

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-01-13-05 / NON-PRECEDENTIAL
ID: P-85-224
DATE: JANUARY 13, 1987
DISPOSITION: SUSTAINED
TAX TYPE: MOTOR VEHICLE PRORATE REGISTRATION
APPEAL: NO APPEAL TAKEN

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The above styled cause comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge. A hearing was had, at which hearing the President of Protestant company, PRESIDENT, appeared on behalf of the Protestant, and the Motor Vehicle Division of the Oklahoma Tax Commission appeared by OTC ATTORNEY, attorney, and ASSISTANT, legal research assistant, of the General Counsel's Office of the Oklahoma Tax Commission.

Testifying on behalf of the Protestant were PRESIDENT and PROTESTANT'S WITNESS, and testifying on behalf of the Motor Vehicle Division of the Oklahoma Tax Commission was EMPLOYEE. Exhibits, not herein itemized, were introduced into evidence. Upon the conclusion of the hearing, this case was submitted for a decision.

STATEMENT OF FACTS

Protestant company is a common carrier operating under the authority granted to it by the Interstate Commerce Commission via MC XXX and by the Oklahoma Corporation Commission via MC ZZZ. In order to transport freight, Protestant hires owner/operators which provide tractors and drivers to pull trailers owned by Protestant company. Since December 10, 1980, Protestant has maintained an account with the Prorate Section of the Motor Vehicle Division of the Oklahoma Tax Commission in order to register vehicles which Protestant has authority, to operate.

Until May 14, 1982, Protestant company delivered registration supplements to the Prorate Section of the Motor Vehicle Division of the Oklahoma Tax Commission and, in turn, the Prorate Section issued to Protestant letters of authorization as temporary registration certificates. On or around June 25, 1982, the Prorate Section offered' to Protestant the use of Temporary Prorate Authorizations (TPA's). Protestant completes these in its office, and the owner/operator is immediately registered for forty-five (45) days. Protestant company then has fifteen (15) days to submit a supplement. Since going on the TPA program, Protestant can substantiate and account for each and every owner/operator it has hired. No owner/operator hired by Protestant has operated without a current registration.

On Thursday, January 17, 1985, the prorate registration secretary for Protestant company went to the Prorate Section office in Oklahoma City, Oklahoma to file a supplement. The supplement was completed in full and TPA #XXX was attached. Upon conversation with

EMPLOYEE of the Prorate Section staff, it was determined that all Protestant needed to do was change the unit number of the vehicle already prorated on its fleet. The new unit number was being issued because the tractor was being sold to another person and the title of the vehicle currently on the fleet was not to be transferred to the owner's name until the vehicle was paid for in full. Protestant's representative was told by the Prorate Section staff member that it would be allowable to write in the new truck number for the current year and that a new cab card with a new number would be issued for the current registration year; therefore, in the presence of the Prorate Section staff, TPA #XXX was destroyed and disposed of with the supplement attached. Not filing the supplement was to have saved Protestant company One Dollar (\$1.00).

ISSUES AND CONTENTIONS

The sole issue herein is whether Protestant company is liable for one year's prorate taxes of Seven Hundred Thirty-One Dollars and No Cents (\$731.00) for the accidental loss or destruction of a Temporary Prorate Authorization which cost Twelve Dollars and No Cents (\$12.00) and allowed them to operate on Oklahoma highways for only three (3) days.

Protestant contends it is not an abuser of the system and that it complies with all laws and regulations under which it is subject. Due to a procedural error, a document was destroyed. The Protestant contends, however, that the State of Oklahoma has not been victimized or damaged because of it, nor has any vehicle operated under false pretenses with the destroyed document. The Protestant further contends that a Seven Hundred Thirty-One Dollars and No Cents (\$731.00) assessment for the loss of a Twelve Dollars and No Cents (\$12.00) document seems unjustified.

The Motor Vehicle Division of the Oklahoma Tax Commission contends that all forms, whether used or unused, shall be retained by the fleet owner and held subject to audit. The Motor Vehicle Division of the Oklahoma Tax Commission contends that since a Temporary Prorate Authorization will allow a truck to operate on the roads and highways of this and other states as if a regular registration were issued and because the effect of a missing TPA will be the same as if the TPA were placed on a truck without notifying the Prorate Section of the Motor Vehicle Division, that an unauthorized use of a TPA could possibly allow a truck to be continually operated on the roads and highways without paying the required registration fee.

