JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-10-18-04
ID:	JM-04-005-K
DATE:	OCTOBER 18, 2005
DISPOSITION:	DENIED
TAX TYPE:	MOTOR LICENSE FEES
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A field audit of Respondent's Motor License Agency Account was performed by the Division on August 20, 2004 for the period fiscal year 2004 through August 19, 2004. The audit found a shortage in the account due the Tax Commission of $20,429.92. As a result of the audit, the Division by letter demanded full payment of the shortage within fifteen days of the August 20th, 2004 demand date. By letter dated September 2, 2004, Respondent responded to the audit and demand for payment. On September 23, 2004, the Division acknowledged Respondent's correspondence and advised that if payment in full of the outstanding audit balance was not tendered or specific information detailing why any part of the balance was not due was not provided on or before October 23, 2004, the audit would be considered protested and the file would be forwarded to the Legal Division for further processing.

The Division by *Office Correspondence* dated November 2, 2004, forwarded its file in this matter to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings consistent with the Oklahoma Vehicle License and Registration Act[1], in particular the statutes governing Motor License Agents[2], and the Rules of Practice and Procedure Before the Oklahoma Tax Commission[3]. The protest was docketed as Case No. JM-04-005 and assigned to ALJ, Administrative Law Judge.[4]

A pre-hearing conference was scheduled in this cause for December 28, 2004, by *Notice of Prehearing Conference* issued December 1, 2004.[5] The pre-hearing conference was held at the appointed date and time with the parties' representatives in attendance. Pursuant to the pre-hearing conference, the parties were directed to file a status report on or before February 8, 2005. The parties each filed a status report on February 8th and pursuant to these reports, a *Prehearing Conference Order and Notice of Hearing* was issued setting forth dates for the parties to conduct and complete discovery, stipulate to any agreed facts and file pre-trial briefs. The *Order* also scheduled a hearing in this cause for June 1, 2005.

The hearing was held on the appointed date, with the parties present. Two witnesses; AUDITOR, Auditor and MANAGER, Manager of TAG AGENCY, were called to testify on behalf

[1] 47 O.S. 2001, § 1102 et seq.

[2] 47 O.S. 2001, §§ 1140 through 1150.

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

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

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

of Respondent. They were also examined by the Division. Division's Exhibits A and B were identified by AUDITOR and admitted into evidence without objection. Division's Exhibits C and D were admitted into evidence by stipulation. The parties were directed to file proposed findings, conclusions and recommendations in lieu of closing statements. The parties each filed *Proposed Findings of Fact and Conclusions of Law* on August 15, 2005, whereupon the record was closed and this cause was submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, including the transcript of the hearing, the exhibits received into evidence and the parties' *Proposed Findings of Fact and Conclusions of Law*, the undersigned finds:

1. Respondent is a Motor License Agent appointed by the Oklahoma Tax Commission ("Commission") pursuant to 47 O.S. § 1140.

2. As a motor license agent, Respondent is required to comply with the provisions of §§ 1140 et seq. of Title 47 of the Oklahoma statutes and the rules promulgated by the Tax Commission in regard to the duties and responsibilities of motor license agents[6].

3. Respondent is required to maintain in an approved financial institution a depository account in which monies owed to the Tax Commission are deposited, and an agency account in which monies belonging to the motor license agent are deposited. Tr. 6. See, 47 O.S. 2001, § 1142(B) and OAC, 710:60-9-91(a) and (b).

4. A field audit of Respondent's Oklahoma Tax Commission Motor License Agency Account was performed by the Division on August 20, 2004 for the period ending August 19, 2004. Tr. 3; Division's Exhibit A. In performing the audit, the auditor reviewed Respondent's Oklahoma Tax Commission Motor License Agency Account, Ledgers prepared with respect to the account by the Accounting Section of the Division and the semi-monthly reports filed by Respondent. Tr. 4. The semi-monthly report deposits are reconciled against the physical deposits in the OTC bank account and the semi-monthly report sales are reconciled against the ledger which reflects all charges, debits, sales and remittances. Tr. 4. The ledgers prepared by the Accounting Section are reviewed for accuracy by the auditor prior to conducting the audit. Tr. 5.

