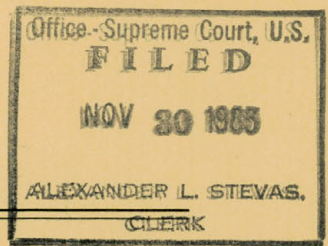


No. 95, ORIGINAL



*In The
Supreme Court of the United States*

OCTOBER TERM, 1983

STATE OF ARKANSAS,

Plaintiff,

v.

STATE OF OKLAHOMA,

Defendant.

ON MOTION FOR LEAVE TO FILE COMPLAINT

**BRIEF IN OPPOSITION TO MOTION
FOR LEAVE TO FILE COMPLAINT**

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QUESTIONS PRESENTED

1. Whether the State of Arkansas in its sovereign capacity and in its proprietary capacity and as *parens patriae* of its citizens has standing to invoke the original jurisdiction of this Court; and
2. Whether the Oklahoma “comparable tax” violates the Constitution of the United States, Article I, Section 8, Clause 3.

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No. 95, ORIGINAL

In The
Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF ARKANSAS)
)
Plaintiff,)
)
VERSUS)
)
STATE OF OKLAHOMA,)
)
Defendant.)

ON MOTION FOR LEAVE TO FILE COMPLAINT

BRIEF IN OPPOSITION TO MOTION
FOR LEAVE TO FILE COMPLAINT

Pursuant to Rule 9 of the Rules of the Supreme Court of the United States, the State of Oklahoma, by and through the Attorney General of Oklahoma and the General Counsel of the Oklahoma Tax Commission, respectfully submits its Brief in Opposition to the Motion for Leave to File Complaint of the State of Arkansas filed herein by and through the Arkansas State Highway Commission on September 30, 1983.

STATEMENT OF THE CASE

Plaintiff, State of Arkansas, has motioned for leave to file an original action in this Court seeking declaratory and injunctive relief from the purported unreasonable, unlawful and prohibited burden placed upon interstate commerce by 47 O.S. Supp. 1982, §22.5j, subsection (K) in violation of the Constitution of the United States, Article I, Section 8, Clause 3, and in violation of the sovereign power of the State of Arkansas to levy taxes.

The Oklahoma Legislature is alleged to have enacted Section 22.5j, supra, in 1982, to retaliate against the Highway Use Equalization Tax enacted by the Arkansas General Assembly in 1983, and to press for repeal of the 1983 Arkansas tax.

The purported violations of the Interstate Commerce Clause and the purported interference with Arkansas' sovereign taxing power are based upon allegations that the Oklahoma "comparable tax" is not fairly related to the services provided by Oklahoma; the tax has no substantial Oklahoma nexus; the tax gives Oklahoma residents an economic advantage; the Arkansas residents receive no greater benefit for the greater amount of tax enacted by Oklahoma; and, the tax will increase the cost of goods consumed by the State of Arkansas and its general public.

Further, it is alleged that the Oklahoma Legislature and the Oklahoma Tax Commission have acted contrary to the Oklahoma Constitution and the Oklahoma Statutes in imposing and administering the tax.

PARTIES

The real parties in interest are the Arkansas residents who operate motor vehicles in excess of a gross combined weight of 73,280 pounds upon the roads and highways of the State of Oklahoma.

The "comparable tax" levied in 47 O.S. Supp 1982, §22.5j is imposed upon the motor vehicle operator for the use of the highway system within Oklahoma.

The State of Arkansas in its sovereign capacity and in its proprietary capacity and as *parens patriae* of its citizens, represented on relation of the Arkansas State Highway Commission suffers no direct injury by the challenged Oklahoma tax and is not a real party in interest.

The State of Oklahoma, as the named defendant, is represented by the Attorney General of Oklahoma and the Oklahoma Tax Commission.

JURISDICTION

The original jurisdiction of this Court over controversies between two states pursuant to the Constitution of the United States, Article III Section 2, Clauses 1 and 2 does not extend to cases wherein the moving State is not a real party in interest.

There exists no justiciable controversy between the State of Arkansas and the State of Oklahoma. It does not appear from the Motion and Complaint that Plaintiff State has suffered a wrong by the actions of Defendant State, nor does Plaintiff State assert a justiciable right against Defendant State.

The purported controversy, if one exists, is between the Arkansas residents upon whom the Oklahoma "comparable tax" in 47 O.S. Supp. 1982, §22.5j is levied and from whom the tax will be collected by the Oklahoma Tax Commission.

QUESTIONS PRESENTED

The issues presented by the Motion for Leave to File Complaint of the State of Arkansas are:

1. Whether the State of Arkansas in its sovereign capacity and in its proprietary capacity and as *parens patriae* of its citizens has standing to invoke the original jurisdiction of this Court; and
2. Whether the Oklahoma "comparable tax" violates the Constitution of the United States, Article I, Section 8, Clause 3.

Plaintiff presents two questions, numbered 2 and 3 in its brief at page 14, relating to the laws of Oklahoma which are matters to be ruled upon by the Supreme Court of the State of Oklahoma.

And, a fundamental question of Arkansas law is herein involved:

Whether the Arkansas State Highway Commission has authority to initiate an action on behalf of the State of Arkansas in the United States Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitutional Provisions

Article III, Section 2, Clause 1:

Section 2, Clause 1. Jurisdiction of Courts

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Article I, Section 8, Clause 3:

Section 8, Clause 3. Regulation of commerce

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

2. Oklahoma Statutory Provisions

47 O.S. Supp. 1982, §22.5j:

§22.5j Proportional registration and licensing of certain vehicles engaged in interstate commerce — Compacts or agreements

A. The Commission may, when in the interest of the State of Oklahoma and its residents, enter into the International Registration Plan or other compacts or agreements with other states to permit motor vehicle registration and license taxes on any truck, bus, truck-tractor, trailer or semitrailer, on a proportional basis commensurate with the use of Oklahoma highways. Proportional registration under such plans may be permitted vehicles engaged in interstate commerce or combined interstate and intrastate commerce.

B. The Commission shall require that such proportional registration be based on the percentage of miles actually operated by such vehicles or fleets of vehicles in the State of Oklahoma in the preceding year in proportion to the total fleet miles operated both within and without Oklahoma. If mileage data is not available for the preceding calendar year, the Commission may accept the latest twelve-month period available. Such percentage figure, so determined by the Commission, shall be the Oklahoma mileage factor. In computing the taxes under the foregoing formula, the Commission shall first compute the license fees for the entire fleet and then multiply the amount by the Oklahoma mileage factor on a dollar basis. Provided, that with respect to those fleet vehicles now required to be licensed and registered in Oklahoma under the provisions of this act, the miles traveled by such vehicles of the fleet in any other states with which this state does not have an agreement for proportional registration of fleet vehicles, and which state grants license plates on registration reciprocity to such vehicles for interstate operation, shall be considered as instate fleet miles.

C. Upon receipt of the Oklahoma license and registration tax, which shall be paid by cash and/or certified funds, as computed under the provisions of the Motor Vehicle License and

Registration Act, the Commission shall register all such fleet vehicles, and shall issue a license plate or decal for each of such vehicles identifying it as part of an interstate fleet.

D. Vehicles so registered on a prorated basis shall be considered fully licensed in Oklahoma and shall be exempt from all further registration or license fees under the provisions of the Motor Vehicle License and Registration Act; provided that such fleet vehicles are proportionally licensed in some other state, territory or possession of the United States or some foreign province, state or country with which said Commission has entered into a prorating compact or agreement.

If a vehicle is permanently withdrawn from a proportionally registered fleet and a replacement vehicle is added to the fleet in the same calendar quarter, said replacement vehicle shall be considered fully registered as provided in Sections 22.5k and 14-109 of this title, provided that said replacement vehicle is registered for a weight equal to or less than the vehicle permanently withdrawn, or if additional registration fees are paid when the replacement vehicle is registered for a weight greater than the vehicle withdrawn. If a vehicle is permanently withdrawn from a proportionally registered fleet and is not replaced by another vehicle in the same calendar quarter, credit shall be allowed as otherwise provided in this section.

E. 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 registration fees due with respect to such vehicle for the remainder of the registration year.

F. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from service, credit shall be allowed. Such credit shall be a sum equal to the amount paid with respect to such vehicle when it was first proportionally registered in the registration year, reduced by one-fourth (1/4) for each calendar

quarter or fraction thereof elapsing since the beginning of the registration year. The credit may be applied against subsequent additions to the fleet to be prorated or for other additional registration fees assessed. In no event shall credit be allowed for fees beyond such registration year, nor shall any such amount be subject to refund. Provided, further, that vehicles removed from a prorated fleet or sold to a nonprorated fleet for operation in Oklahoma shall be registered in Oklahoma for the remaining portion of the year.

G. Mileage proportions for interstate fleets not operated in this state during the preceding year will be determined by the Commission on the basis of the operations of the fleet the preceding year in other states plus the estimated operation in Oklahoma, or, if no operations were conducted the previous year in this state, a full statement of the proposed method of operation.

H. The records of total mileage operated in all states upon which the application is made for a period of three (3) years following the year upon which said application is based shall be preserved. Upon request of the Commission, such records shall be made available for audit as to accuracy of computation and payments. The Commission may enter into agreements with agencies of other states administering motor vehicle registration laws for joint audits of any such records.

I. The Commission may enter into compacts or agreements with other states or other countries or subdivisions of such countries allowing reciprocal privileges to vehicles based in such other states and operating in interstate commerce provided said vehicles are properly registered therein.

J. Interchanged vehicles properly registered in another state may be granted reciprocal privileges when engaged in a continuous movement in interstate commerce, but must register in this state if used in intrastate commerce.

K. *In addition to those taxes or fees imposed by Sections 22.1*

through 22.34 of this title, the same or substantially the same type or category of tax or fee may be imposed upon an out-of-state resident as is imposed upon residents of Oklahoma for the same or substantially similar use of a vehicle in such other state in the amount, or approximate total amount, of any fee or tax, including property, motor fuel, excise, sales, use or mileage tax required by the laws of such other state to be paid by a resident of this state making the same or similar use of a like vehicle in such state.

The Commission shall have the authority to adopt rules and regulations which provide procedures for *implementation of comparable regulatory fees and taxes for vehicles used in this state by residents of other states.*

Any revenue derived from this subsection shall be apportioned in the same manner as provided in Section 22.2A of this title.

It is the intention of the Legislature that the motor vehicle registration and licensing fees assessed against residents of other states operating similar vehicles in Oklahoma be comparably the same as the motor vehicle registration and licensing fees assessed against residents of Oklahoma operating a similar vehicle for a similar purpose in such other state; and that the Commission diligently monitor the motor vehicle registration and licensing fees assessed against residents of Oklahoma by other states and to provide for uniform treatment of Oklahoma residents operating vehicles in other states and for residents of other states operating vehicles in Oklahoma. (Emphasis added)

3. Arkansas Statutory Provisions

Act 65, Section 54, Acts 1929, General Assembly of Arkansas, as last amended by No. 890, Section 1, Acts 1983, General Assembly of Arkansas, in part:

75-201. Fee for registration and licensing of motor vehicles. -

H. Nature of Fees. Each of the fees herein authorized is declared to be a *tax for the privilege of using and operating a*

vehicle on the public roads and highways of the State of Arkansas.

1. Disposition of Fees. All fees, taxes, penalties, and other amounts collected under the provisions of this Section shall be classified as "special revenues", and three percent (3%) of the gross amount thereof shall be credited by the State Treasurer to the Constitutional and Fiscal Agencies Fund as provided by law, until an aggregate of \$1,245,000 during each fiscal year has been credited therefrom to the said Constitutional and Fiscal Agencies Fund, and thereafter during each fiscal year no deduction of the three percent (3%) shall be made, and the net amount thereof shall be distributed as provided by the Arkansas Highway Revenue Distribution Law. (Emphasis added)

Act 60, Section 1, Acts 1945, General Assembly of Arkansas:

75-250. Commission to make reciprocal agreements relating to operation of motor vehicles - Members. - An ex-officio Commission, composed of the Commissioner of Revenues, who shall serve as Chairman, the Director of Highways and the Chairman of the Public Service Commission (Arkansas Transportation Commission), is hereby established for the purpose of representing the State of Arkansas in the matter of making reciprocal agreements relating to the operation of motor vehicles.

Act 685, Section 1, Acts 1983, General Assembly of Arkansas:

75-817.2. Compliance with highway use equalization tax law prerequisite to operation with weight up to 80,000 pounds.

Any motor vehicle registered in Arkansas at the maximum registration fee for 68,001 to 73,280 pounds, as provided in Subsection (7) of Subsection (C) of Section 24 (§75-201) of Act 65 of 1929, as amended, or any motor vehicle registered in any other state to carry in excess of 73,280 pounds, shall be authorized to operate in this State with a gross weight of up to 80,000 pounds, in accordance with Act 7 of 1983 (§§ 75-809, 75-814, 75-816 — 75-817), provided said vehicle complies with the appropriate Subsections

of the following Section 2 (§75-817.3) of this Act, the Highway Use Equalization Tax Law.

Act 685, Section 2, Acts 1983, General Assembly of Arkansas, in part:

(b) A tax is hereby imposed upon all users, as defined in Subsection (a), above, of motor vehicles, as herein defined, in compensation for the use of the highways of this State to be known as the "Highway Use Equalization Tax". Such tax shall be in addition to all other taxes now required to be paid on such vehicles except as hereinafter provided.

(c) The Highway Use Equalization Tax shall not apply to any motor vehicle whose declared gross weight as defined in Subsection (a), above, is 73,280 pounds or less, . . .

(f) (1) At the time of such qualification of any Arkansas registered truck subject to this Section which is registered through the International Registration Plan, the Division may fix a mileage rate in cents per mile for each truck so registered and qualified. The Division shall determine the mileage rate, utilizing the gross weight declared in the application for registration of the truck, according to the following table:

<u>Vehicle Weight (pounds)</u>	<u>Mileage Rate (dollars)</u>
73,281 - 80,000	\$.05

The tax determined under this provision for every truck subject thereto shall be in the amount of the determined mileage rate multiplied by each mile such truck is operated over the highways of this State, as reported to the Division for registration under the International Registration Plan.

(2) At the time of such qualification of any Arkansas registered truck subject to the provisions of this Section, every user not registered through the International Registration Plan shall pay, and every user registered through the International Registration Plan may elect to pay, an annual mileage tax in lieu of an amount determined by the applicable mileage rate set forth by Subsection (f) (1) of this Section. The Division shall determine such annual

mileage tax by utilizing the gross weight declared in the application for registration of the truck, according to the following table:

<u>Vehicle Weight (pounds)</u>	<u>Annual Tax (dollars)</u>
73,281-80,000	\$175

(g) The tax, as determined by either Subsection (f) (1) or Subsection (f) (2) of this Section, shall become due and payable at the time of registration. No license shall be issued, nor operation authority granted, to any Arkansas registered user subject to the provisions of this Act until such time as the full amount of the tax determined to be due, under the provisions of this Section, together with all penalties, shall have been paid.

(h) The Division is hereby authorized to collect those taxes and fees imposed by this Section upon the Arkansas registered users subject to the provisions of this Act (§§ 75-817.2, 75-817.3, 75-819 (b)), to make timely deposits into the State Treasury of all such moneys collected by the Division, and to administer the provisions of this Section as they pertain to Arkansas registered users, including the right to inspect and audit at reasonable times at any place within this State the books, records and documents of any Arkansas registered users required to pay the Highway Use Equalization Tax hereby imposed.

(i) (1) The user of any vehicle, subject to the provisions of this Section, may, in lieu of qualification in accordance with the provisions of Subsection (e) of this Section, remit to the Department either an annual mileage tax in an amount determined by Subsection (f) (2) of this Section, or pay an amount determined by the applicable mileage rate set forth in (f) (1) of this Section, or pay a trip permit fee. It is the intent of this Act that all users, subject to the provisions of this Section, must either qualify with the Division as provided in Subsection (e) of this Section and pay the appropriate taxes, or comply with the provisions of this Subsection. *Provided, that all Arkansas registered vehicles must qualify with the Division and remit such taxes to the Division . . .*

(j) The tax provided for in this Section of this Act must be paid by the users of all applicable vehicles using the highways of this State, and *no reciprocal agreement or agreement of any nature heretofore or hereafter entered into between officials of this State and those of any other State may exempt any user of such vehicles using the highways of this State from the provisions of this Section of this Act and payment of the tax levied by this Section of this Act.*

(k) Any user found operating any vehicle subject to the provisions of this Section of this Act over the highways of this State without complying with this Section or without having available in or on the cab thereof the appropriate certificate or trip permit required by this Section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of no less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00) for the first offense and of no less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00) for each subsequent offense.

(l) This Section of this Act shall be liberally construed to effectuate the purposes thereof.

