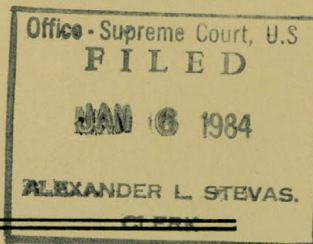


NO. 95 ORIGINAL



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**In the  
Supreme Court of the United States**

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October Term, 1983

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State of Arkansas,  
*Plaintiff,*

v.

State of Oklahoma,  
*Defendant.*

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MOTION FOR LEAVE TO FILE COMPLAINT

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

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## QUESTIONS PRESENTED

I. THE GOVERNOR OF ARKANSAS HAS THE AUTHORITY TO APPOINT COUNSEL FOR THE STATE WHEN THE ATTORNEY GENERAL REFUSES TO ACT FOLLOWING A WRITTEN REQUEST.

II. THIS CASE IS AN APPROPRIATE EXERCISE OF ORIGINAL JURISDICTION.



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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### 1. UNITED STATES CONSTITUTION

Article I, Section 8, Clause 3 of the Constitution of the United States provides as follows:

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes.

### 2. ARKANSAS CONSTITUTION

Article 6, Section 2 of the Constitution of the State of Arkansas provides as follows:

The Supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "the Governor of the State of Arkansas."

Article 6, Section 22 of the Constitution of the State of Arkansas provides as follows:

The Treasurer of State, Secretary of State, Auditor of State and Attorney General shall perform such duties as may be prescribed by law; they shall not hold any other office or commission, civil or military, in this State or under any State, or the United States, or any other power, at one and the same time; and, in case of vacancy occurring in any of said offices, by death, resignation or otherwise, the Governor shall fill said office by appointment for the unexpired term.

Article 16, Section 13 of the Constitution of the State of Arkansas provides as follows:

Any citizen of any county, city or town may institute suit in behalf of himself and all others interested,

to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.

### 3. ARKANSAS STATUTES

Ark. Stat. Ann. §12-710 (Repl. 1979) provides as follows:

If any official, department, institution, or agency of the State needs the service of an attorney and the Attorney General fails to render the service when requested in writing, upon the establishment of such fact, the Governor may appoint counsel to look after the matter or may authorize the employment of counsel by the officer, department, agency, or institution needing the services of an attorney.

Ark. Stat. Ann. §12-712 (Repl. 1979) provides as follows:

The Attorney General shall maintain and defend the interests of the State in matters before the United States Supreme Court, and all other Federal courts, and shall be the legal representative of all State officers, boards and commissions, in all litigation where the interests of the State are involved.

Ark. Stat. Ann. §75-817.3 (Supp. 1983) provides as follows:

(a) As used in this Section of this Act, the following terms shall have the following meanings:

(1) "Department" means the Director of the Arkansas State Highway and Transportation Department;

(2) "Division" means the Commissioner of Revenues, Department of Finance and Administration, State of Arkansas;



(3) "Motor Vehicle", as used herein, 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 this Section of this Act;

(3) [(4)] "Truck" includes the terms "truck" or "truck-tractor" and "semi-trailer" or "trailer" when operated in combination with a truck or truck-tractor;

(4) [(5)] "User" includes any person having the use and control or the right to the use and control, of any motor vehicle;

(5) [(6)] "Highway" includes all highways, roads, and streets of this State generally open to the use of the public as a way for vehicular traffic;

(6) [(7)] "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.

(7) [(8)] "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.

(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, nor to 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, nor to any vehicle owned and operated by the United States of America or the State of Arkansas, or any political subdivision thereof.

(d) The provisions of this Section of this Act shall not apply to any motor vehicle used on an interstate trip with an origin or destination within 10 miles of the geographic boundaries of this State, provided the one-way travel distance in the State is not over 10 miles.

(e)(1) The user of every vehicle subject to this Section of this Act and which is an Arkansas registered vehicle, before operating such vehicle over the highways of this State, shall qualify such vehicle with the Division. Qualifications shall be made by application to the Division on forms to be provided by said Division. Said application may be filed with the Division at the time of registration of the vehicle.

