JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2004-05-13-03 (Non-Precedential)
ID:	MV-03-045-H
DATE:	MAY 13, 2004
DISPOSITION:	DENIED
TAX TYPE:	IRP
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANTS ("Protestants"), appear, pro se.[1] The IRP/IFTA Section of the Audit Division ("Division") is represented by OTC ATTORNEY 1, First Deputy General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, the Office of General Counsel of the Oklahoma Tax Commission.

A prehearing conference was scheduled in this matter on January 28, 2004, at 11:00 a.m. CST. A Notice of Prehearing Conference was mailed to the Protestants at their last known address. The Protestants did not appear at the hearing. 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 Division filed its Verified Response to Protest on February 24, 2004, and the record was closed and this case was submitted for decision on March 11, 2004.

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. Protestant, TRUCKING COMPANY 1 was a registrant under the International Registration Plan ("IRP") based in the jurisdiction of Oklahoma for the 2000 registration year, OKXXX.[2]

2. Protestant, TRUCKING COMPANY 2 was a registrant under the IRP based in the jurisdiction of Oklahoma for the 2001 registration year, OKZZZ, Fleets One (1) and Two (2).[3]

3. On August 15, 2003, the Division received a final audit report from the jurisdiction of California, concerning the joint audit with the jurisdiction of Oklahoma, for the 2000 and 2001

[1] "Pro se" is defined as "For himself; in his own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court." Black's Law Dictionary 5th Edition 1099 (1979).

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

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

registration years, for TRUCKING COMPANY 1 and TRUCKING COMPANY 2, respectively.[4]

4. TRUCKING COMPANY 1 and TRUCKING COMPANY 2 are owned and operated by OWNER. Both Protestants are based in the jurisdiction of California.[5]

5. On October 13, 2003, the Division mailed TRUCKING COMPANY 1, an assessment for the 2000 registration year in the amount of Eleven Thousand Three Hundred Seventy-five Dollars and Sixty-four Cents ($11,375.64).[6]

6. On October 13, 2003, the Division mailed TRUCKING COMPANY 2, Fleet One (1), an assessment for the 2001 registration year in the amount of Twenty Thousand Seven Hundred Seventeen Dollars and Eighty Cents ($20,717.80).[7]

7. On October 13, 2003, the Division mailed TRUCKING COMPANY 2, Fleet Two (2), an assessment for the 2001 registration year in the amount of Five Thousand Eighty-eight Dollars and Sixty-seven Cents ($5,088.67).[8]

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[4]*See* Division Exhibit "B", the original IRP applications filed by the Protestants for the 2000 and 2001 registration years. *See also* Division Exhibit "C", the final audit report from SUPERVISOR, Audit Supervisor, State of California–Business, Transportation and Housing Agency, Department of Vehicles, Industry Operations Division, Interstate Audit Section. The final audit report advised the [Protestants] that an audit was conducted to determine the degree of compliance with the apportioned registration rules and regulations and payment of fees to all IRP jurisdictions in which the fleet was apportioned. The [Protestants] were also informed that the audit was being conducted pursuant to IRP Section 1500 and California Vehicle Code Section 8057. The [Protestants] contact [agent] during the audit exit conference on May 22, 2003, was AGENT.

For the 2000 and 2001 registration years, the [Protestants] based their vehicles in Oklahoma. The Protestants re-based their vehicles in California for the 2002 and 2003 registration years. The [Protestants] are haul-for-hire carriers and haul general commodities. Penalties and interest through September 2003 in the amount of $12,142.00 are assessed separately by California. The [Protestants] were instructed to pay the jurisdiction of California directly. The [Protestants] were also advised that the penalties and interest constitute a lien upon all vehicles operated as part of the fleets and on other fleet vehicles operated by the [Protestants], pursuant to California Vehicle Code Section 8201(a).

[5]*See* Note 4. The audit determined that the Protestants did not have established places of business in the jurisdiction of Oklahoma, but the Protestants did have established places of business in TOWN 1, TOWN 2, and TOWN 3, California.

