

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-08-16-005 / NOT PRECEDENTIAL
ID: MV020018
DATE: 08-16-02
DISPOSITION: DISMISSED
TAX TYPE: MOTOR VEHICLE / IRP
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 28th day of June, 2002, the *Motion to Dismiss* filed by the Audit Section of the Motor Vehicle Division (hereinafter "Division") of the Tax Commission in the above styled and numbered cause comes on for decision pursuant to a hearing held on June 12, 2002. REGISTRANT (hereinafter "Registrant") is represented. The Division is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Upon review of the file and records, including the record of the hearing to consider the *Motion to Dismiss* and the exhibits received into evidence, the undersigned finds:

1. That by letter dated June 21, 2001, the Division notified the Registrant's registration agent of its intent to audit the mileage records of the Registrant's apportioned registered vehicle.

2. That on November 7, 2001, the Division issued a thirty (30) day letter to the Registrant's agent demanding records to support the mileage reported on Registrant's application for apportioned registration for the year 2001.

3. That the records submitted did not meet IRP requirements; in that the records did not include monthly or quarterly mileage totals beginning October 1, 1998 through June 30, 1999 and some origins and destinations listed on trip records could not be interpreted.

4. That as a result of the failure to provide adequate records, the Division by letter dated March 8, 2002, caused to be issued against the Registrant an adjustment of IRP registration fees due in the net amount of \$1,661.57.

5. That the adjustment is based on the difference between the apportioned fees paid in the State of Michigan and the full registration fees due the State of Michigan for the 2001 registration year.

6. That the adjustment was addressed to the Registrant and was forwarded to Registrant's registration agent at the agent's last-known address in accordance with 68 O.S. Supp. 1993, § 208.

7. That neither the Registrant nor the Registrant's registration agent asked for or received an extension of time within which to file a written protest to the adjustment.
8. That by letter to the Division which is undated, but bearing a facsimile transmission date of April 22, 2002, the Registrant protested the audit findings and adjustment.
9. That in the letter of protest, the Registrant asserted that he did not receive the notice of adjustment until April 11, 2002.
10. That on May 14, 2002, the Division caused to be filed the ***Motion to Dismiss***.
11. That dismissal of the protest is requested on the grounds and for the reason that a timely protest to the adjustment was not filed by the Registrant.
12. That a ***Notice to Appear or Respond in Writing***, and show cause why the protest should not be dismissed due to the failure to file a timely protest was addressed to the Registrant and served on the Registrant's registration agent.
13. That neither the Registrant nor the Registrant's registration agent responded to the ***Notice*** or appeared at the hearing.
14. That the total amount in controversy in this proceeding is \$1,661.57.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction to consider the ***Motion to Dismiss***, 68 O.S. 1991, § 207 and Rule 710:1-5-46 of the ***Oklahoma Administrative Code***; that assessments based on audit are required to be made in accordance with the statute of the jurisdiction involved with the audit of the registrant, Art. XVII, § 1702 of the International Registration Plan, Inc. (August 22, 1994), incorporated by reference, Rule 710:60-4-20(b)(1) of the ***Oklahoma Administrative Code***; that where the Tax Commission determines the tax disclosed by a report or return is less than the tax disclosed by its examination, it shall in writing propose the assessment of taxes or additional taxes and shall mail a copy of the proposed assessment to the taxpayer at the taxpayer's last-known address, 68 O.S. 2001, § 221(A); that in general, notice to the agent and knowledge obtained by him while acting within the scope of his authority is notice to the principal, ***Knights and Ladies of Security v. Bell***, 93 Okla. 272, 220 P. 594 (1923); that where the taxpayer fails to file a written protest within the thirty (30) day period after the mailing of the proposed assessment, the proposed assessment, without further action of the Commission, shall become final and absolute, 68 O.S. 2001, § 221(E); and the Commission is without jurisdiction to hear the protest, ***Matter of Phillips Petroleum Co.***, 652 P.2d 283 (Okla. 1982); and that here the records show the Registrant did not file a timely written response to the notice of adjustment, consequently the protest should be dismissed.

DISPOSITION

THEREFORE, it is DETERMINED that the protest of the Registrant be dismissed. It is further DETERMINED that the amount in controversy be fixed as the deficiency 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.