NON-PRECEDENTIAL DECISION OKLAHOMA TAX COMMISSION

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-03-02-04
ID: MV-03-037-H
DATE: MARCH 2, 2004
DISPOSITION: DISMISSED
TAX TYPE: IRP
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A *Motion to Dismiss* was filed by the IRP/IFTA Section of the Audit Division of the Oklahoma Tax Commission [1] (hereinafter "Division") A hearing was held in this matter on December 12, 2003, at approximately 9:30 a.m. Notice of the hearing was mailed to the TRUCKING COMPANY. (hereinafter "Protestant"), at its last known address, but the Protestant, *pro se,* 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 12, 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.[2]

2. On January 28, 2002, the Division sent the Protestant a letter at 123 FAKE STREET, ATOWNIN, OKLAHOMA, advising of its intention to conduct an audit of Protestant's IRP account for registration years 2000 and 2001. The letter enclosed an IRP/IFTA[3] Questionnaire and requested mileage summaries and drivers trip reports, which were to be returned to the Division along with a signed copy of the letter within thirty (30) days.[4]

3. On April 8, 2002, the Division sent a letter to the Protestant at 123 FAKE STREET, ATOWNIN, OKLAHOMA, advising that it was notified in the letter of January 28, 2002, of the Division's intent to audit registration years 2000 and 2001. The letter further advised that if the records were not made available on or before May 15, 2002, an assessment would be made based upon the difference between the apportioned fees paid and the fees due for a full Oklahoma registration.[5]

4. On June 21, 2002, the Division notified the Protestant by letter that no records had been received pursuant to the letters of January 28, 2002, and April 8, 2002, and that the assessment for registration year 2000 was being made based upon the difference between the apportioned fees paid Oklahoma and the full Oklahoma fees due in the amount of Eleven Thousand Six Hundred Sixteen Dollars and Ninety-one Cents ($11,616.91) .[6]

5. No records were provided and on June 27, 2002, the Division issued an assessment for the registration year 2000 in the amount of Eleven Thousand Six Hundred Sixteen Dollars and Ninety-one Cents ($11,616.91).[7]

6. On June 21, 2002, the Division notified the Protestant by letter that no records had been received pursuant to the letters of January 28, 2002 and April 8, 2002, and that the assessment for registration year 2001 was being made based upon the difference between the apportioned fees paid Oklahoma and the full Oklahoma fees due in the amount of Thirteen Thousand Two Hundred Five Dollars and Eight-four Cents ($13,205.84).[8]

7. On June 27, 2002, the Division issued an assessment for the registration year 2001 in the amount of Thirteen Thousand Two Hundred Five Dollars and Eighty-four Cents ($13,205.84).[9]

8. On September 6, 2002, the Division received a letter from Protestant which purported to enclose the records the Division had previously requested, but only enclosed spread sheets with a mileage figure for each jurisdiction.[10] The Division deemed the letter a protest of the assessments for registration years 2000 and 2001.[11]

9. On October 2, 2003, the Division filed its ***Motion to Dismiss*** on the grounds that Protestant had failed to file an audit appeal within thirty (30) days of the audit notifications.

10. The hearing on the Division's ***Motion to Dismiss*** was originally scheduled for October 27, 2003 at 2:30p.m.and the notice was mailed to the three addresses available for Protestant.[12]

11. On October 14, 2003, the Court sent the Protestant a notice that the hearing on the ***Motion to Dismiss*** set for October 27, 2003, had been stricken from the docket at the request of the former Administrative Law Judge assigned to this matter, FORMER ALJ.[13]

12. On November 18, 2003, the Court mailed an Amended Notice to Appear or Respond in Writing, which reset the Division's ***Motion to Dismiss*** for hearing on December 12, 2003, at 9:30a.m.[14]

13. The Division did not receive any evidence or statement from the Protestant that the calculations of the assessments for registration years 2000 and 2001 were incorrect or any response to the ***Motion to Dismiss*** filed by the Division.

