

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-06-28-03
ID: SJ-05-009-H
DATE: JUNE 28, 2005
DISPOSITION: DENIED
TAX TYPE: IRP
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

TRUCKING COMPANY (“Applicant”) appears pro se, by OWNER.¹ The Prorate Section, Motor Vehicle Division (“Division”) is represented by OTC ATTORNEY, Office of General Counsel, Oklahoma Tax Commission.

The hearing in this matter was originally scheduled for April 12, 2005, at 1:30 p.m.² On March 29, 2005, the Division filed a Motion for Continuance because its witnesses were unavailable on the scheduled date. On March 31, 2005, the Division’s motion was granted and the hearing was rescheduled for April 18, 2005, at 1:30 p.m.³ The *Order Granting Motion for Continuance* was sent to the Applicant’s last known address.⁴ A hearing was held in this matter on April 18, 2005, at approximately 1:30 p.m. on the *Notice to Show Cause Why the Application for Renewal of Proportional Registration Should Not Be Refused*. The Applicant did not appear at the hearing. The Applicant did not contact the Division or this office concerning the hearing. The Division called one witness, AUDITOR (“Auditor”), Prorate Section, Motor Vehicle Division, Oklahoma Tax Commission, who testified regarding the records of the Division. The Division’s Exhibits A through G were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on April 18, 2005.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings and the exhibits admitted into evidence, the undersigned finds:

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 1099 (5th ed. 1979).

² A *Notice to Show Cause Why the Application for Renewal of Proportional Registration Should Not be Refused* was sent via certified mail to the Applicant at 123 FAKE STREET, SUBURB, Oklahoma 99999. This was the address on the Renewal Application. An address forwarding label was affixed to the green card by the U.S. Postal Service reflecting that the notice was delivered to 999 BOGUS BLVD., SOME CITY, California 99999-9999. The green card was signed on March 29, 2005.

³ The *Order Granting Motion for Continuance* was sent to the Applicant by certified mail to 111 ANYROAD, ANYTOWN, CA, 99999. This address was provided to Division’s counsel by the Applicant. The mailing was returned unclaimed May 3, 2005.

⁴ OKLA. STAT. ANN. tit. 68, § 208 (West 2001).

1. On March 1, 2005, OWNER d/b/a TRUCKING COMPANY. filed an International Registration Plan (“IRP”) Renewal Application (“Renewal Application”) as an Owner-Operator under Oklahoma IRP account OK11111, listing one (1) vehicle.⁵

2. The Oklahoma business address on the Renewal Application was listed as 123 FAKE STREET, SUBURB, OK 99999. Included with the Renewal Application was a copy of a Commercial Lease dated August 11, 2004, between the Applicant and LEASING COMPANY for Suite 206-C located at 123 FAKE STREET, SUBURB, OK 99999.⁶ A copy of the Applicant’s Federal Schedule of Heavy Highway Vehicles (“2290”) was missing from the Renewal Application, but was later provided to the Division.

3. The Renewal Application was initially approved by the Division on March 4, 2005.⁷ The Proration Statement in the amount of \$1,909.38 was provided to the Applicant.⁸

4. On March 4, 2005, the Applicant contacted the Auditor to inquire about the quickest way to process the Renewal Application and receive the credentials.⁹ The Applicant asked if the payment could be sent by Federal Express directly to the Auditor with return labels. The Applicant was informed that all Federal Express packages are delivered to the Oklahoma Tax Commission’s main address. The Applicant was advised that the quickest way to process the Renewal Application would be to send the payment by Federal Express to the Applicant’s Oklahoma employee and have the Oklahoma employee hand-deliver the payment and pick up the credentials in person. The Oklahoma employee could then Federal Express the credentials

⁵ Division’s Exhibit A. A copy of the Applicant’s Oklahoma IRP Cab Card reflects an August 10, 2004, date of registration and expiration date of December 31, 2004. A screen copy of the Federal Motor Carrier Safety Administration website indicated that as of March 3, 2005, TRUCKING COMPANY was out of service as a “Carrier,” MC11111. The Applicant’s business address was the SUBURB address, but the business phone was listed as (999) 999-9999. This is the phone number for the Applicant in California. The Applicant’s Blanket Company was listed as REGISTRATION AGENCY.