The Motor Vehicle Division of the Oklahoma Tax Commission contends that the liability of the fleet owner must be calculated upon the full amount of the Oklahoma registration fee without proration. The Motor Vehicle Division of the Oklahoma Tax Commission asserts that to do otherwise would be to allow the potential use of a vehicle without the payment of fees based upon a one hundred percent (100%) mileage factor. The Motor Vehicle Division of the Oklahoma Tax Commission cites no statutory authority to support its position.

APPLICABLE LAW

Title 47 O.S.A. § 1124 provides as follows:

A. Any person, firm or corporation owning or possessing a commercial vehicle who:

4. Operates the vehicle for commercial purposes; may receive a temporary permit from the Oklahoma Tax Commission or any motor license agent in this state. The permit shall be recognized in lieu of registration in this state. The permit shall indicate the time and date of its issuance and shall be valid for a period not to exceed seventy-two (72) hours from such indicated time.

B. A fee of Twelve Dollars (\$12.00) shall be charged for the issuance of the temporary permit which shall be apportioned in the same manner as other vehicle license fees are apportioned under the terms of the motor vehicle license and registration laws of this state. (Emphasis Added)

One of Protestant's TPA's has been lost or destroyed. One of the Protestant's witnesses testified that, because of a conversation she had with a staff member of the Prorate Section of the Motor Vehicle Division, she destroyed the TPA along with the supplement she was told was not needed. She testified that she destroyed the TPA along with the supplement in the Prorate Section of the Motor Vehicle Division.

What happened to the TPA is not the relevant question. The uncontroverted testimony of the Protestant was that no truck has operated without appropriate registration, and that no truck has used the destroyed or lost TPA.

To assess Protestant a full year's registration fee for the loss of a three (3) day permit is not warranted by the statutes. The undersigned is unaware of a statute upon which this assessment could be based, nor has the Prorate Section of the Motor Vehicle Division referred to any statutory authority.

Title 68 O.S.A. § 203 defines the authority of the Oklahoma Tax Commission as follows:

The Tax Commission is hereby authorized to enforce the provisions of this Code and to promulgate and enforce any reasonable rules and regulations with respect thereto. The Tax Commission may also prescribe, promulgate and enforce all necessary rules and regulations for the purpose of making and filing of all reports required under any State tax law, and such rules and regulations as may be necessary to ascertain and compute the tax payable by any taxpayer subject to taxation under any State tax law; and may, at all times, exercise such authority as may be necessary to administer and enforce each and every provision of any State tax law. (Emphasis Added)

When a Division of the Oklahoma Tax Commission makes an assessment, it must have as its basis a provision of the State tax law for the assessment to be a valid exercise of authority. Although the Motor Vehicle Division of the Oklahoma Tax Commission's witness testified that assessing taxpayers for a full year was the normal procedure of the Prorate Section of the Motor

Vehicle Division when a three (3) day permit was lost, that procedure has no statutory support and is not a valid exercise of authority. The Oklahoma Tax Commission may promulgate rules, but only to enforce or interpret the State tax law.

CONCLUSIONS OF LAW

In view of the above and foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge concludes as follows:

(1) The Oklahoma Tax Commission has jurisdiction in this matter.

(2) That a Temporary Prorate Authorization costs Twelve Dollars and No Cents (\$12.00) for three (3) days. The loss of a Temporary Prorate Authority costing Twelve Dollars and No Cents (\$12.00) does not warrant an assessment by the Prorate Section of the Motor Vehicle Division in the amount of Seven Hundred Thirty-One Dollars and No Cents (\$731.00).

(3) The Prorate Section of the Motor Vehicle Division has cited no statutory authority on which this assessment can be based, nor does the undersigned know of any authority which would support this assessment.

(4) That the Prorate protest of COMPANY be sustained.

DISPOSITION

It is the ORDER of the undersigned Administrative Law Judge of the Oklahoma Tax Commission that the protest of COMPANY be sustained.

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.