14. The ***Motion to Dismiss*** was heard by the Court on December 12, 2003, at approximately 9:30a.m. and the Protestant did not appear.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[15]

2. The Oklahoma Tax Commission is vested with jurisdiction to consider the ***Motion to Dismiss.***[16]

3. 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.[17]

4. 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.[18]

5. 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.[19]

6. As a registrant under the provisions of the IRP, the Protestant is subject to the audit procedures and policies set forth therein.[20]

7. The Protestant is subject to audit by Oklahoma as its base jurisdiction.[21]

8. The Protestant's records were not made available to the Division for examination by the suspense date, so the assessment was based upon the difference between the apportioned fee paid and the fee due on a full Oklahoma registration.[22]

9. That upon completion of the audit of a registrant, the audit findings shall be provided to the registrant and to all member jurisdictions in which the registrant was apportioned or in which it accrued miles.[23]

10. That the registrant shall have thirty (30) days from the date it is notified of the findings of the audit to file a written appeal of the audit.[24]

11. That the time period specified in IRP, Art. XVI, Section 1608 shall begin from the date the registrant is notified of an audit or reexamination to file a written appeal of the audit or reexamination with the base jurisdiction.[25]

12. That the findings of the audit shall be final as to member jurisdictions and the audited registrant, if they do not act as specified in IRP, Art. XVI, Sections 1608 and 1610 except in conditions of fraud.[26]

13. That the provisions of IRP, Art. XVI, Section 1614 concerns an action of fraud committed with respect to the audit itself. It provides a mechanism whereby the audit can be thrown out if, and only if, it is determined at some latter date that the final audit findings are erroneous due to some fraudulent action whether such action is the submission of false records by the registrant or collusion between the registrant and the auditor.

14. No allegation has been made by either party that the audit is fraudulent in any manner. The exception to the audit becoming final after thirty (30) days from the date of notification of the findings does not apply.

15. That the Protestant did not timely appeal the final audit findings.[27]

16. An assessment is presumed correct and the Protestant bears the burden of showing that it is incorrect, and in what respect.[28]

17. The Protestant has failed to meet its burden of proof in this matter. The Protestant has produced no evidence[29]and cited no authority that the assessments issued by the Division are incorrect.

18. The Protestant did not respond to the Division's ***Motion to Dismiss*** or appear at the hearing.

An analysis of the facts and authority cited herein supports 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 Oklahoma. The letter from the Protestant dated August 27, 2002, was not received by the Division until September 6, 2002, some ten (10) days after the thirty (30) day protest period specified by the IRP to file an appeal with the base jurisdiction had lapsed.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest be dismissed, and that the total amount assessed for registration years 2000 and 2001, be fixed as 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.

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[1]The Motion to Dismiss was originally filed by the Motor Vehicle Division, Prorate Section, but effective September 1, 2003, the responsibility for IRP/IFTA audit functions was transferred from the Motor Vehicle Division to the Audit Division.

[2]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.

[3]The International Fuel Tax Agreement ("IFTA") 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]The court file contains an audit packet which was forwarded by the Division as part of the protest file on this matter. The Court is taking judicial notice of materials 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 Motion to Dismiss or Exhibits "A" and "B" introduced into evidence at hearing. *OAC 710:1-5-36.*

The letter was mailed to Protestant's attention using the address of Protestant's service agent, PERMIT SERVICE. According to the records of the Division, SERVICE EMPLOYEE was the individual at PERMIT SERVICE designated by the Protestant as it's contact person.

[5]See Note 4. The letter specifies that the records required for the audit review are individual mileage records, including, driver's daily logs and/or trip reports of each IRP registered vehicle. The letter further states that monthly or quarterly recaps of the miles driven by each IRP registered vehicle are also required for the audit review.

[6]See Note 4. Protestant's Original Schedule B for the registration year 2000 reported 18,667 miles traveled in Oklahoma out of 948,931 total miles traveled or 1.967% of the fees originally paid. The audit increased the total miles traveled in Oklahoma to 100% of the total miles traveled or full fees in the amount of $11,850.00. The assessment gave Protestant credit for the 1.967% originally paid or $233.09 leaving a total due of $11,616.91.

[7]See Exhibit "A".

