JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-05-27-03
ID: MV-03-046-K
DATE: MAY 27, 2004
DISPOSITION: DENIED
TAX TYPE: IRP
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant did not appear at the Prehearing Conference scheduled in this cause for February 17, 2004. Thereafter, the parties were served notice that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division. Protestant responded to this notice by letter dated March 18, 2004.

FINDINGS OF FACT

Upon review of the file and records, including the November 5, 2003 proposed assessments of IRP fees, the letter of protest dated December 3, 2003, the Division's *Verified Response to Protest* filed March 9, 2004, and Protestant's response to the *Verified Response* filed March 18, 2004, the undersigned finds:

1. That Protestant is a registrant under the provisions of the International Registration Plan ("IRP").

2. That at all times relevant herein, Protestant's base jurisdiction for purposes of the IRP was the State of Oklahoma.[1]

3. That Protestant's principal place of business is located in ANYTOWN, Pennsylvania.[2]

4. That Protestant's fleet consisted of one proportionally registered vehicle used exclusively for transporting tractor pulling weight sleds used in tractor pulling contests, primarily in the eastern United States.[3]

5. That according to Protestant's letter of protest to the audit findings and assessments, the vehicle "only operates 6 months out of a year" and "is only in use May through September";[4] and according to a letter dated January 17, 2004, the vehicle "is only active during the four to five months of summer".[5]

6. That the Division conducted an audit for the 2000 and 2001 registration years, based upon examination of records sent to the Oklahoma Tax Commission by Protestant.[6]

7. That the records included IFTA quarterly summaries documenting jurisdictional mileage and total mileage and driver's trip reports documenting trip origins, trip destinations, odometer readings, jurisdictional miles, and total miles.[7]

8. That the third quarter of 1998 was selected as the sample quarter for mileage traveled in IRP member jurisdictions during the 2000 registration year[8] and the third quarter of 1999 was selected as the sample quarter for the mileage traveled in IRP member jurisdictions during the 2001 registration year.[9]

9. That the audit noted both total and jurisdictional IRP Schedule B miles were significantly different from the total and jurisdictional Summary miles and Protestant accrued zero miles in the Base State of Oklahoma during the mileage reporting periods for the IRP registration years 2000 and 2001.[10]

10. That as a result of the audit findings, the Division, by letters dated November 5, 2003, issued assessments against Protestant for net registration fees for the 2000 and 2001 registration years in the amounts of $1,567.23 and $1,452.28, respectively.[11]

11. That the Protestant filed a timely protest to the proposed assessments, stating: (1) he does not understand how year 2001 can be checked when the mileage records for IFTA are for the fourth quarter of 2000; (2) three percent of fleets are to be audited under the IRP, but he does not consider a one-truck operation a fleet; (3) he does not have to keep records for more than three years at a time and since the current year is 2003, the records submitted are not valid; (4) the fees paid to the jurisdictions in which he did not operate should be refunded; (5) he should not be held accountable for the misinformation provided by the agent he used; (6) the thirty-day appeal time was a concern because the notice was dated November 5, 2003, but the envelope was dated November 10, 2004; (7) he feels the audit should be dismissed; and (8) he does not agree to pay the amount the Commission states is owed.

12. That by letter dated February 3, 2004, the Division responded to Protestant's letter of protest and the letter of January 17, 2004, by addressing the seven areas of concern raised in Protestant's letters.[12]

13. That in accordance with the directive of the Office of the Administrative Law Judges dated February 18, 2004, the *Division's Verified Response to Protest* was filed on March 9, 2004, inclusive of Exhibits A through H.

14. That Protestant responded to the *Verified Response* by letter dated March 18, 2004, stating:

> I still want to argue the fact that I feel strongly I am being singled out by this audit. I have spoken to OTC ATTORNEY concerning this matter, and the fact remains, I did use an agent (AGENT) to get Oklahoma plates, and yes I did give him power of attorney. That still does not change the [sic] fact that he submitted mileage [sic] that were false, and I still contend [sic] that I should not be held accountable for his actions; right or wrong.

15. That Protestant further stated in the letter:

> I also believe records that are three years old should not be considered. I don't care if they do [sic] pertain to the year 2000 audit, the records for that year are three years old and the audit should be dismissed.

16. That the amount in controversy is $3,019.51.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. That the Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 2001, § 221(D) and Article XVI, § 1608 of the International Registration Plan ("*IRP*"), incorporated by reference, Rule 710:60-4-20(b)(1) of the *Oklahoma Administrative Code* ("*OAC*").

2. That as a registrant under the provisions of the IRP, the Protestant is subject to the audit procedures and policies set forth therein. *IRP*, Appendix F, Art. XVI.

3. That the audit of a registrant under the IRP may be conducted by its/his base jurisdiction and/or the commissioners of the several member jurisdictions. *IRP*, Article XVI, Sections 1600 and 1606.

4. That the mileage percentages factor of a registrant may be recalculated as a result of an audit of the registrant's apportioned registration file. *IRP*, Policies and Procedures Manual, Section 5030(4), incorporated by reference, *OAC*, 710:60-4-20(b)(3).

5. That those who act through an agent are customarily bound by their agent's mistakes. ***Gripe v. City of Enid***, 312 F.3d 1184 (10th Cir. 2002). A principal or employer is generally held liable under the doctrine of "respondeat superior" for those acts of an agent or employee which fall within the latter's authority. ***Anderson v. Eichner***, 1994 OK 136, 890 P.2d 1329 (1994). One accepting benefits obtained through an agent ordinarily will not be heard to deny the acts of such agent not beneficial to him. ***City of Haileyville v. Smallwood***, 1968 OK 80, 441 P.2d 388 (1968). Where a loss is inflicted on one of two innocent parties by the fraud of a third party, the material question is which party was he the agent of, as his principal must bear the loss. ***Fish v. Bloodworth***, 1912 OK 721, 36 Okla. 586, 129 P. 32 (1912).

6. That the liability for the registration fees is the obligation of the Registrant, not its agent nor any co-conspirators. ***In re Mitchell***, 101 B.R. 278 (Bkrtcy. W.D. Okla. 1988).

7. That "[a]ny registrant whose application for apportioned registration has been accepted shall preserve the records on which it is based for a period of three years after the close of the registration year" and "[s]uch records shall be made available to the Commissioner at his request for audit as to accuracy of computation, payments, and assessments for deficiencies or allowances for credits". *IRP*, Article XV, § 1500.

8. That an assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *OAC*, 710:1-5-47. See, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988).

9. That Protestant has failed to come forward with any evidence to show the assessments are erroneous in any respect, and therefore, Protestant's protest to the assessments is denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is ORDERED that the protest of Protestant, COMPANY, be denied. It is further recommended that the amount in controversy be fixed as the deficiency 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 Protestant operated under IRP account number OK ##### for IRP registration years 2000 and 2001. Protestant's vehicle is currently proportionally registered in Pennsylvania.

2 Exhibits B, C, D, E, F, G and H.

3 Exhibits B and C.

4 Exhibit F.

5 Exhibit G.

6 Exhibits B and C.

7 Exhibits B and C.

8 Exhibit B.

9 Exhibit C.

10 Exhibits B and C.

11 Exhibits D and E.

12 Exhibit H.