40) pages and contains numerous documents pertaining to the audit of the 2001 registration year.

Division's Exhibit G consists of forty-six (46) pages and contains numerous documents pertaining to the audit of the 2002 registration year.

<sup>15</sup> Division's Exhibit E.

<sup>16</sup> No records were provided to the Division for 2000 registration year.

2000.<sup>17</sup> The audit for the 2002 registration year was based upon copies of ABC TRUCKING'S IFTA reports to the State of Alabama for the third and fourth quarters of 2000 and the first and second quarters of 2001.<sup>18</sup>

12. On March 2, 2004, the Division sent the Protestant the Registrant Audit Reports for the Audit Periods.<sup>19</sup>

13. On March 25, 2004, the Division issued a proposed assessment for the 2000 registration year in the amount of \$97,599.18.<sup>20</sup>

14. On March 25, 2004, the Division issued a proposed assessment for the 2001 registration year in the amount of \$7,306.80.<sup>21</sup>

15. On March 25, 2004, the Division issued a proposed assessment for the 2002 registration year in the amount of \$10,434.74.<sup>22</sup>

16. On March 26, 2004, counsel for the Protestant faxed a timely protest to the Division's proposed assessments for the Audit Periods.<sup>23</sup>

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<sup>17</sup> Division's Exhibit F.

<sup>18</sup> Division's Exhibit G.

<sup>19</sup> Division's Exhibits E, F, and G.

<sup>20</sup> Division's Exhibits A and E. For the 2000 registration year the audit reflected a total of 3,509,379 miles traveled. The Protestant reported 35,325 miles traveled in the State of Oklahoma or 1.007% of the fees originally paid. The audit increased the total miles traveled in Oklahoma to 100% of the total miles traveled or full fees in the amount of \$98,592.00. The proposed assessment gave the Protestant credit for the 1.007% originally paid, or \$992.82, leaving a total due of \$97,599.18.

<sup>21</sup> Division's Exhibits A and F. On the 2001 IRP Application, Schedule B, the Protestant originally reported the total miles traveled as 6,157,705. Based upon the copies of ABC TRUCKING'S IFTA reports for the first and second quarter of 2000, the audit mileage was adjusted to 4,306,950 miles traveled in all jurisdictions. Mileage for each jurisdiction was either increased or decreased. In jurisdictions where the mileage decreased the Division did not allow the credits to offset the jurisdictions that were increased (net the credits) because "no trip or truck level detail was provided." The audit increased the amount of fees due 3.585% or \$7,306.80.

<sup>22</sup> Division's Exhibits A and G. On the 2002 IRP Application, Schedule B, the Protestant originally reported the total miles traveled as 11,528,861. Based upon copies of ABC TRUCKING'S IFTA reports for the third and fourth quarters of 2000, and first and second quarters of 2001, the audit mileage was adjusted to 18,617,626 miles. Mileage for each jurisdiction was either increased or decreased. In jurisdictions where the mileage decreased the Division did not allow the credits to offset the jurisdictions that were increased (net the credits) because "no trip or truck level detail was provided." The audit increased the amount of fees due 9.492% or \$10,434.74.

<sup>23</sup> Division's Exhibit C. The letter states that counsel anticipated receiving additional information from the principals of the Protestant, which had not been considered by the Division. The letter was copied to MANAGER, Vice-President of the Protestant. MANAGER signed the IRP Pre-Audit Questionnaire received by the Division on May 10, 2002.

