

03-1666

TAX TYPE: REFUND REQUEST

TAX YEAR: 2000 and 2001

DATE SIGNED: 1-31-2006

COMMISSIONERS: P. HENDRICKSON, B. JOHNSON, P. DEPAULIS, M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER.,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND FINAL ORDER
Petitioner,)	
)	Appeal No. 03-1666
v.)	Account No. #####, UT #####,
)	UT #####, UT #####,
MOTOR VEHICLE DIVISION OF)	Tax Type: Refund Request
THE UTAH STATE TAX)	Tax Year: 2000, 2001
COMMISSION,)	
)	Judge: Davis / DePaulis
Respondent.)	

Presiding:

G. Blaine Davis, Administrative Law Judge
Commissioner Palmer DePaulis

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, NAME OF LAW FIRM
REPRESENTATIVE-2 FOR PETITIONER, NAME OF LAW FIRM
REPRESENTATIVE-3 FOR PETITIONER, NAME OF LAW FIRM

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Motor Vehicle Division

For STATE DMV: REPRESENTATIVE FOR STATE DMV, Legal Affairs Division, amicus
curiae

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on September 7, 2004. The Commission issued an Order on December 17, 2004. The Commission’s Order found that STATE is an indispensable party to the resolution of this matter, but also determined that the Tax Commission has no authority to compel the State of STATE to participate in a hearing on this matter before the Utah State Tax Commission. The Commission concluded that Petitioners and Respondent could seek a resolution under the International Registration Plan (“IRP”) or in the State of STATE, and the Commission dismissed the appeal.

Petitioners requested a Formal Hearing on the matter, arguing that the Commission has authority to grant the relief requested, which is a refund of certain IRP trailer registration fees collected by the Motor Vehicle Division on behalf of STATE. Petitioners argue that the Commission erred in determining that the parties can seek resolution in STATE because STATE has no authority to order a refund of fees paid to Utah. Furthermore, according to Petitioners, the IRP Dispute Resolution Committee has ruled that a registrant has a right to claim a refund in the Base Jurisdiction.

Petitioners also argue that STATE is not an indispensable party to this case and that the Commission's only responsibility to the STATE is to offer it an opportunity to participate and to defend its position. Nevertheless, Petitioners point out that the STATE was represented in this case and it briefed its position and presented oral argument.

Petitioners contend that Utah, as the base registration state for these Petitioners, is the appropriate jurisdiction to provide refunds and credits because the fees were paid to Utah, not STATE. Furthermore, Petitioners state that they will have no avenue for a remedy if Utah dismisses this action.

The Formal hearing was held May 19, 2005. The parties were allowed to submit post-hearing briefs, which are part of the record upon which this decision is rendered.

STIPULATED FACTS

In preparation for the Initial Hearing, the parties submitted a Stipulation as to the relevant facts and the issues to be decided. The recitation of stipulated facts is as follows:

1. The International Registration Plan is a registration reciprocity agreement among the 48 contiguous United States and ten Canadian provinces authorizing: (i) the proportional registration of commercial vehicles; (ii) apportioning vehicle registration fees paid by motor carriers; and (iii) providing for the recognition of such registration in the participating jurisdictions. (A copy of the IRP governing document with official commentary is attached hereto as Exhibit A and is sometimes referred to as the "Plan").
2. Members and entrants into the Plan (states and provinces) form an organization known as the International Registration Plan, Inc., (hereinafter referred to as the "IRP").
3. The Plan is recognized as an interstate agreement by the federal government. 49 U.S.C.A. §31704.
4. Pursuant to the Plan, the IRP has adopted policies and procedures. IRP Policies and Procedures Manual are attached hereto as Exhibit "B".

5. Under IRP proportional registration, a carrier may register in a single state or province known as the Base Jurisdiction. Upon application for registration, the carrier declares the extent (in actual or estimated mileage) given vehicle will be driven in each member jurisdiction. The IRP provides that fees due for each vehicle are calculated and collected by the Base Jurisdiction. Following assessment and collection of the fees from the fleet owner, the Base Jurisdiction apportions the funds collected among the applicable IRP jurisdictions. IRP Information Manual of May 1995. A copy of the IRP Information Manual is attached hereto as Exhibit "C".

