

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-03-09-11
ID: MV-03-039-H
DATE: MARCH 9, 2004
DISPOSITION: DENIED
TAX TYPE: IRP
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A prehearing conference was scheduled in this matter on November 24, 2003, at 9:30 a.m. A Notice of the Prehearing Conference was mailed to the Protestant at his last known address. On November 19, 2003, the Protestant faxed a letter to the Office of the Administrative Law Judge, which stated that the Protestant would not be able to attend the prehearing conference, but that his position was explained in the letter. The Protestant also requested that the protest be sustained and the assessment stricken. No hearing was requested by the Protestant. Thereafter, notice was served upon the parties that this cause would be closed and the matter submitted for decision upon the filing of a verified response to the protest by the Division. The Audit Division¹ filed its Verified Response to Protest on December 22, 2003, and the record was closed and this case was submitted for decision January 8, 2004.

Upon review of the file and records, the position letter filed by the Protestant, and the Verified Response to Protest filed by the Division, the undersigned Administrative Law Judge, makes the following Findings of Fact and Conclusions of Law:

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 IRP registration years 2001 and 2002.² The Protestant registered five (5) vehicles in 2001 and six vehicles in 2002.³
2. On September 4, 2002, the Division sent a letter to the Protestant, in care of his service agent,⁴ at ARKANSAS ADDRESS, advising of its intention to conduct an audit of his IRP account for registration years 2001 and 2002. The letter enclosed an IRP/IFTA⁵ Questionnaire and requested mileage summaries and drivers trip reports.⁶
3. On May 28, 2003, the Division sent a letter to the Protestant, in care of his service agent, at ARKANSAS ADDRESS⁷, requesting all source mileage documents (trip sheets), for all Oklahoma apportioned vehicles, accounting for mileage traveled during IRP registration years 2001 and 2002, and monthly and/or quarterly mileage summaries for IRP registration years 2001 and 2002.⁸ The Division confirmed in the letter a telephone conversation on May 27, 2003, with the Protestant’s service agent, AGENT X at PERMIT SERVICE, concerning the records requested, and that if the records were not made available on or before June 27, 2003, an assessment would be made in accordance with the penalty provisions of the IRP.⁹

4. No records were provided by the Protestant and the Division conducted an audit of the Protestant for IRP registration years 2001 and 2002, based upon the difference between the apportioned fees paid Oklahoma and the full Oklahoma fees due.¹⁰
5. On August 26, 2003, the Division sent the Protestant, in care of his service agent, a Statement of Preliminary Findings, resulting from the audit for IRP registration years 2001 and 2002, which also references the previous correspondence sent by the Division to the Protestant, in care of this service agent, on September 4, 2002 and May 28, 2003.¹¹
6. On September 12, 2003, the Division received a letter from the Protestant in response to the August, 26, 2003, Statement of Preliminary Findings, in which the Protestant advises the Division that he had paid all of these obligations in full and that he did not owe anything.¹²
7. On September 19, 2003, the Division issued an assessment for the IRP registration year 2001 in the amount of Three Thousand Eighty-eight Dollars and Ninety-two Cents (\$3,088.00).¹³
8. On September 19, 2003, the Division issued an assessment for the IRP registration year 2002 in the amount of Four Thousand Nine Hundred Twenty-six Dollars (\$4,926.00).¹⁴
9. Letters of protest for each IRP registration year were received by the Division on September 22, 2003.¹⁵
10. On November 14, 2003, a Notice of Prehearing Conference was mailed to the Protestant at ILLINOIS ADDRESS, that a prehearing conference was set for November 24, 2003 at 9:30 a.m.
11. On November 19, 2003, the Protestant faxed a letter to the Office of the Administrative Law Judge, in which he states that he will not be able to attend the prehearing conference, but that the correspondence explains his position that the price per mile is unreasonably high based upon the number of vehicles registered. No records were attached to the Protestant's letter and no hearing was requested.
12. On December 8, 2003, a Prehearing Conference Order was mailed to the Protestant, at ILLINOIS ADDRESS, stating that the record in this matter would be closed and that the case would be submitted for decision on the merits, upon receipt of the Division's Verified Response to Protest.¹⁶
13. The Division did not receive any evidence from the Protestant that the calculations of the assessments for IRP registration years 2001 and 2002 were incorrect.

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

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. The Protestant is required to maintain adequate records for an audit, but the Protestant refused to furnish the records required for the audit to the Division.²³

8. The failure of the Protestant to furnish the requested records resulted in an assessment of 100% Oklahoma fees.²⁴

9. An assessment is presumed correct and the Protestant bears the burden of showing that it is incorrect, and in what respect.²⁵

10. That in this matter the Protestant has failed to meet his burden of proof. The Protestant has not presented any evidence that the sum claimed by the Division is incorrect, or that the sum is not due and owing.

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 IRP registration years 2001 and 2002 for Oklahoma and the full fees for Oklahoma. The Protestant did not make any records available to the Division for examination to support the Protestant's apportioned registrations as filed. The Division has documented its repeated requests for records from the Protestant to the conduct the audit and documented the procedures employed for the assessment of fees based upon the difference between the apportioned fees paid by the Protestant for IRP registration years 2001 and 2002 for Oklahoma and the full fees for Oklahoma, all in accordance with the provisions of the IRP.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest be denied, and that the total amounts assessed for IRP registration years 2001 and 2002, be fixed as the Protestant's deficiency and that those amounts be determined as due and owing.

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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.

¹The assessment in this matter was originally made 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.

²The 2001 registration year included records from July 1, 1999 to June 30, 2000. The 2002 registration year included records from July 1, 2000 to June 30, 2001.