17. The Protestant did not maintain any records of the vehicles it leased to ABC TRUCKING and XYZ TRUCKING during the Audit Periods. ABC TRUCKING and XYZ TRUCKING maintained the records. There was no contract between the Protestant and the companies for the maintenance of records.<sup>24</sup>

18. On May 12, 2001, there was a fire in the building of XYZ TRUCKING. XYZ TRUCKING submitted an insurance claim seeking coverage for restoration of Department of Transportation required documentation.<sup>25</sup>

19. XYZ TRUCKING was paid, at least in part, for the claim, but XYZ TRUCKING did not take any steps to restore the records.<sup>26</sup>

20. The records of ABC TRUCKING were stored in a building located in a flood plain.<sup>27</sup> The records were destroyed in a flood, which occurred on May 8, 2003. No insurance claim was made, as ABC TRUCKING had no insurance on the contents of the building. ABC TRUCKING did not make any attempt to recreate the records lost in the flood.<sup>28</sup>

21. Other than the copies of the ABC TRUCKING and XYZ TRUCKING Alabama IFTA reports, PROTESTANT'S WITNESS was not aware of any operating reports, trip sheets, etc., which would show mileage of actual shipments or mileage traveled by the vehicles registered by the Protestant for the Audit Periods.<sup>29</sup> Trip records, trip envelopes, logs, etc. were all destroyed.<sup>30</sup>

22. On May 24, 2004, the Protestant submitted copies of six (6) quarterly Alabama IFTA reports for ABC TRUCKING. On June 1, 2004, the Division issued revised assessments for the 2000 registration year in the amount of \$24,442.77, and 2001 registration year in the amount of \$12,784.50.<sup>31</sup>

23. On July 26, 2004, and July 28, 2004, the Protestant submitted copies of additional Alabama IFTA reports for ABC TRUCKING and XYZ TRUCKING. On August 16, 2004, the Division issued revised assessments for the 2000 registration year in the amount of \$21,610.37,

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<sup>24</sup> Tr. at 17-18.

<sup>25</sup> Protestant's Exhibit 8.

<sup>26</sup> Tr. at 19.

<sup>27</sup> Protestant's Exhibit 10. Tr. at 14-15.

<sup>28</sup> Protestant's Exhibit 9. Tr. at 14 and 20.

<sup>29</sup> Tr. at 15-16.

<sup>30</sup> Tr. at 19.

<sup>31</sup> Division's Exhibit B.

2001 registration year in the amount of \$9,943.00, and 2002 registration year in the amount of \$9,732.99.<sup>32</sup>

### CONCLUSIONS OF LAW

1. The State of Oklahoma entered into and is a member of the IRP, which provides for the registration and licensing of vehicles engages in interstate commerce or combined interstate and intrastate commerce on a proportional basis<sup>33</sup> commensurate with the use of Oklahoma highways.<sup>34</sup>

2. The Oklahoma Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement, and collections of taxes under the IRP and the Oklahoma Motor Vehicle Licensing and Registration Act.<sup>35</sup>

3. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.<sup>36</sup>

4. As a registrant<sup>37</sup> under the provisions of the IRP, the Protestant is subject to the audit procedures and policies set forth therein.<sup>38</sup>

5. The Protestant is subject to audit by Oklahoma as its base jurisdiction.<sup>39</sup>

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<sup>32</sup> Division's Exhibit D.

<sup>33</sup> Pursuant to IRP, Art. III, Section 300(A), the registration fee for apportionable vehicles shall be determined as follows:

1. Divide the in-jurisdiction miles or kilometers by the total distance generated during the preceding year.
2. Determine the total fees required under the laws of each jurisdiction for full registration of each vehicle at the regular annual or applicable fees, or for the unexpired portion of the registration year.
3. Multiply the sum obtained under Paragraph 2 of this section by the quotient obtained under Paragraph 1 of this section.

<sup>34</sup> OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. STAT. ANN. tit. 47, § 1120 (West 2001).

<sup>35</sup> OKLA. STAT. ANN. tit. 47, § 1101 et seq., which incorporate by reference Articles I through XXII of the IRP (West 2001). OKLA. ADMIN. CODE § 710:60-4-20-(b)(1) (2004).

<sup>36</sup> OKLA. STAT. ANN. tit. 75, § 250 et seq., (West 2001) and OKLA. STAT. ANN. tit. 75, § 308.2 (West 2001).

<sup>37</sup> "Registrant" means a person, firm or corporation, in whose name or names a vehicle is properly registered. IRP, Art. II, Section 246.