6. An owner receives from the Base Jurisdiction for each vehicle registered; a license plate bearing the word "apportioned" or "PRP" and a cab card listing each jurisdiction in which the vehicle is registered to operate.

7. Each IRP member jurisdiction is bound by the Plan to recognize and honor the IRP apportioned registration as an apportioned vehicle operates within its borders. (Exhibit C hereto –IRP Information Manual dated as of May 1995.) Congress has recognized the IRP by Congressional enactment and has passed legislation to enforce this policy:

After September 30, 1996, a State that is not participating in the International Registration Plan may not establish, maintain or enforce a commercial motor vehicle registration law, regulation, or agreement that limits the operation in that State of a commercial motor vehicle that is not registered under the laws of the State, if the vehicle is registered under the laws of a State participating in the Plan. 49 U.S.C.A §31704.

8. A jurisdiction's application for membership to the IRP must be endorsed by all jurisdictions who are parties to the Plan. *Id.*

9. Utah approved the IRP September 13, 1973 and duly entered the IRP as a participating member effective January 1, 1975. Exhibit 'A' page 74. Utah is the Base Jurisdiction for each of the Petitioners.

10. STATE entered the IRP effective January 1, 1985. (*Id.*) STATE joined the IRP with the following exception:

The State of STATE requires the registration of all trailers, semi-trailers, and auxiliary axles. Appendix C to Exhibit A hereto, subsequently revised.

11. IRP Ballot 1.7.203 was approved April 17, 1999, and amended the Plan. A copy of Ballot 1.7.203 is attached hereto as Exhibit "D". This action provided for the termination of STATE exception referred to in Paragraph 10 above.

12. STATE disputed the cancellation of its exception and brought the matter before the IRP Dispute Resolution Committee seeking extension of its exception for a two-year period. In its Decision 99.6 of November 13, 1999, this request was denied by the Dispute Resolution Committee.

13. Petitioners BUSINESS-1, BUSINESS-2, BUSINESS-3, BUSINESS-4, BUSINESS-5, BUSINESS-6, and BUSINESS-7 completed State of Utah IRP Renewal Applications.

14. The Base Jurisdiction is responsible for calculating, billing, and collecting fees for all IRP jurisdictions in which an applicant for registration declares that it intends to operate.

15. The STATE Apportioned Fleet Registration Handbook may be admitted without further foundation. (STATE Apportioned Fleet Registration Handbook).

16. Upon receipt of the Renewal Applications of BUSINESS-1, BUSINESS-2, BUSINESS-3, BUSINESS-4, BUSINESS-5, BUSINESS-6, and BUSINESS-7, the State of Utah determined and assessed Petitioners for registration fees and submitted an invoice to each registrant-Petitioner for payment.

17. Each invoice referred to in the foregoing paragraph included an assessment for registration fees for STATE Trailers. This invoice may be admitted without further foundation.

18. Petitioners respectively paid the Utah invoices in full.

19. According to data maintained by the State of Utah, Petitioners paid the following Registration fees to the State of Utah:

- a. In December of 2000, Petitioner BUSINESS-1 paid \$\$\$\$ for its fleet *Two* and \$\$\$\$ for its fleet *Four* for the 2001 calendar year. Of these two payments, \$\$\$\$ was assessed and collected as STATE trailer registration fees.
- b. Petitioner BUSINESS-2 made four payments:
 - i. For the period April 1, 2000 through March 31, 2001 BUSINESS-2 paid Respondent \$\$\$\$ as STATE trailer registration fees.
 - ii. For the period October 1, 2000 through September 30, 2001, BUSINESS-2 paid Respondent \$\$\$\$ as STATE trailer registration fees.
 - iii. On April 1, 2001 BUSINESS-2 paid \$\$\$\$ as STATE trailer registration fees.
 - iv. On October 1, 2001 BUSINESS-2 paid \$\$\$\$ as STATE trailer registration fees.
- c. Petitioner BUSINESS-3 made two payments:
 - i. In December of 2000 BUSINESS-4 paid \$\$\$\$ for the 2001 calendar year, of which \$\$\$\$ was assessed as STATE trailer registration fees.
 - ii. On May 2, 2001 BUSINESS-3 paid \$\$\$\$\$, of which \$\$\$\$ was assessed as STATE trailer registration fees.
- d. On September 25, 2001 BUSINESS-5 paid \$\$\$\$ of which \$\$\$\$ was

assessed as STATE trailer registration fees.