(m) All fees, taxes, penalties and interest collected under the provisions of this Section of this Act not specifically classified as "Constitutional and Fiscal Agencies Funds" shall be classified as "special revenues" and shall be deposited in the State Treasury, and the net amount thereof shall be transferred by the State Treasurer on the last business day of each month: 15% of the amount thereof, to the County Aid Fund; 15% of the amount thereof, to the Municipal Aid Fund; and 70% of the amount thereof, to the State Highway Department Fund, such funds to be further disbursed in the same manner and used for the same purposes as is set out in the "Arkansas Highway Revenue Distribution Law." (Emphasis added)

BACKGROUND

Pursuant to Section 22.5j and 22.5k of Title 47 of the Oklahoma Statutes, the registration and license tax rates upon motor vehicles weighing in excess of 73,280 pounds are based upon weight and prorated or allocated to Oklahoma upon mileage. For 1983, the Oklahoma annual registration and license tax rates upon vehicles weighing between 73,280 to 80,000 pounds are:

Weight/Pounds	Tax Rate
73,280	\$661.00
74,000	671.00
75,000	681.00
76,000	691.00
77,000	701.00
78,000	711.00
79,000	721.00
80,000	731.00

(Appendices Pages A6-A7)

All revenues derived from the registration and license tax are distributed to the various counties and municipalities of Oklahoma, the County Road Fund and the Oklahoma Tax Commission (5%) for the purpose of construction, maintenance, repair and improvement of the highways, roads and streets of Oklahoma and for matching federal aid projects funds for county roads. 47 O.S.1981, §22.2A.

The registration and license taxes are levied for the express purpose of reimbursing the state, counties and cities for the use of the public highways and are in lieu of all ad valorem taxes upon such vehicles as personal property. 47 O.S. 1981, §22.10.

Pursuant to Act 890, Section 1, Acts 1983 of the General Assembly of Arkansas, §75-201, the registration and license tax rates upon motor vehicles weighing less than 73,280 pounds are based upon weight and prorated or allocated to Arkansas upon

mileage as authorized in Act 60, Section 1, Acts 1945 of the General Assembly of Arkansas, §75-250.

For 1983, the Arkansas annual registration and license tax rates upon vehicles weighing from 68,001 pounds to 80,000 pounds are:

Weight/Pounds	Tax Rate
68,001	\$ 972.00
69,000	987.00
70,000	1,001.00
71,000	1,015.00
72,000	1,030.00
73,000	1,044.00
73,281	1,044.00
74,000	1,044.00
75,000	1,044.00
76,000	1,044.00
77,000	1,044.00
78,000	1,044.00
79,000	1,044.00
80,000	1,044.00

(Apendices, Pages A3-A5)

The revenues derived from the registration and license tax are distributed to the Constitutional and Fiscal Agencies Fund (3%) and the remainder is distributed under the Arkansas Highway Revenue Distribution Law. §75-201.

The registration and license taxes are expressly declared to be taxes for the privilege of using and operating a vehicle on the public roads and highways of Arkansas. §75-250.

Pursuant to authority granted by the respective state legislatures, both the State of Arkansas and the State of Oklahoma are participating members of the International Registration Plan (hereinafter IRP), a registration reciprocal agreement among twenty-seven (27) taxing jurisdictions. Arkansas became a participating member of the IRP on August 26, 1975, beginning with

the 1976 registration year. Oklahoma became a participating member on September 27, 1976, beginning with the 1978 registration year. (Appendices, Pages A19-A27)

The purpose of the IRP is to provide a uniform system of registration of vehicles used or maintained for use in two or more states or taxing jurisdictions. *Two important effects of the IRP are that the registration and license taxes and other similar highway user taxes or fees are prorated among the participating jurisdictions* based upon mileage traveled in the jurisdiction during the preceding year and only one license plate and cab card for each apportionable vehicle is issued.

Under the IRP, an Oklahoma based vehicle weighing 73,281 pounds and, during 1982, travelling equal miles (50%) in Arkansas and Oklahoma, for 1983 will be required to pay registration and license taxes as follows:

Oklahoma: \$661.00 X .5 = \$330.50

Arkansas: \$1,044.00 X .5 = \$522.00

However, authorization to use the highways of Arkansas will not be granted to this Oklahoma based vehicle unless the Arkansas highway use equalization tax is paid. This tax is *not* prorated. If the vehicle travels more than 3,500 miles in Arkansas, then the vehicle will be required to pay the lump sum of \$175.00 to the Arkansas State Highway Commission as the highway use equalization tax, in addition to the Arkansas prorated registration and license tax. Thus, the Oklahoma based vehicle, in the above hypothetical will pay Arkansas \$522.00 registration and \$175.00 highway use, totaling \$697.00 and Oklahoma \$330.50. This hypothetical, with equal miles in each state, crystallizes the fallacy in Arkansas' assertions that Oklahoma is injuring Arkansas. For the same miles and the same vehicle, Arkansas exacts more than twice as much as Oklahoma. Further, if the hypothetical is an Arkansas resident vehicle, the Oklahoma comparable tax is exacted, but again Oklahoma's total exaction is less than Arkansas' because Arkansas' prorated

registration and license tax is greater than that of Oklahoma, to wit:

Oklahoma: $\$661.00 \times .5 = \$330.50 + \$175.00 = \505.00

Arkansas: $\$1,044.00 \times .5 = \$522.00 + \$175.00 = \697.00

At the crux of this case is this additional, unapportioned by mileage and unprorated under the IRP, Arkansas highway user tax that is reflected in Oklahoma's challenged comparable tax levied in 47 O.S. Supp. 1982, §22.5j upon the Arkansas resident vehicle.

Generally, the scheme of taxes, fees and charges imposed upon motor vehicles operating in two or more states is three-tiered:

1. registration fees are the first structure taxes;
2. fuel taxes are the second structure taxes; and
3. cab card stamp fees, marker fees, retaliatory or counterpart or comparable or mirror or reciprocal fees or taxes, and non-apportioned weight, distance or weight-distance fees are the third structure taxes.

B & L Motor Freight, Inc. v. Heyman, 293 A.2d 711, cert. denied 317 A.2d 707, (NJ: 1972)

In 1982, in an attempt to assure uniform tax treatment for Oklahoma based vehicles, the Oklahoma Legislature amended §22.5j, adding subsection (K), imposing a comparable third structure tax upon resident vehicles of the state imposing a third structure tax upon Oklahoma resident vehicles. This was in response to third structure taxes, such as the cab card stamp fees levied by Ohio (\$30.00), Louisiana (\$5.00), Missouri (\$25.00), Indiana (\$12.00), Connecticut (\$10.00), Kansas (\$10.00), Massachusetts (\$10.00), Maine (\$8.00), Rhode Island (\$7.00), and Mississippi (\$12.00).

Arkansas retaliates against Mississippi for its \$12.00 cab card fee. And, several other states have authority and do collect retaliatory, reciprocal, comparable, counterpart or mirror taxes

levied upon their respective state-based vehicles operating in interstate businesses, such as Georgia, Illinois, Louisiana, Minnesota, Nebraska, New Jersey, New Hampshire, Tennessee, Vermont and Wisconsin.

Article III, paragraph B of the IRP's organic document, and the official commentary voted by the member jurisdictions, clearly state that a proliferation of non-apportionable fees, the third structure fees, may result in impeding the free movement of commerce among the member jurisdictions and may contravene the purpose of the IRP: to promote and encourage the fullest possible use of the highway system, thereby contributing to the economic and social growth of the member jurisdictions. (Appendices, Pages A19-A47)

Arkansas, apparently suffering from declines in revenues and increased governmental costs, similar to many other states, also, had to allow vehicles weighing up to 80,000 pounds operating upon its public highways to be eligible for highway federal aid. 23 U.S.C. §127. Arkansas raised the permissible weights, but did not increase its registration and license tax accordingly for the privilege of operating upon Arkansas public highways.

Instead, Arkansas abandoned its tax scheme and registration reciprocity and enacted the highway use equalization tax, a third structure tax, to provide funds for highways. This non-apportioned tax constitutes a serious departure from the policy set forth in the preamble to Act 60, Acts 1945 of the General Assembly of Arkansas §75-250, authorizing reciprocity, to-wit:

“Whereas, the free flow of commerce between the several states of the United States not only reduces costs to the producer, manufacturer, and consumer, but also gives a distinct advantage to citizens of those states having no trade barriers, and

“Whereas, the motor transportation industry is of widespread importance to every citizen, industry, business, producer and manufacturer in the State of Arkansas, and

"Whereas, motor carriers domiciled in Arkansas are confronted with certain trade barriers, which increase their operating costs and place them at a distinct disadvantage in competing with carriers domiciled in other states, and

"Whereas, numerous states of the United States, including our neighbor commonwelaths of Tennessee, Missouri, Oklahoma, Texas and Louisiana, have enacted laws effecting the removal of trade barriers that were retarding the growth and usefulness of the motor carrier industry within such States, and

"Whereas, states having reciprocal laws retaliate against motor carriers domiciled in Arkansas because Arkansas is not authorized to make reciprocal agreements, which retaliation results in a pyramiding of the operating expense of Arkansas carriers and discourages the investment of new capital within the State, Now Therefore, . . ."

Until the highway use equalization tax, reciprocity prevailed in this taxing scheme in Arkansas. Act 685, supra, however, expressly removes reciprocity as an element of the highway use equalization tax, although reciprocity and IRP proration of registration fees remain a reality in Arkansas. Such conflict in Arkansas taxing policy as to interstate vehicles may reflect state house policies, but to the Oklahoma based trucker both Arkansas taxes must be paid.

On May 2, 1983, the Oklahoma Legislature adopted House Concurrent Resolution No. 1001 of the 39th Oklahoma Legislature, directing the Oklahoma Tax Commission to negotiate for reciprocity with other states regarding these third structure taxes and urging the Oklahoma Tax Commission to collect the comparable fees and taxes from nonresident vehicle operators if the resident state collects its third structure tax from Oklahoma residents. (Appendices, Pages A1-A2). Thus, the Oklahoma Tax Commission has proceeded to enforce the comparable tax against Arkansas resident vehicles in accordance with Oklahoma laws.

Pursuant to the information required to prorate registration and license fees under the IRP, it is estimated that Oklahoma is the resident jurisdiction of approximately 38,893 apportionable vehicles and Arkansas is the resident jurisdiction of approximately 12,466 apportionable vehicles. (Appendices, Pages A8-A9). Thus, by virtue of the numbers, Oklahoma residents may carry more of the Arkansas tax burden than Arkansas residents.

The operators of these apportionable vehicles have instituted a class action seeking redress of the grievances caused by Arkansas' new tax in the Chancery Court of Pulaski County, State of Arkansas in Cause No. 83-2360 styled:

AMERICAN TRUCKING ASSOCIATIONS, INC.,
TRANSCON LINES, INC., DIAMOND TRANSPORTATION SYSTEM, INC., ROLLINS LEASING CORPORATION, AND COMMERCIAL CARRIERS, INC.,
AND JOE FORTENBERRY, D/B/A FERNWOOD TRANSPORTATION, ON BEHALF OF THEMSELVES
AND ALL OTHER SIMILARLY SITUATED TAXPAYERS;
AND ARKANSAS BUS AND TRUCK ASSOCIATION, INC., AND JONES TRUCK LINES, INC.,
AND LEON CAWOOD, D/B/A LEON CAWOOD TRUCKING, ON BEHALF OF THEMSELVES
AND ALL OTHER SIMILARLY SITUATED TAXPAYERS,

PLAINTIFFS,

VS.

HENRY C. GRAY, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT;
DAVID SOLOMAN; RON HERROD; PATSY LEE THOMASSON; RAYMOND PRITCHETT, JR.; AND BOBBY HOOPER; MEMBERS OF THE ARKANSAS STATE HIGHWAY COMMISSION; ROY L. JOHNSON, CHIEF OF THE ARKANSAS HIGHWAY POLICE DIVISION OF THE ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT; CHARLES D.

RAGLAND, COMMISSIONER OF REVENUES, REVENUE DIVISION, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION, JIMMY LOU FISHER, TREASURER OF THE STATE OF ARKANSAS; MAHLON MARTIN, DIRECTOR, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION,

DEFENDANTS.

And, suit against the State of Oklahoma to challenge Oklahoma's comparable tax has been publicized in the press in Arkansas. The Attorney General of Arkansas refused to institute an action against Oklahoma challenging its comparable tax even though the Governor of Arkansas requested him to file such a suit. Consequently, the Governor of Arkansas requested the Arkansas State Highway Commission to challenge Oklahoma's tax.

**AUTHORITY OF THE ARKANSAS STATE
HIGHWAY COMMISSION TO REPRESENT
THE STATE OF ARKANSAS.**

Preliminary to the legal argument in opposition to Plaintiff's Motion for Leave to File Complaint, is the state question of the Arkansas State Highway Commission's authority to institute and maintain this act.

The constitutional office of Attorney General and the constitutional State Highway Commission, pursuant to the constitution of Arkansas, each shall have the powers and duties prescribed by law. Article 6, Section 22 and Amendment No. 42, Constitution of Arkansas.

Act 131, Section 2, Acts 911 of the General Assembly of Arkansas, §12-712, mandates that the Attorney General shall maintain the interests of the State in all matters before the United States Supreme Court. However, the State Highway Commission, under Act 65, Section 53, Acts 1929 of the General Assembly of Arkansas, §76-217, is authorized to bring suit to

enforce contracts arising under the act. Even so, such suit must be brought by the Attorney General in the name of the State.

Thus, the Arkansas statutes require this action be maintained by the State Attorney General, who has declined to bring an action against Oklahoma challenging the involved tax.

In the case of *Morley, Commissioner of Revenues v. Berg*, 26, S. W. 2d 559 (Ark: 1950), authority of the Commissioner to bring suit was challenged. The Arkansas Court held that the Commissioner had authority to maintain the action as the Arkansas Legislature authorized him to bring suit in his name to collect the monies involved.

In the instant matter, however, the State Highway Commission neither collects nor pays the challenged tax.

Pursuant to Act 685, Acts of 1983 of the General Assembly of Arkansas, §75-817.3, the State Highway Commission (Arkansas Highway and Transportation Department) collects the highway use equalization tax from the out-of-state based vehicles (Oklahoma resident vehicles). However, it is not that tax nor the collection thereof which is here challenged. Challenged is the Oklahoma tax, comparable to the highway use equalization tax collected by the Arkansas State Highway Commission, collected by Oklahoma from the Arkansas resident vehicles operated upon Oklahoma's public roads and highways. And, the Arkansas highway use equalization tax levied against the Arkansas resident vehicles is collected by the Division of Revenue of the Arkansas Department of Finance and Administration.

Thus, the State of Oklahoma asserts that the Arkansas State Highway Commission is not clothed with the necessary power under the Arkansas laws to institute an original action in this Court and the Motion to Leave to File Complaint should be denied, unless urged by the Arkansas Attorney General.

DEFENDANT'S ARGUMENT FOR DENYING THE MOTION FOR LEAVE TO FILE COMPLAINT

Defendant's argument is in two parts: response to Plaintiff's argument and Defendant's counter-argument.

1. Response to Plaintiff's Arguments

This response to Plaintiff's arguments corresponds in sequence to the argument set forth in Plaintiff's Brief on pages 24 through 38.

First, the State of Arkansas in its sovereign capacity does not have standing to challenge the Oklahoma (Retaliatory) comparable tax. The cases cited by Plaintiff to support its standing to challenge Oklahoma's tax, on the contrary, demonstrate the lack of standing of the State of Arkansas to invoke this Court's original jurisdiction.

Maryland v. Louisiana, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981) recognizes that the controversy must be directly between the states to justify exercise of this Court's original jurisdiction.

"Standing to sue, however, exists for constitutional purposes if the injury alleged fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41-42, 96 S.Ct. 1917, 1925-1926, 48 L.Ed.2d 450 (1976). See *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72-81, 98 S.Ct. 2620, 2630-2634, 57 L.Ed.2d 595 (1978). This is clearly the case here. *The plaintiff States are substantial consumers of natural gas.* The First-Use Tax, while imposed on the pipeline companies, is clearly intended to be passed on to the ultimate consumer. Indeed, the statute forbids the Tax from being passed on or back to any third party other than the purchaser of the gas and explicitly directs that it should be considered as a cost of preparing the gas for

market. La.Rev.Stat. Ann. §47:1303 C (West Supp. 1981). In fact, the pipeline companies, with the approval of the FERC, have passed on the cost of the First-Use Tax to their customers. See Louisiana First-Use Tax in Pipeline Rate Cases, Docket No. RM78-23, Order No. 10, 43 Fed.Reg. 45553 (1978). Thus, the Special Master properly determined that 'although the tax is collected from the pipelines, it is really a burden on consumers.' Second Report, at 12. *It is clear that the plaintiff states, as major purchasers of natural gas whose cost has increased as a direct result of Louisiana's imposition of the First-Use Tax, are directly affected in a 'substantial and real' way so as to justify their exercise of this Court's original jurisdiction.*" 101 S.Ct. pp 2123-2124. (emphasis added)

Arkansas has not alleged that it is a substantial consumer, nor that its costs have directly increased, but only that costs will increase.