<sup>38</sup> IRP, Art. XVI and IRP, Appendix F, Art. XVI.

<sup>39</sup> IRP, Art. XVI, Section 1600.

Audit Procedures Manual, Section 100.1, states: "The purpose of the Audit Procedures Manual is to establish a uniform procedure for all jurisdictions to follow in notifying registrants of an audit, conducting the audit, reporting the audit, assessing shortages, granting credits, and canceling registrants, should it become necessary."

6. Upon completion of the audit of a registrant, the audit findings shall be provided to the registrant and to all member jurisdictions in which the registrant was apportioned or in which it accrued miles.<sup>40</sup>

7. The written appeal shall be resolved under the administrative and appellate procedures of the base jurisdiction.<sup>41</sup>

8. The findings of the audit shall be final as to member jurisdictions and the audited registrant, if they do not act as specified in IRP, Art. XVI, Sections 1608 and 1610, except in conditions of fraud.<sup>42</sup>

9. The provisions of IRP, Art. XVI, Section 1604, concern an action of fraud committed with respect to the audit itself. It provides a mechanism whereby the audit can be thrown out if, and only if, it is determined at some later date that the final audit findings are erroneous due to some fraudulent action, whether such action is the submission of false records by the registrant or collusion between the registrant and the auditor.

10. No allegation has been made by either party that the audit is fraudulent in any manner. The exception to the audit becoming final after thirty (30) days from the date of notification of the findings does not apply.

11. Under the IRP, the registrant is required to preserve the records on which the registrant's application is based. Article XV, Preservation of Records and Audit, § 1500 provides:

Any registrant whose application for apportioned registration has been accepted shall preserve the records on which it is based for a period of three years after the close of the registration year. Such records shall be made

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Audit Procedures Manual, Section 100.2, provides:

The purpose of auditing registrants under the International Registration Plan (IRP) is to protect the integrity of the vehicle registration laws of all jurisdictions party to the IRP and to ensure equitable treatment of all registrants subject to the IRP. In accordance with the purpose and principles of the IRP in providing for efficient use of the jurisdictions' highway systems, it is incumbent upon each jurisdiction to meet its obligations under the provisions of the IRP, i.e., proportional registration of commercial vehicles, by insuring proper documentation of carrier total distance operated, and official examination and verification of the appropriate records of all interjurisdictional carriers as prescribed by Articles XV, XVI and XVII of the *International Registration Plan with Official Commentary* (Plan) and the *Audit Procedures Manual*.

<sup>40</sup> IRP, Art. XVI, Section 1604, Section 1604, amended April 10, 1998, Ballot 1.7187. Effective October 1, 1999.

<sup>41</sup> IRP, Art. XVI, Section 1608, amended April 10, 1998, Ballot 1.7.187. Effective October 1, 1999.

<sup>42</sup> IRP, Art. XVI, Section 1614.

available to the jurisdiction at its request for audit during normal business hours.

12. According to the official commentary to the IRP, the term records includes “operational records” as defined in Section 232, which states:

Operational Records means documents supporting the total distance traveled in each jurisdiction and total distance traveled such as fuel reports, trip sheets and driver logs.<sup>43</sup>

13. A jurisdiction may make an assessment based upon information furnished by the registrant if the registrant fails to maintain records or fails to make records available upon request. Article XV, Preservation of Records and Audit, § 1502, provides:

If any registrant fails to make records available to the jurisdiction upon proper request or if any registrant fails to maintain records from which true liability may be determined, the jurisdiction may, thirty days after written demand for an availability of records or notification of insufficient records, impose an assessment of liability. This assessment of liability may be based on the jurisdiction’s estimate of the true liability of such registrant as determined

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<sup>43</sup> Audit Procedures Manual, Section 402.1, provides:

An acceptable source document for verifying fleet distance traveled is an “Individual Vehicle Distance Record” (IVDR). A standardized IVDR is suggested and encouraged, but not required. IVDRs shall contain the following information:

1. Date of trip (starting and ending);
2. Trip origin and destination;
3. Route of travel (may be waived by base jurisdiction);
4. Beginning and ending odometer or hubodmeter reading of the trip (may be waived by base jurisdiction);
5. Total trip distance traveled;
6. Distance traveled by jurisdiction;
7. Unit number or vehicle identification number.

