JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 005-02-24-02
ID: MV-04-016-K
DATE: FEBRUARY 24, 2005
DISPOSITION: DENIED
TAX TYPE: IRP/IFTA
APPEAL: NONE TAKEN

STATEMENT OF THE CASE

Protestant was a registrant under the provisions of the International Registration Plan ("IRP") during the 2002 license year. Protestant's base jurisdiction during this period was the State of Oklahoma.

Pursuant to the IRP joint audit program, Protestant was audited by the Indiana Department of Revenue, State of Indiana, for the 2002 license year. The results of the Indiana audit were forwarded to the State of Oklahoma for reconciliation with Protestant's 2002 IRP renewal application filed with the Tax Commission, the issuance of the audit findings to the affected jurisdictions and Protestant, and the assessment of net registration fees due for the audit period.

By letter dated June 15, 2004, the Tax Commission caused to be issued against Protestant an assessment of net registration fees for the 2002 license year based on the Indiana audit findings. Protestant timely protested the assessment by letter dated June 23, 2004 and mailed July 12, 2004. A hearing was requested in the letter.

On July 16, 2004, the Division forwarded its file, consisting of a cover memorandum, the letter of protest, the assessment letter, the audit summary and Protestant's 2002 IRP renewal application to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission[2]. The cause was docketed as Case No. MV-04-016-K and assigned to ALJ, Administrative Law Judge[3].

A pre-hearing conference was scheduled in this cause for September 9, 2004, by *Notice of Prehearing Conference* issued August 2, 2004.[4] The pre-hearing conference was conducted by telephone. Pursuant to the pre-hearing conference, a *Prehearing Conference Order and Notice of Hearing* was issued setting forth dates for the parties to exchange preliminary witness lists, discovery requests, final witness lists and dates for the parties to

[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[3] *OAC*, 710:1-5-22(b).

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

complete discovery, file a stipulation of facts and pre-trial position statements. The *Order* also scheduled the hearing for December 7, 2004.

On September 13, 2004, the Division filed a *Notice of Revision*. The *Notice* advised that the assessment issued against Protestant for the 2002 license year was revised on July 21, 2004 and a copy of the revision was mailed to Protestant on July 22, 2004.

The Division complied with each unilateral aspect of the *Prehearing Conference Order and Notice of Hearing.* Protestant did not comply with the *Order* and failed to respond to the Division's *Request for Production of Documents* filed September 13, 2004.

The hearing was held on the appointed date and time, with the parties present. Protestant testified on his own behalf and was cross-examined by the Division. The Division called one witness, OTC AUDITOR, IRP and IFTA[5] Audit Administrator, Audit Division of the Tax Commission. OTC AUDITOR identified Exhibits A-1 through A-3, B and D, which were admitted into evidence without objection. The parties were allowed to make closing statements whereupon the case was submitted for decision.

Upon review of the file and records, including the testimony of the witnesses and the exhibits received into evidence, the undersigned finds:

FINDINGS OF FACT

1. Protestant is a registrant under the provisions of the IRP. Exhibits A-1 and D.

2. At all times relevant herein, Protestant's base jurisdiction for purposes of the IRP was the State of Oklahoma.[6] Exhibit D.

3. Protestant's principal place of business is located in Kouts, Indiana. Testimony of Protestant.[7]

4. Protestant's fleet consisted of one (1) proportionally registered power unit.[8] Exhibit A-1.

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[5] International Fuel Tax Agreement.

[6] Protestant operated under IRP account number OK 11111 for the 2001 and 2002 license years. Protestant first applied for registration under the IRP with the State of Oklahoma in April, 2001. The 2001 registration was a short year application utilizing estimated mileage for purposes of the mileage schedule. According to AUDITOR, because the application was filed in April, 2001, the Division would not have known whether Protestant had operated ninety (90) days or more during the mileage reporting period. Protestant is currently proportionally registered in the State of Indiana.

[7] Protestant has been in the trucking business since 1971 and has lived at the same residence in Indiana since 1976.

[8] Two (2) power units were operated during the mileage reporting period. Unit #####1 was in operation for the time period of July 1, 2000 to April 4, 2001. Unit #####2 replaced unit #####1 on April 5, 2001.