5. The audit determined there was a shortage in Respondent's Oklahoma Tax Commission Motor License Agency Account of $20,429.92 for the period ending August 19, 2004. Tr. 13; Division's Exhibit A. The shortage primarily resulted from balances due the Tax Commission from fiscal years 2002 and 2003. Tr. 13-14; Division's Exhibit A. The cumulative balance due from those years was $20,077.03. Tr. 13; Division's Exhibit A.

6. As a result of the audit, the Division by letter demanded full payment of the shortage within fifteen (15) days of the August 20th, 2004 demand date. Tr. 29; Division's Exhibit B.

[6] Codified at *OAC*, 710:60-9-1 et seq. See, 47 O.S. 2001, § 1149.

7. Respondent responded to the audit and demand for payment by letter dated September 2, 2004. Division's Exhibit C. In the letter, Respondent questions the action of the Division in response to the deduction from one of its deposits of a credit balance of approximately $19,000.00 reflected to be due Respondent on the Division's ledger sheets. Division's Exhibit C. In a separate letter dated September 2, 2004 to Respondent's CPA, Respondent writes that the discrepancies appear to be in the balance forward figures and credits for insufficient funds checks. Division's Exhibit C.

8. On September 23, 2004, the Division acknowledged Respondent's correspondence and advised that if payment in full of the outstanding audit balance was not tendered or specific information detailing why any part of the balance was not due was not provided on or before October 23, 2004, the audit would be considered protested and the file would be forwarded to the Legal Division for further processing. Division's Exhibit D.

9. According to MANAGER, the only error with respect to the audit which remains unresolved concerns charges for bad checks written to the Tax Commission in 2001 and 2002. Tr. 37. The bad check charges for which Respondent has not received credit represent approximately $6,000.00 of the $20,429.92 shortage. Tr. 37 and 42. Respondent admits that approximately $10,000.00 to $12,000.00 is owed to the Tax Commission. Tr. 38-39.

10. MANAGER stated that the bad checks were submitted to the Tax Commission for credit; however, he can not determine which checks he did not get credit for and can not verify that the checks were mailed to the Division. Tr. 37-38. MANAGER further stated that he doesn't have the original checks, paperwork and collection letters to the individuals on the $6,000.00 of hot checks. Tr. 43-44.

11. The dispute regarding insufficient funds checks that were either not credited or were charged more than once to Respondent's account started with the January 19, 2003 audit which was the first of approximately five or six audits conducted by the Division. Tr. 9. According to AUDITOR, in each instance the Division would request documentation to show that the checks had been submitted for credit and have shown MANAGER that either Respondent has received credit for the check or why they did not receive credit. Tr. 9. AUDITOR further stated that to his knowledge the Division has shown MANAGER that Respondent has received credit for every single check that they have claimed to have sent in for credit. Tr. 9. He further stated that in preparing for the August 20, 2004 audit, he asked MANAGER and the accounting section whether there were any outstanding uncredited items and was informed that there weren't any. Tr. 17 and 27.

12. In order to receive credit for an insufficient funds check, the Division requires the agent to submit the check, the corresponding transaction receipts and proof the agent tried to collect the check. Tr. 22.

13. MANAGER acknowledged that over a two (2) month period Respondent shorted their deposits and received a credit against those deposit on January 13, 2004, in the amount of $18,456.25 for fiscal year 2000 excess income which had been reported on the Division's ledger sheets for a period of five (5) or six (6) months. Tr. 38. According to AUDITOR, prior to fiscal

year 2000 tag agents were required to submit expense reports on an annual basis and anything they could not expense out in excess of $40,000.00 they were required to remit to the Tax Commission and in this case, Respondent remitted the excess by check. Tr. 33-34. Thereafter, during one of the audits in 2003, Respondent was allowed to claim their expenses and as a result was given a credit of $18,456.25. Tr. 34.

14. On the semi-monthly reports for the periods April 30, 2004, May 15, 2004 and June 15, 2004, Respondent reported shortages in the deposits to the Tax Commission account of $4,013.04, $15,862.66 and $1,029.04, respectively. Tr. 26.

15. The amount in controversy is $20,429.92.

ISSUE

The issue presented for decision is whether the Oklahoma Tax Commission Motor License Agency Account of Respondent should receive credit for approximately $6,000.00 in undocumented insufficient funds checks.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Tax Commission. 47 O.S. 2001, §§ 1142 and 1149.