(2) Such application shall be accompanied by payment to the Division of a fee of five dollars (\$5.00), to be

deposited into the Constitutional and Fiscal Agencies Fund, which shall cover the clerical cost of such qualification. Upon receipt of such application and payment of the tax as hereinafter determined, the Division shall make appropriate record of the vehicle qualified and certify such qualification on the applicant's registration certificate or a registration cab card, one of which is to be carried in the cab of the vehicle at all times. The said registration certificate or registration cab card shall, in addition to the registration information and the required certification, show the amount of tax paid for such vehicle as determined by Subsection (f) of this Section.

(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. If the user elects to pay the annual mileage tax, the Department, upon application thereof and receipt of such payment, shall issue an annual mileage tax certificate to the user which shall, by the user, be affixed to the cab of such vehicle. If the user elects to pay an amount determined by the applicable mileage rate set forth in (f) (1) of this Section, the Department shall utilize the appropriate rate multiplied by each mile such vehicle was operated over the highways of this State for the preceding twelve month period based on mileage records of the user acceptable to the Department. Upon payment of such amount, the Department shall issue a certificate to the user, which shall, by the user, be affixed to the cab of such vehicles. If the user elects to utilize a trip permit, such trip permits for trucks with a gross weight of 73,281 pounds through 80,000 pounds shall be issued at a fee of eight dollars (\$8.00) for each 100 miles of travel, rounded to the nearest 100 miles, whether loaded or unloaded. Said permits shall be issued by the Department in such forms as it deems appropriate.

(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 Sec-

tion, 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 "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."

#### 4. Oklahoma Statutory Provisions

47 O.S. Supp. 1982, §22.5j, provides as follows:

§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 prorationing 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 ( $\frac{1}{4}$ ) 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 non-prorated 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 state 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.

QUESTIONS PRESENTED

I. THE GOVERNOR OF ARKANSAS HAS THE AUTHORITY TO APPOINT COUNSEL FOR THE STATE WHEN THE ATTORNEY GENERAL REFUSES TO ACT FOLLOWING A WRITTEN REQUEST.

II. THIS CASE IS AN APPROPRIATE EXERCISE OF ORIGINAL JURISDICTION.

## ARGUMENT

## I.

THE GOVERNOR OF ARKANSAS HAS THE AUTHORITY TO APPOINT COUNSEL FOR THE STATE WHEN THE ATTORNEY GENERAL REFUSES TO ACT FOLLOWING A WRITTEN REQUEST.

In its Brief in Opposition, the State of Oklahoma has raised the issue of the statutory authority of attorneys for the Arkansas State Highway Commission to bring this action at the request of the Governor. Oklahoma contends that under Arkansas state law only the Attorney General can represent the State in this Court. In so doing they misconceive the Constitutional and statutory framework governing such matters in Arkansas and (because of the abbreviated foundation laid in our Motion previously filed) the factual context out of which this law suit arose.

The Attorney General in Arkansas is vested with no independent Constitutional authority: he simply carries out any directives given him "by law". Art. 6, §22, Ark. Const. It is true that under Section 2 of Act 131 of 1911 (Ark. Stat. Ann. §12-712 (Repl. 1979), the Attorney General is authorized to be the "legal representative" in "all litigation where the interests of the State are involved" including specifically "matters before the United States Supreme Court". However, some twenty years after the passage of Act 131 the Arkansas legislature provided a supplemental comprehensive solution to the problem of representation when the Attorney General declines to act. Section 6 of Act 14 of 1933 (Ark. Stat. Ann. §12-710 (Repl. 1979) provides:

If any official, department, institution, or agency of the State needs the service of an attorney and the Attorney General fails to render the service when requested in writing, upon the establishment of such fact, the Governor may appoint counsel to look after the matter or may

authorize the employment of counsel by the officer, department, agency, or institution needing the services of an attorney.

Ark. 6, §2, of the Arkansas Constitution states: "the supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of Arkansas". As chief executive the Governor requested by letter dated May 16, 1983 (a copy of which is located in the appendix at A-1) that the Attorney General "represent the people of our state by filing an original action in the United States Supreme Court against . . . [Georgia, Nebraska, New Jersey, and Oklahoma] and any other states which may have taken steps to impose retaliatory levies". At that time no retaliatory taxes had actually been imposed, although the threat of retaliation had surfaced. On July 6, 1983, following actual imposition on July 1, 1983, of the challenged tax by the Oklahoma Tax Commission, the Governor again requested in writing that the Attorney General file suit. A copy of this letter has not been secured (due to the press of time and the disruption of the holidays). In any case the Attorney General noted his receipt of this request in his response of July 7 which is located in the appendix, A-2, 3). In that response he refused to file suit for the State because of the time factor implicit in original litigation and his own reading of this Court's decision in *Western and Southern Life Insurance Co. v. State Board of Equalization*, 451 U.S. 648 (1981). Upon receiving this refusal the Governor (pursuant to his authority under Ark. Stat. Ann. §12-710 (Repl. 1979), appointed attorneys for the Arkansas State Highway Commission. A copy of the Governor's letter, outlining this appointment, is included as Exhibit 1 to the Motion for Leave to File Complaint already lodged with this Court. (at A-3).