e. On December 7, 2000 BUSINESS-6 paid \$\$\$\$\$, of which \$\$\$\$\$ was assessed as STATE trailer registration fees.

f. On September 20, 2001 BUSINESS-7 paid \$\$\$\$\$, of which \$\$\$\$\$ was assessed as STATE trailer registration fees.

20. Respondent represents that it remitted all of the trailer registration fees referred to in Paragraph 19 above to the STATE.

ISSUES

This dispute concerns trailer registration fees collected by Utah on behalf of the State of STATE after the IRP expressly abolished STATE'S "trailer exception." At issue is whether Petitioners are entitled to a refund of trailer registration fees and, if so, whether Utah is obliged to refund the fees then to seek reimbursement from STATE.

As part of the stipulation, the parties agreed that the legal issues to be decided are as follows:

1. Does the Commission have jurisdiction to hear this proceeding and, if so, can it require a refund/credit of trailer registration fees assessed and collected by the State of Utah and remitted by it to the State of STATE?
2. Are one or more of the Petitioners entitled to a refund/credit for amounts assessed and collected by the State of Utah as STATE trailer registration fees? If so, for what period(s) and in what amounts? Are Petitioners entitled to interest on any refund or credit due? If so, in what amounts?
3. Should any refund/credit to Petitioners be offset from future fees Respondent: collects from Petitioners; or collects on behalf of STATE; or should any refund or credit be contingent upon payment of a refund/credit by STATE?
4. Is STATE a necessary party to this proceeding?

CONCLUSIONS OF LAW

In response to the issues set forth by the Parties, the Commission concludes the following:

1. Utah has no authority to use Utah revenues to refund overpayments of fees paid to another state.
2. Whether STATE imposed fees that were barred by the IRP and federal law is an issue to be decided through STATE'S administrative processes, the STATE courts, or the federal courts.

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The Utah State Tax Commission lacks jurisdiction to hear that issue.

3. Utah has no authority to initiate an offset to Petitioners' future assessments of STATE fees. If STATE directs or agrees to an offset, or if a court of appropriate jurisdiction orders STATE to accept payment of these fees to offset future amounts due, the Division will work with the parties to accommodate that agreement or order.

4. The only action properly before the Commission is whether the Division was justified in denying Petitioners' claims for refund. The State of STATE is not an essential party to this dispute. The State of STATE certainly has a stake in the underlying issue - whether trailer fees were erroneously imposed by STATE in 2001, but the Utah State Tax Commission has no jurisdiction over that issue and takes no position on it.

APPLICABLE LAW

1. Utah has adopted the International Registration Plan, which applies to apportionable carriers operating interjurisdictionally. Utah Code §41-1a-301.

2. The fundamental principal underlying the IRP is set forth in §102 of the Plan and accompanying notes, which state that the plan is intended to "encourage the fullest possible use of the highway system by authorizing apportioned registration of fleets of vehicles, and the recognition of vehicles apportioned in other jurisdictions" Additionally, "[f]reedom of vehicle movement is a fundamental principal of the plan."

3. Under the IRP, Utah serves at the base jurisdiction for certain carriers that operate interjurisdictionally, including Petitioners. As a base jurisdiction, Utah has various responsibilities with regard to these carriers under the IRP and the Utah Motor Vehicle Act. For example, Articles IV and V of the Plan, the Division, acting in its capacity as the base jurisdiction, accepts registration applications and renewals; collects and disburses fees; and issues cab cards and plates as provided by the Plan. The Division also has other administrative responsibilities in conjunction with the IRP and Utah's Motor Vehicle Act that are not pertinent to the issues here.