Arkansas alleges its sovereign taxing power must be protected by this Court. Oklahoma's tax does not infringe upon the sovereign taxing power of Arkansas. As demonstrated, Arkansas levies an annual registration and license tax which is \$300.00 per vehicle more than that of Oklahoma. And, Arkansas, contrary to its established and existing reciprocity policy and IRP membership, now exacts an additional \$175.00 annually from each heavy, interstate vehicle for use of its roads. Unless this additional tax is paid, registration or authorization to operate upon the public highways is withheld. Further, a vehicle, if qualified in any state at a weight in excess of 73,280 pounds, whether or not its weight is in excess of 73,280 when operated upon the public highways of Arkansas, must pay the additional highway use equalization tax. (Appendices, Pages A13-A18). In view of this tax scheme, infringement upon the sovereign taxing powers of Arkansas becomes elusive.

This Court must look beyond the mere allegations of the State of Arkansas to determine the interest asserted. *State of Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387, 58 S.Ct. 954 (1938).

In *State of Arkansas v. State of Texas*, 346 U.S. 368, 74 S.Ct. 109 (1953), in holding that the State of Arkansas had standing to sue the State of Texas to enjoin alleged unlawful interference with performance of a contract, the Court stated, at p. 111:

“(7,8) In determining whether the interest being litigated is an appropriate one for the exercise of our original jurisdiction we of course look behind and beyond the legal form in which the claim of the State is pressed. *We determine whether in substance the claim is that of the State*, whether the State is indeed the real party in interest. *State of Oklahoma v. Cook*, supra, 304 U.S. at pages 392-396 58 S.Ct. at pages 956-958, 82 L.Ed.1416. Arkansas is in our view the real party in interest. The University of Arkansas is her agency in the educational field — a branch or department of the State. (Emphasis added)

In the purported controversy at bar, the substance of Arkansas’ claim is that Arkansas resident vehicles are subjected to illegal exactions by Oklahoma. The interest at stake is not the sovereign taxing powers of Arkansas, nor any other interest of the Plaintiff State.

In *Arizona v. New Mexico*, 425 U.S. 794, 96 S.Ct. 1845, 48 L.Ed.2d 376 (1976) this Court denied Arizona’s Motion for Leave to File Complaint. In denying Arizona’s Motion, the Court recognized the principles that original jurisdiction should be invoked sparingly, *Illinois v. City of Milwaukee*, 406 U.S. 91, 92 S.Ct. 1385, 31 L.Ed. 2d 712 (1972); and, that original jurisdiction should be exercised only when necessary for the complaining state’s protection, *Massachusetts v. Missouri*, 308 U.S. 1, 60 S.Ct. 39, 84 L.Ed.3 (1939). The Court noted that the state tax levied by New Mexico was upon the utilities and that the pending state court action provided an appropriate action.

The Arkansas highway use equalization tax is challenged in the aforesated class action pending in Arkansas state court. Mr. Gray, Director of the State Highway Commission, and each member of the Commission and other involved Arkansas

agencies are parties defendant. The Arkansas tax is challenged by the motor vehicle operators (Arkansas taxpayers) under the Interstate Commerce Clause, the Privileges and Immunities Clause, the Supremacy Clause, and the Fourteenth Amendment (equal protection) of the United States Constitution; the uniformity provision of the Arkansas Constitution; and, as a breach of the IRP; and, that it illegally delegates legislative taxing powers to the administering agents.

If Arkansas' tax is held to be unconstitutional or otherwise legally infirmed to bar enforcement, then the Oklahoma comparable tax will not be collected. In view of the serious challenges to the Arkansas tax asserted by Arkansas taxpayers, before the Arkansas courts, this is not an appropriate case for exercise of this Court's original jurisdiction, notwithstanding Plaintiff's lack of standing.

Plaintiff's argument that more states will follow Oklahoma's lead until state taxes bear no relation to economic reality presumes the various state legislatures and chiefs of state act without regard to economic reality. To support this argument Plaintiff relies upon the dissent in *Western and Southern Life Insurance Co. v. State Board of Equalization*, 451 U.S. 648, 101 S.Ct. 2070, 68 L.Ed.2d 514 (1981). In *Western and Southern Life* this court upheld California's retaliatory insurance premium tax against challenges under the privileges and immunities clause and the equal protection clause of the Fourteenth Amendment of the United States Constitution.

Congress has and does recognize the states' powers to tax motor vehicle transportation. 23 U.S.C. §126, subsection (a). Congress recognizes the state taxation in the form of registration fees, licenses, gasoline taxes, and other special taxes as motor vehicle owners. (The three-tier tax structure.) However, in 23 U.S.C. §127, subsection (b), Congress prohibits the states from enacting laws (tax laws) which would deny reasonable access to motor vehicles to and from the Interstate Highway System to terminals, and facilities for food, fuel, repairs, and rest.

In 49 U.S.C. §10101, part of the recent recodification of the transportation laws, Congress set forth the transportation policy of the United States. This policy includes promotion of economical transportation, encouragement of sound economic conditions, establishment and maintenance of reasonable rates and cooperation with each state and the officials of each state on transportation matters. Such policy is consistent with the express intent of the Oklahoma legislature and the IRP.

Further, in 49 U.S.C. §10521 Congress specifically provided that the state taxation power over a motor carrier would not be affected except as set out in 49 U.S.C. §§11503a and 11504(b). Section 11503a prescribes certain limits upon ad valorem taxation of motor carriers' property, and §11504, subsection (b) prescribes certain limits on state withholding income taxation. And, 49 U.S.C. §11506 recognizes state registration requirements of carriers controlled by the Interstate Commerce Commission.

Congress has not limited the states' taxing powers over motor vehicle carriers. Rather, Congress has explicitly recognized the three-tier tax structure (which includes the comparable or retaliatory taxes).

Thus, similar to the declared policy of Congress that the continued regulation and taxation by the states of the business of insurance, the national transportation policy recognizes the continued state taxation of the motor carriers and the existing three-tier tax structure.

Second, the State of Arkansas does not have standing to challenge Oklahoma's comparable tax in its proprietary capacity or as *parens patriae* of its citizens. Plaintiff asserts that the cost of goods will increase because of Oklahoma's tax. Such reasoning has no merit. By comparison of the levels of registration and license taxes of Oklahoma to Arkansas, Arkansas' complaint that a sister state's tax, in a lesser amount than Arkansas exacts, asserts no injury or justiciable right. This Court should not expend its limited time entertaining such complaints.

Thirdly, Plaintiff asserts that this is an appropriate case for this

Court to exercise its original jurisdiction as substantial federal questions are involved.

There are no serious and important federal questions involved. Plaintiff argues that the mixture of private taxpayer decisions and public sister state decisions creates an extraordinary tax and thus, substantial federal question. Essentially Oklahoma's tax, imposed by the public body of the Oklahoma Legislature, for the stated purpose to provide uniform treatment of Oklahoma residents, is the same mixture of public taxes imposed upon private taxpayers throughout the United States, at all levels of government.

Plaintiff does note that Oklahoma's levy mirrors the taxes of her sister states, and that Oklahoma's tax will differ in amounts for the carriers from different taxing jurisdictions. Such realities were held not to invalidate the retaliatory tax in *Western and Southern Life Insurance Co. v. State Board of Equalization*, *supra*.

Finally, Oklahoma's comparable tax does not violate Article I, Section 8, Clause 3 of the United States Constitution.

Plaintiff argues that Oklahoma's comparable tax violates the commerce clause under the four pronged test in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977). The four pronged standard is:

1. sufficient nexus to the state to justify the tax;
2. tax is fairly related to benefits provided to the taxpayer;
3. the tax does not discriminate against interstate commerce;
and
4. the tax is fairly apportioned.

Plaintiff's argument that Oklahoma's tax has no Oklahoma nexus is frivolous. The tax is levied upon the use of Oklahoma's public roads and highways.

Plaintiff's argument that Oklahoma does not provide a fairly

related benefit is likewise frivolous. Revenues from the comparable tax are distributed for roads and highways in Oklahoma. The benefits are those public roads and highways.

Plaintiff's argument that it discriminates against interstate is based upon the fact that Oklahoma's comparable tax is not an exaction from Oklahoma residents.

In *Kane v. New Jersey*, 242 U.S. 160, 37 S.Ct. 30, 61 L.Ed. 222 (1916), the Court ruled that a state may determine the conditions for use of its highway by vehicles in interstate commerce.

And, in *Capitol Greyhound Lines v. Brice*, 339 U.S. 542, 70 S.Ct. 806, 94 L.Ed. 1053, 17 A.L.R. 2d 407 (1950), the Court ruled that the state tax upon motor vehicles in interstate commerce must be judged by its results, not its formula, and such tax must be upheld unless proven to be an unreasonable amount for the privilege granted.

Under these standards, Oklahoma's tax does not violate the commerce clause.

Plaintiff does not argue the apportionment test of the *Complete Auto Transit* standard. Arkansas does not prorate or apportion its annual highway use equalization tax, even though it does prorate its annual registration and license tax.

2. Defendant's Counter-Argument

Arkansas has failed to state a claim upon which relief can be granted. Without injury or harm to the State of Arkansas caused by the actions of the State of Oklahoma, no controversy exists between the states. Arkansas has no standing to seek relief by way of an original action before this Court. *Oklahoma ex rel Johnson v. Cook*, 304 U.S. 387, 58 S.Ct. 954 (1938); *Louisiana v. Texas*, 176 U.S. 1, 20 S.Ct. 251 (1900); *State of Texas v. State of Florida*, 306 U.S. 398, 59 S.Ct. 563 (1939); *Commonwealth of Massachusetts v. State of Missouri*, 308 U.S. 1, 60 S.Ct. 39 (1939); *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); and, *Simon v. Eastern Kentucky Welfare Rights*

Organization, 426 U.S. 26, 96 S.Ct. 1971, 48 L.Ed.2d 450 (1976).

The interests involved in this suit are interests of a few particular residents of Arkansas. Arkansas may not seek relief by original action in this Court on behalf of particular citizens. *Hawaii v. Standard Oil Company of California* 405 U.S. 251, 92 S.Ct. 885 31 L.Ed.2 184 (1972); and *Maryland v. Louisiana*, *supra*.

The standard by which a state tax upon motor vehicle operators for the use of the public highways is measured under the commerce clause is whether the amount of the exaction is unduly disproportionate to the expenses and costs of the highways provided. *Interstate Transit Inc. v. Lindsey*, 283 U.S.183, 51 S.Ct. 380, 75 L.Ed. 953 (1931); *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 59 S.Ct. 744 (1939); *Commonwealth Edison Company v. Montana*, 453 U.S. 609 101 S.Ct. 2946, footnote 12 at page 2955, 69 L.Ed.2d 884 (1981); and, *Capital Greyhound Lines v. Brice*, *supra*.

CONCLUSION

This Court has often held that its original jurisdiction should be exercised sparingly. *Illinois v. City of Milwaukee*, supra. And, this Court has long held the complaining state to a heavy burden to clearly establish its interest or injury to be vindicated by relief in this Court. *Alabama v. Arizona*, 291 U.S.286, 54 S.Ct. 399, 78 L.Ed. 798 (1934).

Arkansas does not assert an interest or injury sufficient to meet these standards. Accordingly, the State of Oklahoma respectfully submits that the Motion for Leave to File Complaint should be dismissed and the state of Oklahoma should be reimbursed all its costs herein.

/s/

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/s/

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/s/

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CERTIFICATE OF SERVICE

In accordance with Rules 9 and 28, on November 29, 1983, three copies of the above and foregoing Brief in Opposition to Motion for Leave to File Complaint were deposited in the United States Mail, sufficient first class postage prepaid, addressed as follows:

1. The Honorable Bill Clinton
Governor
State of Arkansas
State Capitol Building
Little Rock, Arkansas 72201
2. The Honorable John Steven Clark
Attorney General of Arkansas
Justice Building
Little Rock, Arkansas 72201
3. Thomas B. Keys
Chief Counsel for the
Arkansas State Highway Commission
Post Office Box 2261
Little Rock, Arkansas 72203

Attorney for Plaintiff
State of Arkansas

/s/
Donna E. Cox, Attorney

THIRTY-NINTH LEGISLATURE
MOTOR VEHICLES - FEES - TAXES - COLLECTION

H.C.Res.No. 1001

**A CONCURRENT RESOLUTION URGING THE
OKLAHOMA TAX COMMISSION TO COLLECT
CERTAIN FEES AND TAXES; ENCOURAGING THE
NEGOTIATION OF CERTAIN AGREEMENTS; AND
DIRECTING DISTRIBUTION.**

WHEREAS, the 2nd Session of the 38th Oklahoma Legislature enacted House Bill No. 1855, Section 1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, Section 607.1) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K), which provide that a use fee or tax may be imposed upon a resident of another state for the operation of vehicles in this state if the other state imposes a similar use fee or tax upon Oklahoma residents for the operation of vehicles in said other state; and

WHEREAS, the collection of said fee or tax is discretionary and the decision to collect the fee or tax is the responsibility of the Oklahoma Tax Commission; and

WHEREAS, Oklahoma residents who must pay a fee or tax in other states are placed at an economic disadvantage because non residents do not have to pay a comparable fee or tax in this state; and

WHEREAS, it is the intent of the Legislature that the fee or tax authorized by Section 1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, Section 607.1) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K) be collected from nonresident if the state of residence of said nonresident imposes and collects a similar fee or tax from Oklahoma nonresidents.

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE
OF REPRESENTATIVES OF THE 1ST SESSION OF THE**

39TH OKLAHOMA LEGISLATURE, THE SENATE CONCURRING THEREIN:

SECTION 1. The Oklahoma Legislature urges the Oklahoma Tax Commission to collect the fees and taxes authorized by Section 1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, Section 607.1) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K) from non resident operating vehicles in this state if the state of residency of such nonresident imposes a similar fee or tax upon Oklahoma residents.

SECTION 2. The Oklahoma Legislature further encourages the Oklahoma Tax Commission to negotiate with other states imposing a use fee or tax similar to the fees and taxes authorized by Section '1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, section 607.1) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K) to provide for reciprocity agreements which would exempt Oklahoma residents operating vehicles in other states from such fees or taxes in exchange for exempting residents of other states from the provisions of Section 1, Chapter 104, O.S.L. 1982 (68 O.S. Supp. 1982, Section 607.1) and House Bill No. 1853, Section 1, Chapter 155, O.S.L. 1982 (47 O.S. Supp. 1982, Section 22.5j, subsection K).

SECTION 3. Copies of this resolution shall be dispatched to members of the Oklahoma Tax Commission.

Adopted by the House of Representatives the 7th day of March, 1983.

Filed with the Secretary of State May 3, 1983.

