

+URISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2004-02-26-03 / NOT PRECEDENTIAL
ID: MV030033-H
DATE: 02-26-04
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE / IRP
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 27th day of January 2004, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. REGISTRANT appears not. The IRP/IFTA Section of the Audit Division (hereinafter "Division") is represented by THE Office of General Counsel of the Oklahoma Tax Commission.

A hearing was held in this matter on December 11, 2003, at approximately 9:00 a.m. Notice of the hearing was mailed to the Protestant at its last known address, but the Protestant did not appear and the notice was not returned in the mail. Upon conclusion of the hearing the record was closed and this case was submitted for decision December 11, 2003.

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

FINDINGS OF FACT

1. The Protestant was a registrant under the International Registration Plan ("IRP") based in the jurisdiction of the State of Oklahoma for registration years 2000 and 2001.¹ The Protestant's business is using flatbeds hauling mainly building materials.²

¹ The 2000 registration year included records from July 1, 1998 to June 30, 1999. The 2001 registration year included records from July 1, 1999 to June 30, 2000.

² See Exhibit "E".

2. On April 10, 2002, the Division sent the Protestant a letter advising of its intention to conduct an audit of its IRP account for registration years 2000 and 2001. The letter enclosed an IRP/IFTA³ Questionnaire and requested mileage summaries and drivers trip reports.⁴

3. On July 2, 2002, the Division sent a letter to the Protestant at XXX S. ANYSTREET #XXX, ANONYMOUS, OK,⁵, requesting all company mileage operational records to conduct an audit for registration years 2000 and 2001.⁶ The Division confirmed in the letter a conversation with the owner of Protestant's service agent, MR. ABC, concerning the records requested and that if the records were not made available on or before August 2, 2002, an assessment would be made in accordance with the provisions of the IRP.⁷

4. No records were provided and the Division conducted an audit of the Protestant for registration years 2000 and 2001 based upon the difference between the apportioned fees paid Colorado and the full Colorado fees due.⁸

³ The International Fuel Tax Agreement is analogous to the IRP. The purpose of IFTA is to enable participating jurisdictions to act cooperatively and provide mutual assistance in the administration and collection of motor fuels use taxes.

⁴ See Note 2.

⁵ This was the address of the Protestant's service agent, ABC REGISTRATION, owned by MR. ABC. The court file contains an audit packet which was forwarded by the Division as part of the protest file. The Protestant, by Duty Letter and Special Power of Attorney contained in the court file, appointed ABC REGISTRATION to perform services for it which included among other things "submitting applications for registration through the International Registration Plan for licenses plates & registration cards" and "receive and forward/discard mail as appropriate". The Court is taking judicial notice of the Duty Letter and Special Power of Attorney contained in the court file for the purpose of completing factual details and background of this audit which were not part of the Division's Position Letter or Exhibits "A" through "E" introduced into evidence at hearing. *OAC: 710:1-5-36*.

⁶ See Note 5. The Court is taking judicial notice of the July 2, 2002 letter contained in the court file for the purpose of completing factual details and background of this audit which were not part of the Division's Position Letter or Exhibits "A" through "E" introduced into evidence at hearing.

⁷ See Note 5. The court file also contains a letter dated August 8, 2002, from the Division to Protestant (through it's service agent) advising the Protestant that the assessment would be additional fees due based on the difference between the apportioned fees paid and the fees due for a full base state registration application for IRP registration years 2000 and 2001. The letter further advised that since there was no proof that the Protestant was ever in the State of Oklahoma, the Division was recommending to the IRP/IFTA Section of the Motor Vehicle Division of the Oklahoma Tax Commission that the Protestant not be allowed to base plate its fleet in the State of Oklahoma for the registration year 2003.

⁸ See Exhibits "A" and "A-1".

5. On August 13, 2002, the Division issued an assessment for the registration year 2000 in the amount of Four Thousand Eight Hundred Sixty-two Dollars and Ninety-two Cents (\$4,862.92).⁹

6. On August 13, 2002, the Division issued an assessment for the registration year 2001 in the amount of Three Thousand Nine Hundred Forty-seven Dollars and Twenty Cents (\$3,947.20).¹⁰

7. By letter dated August 22, 2002, the Protestant requested a re-audit, which the Division deemed as a timely filing of a protest.¹¹

8. On September 12, 2003, the Division received a letter from the Protestant which stated that it enclosed copies of all the drivers trip reports and the completed questionnaire previously requested by the Division on July 2, 2002.¹²

