JURISDICTION:	**OKLAHOMA TAX COMMISSION DECISION**
CITE:	**85-12-12-20 / NON-PRECEDENTIAL**
ID:	**P-85-108**
DATE:	**DECEMBER 12, 1985**
DISPOSITION:	**SUSTAINED AS TO INDIVIDUALS / DENIED AS TO COMPANY**
TAX TYPE:	**MOTOR VEHICLE**
APPEAL:	**NO APPEAL TAKEN**

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration, pursuant to the assignment regularly made to the undersigned Administrative Law Judge by the Oklahoma Tax Commission, and hearing had, at which hearing Protestant, PROTESTANT COMPANY, failed to appear, that PRESIDENT, formerly president of PROTESTANT COMPANY, and SECRETARY, formerly Secretary of PROTESTANT COMPANY, appeared represented by ATTORNEY, and that TREASURER failed to appear at such hearing, and that the Motor Vehicle Division of the Oklahoma Tax Commission was represented by and through OTC ATTORNEY, Attorney, and ASSISTANT, Legal Research Assistant for the Oklahoma Tax Commission.

By agreement of the legal representatives of the respective parties and following statements by counsels, it was announced that there had been informal discussions and that based upon such informal discussions there were no questions as to the facts to be determined. Following the announcement of the respective parties as to the issues involved in the case at bar, witnesses were sworn in and testimony was taken after which the parties agreed to a Proposed Findings, Conclusions and Recommendations to be submitted to the Commission by and through the Administrative Law Judge's office.

STATEMENT OF FACTS

PROTESTANT COMPANY is an Oklahoma corporation and operates as a common carrier with a fleet of trucks based in the State of Oklahoma. In 1980 corporate taxpayer established a prorate account with the Motor Vehicle Division of the Oklahoma Tax Commission. In 1982 common carriers with established prorate accounts were allowed to apply for temporary authorization forms in order to facilitate immediate operation of vehicles added to their then existing fleet of trucks. On May 14, 1982, corporate taxpayer filed an application for temporary prorate authorization. This application was signed by TREASURER as President, PRESIDENT as Chairman of the Board and OFFICER 2 as Permitting Officer. As the result of the application, PROTESTANT COMPANY, corporate taxpayer, received twenty (20) temporary authorization forms on May 25, 1982. Upon receipt of these temporary authorization forms, the corporate taxpayer put to use eight (8) of the authorization forms on the following dates:

Permit Number	Issue Date
3182	6-15-82
3181	6-15-82
3183	7-09-82
3184	7-09-82
3185	8-11-82
3186	8-11-82
3187	8-11-82
3188	9-29-82

Corporate taxpayer paid for only four (4) of the twenty (20) prorate authorization forms issued by the Motor Vehicle Division of the Oklahoma Tax Commission to corporate taxpayer. In July, 1982, the individual taxpayers, Protestants herein, sold the corporate taxpayer, PROTESTANT COMPANY, to BUYER. This sale was allegedly never fully consummated and its parties are currently involved in litigation arising out of the sale transaction dated in July of 1982.

The Motor Vehicle Division of the Oklahoma Tax Commission became aware of the proposed sale of corporate taxpayer, PROTESTANT COMPANY, to BUYER and, upon realizing that an unapproved party would be in control of the previously issued temporary authorization forms, attempted several times to obtain the temporary authorization forms from the corporate taxpayer, PROTESTANT COMPANY. Following the unsuccessfully attempt to obtain these temporary authorization forms, the Division on February 25th, 1985 did issue an assessment against BUYER, President of PROTESTANT COMPANY.

On March 8, 1983, a letter was received by the Division from the Attorney representing BUYER in which it was stated to the Division that the sale of PROTESTANT COMPANY was never consummated and that the Division's letter of February 25, 1983 was being forwarded to the attorney representing the individual Protestants in this matter, being PRESIDENT and SECRETARY. On April 8, 1983 a letter was received by the Motor Vehicle Division from the Protestants herein acknowledging receipt of the letter forwarded by BUYER'S attorney and requesting that additional information be forwarded to them in regard to the assessment of February 25, 1983.

On April 14, 1983 the Prorate Section of the Motor Vehicle Division proposed an assessment against PROTESTANT COMPANY, ADDRESS, and individually against the officers thereof; PRESIDENT, President; SECRETARY, Secretary, whose correct name is SECRETARY; and TREASURER, Treasurer. Said assessment was for Five Hundred Three Dollars and Forty-three Cents ($503.43) for unpaid motor vehicle registration fees on 1982 prorate registrations applied for; Eight Thousand Six Hundred Thirty-three Dollars and Eighty-eight Cents ($8,633.88) for registration fees for twelve (12) vehicles for which temporary permits had been obtained on May 25, 1982 but which remained unpaid and unaccounted for; and for Two Thousand Nine Hundred Seventy-seven Dollars and Sixty-eight Cents ($2,977.68) in penalties; for a total proposed assessment of Twelve Thousand One Hundred Fourteen Dollars and Ninety-nine Cents ($12,114.99).