STATE OF ARKANSAS
TRUCK AND TRAILER FEE SCHEDULE
BASED ON COMBINED GROSS WEIGHT

B Class	Full Year	½ Year	¼ Year
6,001	\$ 39.00	\$ 19.50	9.75
7,000	46.00	23.00	11.50
8,000	52.00	26.00	13.00
9,000	59.00	29.50	14.75
10,000	65.00	32.50	16.25
11,000	72.00	36.00	18.00
12,000	78.00	39.00	19.50
13,000	85.00	42.50	21.25
14,000	91.00	45.50	22.75
15,000	98.00	49.00	24.50
16,000	104.00	52.00	26.00
17,000	111.00	55.50	27.75
18,000	117.00	58.50	29.25
19,000	124.00	62.00	31.00
C Class			
20,001	169.00	84.50	42.45
21,000	177.00	88.50	44.25
22,000	186.00	93.00	46.50
23,000	194.00	97.00	48.50
24,000	203.00	101.50	50.75
25,000	211.00	105.50	52.75
26,000	220.00	110.00	55.00
27,000	228.00	114.00	57.00
28,000	237.00	118.50	59.25
29,000	245.00	112.50	61.25
30,000	254.00	127.00	63.50
31,000	262.00	131.00	65.50
32,000	270.00	135.00	67.50
33,000	279.00	139.50	69.75
34,000	287.00	143.50	71.75
35,000	296.00	148.00	74.00

A4

36,000	304.00	152.00	76.00
37,000	313.00	156.50	78.25
38,000	321.00	160.50	80.25
39,000	330.00	165.00	82.50

D Class

40,001	442.00	221.00	110.50
41,000	453.00	226.50	113.25
42,000	464.00	232.00	116.00
43,000	475.00	237.50	118.75
44,000	486.00	243.00	121.50
45,000	497.00	248.50	124.25
46,000	508.00	254.00	127.00
47,000	519.00	259.50	129.75
48,000	530.00	265.00	132.50
49,000	541.00	270.50	135.25
50,000	553.00	276.50	138.25
51,000	564.00	282.00	141.00
52,000	575.00	287.50	143.75
53,000	586.00	293.00	146.50
54,000	597.00	298.50	149.25
55,000	608.00	304.00	152.00

E Class

56,001	692.00	346.00	173.00
57,000	704.00	352.00	176.00
58,000	716.00	358.00	179.00
59,000	729.00	364.50	182.25

H Class

60,001	819.00	409.50	204.75
61,000	833.00	416.50	208.25
62,000	846.00	423.00	211.50
63,000	860.00	430.00	215.00
64,000	874.00	437.00	218.50
65,000	887.00	443.50	221.75
66,000	901.00	450.50	225.25
67,000	915.00	457.50	228.75

A5

J Class

68,001	972.00	486.00	243.00
69,000	987.00	493.50	246.75
70,000	1,001.00	500.50	250.25
71,000	1,015.00	507.50	253.75
72,000	1,030.00	515.00	257.50
73,000	1,044.00	522.00	261.00

K Class

73,281	1,044.00	522.00	261.00
74,000	1,044.00	522.00	261.00
75,000	1,044.00	522.00	261.00
76,000	1,044.00	522.00	261.00
77,000	1,044.00	522.00	261.00
78,000	1,044.00	522.00	261.00
79,000	1,044.00	522.00	261.00
80,000	1,044.00	522.00	261.00

FEE SCHEDULE — BUSES

2.500 times the Number of Passengers

.015 times the Unladen Weight of the vehicle

.450 times the Rated Horsepower of the vehicle

The annual fee is reduced 50% after 6 months and
75% after 9 months.

STATE OF OKLAHOMA
FEE SCHEDULE
TRACTOR, TRUCK-TRACTOR, TRUCKS
BASED UPON COMBINED GROSS WEIGHT

Weight/Lbs.	1-3rd Month	4-6 Month	7-9 Month	10-12 Month
15,000	\$ 95.00	\$ 71.25	\$ 47.50	\$ 23.75
18,000	120.00	90.00	60.00	30.00
21,000	155.00	116.25	77.50	38.75
24,000	190.00	142.50	95.00	47.50
27,000	225.00	168.75	112.50	56.25
30,000	260.00	195.00	130.00	65.00
33,000	295.00	221.25	147.50	73.75
36,000	325.00	243.75	162.50	81.25
39,000	350.00	262.50	175.00	87.50
42,000	375.00	281.25	187.50	93.75
45,000	400.00	300.00	200.00	100.00
48,000	425.00	318.75	212.50	106.25
51,000	450.00	337.50	225.00	112.50
54,000	475.00	356.25	237.50	118.75
57,000	500.00	375.00	250.00	125.00
60,000	525.00	393.75	262.50	131.25
63,000	550.00	412.50	275.00	137.50
66,000	575.00	431.25	287.50	143.75
69,000	600.00	450.00	300.00	150.00
72,000	630.00	472.50	315.00	157.50
73,280	661.00	495.75	330.50	165.25
74,000	671.00	503.25	335.50	167.75
75,000	681.00	510.75	340.50	170.25
76,000	691.00	518.25	345.50	172.75
77,000	701.00	525.75	350.50	175.25
78,000	711.00	533.25	355.50	177.75
79,000	721.00	540.75	360.50	180.25
80,000	731.00	548.25	365.50	182.75
81,000	741.00	555.75	370.50	185.25
82,000	751.00	563.25	375.50	187.75
83,000	761.00	570.75	380.50	190.25

A7

84,000	771.00	578.25	385.50	192.75
85,000	781.00	585.75	390.50	195.25
86,000	791.00	593.25	395.50	197.75
87,000	801.00	600.75	400.50	200.25
88,000	811.00	608.25	405.50	202.75
89,000	821.00	615.75	410.50	205.25
90,000	831.00	623.25	415.50	207.75

FEE SCHEDULE — BUSES

BASED UPON SEATING CAPACITY AND YEAR OR REGISTRATION

	1-11 Seats	12-23 Seats	24 Seats or Over
First Year of Registration	\$7.50/seat	\$9.00/seat	\$10.00/seat
Second Year of Registration	6.00/seat	7.20/seat	8.00/seat
Third Year of Registration	4.80/seat	5.76/seat	6.40/seat
Fourth Year of Registration	3.84/seat	4.61/seat	5.12/seat
Fifth Year of Registration	3.07/seat	3.69/seat	4.10/seat
Sixth Year of Registration	2.46/seat	2.95/seat	3.28/seat
Seventh Year of Registration	1.97/seat	2.36/seat	2.62/seat
Eighth Year of Registration	1.57/seat	1.89/seat	2.10/seat

Fees Reduced 25% Quarterly

Trailers	20.00	15.00	10.00	5.00
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OKLAHOMA TAX COMMISSION

RECIPROCITY

Arizona	1805 Vehicles - (1982 Prorate files) - traveled 2,375,398 miles on Oklahoma highways: @ .08¢ per mile = \$190,031.84 per year: Total in '83 - \$2430.66.
Arkansas	12,466 Vehicles (1982 Prorate files) @ \$175.00 per = \$2,181,550.00. Approximately \$500,000.00 has been collected - Citations over \$204,400.00 not paid!
Idaho	612 Vehicles (1982 Prorate files) traveled 415,710 miles; @ .045 per mile equals \$18,706.95 0 Collected \$280.03 to date.
Kentucky	11,182 Vehicles (over 60,000 lbs.) (1982 Prorate files) - traveled 9,134,062 miles and @ .03¢ per mile = \$274,021.86; \$13,807.68 collected to date.
New Mexico	1,116 Vehicles (1982 Prorate files) traveled 3,856,479 miles and at .025¢ (average fee) per mile = \$96,411.98; \$740.28 has been collected to date in 1983.
New York	We have "paid" citations on only 26 vehicles for a total of \$254.41 to date. New York is not a member of the I.R.P.
Nevada	85 Vehicles (1982 Prorate files) traveled 29,489 miles; @ 2¼¢ per mile = \$1,327.01; \$66.04 collected to date.
Ohio	431 Citations totaling \$2,427.92 have been issued and paid - no other figures are available - Ohio not IRP member.
Oregon	2,896 Vehicles (1982 Prorate files) traveled 4,926,476 miles; @ .08¢ per mile = \$394,118.08; \$22,591.00 collected to date.

- Pennsylvania** 10,000 Vehicles estimated from 5 months 1983 Prorate files. Axle tax based on 4 axles per vehicle = \$1,440,000.00; \$27,544.00 paid to date. (75% of all Pa. vehicles in Okla. have 5 axles.)
- *Colorado** 4,382 Vehicles (1982 Prorate files) Colorado has \$2.15 in non-apportionable fees which must be paid by each vehicle (i.e. registration fee) \$10,078.00.
- *Texas** 53,970 Vehicles (1982) Prorate files) @ \$25.00 average per vehicle = \$1,349,250.00 most of which would be a one time assessment; All trip leased vehicles however, would be assessed a \$5.00 per vehicle trip fee, for each trip traveled and would be paid on a quarterly basis. There is no way at the present time to estimate revenue derived from trip lease fees.

*Colorado and Texas vehicles are not assessed any fees at the present time.

HIGHWAY USE EQUALIZATION TAX REGULATIONS

The Commissioner of Revenues of the State of Arkansas, pursuant to the authority vested in him by Act 685 of 1983, does hereby promulgate the following rules and regulations for the orderly administration of said Act, excepting Section 2(i) thereof.

1. **EFFECTIVE DATE.** These regulations shall be effective from and after midnight, July 31, 1983.

2. **PURPOSE.** These regulations are promulgated to implement and clarify Act 685 of 1983. All persons should read these regulations in their entirety because the meaning of the provisions of one regulation may depend upon the provisions contained in another regulation.

3. DEFINITIONS.

A. "Revenue Division" means the Revenue Division of the Arkansas Department of Finance and Administration.

B. "Motor Vehicle" means all cargo vehicles required to be registered for use upon the public highways of this State, designed, used or maintained primarily for the transportation of property and having a declared gross weight of 73,182 pounds or more. For the purpose hereof, truck-tractors, single unit trucks, semi-trailers and trailers operated in combination thereof shall constitute a single vehicle. The person having the use or control, or the right to the use or control of the part of such a vehicle furnishing the motive power is the highway user with respect to the entire vehicle and is accordingly subject as such to the provisions of Act 685 of 1983.

C. "Truck" includes the terms "truck" or "truck-tractor" and "semi-trailer" or "trailer" when operated in combination with a truck or truck-tractor.

D. "User" includes any person having the use and control or the right to the use and control, of any motor vehicle.

E. "Highway" includes all highways, roads, and streets of

this State generally open to the use of the public as a way for vehicular traffic.

F. "Gross Weight" means the actual weight of the truck or truck-tractor, plus the actual weight of the heaviest semi-trailer or trailer or combinations thereof with which it is to be operated in combination plus the actual weight of the heaviest load to be carried thereon.

G. "Arkansas Registered Vehicle" or "Arkansas Registered Truck" means a vehicle registered in Arkansas by a user who is an Arkansas resident, and bearing an Arkansas license plate.

4. A Highway Use Equalization Tax is, by Act 685 of 1983, imposed upon all users of motor vehicles except such vehicles which are specifically exempted by Act 685 of 1983.

5. The user of every motor vehicle not exempted by Act 685 of 1983 which is an Arkansas registered vehicle having a declared gross weight of 73,281 pounds or more, before operating such vehicle over the highways of the State of Arkansas, shall qualify such vehicle with the Revenue Division.

6. Every Arkansas registered user must apply with the Revenue Division for qualification. All applications shall be accompanied by a fee of \$5.00 and shall be on forms prescribed by the Revenue Division.

7. Qualification may be obtained at either a local office of the Revenue Division or at the International Registration Plan Unit located in Room 105 and 133 of the Joel Y. Ledbetter Building, Seventh and Wolfe Streets, Little Rock, Arkansas. If qualifying at a local office, a user must elect to pay the annual mileage tax of \$175.00. If qualifying at the International Registration Plan Unit, a user must either pay the annual mileage tax of \$175.00 or pay the tax at the rate of \$.05 per mile (as reported under the International Registration Plan) for each mile a truck is operated in the State of Arkansas.

8. Qualification obtained through the International Registration Plan Unit shall be on a fleet basis, by paying either the

\$.05 per mile rate for all affected vehicles or the annual mileage tax of \$175.00 for all affected vehicles.

9. After payment has been received for all fees and taxes due as a result of the user's application for registration and request for qualification at a local office of the Revenue Division, the user shall be issued a registration certificate upon which will appear, in addition to registration information, certification that the vehicle has qualified for a gross weight of 73,281 pounds or more and that the Highway Use Equalization Tax of \$175.00 has been paid by the user. In addition, the user shall be issued a license plate bearing a "K" prefix, which license plate shall serve as visible notice that the vehicle to which it is affixed has had the Highway Use Equalization Tax levied thereupon and is qualified for a gross weight of 73,281 pounds or more.

10. After payment of all fees and taxes has been received as a result of a user's application for registration and request for qualification at the International Registration Plan Unit, the user shall be issued a registration cab card upon which will appear, in addition to registration information, certification that the vehicle has qualified for a gross weight of 73,281 pounds or more, and that the appropriate tax has been paid by the user. In addition, the user shall be issued a license plate bearing a "K" prefix, which license plate shall serve as visible notice that the vehicle to which it is affixed has had the Highway Use Equalization Tax levied thereupon and is qualified for a gross weight of 73,281 pounds or more.

We hereby certify that the foregoing is a true and correct copy of the original Highway Use Equalization Tax Regulations to be effective from and after midnight, July 31, 1983.

WITNESS our hands and seals on this 28 day of June, 1983.

/s/ _____
MAHLON MARTIN
Director
Department of Finance
and Administration
State of Arkansas

/s/ _____
CHARLES D. RAGLAND
Commissioner of Revenues
Department of Finance
and Administration
State of Arkansas

**HIGHWAY USE EQUALIZATION TAX RULES
& REGULATIONS FOR USERS OF HEAVY TRUCKS
REGISTERED OUTSIDE ARKANSAS**

I. AUTHORITY

The Director of the Arkansas State Highway and Transportation Department, pursuant to the authority vested in him by Act 685 of 1983 and by Arkansas Highway Commission Minute Order No. 83-82, does hereby promulgate the following rules and regulations for the orderly administration of said Act.

II. EFFECTIVE DATE

These regulations shall be effective subsequent to their filing as provided by law.

III. PURPOSE

These regulations are promulgated to implement and clarify Section 2(i) of Act 685 of 1983. All persons should read these regulations in their entirety because the meaning of the provisions of one regulation may depend upon the provisions contained in another regulation.

IV. DEFINITIONS

A. "Revenue Division" means the Revenue Division of the Arkansas Department of Finance and Administration.

B. "Department" means the Arkansas State Highway and Transportation Department.

C. "Motor Vehicle" or "Heavy Truck" means all cargo vehicles required to be registered for use upon the public highways of this State, designed, used or maintained primarily for the transportation of property and having a declared gross weight of 73,281 pounds or more. For the purpose hereof, truck-tractors, single unit trucks, semi-trailers and trailers operated in combination thereof shall constitute a single vehicle. The person having the use or control, or the right to the use or control of the part of such a vehicle furnishing the motive power is the highway user with respect to the entire vehicle and is accordingly subject as such to the provisions of Act 685 of 1983.

D. "Exempted Vehicle(s)" means those motor vehicles(s) with declared gross weights of 73,281 pounds or less; those vehicles used exclusively in hauling unfinished and unprocessed farm products, forest products, and clay minerals, and ores, from the point of production, harvesting or severance to the point at which the same shall first undergo any processing, preparation for processing, conversion or transformation from their raw, natural or severed state; and, vehicles owned and operated by the United States or the State of Arkansas, or any political subdivision thereof. Also, the tax law does not apply to any motor vehicle used on an interstate trip with an origin or destination within 10 miles of the geographic boundaries of the State, provided the one-way travel distance in the State is not over 10 miles.

E. "Truck" includes the terms "truck" or "truck-tractor" and "semi-trailer" or "trailer" when operated in combination with a truck or truck-tractor.

F. "User" includes any person having the use and control or the right to the use and control, of any motor vehicle.

G. "Highway" includes all highways, roads, and streets of this State generally open to the use of the public as a way for vehicular traffic.

H. "Gross Weight" means the actual weight of the truck or truck-tractor, plus the actual weight of the heaviest semi-trailer or trailer or combinations thereof with which it is to be operated in combination plus the actual weight of the heaviest load to be carried thereon in any state.

I. "Arkansas Registered Vehicle" or "Arkansas Registered Truck" means a vehicle registered in Arkansas by a user who is an Arkansas resident, and bearing an Arkansas license plate.

J. "Bonded Interstate Fuel User" means a person utilizing gasoline, diesel or LPG for the purpose of operating a vehicle who is licensed as a bonded user of such fuel or fuels pursuant to the laws of the State of Arkansas.

K. "Fleet" means one or more vehicles under one ownership subject to the Tax Law.

L. "IRP Vehicle" means a vehicle registered in accordance with the International Registration Plan.

M. "Owner" or "Ownership" means the user whose name appears on the certificate of title for the motor vehicle.

N. "Specialty Carrier" means a user operating motor vehicles registered in excess of 73,280 pounds, but by virtue of the motor vehicle configuration or products being hauled, will never operate in the State of Arkansas in excess of 73,280 pounds.

V. OPTIONS OF PAYMENT

All users of heavy trucks, other than Arkansas Registered Trucks, must elect one of the following options:

A. Pay an annual \$175.00 tax for each heavy truck not an exempted vehicle in his fleet which the user wishes to qualify to operate in Arkansas that is registered in any state in excess of 73,280 pounds;

B. A user may certify his fleet's Arkansas mileage for the taxable year based on either: (1) the latest calendar year's Arkansas Bonded Interstate Fuel User's records filed by the user with the State of Arkansas; or (2) the latest year's International Registration Plan records indicating the mileage logged by the user's vehicles in Arkansas as filed with the user's IRP base state. (If the user is a member of IRP, a copy of the last IRP registration application, as filed by the user in his IRP base state, must accompany the user's application.) If the user is not an Arkansas Bonded Interstate Fuel User, or if the subject vehicles of the user are not IRP vehicles, the user may certify such mileage based on any records indicating mileage traveled in Arkansas that is required to be filed with any Federal Agency or any agency of the State of Arkansas. The user shall utilize such records to determine the number of miles for those heavy trucks that are not exempted vehicles that will be operated in Arkansas for the taxable year and by remitting the appropriate payment as determined by the following equation:

$$\text{Fleet Miles} \times \$0.05 = \text{Tax Due}$$

A new user (one who has not operated in the State of Arkansas for the previous year) may certify the Arkansas mileage based on

an estimate of mileage expected to be traveled in Arkansas for the taxable year. The AHTD may choose to inspect or audit any user's records to ascertain that such mileage is reasonable.