9. On September 22, 2003, the IRP/IFTA Field Auditor advised the IRP/IFTA Administrator that he had reviewed the information provided by the Protestant for the re-audit and found 99.9% of the carrier's reported miles were generated in the State of Colorado and that a sample audit could not be completed on the information because the trip sheets did not list all points of destinations. Without points of origin and destination the auditor could not follow the vehicles routing, generate audited miles or make a comparison with reported miles.¹³

⁹ See Note 8. The Protestant's Original Schedule B for the registration year 2000 reported 1,702 miles traveled in Colorado out of 105,074 total miles traveled or 1.620% of the fees originally paid. The audit increased the total miles traveled in Colorado to 100% of the total miles traveled or full fees in the amount of \$4,943.00. The assessment gave the Protestant credit for the 1.620% originally paid or \$80.08 leaving a total due of \$4,862.92.

¹⁰ See Note 8. The Protestant's Original Schedule B for the registration year 2001 reported 19,666 miles traveled in Colorado out of 28,757 total miles traveled or 68.387% of the fees originally paid. The audit increased the total miles traveled in Colorado to 100% of the total miles traveled or full fees in the amount of \$12,486.00. The assessment gave the Protestant credit for the 68.387% originally paid or \$8,538.80, leaving a total due of \$3,947.20.

¹¹ See Note 2, Note 5, and Exhibit "B". The basis of the "protest" was that THE OWNER of the Protestant, had assumed that the company's service agent, through MR. ABC, had supplied the records requested by the Division [July 2, 2002] to conduct the audit. The letterhead of the Protestant reflects its mailing address as P.O. Box XXX, ANONYMOUS, CO.

¹² See Note 2 and Exhibit "E". The records were provided by the owner of the Protestant.

¹³ See Exhibit "B-1".

10. On September 26, 2003, the Division issued a revised assessment for the registration year 2000 in the amount of Four Thousand Seven Hundred Fifty-one Dollars and Ninety Cents (\$4,751.90).¹⁴

11. On September 26, 2003, the Division issued a revised assessment for the registration year 2001 in the amount of Three Thousand Six Hundred Forty-eight Dollars and Twenty-eight Cents (\$3,648.28).¹⁵

12. The Division did not receive any evidence or statement from the Protestant that the calculations of the revised assessments for registration years 2000 and 2001 were incorrect or any objection(s) to the results of the re-audit as reflected in the revised assessments.

13. On November 14, 2003, the Court mailed a notice to the Protestant at its last known address advising that a position letter or a memorandum brief was due December 4, 2003, and that this matter had been set for hearing on December 11, 2003.¹⁶

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.¹⁷

2. 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.¹⁸

3. The Oklahoma Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement and collection of taxes under the IRP and the Oklahoma Motor Vehicle Licensing and Registration Act.¹⁹

¹⁴ See Exhibit "C" and "C-1".

¹⁵ See Note 14.

¹⁶ See Exhibit "D".

¹⁷ See 68 O.S. § 207 and 47 O.S. § 1120.

¹⁸ 47 O.S. § 1120(A).

¹⁹ 47 O.S. § 1101 et seq., which incorporate by reference Articles I through XXII of the IRP. *OAC 710:60-4-20(b)(1)*.

4. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.²⁰

5. As a registrant under the provisions of the IRP, the Protestant is subject to the audit procedures and policies set forth therein.²¹

6. The Protestant is subject to audit by Oklahoma as its base jurisdiction.²²

7. An assessment is presumed correct and the Protestant bears the burden of showing that it is incorrect, and in what respect.²³

8. The Protestant has produced no evidence, cited no authority and raised no objections after the re-audit and the revised assessments were issued by the Division.

An analysis of the records provided by the Protestant supports the Division's conclusions that the Protestant never traveled in Oklahoma and never left the State of Colorado. It appears the Protestant's only contact with the jurisdiction of Oklahoma was through its service agent. The records submitted by the Protestant reflect that over Ninety-nine percent (99%) of the carrier's reported miles were generated in the State of Colorado. The assessment of fees based upon the difference between the apportioned fees paid by the Protestant for registration years 2000 and 2001 and the full fees for Colorado in this matter are supported by the facts and authority cited herein.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the protest be denied, and that the total amount assessed for registration years 2000 and 2001, as revised, be fixed as the Protestant's deficiency and that amount is determined to be 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.

²⁰ 75 O.S. § 250 et seq., § 301 et seq. and 75 O.S. § 308.2(C).

²¹ IRP, Art. XVI and IRP, Appendix F, Art. XVI.

²² IRP Art. XVI, Section 1600 of the IRP.

²³ OAC 710:1-5-47. See *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359.