JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-07-11-007 / NOT PRECEDENTIAL**
ID: **MV980006**
DATE: **07-11-00**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE / IRP / IFTA**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the audit summary, the position letter of the Division and the correspondence from Protestant's representative dated March 26, 1999, the undersigned finds:

1. Protestant operates twenty-four (24) vehicles under its International Registration Plan ("IRP") and International Fuel Tax Agreement ("IFTA") authorities.

2. Protestant hauls for hire, grain and paper products using both vans and flatbeds.

3. Protestant has MS bulk storage facilities and did not report off the rack purchases prior to February, 1998.

4. The Division conducted an IRP audit of all available records of Protestant for the 1997 registration year. The only records available for audit were quarterly summaries. No other records were provided. The audit write-up indicates that Protestant's reporting system consisted of DOT logs which reported origin, destination and drops. No driver trip reports were maintained by Protestant.

5. Based on the penalty provisions of the IRP Agreement, the Division assessed full Oklahoma registration fees, representing a one hundred percent (100%) audit assessment in Oklahoma, against Protestant for the 1997 registration year. The additional Oklahoma fees assessed were $17,596.45.

6. The Division also conducted an IFTA audit of all available records of Protestant for the period covering the second quarter, 1995 through the first quarter, 1998. The audit records consisted of summary sheets, bulk fuel and off the rack fuel receipts for the first quarter of 1998 only. The audit write-up indicates that no source documents were available for the second quarter of 1995 through the fourth quarter of 1997 and that only partial records were available for the first quarter of 1998. The audit write-up also indicates that no driver trip reports or itemized bulk fuel withdrawal logs were maintained by Protestant.

7. Tax paid during the audit period totalled $267.62.

8. Based on the penalty provisions of IFTA, the Division reduced the reported average miles per gallon ("MPG") to the IFTA audit standard of 4.0 MPG for the second quarter of 1995 through the fourth quarter of 1997 and accepted the reported average MPG, based on the partial records provided, for the first quarter of 1998. The aggregate amount assessed was $48,385.48, consisting of diesel tax of $37,551.05, interest of $7,079.32 and penalty of $3,755.11.

9. Protestant timely protested and requested a hearing concerning the audits and assessments.

10. A pre-hearing conference was conducted in this cause on December 3, 1998, at which conference Protestant was given the opportunity to provide a sampling of trip records for the audit period consisting of full and complete trip records for three months out of the audit period.

11. By letter dated February 25, 1999, Protestant notified the Division that no other records could be found or obtained.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. 1991, § 212, 47 O.S. 1991, § 1120 and 68 O.S. Supp. 1993, § 607(e); that an assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988), IRP XV(1500) and IFTA XII(R1210.200); that the assessments were made as a result of Protestant's failure to maintain and provide adequate records for audit and are authorized by the provisions of the IRP and IFTA, IRP Uniform Audit Procedure Guidelines VII(A) and IFTA XII(R1210.100) and IFTA Audit Manual A100.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of Protestant be denied. It WAS further DETERMINED that the amounts in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiencies due and owing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.