The owner is liable for qualifying the vehicles under Act 685, however, due to the business practices in the trucking industry regarding vehicle leasing and owner-operator fleet operations, any party may qualify the vehicle by paying the required tax. Where separate integral fleets exist under one ownership and separate record and reporting systems are maintained for each integral fleet, separate options may be utilized.

C. Purchase a trip permit at the following rates: 21 through 149 miles, \$8.00; 150 through 249 miles, \$16.00; 250 through 349 miles, \$24.00, etc. (\$8.00 per major fraction of 100 miles).

D. Specialty carrier qualifications will be granted by providing proof to the Department that the motor vehicles noted on the application, though operating over the highways of the State of Arkansas, will never be loaded to the point that the gross weight exceeds 73,280 pounds. Such vehicles will be issued a special decal.

VI. TRANSFERABILITY AND/OR REPLACEMENT DECALS

A. Intent

It is the express intent of these regulations that weight/distance decals are non-transferable. However, because of the various means by which a vehicle that has a weight/distance decal attached may be permanently taken out of service (accident, fires, trading vehicles, etc.), there are circumstances that will allow the owner of a decal to replace it with another one when a vehicle is permanently taken out of service.

B. Procedures

Annual decal — An annual \$175.00 decal qualifies the vehicle and is non-transferable unless that vehicle is destroyed or sold. In order to have a new decal reissued at no cost, an application "Replacement of Decal" must be submitted to the

Tax Unit of the Department accompanied by the remains of the old decal sufficient to identify the decal number along with the cab card that was previously attached to the decal or satisfactory evidence that the decal and/or decal card cannot be submitted.

Vehicles qualified under the fleet mileage option will be qualified as a fleet and not as a vehicle. When a vehicle is removed from the fleet for any reason, a "Notice of Change in Fleet Vehicles" must be filed with the Tax Unit of the Department. A deletion must be accompanied by the "Decal and Decal Cab Card." Only the VIN of new vehicles coming into the fleet must be reported. Qualifying mileage decals will be sent to the applicant at no cost.

Decals must be affixed to the vehicle with the corresponding VIN as shown on the cab card.

No cash refunds will be made: only replacement decals will be issued under the above procedures.

C. Penalty

It will be the responsibility of the owner to assure that the necessary procedures are followed to obtain additional replacement decals at no cost. The operator of any vehicle bearing an improperly assigned decal will be fined according to law.

D. Auditing Powers

The Department shall have the right to inspect and audit at all reasonable times at any place within or without the State of Arkansas the books, records and documents of any user required to pay the Highway Use Equalization Tax imposed by Act 685 of 1983.

VII. METHODS OF PAYMENT

A. Payment must be made with valid U.S. currency, check or money order: however, only cash, certified check, or money orders will be accepted at the permanent weigh stations or from an Arkansas Highway Police roving unit.

B. Arkansas Based Vehicles, whether registered under the

International Registration Plan or not, should contact the Arkansas Department of Finance and Administration, Division of Revenues, Joel Y. Ledbetter Building, 7th and Wolfe, Little Rock, Arkansas 72203, or telephone (501) 371-2541.

C. All other vehicles should contact the following office(s) depending on the option of payment chosen.

1. \$0.05 / mile Mileage Fee:

Arkansas State Highway and
Transportation Department
Highway User Tax Unit
9500 New Benton Highway
P. O. Box 8907
Little Rock, Arkansas 72219
Telephone (501) 569-2159

2. \$8/100 mile trip permit or \$175 Annual Permit Fee:

Arkansas State Highway and
Transportation Department
Highway User Tax Unit
9500 New Benton Highway
P. O. Box 8907
Little Rock, Arkansas 72219
Telephone (501) 569-2159

or

Any Permanent Location of the Highway Weigh Stations operated by the Arkansas Highway Police. Trip permits may also be purchased from Arkansas Highway Police roving units.

INTERNATIONAL REGISTRATION PLAN

I — PURPOSE AND PRINCIPLE

[This Article sets forth the guiding purposes and principles of the International Registration Plan (herein cited as the IRP or Plan) as envisioned by its drafters.

The Plan should be construed in accordance with its underlying purposes and principles. The text of each Article should be read in the light of the purpose or principle of the provision in question, as well as those of the Plan as a whole; and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and principles involved.]

A. This reciprocal agreement shall be referred to, cited and known as the International Registration Plan.

[This Section indicates the official name of the "reciprocal agreement." Because the participation of the Provinces of Canada was anticipated, the term "international" was ultimately included. (See page 2, Minutes of the AAMVA Ad Hoc Committee Meeting to Develop Implementation for National Proportional Registration held in Washington, D.C., on May 30 - 31, 1973.) The term "reciprocal agreement" is used here to indicate that participating jurisdictions mutually agree to provide for reciprocal vehicle registration unless appropriate exceptions to Plan provisions are approved pursuant to Article XVII. (See commentary under Article I.E.).]

B. It is the purpose of this agreement to promote and encourage the fullest possible use of the highway system by authorizing the proportional registration of fleets of vehicles, and the recognition of vehicles proportionally registered in other jurisdictions, thus contributing to the economic and social development and growth of the jurisdictions.

[Freedom of vehicle movement is a fundamental principle of the Plan. This freedom is to be attained by authorizing the "proportional registration" of fleets of vehicles. (The term "proportional registration" is not defined in Article II definitions, but is explained under fleet registration fee determination in Article III: see commentary thereunder.) Proportional registration promotes and encourages the fullest possible use of the highway system, thereby "... contributing to the economic and social growth of the jurisdiction." (Most of this provision is taken from the Uniform Vehicle Code.) The "proportional registration" system makes possible greater flexibility of commerce between and among the participating jurisdictions. Such efficient use of the highway system is beneficial to the economic and social growth of the member jurisdictions.

Freedom of vehicle movement is achieved through official "recognition" of proportionally registered vehicles in all member jurisdictions. If a fleet is registered pursuant to the IRP in the "base jurisdiction" and appropriate fees are paid to other member jurisdictions through which the registrant intends to operate such fleet, "recognition" of the base jurisdiction's distinctive identification plates for that fleet is authorized. (The choice of terms in this provision may give rise to some confusion unless read in the light of the Plan's overall purpose. The commentary on Articles I.C., I.D., I.E. and II.K. develops this concept in more depth.)]

C. It is the purpose of this agreement to implement the concept of one registration plate for one vehicle.

[Only one identification plate is issued to each vehicle for purposes of vehicle registration. Under the IRP, only the "base plate" is required; no other exterior vehicle registration identification is allowed for licensing purposes. (Under the Uniform Vehicle Registration Proration and Reciprocity Agreement, in contrast, each vehicle carries a so-called "backing

plate" upon which the member jurisdictions may require the annual placement of a "sticker" or "decal" indicating currently valid registration, in addition to the base jurisdiction's registration plate); (See Article XVII.E).]

D. It is the purpose of this agreement to grant exemptions from payment of certain fees when such grants are reciprocal.

[The drafters of the Plan recognized that not all fees are apportionable fees and they wanted to encourage reciprocity on those non-apportionable fees. *Those non-apportionable fees under this section may be subject to exemption under separate reciprocal agreements.* (See Article III.B. and commentary thereunder.)]

E. It is the purpose of this agreement to grant reciprocity to proportionally registered fleets of vehicles, and to provide for the continuance of reciprocity granted to those vehicles that are not eligible for proportional registration under the terms of this agreement.

[Proportionally registered fleets of vehicles must be granted "reciprocity." Fleets of vehicles not so registered are subject to pre-existing registration requirements but may, nevertheless, be granted "reciprocity." Vehicles displaying "restricted plates," such as farm vehicles for example, may be exempt from additional fees if the jurisdiction's law, applicable agreements, understandings or declarations so provide. Fleets of vehicles properly registered under the IRP are not charged additional fees by member jurisdictions unless such fees are authorized under Article III.B. (See commentary thereunder.) The IRP, therefore, provides for an exemption from such additional fees. The IRP is a reciprocity agreement providing for "... the recognition of fees paid to other jurisdictions." (See page 2, Minutes of the AAMVA Ad Hoc Committee Meeting held in Dallas, Texas on December 5 - 6, 1972.)]

The IRP speaks of "reciprocity" both as to vehicles registered pursuant to it, as well as to those not so registered. (The Uniform Vehicles Registration Proration and Reciprocity Agreement, in contrast, speaks of "reciprocity" only in the latter instance. Article V of that agreement provides for "reciprocity" to vehicles not registered thereunder, but does not provide that proportionally registered vehicles are receiving "reciprocity".) *The IRP is, therefore, construed to be a "reciprocity agreement."* (See page 2, Minutes of the AAMVA Ad Hoc Committee meeting held in Washington, D.C., May 30 - 31, 1973.) *"Reciprocity Agreement" is not defined, but is construed to mean:*

An agreement, arrangement or understanding governing the reciprocal grant of rights and/or privileges to vehicles which are based in and properly registered under the applicable laws of the jurisdictions which are parties to such an agreement, arrangement or understanding.]

II — DEFINITIONS APPLICABLE TO THIS AGREEMENT

A. "Apportionable Fee" means any periodic recurring fee required for licensing or registering vehicles, such as, but not limited to, registration fees, license or weight fees.

[This provision describes the type of fees to be apportioned. The key words are "periodic" and "recurring." A registration, license or weight fee is only apportionable if it is a "periodic recurring" fee.]

B. "Apportionable Vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pick up and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, used in two or

more jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons for hire or designed, used or maintained primarily for the transportation of property and:

1. has a gross vehicle weight in excess of 26,000 pounds; or
2. has three or more axles, regardless of weight; or
3. is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered at the option of the registrant.

[Fleets of vehicles are determined to be apportionable according to the characteristics and use of the vehicle or the "combination" of vehicles. Articles II.B.1. and II.B.2. refer solely to power units and are so construed. For purposes of Article II.B.2, an "axle" includes a so-called "dummy," "drag," "tag" or "pusher" type axle. Article II.B.3 refers to any vehicle (power unit or trailing unit) used within a combination which exceeds 26,000# gross vehicle weight. Trailers, however, are only apportioned under the Plan pursuant to an approved exception unless subject to Article XI. (See Articles IV.C and XI.)]

A vehicle or combination of vehicles falling within any of the three enumerated classifications is apportionable, if it is, a) used for the transportation of persons for hire, or, b) designed, used or maintained primarily (but not necessarily exclusively) for the transportation of property, and, c) "... used in two or more jurisdictions that allocate or proportionally register vehicles ...

A vehicle or combination of vehicles which travels in two or more IRP jurisdictions, but which is not otherwise within the definition of "apportionable vehicle," may be proportionally registered if the registrant so chooses. Vehicles not proportionally registered are subject to registration and fee payment in accordance with each base jurisdiction's general registration statutes and may be entitled to reciprocity in other jurisdictions under applicable reciprocity agreements. (See Articles I.E. and XVIII and commentary thereunder; see also page 2, Minutes of the Kentucky Dam Village Meeting held September 27 - 28, 1972.)]

C. 1. "Base Jurisdiction" means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where mileage 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 Article XIV, A(2).

[This section provides a three-part test for the determination of base jurisdiction. During the drafting of the Plan, this definition was revised several times. Originally, the "base jurisdiction" was the jurisdiction where the registrant, 1) had his principal place of business, and, 2) where the financial records of the firm as well as the records on vehicle operation were kept and could be inspected.]

The definition was revised to delete the word "principal" and all reference to financial records. A requirement that the fleet accrue mileage within the base jurisdiction was added. This definition was later amended by official ballot action to add the words "or can be made available in accordance with the provisions of Article XIV.A.2." after the term "maintained." (Final approval dated July 30, 1976.)

Prior to the passage of the Amendment a serious question arose regarding the need to maintain operational records of a fleet in the "base jurisdiction." As a matter of business practice many companies did not do so and considerable expense and time-consumption would have resulted from literal enforcement of that provision. Consequently, the administrators amended the Plan to allow the records to be maintained outside the "base." (See Article XIV.A.2. and Minutes, AAMVA Legal Affairs Subcommittee Meeting held in Houston and Austin, Texas, January 6 - 8, 1976.)

The fundamental principal of operational flexibility is again involved here. Industry representatives were concerned that a restrictive definition would reduce that flexibility. Administrators, on the other hand, were concerned that registrants might use the flexibility provided to avoid registration fees by choosing a base jurisdiction which does not claim "reciprocity miles."

It is not now, and never has been, the intent of the Plan to permit a registrant to use the flexible provisions of this section in changing his base jurisdiction as a device to avoid the payment of registration fees on a 100% mileage basis. (See commentary under Article II, Section G.) The three-part test requires: 1) an established place of business, 2) fleet mileage accrual, and 3) maintenance of operational records or record availability under Article XIV.A.2.

Although "an established place of business" is not defined, it is construed to mean:

... a physical structure owned, leased or rented by the fleet registrant the location of which is designated by street number or road location, and which is open during normal business hours; and in which are located:

- 1) a telephone or telephones publicly listed in the name of the fleet registrant,*
- 2) a person or persons conducting the fleet registrant's business, and,*
- 3) the operational records of the fleet (unless such records can be made available in accordance with the provisions of Article XIV.A.2.)"*

A question has arisen whether all vehicles of a fleet must accrue miles within the jurisdiction chosen as "base." If this interpretation were adopted, the registrant would be forced to make certain that every vehicle of a fleet travelled some of its miles in the "base" each year. This requirement would contravene the purpose of granting operational flexibility, discussed under Article I.B. *The Plan is construed broadly to require only the accrual of miles by the fleet as a whole; each vehicle need not individually enter the base jurisdiction.]*

2. Registrants based in any jurisdiction not a member of this agreement, and who have been licensing vehicles in any member jurisdiction under basing point, allocation or proration, may declare the member jurisdiction where the most miles have been operated as a base jurisdiction for purposes of this agreement until such time as the registrant's base jurisdiction becomes a member of this agreement.

[Registrants "based" in a non-member jurisdiction may obtain the benefits of Plan membership by initially declaring as a "base" the IRP member jurisdiction within which the most miles have been operated, without regard to the three-part test provided in Article II.C.1. However, a question arises whether the "base" declaration must be changed upon membership approval of the previous "non-member." Because this provision authorizes such a declaration of "base" only "... until such time as the registrant's base jurisdiction becomes a member ..." the implication is that the new member must become the new "base." However, this assumes that the registrant's bona fide "base" was and continues to be in the new member jurisdiction. Since the three-factor test for determining "base" is intended to provide a reasonable degree of flexibility to fleet operations, the registrant could decide to base his fleet (or fleets) in jurisdictions other than his former "base." The Plan is construed to require a change in "base" only if the three-factor test is not met in the "declared base." For example, assume:

(1) the registrant has historically operated fleet A from a place of business in jurisdiction X, a non-member of IRP; (2) fleet A accrues more of its mileage in IRP jurisdiction Y than in any other IRP jurisdiction but has no established place of business there; (3) fleet A declares jurisdiction Y as its base pursuant to this provision; (4) jurisdiction X then becomes an IRP member: The clear result is that the registrant must change its "base" to jurisdiction X. However, if the registrant has an established place of business in jurisdiction Y (or in any other IRP jurisdiction) when jurisdiction X becomes a member, the Plan does not require that the "base" declaration be changed to X. It is possible that the registrant will have closed his place of business in X and, consequently, would be prohibited from declaring X as "base."]

3. Household Goods Carriers using equipment leased from service representatives may elect, with respect to such equipment, to base such equipment in the Base Jurisdiction of the service representative, or that of the carrier.

For equipment owned and operated by owner-operators, other than service representatives, and used exclusively to transport cargo for the household goods carrier, the equipment shall be registered by the carrier in the Base Jurisdiction of the carrier, but in both the owner-operator's name and that of the carrier as lessee, with the apportionment of fees according to the records of the carrier.

[See commentary on Articles IV.E and IX.]

D. 1. "Base Plate" means the plate issued by the Base Jurisdiction and shall be the only registration identification plate issued for the vehicle by any member jurisdiction.

[See Article XVII.E.1.]

2. Base plates shall be identified by having the word "Apportioned" and the jurisdiction's name on the plate. The numbering system and color shall be determined by the issuing jurisdiction.