The Plaintiff's note, for the Court's information, that if the Attorney General (or indeed any citizen of the State of Arkansas) challenges the Governor's authority to appoint special counsel, such challenge could easily be brought pursuant to Art. 16, §13 of the Arkansas Constitution. Suits to prevent "illegal exactions" includes suits to injoin illegal expenditure of

public funds (such as unauthorized filing of law suits) as well as illegal collections. See for example *Starnes v. Sadler*, 237 Ark. 325, 372 S.W.2d 585 (1963). No questioning of this authority has in fact been made.

## 2. THIS CASE IS AN APPROPRIATE EXERCISE OF ORIGINAL JURISDICTION.

The State of Oklahoma provides no legitimizing analysis of the taxes imposed by the Oklahoma Tax Commission under the four pronged test elucidated by this Court in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L.Ed.2d 326 (1977). Oklahoma merely labels as "frivolous" the Plaintiff's suggestion that the combination of public and private triggers required for the imposition of any taxes under 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 F) breaks the necessary nexus. It likewise asserts, without citing authority, that special revenue taxes automatically meet the fourth prong under *Complete Auto Transit* even though carriers will pay differing amounts for the same state-provided service, namely the right to travel an unlimited number of miles over the roads of Oklahoma. Still, even a casual analysis confirms that a tax levy that will never be paid by an Oklahoma carrier, and that will be paid in differing amounts by different carriers, is discriminatory whether judged "by its results or its formula". The state of Oklahoma does not contest this arguing that such discrimination is permissible if not "unreasonable in amount" (Brief in Opposition at 27-28). This is *not* the holding of *Capitol Greyhound Lines v. Brice*, 339 U.S. 547, 70 S. Ct. 806, 94 L.Ed.2d 1053 (1950) and can not be squared with *Complete Auto Transit*, and its progeny as cited in our original Motion.

The Plaintiff argues that 47 O.S. Supp. 1982, §22.5j is a clear violation of the Commerce Clause and, as set out above, Oklahoma makes faint effort to contest that. Instead,

Oklahoma asserts that whether its statute is a Constitutional violation or not, this case would be an inappropriate exercise of original jurisdiction. Three quick points raised by Oklahoma need to be answered.

First, Oklahoma in the section of its Brief in Opposition labeled "Background" tries to establish that the Oklahoma tax burden, even with the mirror levy, is lower than that imposed on the highest weight trucks by Arkansas. Of course the *actual* relative tax burden can only be established after discovery when this case proceeds to trial. It is worth noting that under Ark. Stat. Ann. §75-817.3 (Supp. 1983) the Arkansas Highway Use Equalization Tax is paid at a rate of 5 cents/mile up to a *maximum* of \$175 while the Oklahoma Tax Commission is imposing a tax of \$175 regardless of mileage. Also, a significant factor in the Oklahoma highway system is a system of six toll expressways, payment for which is on a ton mile basis. The toll roads are key interstate links including what the Official State Map of Oklahoma (1983) refers to as the "South Route to California: The Bailey Turnpike, The Turner Turnpike, the Will Rogers Turnpike and their connecting State Expressways in Texas, Oklahoma, Missouri, and Illinois now provide a continuous 4-lane divided expressway from Chicago, Illinois, all the way across Oklahoma and into and through Wichita Falls, Texas. From Wichita Falls a variety of routes are available through the relatively open country of Southwest Texas, New Mexico and Arizona to California." Total charges for a single one way trip on the "south route" (I-44) is \$22.80. (Sufficient copies of the map could not be secured in the time made available for Reply, the relevant portion of the map is reproduced and located in the pocket part.) Arkansas has no toll facilities.