5. The State of Indiana conducted an audit of Protestant's operations for the 2002 license year. Exhibit A-1.

6. During the mileage reporting period and the 2002 license year, Protestant was permanently leased to TRUCKING COMPANY. and transported steel and machinery to various locations. Testimony of Protestant and Exhibit A-1.

7. Protestant also trip leased during the mileage reporting period and the 2002 license year which was brokered through TRUCKING COMPANY. Testimony of Protestant and Exhibit A-1.

8. TRUCKING COMPANY. held an IFTA license during the mileage reporting period and the 2002 license year and was responsible for computing, reporting and paying the taxes associated with Protestant's operations under IFTA. Testimony of Protestant.

9. For purposes of the audit, the auditor reviewed quarterly mileage summaries for the mileage reporting period which were prepared by TRUCKING COMPANY. from fuel/mileage reports submitted to TRUCKING COMPANY. by Protestant. Exhibit A-1.

10. The auditor determined that Protestant should have registered the vehicle in question in Indiana during the 2002 license year since Protestant's place of business was located at his home in Indiana, not the rental office in Oklahoma. Exhibit A-1.

11. The auditor also determined that Protestant only accrued mileage in the states of Indiana, Illinois, Kentucky, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Tennessee, West Virginia and Wisconsin during the mileage reporting period of the 2002 license year. Exhibit A-1.

12. Based on the audit findings, the Division by letter dated June 15, 2004, issued an assessment of net registration fees against Protestant for the 2002 license year in the amount of $2,144.56. Exhibit A-2.

13. Protestant by letter dated June 23, 2004, filed a timely written protest to the assessment and requested a hearing. Exhibit B.

14. The Division revised the assessment and notified Protestant of the revision by letter dated July 22, 2004. Exhibit A-3.

15. The assessment was revised by removing any fees charged or credits given in any jurisdictions in which Protestant did not accrued any mileage during the mileage reporting period. Testimony of AUDITOR.

16. The estimation of mileage in those jurisdictions were treated as second year estimates. Testimony of AUDITOR.

17. Protestant had utilized estimated mileage on the 2002 IRP renewal application filed with the State of Oklahoma. Exhibit D.

18. Estimated miles were utilized in each jurisdiction listed on the application. Exhibit D.

19. A total of 377,571 estimated miles were filed with approximately 93% of the miles concentrated in the states of Louisiana, New Mexico, Oklahoma and Texas. Exhibit D.

20. The explanation for utilizing estimated mileage was "[t]he registrant is beginning a change of operations in regard to products hauled and routes driven. He anticipates hauling primarily in the south and southwest part of the country. The registrant chooses to allocate some mileage in all states, however, to cover any unforseen circumstances." Exhibit D.

21. Included in the 2002 IRP renewal application package was a Real Estate Lease agreement between Protestant and REGISTRATION COMPANY.[9] purportedly showing the lease of office space at 123 FAKE STREET in Oklahoma City by Protestant for a term beginning on March 30, 2001 and ending on December 31, 2002. Exhibit D.

22. The amount in controversy is $1,831.52.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant properly used estimated mileage for proportional registration of its fleet on the IRP renewal application filed with the State of Oklahoma for the 2002 license year.

Protestant contends that everything he did in respect to the IRP and the State of Oklahoma was legal at the time he made application for proportional registration with the State of Oklahoma and that the application was accepted as filed. In support of this contention, Protestant argues that he established an office in Oklahoma and as a result was doing business here. Protestant further argues that he changed his operations in order to get a cheaper plate and was supposed to have a lot of business in the southwest because of NAFTA, but the business did materialize due to the loss of an account over an accident.

The Division contends that the assessment should be upheld and the amount assessed, as revised, should be found due and owing. In support of these contentions, the Division argues that Protestant had operations as early as 1999 and had mileage during the mileage reporting period for the 2002 license year, therefore, Protestant was required to file actual miles on his 2002 IRP renewal application filed with the State of Oklahoma. The Division further argues that no evidence has been presented to show that the audit and assessment of net registration fees is incorrect. In support of this argument, the Division asserts that the audit was properly conducted and the auditor determined net registration fees

[9] REGISTRATION COMPANY. was Protestant's registration agent.

were due based on a comparison of Protestant's actual audited miles with Protestant's reported estimated miles.

