

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-04-06-03
ID: SJ-03-071-H
DATE: APRIL 6, 2004
DISPOSITION: DISMISSED
TAX TYPE: IRP
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held in this matter on January 12, 2004, at approximately 9:30 a.m. on the *Notice to Show Cause Why the Renewal Application for Proportional Registration Should Not Be Refused*. CORPORATE APPLICANT, appears pro se¹, by MANAGER and VICE PRESIDENT. During the hearing an oral *Motion to Dismiss* was made by the Division. Both parties were given an opportunity during the hearing to argue the merits of the Division's motion. Upon conclusion of the oral arguments by the parties, the Administrative Law Judge granted the Division's *Motion to Dismiss*. The record in this matter was closed and this case was submitted for decision on January 12, 2004.

Upon review of the file and records, including the record of the proceedings, the exhibits admitted into evidence, the OKLAHOMA TAX COMMISSION finds:

FINDINGS OF FACT

1. On August 15, 2002, the Applicant was incorporated under the laws of the State of California, with its principal place of business located at CALIFORNIA ADDRESS 1.² On February 4, 2003, the Applicant received a "Certificate of Authority" from the State of Oklahoma to transact business in the State of Oklahoma for a "Safety Office for Over the Road Trucking".³
2. The Federal Motor Carrier Safety Administration ("FMCSA") website indicated that on September 12, 2002, the Applicant was granted active authority as a [Motor] Carrier, CARRIER NUMBER, with a business address of CALIFORNIA ADDRESS 2, a business phone number of PHONE NUMBER, and fax number of FAX NUMBER.⁴ According to the screen printout, the blanket company for Applicant was XYZ PERMIT COMPANY.⁵
3. On November 1, 2002, the Division approved an IRP original application as a [Motor] Carrier, CARRIER NUMBER, OKLAHOMA REGISTRATION NUMBER, with an expiration date of October 31, 2003.⁶
4. On January 23, 2003, the Division sent the Applicant a notice that the original IRP application, approved on November 1, 2002, had been reviewed and that the Applicant did not meet the [motor] carrier requirements to base in Oklahoma for the following reasons:

- Lease Agreement is Month to Month
- No Employee Withholding Account in Oklahoma

The letter advised the Applicant it had thirty (30) days from the date of the letter to show evidence that it was entitled to register in Oklahoma or the Applicant would be subject to a revocation of the registration issued on November 1, 2002.⁷

5. On March 3, 2003, a protest was received from the Division, and a “*Notice to Show Cause Why the Proportional Registration Should Not be Revoked*” was sent to the Applicant in Case No. SJ-03-047.⁸

6. On May 6, 2003, an oral hearing was held in Case No. SJ-03-047, and the record in the matter was held open until May 20, 2003, for the parties to submit additional documentation. The record was closed on May 20, 2003, and the case was submitted for decision.⁹

7. On November 3, 2003, while a decision was still pending in the SJ-03-047, the Division filed a Motion to Dismiss, on the basis that the 200310 proportional registration under the International Registration Plan (“IRP”) of the registrant had expired [October 31, 2003] and the Division’s request for revocation was now moot.¹⁰

8. On December 5, 2003, the Division’s *Motion to Dismiss* was granted by *letter* in Case No. SJ-03-047, because the 200310 proportional registration of Applicant had expired [October 31, 2003] and [since] no response had been filed by the Applicant, the application [to revoke] in Case No. SJ-03-047 was moot.¹¹

9. On November 26, 2003, prior to the dismissal of Case No. SJ-03-047, TAG AGENCY faxed the Division, the 2004 IRP Renewal for Applicant, as Motor Carrier, MOTOR CARRIER NUMBER, OKLAHOMA REGISTRATION NUMBER.¹² The 2004 Renewal was filed by the Applicant’s registration agent, XYZ PERMIT SERVICE.¹³

10. On December 1, 2003, at 10:14 a.m., the Division faxed a denial letter to Applicant’s 2004 Renewal, listing the following reasons for denial:

- Telephone has call forwarding to another location.
- You did not provide a written statement by the Registrant providing the name of the person in Oklahoma conducting the Registrant’s business (including the Social Security Number to verify employment) or a description of that person’s duties.
- You did not provide proof of Oklahoma residency pursuant to Oklahoma Tax Commission administrative 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. The lease does not appear to be valid.