Second, the State of Oklahoma raises the question of a pending state challenge to Ark. Stat. Ann. §75-817.3 (Supp. 1983) which, if successful, would avoid the imposition of Oklahoma's retaliation. On November 23, 1983, the Chancery Court of Pulaski County upheld the Constitu-

tionality of the Arkansas Highway Use Equalization Tax in *ATA, Inc. et. al. v. Gray et. al.*, Pulaski Chancery No. 83-2360. Findings of Fact and Conclusions of Law are being drafted in conformity with the trial court's oral decision.

Ultimately, the State of Oklahoma, citing *Illinois v. City of Milwaukee*, 406 U.S. 91, 92 S.Ct. 1385, 31 L.Ed.2d 712 (1972) and *Arizona v. New Mexico*, 425 U.S. 794, 96 S.Ct. 1845, 48 L.Ed.2d 376 (1976) is arguing that Arkansas' assertions of injury in fact, whether proprietary, sovereign, or parens patriae are not important enough to invoke the Court's original jurisdiction. It is true that Arkansas in its Motion has not yet quantified its increased costs as a consumer of truck services. Such quantification of its own costs, and the costs of its citizens parens patriae, will require discovery of the actual sums collected by Oklahoma from both Arkansas based trucking firms and trucks based in other states, subject to retaliation, which serve consumers in Arkansas. Still, two occurrences since our initial filing highlight the importance of the federalism issues to be decided. Pennsylvania, also a victim of Oklahoma's retaliation, has filed a brief in this case as amicus curiae and Arkansas has been notified that beginning January 1, 1984, the State of Nebraska will begin to impose its retaliatory tax (60-305.02). A copy of this notification is attached in the appendix (A-5). The spectre of "Economic Balkanization" is becoming a reality. *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979).



CONCLUSION

This Court should grant that Plaintiff's Motion to File its Complaint and allow this case to proceed to a decision on the merits.

Respectfully submitted,

THOMAS B. KEYS  
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Phone (501) 569-2272

*Attorney for Plaintiff  
State of Arkansas*

## CERTIFICATE OF SERVICE

In accordance with Rules 9 and 28 on *January 5, 198\** three copies of the above and foregoing Reply to 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:

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Attorney General of Oklahoma  
State Capitol Building  
Oklahoma City, Oklahoma 72105

J. Lawrence Blankenship  
General Counsel  
Oklahoma Tax Commission

Donna E. Cox, Attorney  
Oklahoma Tax Commission  
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Oklahoma City, Oklahoma 72194

and

Spencer A. Manthorpe  
Office of Chief Counsel  
Department of Transportation  
Commonwealth of Pennsylvania  
Harrisburg, Pennsylvania 17120

Leroy S. Zimmerman  
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Commonwealth of Pennsylvania  
Harrisburg, Pennsylvania 17120

---

Thomas B. Keys  
Attorney for Plaintiff  
State of Arkansas

A-1

APPENDIX

STATE OF ARKANSAS  
OFFICE OF THE GOVERNOR  
State Capitol  
Little Rock 72201

Bill Clinton  
Governor

May 16, 1983

Attorney General Steve Clark  
Justice Building  
Little Rock, Arkansas 72201

Dear General Clark:

Recently I have learned that motor vehicle taxing authorities in the states of Georgia, Nebraska, New Jersey, and Oklahoma are poised and ready to levy "retaliatory" highway taxes and fees on Arkansas trucks using their highways, when our new weight distance tax goes into effect July 1. Letters from officials in each of the four states are attached, indicating that they will take steps to require Arkansas trucks traversing their highways to pay taxes and fees equal to those exacted from trucks operating in Arkansas pursuant to Act 685 of 1983, the Highway Use Equalization Tax Law.

Because I am strongly of the belief that such retaliatory taxes are violative of the federal commerce and equal protection clauses, I am requesting that you represent the people of our state by filing an original action in the United States Supreme Court against these and any other states which may have taken steps to impose retaliatory levies. I believe such a suit should seek a declaratory judgment that such levies are unconstitutionally discriminatory against the State of Arkansas. I hope you will also seek injunctive

relief, in light of the apparently imminent actions of the four defendant states.