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 2001, § 221(D) and 47 O.S. 2001, § 1120. *See*, *IRP*, Article XVI, **Audits**, § 1608, incorporated by reference, *OAC*, 710:60-4-20(b)(1).

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. 2001, § 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, 47 O.S. 2001, § 1101 et seq.; 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. Rules promulgated pursuant to the Administrative Procedures Act, 75 O.S. 2001, § 250 et seq., § 301 et seq., are presumed to be valid and binding on the persons they affect and have the force of law. 75 O.S. 2001, § 308.2(C).

5. "In the case of any inconsistency or duplication between the requirements of those provisions incorporated by reference in this Section, and the rules set out in this Subchapter, the provisions incorporated by reference shall prevail, except where the rules in this Subchapter are more particular." *OAC*, 710:60-4-20(d). Further, "[t]he provisions incorporated by reference are subject to any limitations provided by Oklahoma law." *Id.*

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

7. 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.

8. 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).

9. At the time Protestant filed the 2002 IRP renewal application with the State of Oklahoma, *IRP*, Art. VIII, **New Operations**, § 800 provided:

APPLICATION FOR INITIAL REGISTRATION

> An initial application for apportioned registration shall: 1) state the estimated mileage to be traveled in each jurisdiction; 2) justify the estimated mileage; or 3) the applicant will use the actual mileage for the preceding year if the mileage was accrued by the applicant. The base jurisdiction Commissioner may accept an estimate by the registrant if the base jurisdiction Commissioner is satisfied with documentation supplied by the registrant as to the proposed method of operation. If the base jurisdiction Commissioner does not accept the registrant's estimate or the registrant does not submit an estimate, the base jurisdiction shall estimate the mileage. Based on actual miles other carriers traveled, the base jurisdictions shall determine the annual in-jurisdiction and total annual mileage to be used in computing the proportional registration fee for the vehicle(s) with the aid of mileage charts, computer estimating programs, or other resources available at the time of registration.

The official commentary to *IRP*, § 800 provides that "[t]his Article authorizes the registrant to estimate anticipated mileage for the upcoming license year if no mileage history exists because `new operations' are contemplated."

10. The IRP does not define "new operations." "New operation" is defined by the Oklahoma Administrative Code to mean "a vehicle or fleet of vehicles not previously registered pursuant to the provisions of the IRP" and "`[n]ew operation' does not include an existing fleet that is expanding the number of vehicles or area of operation." *OAC*, 710:60-4-2 (**Definitions**).

11. *OAC*, 710:60-4-15 (**Mileage**) provides:

> (a) If an applicant for proportional registration operated for ninety (90) or more days during the mileage reporting period of the preceding year, actual operated miles must be filed. For those jurisdictions where there is no mileage to report, but for which proration is desired, estimated miles must be filed.
>
> (b) If an applicant for proportional registration is new, or the applicant did not operate for ninety (90) days or more during the reporting period, estimated miles must be filed for all jurisdictions for which proration is sought.
>
> (c) Estimated mileage will not be accepted after the first year of prorate registration in Oklahoma, except in cases where actual operation was less than ninety (90) days during the mileage reporting year where estimated mileage will also be accepted for the second year.
>
> (d) Estimated mileage must be based on the proposed operation of the fleet during the entire calendar year for which proportional registration is being sought. The applicant may be required to substantiate the estimation by submitting details of the proposed operation including, but not limited to, type of operation, its location, routes, frequencies and any additional information which shall help explain the basis for the estimated mileage. Additionally, the Division may independently substantiate mileage through other sources available to the Oklahoma Tax Commission.

(e) Failure to substantiate estimated mileage is cause for adjustment of mileage or denial of the application for proportional registration.

12. Here, Protestant accrued mileage and operated for ninety (90) days or more during the mileage reporting period. Accordingly, Protestant was required to report actual operated miles on its 2002 IRP renewal application. *See, IRP*, Art. VIII, **New Operations**, § 800 and *OAC*, 710:60-4-15(a).

13. 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.

14. Protestant failed to present any evidence to show the assessment is erroneous in any respect, and therefore, Protestant's protest to the assessment is denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT, be denied. It is further ORDERED 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.