4. The Utah State Tax Commission's authority to apply an overpayment of any tax

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or fee to outstanding or future liability for taxes or fees is limited. Utah Code §59-1-303 (2) allows the Commission to apply an “overpayment of any tax or fees against a taxpayer’s liability for any tax or fee.” As defined in subsection (1) (a) of that statute, the term “overpayment” means an amount paid by the taxpayer which exceeds the taxpayer’s liability for the tax or fee, plus interest. Under subsection (1) (b) of that provision, “tax or fee” means any tax or fee administered by the Tax Commission.

DISCUSSION

The International Registration Plan is a registration reciprocity agreement among states of the United States and provinces of Canada. It allows motor carrier vehicles to operate interjurisdictionally with a single base state license and registration,¹ eliminating the need for multiple state registrations. The base state accepts the registration fees from the registrant and allocates or apportions the fees among the states where the vehicles operate based on the road miles traveled in each state. Under the IRP, if a motor carrier fleet is correctly registered in its base state and the appropriate allocation of fees is made to other member states, the registrant’s responsibility for paying fees in the other member jurisdictions where the vehicle or fleet operates is discharged.²

Under the IRP, trailers operated in combination with the apportionable vehicle enjoy full and free reciprocity in IRP jurisdictions if the apportionable vehicle is properly registered and the fees are properly allocated.³ At the time that the State of STATE ratified the IRP, it did so with an exception that required separate apportioned registration of trailers operating in STATE. Under this exception, base states collected trailer registration fees on behalf of STATE. The IRP abolished this exception by way of IRP Ballot 1.7.203, issued in 1999. Article XIX of the Ballot required STATE to cancel its trailer exception prior to January 1, 2001. STATE applied for an extension for its exception, but the IRP Dispute Resolution Committee denied that request on November 13, 1999. To maintain its membership in the IRP, STATE eventually amended its laws to eliminate apportioned trailer registrations as of December 31,

1 The base state or base jurisdiction is defined as the jurisdiction where the registrant has an established place of business, where distance is accrued by the fleet and where operational records of such fleet are maintained or can be made available in accordance with the provisions of Section 1602 of the IRP. Art. II, §210.

2 IRP Art I, §109.

3 IRP Art. IV, §404.

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2001.⁴ Arguably, STATE law was in conflict with the IRP from January 1, 2001 to December 31, 2001.

Although the IRP abolished STATE'S trailer exception effective January 1, 2001, IRP, Inc. Chair NAME-1 issued a "non-binding recommendation" on August 29, 2001 advising member states to continue to honor STATE'S trailer exception through December 31, 2001. The memorandum cited no authority for the IRP Board to issue a recommendation that was contrary to the official action taken on this matter by ballot in 1999. Instead, the memorandum left to the various member jurisdictions the decision of how to deal with the recommendation.

The Division contacted the STATE Department of Motor Vehicles and learned that it intended to continue applying STATE trailer registration laws in 2001 despite the apparent conflict with the IRP. Furthermore, the STATE DMV informed the Division that if the Division did not continue to collect the fees, it would stop all Utah based trucks at the border and to require them to purchase individual trip permits.⁵ The Division determined that it would be cheaper and more convenient to collect the fees through the registration process, so it included the STATE trailer fees on Petitioners' 2001 invoices. Petitioners paid the fees without objection. The Division turned the trailer fees over to STATE through the usual allocation process.

In 2003, Petitioners filed requests for refund in Utah and STATE. The Utah Motor Vehicle Division denied the request, giving rise to this appeal. Apparently STATE Motor Vehicle Division also denied the refund requests, and Petitioners have apparently pursued appeals there as well.

Petitioners contend that Utah is the appropriate jurisdiction to make the refund, not because Petitioners made an overpayment of Utah taxes or fees, but because Utah is their base jurisdiction and because the Division actually collected the fees on behalf of STATE. We disagree.

The Commission does not have jurisdiction to determine the validity of STATE'S trailer fees.

Petitioners do not deny that STATE statutes required the imposition of the fees in question. The only issue is whether those statutes are invalid because they are in conflict with the provisions of the

4 See STATE's Commercial Vehicle Registration Act of 2001.

5 See, Affidavit of Kevin Park.

International Registration Plan, also duly adopted by the STATE. The Tax Commission must assume the validity of the Utah statutes it is called upon to administer⁶. The Tax Commission, *a fortiori*, has no jurisdiction to determine the validity of the statute of a sister State.

