

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-03-25.24
ID: JM-03-005-H
DATE: MARCH 25, 2004
DISPOSITION: SUSTAINED
TAX TYPE: DISBARMENT
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 24th day of February 2004, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ADMINISTRATIVE LAW JUDGE. Respondent, Donald R. Robinson, is represented by ATTORNEY., XYZ LAW FIRM. The Office of General Counsel is represented by OTC ATTORNEY, Assistant General Counsel, Oklahoma Tax Commission.

By agreement of the parties, this matter was submitted for decision without a hearing based upon Stipulation of Facts in accordance with *Oklahoma Administrative Code 710:1-5-38*.

Upon review of the file and records and the Stipulation of Facts submitted by the parties,
the undersigned finds:

FINDINGS OF FACT

1. On February 10, 2003, the Office of General Counsel filed a Petition for Disbarment against Donald R. Robinson ("Respondent"), alleging violations of the provisions of 68 O.S. § 236 and *Oklahoma Administrative Code ("OAC") 710:1-5-200*, and seeking to disqualify the Respondent from further practice before the Oklahoma Tax Commission, and that Respondent be prohibited from the preparation or filing on behalf of or as an agent for any other person any tax returns, report or application required or provided for under the tax laws or motor vehicle registration laws of the State of Oklahoma.

2. Respondent acted as a registration agent for motor carriers and owner-operators and filed applications under the International Registration Plan for renewal of motor vehicle registrations with Motor Vehicle Division of the Oklahoma Tax Commission.

3. Respondent was employed by REGISTRATION COMPANY and did, in such capacity, represent various out of state motor carriers and owner operators as their registration agent before the Motor Vehicle Division of the Oklahoma Tax Commission.

4. Respondent stipulates and agrees that, while representing taxpayers before the Oklahoma Tax Commission, Respondent has committed acts which constitute a violation of the prohibitions of 68 O.S. § 236 for which Respondent may be disbarred from further practice before the Commission, and agrees to such disbarment.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this Disqualification procedure pursuant to the provisions of 68 O.S. § 236¹ and has promulgated OAC 710:1-5-200² in accordance with 68 O.S. § 236.

2. The Oklahoma Tax Commission may disbar from further practice before the Tax Commission any such person shown to be incompetent or disreputable or who refuses to comply with the Oklahoma Tax Commission's rules and regulations, or who shall prepare a false or fraudulent report or return.³

¹The terms of 68 O.S. § 236 provide:

The Tax Commission may prescribe rules and regulations governing the recognition of agents, accountants, attorneys, or other persons representing taxpayers before the Tax Commission, and may require that such person, before being recognized as representatives of taxpayers, shall make a proper showing that they are of good character and in good repute and are possessed of the necessary qualifications to enable them to render such taxpayers valuable services, and are otherwise competent to advise and assist such taxpayers in the preparation of reports, returns or cases to be filed with or heard before the Tax Commission. The Tax Commission may, after due notice and an opportunity for hearing, suspend and disbar from further practice before the Tax Commission any such person, agent, accountant or attorney shown to be incompetent or disreputable, or who refuses to comply with said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any taxpayer or prospective client by words, circular, letter, or by advertisement, or who shall advise a taxpayer to file a fraudulent or false report or return, or who shall prepare a false or fraudulent report or return in any particular whatsoever, or who shall assist, aid or abet any taxpayer in concealing any information pertaining to said taxpayer's books, records, reports or returns, or who shall delay proceedings of the Tax Commission to assist a taxpayer in disposing of or concealing property upon which levy could be made for the collection of taxes accrued, or who shall be in default in payment of taxes or filing reports or returns under State tax law.

²OAC 710:1-5-200(a) provides in pertinent part:

Any person shown to be in violation of the provisions of Section 236 of Title 68 of the Oklahoma Statutes, may after notice and an opportunity for hearing, be disqualified from practice before the Oklahoma Tax Commission.

³See Note 1.

3. The Office of the General Counsel shall have the burden of establishing, by a preponderance of the evidence⁴, that a violation of Section 236 has occurred such that respondent should be disqualified from practice before the Commission.⁵

4. The Office of General Counsel has established by a preponderance of the evidence, that a violation of 68 O.S. § 236 has occurred such that Respondent should be disqualified from practice before the Oklahoma Tax Commission.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the Petition for Disbarment filed by the Office of General Counsel be sustained and that the Respondent be disqualified from practice before the Oklahoma Tax Commission indefinitely.

¹OKLAHOMA 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.

⁴OAC 710:1-5-77(b) provides in pertinent part that “preponderance of the evidence” means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

⁵OAC 710:1-5-200(f). The standard review in an administrative proceeding is preponderance of the evidence. *Oklahoma Tax Commission Order No. 99-04-08-003* (citing *Oklahoma Tax Commission Order No. 91-10-17-061*).