

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-10-11-19
ID: MV-04-024-K
DATE: OCTOBER 11, 2005
DISPOSITION: DENIED
TAX TYPE: IRP
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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.

The Division attempted to conduct an International Fuel Tax Agreement ("IFTA") and International Registration Plan ("IRP") audit of Protestant's books and records for the periods of the first quarter through fourth quarter 2002 and July 1, 2000 through June 30, 2001 for the 2002 license year, respectively. Protestant failed to respond to the Division's records request and as a result thereof, the Division assessed Protestant in accordance with the penalty provisions of the IFTA (4.00 MPG and disallowance of all claims for tax-paid fuel) and the IRP (One Hundred percent (100%) Oklahoma).

By letter dated September 3, 2004, the Division caused to be issued against Protestant an assessment of net registration fees for the 2002 license year in the amount of \$932.12. The Division also caused to be issued against Protestant on September 16, 2004, an assessment of additional motor fuel tax, penalty and interest in the aggregate amount of \$3,296.83. Protestant timely protested the assessments by letter dated September 30, 2004. A hearing was not requested in the letter.

On October 7, 2004, the Division forwarded its file to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings consistent with the Uniform Tax Procedure Code¹ and the Rules of Practice and Procedure Before the Oklahoma Tax Commission². The cause was docketed as Case No. MV-04-024-K and assigned to ALJ, Administrative Law Judge³.

A pre-hearing conference was scheduled in this cause for December 8, 2004, by *Notice of Prehearing Conference* issued November 4, 2004.⁴ The pre-hearing conference was conducted by telephone. Pursuant to the pre-hearing conference, the parties were directed to file a status report on or before February 15, 2005. By *Memorandum* filed February 14, 2005, the Division advised that Protestant had not provided the additional information requested to complete an audit revision and requested that the protest be scheduled for a hearing. Pursuant to this request a hearing was scheduled in this cause for March 23, 2005, by *Notice of Hearing* issued February 22, 2005.

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.

On March 21, 2005, the Division filed a *Notice of Revision*. The *Notice* advised that the IFTA and IRP assessments issued against Protestant were revised to the amounts of \$69.18 and \$699.18, respectively on March 11, 2005. By *Memorandum* filed March 22, 2005, the Division advised that Protestant had submitted additional information to further revise the IRP assessment and requested that the hearing scheduled for March 23, 2005, be stricken. The hearing was stricken and the parties were directed to file a status report on or before April 22, 2005, by letter dated March 30, 2005. By *Memorandum* filed April 21, 2005, the Division advised that the protest had not been resolved and requested the scheduling of a hearing. A hearing was scheduled in this cause for May 23, 2005, by Notice of Hearing issued April 25, 2005.

The hearing was held on the appointed date and time, with the parties present. As a preliminary matter, the parties announced that Protestant had agreed to withdraw its protest to the IFTA assessment in the amount of \$69.18 and by *Stipulation of Dismissal* filed June 20, 2005; Protestant did in fact dismiss its protest to the IFTA assessment and by Cashier's Check remitted the amount assessed. DRIVER testified on Protestant's behalf and was cross-examined by the Division. The Division called one witness, AUDITOR, Auditor, IRP/IFTA Section of the Division, who testified regarding the IRP audit. ALJ's Exhibit 1, Protestant's Exhibits 1 and 2, and Division's Exhibits A through C, E and G were admitted into evidence.

The record in this cause was held open until July 8, 2005 to allow Protestant additional time to provide the trip detail records and the Division to report its review of the records. On June 20, 2005, Protestant filed a *Final Motion* wherein Protestant requested that all charges be dismissed against it and that TRUCKING COMPANY, the company to whom the tractor was leased during the mileage reporting period, be considered for audit to complete the audit. The detail trip records were not submitted by Protestant. A *Request to Close Record and Submit Case for Decision* was filed by the Division on June 23, 2005, wherein the Division advised that it had not received the documentation requested at the hearing. The *Request* was granted by *Order Granting Request* issued July 12, 2005.

FINDINGS OF FACT

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

1. Protestant is a registrant under the provisions of the IRP. Exhibit C
2. At all times relevant herein, Protestant's base jurisdiction for purposes of the IRP was the State of Oklahoma.⁵ Exhibit C.
3. Protestant's principal place of business is located in ANYTOWN, California.
4. Protestant's fleet consisted of one (1) proportionally registered power unit. Exhibit C.

⁵ Protestant operated under IRP account number OK 99999 for the 2001 and 2002 license years.

5. An audit of Protestant's operations for the 2002 license year was conducted by the Division. Exhibit C.

6. During the mileage reporting period (July 1, 2000 through June 30, 2001), the tractor was leased to TRUCKING COMPANY. According to DRIVER, the driver of the tractor, the tractor was purchased in July, 2000 and leased to TRUCKING COMPANY. The tractor was registered under TRUCKING COMPANY and operated under TRUCKING COMPANY'S operating authority. All log books, trip records and fuel purchases were turned over to TRUCKING COMPANY and maintained by TRUCKING COMPANY. ALJ's Exhibit 1 and testimony of DRIVER.

7. The original audit and assessment was a "Base Plate" or "Default" assessment rendered because no records were made available upon request. Exhibit A and C. As a result, One Hundred percent (100%) Oklahoma fees in the amount of \$932.12 were assessed on the Schedule B reported miles of 34,411.

8. The audit and assessment was revised based on "Best Available Records." According to the auditor, Protestant provided quarterly recaps of miles traveled in each jurisdiction and IFTA reports. However, Protestant did not provide detail trip reports showing trip origin and trip destination and as a result registration fees in all jurisdictions except for Arizona, California, Colorado, New Mexico, Oklahoma, Texas and Utah were treated as second year estimates and credit for the fees paid to those jurisdictions was not allowed against the audited fees due. Division's Exhibits E and G and testimony of Jay D. Mauldin.

9. Protestant has not provided any detail trip reports showing trip origin and trip destination.

10. The amount in controversy is \$699.18 based on audited miles of 28,016.

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)⁶.

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

⁶ Now codified at *OAC*, 165:30-19-20(b)(1).

Procedure Guidelines and The *IRP* Policies and Procedures Manual. *OAC*, 710:60-4-20(b)(1), (2) and (3)⁷.

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. 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.

6. 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, § 5030(4).

7. A registrant under the IRP is permitted to estimate miles for a second consecutive year if there are no actual operations in the mileage reporting year, however, where no mileage is experienced in a jurisdiction for the second mileage reporting period, the estimated mileage shall not be included in the denominator (total fleet miles) of the mileage percentages factor for the subsequent registration year. *IRP*, Policies and Procedures Manual, § 5020.

8. The IRP does not permit the refund of registration fees apportioned to a jurisdiction where such fees are based on an estimation of miles and registrant does not experience any miles in that jurisdiction during the reporting period. *IRP*, Policies and Procedures Manual, § 3030.

9. 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.

10. Protestant failed to come forward with any evidence to show the assessment is erroneous in any respect, accordingly Protestant's protest to the assessment should be and the same is hereby denied.

DISPOSITION

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

⁷ See, Footnote 6.