

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2004-01-29-13 / NOT PRECEDENTIAL
ID: SJ030068
DATE: 01-29-04
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE / IRP
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 29th day of December, 2003, the above styled and numbered cause comes on for decision pursuant to a hearing held on November 26, 2003. Applicant is represented BY APPLICANT'S President. The Motor Vehicle Division of the Tax Commission (hereinafter "Division") is represented by THE First Deputy General Counsel, General Counsel's Office of the Tax Commission. Applicant did not appear at the hearing on November 26, 2003.

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. That Applicant submitted its application for a new motor carrier account under the International Registration Plan with the State of Oklahoma on September 6, 2003.

2. That by letter dated September 10, 2003, the Division caused to be issued to Applicant a notification of its denial of the application, listing the following reasons:

- a. Failure to provide proof of Oklahoma residency pursuant to Oklahoma Tax Commission Rule 710:60-4-5 as evidenced by a current real estate tax bill, a current rental contract, or proof of insurance coverage on real estate. A water bill cannot be accepted.
- b. Failure to provide duty letter (Power of Attorney).
- c. Registrant has no Oklahoma withholding tax account.

3. That by letter dated September 16, 2003, Applicant responded to the Division's letter, transmitting a copy of a Certificate of Property Insurance showing coverage for a building and its contents located at the address given on the application, transmitting a copy of a "duty letter" listing its employees and their titles, advising Oklahoma Income Tax Withholdings would be paid on three individuals, and advising it had been informed that its Oklahoma Business Registration was processed July 29, 2003, with the third quarter 2003 to be its first reporting period.

4. That by letter dated October 17, 2003, Applicant formally requested a hearing in reference to the denial of its application for IRP registration.

5. That at the hearing THE Auditor, Motor Vehicle Division, testified on behalf of the Division, as follows:

a. That upon receiving Applicant's duty letter, he attempted to call the party who was listed as Transportation Manager and named as a contact person, but was unable to contact him. He further testified that he had previously seen the named party in the offices of the Oklahoma Tax Commission in effect acting as a registration agent and turning in applications on behalf of other companies.

b. That over the course of the last two years, the business address which was provided on the application has been used for other applications using various company names and it appears that the address was used as a depot for the service agent to turn in applications for both owner-operators and motor carriers. He further testified that currently there are seven (7) IRP registrants registered at the given address.

c. That at the request of the Office of the General Counsel, he made an on-site visit to the given address approximately one week prior to the hearing. He found that the building was vacant. He further testified that he had attempted to reach Applicant by calling the provided toll-free phone number and was told he could locate Applicant at the local number at any time of the day. He then called the local number and it had been disconnected.

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., 301 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 failed to show that it has an established place of business in Oklahoma as verified by the testimony of the Division's witness when he testified "Applicant's purported place of business has been vacated and the given local telephone number has been disconnected," and that therefore Applicant's protest to the denial of the application for a new motor carrier account under the International Registration Plan with the State of Oklahoma should be denied.

DISPOSITION

THEREFORE, 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.