³See Exhibit "B", consisting of the Oklahoma Tax Commission IRP Sampling Methodology Agreement Forms for registration years 2001 and 2002. The agreements were signed by the Division's auditor on August 26, 2003 and reflect the methodology used for the audit because the requested records were not made available to the Division by the Protestant. This exhibit also contains the Division's Contact Log for the audit and the letter dated May 28, 2002, sent by the Division to the Protestant, in care of his service agent.

⁴See Note 3. According to the Division's Contact Log, the Protestant's service agent is PERMIT SERVICE and AGENT is the contact person. The Protestant's business address is reflected as OKLAHOMA ADDRESS.

⁵The IRP is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions. The unique feature of the IRP is that, even though license fees are paid to the various jurisdictions in which fleet vehicles are operated, only one (1) license plate and one cab (1) card is issued for each fleet vehicle when registered under the IRP. A fleet vehicle is as an apportionable vehicle and such vehicle, so far as registration is concerned, may be operated both interjurisdictionally and intrajurisdictionally. 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.

⁶The Administrative Law Judge's file contains an audit packet which was forwarded by the Division as part of the protest. The Administrative Law Judge is taking judicial notice of the September 2, 2002, letter contained therein, for the purpose of completing factual details and background of this audit which were not part of the Division's verified response. *OAC 710:1-5-36*.

⁷ See Note 3

⁸See Note 3.

⁹See Note 3. The Division's Contact Log reflects that AGENT was advised by phone on May 27, 2003, what records were needed to conduct the audit. AGENT was further advised that the Division would send a thirty (30) day letter to the Protestant, in care of PERMIT SERVICE, that would advise the Protestant, that if the records were not produced by the suspense date that the assessment would be based on penalty provisions of the IRP.

The Division's Contact Log also reflects that on July 28, 2003, ANOTHER AGENT, with PERMIT SERVICE, was contact by phone by to find out if the service agent had received any records from the Protestant. The Contact Log reflects that the service agent advised the auditor that the Protestant was gathering paperwork.

¹⁰See Exhibit "D", consisting of the Statements of Preliminary Findings, assessments for IRP registration years 2001 and 2002, along with the auditor's work papers, including: Oklahoma Tax Commission Forms 724, which details the methodology used by the Division for the audit. Oklahoma Tax Commission Forms 724 were attached to each of the August 26, 2003, Statement of Preliminary Findings sent the Protestant, in care of his service agent.

¹¹See Note 10.

¹²See Exhibit "C", consisting of two (2) memorandums from the auditor to the audit administrator. The first memo dated September 12, 2003, advised the audit administrator that all previous correspondence was sent to the Protestant, in care of his service agent. However, the letter received by the Division on September 12, 2003, was from the Protestant, at ILLINOIS ADDRESS. The second memorandum dated September 17, 2003, details a telephone conversation with AGENT at PERMIT SERVICE, advising the auditor that she had been in contact with the Protestant, and that the Protestant told her that he had sent the information requested to the auditor. The auditor advised AGENT that the only information received from the Protestant was the letter that the Division had received on September 12, 2003. The auditor read the letter in full to AGENT and advised her that no records had been received from the Protestant.

The letter received by the Division from the Protestant on September 12, 2003, is not one of the exhibits attached to the Division's Verified Response, but the letter is included in the Administrative Law Judge's file. The Administrative Law Judge is taking judicial notice of the letter in order to complete the factual details and background of this audit. The letter from the Protestant reflects his address as ILLINOIS ADDRESS. The letter references the Protestant's Oklahoma IRP account, but the letter responds to the August 26, 2003, Statements of Preliminary Findings for IRP registration years 2001 and 2002, as assessments for his Illinois IFTA account, which he states is paid in full. *OAC 710:1-5-36*.

¹³See Note 10, Oklahoma Tax Commission Form 724. The Protestant's Original Schedule B for the registration year 2001 reported 22,420 miles traveled in Oklahoma out of 323,393 total miles traveled or 6.933% 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 3,318.00. The assessment gave the Protestant credit for the 6.933% originally paid or \$230.00 leaving a total due of \$3,088.00.

¹⁴See Note 10, Oklahoma Tax Commission Form 724. The Protestant's Original Schedule B for the registration year 2002 reported 6,392 miles traveled in Oklahoma out of 228,035 total miles traveled or 2.803% 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 \$5,688.00. The assessment gave the Protestant credit for the 2.803% originally paid or \$762.00, leaving a total due of \$4,926.00.

¹⁵The basis of the "protest" was that the Protestant believed that he had paid a very high price and that the audit was without validity. The Protestant reflects his mailing address as ILLINOIS ADDRESS.

¹⁶*OAC 710:1-5-28(c)*. See Exhibit “A”.

¹⁷68 O.S. § 207; 47 O.S. §§ 1120 and 1133, and IRP, Art. IX, Sections 902 and 906.

¹⁸47 O.S. § 1120(A).

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

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

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

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

²³IRP Art. XV, Sections 1500, 1501 and 1502.

²⁴IRP, Art. XVI, Appendix F, Section 603:

During the preliminary phase of the audit, the auditor will have made a request for records that support the apportioned application as filed. Records must be adequate and complete for each fleet being audited. If the records are not made available, or if the records made available are inadequate for examination purposes, an assessment of liability may be imposed in accordance with Article XV of the Plan. If an estimate of the registrant’s true liability cannot be determined, the registrant may be assessed 100% registration fees for the jurisdiction. Any credits calculated for jurisdictions which are caused by the inadequacy of the records will not be reflected in the fees netted under Article XVII of the Plan.

The audit file shall include documentation of requests for records in cases where adequate records were not provided subsequent to request. The audit file shall also include documentation regarding the nature of estimate procedures employed when an assessment of liability is imposed.

²⁵*OAC 710:1-5-47*. See *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359.