11. On December 1, 2003, at 2:45 p.m., TAG AGENCY, faxed the Division a response, from the Applicant, to the denial letter for the 2004 Renewal. The letter stated that the Applicant had two employees in its Tulsa office, CLERICAL WORKER, Social Security

Number XXX-XX-XXXX and MANAGER, Social Security Number XXX-XX-XXXX. The letter states that CLERICAL WORKER started working for the Applicant on May 9, 2003, and that her employment responsibilities include “doing our fuel taxes, logbooks and other general clerical work”. That MANAGER started working for the Applicant on October 28, 2003, and that his employment responsibilities include “all owner-operator recruiting” and “driver orientations and makes sure we have all the necessary paperwork for the drivers to lease their truck on with our company”. MANAGER is also the Applicant’s “Safety Manager and Director of Operations for the Tulsa office”.¹⁴

12. On December 8, 2003, the Division received a timely protest to the denial of the Applicant’s 2004 Renewal and a request for a hearing.¹⁵

13. On December 19, 2003, a “*Notice To Show Cause Why The Renewal Application For Proportional Registration Should Not Be Refused*” in Case No. SJ-03-071 was sent by certified mail to the Applicant notifying it that on January 12, 2004, at 9:30 a.m., a hearing would be held at which time, the Applicant could appear and show cause why refusal of the 2004 Renewal should not be sustained.¹⁶

14. During the hearing on January 12, 2004, VICE-PRESIDENT testified that [since] the Applicant had not gotten an answer from the jurisdiction of Oklahoma after the May, 6, 2003 hearing [Case No. SJ-03-047], the Applicant’s credentials expired on October 31, 2003, and the 2004 Renewal had been denied by Division, the Applicant had to renew [in another jurisdiction]. The Applicant successfully registered the three (3) trucks owned by the Applicant’s President, PRESIDENT, in the jurisdiction of California. The remaining trucks listed on the 2004 Renewal were successfully registered in either the home states of the Owner-Operators [California, Florida and Oklahoma] or the Owner-Operators quit doing business with the Applicant.

15. Based upon the Applicant registering in the jurisdiction of California for the 2004 Renewal, the Division made an oral *Motion to Dismiss* on the grounds that the Division’s denial of the 2004 Renewal was no longer at issue, and the pending matter was moot.

16. In response to the oral *Motion to Dismiss*, VICE-PRESIDENT testified that because of the hearing on May 6, 2003 [Case No. SJ-03-047], and the Division’s denial of the 2004 Renewal, that the Applicant needed to renew and the Applicant did [register] in the jurisdiction of California.

17. VICE-PRESIDENT testified that the 2004 Renewal was no longer at issue. That the Applicant’s objective in attending the January 12, 2004, show cause hearing was not to obtain the 2004 Renewal, which had been denied by the Division, but to obtain a ruling granting the Applicant prospective registration in the jurisdiction of Oklahoma.

18. The Division’s *Motion to Dismiss* was granted by the undersigned Administrative Law Judge on the record, in the presence of the parties, based upon the Applicant’s registration for the 2004 Renewal in the jurisdiction of California, and the Applicant’s admission that this matter [2004 Renewal] was no longer at issue.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.¹⁷
2. The Oklahoma Tax Commission is vested with jurisdiction to consider the *Motion to Dismiss*.¹⁸
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.¹⁹
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.²⁰
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.²¹

The hearing in this matter was requested because the Division had denied the 2004 Renewal of the Applicant in the jurisdiction of Oklahoma. When the Applicant made the decision to register in the jurisdiction of California, it rendered this matter moot. If the Applicant had not registered in the jurisdiction of California, and the undersigned had determined that the 2004 Renewal should have been granted by the Division, then a remedy was available under the IRP and Oklahoma Administrative Code (“OAC”). The 2004 Renewal would have been granted and the Applicant could have registered in the jurisdiction of Oklahoma.

The Applicant’s objective in attending the hearing on January 12, 2004, was not to obtain the 2004 Renewal, which had been denied by the Division on December 1, 2003, but to obtain a prospective ruling for registration years not yet at issue. No provision of the IRP or the OAC allows this Applicant or any Applicant, to obtain a ruling that the Applicant is qualified to register in any IRP jurisdiction for future periods.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that this matter be dismissed.

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.

¹MANAGER is not an attorney or a CPA. MANAGER is employed by the Applicant as its Safety Manager and Director of Operations for the office in Tulsa. VICE-PRESIDENT, is Vice-President of Applicant, and the Husband of the Applicant's President, PRESIDENT

²See Division Exhibit "1", "Certificate of Qualification" form filed with the Oklahoma Secretary of State on February 4, 2003. The form is signed by PRESIDENT, President of Applicant.

³The court file contains an application packet which was forwarded by the Division as part of the court file on this matter. The Administrative Law Judge is taking judicial notice of the documents contained in the court file for the purpose of completing the factual background of the Applicant's Oklahoma IRP account no. OKLAHOMA REGISTRATION NUMBER, which was the subject of a revocation hearing in Case No. SJ-03-047, and the current administrative proceeding on the Division's denial of the Applicant's 2004 Renewal. The Administrative Law Judge is also taking judicial notice of the court file in Case No. SJ-03-047, which is referred to by VICE-PRESIDENT throughout his testimony in this matter. *OAC 710:1-5-36*.

