

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-01-11-03 (NON-PRECEDENTIAL)
ID: MV-04-020-K
DATE: JANUARY 11, 2005
DISPOSITION: DENIED
TAX TYPE: IRP
APPEAL: NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT, appears pro se. OTC ATTORNEY, First Deputy General Counsel, General Counsel's Office of the Tax Commission, represents the IRP/IFTA Section of the Audit Division of the Tax Commission ("Division").

STATEMENT OF THE CASE

By letters dated July 26, 2004, the Division issued assessments of net registration fees against Protestant for the 2000 and 2001 registration years. Protestant filed a timely written protest to the assessments by letter dated August 24, 2004. Protestant did not request an oral hearing in the letter of protest.

A prehearing conference was scheduled in this cause for October 19, 2004, by *Notice of Prehearing Conference* dated September 29, 2004. Protestant did not respond to the *Notice* either orally or in writing, nor appear at the prehearing conference. Notice was thereafter served on the parties that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division in accordance with Section 221(D) of the *Uniform Tax Procedure Code*.¹ Protestant did not respond to this notice.

The *Division's Verified Response to Protest* was filed October 22, 2004. Attached to the *Division's Response* were Exhibits A through C.

FINDINGS OF FACT

Upon review of the file and records, including the *Division's Verified Response to Protest* and attached exhibits, the undersigned finds:

1. That Protestant is a registrant under the provisions of the International Registration Plan ("IRP").
2. That at all times relevant herein, Protestant's base jurisdiction for purposes of the IRP was the State of Oklahoma.²

¹ 68 O.S. 2001, § 201 et seq.

² Protestant operated under IRP account number OK xxx for IRP registration years 2000 and 2001. Protestant is currently proportionally registered in Pennsylvania.

3. That Protestant's principal place of business is located in ANYTOWN, Pennsylvania.³
4. That Protestant's fleet consisted of two proportionally registered power vehicles used to transport tractor pulling weight sleds with a peak season from May to September.⁴
5. That by memorandum filed in the Office of the Administrative Law Judges on October 1, 2004, the Division advised that the assessment for the 2000 registration year had been withdrawn and only the 2001 registration year remained in controversy.
6. That the Division conducted an audit for the 2001 registration year, based upon examination of records sent to the Oklahoma Tax Commission by Protestant.
7. That as a result of the audit findings, the Division, by letter dated July 26, 2004, issued an assessment against Protestant for net registration fees for the 2001 registration year in the amount of \$1,165.20.⁵
8. That Protestant filed a timely protest to the proposed assessment, stating that the mileages he reported to his agent for year 2001 were accurate and true to the mileages for the states in which he conducted business; that the agent falsely reported the mileages to the State of Oklahoma; and that the agent should be held liable for the charges.⁶
9. That Protestant did not assert any errors alleged to have been committed by the Division's audit.
10. That the amount in controversy is \$1,165.20.

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. That the Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 2001, § 221(D) and Article XVI, § 1608 of the International Registration Plan ("*IRP*"), incorporated by reference, Rule 710:60-4-20(b)(1) of the *Oklahoma Administrative Code* ("*OAC*").
2. That 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.
3. That the audit of a registrant under the *IRP* may be conducted by its/his base jurisdiction and/or the commissioners of the several member jurisdictions. *IRP*, Article XVI, Sections 1600 and 1606.

³ OTC Audit Summaries for the 2000 and 2001 registration years.

⁴ OTC Audit Summaries for the 2000 and 2001 registration years.

⁵ Exhibit B.

⁶ Exhibit C.

4. That 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, Section 5030(4), incorporated by reference, *OAC*, 710:60-4-20(b)(3).

5. That those who act through an agent are customarily bound by their agent's mistakes. *Gripe v. City of Enid*, 312 F.3d 1184 (10th Cir. 2002). A principal or employer is generally held liable under the doctrine of "respondeat superior" for those acts of an agent or employee which fall within the latter's authority. *Anderson v. Eichner*, 1994 OK 136, 890 P.2d 1329 (1994). One accepting benefits obtained through an agent ordinarily will not be heard to deny the acts of such agent not beneficial to him. *City of Haileyville v. Smallwood*, 1968 OK 80, 441 P.2d 388 (1968). Where a loss is inflicted on one of two innocent parties by the fraud of a third party, the material question is which party was he the agent of, as his principal must bear the loss. *Fish v. Bloodworth*, 1912 OK 721, 36 Okla. 586, 129 P. 32 (1912).

6. That the liability for the registration fees is the obligation of the Registrant, not its agent nor any co-conspirators. *In re Mitchell*, 101 B.R. 278 (Bkrctcy. W.D. Okla. 1988).

7. That "[a]ny registrant whose application for apportioned registration has been accepted shall preserve the records on which it is based for a period of three years after the close of the registration year" and "[s]uch records shall be made available to the Commissioner at his request for audit as to accuracy of computation, payments, and assessments for deficiencies or allowances for credits". *IRP*, Article XV, § 1500.

8. That 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*, 768 P.2d 359 (Okla. 1988).

9. That Protestant has failed to come forward with any evidence to show the assessment is erroneous in any respect, and therefore, Protestant's protest to the assessment is denied.

THEREFORE, based on the above and foregoing findings and conclusions, it is ORDERED that the protest of Protestant, PROTESTANT, 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.