E. "Commissioner" means the jurisdiction official in charge of registration of vehicles.

F. "Fleet" means one or more apportionable vehicles.

G. "In-Jurisdiction Miles" means the total number of miles operated by a fleet of proportionally registered vehicles in a jurisdiction during the preceding year. In those cases where the registrant operated a fleet of proportionally registered vehicles in jurisdictions that require no apportionment and grant reciprocity, the base jurisdiction may add such miles to the in-jurisdiction miles.

[The Plan does not define the term "reciprocity" in this context and Article II.K. "reciprocity" does not apply since that provision deals with "reciprocity" granted by member jurisdictions only. However, the concept is one of vehicle operation in non-member jurisdictions at no licensing or registration cost to the registrant. *If a non-member jurisdiction requires the registrant to obtain a permit or permits and collects fees therefore or collects other fees in lieu of registration, it cannot be said that "reciprocity" is being granted. The term "in-jurisdiction miles" is construed to include only those miles actually travelled within a member jurisdiction and in the case of the base jurisdiction it may include those miles travelled in non-member jurisdictions which impose no fees for, or in lieu of, vehicle registration.*]

H. "Jurisdiction" means a state, territory or possession of the United States, the District of Columbia, or a state or province of a country.

I. "Operational Records" means documents supporting miles traveled in each jurisdiction and total miles traveled such as fuel reports, trip sheets and logs.

["Operational records" refers to source documents suitable for verification of fleet mileage, known as "Individual Vehicle Mileage Records" (IVMRs). An IVMR must contain the information set forth in the Uniform Operational Audit Procedure Guidelines which are herein incorporated by reference. (See commentary under Articles XIII and XIV.)]

J. "Preceding Year" means the period of twelve consecutive months immediately prior to September 1st of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought.

K. "Reciprocity" means that an apportionable vehicle properly registered hereunder shall be exempt from further registration by any other member jurisdiction.

[See Articles I.A. and I.E.]

L. "Recreational Vehicle" as used in this agreement is one used for personal pleasure or travel by an individual or his family.

[The term "recreational vehicle" refers to vehicles such as "campers," "house trailers," "motor homes" and "mobile homes" when used exclusively for personal pleasure and travel by an individual and his family. In order to qualify as a "recreational vehicle", it must not be used in connection with any business endeavor (see page 3, Minutes of the AAMVA Ad Hoc Committee Meeting held in Washington, D.C., May 30 - 31, 1973.) When a recreational vehicle is being transported by a vehicle transporter, its weight must be included in the gross vehicle or combination weight of the transporting vehicle or combination of vehicles for purposes of determining appropriate registration fees. This requirement is clear since it is the registration of the vehicle transporter which is being considered here and the nature of the property transported is irrelevant. (See Article II.B.3.)]

M. "Registrant" means a person, firm or corporation in whose name or names a vehicle is properly registered.

[The term "registrant" is defined broadly so as not to exclude service representatives and rental companies from the classification. (See commentary under Articles IV.E. and XI.)]

N. "Registration Year" means the twelve month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

O. "Restricted Plate" means one that has time (less than a registration year), geographic area, mileage or commodity restriction.

P. "Service Representative" means one who furnishes facilities and services including sales, warehousing, motorized equipment and drivers under contract or other arrangements to a carrier for transportation of property by a household goods carrier.

Q. "Total Miles" means the total number of miles operated by a fleet of proportionally registered vehicles in all jurisdictions during the preceding year.

["Total miles" means miles traveled by a fleet in all jurisdictions during the preceding year. This provision is not construed so as to limit "total miles" to miles traveled in member jurisdictions.]

R. "Chartered Party" means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the Interstate Commerce Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

[This definition was added by amendment effective January 1, 1975, and was made necessary by the amendment to Article II.A. excluding "buses used in transportation of chartered parties" from the definition of an "apportionable vehicle."]

III — FEES FOR PROPORTIONAL REGISTRATION

A. The registration fee for apportionable vehicles shall be determined as follows:

1. Divide the in-jurisdiction miles by total miles 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.

[(See Articles II.G., II.Q. and commentary thereunder).]

B. This agreement does not waive any fees or taxes charged or levied by any jurisdiction in connection with the ownership or operations of vehicles other than the apportionable fees as defined herein. All other fees and taxes shall be paid to each jurisdiction in accordance with the laws thereof.

[This section authorized the collection of all fees and taxes which are not "apportionable fees" as defined in Article II.A. Whether a "fee" or a "tax" is involved, it may only be collected "in accordance with the laws" of the jurisdiction imposing the fee or tax. The fee or tax must be set or authorized by statute. A proliferation of such fees or taxes, however, may result in impeding the free movement of commerce among the member jurisdictions. This result would tend to contravene the purpose set forth in Article I.B. (see commentary thereunder).]

IV — APPLICATION FOR PROPORTIONAL REGISTRATION

A.1. An applicant for proportional registration shall file a uniform application with the Commissioner of the base jurisdiction in lieu of registration under other applicable statutes.

[This section requires the filing of a uniform application with the Commissioner of the base jurisdiction. The application form adopted for use shall be used by all member jurisdictions and is hereby incorporated by reference. (Forms for this purpose were developed by the American National Standards Institute D19.4 Subcommittee on Uniform Documents and Records, approved as to form in July 1975; see page 10, Minutes of the AAMVA IRP Procedures Conference held in Jackson, Mississippi, July 22-24, 1975.)]

2. Whenever the base jurisdiction of a registrant changes as a result of the conditions described in Article II.C.2., the re-registration of the registrant in the new jurisdiction shall be accomplished through orderly and equitable procedures to be established by the Commissioners of the two jurisdictions involved.

[This section requires the establishment of orderly and equitable procedures by the Commissioners of the jurisdictions involved in a change of "base" under Article II.C.2. conditions. This provision allows for the ad hoc development of procedures to effect the "base" change. If such procedures result in the duplication of registration fee payment, they are deemed not to be "equitable" and, therefore, shall not be authorized under this section.]

B. Applications for proportional registration shall be filed on a date as determined by the base jurisdiction. Every application for proportional registration shall, at the time and in the manner required by the Commissioner, be supported by the payment of the registration fees in the amount determined in Article III, provided, however, the Commissioner may, by regulation, postpone payment of fees until after the Commissioner has computed the fees due.

[This section allows the base jurisdiction to determine the date by which applications must be filed, since the base (with a few exceptions) is the only jurisdiction involved in the filing of applications. This provision also authorizes the Commissioner to postpone or delay payment of fees "until after the Commissioner has computed the fees due." This option avoids duplicate effort in those cases where the registrant might have made an error in fee calculation. Such procedures must be established by regulation under the Plan's explicit terms and should provide notice of the due date of the application and other pertinent requirements.]

C. The applicant for proportional registration of trailers, semi-trailers, and auxiliary axles shall use the application form for such vehicles and the apportionment of registration fees shall be computed by using the same factor determined by jurisdiction and total miles in Article III and this shall be applied to the registration fee. Jurisdictions may waive trailer, semi-trailer and auxiliary axle apportionment. Jurisdictions requiring proportional registration of trailers, semi-trailers and auxiliary axles shall provide for such requirement by filing an exception as described in Article XVII.

[This section allows for the proportional registration of "trailers, semi-trailers and auxiliary axles" pursuant to an approved exception. The Plan does not define the terms "axle," "auxiliary axles," "semi-trailers" or "trailers." These terms are construed to mean:

Axle - An assembly of a vehicle consisting of two or more wheels whose centers are in one horizontal plane, by means of which a portion of the weight of a vehicle and its load, if any, is continually transmitted to roadway. For purposes of registration under the IRP, an "axle" is any such assembly whether or not it is load-bearing only part of the time. For example, a single-unit truck with a steering axle and two axles in a rear-axle assembly is an apportionable vehicle even though one of the rear axles is a so-called "dummy," "drag," "tag" or "pusher" type axle.

Auxiliary Axles - An auxiliary undercarriage assembly with a fifth wheel and tow bar used to convert a semi-trailer to a full trailer.

Semi-trailer - Every vehicle without motive power 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 the towing vehicle.

Trailers - Every vehicle without motive power, 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.

The drafters were cognizant of the American Association of Motor Vehicle Administrators' (AAMVA) policy encouraging the adoption by all jurisdictions of a license or registration fee system in which the major portion of the fee would be on the power unit (the so-called "power-unit licensing system"). Consequently, this Article requires jurisdictions applying for membership to file an exception under Article XVII if trailers, semi-trailers and/or auxiliary axles are to be proportionally registered. However, a question arises as to whether such an exception should require approval of all current members. A jurisdiction's exception on this item should receive approval unless the fees applicable to trailers, semi-trailers and/or auxiliary axles are not based on a split-fee registration system under which they are payable in full to the base jurisdiction with no apportionment to other jurisdictions. If a jurisdiction has a true "split-fee" registration system — wherein the method of fee determination for non-power units is the same as or substantially similar to the method applicable to power units — its membership should not be delayed or denied in an effort to force it to adopt a "power-unit licensing system." (See page 6, Minutes of the AAMVA Ad Hoc Committee Meeting held in St. Louis, Missouri, October 15-16, 1973).]

D.1. The application shall contain the number of power units, number of trailers, semi-trailers and auxiliary axles, with such vehicle description as may be required by the jurisdictions concerned and a uniform mileage schedule.

[This section recognizes the fact that some jurisdictions may need a more detailed vehicle description than others, although the form must be uniform. This problem was solved by providing enough columns in the application form to satisfy all requirements in all jurisdictions. Consequently, although one jurisdiction may need descriptive detail not needed by another, the format of the application form remains uniform.]

2. The base jurisdiction, after receiving its proportionate fees shall supply the necessary identification plates and prepare cab cards, listing on the front of the cab cards the jurisdictions where the vehicles are proportionally registered, the weight for which registered and other necessary information in each of the jurisdictions. The base jurisdiction may, in its discretion, withhold issuing plates and cards until it has received evidence of payment due other member jurisdictions.

[Sections D.2 and D.3 set forth the vital base jurisdiction responsibilities essential to the proper functioning of the Plan. Only the base jurisdiction issues the "identification plate" and "cab card." No exception to this principle may be taken (see Article XVII). The weight for which the vehicle is registered must be listed on the face of the registration card so that enforcement personnel can know whether a vehicle is operating in excess of its registered weight. It should be noted, of course, that even though a vehicle is properly registered in its base jurisdiction

with regard to declared gross weight, it must also comply with existing weight laws or regulations in other jurisdictions into or through which it is expected to operate.

For example, the payment of registration fees in jurisdiction X at a declared gross combination weight (GCW) of 80,000# does not authorize the operation of that vehicle at 80,000# in jurisdiction Y whose legal weight limit is lower (although in some instances "overweight permits" may be obtainable).

The term "and other necessary information" in Article IV.D.2. refers to that information required by registration and licensing statutes and is not construed to require unrelated information (fuel use tax account numbers, PUC/PSC authority, axle mile tax account numbers, etc.).

The base jurisdiction has the option of withholding identification indicia until it has evidence of fee payment to all other member jurisdictions (Article IV.D.2.). The purpose of this option is to allow withholding the privilege of vehicle operation under apportionment until all IRP jurisdictions have received appropriate fee payment.]

3. The base jurisdiction shall notify the other declared jurisdictions that a proportional registration application has been filed, and shall furnish the declared jurisdiction a uniform mileage schedule.

[This section imposes an obligation on the base jurisdiction to notify the other members that an application has been filed and to forward each jurisdiction a copy of the Uniform Mileage Schedule. ("Uniform Mileage Schedule" refers to Schedule B.)]

4. All plates and cards and reciprocal exemptions are subject to cancellation and revocation in the event of erroneous issuance thereof, or if any fees remain unpaid.

[This section grants the base jurisdiction the power to cancel or revoke "all plates and cards and reciprocal exemptions" if erroneously issued "... or if any fees remain unpaid." *The intent of this provision is clear - the failure to pay one jurisdiction's fees may lead to inability to operate in any jurisdiction.* This power is not to be used lightly, but is necessary to practical and equitable operation under the Plan. (See Articles XIII, XIV and commentary thereunder.)]

5. The base jurisdiction shall cooperate with other declared jurisdictions in connection with applications and fees paid.

[This section requires the base jurisdiction to "cooperate" with other members "... in connection with applications and fees paid." *This provision is construed, in part, to require the base jurisdiction to assist another member in the collection of fees due if a registrant fails to pay such fees.*]

E. In those cases where Household Goods Carrier equipment is elected to be registered in the base jurisdiction of the service representative, the equipment shall be registered in said service representative's name and that of the carrier as lessee with the apportionment of fees according to the combined records of the service representative and those of the carrier, and such records must be kept or made available in the service representative's base jurisdiction.

If the election is the base jurisdiction of the carrier, and such jurisdiction is a member jurisdiction, the equipment shall be registered by and in the name of the carrier and that of the service representative as lessor with the apportionment of fees according to the records of the carrier and the service representative which must

include intrastate miles operated by those vehicles applicable under this agreement, and the records must be kept or made available in the base jurisdiction of the carrier. Service representatives properly registered under this election shall be fully registered for operations under their own authority as well as under the authority of the carrier.

[This section sets forth procedures applicable to household goods carriers' operations. The names of both the lessee-carrier and lessor-service representative (or vehicle owner) must be shown since the equipment is operated on an intermittent basis under the lessee-carrier's interstate operating authority, pursuant to Interstate Commerce Commission regulations, and the lessor-service representative's local and/or intrajurisdictional operating authority pursuant to regulations promulgated by a state or province. Intrajurisdictional mileage records are maintained by the lessor-service representative and interjurisdictional mileage records are maintained by the lessee-carrier and furnished to the lessor-service representative.]

Mileage records must be maintained or made available in the jurisdiction selected as the base jurisdiction, which must be that of the service representative or carrier. (See Article II.C.3. power of election.)

V — REGISTRATION OF APPORTIONABLE VEHICLES

A. The Commissioner of the base jurisdiction shall register apportionable vehicles upon application and payment of the registration fees as provided in Articles III and IV. Payment of additional fees for each vehicle so registered may be required by the Commissioner of the base jurisdiction, in an amount provided by statute or regulation of the base jurisdiction for issuance of a plate. A registration card shall be issued for each vehicle registered by the Commission of the base jurisdiction and the card shall appropriately identify the vehicle for which it is issued, list the jurisdictions in which the vehicle has been apportioned, the weight and classification of fee for which registered according to the applications and payments furnished by the applicant. Such registration card shall be carried in or upon the vehicle, for which it has been issued, at all times.

[Only the base jurisdiction may charge a fee for the issuance of an identification (license) plate, which is in addition to the proportional registration fee determined under Article III.A., since only the base jurisdiction may issue such a plate. (See Articles I.C., IV.D.2. and commentary thereunder, and Article XVII.E.1.) Any such fee must be established by statute or legally valid regulation in order to be an authorized fee under the Plan. (See page 7, Minutes of the AAMVA Ad Hoc Committee Meeting held in Phoenix, Arizona, July 24 - 25, 1973.)]

[Only the base jurisdiction may issue a registration (cab) card, which must identify the vehicle for which it is issued, identify the jurisdictions into and through which the vehicle may operate and show the weight and classification of fee for which the vehicle is registered.]

B. Vehicles registered as provided in Section A of this Article shall be deemed fully registered in all jurisdictions where proportionally registered for any type of movement or operation provided the registrant has proper interstate or intrastate authority from the appropriate regulatory agency or is exempt from regulation by the regulatory agency.

[Vehicles registered as provided in Section A are deemed fully registered for any type of movement or operation, provided appropriate regulatory authority is held, if necessary. Since some jurisdictions' statutes require the payment of full registration fees in the event a vehicle is to be operated intrajurisdictionally (vehicle movement point to point within a single jurisdiction), it was believed necessary to add a provision indicating that proportionally registered vehicles are "deemed fully registered" even though full fees have not been paid. This provision should be construed in light of its purpose, i.e. to make intrajurisdictional operations possible with only a proportional payment of fees. This provision should not be construed so as to cause the imposition of other fees and taxes (state, federal or provincial) not otherwise applicable under statute. It should be noted in this connection that the IRP is a "reciprocity agreement," as discussed in the commentary on Article I.E. - Vehicles proportionally registered pursuant to the IRP are receiving "reciprocity" and are exempt from "further registration . . ." (See Article II.K. and commentary thereunder.)]

C. There shall be no minimum vehicle fees for any apportionable vehicle, except those statutory fees for issuance of identifications or filing of applications.