⁴See Note 3. Licensing and Insurance System, Federal Motor Carrier Safety Administration, Visited November 4, 2002, 11:17:57 and November 5, 2002, 8:41:53
<http://fhwa-li.volpe.dot.gov/LIVIEW/pkg_carrquery.pre_getdetail>

⁵See Note 3.

⁶See Note 3.

⁷See Note 3. This document is included in the court file, Case No. SJ-03-047.

⁸See Note 3 and Note 7.

⁹See Note 3.

¹⁰See Note 3.

¹¹See Note 3. The December 5, 2003, *letter* granting the *Motion to Dismiss* was signed by FORMER ADMINISTRATIVE LAW JUDGE. The cause was withdrawn from submission for decision and the Applicant was sent the notice of dismissal by certified mail. The green card was signed by VICE-PRESIDENT on December 12, 2003. The court file in Case No. SJ-03-047, was closed December 18, 2003.

¹²See Division Exhibit "2".

¹³See Note 3 and Note 12. On November 1, 2003, Applicant granted a Power of Attorney XYZ PERMIT SERVICE, with REPRESENTATIVE 1, REPRESENTATIVE 2, REPRESENTATIVE 3, REPRESENTATIVE 4, REPRESENTATIVE 5, and REPRESENTATIVE 6, as authorized Representatives. The Power of Attorney was signed by VICE-PRESIDENT, Vice-President of Applicant and notarized by NOTARY PUBLIC, on November 1, 2003 in Crawford County, Arkansas.

The 2004 Renewal was signed by REPRESENTATIVE 2 on November 19, 2003, with a contact address of ARKANSAS ADDRESS. The business address of the Applicant is stated as OKLAHOMA ADDRESS. The 2004 Renewal also includes a copy of an MCI phone bill addressed to Applicant, in care of VICE-PRESIDENT, CALIFIORNIA ADDRESS, for telephone number PHONE NUMBER 1 and a copy of an

MCI phone bill for phone number PHONE NUMBER 2, for the period of September 30, 2003 to October 3, 2003. The bill indicates that this number has call forwarding, but there are no charges for the period being billed.

Attached to the 2004 Renewal is a copy of a lease dated September 22, 2003, between PROPERTY COMPANY and Applicant (VICE-PRESIDENT), for office space located at TULSA ADDRESS, for a term of two (2) years, commencing October 1, 2003. The lease specifies that all rent payments should be made to REALTY COMPANY, TULSA ADDRESS. The 2004 Renewal also includes an "Affidavit For Return of Operating Credentials" for vehicles not being renewed, and Supplemental Applications, S020, S023, S025, S031, and S032, all signed by employees of XYZ PERMIT SERVICE.

A Petition for Disbarment was filed against XYZ PERMIT SERVICE on June 5, 2003. Counsel for XYZ PERMIT SERVICE, ATTORNEY, LAW FIRM, ARKANSAS ADDRESS, stipulated XYZ PERMIT SERVICE "has been shown to be incompetent and agrees to being suspended from further practice before the Oklahoma Tax Commission or further representation as agent for any person, tax return, report, or application required or provided for under the tax laws or motor vehicle registration laws of the State of Oklahoma". On November 18, 2003, the Commissioners accepted and adopted the stipulations of the parties, and adopted the findings of the Administrative Law Judge. *Commission Order No. 2003-11-18-23* was issued suspending XYZ PERMIT SERVICE from practice before the Oklahoma Tax Commission.

¹⁴See Note 3. The letter is from the Applicant, signed by PRESIDENT, President, and lists the business addresses of Applicant as TULSA ADDRESS, PHONE NUMBER and CALIFORNIA ADDRESS, PHONE NUMBER. There is also a hand-written notation next to the Tulsa office phone number stating: "This is not forwarded". Applicant also includes a letter from REALTY COMPANY stating that "VICE-PRESIDENT with CORPORATE APPLICANT occupies an office suite with our company" at TULSA ADDRESS and copies of rent checks from the Applicant to PROPERTY COMPANY for August 2003, September 2003, and October 2003. The checks are all drawn on Applicant's checking account through the CALIFORNIA office.

On October 29, 2003, the FMSCA website reflected that the business address of the Applicant was TULSA ADDRESS, with a business phone number of PHONE NUMBER and fax number of FAX NUMBER.

¹⁵See Note 3. The protest letter was signed for the Applicant by MANAGER.

¹⁶See Note 3. The notice was sent to the Applicant's Tulsa address and the green card was signed by MANAGER on December 22, 2003.

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

¹⁸See 68 O.S. § 221(E), IRP, Art. XVI, Section 1608, and *OAC 710:1-5-46*.

¹⁹47 O.S. § 1120(A).

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

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