JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-02-25-007 / NOT PRECEDENTIAL**
ID: **MV020034**
DATE: **02-25-03**
DISPOSITION: **DISMISSED**
TAX TYPE: **MOTOR VEHICLE / IRP**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 September 10, 2001, the Division notified the Registrant's registration agent of its intent to audit the mileage records of the Registrant for the 2000 and 2001 registration years.

2. That by letter dated October 15, 2001, the Registrant advised the Division that the requested driver trip reports did not exist because the truck was used for local deliveries only.

3. That on March 12, 2002, the Division issued a thirty (30) day letter to the Registrant's agent demanding records to support the mileage reported on Registrant's applications for apportioned registration for the years 2000 and 2001.

4. That no records were submitted to the Oklahoma Tax Commission.

5. That as a result of the failure to provide records, the Division, by letters dated April 16, 2002, caused to be issued against the Registrant an adjustment of IRP registration fees due for 2000 and 2001, in the net amounts of $2,932.06 and $3,027.46, respectively.

6. That the adjustments are based on the difference between the apportioned fees paid in the State of Arizona and the full registration fees due the State of Arizona for the 2000 and 2001 registration years.

7. 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, э 208.

8. 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.

9. That by letter to the Division dated June 27, 2002, Registrant protested the audit findings and adjustments, asserting that because their operation had not progressed as fast as anticipated, their mileage has been low and restricted to two or three states. The Registrant also advised that they pay tax when fuel is purchased and questioned why the amount of the audit was so high.

10. That on December 13, 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 served on the Registrant at the address provided on the protest letter.

13. That neither the Registrant nor his representative responded to the ***Notice*** or appeared at the hearing.

14. That the total amount in controversy in this proceeding is $5,959.52.

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.