[It was the intention of the drafters of the Plan to authorize only those "minimum vehicle fees" set by statute for issuance of identification by the base jurisdiction or for filing of application with the base jurisdiction. Although this intention is not entirely clear from the Minutes of the final AAMVA Ad Hoc Committee Meeting held in Phoenix, July 24 - 25, 1973, it may be discerned from a reading of all meeting minutes wherein this subject is discussed. Since one of the fundamental purposes of the Plan is to provide for the processing of applications and issuance of identification by the base jurisdiction only, it would be incongruous to authorize the collection of fees for those responsibilities by other than the base jurisdiction. This provision is construed to authorize the imposition of such "minimum vehicle fees" by the base jurisdiction only. Such fees must be set by statute to comply with the Plan's intent.]

D. Registrants shall register all owner-operator vehicles on the basis of the registrant's (lessee's) mileage figures for the preceding year.

VI — REGISTRATION OF ADDITIONAL FLEET VEHICLES

A. Vehicles acquired by the registrant after the commencement of the registration year and added to the proportionally registered fleet shall be registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicles for the remainder of the registration year.

B. All applications for additional fleet vehicles shall be filed and processed in the same manner as the original application.

VII — WITHDRAWAL OF FLEET VEHICLES, CREDITS, REPLACEMENT VEHICLES AND ACCOUNTING

A. If a vehicle is withdrawn from a proportionally registered fleet during the

period for which it is registered, the registrant of such fleet shall so notify the Commissioner on appropriate forms provided by the Commissioner. The Commissioner shall require the registrant to surrender the cab card and identification plates to the base jurisdiction with respect to any such vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the fees paid with respect to such vehicle, where permitted by statute, shall be refunded by each jurisdiction or be applied against liability of such registrant for subsequent additions to such fleet during such registration year or for additional fees upon audit.

[This section requires the granting of refunds or "credits" by each jurisdiction (if authorized by statute) if a vehicle is "permanently withdrawn" from a proportionally registered fleet. "Permanently withdrawn" includes destruction, sale or other complete removal from the registrant's fleet. The term "where permitted by statute" was included in recognition of the fact that some jurisdictions were not statutorily authorized to grant refunds or allow credits. Original language would have granted the registrant an "election" to determine whether he wanted a refund or credit. This provision was later revised to delete the reference to an "election," thus, in effect, allowing the jurisdiction to determine whether a refund or credit is appropriate. (See page 7, Minutes of the AAMVA Ad Hoc Committee Meeting held in Phoenix, Arizona, July 24 - 25, 1973, and attachments.)]

B. If the registrant is replacing a vehicle for one withdrawn from the fleet and such vehicle is of the same weight category as that replaced, the registrant shall file a supplemental application with the base jurisdiction. The base jurisdiction shall in accordance with provisions in Article VI.B, issue a new cab card and transfer the identification plates to the new vehicle. When a replaced vehicle is of a greater weight or requires a larger registration fee, the registrant shall file the re-registration with the base jurisdiction in the manner set forth in Article VI for the registration of additional fleet vehicles.

[This section provides that the registrant must file the re-registration with the base jurisdiction pursuant to Article VI "... when a replaced vehicle is of greater weight or requires a larger registration fee. . . ." The term "replaced vehicle" is construed to mean "replacement vehicle."]

VIII — NEW OPERATIONS

[This Article authorizes the registrant to estimate anticipated mileage for the upcoming license year if no mileage history exists because "new operations" are contemplated.]

The registrant "... shall determine the in-jurisdiction and total mileage to be used. . ." but the base jurisdiction Commissioner is authorized to "... adjust the estimate . . . if . . . not satisfied with its correctness." Early drafts of the IRP provided that adjustments made by the Commissioner "... shall not increase the registrant's total proportional factor above 100%." This limitation on the Commissioner's authority was removed by deleting the reference to it on the ground that the base jurisdiction "... may at times be compelled to increase the registration to over 100% on adjustment of proportional estimate" due to statutory mandate. (See page 7-8, Minutes of the AAMVA Ad Hoc Committee Meeting held in Phoenix, Arizona, July 24-25, 1973.)]

Initial application for proportional 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.

IX — REGISTRATION OF OWNER- OPERATOR VEHICLES

[This Article sets forth procedures specifically and solely applicable to vehicles leased by owner-operators to motor carriers on a long-term basis. The Plan does not define the terms "long-term" or "owner-operator." *As used in this article, these terms are construed to mean:*

Long Term - Any period of time exceeding 29 consecutive days.

Owner-Operator - An equipment lessor who leases his vehicular equipment with driver to a for hire carrier pursuant to ICC regulations (49 CFR 1057) or similar regulations of a jurisdiction's regulatory body.]

A. Proportional registration for owner-operators who lease their vehicles to motor carriers on a long term basis shall be accomplished as follows:

1. The lessee shall be the registrant and the vehicle shall be registered by the carrier, but in both the owner-operator's name and that of the carrier as lessee, with the allocations of fees according to the records of the carrier.

2. The identification plates and cab card shall be the property of the lessee.

[Under this section, the lessee-carrier is the owner of the identification plates and registration (cab) cards and, consequently, is responsible for their surrender under Article VII.A.]

3. Should an owner-operator leave the fleet of the lessee, the lessee may proceed in accordance with Article VII.

[This section authorizes the lessee-carrier to apply for a refund or credit under Article VII.A. if the vehicle will not be replaced by another, or to obtain new vehicle indicia for the replacement vehicle pursuant to Article VII.B. Under the provisions of the Plan the owner-operator is unable to obtain a refund directly from the member jurisdictions.]

B. Vehicles of owner-operators that are not proportionally registered or not fully registered in a jurisdiction having a separate reciprocity agreement with the jurisdiction in which the vehicle is being operated shall be subject to the trip permit requirement as set forth in Article XII.

C. Each jurisdiction shall provide a means of registration for owner-operators not

operating as a lessor. Such registration shall be a restricted plate or permit issued for a minimum fee and for a registered gross weight not in excess of the empty weight of the vehicle.

[This section requires each jurisdiction to develop a method by which an owner-operator can move his empty vehicle from one lessee-carrier fleet to another without violating general registration statutes, thereby avoiding unwarranted statutory penalties which might otherwise apply. (See Article II.C.3. and V.D.)]

X — TRIP LEASING

[This article provides special procedures applicable to "trip leasing" not to be confused with trip permit registration, covered under Article XII. "Trip Lease" is not defined in the Plan, but is construed to mean:

A lease of vehicular equipment to a common or contract carrier (lessee) for a single movement by either (a) another common or contract carrier for transportation in the direction of a point which the lessor carrier is authorized to serve or (b) a carrier of exempt commodities, as defined in the Interstate Commerce Act, for transportation in the general direction of the general area in which the vehicle is based. The term may also include a similar movement intrastate where such movement is authorized under the laws of the jurisdiction.

This provision was originally recommended for inclusion by the household goods carriers at the February 1972 Tampa Bay, Florida meeting to facilitate procedures for handling trip leasing in interstate commerce under ICC regulations with the primary registration responsibility placed on the lessee carrier. During the September 1972 Kentucky Dam Village meeting, the last sentence was modified to clarify that the service representative (see Article II.C.) has the same responsibilities. The major revision to this Article occurred at the AAMVA Ad Hoc Committee meeting held in Washington, D.C., May 30-31, 1973, when the registration and reporting burden was shifted from the lessee to the lessor in trip leasing situations involving two apportioned fleet operators. (See Minutes, page 4.) This revision recognized trip leasing practice, under which, in the vast majority of cases, the lessor is responsible for operational costs incurred under the lease.

Under a trip lease between an apportioned carrier and a non-apportioned carrier when a trip permit is not required, the miles so operated shall accrue to the lessee carrier; if a trip permit is required, no miles will accrue to the lessee carrier.]

The lessee, except as provided for service representatives in Article II.C., is responsible for the proper registration of the vehicle. Except that an apportioned operator may lease equipment to another apportioned fleet operator and the lessor shall be responsible for reporting on the proportional application the miles traveled by the leased equipment. The lessee shall be the person using and operating the equipment by the lease agreement. The leased vehicle must bear proportional credentials and be operated only in the jurisdictions to which fees have been paid or a trip permit will be required. The service representative in Article II.C. shall have the same responsibility for qualifying his vehicles.

XI — REGISTRATION OF RENTAL VEHICLES

[This article sets forth procedures specifically and solely applicable to persons or firms engaged in the business of renting and/or leasing fleets of vehicles without drivers. A "rental fleet" must be designated as such by the "rental owner" and must include five or more "rental vehicles."]

The intention of the IRP drafters in the adoption of this article was to allow, but not require, the owner of a rental fleet to be the "registrant" (see Article II.M.) of such fleet vehicles whether rented or leased. The Minutes (page 6) of the IRP Signators Meeting held in St. Louis, Missouri, October 15-16, 1973, indicate as follows:

The next subject discussed concerned the proportional registration of rental fleets. In general, all vehicles that are leased by a registrant shall be proportionally registered in the name of the carrier. However, it was agreed that in the case of vehicles that are part of a rental fleet, such vehicles may be proportionally registered in the name of the rental company as part of the rental fleet even though such vehicles may be under long term lease to an individual apportioned carrier. In such cases, the cab card may show to whom the vehicle is leased. (Emphasis added.)]

A. Definitions applicable to this Article are:

1. "Rental Owner" means an owner principally engaged, with respect to one or more rental fleets, in renting to others or offering for rental the vehicles of such fleets, without drivers.

2. "Rental Fleet" means five or more vehicles which are rented or offered for rental without drivers, and which are designated by a rental owner as a rental fleet.

3. "Rental Vehicle" means a vehicle of a rental fleet.

4. "Renting and Leasing" means the giving of possession and control of a vehicle for valuable consideration for a specified period of time.

[This section defines "renting and leasing" synonymously, making no reference to time limitations. Early drafts defined "renting" to mean "the giving of possession of a vehicle for consideration for a period of 364 consecutive days or less." Because the 364 day limitation would unduly limit the registrant's fleet flexibility, that requirement was deleted. The definition was amended further to add the term "and leasing" following the term "renting," eliminating any distinction between the two terms for registration purposes under Article XI. (See pages 6-7, Minutes of the AAMVA Ad Hoc Committee Meeting held in Washington, D.C. May 30-31, 1973; see also page 32, Minutes of the 39th Annual International Conference held in New York, New York, September 19-23, 1971 - attached to those minutes is a resolution recognizing the need for special treatment of "rental fleets" to "... achieve reciprocity among jurisdictions needed for service to the public and for efficient operation of rental vehicles.")]

5. "A Rental Transaction" for the rental of a vehicle shall be deemed to occur in the jurisdiction where such vehicle first comes into possession of the user.

B. Rental fleets owned by any person or firm engaging in the business of renting

such vehicle, shall be extended full interstate and intrastate privileges, provided that:

[A "rental owner" of a "rental fleet" in the business of "renting" and/or "leasing" apportionable vehicles without drivers in two or more member jurisdictions may register such vehicles in his own name.]

1. Such vehicles are part of a rental fleet which are identifiable as being a part of such fleet; and

2. Such person or firm has received approval from the jurisdiction to apportion such rental fleet; and

3. Such person or firm registers the vehicles as described below:

a. Trucks and Truck-Tractors. In accordance with Articles III, IV; V, VI and VII of this agreement.

[Trucks and truck tractors not otherwise treated under this section (see Article XI.B.3.e) may be registered in the name of any person or firm engaging in the business of renting or leasing rental vehicles which are part of a rental fleet. These vehicles are subject to apportionment pursuant to the definition in Article II.B. and are to be registered in accordance with basic Plan procedures, as distinguished from procedures set forth in Article XI.B.3.e.]

b. Rental Passenger Cars. Divide the gross revenue received in the preceding year for use of such rental vehicles arising from passenger car rental transactions occurring in the jurisdiction by the total gross revenue received in the preceding year for the use of such rental vehicles arising from passenger car rental transactions occurring in all jurisdictions in which such vehicles are operated. The resulting percentage shall be applied to the total number of passenger cars in the fleet and that figure shall be the number of rental passenger cars that shall be fully registered in the jurisdiction.

[This section requires the use of revenue, rather than miles, in determination of the quotient to be used in registering rental passenger cars. This revenue quotient approach was agreed by the drafters to be the only feasible method of determining the total number of rental passenger cars to be fully registered in each jurisdiction. Note that revenue is attributable to a jurisdiction if it arises from "rental transactions occurring in the jurisdiction." (Deemed to be where the vehicle first comes into possession of the user; see Article XI.A.5.)]

c. Trailers and Semi-Trailers. Trailers and semi-trailers not in separate pool fleets and used in normal tractor trailer operations shall be licensed according to Article IV.C. Where required, trailers and semi-trailers, over 6,000 pounds gross vehicle weight and used solely in pool fleets shall be licensed as follows:

Divide the gross revenue received in the preceding year for the use of such rental vehicles arising from rental transactions occurring in the jurisdiction by the total gross revenue received in the preceding year for the use of such rental vehicles arising from rental transactions in all jurisdictions. The resulting percentage shall be applied to the number of units in such fleet.

[Paragraph one requires that trailers and semi-trailers operating in rental fleets of trucks and truck tractors be registered in accordance with Article IV.C. (see Article XI.B.3.a.). These vehicles, therefore, may be registered in the name of the rental owner, under basic Plan procedures.

Paragraph two requires the use of revenue figures in the determination of the number of "pool" trailers or semi-trailers to be fully licensed. This provision fails to indicate that the application of the percentage factor to total fleet units determines the number of vehicles to be "fully registered" (see Article XI.B.3.b.) or "fully plated" (see Article XI.B.3.c.).]

d. Utility Trailers. Utility Trailers, 6,000 pounds gross vehicle weight and under. Every owner of utility trailers engaged in the business of renting such trailers for use in a jurisdiction shall register a number of trailers equal to the average number of such trailers rented in or through the jurisdiction during the preceding year.

[This section provides for the registration of utility trailers, which are trailers not exceeding 6,000# GVW. The Plan provides that the number of trailers to be registered shall equal the "average number of such trailers rented in or through the jurisdiction during the preceding year." This method of registration was selected because it was currently being used by most jurisdictions and, after careful consideration, was determined to be the most equitable and feasible approach.]

e. One-Way vehicle. Trucks of less than 26,000 pounds gross vehicle weight operated as a part of an identifiable one-way fleet will allocate vehicles to the respective jurisdictions based on the mileage factor procedure in Article III and fully plate said allocated vehicles in such jurisdiction. All trucks of such one-way fleet so qualified will be allowed to perform both interstate and intrastate movements in all jurisdictions.

[Provides for "vehicle allocation" of vehicles described as "one way vehicles." Such vehicles are those which are rented in one place and generally left in another. Such vehicles are to be "allocated" to each "respective jurisdiction."]

In this section, an "allocated vehicle" is one to which a particular jurisdiction's basic registration plate is attached upon payment of that jurisdiction's full basic registration fee. A portion of each fleet of one way vehicles is "allocated" to each jurisdiction into or through which the fleet travels (each vehicles of the fleet need not enter every jurisdiction.) The mileage quotient procedure of Article III.A.1. is used to determine the number of vehicles allocated to each jurisdiction.

For example: Assume (1) Fleet A consisted of fifty vehicles; (2) the fleet traveled 1,000,000 total miles during the preceding year in ten jurisdictions; (3) 100,000 of those miles were traveled in jurisdiction X. Based on these assumptions, 10% of the fleet mileage was accrued in X and, consequently, five vehicles (10% x 50) should be allocated to and "fully plated" in X.

All trucks of an identifiable one way fleet (identified by visible vehicle markings) "so qualified" (allocated and fully plated) are to be authorized to perform both interstate and intrastate movements in IRP jurisdictions, even those identified with the registration plate of a non-IRP jurisdiction.]

XII — TRIP PERMIT REGISTRATION

A. Trip permit registration may be issued for any vehicle or combination of

vehicles which could be lawfully operated in the jurisdiction if full registration or proportional registration were obtained.

[This section authorized the issuance of "trip permits" in lieu of either "full" or "proportional" registration. It is clear that the drafters' intent was to provide for an optional alternative, available to the registrant at his election.]

B. A person desiring a trip permit registration shall make application therefore on forms provided by the Commissioner. Every such application shall be accompanied by the required fee. Every trip permit shall be carried in the cab of the vehicle for which such permit is issued.

C. Any vehicle or combination of vehicles for which a trip permit has been issued may be operated in interstate or intrastate commerce in the jurisdiction for the period allowed under such permit.

[This section sets forth a fundamental Plan concept that vehicles operating under trip permit "... may be operated in interstate or intrastate commerce in the jurisdiction for the period allowed under such permit." The minutes (page 8) of the AAMVA Ad Hoc Committee meeting held in Phoenix, July 24-25, 1973 indicate:

The intention in the original document was to give the trip permit the same standing as a full proportional registration. Many times the trip permits allow only interstate movement, and if prorated it would allow both interstate and intrastate movement.

