

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-01-07-005 / NOT PRECEDENTIAL
ID: MV010018
DATE: 01-07-03
DISPOSITION: DENIED
TAX TYPE: MV / IRP
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 26th day of November, 2002, the above styled and numbered cause comes on for decision pursuant to a hearing held on November 4, 2002. Registrant is represented by REGISTRANT'S PRESIDENT AND ANONYMOUS Consulting Services. The Motor Vehicle Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

A prehearing tele-conference was held in this matter on February 11, 2002, at which conference, a discussion was had concerning the Registrant's contentions with respect to the registration fee assessment. By letter dated February 12, 2002, the parties were directed to file a status report on or before March 14, 2002.

In a letter dated February 12, 2002, REGISTRANT'S PRESIDENT reiterated the Registrant's contentions with respect to the registration fee assessment.

On February 20, 2002, the Office of the Administrative Law Judges received a telephone call from REGISTRANT'S PRESIDENT wherein he sought advice regarding the filing of the status report, asked whether his letter of February 12, 2002, would be sufficient to constitute the status report and requested that the Registrant's protest to the registration fee assessment be submitted on written presentation rather than a hearing.

A status report was filed on March 13, 2002, wherein the representative of the Division advised that she had spoken with ANONYMOUS and WAS advised that REGISTRANT'S PRESIDENT wished to proceed to a hearing on the matter.

On March 14, 2002, a Notice of Hearing was forwarded to the representatives of the parties scheduling the matter for hearing on April 10, 2002, at the hour of 2:00 p.m. The hearing in this cause was continued a total of three (3) times on the advice and consent of the parties.

On August 7, 2002, a Notice of Hearing was forwarded to the representatives of the parties scheduling the matter for hearing on November 4, 2002, at the hour of 9:30 a.m. On October 28, 2002, the Office of the Administrative Law Judges received a telephone call from ANONYMOUS wherein she requested additional time within which to file the position statement of the Registrant.

On October 30, 2002, the Registrant's representative, ANONYMOUS, filed the position statement wherein it is alleged that the audit is unfair and wrong.

The hearing in this cause was held on November 4, 2002. ANONYMOUS phoned the General Counsel's office on the morning of November 4, 2002, and advised that she would be unable to attend the hearing. Although notice of the hearing was forwarded to both ANONYMOUS and REGISTRANT'S PRESIDENT, REGISTRANT'S PRESIDENT also failed to appear at the hearing and did not respond to notice thereof.

Upon review of the file and records, including the record of the proceedings held on November 4, 2002, and the exhibits received into evidence, the undersigned finds:

1. That in accordance the provisions of the International Registration Plan ("IRP") and 47 O.S. 2001, § 1120, the Registrant licensed and registered on a proportional basis five (5) power units with the State of Oklahoma during the 2001 license year.

2. That the Division performed an audit of Registrant's trip reports per vehicle and quarterly mileage summary statements for the period of the third quarter 1999 through the second quarter 2000. These records were compared with the minimum mileage required to travel from the trip origins to the trip destinations as documented on the trip sheets. Based on this comparison, it was determined that trip mileage was under reported and/or over reported. As a result of the audit determinations, mileage adjustment factors were applied, on a relative basis, to all applicable IRP jurisdictions.

3. That on November 27, 2001, the Division issued a revised proposed assessment of additional proportional registration fees against the Registrant for the 2001 registration year in the amount of \$1,495.04.

4. That Registrant timely filed a protest to the proposed assessment, stating the audit was arbitrary and grossly inaccurate.

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, § 207 and 47 O.S. 1991, § 1120; that as a registrant under the provisions of the IRP, Registrant is subject to the audit procedures and policies set forth therein, **IRP**, Appendix F, Art. XVI, incorporated by reference, Rule 710:60-4-20(b)(1) of the *Oklahoma Administrative Code*; that the audit of a registrant under the IRP shall be conducted by its/his base jurisdiction, **IRP**, Art. XVI, Sec. 1600; that the mileage percentages factor of a registrant may be recalculated as a result of an audit of the registrant's apportioned registration file, **IRP**, *Policies and Procedures Manual*, Sec. 5030(4); that an assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, Rule 710:1-5-47 of the Oklahoma Administrative Code; See, *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 768 P.2d 359 (Okl. 1988); and that Registrant has failed to come forward with any evidence to show the assessment is erroneous in any respect, accordingly Registrant's protest to the assessment should be denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest of Registrant be denied. 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.