⁶ Division’s Exhibit A.

⁷ Through testimony the Auditor indicated that the Renewal Application was initially approved, but before the processing was completed the Division began to question the accuracy of the Renewal Application. This is why this matter is a show cause proceeding on the denial of the Renewal Application rather than a revocation of the registration.

⁸ Division’s Exhibit B. The Proration Statement listed the Applicant’s address as 777 RANDOM ROAD, BIG CITY, OK, 99999. There is nothing in the record to indicate where this address was obtained and what connection it has to the Applicant.

⁹ “Credentials means identification plates and cab cards.” OKLA. ADMIN. CODE § 710:60-4-2 was transferred to OKLA. ADMIN. CODE § 165:30-17-2 effective July 1, 2004.

Effective July 1, 2004, all powers, duties, and responsibilities under the International Registration Plan (“IRP”) and International Fuel Tax Agreement (“IFTA”) were transferred from the Oklahoma Tax Commission to the Oklahoma Corporation Commission (“OCC”). The period of July 1, 2004, through June 30, 2005, is a transitional period in which the OCC shall gradually assume complete administration and management over the IRP and IFTA. *See* OKLA. STAT. ANN. tit. 47, § 1166 (West 2001).

back to the Applicant in California. The Applicant indicated that he would proceed as advised by the Auditor.¹⁰

5. On March 7, 2005, despite the Auditor's advice, the payment was sent directly to the Auditor via Federal Express with return labels included. Upon receiving the Federal Express package, the Auditor questioned why the Applicant did not have the Oklahoma employee bring the payment in person and pick up the credentials as discussed. The Auditor began to question the accuracy of the Renewal Application and whether it be accepted.¹¹

6. The Auditor also questioned why he had never been able to contact anyone at Applicant's Oklahoma phone number. The Auditor discovered that the Applicant's Oklahoma business address on the Renewal Application was the same address listed for REGISTRATION AGENCY¹² in the phone book. The Auditor consulted with his Supervisor and determined that a site visit was necessary in order to verify that the Applicant was conducting trucking operations in Oklahoma.¹³

7. On March 7, 2005, at approximately 12:45 p.m., a site visit was conducted by the Auditor and another Supervisor at the address listed on the Renewal Application. There was no listing for the Applicant on the directory in the lobby of the building. The Auditor and Supervisor proceeded to the second floor, *Room 204*, and found a hand-made sign marked "*TRUCKING COMPANY. Room 206C*" stapled to the door. The Auditor and Supervisor entered the door into a darkened hallway and found a door marked *206C* with the same hand-made sign stapled to it. Through a hole in the door for a mail slot the Auditor could see that the room was dark. The door was unlocked. The Auditor and Supervisor entered *Room 206C* and turned on the lights. They found an empty room with no furniture or phone. There was no evidence that *Room 206C* had ever been used to conduct the Applicant's trucking operations.¹⁴

8. On March 15, 2005, the Division denied the Renewal Application.¹⁵ The basis for the denial letter was stated as follows:

Based on the site visit conducted on March 7, 2005, and upon the totality of the evidence supplied to the Oklahoma Tax Commission, this application is

¹⁰ See Division's Exhibit C. The sequence of events was also established by the Auditor's testimony at hearing.

¹¹ See Division's Exhibit C.

¹² The Auditor testified that the failure of the Applicant to follow instructions on making the payment prompted him to remember an earlier incident, when he had requested a copy of the Applicant's 2290. The Auditor had received a call from an agent at REGISTRATION AGENCY. The company faxed a copy of the Applicant's 2290, but advised that the company had nothing to do with the application or the applicant. The company also had questioned the Applicant's proof of Oklahoma residency when obtaining the 2290.

¹³ See Division's Exhibit B.

¹⁴ See Division's Exhibit D. The site visit was also described in detail through testimony by the Auditor.

¹⁵ Division Exhibit E.

being denied under Oklahoma Tax Commission Rule 710-60-4-5, established place of business.¹⁶

9. On March 15, 2005, the denial letter was hand delivered to Applicant when he came to the Tax Commission to personally pick up the credentials.

