JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-07-13-06
ID: MV-03-044-K
DATE: JULY 13, 2004
DISPOSITION: DENIED
TAX TYPE: IRP
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATEMENT OF THE CASE

By letter dated October 13, 2003, the Division issued an assessment of net registration fees against Protestant. Protestant filed a timely written protest to the assessment by letter dated November 12, 2003 and received by the Division on November 17, 2003. Protestant did not request an oral hearing in the letter of protest.

A prehearing conference was scheduled in this cause for January 29, 2004, by *Notice of Prehearing Conference* dated December 22, 2003. Protestant did not respond to the *Notice* either orally or in writing, nor appear at the prehearing conference. Notice was thereafter served on the parties 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 in accordance with Section 221(D) of the ***Uniform Tax Procedure Code***.[1] Protestant did not respond to this notice.

The *Division's Verified Response to Protest* was filed February 19, 2004. Attached to the *Division's Response* were Exhibits A through D.

FINDINGS OF FACT

Upon review of the file and records, including the *Division's Verified Response to Protest* and attached exhibits, the undersigned finds:

1. That Protestant is a registrant under the provisions of the International Registration Plan ("IRP").[2]

2. That Protestant is a common carrier of primarily lumber and steel products and operated up to twenty (20) Virginia and Oklahoma qualified and apportioned vehicles during the audit periods.[3]

3. That Protestant registered its vehicle for purposes of the IRP with the State of Oklahoma for the 2002 registration year under Oklahoma IRP account number, OKLAHOMA REGISTRATION NUMBER.[4]

4. That the Department of Motor Vehicles for the Commonwealth of Virginia performed an audit of Protestant's business records for the registration period ending July 31, 2002.[5]

5. That the audited records were provided by Protestant.[6]

6. That the auditor found that the miles reported on the Oklahoma IRP application for the registration year ending July 31, 2002, were estimated despite the fact that Protestant had actual operations during the corresponding record year period.[7]

7. That based on the audit findings, Protestant's reported mileage for the 2002 registration year was adjusted to reflect the actual mileage operated during the record year.[8]

8. That as a result of the audit findings, the Division caused to be issued against Protestant an assessment of net registration fees due for the registration period ending July, 2002 in the amount of $14,562.55.[9]

9. That Protestant filed a timely written protest to the assessment, stating that at the time of renewal in 2002, they were advised the Oklahoma registration would not be renewed because they did not maintain a physical location in Oklahoma and they thereafter registered and tagged their vehicles in their home state of Virginia.[10]

10. That Protestant did not assert any errors alleged to have been committed by the audit.

11. That the total amount in controversy is $14,562.55.

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). Article XVI, § 1608 of the *IRP*, incorporated by reference, *OAC*, 710:60-4-20(b)(1).

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 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, Sec. 5030(4), incorporated by reference, *OAC*, 710:60-4-20(b)(3).

5. 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).

6. That Protestant has failed to come forward with any evidence to show the assessment is incorrect in any respect, accordingly Protestant's protest is denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is THE DECISION OF THE OKLAHOMA TAX COMMISSION that the protest of PROTESTANT., 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] 68 O.S. 2001, § 201 et seq.

[2] Exhibit B to the *Division's Verified Response to Protest*. In August 1993, a company known as COMPANY was formed in Virginia. COMPANY operated using Virginia IFTA and IRP accounts until the third quarter of 2001. During that quarter, the principals of COMPANY formed Protestant. PRESIDENT, Vice-President of COMPANY, became President of Protestant. SECRETARY, President of COMPANY, became Secretary of Protestant under her married name of SECRETARY. The assets of COMPANY were transferred to Protestant and Protestant opened IFTA and IRP accounts in Oklahoma. On October 1, 2002, Protestant re-registered its vehicles in Virginia after it was denied registration in Oklahoma and its IFTA and IRP accounts were moved to Virginia in December, 2002.

[3] Exhibit B to the *Division's Verified Response to Protest*.

[4] Exhibit B to the *Division's Verified Response to Protest*. The registration year ended July 31, 2002.

[5] Exhibit B to the *Division's Verified Response to Protest.*

[6] Exhibit B to the *Division's Verified Response to Protest.* The auditor reviewed Protestant's mileage records for the first quarter of 2001 and Protestant's 2002 IRP registration application filed with the State of Oklahoma for purposes of auditing Protestant's reported mileage for the registration period ending July 31, 2002. The records examined included the IRP application, drivers trip envelopes which reported the unit number, trip number, driver's name and beginning and ending odometer readings and trip dates and included fuel receipts, toll receipts and other expense items, DOT logs, over-the-road fuel receipts, DATA printouts which shows over the road fuel purchases, dispatch logs which shows trip number, unit number, load origin and destination and driver's name, motel, maintenance and toll receipts and quarterly mileage and fuel summaries. The auditor found the internal controls of Protestant's mileage accounting systems were inadequate.

[7] Exhibit B to the *Division's Verified Response to Protest.*

[8] Exhibit B to the *Division's Verified Response to Protest.* Protestant had reported estimated mileage of 389,977 on its 2002 IRP registration application with a majority of the mileage (367,184) concentrated in the jurisdictions of Louisiana, New Mexico, Oklahoma and Texas. The audited mileage for the record year

period reflected total mileage of 1,097,072 with the largest percentage of the mileage (27.4448%) traveled in the jurisdictions of Virginia and Tennessee.

[9] Exhibit C to the *Division's Verified Response to Protest.*

[10] Exhibit D to the *Division's Verified Response to Protest.*