

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-07-02-03 / NOT PRECEDENTIAL
ID: SJ030044
DATE: 07-02-03
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE / IRP
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicant operates a transportation and stevedoring company headquartered in BIGCITY, Texas.
2. Applicant has approximately 120 vehicles that transport steel goods throughout Texas, Oklahoma, Alabama and Mississippi.
3. Applicant initially licensed and registered its fleet with the State of Oklahoma in the 2002 registration year.
4. Prior to the 2002 registration year, Applicant had licensed and registered its fleet with the State of Texas.
5. Applicant filed its 2003 IRP renewal application with the State of Oklahoma on January 20, 2003.
6. The Division rejected the application on two (2) stated grounds: (1) no withholding status, and (2) no Oklahoma proof of residency.
7. On the 2003 IRP renewal application, Applicant listed its location of business in the State of Oklahoma as XXX South ANONYMOUS, ANYTOWN, Oklahoma.
8. Applicant admits that it did not lease, rent or own the property and improvement located at XXX South ANONYMOUS.
9. The property and residence located at XXX South ANONYMOUS are owned by A and B, President and Secretary/Treasurer of Applicant, respectively.
10. According to A, the residence at XXX South A ANONYMOUS was listed as Applicant's place of business in Oklahoma because Applicant operated a dispatch office out of the basement of the house and duplicate log and maintenance records were stored there.

11. Applicant's employee at this location was B, however, Applicant admits that she was not at this location on a regular basis during the hours of 8:30 a.m. to 4:30 p.m. Monday through Friday.

12. Neither A nor B are residents of the State of Oklahoma.

13. Telephone service was initially established in Applicant's name at the XXX South ANONYMOUS location on January 3, 2003.

14. Applicant's telephone service was moved to the XXX ANONYMOUS, ANYTOWN, Oklahoma on March 10, 2003.

15. Applicant purchased the property and improvement located at XXX Grand in ANYTOWN November 18, 2002.

16. The improvement is a building approximately 25 foot by 80 foot in size and houses an office area, storage area and maintenance area.

17. According to A, "Applicant is establishing a terminal at the ANYTOWN facility" (Tr. 22), has the "intention" of operating a dispatch office out of the facility (Tr. 46-47) and "plan[s] to establish a number of truck to haul grain from the elevator being constructed in ANYTOWN" (Tr. 29-30).

18. Applicant currently has a computer system located at the ANYTOWN facility which networks with Applicant's mainframe computer in Houston and serves as its dispatch operation in ANYTOWN.

19. Applicant has one (1) truck located at the ANYTOWN facility, but does not have a driver located in ANYTOWN.

20. No maintenance equipment is currently located in the ANYTOWN facility.

21. Two Oklahoma residents have been hired to work at the ANYTOWN facility full time during the hours of 8:30 a.m. to 4:30 p.m. Monday through Friday.

22. The individuals were hired on March 10, 2003 and March 31, 2003.

23. The employment applications of both individuals show that they were hired by CORPORATION C at \$6.00 per hour.

24. An earnings statement for one of the individuals reflects that her wages were paid by Applicant and that Oklahoma income tax was withheld from the wages.

25. According to A, both individuals are employed by the Applicant.

26. According to B, both individuals are currently in training and are being trained to audit log books and maintenance records, take dispatch calls and prepare invoices.

27. Currently neither the invoicing nor the dispatching of trucks is being conducted at the ANYTOWN facility.

28. According to THE Administrator of the IRP/IFTA Section of the Motor Vehicle Division of the Tax Commission, if an application for proportional registration is submitted incomplete, the application is automatically denied. However, THE ADMINISTRATOR did testify that an applicant may resubmit the application any number of times to supply the missing information or to come into compliance with the requirements of the rules of the Tax Commission.

29. Applicant argues that it is in current compliance with Rule 710:60-4-5 of the Oklahoma Administrative Code (OAC, 710:60-4-5) and therefore its application for proportional registration with the State of Oklahoma should be granted since the law permits an applicant to resubmit an application at any time to cure any alleged defects in the original application.

30. The Division argues that the Applicant's established place of business is in BIGCITY, Texas. The Division further argues that while it may be Applicant's intention to establish a place of business in ANYTOWN, Oklahoma, it did not do so at the time the application was filed and has not done so thus far.

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. 2001, § 212; that "[a]n applicant for apportioned registration shall file a uniform application with the Commissioner of the base jurisdiction in lieu of registration under other applicable statutes", Art. IV, Sec. 400(a) of the International Registration Plan ("IRP"); that "'[b]ase [j]urisdiction' means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet and where operational records of such fleet are maintained or can be made available in accordance with the provisions of Section 1602", IRP, Art. II, Sec. 210; that an "'[e]stablished [p]lace of [b]usiness' means a physical structure owned, leased or rented by the fleet registrant", IRP, Art. II, Sec. 218(a); that "[t]he physical structure shall be designated by a street number or road location, be open during normal business hours, and have located within it: (1) a telephone or telephones publicly listed in the name of the fleet registrant, (2) a person or persons conducting the fleet registrant's business, and (3) the operational records of the fleet (unless such records can be made available in

accordance with the provisions of Section 1602)", IRP, Art. II, Sec. 218(b); that the State of Oklahoma entered into and is a member of the IRP which provides for the registration and licensing of vehicles engaged in interstate commerce or combined interstate and intrastate commerce on a proportional basis commensurate with the use of Oklahoma highways, 47 O.S. 2001, §1120(A); that pursuant to statutory authority, 47 O.S. 2001, §1149, the Tax Commission promulgated rules with respect to the administration, enforcement and collection of taxes under the IRP and the Oklahoma Motor Vehicle Licensing and Registration Act, 47 O.S. 2001, § 1101 et seq.; which rules incorporate by reference Articles I through XXII of the IRP, OAC, 710:60-4-20(b)(1); that rules promulgated pursuant to the Administrative Procedures Act, 75 O.S. 2001, § 250 et seq., are presumed to be valid and binding on the persons they affect and have the force of law, 75 O.S. 2001, § 308.2(C); that "[b]efore a vehicle can be proportionally registered in the state of Oklahoma the registrant must: (1) [h]ave an established place of business located in Oklahoma", OAC, 710:60-4-3(a); that the "[e]stablished place of business requirements" promulgated by the Tax Commission essentially adopt the relevant IRP definitions regarding "established place of business", OAC, 710:60-4-5; that here the Applicant has shown that it owns a physical structure in Oklahoma designated by a street address, that the structure is open during normal business hours and that the structure contains within it a telephone publicly listed in the Applicant's name; that notwithstanding whether the individuals are employees of the Applicant and are currently conducting the Applicant's business (questions not entirely answered in the record), Applicant has not shown that its place of business in Oklahoma is "established" as verified by the testimony of the Applicant's witness when he testified "Applicant is establishing a terminal at the ANYTOWN facility" (Tr. 22), has the "intention" of operating a dispatch office out of the facility (Tr. 46-47) and "plan[s] to establish a number of trucks to haul grain from the elevator being constructed in ANYTOWN" (Tr. 29-30); and that therefore Applicant's protest to the denial of the application for renewal of proportional registration under the International Registration Plan with the State of Oklahoma is denied.

DISPOSITION

Based on the above and foregoing findings and conclusions, it is DETERMINED that the protest of Applicant be denied.

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.