10. On March 15, 2005, the Division received a timely filed protest to the denial of the Renewal Application.¹⁷

11. On March 28, 2005, the Division caused to be issued a “Subpoena Duces Tecum,” which was served upon the Applicant by certified mail. The green card was signed, but not dated. The Applicant did not produce any of the documents subpoenaed by the Division.¹⁸

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.¹⁹

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.²⁰

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.²¹

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.²²

¹⁶ OKLA. ADMIN. CODE § 710:60-4-5 was transferred to OKLA. ADMIN. CODE § 165:30-19-5 effective July 1, 2004.

¹⁷ Division’s Exhibit F. The Applicant wrote out his protest at the counter after being informed of the denial of the Renewal Application.

¹⁸ See Division Exhibit G.

¹⁹ See OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. STAT. ANN. tit. 47, § 1120 (West 2001).

²⁰ OKLA. STAT. ANN. tit. 47, § 1120(A) (West 2001).

²¹ See OKLA. STAT. ANN. tit. 47, § 1101 et seq. (West 2001), which incorporates by reference Articles I through XXII of the IRP. See also OKLA. ADMIN. CODE § 710:60-4-20(b) (1), which was transferred to OKLA. ADMIN. CODE § 165:30-17-20 effective July 1, 2004.

²² See OKLA. STAT. ANN. tit. 75, § 250 et seq.; § 301 et seq. (West 2001); and OKLA. STAT. ANN. tit. 75, § 308.2(C) (West 2001).

5. Before a vehicle can be proportionally registered in the State of Oklahoma, the registrant must have an established place of business in Oklahoma. The pertinent part of the rule²³ provides:

(a) General provisions. To verify a registrant's established place of business in Oklahoma, the registrant must provide proof of a physical structure, designated by a street number or road location and open during normal business hours, which contains within it:

- (1) A telephone or telephones publicly listed in the name of the fleet registrant;
- (2) A person or persons conducting the fleet registrant's business; and,
- (3) The operational records of the fleet, unless such records can be made available in accordance with the provisions of Section 1602 of the International Registration Plan.

6. Owner-operators²⁴ who cannot fully comply with Section 218²⁵ of the IRP and OKLA. ADMIN. CODE § 710:60-4-5²⁶ may register in Oklahoma, provided that the owner-operator furnishes a street address, a telephone number, and satisfactorily demonstrates that the owner-operator can be located in Oklahoma²⁷ for purposes of audit. An owner-operator using a carrier to satisfy the requirement of operating authority or proof insurance must submit an executed copy of the lease between the owner-operator and a motor carrier.²⁸

7. The Applicant failed to prove that the Renewal Application met the requirements for an "Established Place of Business." An empty office with no employee and no phone is not sufficient to qualify the Applicant to register in Oklahoma. The record is also void of any evidence that the Applicant could meet the lesser requirements for owner-operators.

²³ OKLA. ADMIN. CODE § 710:60-4-5 was transferred to OKLA. ADMIN. CODE § 165:30-19-5 effective July 1, 2004.

²⁴ IRP Section 234: "Owner-Operator means a person, firm or corporation leasing an apportioned motor vehicle with driver to a motor carrier."

²⁵ See IRP Section 218 (Established Place of Business).

²⁶ See Note 23.

²⁷ See OKLA. ADMIN. CODE § 710-60-4-6(d), which was transferred to OKLA. ADMIN. CODE § 165:30-17-6(d).

Documentation acceptable for meeting the requirements of this subsection include, but are not limited to:

- (1) Proof of Oklahoma residency;
- (2) Employment of owner-operator or owner-operator's spouse in Oklahoma;
- (3) Enrollment of one or more of owner-operator's children in an Oklahoma school or schools;
- (4) Ownership of real property in Oklahoma; or,
- (5) Lease to an Oklahoma-based motor carrier.

²⁸ OKLA. ADMIN. CODE § 710:60-4-6 was transferred to OKLA. ADMIN. CODE § 165:30-17-6 effective July 1, 2004.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION based upon the specific facts and circumstances of this case that the protest to the denial of the Application for Renewal of Proportional Registration under the International Registration Plan should be denied

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.