2. Each motor license agent is required to establish, in a bank or banks authorized to do a banking business in the state, an Oklahoma Tax Commission Motor License Agent Account and deposit all receipts which the agent is obligated to account for and remit to the Commission in the special agency account. 47 O.S. 2001, § 1142(B) and *OAC*, 710:60-9-91(a). "That part of the agent's fee to be retained by the agent as his personal compensation shall not be deposited in the Oklahoma Tax Commission Motor License Agent Account." Id. and *OAC*, 710:60-9-91(b). Every motor license agent shall safeguard and preserve all monies paid to such agent that the agent is bound to account for and pay over to the Commission. 47 O.S. 2001, § 1142(A).

3. "Motor license agents shall deposit in [the Oklahoma Tax Commission Motor License Agent Account] all monies, taxes and fees collected and received by them as such agents, which they are obligated to account for and remit to the Commission, and it is specifically required that checks or similar instruments accepted or received by such agents for taxes or fees must be deposited in such account." 47 O.S. 2001, § 1142(C). Section 1142(C) further provides in pertinent part:

> Items deposited shall be credited at par and should payment be refused on any such check, draft, order or voucher, or should the same prove otherwise worthless, the amount thereof shall not be charged by the Commission against the individual subaccounts of the agent. The agent shall continue to attempt to require proper payment of all such worthless items, but shall not be personally liable to the Commission for their payment.

See, OAC, 710:60-9-93.

4. *OAC*, 710:60-9-94 provides:

> **Procedures for reporting and collecting returned checks**
>
> The following procedures should be followed in the event a check deposited by a motor license agent is returned unpaid.
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> (1) **Notice of returned check**. The bank should notify the agent that they are holding an unpaid item. (The check must be run through twice). The agent, in turn, has the option of picking up the check with cash or reducing the amount of his next deposit. The check should be picked up from the bank as soon as notification is received. Form 774-A is to be completed and immediately sent to the maker of the dishonored check.
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> (2) **Procedure for collection of returned check; applicable penalties; taxpayer liability.** A charge as set forth by statute may be charged to the maker of a returned check, after an attempt has been made to deposit the check twice. Any accrued penalty to date of collection is to be assessed. The taxpayer is notified to immediately remit payment to the tag office. The insufficient check, agent's file copies of documents on which the check was issued, and a copy of the notification to the taxpayer is to be sent to the Oklahoma Tax Commission if the Agent cannot collect the check. The security verification form is to be retained in the tag office along with photocopies of all documents issued. In the event the taxpayer returns all items issued by the motor license agent, the insufficient check is not to be returned to the taxpayer. Return of these items does not relieve the taxpayer of responsibility to remit the proper fees to the State of Oklahoma.
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> (3) **Procedure to obtain credit to agent's account; subsequent tender of payment**. The Tax Commission will then issue credit to the agent's account in the amount of the remittance for such instruments. After documents and the insufficient check have been sent in for credit, payment is not to be accepted from the registrant without calling the Motor Vehicle Division for instructions. The returned check and the copies of the documents on which the check was issued will be processed and forwarded to the Collections Division for collection. The statutes require that an agent accept a check one time. Statutes further stipulate that an agent is not required to take a check when the applicant is within a penalty period. Postdated checks are not to be accepted.
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> (4) **Tag or decal may be held**. The motor vehicle agent may hold a tag or decal until the taxpayer's check has cleared the bank.

> (5) **Insufficient checks to be forwarded to the Oklahoma Tax Commission; time limits**. All insufficient checks for which payment is not received are to be sent into the Oklahoma Tax Commission no later than thirty (30) days after the date picked up from the bank. Further delays in processing may prevent collection.

See, OAC, 710:60-9-98.[7]

5. Rules promulgated pursuant to the Administrative Procedures Act[8], are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 2001, § 306(C). They are valid and binding on the persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 2001, § 308.2(C).

6. Here, Respondent admits that it cannot comply with the provisions of *OAC*, 710:60-9-94 with respect to the approximately $6,000.00 in insufficient funds checks. Accordingly, Respondent's Oklahoma Tax Commission Motor License Agency Account should not receive credit for approximately $6,000.00 in undocumented insufficient funds checks.

7. Respondent's protest to the audit and demand for payment of the shortage in its Oklahoma Tax Commission Motor License Agent Account should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Respondent, MANAGER d/b/a TAG AGENCY, 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] Procedures for reporting and collecting returned checks on driver's license.

[8] 75 O.S. 2001, § 250 et seq., § 301 et seq.