This section is construed to mean:

Any vehicle or combination of vehicles for which a trip permit has been issued may be operated interstate or intrastate in the jurisdiction for the period allowed under such permit.

The drafters recognized that they should concern themselves with interstate and intrastate "movements" only (whether such movements are in interstate or intrastate commerce is a regulatory issue; see Articles V.B., XI.B., XI.B.3.e. and XVII.E. and commentary thereunder.)

The terms "interstate" and "intrastate" are not defined in the Plan, but are construed to mean:

Interstate - Vehicle movement between or through two or more jurisdictions.

Intrastate - Vehicle movement from one point within a jurisdiction to another point within the same jurisdiction.

Miles operated by an apportioned carrier under a trip permit shall not accrue to the carrier, except as the basis for an estimate under Article VIII.]

D. Trip permits shall not be used to evade or circumvent this agreement.

E. Jurisdictions, members to this agreement, may provide a system of issuing trip permits for other jurisdictions, members of this agreement, so that vehicles may move without waiting for telegraphic or other emergency authorization. The issuing jurisdiction shall collect the necessary trip permit fee and forward it to the jurisdiction for which the permit was issued and deliver the registrant the permit for movement in the other jurisdiction or jurisdictions.

XIII — PRESERVATION OF RECORDS AND AUDIT

A. Any registrant whose application for proportional registration has been accepted shall preserve the records on which it is based for a period of the three preceding years. Such records shall be made available to the Commissioner at his request for audit as to accuracy of computation, payments, and assessments for deficiencies or allowances for credits, during the normal business hours of the day.

[This section requires the preservation of "operational records" supporting the application for a period of the "... three preceding years." "Preceding year" means the "twelve consecutive months immediately prior to September 1st of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought." (See Article II.J.) Records must be maintained through September of the fourth prior year for each registration year in question since the "preceding year" or mileage year actually includes part of two calendar years. For example: If a carrier is audited during 1977 registration, the mileage records would be: January 1, 1976, through August 31, 1976, and September 1, 1975, through December 31, 1975 (1st preceding year); September 1, 1974, through August 31, 1975 (2nd preceding year); and September 1, 1973, through August 31, 1974 (3rd preceding year.)

Insofar as the Uniform Operational Audit Procedure Guidelines approved by the IRP jurisdictions set forth procedures applicable to the preservation of records sufficient for a determination of true liability, they are hereby incorporated by reference.]

B. If any registrant fails to make records available to the Commissioner upon proper request or if any registrant fails to maintain records from which his true liability may be determined, the Commissioner may, thirty days after written demand for an availability of records or notification of insufficient records, impose an assessment of liability based on the Commissioner's estimate of the true liability of such registrant as determined from information furnished by the registrant, information gathered by the Commissioner at his own instance, information available to the Commissioner concerning operations by similar registrants and such other pertinent information as may be available to the Commissioner.

XIV — AUDITS

[Insofar as the Uniform Operational Audit Procedure Guidelines approved by the IRP jurisdictions set forth procedures required under audit, they are hereby incorporated by reference.]

A.1. The base jurisdiction shall audit the registrants displaying a base plate of the base jurisdiction as to authenticity of mileage figures derived from operational records and registrations and at such time and frequency as determined by the base jurisdiction.

2. In the event that the registrant's operational records are not located in the base

jurisdiction and it becomes necessary for the base jurisdiction to send auditors to the place where such records are normally kept, the base jurisdiction may require the registrant to reimburse the base jurisdiction for per diem and travel expense of its auditors incurred in the performance of such audit.

B. Upon completion of any such audit, the Commissioner shall notify all jurisdictions in which the registrant was proportionally registered on the accuracy of the records of such registrant. Should the registrant have miscalculated the fees due any jurisdiction in which his vehicles were proportionally registered, such information shall be furnished to the jurisdictions for adjustment.

C. Audits may be made by the Commissioners of the several jurisdictions.

XV — ASSESSMENT CLAIMS UNDER AUDIT

[Insofar as the Uniform Operational Audit Procedure guidelines approved by the IRP jurisdictions set forth procedures required for assessment for deficiencies and claims for credit or refund, they are hereby incorporated by reference.]

A. Upon audit, the Commissioner shall assess for any deficiency found to be due. No assessment for deficiency or claim for credit may be made for any period for which records are no longer required.

B. Assessments based on audit, interest on assessments, refunds, or credits or any other amounts including auditor's per diem and travel shall be made in accordance with the statute of each jurisdiction involved with the audit of a registrant.

XVI — ENTRY AND WITHDRAWAL

A. Any jurisdiction may become a party to this agreement by executing the prescribed adopting resolution and sending it to the American Association of Motor Vehicle Administrators (hereinafter referred to as AAMVA) in Washington, D.C.; however, such resolution must be approved and endorsed by all member jurisdictions using procedures contained in Article XIX.

B. This agreement shall continue in full force and effect, after its original adoption, as to each jurisdiction until cancelled or revoked by proper officials of any jurisdiction upon thirty days written notice to AAMVA who shall immediately notify the officials of the other member jurisdictions of this agreement. However, cancellation by one jurisdiction shall not affect the agreement as between other jurisdictions. All credentials issued under this agreement shall be valid until the end of the current registration year of the applicable jurisdiction.

XVII — EXCEPTIONS

A. Each signatory jurisdiction to this agreement shall list its exceptions, if any. These exceptions will be made a part of the adopting resolution and of this agreement by appendix listing and will be effective upon approval by each member jurisdiction using procedures contained in Article XIX.

B. Any jurisdiction may amend its exceptions by serving copies of the proposed changes on AAMVA and all member jurisdictions. Upon approval of all contracting jurisdictions, the amended or proposed exception shall be effective in the next succeeding registration year provided at least 30 days notice has been given.

C. Failure, on the part of a member jurisdiction, to respond to a proposed new or amended exception within 120 days of its receipt shall be deemed to constitute approval of the exception so submitted.

D. The withdrawal or cancellation of an exception shall be accomplished by filing due notice of such action with AAMVA and becomes effective upon notification to all member jurisdictions using the procedures contained in Article XIX. The withdrawal or cancellation of an exception shall not require approval by the member jurisdictions.

E. There shall be no exceptions taken, however, to the following concepts embodied in this agreement:

- 1. Single registration plate;**
- 2. Single registration (cab) card; and**
- 3. Ability to perform both interstate and intrastate vehicle movements.**

XVIII — OTHER AGREEMENTS

[The IRP supersedes all other agreements between members "... covering, in whole or in part, any of the matters covered by the agreement." From the provision it is clear that agreements relating to matters not specifically covered by the IRP continue in force and effect. For example, any agreement granting full reciprocity (no fees for licensing) to vehicles not apportionable under the Plan would continue in effect (for purposes of this commentary an "agreement" is deemed to include "arrangements" and "understandings"; see commentary under Article II.B.).]

This agreement shall supersede any reciprocal or other agreement, arrangement or understanding between any two or more of the member jurisdictions covering, in

whole or in part, any of the matters covered by this agreement; but this agreement shall not affect any reciprocal or other agreement, arrangement or understanding between a member jurisdiction and any non-member jurisdiction.

XIX — ADMINISTRATION

A. The AAMVA shall be the official repository of this agreement and shall be responsible for the required duties attendant to the administration of this agreement.

B. When two or more jurisdictions become signatories to this agreement, and as each jurisdiction thereafter joins the agreement, each jurisdiction shall send the prescribed adopting resolution to AAMVA in Washington, D.C. Upon receipt of such resolution, AAMVA shall provide a copy to each member jurisdiction shall notify AAMVA as to its endorsement or rejection of the applicant jurisdiction.

C. The AAMVA shall keep all jurisdictions apprised of the current status of the agreement in the manner determined by the Association to best accomplish this purpose.

D. Decisions regarding interpretations of any question at issue or formal policy procedures relating to this agreement shall be reached by agreement of two-thirds of the member jurisdictions, acting through the Commissioners thereof, and upon determination shall be placed in writing and be retained by AAMVA as a part of the permanent records which shall be binding on member jurisdictions where not in conflict with existing statute. Each such matter to be decided under this section shall be placed in writing and shall be presented to each member jurisdiction Commissioner for approval or rejection. Each such matter to be decided under this section which is not decided within 365 days of its receipt shall be considered moot.

XX — AMENDMENTS

This agreement may be amended, subject to the approval of three-fourths of the member jurisdictions, acting through the officials thereof authorized to enter this agreement. All proposed amendments shall be in writing and have been presented in one or more open meetings of Commissioners. Such proposed amendment must be accompanied by a memorandum setting forth the intent and purpose of the proposed amendment which memorandum shall be filed by the repository along with the amendment.

XXI — EFFECTIVE DATE

This agreement shall become effective upon the approval by any two jurisdictions and shall be operative between jurisdictions upon their signing or adopting this agreement.

XXII — AAMVA

The American Association of Motor Vehicle Administrators, AAMVA, hereby accepts the responsibilities herein above assigned to it.

By: _____
Executive Director, AAMVA

**Signed this the _____ day of _____, 19 _____ by
the following jurisdictions, acting through their authorized officers:**

APPENDIX A

RESOLUTION ADOPTING THE INTERNATIONAL REGISTRATION PLAN

WHEREAS, the International Registration Plan was formed to provide a uniform system for the registration of vehicles used interjurisdictionally, and

WHEREAS, it is the purpose of the Plan to implement the concept of one registration plate and one registration (cab) card for one vehicle;

NOW THEREFORE, in consideration of the mutual and reciprocal benefits to flow therefrom in accordance with the laws of this jurisdiction, the _____

(Title of the Official)

acting in pursuant to _____

(Insert statutory authority)

and on behalf of the State/Province of _____, does hereby ratify the INTERNATIONAL REGISTRATION PLAN with no exceptions — exceptions as attached hereto.

(Strike out the phrase that does not apply)

IN TESTOMONY WHEREOF, the State/Province of _____, acting through its duly authorized officials, has caused this resolution to be adopted to make the State/Province of _____

_____ a member of and a party to the agreement herein mentioned, subject to the endorsement by all jurisdictions now party to the agreement.

Adopted this _____ day of _____, 19 _____.
FOR the State/Province of _____

BY: _____

Signature

Title

Signature

Title

ENDORSEMENT: For the State/Province of _____

As required by Section A of Article XVI of the International Registration Plan, this Resolution of Ratification is hereby endorsed on this _____ day of _____, 19 _____.

By: _____
Signature Title

APPENDIX B

ROSTER OF PARTY JURISDICTIONS

<i>JURISDICTION</i>	<i>DATE SIGNED</i>	<i>DATE OF ENTRY</i>
Kentucky	Sept. 13, 1973	Sept. 13, 1973
Tennessee	Sept. 13, 1973	Sept. 12, 1973
Missouri	Sept. 13, 1973	Sept. 13, 1973
Texas	Sept. 13, 1973	Sept. 13, 1973
Minnesota	Sept. 13, 1973	Jan. 1, 1975
Oregon	Sept. 13, 1973	Jan. 1, 1975
Nebraska	Sept. 13, 1973	Jan. 1, 1975
Utah	Sept. 13, 1973	Jan. 1, 1975
Colorado	Sept. 13, 1973	Jan. 1, 1975
South Dakota	Apr. 26, 1974	Jan. 1, 1975
Alberta	June 13, 1974	Jan. 1, 1975
Mississippi	Sept. 3, 1974	Nov. 1, 1975
Virginia	Oct. 21, 1974	Mar. 1, 1975
Wyoming	Apr. 9, 1975	Jan. 1, 1976
Montana	Aug. 7, 1975	Jan. 1, 1976
Arkansas	Aug. 26, 1975	1976 Regis. Year (7/1/76)
Louisiana	Aug. 7, 1975	1976 Regis. Year (4/1/76)
Idaho	Sept. 17, 1975	1976 Regis. Year
Illinois	Oct. 16, 1975	1977 Regis. Year (1/1/77)
North Carolina	May 13, 1976	1977 Regis. Year (1/1/77)
Oklahoma	Sept. 27, 1976	1978 Regis. Year (1/1/78)
Wisconsin	Feb. 2, 1977	1978 Regis. Year (1/1/78)
Iowa	May 11, 1977	1978 Regis. Year (1/1/78)
Alabama	July 11, 1979	1981 Regis. Year (10/1/80)
Arizona	Sept. 4, 1979	Application Pending
North Dakota	Jan 31, 1980	Application Pending

APPENDIX C

EXCEPTIONS TO THE INTERNATIONAL REGISTRATION PLAN

ALBERTA

Vehicles operating on the highways of Alberta without being proportionally registered as required by this agreement or temporarily registered with Alberta permits will be required to pay the full Alberta Motor Vehicle Registration fees plus any applicable penalties.

COLORADO

Colorado requires the registration of trailers, semitrailers and auxiliary axles as provided in Colorado Revised Statutes 1973, Title 42, Chapter 3, Article 102.

NOTE: This does not mean that Colorado requires such vehicles to display a license plate in this state if the base state does not issue a license plate or register such vehicles. We want (*sic*) the base state to include these vehicles on the applications submitted to Colorado.

IDAHO

Pursuant to Article VII, the State of Idaho files the following exceptions:

- A) There are no credits for replacement vehicles; plates are not transferable (statutory).
- B) If vehicle is destroyed, plates are transferable for a \$5 fee.
- C) The maximum fee charged on the power unit is \$100, which is apportioned.

ILLINOIS

Pursuant to Article XVII, and in accordance with Article IV, Section C hereof, the State of Illinois herewith files the following exceptions:

All trailers are required to be prorationally registered prior to being operated on the

highways of the State of Illinois. The fees for trailers shall be determined by applying the same apportionment factor as employed in Article III. Miles generated by trailers shall not be used in computing the Illinois apportionment factor. The applicant shall include a listing identifying all trailers with their proper vehicle identification number.

IOWA

Vehicles operating on the highways of Iowa, without being proportionally registered and operating under the reciprocity extended by Chapter 326.23, Code of Iowa, 1975 (\$10 72-hour trip permit) are limited to such operations and movements are exclusively interstate in character. Such vehicles operating intrastate will be subject to full Iowa registration fees as required by Chapter 321.54, Code of Iowa, 1975, or be proportionally registered.

MONTANA

The State of Montana will require all trailers, semitrailers and all other trailing vehicles or combinations of trailing vehicles, except special mobile equipment, be included in the fleet.

NEBRASKA

Vehicles operating on the highways of Nebraska, without being proportionally registered and operating under the reciprocity extended by the \$10 72-hour Trip Permit are limited to such operations and movements as are exclusively interstate in character. Vehicles operating or moving between two points in Nebraska or carrying any merchandise or passengers between two points in Nebraska will be required to pay the full Nebraska Motor Vehicle Registration fees and taxes as required by R.S.S., NEBR 1943, Section 60-305.03, or be proportionally registered.

NORTH CAROLINA

Vehicles operating on the highways of North Carolina without being proportionally registered as required by this agreement or temporarily registered with North Carolina permits will be required to pay the full North Carolina Motor Vehicle Registration fees plus any applicable penalties.

OREGON

As provided in Article IV, Section C all trailers, semitrailers and auxiliary axles are required to be registered before they may be operated on the highways of the State of Oregon. The fees shall be computed by using the factor determined in the same manner as described by other apportionable vehicle.

The vehicles will be identified by means of an apportioned plate issued by the base jurisdiction in the same manner as any other apportionable vehicle.

Those jurisdictions that do not require identification plates for auxiliary axles may apply the fees to the trailer or semitrailer and withhold issuing any apportionment credentials.

As provided in Article IV, Section D.1., the applicant will include a listing identifying the power units, trailers and semitrailers with the proper vehicle identification serial numbers and the license plate numbers issued by the base jurisdiction.

TEXAS

Vehicles operating on the highways of Texas without being proportionally registered as required by this agreement or temporarily registered with Texas 72-hour permits will be required to pay the full Texas Motor Vehicle Registration fees plus any applicable penalties.

VIRGINIA

Vehicles operating on the highways of Virginia without being proportionally registered as required by this agreement, or temporarily registered with Virginia 10 day permits, will be required to pay the full Virginia Motor Vehicle Registration fees plus any applicable penalties.

WYOMING

Pursuant to XVII of the International Registration Plan and in compliance with IV (C) thereof, the State of Wyoming requires that all trailers and semitrailers be registered for operation on the highways of the State of Wyoming. Registration fees are the same for trailers and semitrailers as for motor vehicles and are computed in the same manner.

Trailers and semitrailers for which the State of Wyoming is the base jurisdiction will each be issued an apportioned plate similar to those apportioned plates issued to motor vehicles. The State of Wyoming will honor trailer and semitrailer plates of other base jurisdictions issued as provided by their laws.