The trailer fees were imposed by and paid to STATE.

The IRP, as we understand the agreement, is intended to simplify the registration and fee system for interstate carriers. Unlike the corporate tax system, for example, where the companies owing taxes to various states are required to file in each state, the IRP allows for a single point of registration and payment of fees that are payable to various states. Although the IRP allows a convenient one-stop registration system, nothing in the IRP gives a carrier's base state the authority to override the fee systems set by other member states.

Petitioners argue that the Division was complicit in the imposition of the fees because it issued invoices that included the fees. The Division played a part in this matter when it offered to collect the fees along with the carriers' IRP registration fees. However, Petitioner did not establish that the Division compelled them to pay the fee by denying them registrations if the fees were not paid. The Division explained that when it was faced with the confusing memorandum for the Chair of the IRP board and with STATE'S decision to impose the trailer fees on out-of-state trailers during calendar year 2001, it took steps to collect the fees for the convenience of the carriers – *fees the carriers would have otherwise paid directly to STATE at the border*. Had the Division declined to collect the fees, there would be no question that Petitioners would have paid the fees at the border and that their causes of action would be with the State of STATE.

On receiving the invoices that included trailer fees, Petitioners paid without objection. Had the carriers challenged the imposition of the fees at the time, the Division could not have offered an opinion on the legality of STATE'S law, and it certainly could not have overruled it. At most, the Division could have agreed not to collect the fees, which would have created a situation in which the carriers' trucks were stopped at the border to buy individual trip permits each time they entered STATE. The Division would have been justified in that approach, but the outcome would have been contrary of the fundamental

⁶ See, e.g. *Norville v. State Tax Commission*, 97 P.2d 937 (Utah 1940.) (“Statutes duly enacted by the legislature are presumed to be constitutional and valid.”)

principle of the IRP to facilitate uninterrupted interjurisdictional operations.⁷

As we have already stated, Petitioners would have paid the fees in any event, subject to refund by the STATE Motor Vehicle Division. There is no evidence that the Division endorsed STATE'S fee system or that the Division leveraged Petitioners' IRP registrations to compel payment of the trailer fees.

The Utah State Tax Commission has no authority to refund fees paid to another state.

Utah law specifies the Commission's authority and obligations with regard to refunds and credits. Various sections of the tax code set out the circumstances in which the Commission may issue a refund or credit.⁸ It is clear from section 59-1-303 of the Utah Code, as well as other provisions, that the Commission may only refund overpayments of taxes and fees imposed by Utah law. Nothing in Utah law gives the Commission the authority to tap Utah's Transportation Fund or General Fund in order to refund fees imposed by and paid to another state.

The Utah State Tax Commission has no authority to represent Petitioners' legal interests in STATE.

Petitioners apparently believe that the Commission can refund their fees, and then seek reimbursement from STATE. This approach would thrust the Commission into a legal battle over the application of STATE'S law to Petitioners' trailers and interstate operations. It would put the Commission in Petitioners' shoes and require the Commission to argue and defend the Petitioners' positions in adjudicative processes in STATE or in federal court. The Commission has certain responsibilities to Petitioners under Utah law and the IRP, but its responsibilities do not include providing the carriers with legal representation in disputes that arise in other states. Nor can the Commission refund the fees imposed by STATE, and then expect the resulting self-inflicted wound to create standing as an injured party in Petitioners' dispute with STATE.

DECISION AND ORDER

On the basis of the foregoing discussion, the Commission affirms the denial of Petitioners' refund requests. The Commission has no jurisdiction to determine the legality of the STATE fees or

7 See §102 of the Plan.

8 See, e.g., §§59-1-303; 59-1-402; 59-7-522; 59-10-529, among others.

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whether STATE law violates the IRP or federal law. Those issues must be raised in STATE courts or in federal court. Because the Commission has no jurisdiction over those issues, it is not necessary for the Commission to rule on the applicable payment period or on issues of refunds, credits or offsets.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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