Based upon the preliminary legal research conducted by my legal counsel, Charles Schlumberger, a copy of which is also enclosed, I believe there is a strong probability that such a suit can be won. In order to protect the interests of our Arkansas based trucks and our citizens generally, I think it is essential that we defend Act 685 by vigorously challenging the efforts of other states to engage in retailatory taxation. I stand ready to assist your efforts in any way possible.

Sincerely,

/s/ Bill Clinton  
Bill Clinton

BC:ld  
enclosures

cc: Mr. Henry Gray

STATE OF ARKANSAS  
OFFICE OF ATTORNEY GENERAL  
Justice Building, Little Rock 72201

Steve Clark  
Attorney General

(501) 371-2007

July 7, 1983

The Honorable Bill Clinton  
Governor of Arkansas  
State Capitol Building  
Little Rock, AR 72201

Dear Governor Clinton:

In response to your letter of July 6, 1983, requesting that I file an original action in the United States Supreme Court challenging the retaliatory tax levied upon some Arkansas truckers by the State of Oklahoma, I have researched and carefully studied your contention that the retaliatory tax is in violation of the Commerce and Equal Protection Clauses of the United States Constitution. I cannot agree.

Every case, article, and commentary I have found on the subject indicates that retaliatory or mirror taxes are valid and not subject to constitutional challenge. See, e.g. *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); *B&L Motor Freight, Inc. v. Heymann*, 293 A2d 711 (N.J. Super. 1972), *aff'd*, 311 A2d 184 (App. Div. N.J. Super. 1973), *cert. denied*, 317 A2d 707 (S.Ct. N.J. 1974). Moreover, the validity of a state tax is not necessarily jeopardized merely because it burdens interstate commerce. *Maryland v. Louisiana*, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981). Most importantly, as I have said since February of this year, retaliatory taxes are not unconstitutional so long as they are enacted to further a legitimate state purpose. The United States Supreme Court has said, "[t]here can be no doubt that promotion of domestic industry by deterring barriers to interstate commerce is a legitimate state purpose." *Western and Southern Life Insurance Co., supra* at 671. In the present circumstances, the State of Oklahoma in order to promote its domestic trucking industry has adopted a retaliatory tax against the State of Arkansas and 30 other states to deter those states from erecting barriers to interstate business. It is my best professional legal judgment that a state or federal court, including the United States Supreme Court, would find that the action of the State of Oklahoma is consistent with and in furtherance of the valid state purpose to protect its motor carrier companies traveling in interstate commerce.

An original action in the United States Supreme Court requires a commitment of time and money by any plaintiff. These factors are complicated in the present situation by the fact that the State may lack standing to file an action inasmuch as it, in its sovereign capacity, has not directly suffered an injury as a result of the action in the State of Oklahoma. In fact, the Supreme Court has recently reaffirmed the proposition that "[a] State is not permitted to enter a controversy as a nominal party in order to forward the claims of individual citizens." *Maryland v. Louisiana*, *supra*, at 737. Under these circumstances, it may be that an individual trucking company rather than the State of Arkansas, is in a better position to challenge the Oklahoma retaliatory tax (assuming, of course, that the tax is subject to challenge). In other words, an original action in the United States Supreme Court by my office may not be maintainable because the State may not be a proper party. In addition, it would take approximately six months for the Court to merely approve our motion for leave to file a complaint against another state and to appoint a special master; therefore, the swift and immediate relief needed by Arkansas truckers is simply not available in an original action in the United States Supreme Court.

Accordingly, I decline to file an original action in the United States Supreme Court on this matter. I am, of course, available to visit with you to discuss alternatives. I am secure in my conviction that the information which I have provided to you and the decision I have made is in the best interests of our State.

Sincerely,

/s/ Steve Clark  
STEVE CLARK  
Attorney General

SC/pa

STATE OF NEBRASKA

Robert Kerrey • Governor • Holly Jensen • Director

November 16, 1983

Charles D. Ragland  
Commissioner of Revenue  
P.O. Box 1272  
Little Rock, AR 72203

Dear Mr. Ragland:

Beginning January 1, 1984, the State of Nebraska will implement its mirror reciprocity statute 60-305.02. This statute will require all Arkansas plated vehicles, having a combined gross weight or registered gross weight in excess of 73,280 pounds, to secure a Reciprocity Permit. The fee for such an annual Reciprocity Permit will be \$175 per vehicle and is available from the Interstate Registration Office, P.O. Box 94789, Lincoln, Nebraska 68509.

