

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-10-02-14 / NOT PRECEDENTIAL
ID: MV020026
DATE: 10-02-03
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE / IRP
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

1. For the years 1999, 2000, and 2001, Protestant, through its duly authorized agents, applied for registration of its fleet of vehicles with Oklahoma under the International Registration Plan by filing on paper or electronically an Application on Schedules A and B of Form 745-PR-R-11.
2. Each of the jurisdictions for which mileage was provided on Protestant's original Schedule B was included on the cab card issued Protestant for each vehicle authorizing Protestant to travel within the jurisdiction during the registration year.
3. Protestant's practice during the years in question was that its vehicle mileage records were maintained by the company to which its vehicles were leased. Protestant forwarded miles to be reported to its agent who prepared and filed the registration applications without review by the Protestant. Protestant is [sic] unable to explain the discrepancies between the mileage reported on its original Schedule B for each year and the actual mileage as set forth in the Division's audit report.
4. Division asserts that refunds for jurisdictions where there was no actual mileage during the mileage reporting period were properly disallowed as second year estimates.
5. Protestant asserts that Protestant is entitled to the disallowed refunds because Protestant's erroneously reported mileage on Protestant's original Schedule B was simply a mistake and not an attempt to qualify for new states. Except as may be ascertained from the stipulated documents, Protestant has not presented any evidence.

Additional findings of fact:

1. The amount in controversy is \$10,703.75, the amount of the denied refunds.
2. Protestant operates its fleet of trucks through an operating license held by XYZ of ANONYMOUS, Pennsylvania ("XYZ") which maintained Protestant's detailed mileage records.
3. Prior to July, 1997, Protestant's trucks were tagged with Pennsylvania tags secured through XYZ.
4. In July, 1997, through a service agent, Protestant proportionally register its trucks in Oklahoma for the first time.

5. The audit of Protestant is based on quarterly mileage summaries submitted by Protestant for all quarters of the mileage reporting periods in each of the audited years.

6. Protestant reported mileage in 48 states and the District of Columbia on the schedules of mileage (Schedule B) to its IRP applications for the 1997 and 1998 registration years.

7. Protestant reported "actual" mileage in 48 jurisdictions on its original 1999 Schedule B. No estimated mileage jurisdictions were reported. The audit determined that Protestant accrued mileage in only 24 jurisdictions during the mileage reporting period.

8. Protestant reported "actual" mileage in 49 jurisdictions on its original 2000 Schedule B. No estimated mileage jurisdictions were reported. The audit determined that Protestant accrued mileage in only 23 jurisdictions during the mileage reporting period.

9. Protestant reported "actual" mileage in 48 jurisdictions on its original 2001 Schedule B. No estimated mileage jurisdictions were reported. The audit determined that Protestant accrued mileage in only 23 jurisdictions during the mileage reporting period.

10. On its original mileage schedules (Schedule B) for the 1999, 2000 and 2001 registration years, Protestant reported that approximately 6 percent, 19 percent and 14 percent of its total miles would be traveled in Pennsylvania, respectively. The audit determined that approximately 47 percent, 34 percent and 43 percent of Protestant's total miles were actually traveled in Pennsylvania, respectively.

11. As a result of the audit, the Division caused to be issued against Protestant assessments of net registration fees for the 1999, 2000 and 2001 registration years in the aggregate amount of \$26,214.41.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant is entitled to a refund of registration fees paid to other jurisdictions pursuant to the mileage reported by Protestant on its Original Applications for registration years 1999, 2000, and 2001, if it is determined later during an audit that Protestant had no mileage during the mileage reporting year in the jurisdictions.

Protestant contends that it is entitled to the disallowed refunds because its erroneously reported mileage on the original Schedule B was simply a mistake and not an attempt to qualify for new states.

The Division contends that the assessments should be sustained. In support of this contention, the Division argues that Protestant was based in the jurisdiction of Oklahoma for the registration years 1999, 2000, and 2001; that an audit of these years was conducted based upon the best information available which was submitted by Protestant; and that Protestant has failed to provide testimony or documentation to support its claim that it made errors on its original Schedule B.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 221(D) and Art. XVI, § 1608 of the International Registration Plan ("*IRP*"), incorporated by reference, Rule 710:60-4-20(b)(1) of the *Oklahoma Administrative Code* ("*OAC*").

2. As a registrant under the provisions of the *IRP*, the registrant is subject to the audit procedures and policies set forth therein, *IRP*, Appendix F, Art. XVI.

3. An audit of a registrant under the *IRP* may be conducted by its/his base jurisdiction and/or the commissioners of the several member jurisdictions, *IRP*, Art. XVI, §§ 1600 and 1606.

4. 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*, § 5030(4), incorporated by reference, *OAC*, 710:60-4-20(b)(3).