[8]See Note 4. Protestant's Original Schedule B for the registration year 2001 reported 8,038 miles traveled in Oklahoma out of 1,589,676 total miles traveled or 0.506% of the fees originally paid. The audit increased the total miles traveled in Oklahoma to 100% of the total miles traveled or full fees in the amount of $13,273.00. The assessment gave the Protestant credit for the 0.506% originally paid or $67.16, leaving a total due of $13,205.84.

[9]See Exhibit "A".

[10]See Exhibit "B". The letter reflects the Protestant's address as POST OFFICE BOX, SOMEWHERE, OKLAHOMA. There are spread sheets attached to the letter with two (2) lines of mileage figures for each jurisdiction. According to the first page of the spread sheet, line one represents the 3rd and 4th Quarters of 1998 and the 1st and 2nd Quarters of 1999, and line two represents the 3rd and 4th Quarters of 1999 and 1st and 2nd Quarters of 2000.

[11]See Note 10. The basis of the "protest" was that the Protestant did not know that it needed to submit the mileages until the Protestant went to renew its registration. The letter is unsigned, but reflects that it was sent by PROTESTANT'S REPRESENTATIVE on behalf of the Protestant. The spread sheets attached to the letter were faxed from EMPLOYEE at TITLE COMPANY in Houston, Texas to "PROTESTANT'S REPRESENTATIVE" and to the attention of "AGENT". The fax reflects the Protestant's address as POST OFFICE BOX, CITY, TX.

According to the records of the Division, CONTACT PERSON remained the Protestant's contact during the audit. The hiring of an agent by the Protestant does not negate or abrogate its responsibility to know the requirements under the IRP, applicable Oklahoma statutes or the Oklahoma Administrative Code.

[12]The three (3) addresses were as follows: TRUCKING COMPANY, Attention PROTESTANT'S REPRESENTATIVE, POST OFFICE BOX, SOMEWHERE, Oklahoma, TRUCKING COMPANY, 123 FAKE STREET, ATOWNIN, Oklahoma, and TRUCKING COMPANY, POST OFFICE BOX, CITY, Texas. Only the notices mailed to the CITY, Texas address were not returned as undeliverable.

[13]The notice was sent to the CITY, Texas address by certified mail, article NUMBER, and the green card was signed by PERSON on October 20, 2003.

[14]The notice was sent to the CITY, Texas address by regular mail and was not returned.

[15]See 68 O.S. § 207 and 47 O.S. § 1120.

[16]See 68 O.S. § 221(E), IRP, Art. XVI, Section 1608, and *OAC 710: 1-5-46.*

> *OAC 710:1-5-46(b)* provides in pertinent part:
> If the taxpayer fails to appear at the hearing or to respond to the notice, the Administrative Law Judge may recommend to the Commission that an order of dismissal be entered fixing the deficiency as the amount determined by the Tax Commission or that an order be entered disposing of the case consistent with the position last taken by the tax division.

[17]47 O.S. § 1120(A).

[18]47 O.S. § 1101 et seq.; which incorporate by reference Articles I through XXII of the IRP. *OAC 710:60-4-20(b)(1).*

[19]75 O.S. § 250 et seq., § 301 et seq., and 75 O.S. § 308.2(C).

[20]IRP, Art. XVI and IRP, Appendix F, Art. XVI.

[21]IRP, Art. XVI, Section 1600.

[22]IRP, Art. XV, Section 1502.

[23]IRP, Art. XVI, Section 1604.

[24]IRP, Art. XVI, Section 1608.

[25]See Note 23.

[26]IRP, Art. XVI, Section 1614.

[27]See Note 10 and Note 11. The letter of protest is dated August 27, 2002, but it has a date stamp reflecting that it was not received by the Division until September 6, 2002. The date of receipt was also confirmed through the testimony of the ADMINISTRATOR of the IRP/IFTA Audit Section, Audit Division of the Oklahoma Tax Commission.

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

[29]See Note 10.The Protestant indicated that it did not know that it needed the mileage records required by the Division for the audit. However, when the Protestant tried to renew its registration it became aware of the documents required by the Division, but the Protestant attached mileage information to the letter of protest which was of no use in the audit without the other records requested by the Division.