Enforcement for display of the permits will become effective on April 1, 1984.

If you have any questions regarding this matter, please feel free to contact me at 402-471-3906.

Sincerely,  
William Edwards, Deputy Director  
Department of Motor Vehicles

WE:sbm

cc: Holly Jensen, Director  
Department of Motor Vehicles

Department of Motor Vehicles, Box 94789,  
Lincoln, Nebraska 68509-4789 Phone (402) 471-2231  
An Equal Opportunity/Affirmative Action Employer









## CLASSIFICATION SCHEDULE

1. Automobile, Station Wagon, Motorcycle, any two-axle, four-tired Truck.
2. Class 1 Vehicle towing a one-axle Trailer.
3. Class 1 Vehicle towing a two-axle Trailer.
4. Two-axle Bus and two-axle, six-tired Truck.
5. Three-axle Truck, single or combination, and three-axle Bus.
6. Four-axle combination Truck.
7. Five-axle combination Truck.
8. Six-axle combination Truck.

Note:  
The Turner and Will Rogers Turnpikes are "Closed System" turnpikes. The driver is handed a ticket by the booth attendant as he enters the turnpike and pays his fare as he leaves the turnpike.  
The H.E. Bailey, Indian Nation, Muskogee and Cimarron Turnpikes are "Barrier System" turnpikes. The driver pays his fare each time he goes through a toll plaza.

## TURNER TURNPIKE

Trip	1	2	3	4	5	6	7	8
Oklahoma City to Tulsa	2.00	3.00	4.00	2.60	3.90	5.20	6.50	7.80
Oklahoma City to Sapulpa	1.90	2.85	3.80	2.40	3.60	4.80	6.00	7.20
Oklahoma City to Bristow	1.40	2.10	2.80	1.90	2.85	3.80	4.75	5.70
Oklahoma City to Stroud	1.00	1.50	2.00	1.30	1.95	2.60	3.25	3.90
Oklahoma City to Chandler	80	1.20	1.60	1.00	1.50	2.00	2.50	3.00
Oklahoma City to Wellston	50	75	1.00	50	75	1.00	1.25	1.50
Wellston to Oklahoma City	50	75	1.00	60	90	1.20	1.50	1.80
Chandler to Tulsa	1.20	1.80	2.40	1.60	2.40	3.20	4.00	4.80
Chandler to Sapulpa	1.10	1.65	2.20	1.40	2.10	2.80	3.50	4.20
Chandler to Bristow	70	1.05	1.40	90	1.35	1.80	2.25	2.70
Chandler to Stroud	40	60	80	50	75	1.00	1.25	1.50
Stroud to Tulsa	1.00	1.50	2.00	1.30	1.95	2.60	3.25	3.90
Stroud to Sapulpa	90	1.35	1.80	1.10	1.65	2.20	2.75	3.30
Stroud to Bristow	50	75	1.00	60	90	1.20	1.50	1.80
Bristow to Tulsa	60	90	1.20	70	1.05	1.40	1.75	2.10
Bristow to Sapulpa	50	75	1.00	60	90	1.20	1.50	1.80
Sapulpa to Tulsa	10	15	20	20	30	40	50	60

## WILL ROGERS TURNPIKE

Trip	1	2	3	4	5	6	7	8
Tulsa to State Line	2.00	3.00	4.00	2.60	3.90	5.20	6.50	7.80
Tulsa to Miami	1.60	2.40	3.20	2.10	3.15	4.20	5.25	6.30
Tulsa to Afton	1.30	1.95	2.60	1.80	2.70	3.60	4.50	5.40
Tulsa to Vinita	1.10	1.65	2.20	1.40	2.10	2.80	3.50	4.20
Tulsa to Big Cabin	90	1.35	1.80	1.20	1.80	2.40	3.00	3.60
Tulsa to Claremore	40	60	80	50	75	1.00	1.25	1.50
Claremore to State Line	1.60	2.40	3.20	2.10	3.15	4.20	5.25	6.30
Claremore to Miami	1.30	1.95	2.60	1.60	2.40	3.20	4.00	4.80
Claremore to Afton	1.10	1.65	2.20	1.30	1.95	2.60	3.25	3.90
Claremore to Vinita	80	1.20	1.60	90	1.35	1.80	2.25	2.70
Claremore to Big Cabin	70	1.05	1.40	80	1.20	1.60	2.00	2.40
Big Cabin to State Line	1.10	1.65	2.20	1.40	2.10	2.80	3.50	4.20
Big Cabin to Miami	70	1.05	1.40	90	1.35	1.80	2.25	2.70
Big Cabin to Afton	50	75	1.00	60	90	1.20	1.50	1.80
Big Cabin to Vinita	20	30	40	30	45	60	75	90
Vinita to State Line	90	1.35	1.80	1.20	1.80	2.40	3.00	3.60
Vinita to Miami	60	90	1.20	70	1.05	1.40	1.75	2.10
Vinita to Afton	30	45	60	30	45	60	75	90
Afton to State Line	70	1.05	1.40	80	1.20	1.60	2.00	2.40
Afton to Miami	30	45	60	40	60	80	1.00	1.20
Miami to State Line	40	60	80	50	75	1.00	1.25	1.50