Audit Procedures Manual, Section 402.2, further provides:

The base jurisdiction may waive either item 3 or 4 above, but may not waive both items 3 and 4. Also, a base jurisdiction may, in its discretion, require a IVDR to include additional information as follows:

1. Vehicle fleet number;
2. Registrant’s name;
3. Trailer number;
4. Driver’s signature and/or name.

Audit Procedures Manual, Section 900.1, states:

This Audit Procedures Manual provides uniform audit procedures for conducting an audit that will be acceptable to both member jurisdictions and industry. The procedures contained herein will be helpful to any jurisdiction in setting up an audit program as well as giving assistance to a registrant on keeping acceptable records in support of registration applications. The main theme involved in developing uniform audit procedures relates to the necessity of the member jurisdictions to have a viable audit program and to make the registrant aware of its responsibility in maintaining accurate records.

from information furnished by the registrant, information gathered by the jurisdiction at its own instance, information available to the jurisdiction concerning operations by similar registrants and such other pertinent information as may be available to the jurisdiction.

14. Article XVII, Assessment Claims Under Audit, Section 1704 provides:

When the findings of an audit result is a net underpayment by the registrant, the base jurisdiction shall collect the amount of the underpayment from the registrant, pursuant to the base jurisdiction's laws and procedures. When the result is a net overpayment by the registrant, the base jurisdiction shall refund the amount of overpayment to the registrant. ***If the records are not made available, or the records made available are inadequate for an examination, any credits calculated for jurisdictions which are caused by the inadequacy of records will not be reflected in the fees netted under Article XVI.*** (Emphasis Added)

15. The Protestant has failed to meet its burden of proof in this matter. The Protestant has produced no evidence and cited no authority that the assessments for the Audit Periods are incorrect, or that the sums are not due and owing.

The Protestant asserts that the copies of the ABC TRUCKING and XYZ TRUCKING Alabama IFTA reports comply with the definition of "Operating Records" as defined by IRP, Art. II, Section 232, and were adequate for the Division to conduct the audit.

The Protestant's position fails on several grounds. The Protestant was the registrant during the Audit Periods, not ABC TRUCKING and XYZ TRUCKING. The Protestant registered 104 vehicles for the 2000 registration year, 106 vehicles for the 2001 registration year, and 86 vehicles for the 2002 registration year. No trip level detail was provided to the Division. PROTESTANT'S WITNESS testified that he "was not aware of any operating records, trip sheets, etc., which would show mileage of actual shipments or mileage traveled by the vehicles registered by the Protestant for the Audit Periods. Trip records, trip envelopes, logs, etc. were all destroyed." The Protestant did not make records available as required by Article XV, Section 1500, and the Division based the assessments for the Audit Periods on the best information available.

The provisions of the IRP are clear and unambiguous. The Protestant, as the registrant, was required to preserve the records on which the applications for the Audit Periods were based. The Protestant did not maintain any of the records of the vehicles it registered in the jurisdiction of the State of Oklahoma during the Audit Periods.

The IRP does not contain an exception to the "netting of credits," because records were destroyed by "acts of God," even if the Protestant had properly maintained adequate records.

Whether the provisions of the IRP should contain an exception, for the destruction of records by "acts of God," is not a matter that can be addressed by the undersigned. The IRP

provides for a balloting process, which allows the member jurisdictions to vote on proposed changes in the plan.<sup>44</sup> The Division correctly disallowed the “netting of credits” based upon the provisions of the IRP as written.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest be denied, and the total amounts assessed for the Audit Periods be fixed as the Protestant’s deficiency, and that those amounts be determined as due and owing.

OKLAHOMA TAX COMMISSION

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<sup>44</sup> IRP, Art. XXII.