5. Section 3030 of the *IRP Policies and Procedures Manual* mandates the refund of registration fees in certain circumstances, wherein it provides, in pertinent part:

A member jurisdiction shall permit a refund of registration fees under the following circumstances:

- a. An error by an *IRP* jurisdiction in computation of fees due.
- b. An error by the registrant on the mileage Schedule B.
- c. An error by the registrant or by the base jurisdiction where there is a duplication of vehicles and fees have been paid twice.
- d. An audit of actual miles of an apportioned registrant indicates an over-payment.
- e. When vehicles are deleted from an original application prior to the commencement of the new registration year if this is the result of the base jurisdiction requiring the registrant to file original applications prior to the commencement of the new year for processing.
- f. Registration fees are paid to multiple member jurisdictions as the base jurisdiction in error.

6. Section 5020 of the *IRP Policies and Procedures Manual* dictates when estimated mileage may be utilized in an *IRP* application for apportionment and the treatment accorded the apportionment of vehicles in jurisdictions where no previous mileage has been experienced, wherein it provides:

If estimated miles are used by a registrant in the initial year of operation, the mileage schedule should be scrutinized for any inconsistencies. The mileage should be an accurate estimate of the future operation of the fleet involved. Registrants filing estimated mileage should explain estimates for audit by the base jurisdiction.

If a registrant seeks to apportion its vehicles in a jurisdiction where there was no mileage experience in the previous mileage reporting period, apportionment shall be permitted for one year by including the estimated miles in the denominator of the apportionment factor (total fleet miles) and shall be permitted for a second consecutive year if there are no actual operations in the mileage reporting year. If the registrant seeks to apportion its vehicles in a jurisdiction where no mileage was accrued for the second mileage reporting period, the apportionment shall be permitted provided the estimated mileage is not included in the denominator (total fleet miles) for the subsequent years.

Estimated mileage for expanded operations into additional jurisdictions should reflect a time period that is directly proportional to the time period covered by actual operations in the reported mileage year.

7. A specific provision pertaining to a particular subject will govern in regard to that subject and supersede a general provision even though the general provision, if standing alone, would include such subject. ***City of Tulsa v. Southwestern Bell Telephone Co.***, 75 F.2d 343 (C.C.A.Okla. 1935), cert. denied 295 U.S. 744, 55 S.Ct. 656, 79 L.Ed. 1690 (1935).

8. A proposed assessment is presumed correct and the taxpayer bears the burden of proving it is incorrect, and in what respect. ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okla. 1988). See, OAC, 710:1-5-47. Here, no evidence has been presented to show that the erroneously reported mileage was merely a mistake and not an attempt to qualify for new jurisdictions. Further, although the stipulations show that Protestant did not review the registration applications, Protestant had notice of each of the jurisdictions for which mileage was reported as reflected on the cab cards issued to the Protestant.

9. The undersigned finds that the particular subject of this protest is contained in Section 5020 of the *IRP Policies and Procedures Manual*, that Section 5020 provides for the specific treatment to be accorded to the subject of this protest and that Section 5020 governs the subject of this protest and supersedes the provisions of Section 3030 of the *IRP Policies and Procedures Manual* which, in general, mandates a refund of registration fees in the event of "[a]n error by the Registrant on the mileage Schedule B."

10. Pursuant to the second paragraph of Section 5020 of the *IRP Policies and Procedures Manual* apportionment shall be permitted for one year by including the estimated miles in the denominator of the apportionment factor where a registrant seeks to apportion its vehicles in a jurisdiction in which it had no previous mileage experience during the mileage reporting period and for a second consecutive year if there are no actual operations in the mileage reporting year. Section 5020 further provides that if a registrant seeks to apportion its vehicles in a jurisdiction where no mileage was accrued for the second mileage reporting period, the apportionment shall be permitted provided the estimated mileage is not included in the denominator (total fleet miles) for the subsequent years.

11. Here, Protestant reported mileage in 48 states and the District of Columbia on the schedules of mileage (Schedule B) to its IRP applications for the 1997 and 1998 registration years. As reflected by the audit, Protestant had actual operations during the 1999 registration year and it sought to apportion its vehicles in jurisdictions where no mileage was accrued for the second mileage reporting period. In accordance with Section 5020, the mileage reported for those jurisdictions where no mileage was accrued was required to be excluded from the denominator of the apportionment factor for the 1999, 2000 and 2001 registration years.

12. Since Protestant was required to exclude the estimated mileage for those jurisdictions in which no mileage was accrued during the 1998, 1999 and 2000 mileage reporting periods from the denominator of the apportionment factor, Protestant was required to pay those jurisdictions a mileage percent that was in excess of the 100 percent registration. See, *IRP Policies and Procedures Manual*, § 5030(3). In other words, Section 5020 does not permit or grant a refund of registration fees paid to a jurisdiction based on an estimate of mileage when no mileage is accrued in the jurisdiction for a second and subsequent mileage reporting periods. Accordingly, the Division's audit and assessment of net registration fees for the 1999, 2000 and 2001 registration years was proper.

13. Protestant's protest to the audit and assessment of net IRP registration fees is denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest be denied. It is further DETERMINED that the net registration fees as assessed by the Division, 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.