## H.E. BAILEY TURNPIKE

Trip	1	2	3	4	5	6	7	8
Oklahoma City to Wichita Falls	2.10	3.15	4.20	2.40	3.60	4.80	6.00	7.20
Oklahoma City to Chickasha	70	1.05	1.40	80	1.20	1.60	2.00	2.40
Chickasha to Lawton	80	1.20	1.60	90	1.35	1.80	2.25	2.70
Lawton to Wichita Falls	60	90	1.20	70	1.05	1.40	1.75	2.10
Lawton to Walters	20	45	60	40	60	80	1.00	1.20
Walters to Wichita Falls	30	45	60	40	60	80	1.00	1.20
Elgin to Lawton	20	30	40	20	30	40	50	60

## INDIAN NATION TURNPIKE

Trip	1	2	3	4	5	6	7	8
Henryetta to Hugo	2.50	3.75	5.00	2.80	4.20	5.60	7.00	8.40
Henryetta to S.H. 9	30	45	60	40	60	80	1.00	1.20
Henryetta to McAlester	90	1.35	1.80	1.00	1.50	2.00	2.50	3.00
S.H. 9 to McAlester	60	90	1.20	70	1.05	1.40	1.75	2.10
McAlester to Daisy	70	1.05	1.40	80	1.20	1.60	2.00	2.40
Daisy to Antlers	50	75	1.00	60	90	1.20	1.50	1.80
Daisy to Hugo	90	1.35	1.80	1.00	1.50	2.00	2.50	3.00
Antlers to Hugo	40	60	80	50	75	1.00	1.25	1.50

## MUSKOGEE TURNPIKE

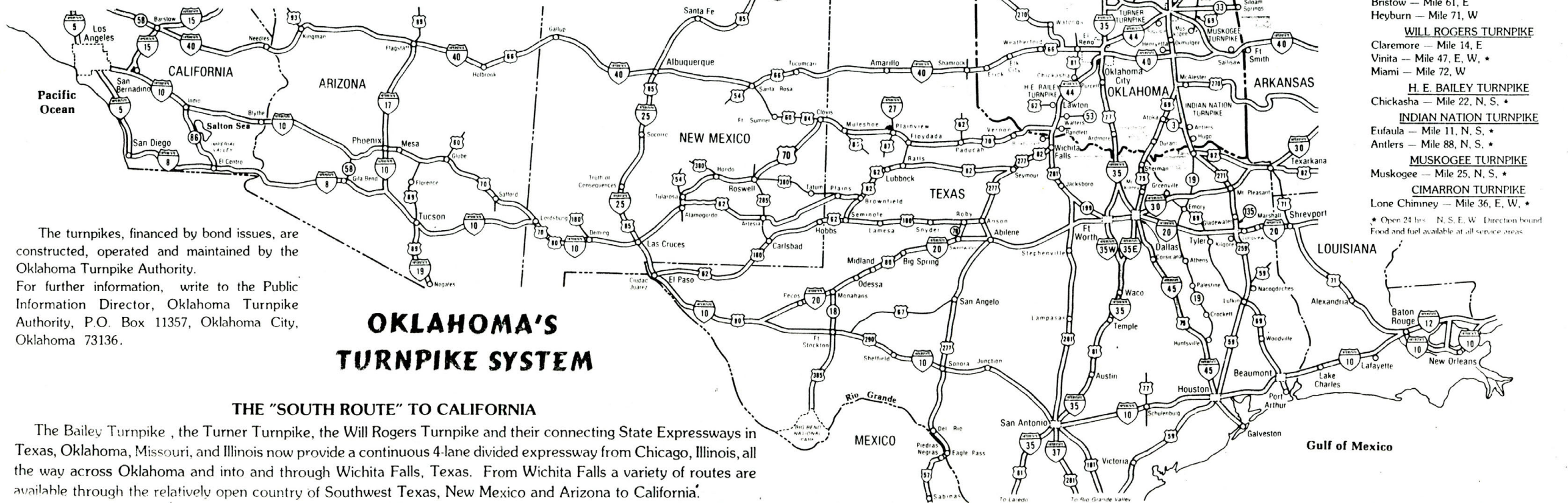
Trip	1	2	3	4	5	6	7	8
Tulsa to Webbers Falls	1.30	1.95	2.60	1.50	2.25	3.00	3.75	4.50
Tulsa to Coweta	40	60	80	50	75	1.00	1.25	1.50
Tulsa to Muskogee	80	1.20	1.60	90	1.35	1.80	2.25	2.70
Coweta to Muskogee	40	60	80	50	75	1.00	1.25	1.50
U.S. 69 to Muskogee	30	45	60	30	45	60	75	90
Muskogee to Webbers Falls	50	75	1.00	60	90	1.20	1.50	1.80