On June 16, 1983, the Motor Vehicle Division received a protest letter from the individual Protestants, PRESIDENT and SECRETARY, in regard to the assessment. Said assessment was in error, however, in that the prorate registration fee in the amount of Five Hundred Three Dollars and Forty-three Cents ($503.43) had been paid on or about February 3, 1983; but said assessment was correct in amount in all other respects and is sustained in the amount of Eleven Thousand Six Hundred Eleven Dollars and Fifty-six Cents ($11,611.56).

No protest has been made by or filed on behalf of PROTESTANT COMPANY; and, as to said corporate taxpayer the proposed assessment has become final in the amount of Eleven Thousand Six Hundred Eleven Dollars and Fifty-six Cents ($11,611.56).

APPLICABLE LAW

The law applicable to the matter before the Court is contained in Sections 22.5j and 22.5k of Title 47 of the Oklahoma Statutes, wherein the amount of fees as assessed are based upon the proportional amount each carrier vehicle is driven within the number of states of the International Registration Plan as such mileage is reflected upon the application submitted by, in this case, the corporate taxpayer to the Motor Vehicle Division of the Oklahoma Tax Commission.

The regulations for temporary proration authorization issued by the Motor Vehicle Division under which the twenty (20) temporary authorization forms were issued by the Motor Vehicle Division to the corporate taxpayer on May 25, 1982 recite that:

> The approved "fleet owner" shall be liable for all Oklahoma temporary proration authorization forms provided and assigned to each "fleet owner" and whether used or unused, such forms shall be retained by such fleet owner for the same period of time as other records required for the purposes of an audit.

In view of the agreed statement of facts between the Protestants, PRESIDENT and SECRETARY, and the Motor Vehicle Division by and through their respective attorneys and representatives in the hearing and their agreement concerning the application of Sections 22.5j and 22.5k of Title 47 of the Oklahoma Statutes and the regulations of the Motor Vehicle Division to the facts at bar, the actual liability for the Oklahoma temporary proration authorization forms issued by the Motor Vehicle Division to the corporate taxpayer, PROTESTANT COMPANY, lies solely with the corporate taxpayer, PROTESTANT COMPANY. That the assessments against the former officers of PROTESTANT COMPANY, PRESIDENT, SECRETARY and TREASURER, should be, as agreed to at the hearing by the representatives of the General Counsel's office and the Protestants' representative, be withdrawn. That the actual liability lies with the corporate entity, PROTESTANT COMPANY, and in view of the fact that the corporate taxpayer did not protest the assessment, said assessment has become final by operation of law.

CONCLUSIONS

In view of the above and foregoing findings of fact and conclusions of law stipulated to by the respective parties, the undersigned Administrative Law Judge concludes as follows:

1. That the Oklahoma Tax Commission has jurisdiction in this matter.

2. That the assessment in the amount of Twelve Thousand One Hundred Fourteen Dollars and Ninety-nine Cents ($12,114.99) is in error and should be amended to reflect the correct amount of unpaid registration fees and penalty in the total amount of Eleven Thousand Six Hundred Eleven Dollars and Fifty-six Cents ($11,611.56).

3. That the amended assessment in the amount of Eleven Thousand Six Hundred Eleven Dollars and Fifty-six Cents ($11,611.56) representing unpaid registration fees and penalty as assessed by the Motor Vehicle Division against PROTESTANT COMPANY is a valid assessment and in accordance with the provisions of Sections 22.5j and 22.5k of Title 47 of the Oklahoma Statutes and the regulations of the Motor Vehicle Division concerning the issuance of temporary authorization forms.

4. That the assessment against the individual Protestants herein, being PRESIDENT, SECRETARY and TREASURER, should be withdrawn in view of the fact that the actual temporary authorization forms were issued to and in the name of the corporate entity, PROTESTANT COMPANY.

5. That the Findings, Conclusions and Recommendations issued September 19, 1985 in this matter are hereby set aside and vacated.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the assessment against PROTESTANT COMPANY has become final and that the protest of PRESIDENT, SECRETARY and TREASURER should be sustained; and, that the assessment against said individual taxpayers be withdrawn, and that the corporate taxpayer, PROTESTANT COMPANY, be required to pay the tax and penalty assessed thereon and interest accrued and accruing thereon, if applicable, until paid.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.