[6]*See* Note 4. The final audit report provided to the [Protestant] and the Division set out in detail the methodology for the computation of the assessments. For the 2000 registration year TRUCKING COMPANY 1 reported estimated miles in 49 jurisdictions, but the records of TRUCKING COMPANY 1 show actual miles in 12 jurisdictions for 2000. The reported estimated miles for these jurisdictions are reclassified to actual miles based on the distances of the reconstructed recap. The reported miles for the other jurisdictions remain as estimates.

[7]*See* Note 4. For the 2001 registration year TRUCKING COMPANY 1'S fleet was registered under TRUCKING COMPANY 2'S Oklahoma IRP account, as Fleets One (1) and Two (2). For the 2001 registration year TRUCKING COMPANY 2, Fleet One (1), reported estimated miles in 49 jurisdictions, but the records of TRUCKING COMPANY 2, Fleet One (1), show actual miles in 36 jurisdictions for 2001. The reported estimated miles for these jurisdictions are reclassified to actual miles based on the distances of the reconstructed recap. The reported miles for the other jurisdictions remain as estimates.

8. On November 25, 2003, the Division received a letter of protest to the proposed assessments from OWNER, on behalf of TRUCKING COMPANY 1 and TRUCKING COMPANY 2 for 2000 and 2001 registration years.[9]

9. On January 13, 2004, a Notice of Prehearing Conference was mailed to TRUCKING COMPANY 1 and TRUCKING COMPANY 2 c/o OWNER, at BUSINESS ADDRESS, advising that the prehearing conference was set for January 28, 2004, 11:00 a.m. CST. TRUCKING COMPANY 1 and TRUCKING COMPANY 2 did not appear at the hearing.

10. On January 29, 2004, a Prehearing Conference Order was mailed to TRUCKING COMPANY 1 and TRUCKING COMPANY 2 c/o OWNER, at BUSINESS 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.[10]. No response was received from either Protestant.

11. On February 24, 2004, the Division filed its Verified Response To Protest. No response was received from the Protestants.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[11]

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.[12]

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.[13]

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[8] *See* Note 4 and Note 7. For the 2001 registration year, TRUCKING COMPANY 2, Fleet Two (2), reported estimated miles in 49 jurisdictions, but the records of TRUCKING COMPANY 2, Fleet Two (2), show actual miles in 36 jurisdictions for 2001. The reported estimated miles for these jurisdictions are reclassified to actual miles based on the distances of the reconstructed recap. The reported miles for the other jurisdictions remain as estimates.

[9] *See* Division Exhibit "D". No basis for the protest was stated in the letter.

[10] *See* Division Exhibit "A".

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

[12] 47 O.S. § 1120(A).

[13] 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.[14]

5. As a registrant under the provisions of the IRP, the Protestants are subject to the audit procedures and policies set forth therein.[15]

6. The Protestants are subject to joint audits, which may be conducted by multiple jurisdictions.[16]

7. The Protestants are subject to audit by Oklahoma as its base jurisdiction.[17]

8. 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.[18]

9. 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.[19]

10. The provisions of IRP, Art. XVI, Section 1614, concern 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.

11. 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.

12. An assessment is presumed correct and the Protestant bears the burden of showing that it is incorrect, and in what respect.[20]

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[14]75 O.S. § 250 et seq., § 301 et seq., and 75 O.S. § 308.2(C).

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

[16]IRP, Art. XVI, Section 1606.

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

[18]IRP, Art. XVI, Section 1604. Section 1604 amended April 10, 1998, Ballot 1.7.187. Effective October 1, 1999.

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

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

13. The Protestants have failed to meet their burden of proof in this matter. The Protestants have produced no evidence and cited no authority that the assessments issued by the Division are incorrect, or that the sums are not due and owing.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protests be denied, and that the total amounts assessed for 2000 and 2001 registration years be fixed as Protestants' deficiency and that those amounts be determined as due and owing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.