## CIMARRON TURNPIKE

Trip	1	2	3	4	5	6	7	8
Tulsa to I-35	1.40	2.10	2.80	1.60	2.40	3.20	4.00	4.80
Tulsa to U.S. 177 (Ponca City)	1.00	1.50	2.00	1.20	1.80	2.40	3.00	3.60
Tulsa to Morrison (U.S. 64)	90	1.35	1.80	1.00	1.50	2.00	2.50	3.00
Tulsa to Stillwater	90	1.35	1.80	1.20	1.80	2.40	3.00	3.60
Tulsa to S.H. 18	60	90	1.20	70	1.05	1.40	1.75	2.10
Tulsa to Hallett (S.H. 99)	30	45	60	40	60	80	1.00	1.20
Hallett (S.H. 99) to S.H. 18	30	45	60	40	60	80	1.00	1.20
S.H. 18 to I-35	80	1.20	1.60	90	1.35	1.80	2.25	2.70
S.H. 18 to U.S. 177 (Ponca City)	40	60	80	50	75	1.00	1.25	1.50
S.H. 18 to Morrison (U.S. 64)	30	45	60	30	45	60	75	90
S.H. 18 to Stillwater	30	45	60	50	75	1.00	1.25	1.50
U.S. 177 (Ponca City) to I-35	40	60	80	50	75	1.00	1.25	1.50

## LEGEND

- Turnpikes and Expressways
- Other Highways



# OKLAHOMA'S TURNPIKE SYSTEM

## THE "SOUTH ROUTE" TO CALIFORNIA

The Bailey Turnpike, the Turner Turnpike, the Will Rogers Turnpike and their connecting State Expressways in Texas, Oklahoma, Missouri, and Illinois now provide a continuous 4-lane divided expressway from Chicago, Illinois, all the way across Oklahoma and into and through Wichita Falls, Texas. From Wichita Falls a variety of routes are available through the relatively open country of Southwest Texas, New Mexico and Arizona to California.

## TURNPIKE SERVICE AREAS

### TURNER TURNPIKE

- Wellston — Mile 21, W
- Chandler — Mile 31, E
- Stroud — Mile 43, E, W, \*
- Bristow — Mile 61, E
- Heyburn — Mile 71, W

### WILL ROGERS TURNPIKE

- Claremore — Mile 14, E
- Vinita — Mile 47, E, W, \*
- Miami — Mile 72, W

### H. E. BAILEY TURNPIKE

- Chickasha — Mile 22, N, S, \*

### INDIAN NATION TURNPIKE

- Eufaula — Mile 11, N, S, \*
- Antlers — Mile 88, N, S, \*

### MUSKOGEE TURNPIKE

- Muskogee — Mile 25, N, S, \*

### CIMARRON TURNPIKE

- Lone Chimney — Mile 36, E, W, \*

\* Open 24 hrs. N. S. E. W. Direction bound  
Food and fuel available at all service areas.





