JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2004-09-28-04
ID:	MV-04-010-K
DATE:	SEPTEMBER 28, 2004
DISPOSITION:	DENIED
TAX TYPE:	IRP
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Division requested Protestant's mileage records in support of its applications for proportional registration for the 2000, 2001 and 2002 license years filed with the Tax Commission, by letter dated April 26, 2002, to AGENT, Protestant's registration agent. No response to this letter was received and the Division, by letter dated September 30, 2003, requested the mileage records from Protestant. Again, no response was received and the Division by letter dated February 3, 2004, made a second request of Protestant to provide mileage records.

No response to the second request for mileage records was received and by letters dated March 25, 2004, the Division issued assessments of net registration fees against Protestant. Protestant filed a timely written protest to the assessment by letter dated April 3, 2004, and received by the Division on April 12, 2004. Protestant did not request an oral hearing in the letter of protest.

On April 19, 2004, the Division forwarded its file to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings consistent with the International Registration Plan[1], Oklahoma Motor Vehicle License and Registration Act[2], Uniform Tax Procedure Code[3] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission[4]. The case was docketed as Case No. MV-04-010-K and assigned to ADMINISTRATIVE LAW JUDGE.

A *Notice of Prehearing Conference* was issued May 5, 2004, scheduling this matter for a prehearing conference on June 8, 2004.[5] The *Prehearing Conference* was held on June 8, 2004, and the parties were allowed time to exchange documentation and file a status report. By *Status Report* filed July 16, 2004, the Division advised that Protestant had failed to respond to its request for documentation and that it had received no communication from Protestant. The Division requested that the matter be scheduled

[1]Incorporated by reference into the Oklahoma Administrative Code ("*OAC*") by *OAC*, 710:60-4-20(b)(1).

[2]47 O.S. 2001, § 1102 et seq.

[3]68 O.S. 2001, § 201 et seq.

[4]*OAC*, 710:1-5-20 through 710:1-5-47.

[5]*OAC*, 710:1-5-28.

for hearing at the earliest convenience of the ALJ's Office. A *Notice of Hearing* was issued July 19, 2004, scheduling this cause for hearing on August 16, 2004.[6]

The hearing was held on August 16, 2004. Protestant failed to appear at the hearing or respond to the notice although notice was forwarded to Protestant's last known address.[7] It was noted for the record that Protestant had neither contacted the Division's representative nor the ALJ's Office concerning the hearing. The Division called one witness, OTC ADMINISTRATOR, Auditor Administrator-IRP/IFTA Audit Section, Audit Division, who testified regarding the records of the Division. Division's Exhibits A through G were identified, offered and admitted into evidence.

FINDINGS OF FACT

Upon review of the file and records, including the Division's Position letter filed August 10, 2004, the record of the hearing, and the exhibits received into evidence, the undersigned finds:

1. During license year 2002, Protestant was a registrant under the provisions of the *IRP*.

2. For license year 2002, Protestant utilized the State of Oklahoma as its base jurisdiction for licensing and registering on a proportional basis its vehicles engaged in interstate commerce under Account No. OK ###### The same account number (OK ######) was utilized by TRUCKER d/b/a TRUCKING COMPANY for the 2000 and 2001 license years. TRUCKING COMPANY did not renew its Oklahoma IRP registration for 2002 and its fleet was eliminated and/or combined with Protestant's fleet under Protestant's application for proportional registration for the 2002 license year. Testimony of ADMINISTRATOR.

3. The Division requested mileage records for the mileage reporting periods in support of Protestant's applications for proportional registration for the 2000, 2001 and 2002 license years. Division's Exhibits B and C.

4. Due to Protestant's failure to provide records, the Division, by letters dated March 25, 2004, caused to be issued against Protestant, assessments of registration fees representing one hundred percent (100%) Oklahoma registration fees for the 2000, 2001, and 2002 license years, in the amounts of $4,942.41, $5,644.80, and $3,780.17, respectively. Division's Exhibit E.

