JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-09-15-04
ID: MV-05-001-H
DATE: SEPTEMBER 15, 2005
DISPOSITION: DENIED
TAX TYPE: IRP
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The IRP/IFTA Section of the Audit Division ("Division") is represented by OTC ATTORNEY, Office of General Counsel, Oklahoma Tax Commission.

The hearing was held on May 9, 2005, at 1:30 p.m. The Protestant failed to appear at the hearing or respond to the notice of hearing. The notice of hearing was forwarded to the Protestant's last known address.[2] It was noted for the record that the Protestant had not contacted the Division's representative or the Office of Administrative Law Judge concerning the hearing. The Division called one witness, WITNESS, Administrator, IRP/IFTA Section, Audit Division, Oklahoma Tax Commission, who testified regarding the records of the Division. The Division's Exhibits A through I were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on May 9, 2005.

FINDINGS OF FACT

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

1. The Protestant was a registrant under the International Registration Plan ("IRP") based in the jurisdiction of Oklahoma for the 2000[3] and 2001[4] registration years, OK11111.

2. Pursuant to the IRP Joint Audit Program, the jurisdiction of Mississippi examined the records of the Protestant and conducted an audit of the Mississippi IRP account and the Oklahoma IRP account for the 2000 and 2001 registration years.[5]

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

[3] Division's Exhibit E. The 2000 registration year begin on July 1, 1998, and ended June 30, 1999.

[4] Division's Exhibit F. The 2001 registration year begin on July 1, 1999, and ended June 30, 2000.

[5] The opening conference with the Mississippi auditor and the Protestant was held on July 15, 2003. The closing conference was held with the Protestant on December 12, 2003. *See* Division's Exhibits H and I.

3. By letter dated February 9, 2004, the Division received a final audit report from the jurisdiction of Mississippi on the joint audit with the jurisdiction of Oklahoma for the 2000[6] and 2001[7] registration years.

4. During the 2000 registration year the Protestant registered three (3) vehicles in the jurisdiction of Oklahoma.[8]

5. During the 2001 registration year the Protestant registered three (3) vehicles in the jurisdiction of Oklahoma with its Renewal Application.[9] On July 17, three (3) more vehicles were added to the Protestant's Oklahoma IRP account by IRP Supplemental Application "S-001".[10]

6. On January 10, 2002, the Division received a letter from REPRESENTATIVE, on behalf of the Protestant, not to renew the Protestant's registration in the jurisdiction of Oklahoma for the 2002 registration year.[11]

7. On December 28, 2004, the Division mailed the Protestant a proposed assessment for the 2000 registration year in the amount of $1,459.01.[12]

8. On December 15, 2004, the Division mailed the Protestant a proposed assessment for the 2001 registration year in the amount of $6,865.65.[13]

9. The Division received a letter of protest dated December 29, 2004.[14]

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[6] Division's Exhibit H.

[7] Division's Exhibit I.

[8] Division's Exhibit E.

[9] Division's Exhibit F.

[10] *See* Division's Exhibit C.

[11] Division's Exhibit G.

[12] Division's Exhibit A. The final audit report provided to the Protestant and the Division set out in detail the methodology for the computation of the assessment. Mileage records consisted of weekly trip sheets. Individual trip sheets for all quarters were selected for audit testing. Computed mileage amounts were compared with the Protestant's summary amount for each trip. Payroll sheets were used to determine destinations on other trips. A Prophecy mileage program was then used to determine audited miles. The Protestant did not agree with the audit findings.

[13] Division's Exhibit B. *See* Note 12.

[14] Division's Exhibit D. The protest letter is dated December 29, 2004, but it is not stamped with a receive date. The protest consists of two (2) arguments:

1. The Protestant paid its service agent and the service agent should be held responsible.
2. Three (3) of the trucks were owned by the Protestant's father and should be removed from the audit.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[15]

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.[16]

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.[17]

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.[18]

5. As a registrant under the provisions of the IRP, the Protestant is subject to the audit procedures and policies set forth therein.[19]

6. The Protestant is subject to joint audits, which may be conducted by multiple jurisdictions.[20]

7. The Protestant is subject to audit by Oklahoma as its base jurisdiction.[21]

8. Upon completion of the audit of a registrant, the audit findings shall be provided to the registrant and to all member jurisdictions in which the registrant was apportioned or in which it accrued miles.[22]

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[15] *See* OKLA. STAT. ANN. tit. 68, § 207 (West 2001); OKLA. STAT. ANN. tit. 47, § 1120 (West 2001); and IRP, Art. XVI, Section 1608.

[16] OKLA. STAT. ANN. tit. 47, § 1120(A) (West 2001).

[17] OKLA. STAT. ANN. tit. 47, § 1101 et seq., which incorporate by reference Articles I through XXII of the IRP. OKLA. ADMIN. CODE § 710:60-4-20(b)(1) (2004).

[18] OKLA. STAT. ANN. tit. 75, § 250 et seq.; § 301 et seq. (West 2001); and OKLA. STAT. ANN. tit. 75, § 308.2(c) (West 2001).

[19] IRP, Art. XVI and IRP, Appendix F, Art. XVI.

[20] IRP, Art. XVI, Section 1606.

[21] IRP, Art. XVI, Section 1600.

[22] IRP, Art. XVI, Section 1604. Section 1604 amended April 10, 1998, Ballot 1.7.187. Effective October 1, 1999.

9. An assessment is presumed correct and the Protestant bears the burden of showing that it is incorrect, and in what respect.[23]

10. The Protestant has failed to produce any evidence and cited no authority that the proposed assessments for the 2000 and 2001 registration years are incorrect, or that the sums are not due and owing.

11. The sums due and owing for the 2000 and 2001 registration years are the obligation of the Protestant, not his service agent.[24]

12. Although, the Protestant may have paid the appropriate registration fees to his service agent, until payment is actually made to the state, the responsibility for the payment of the fees lies with the Protestant.[25]

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest should be denied. It is further ORDERED that the total amounts reflected by the assessments for the 2000 and 2001 registration years be fixed as the Protestant's deficiency, and those amounts be determined to be due and owing.

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.

[23] OKLA. ADMIN. CODE § 710:1-5-47 (2004). *See Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359.

[24] *See In re Mitchell*, 101 B.R. 278 (Bankr. W.D. Okl. 1988).

[25] *See U.S. v. Garami*, 184 B.R. 834 (M.D. Fla. 1995).