5. By letter dated April 3, 2004, Protestant filed a protest to the proposed assessments, stating it felt the audit for the 2000 and 2001 years was done in error since the company was not in business until January of 2002. Concerning the 2002 license

[6] *OAC*, 710:1-5-29.

[7] 68 O.S. 2001, § 208.

year, Protestant stated "we wish to protest the audit findings because our company has not received a request for 2002 records, for a complete & fair audit to be conducted." Protestant further stated it would be eager to furnish all necessary records to assist the Division with an accurate audit for the time period pertaining to the company. Division's Exhibit F.

6. By letter dated May 7, 2004, the Division notified Protestant that the assessments for the 2000 and 2001 license years were incorrectly assessed and were withdrawn. Division's Exhibit G.

7. The total amount in controversy is $3,780.17 for the 2002 license year.

ISSUES AND CONTENTIONS

The issue presented for decision is whether the net registration fee assessment for the 2002 license year, resulting in one hundred percent (100%) Oklahoma registration fees, is incorrect.

Protestant contends it was not given a request for 2002 records so that a complete and fair audit could be conducted. In support of this contention, Protestant argues that it was not in business during the mileage reporting period (July 1, 2000 through June 30, 2001) for license year 2002, and as such, its mileage records during 2002 should be audited.

The Division contends that since it properly requested Protestant's mileage records for the mileage reporting period for the 2002 license year and Protestant failed to provide any records, it is authorized under the IRP Audit Procedures Manual as Protestant's base jurisdiction to assess 100% Oklahoma registration fees. In support of this contention, the Division argues that Protestant was subject to audit under normal audit criteria since its new operation was a result of combining or eliminating the fleet of TRUCKER d/b/a TRUCKING COMPANY.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Commission. 68 O.S. 2001, § 221(D) and 47 O.S. 2001, § 1120. See, *IRP*, Art. XVI, Audits, § 1608 (October 1, 2001).

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. 47 O.S. 1991, § 1120(A).

3. Pursuant to statutory authority, 47 O.S. 2001, § 1149, the Tax Commission promulgated rules with respect to the administration, enforcement and collection of taxes under the *IRP* and the Oklahoma Motor Vehicle Licensing and Registration Act, which

rules incorporate by reference Articles I through XXII of the *IRP*, The *IRP* Uniform Operation Audit Procedure Guidelines and The *IRP* Policy and Procedures Manual. *OAC*, 710:60-4-20(b)(1), (2) and (3).

4. A registrant under the provisions of the IRP is subject to the audit procedures and policies set forth therein. *IRP*, Art. XVI, Audits, § 1600. *See, IRP*, Audit Procedures Manual, § 704.4.

5. An audit of a registrant under the IRP shall be conducted by its/his base jurisdiction, *IRP*, Art. XVI, Audits, § 1600; and or the Commissioners of the several member jurisdictions, *IRP*, Art. XVI, Audits, § 1606.

6. A proper request for Protestant's mileage records was made by the Division. *IRP*, Audit Procedures Manual, § 401.2.

7. Protestant's failure to comply with the audit request may result in the assessment of up to one hundred percent (100%) registration fees. *Id*.

8. 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***, 1988 OK 91, 768 P.2d 359.

9. Protestant has failed to come forward with any evidence to show the assessment is incorrect. Protestant's application for proportional registration for the 2002 license year was subject to audit under normal audit criteria as Protestant's operation was a result of the combining of its fleet with the fleet of TRUCKER d/b/a TRUCKING COMPANY or the elimination of the fleet of TRUCKER d/b/a TRUCKING COMPANY. All of the trucks registered in TRUCKER d/b/a TRUCKING COMPANY for license year 2001 were registered by Protestant in 2002. Accordingly, Protestant's protest to the assessment of 100% Oklahoma registration fees for the 2002 license year should be denied.

DISPOSITION

Based on the above and foregoing findings and conclusions, it is ORDERED that the protest of PROTESTANT, be denied. It is further ORDERED that the amount in controversy be fixed as the deficiency due and owing.

OKLAHOMA TAX XOMMISSION

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.