JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-01-04-004 / NOT PRECEDENTIAL**
ID: **SJ99000012**
DATE: **01-04-00**
DISPOSITION: **DENIED**
TAX TYPE: **APPLICATION FOR SALES TAX PERMIT**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. A Business Registration Form, dated December 9, 1997, under the signature of MR. ANONYMOUS, was filed with the Tax Commission for THE CORPORATION. Pursuant to the Business Registration, THE CORPORATION was applying for a sales tax permit to operate a car dealership IN ANYTOWN, Oklahoma.

2. In accordance with 68 O.S. § 212, a *Notice of Intent to Deny Issuance of Tax Permit or License* was mailed to THE CORPORATION. The basis of the intended action was 68 O.S. § 1364(F) and Attorney General Opinion 87-53. The Notice advised that it could appear at a hearing and show cause why the issuance of the tax permit or license should not be refused. The hearing originally set for June 17, 1999, was heard on July 20, 1999.

3. The previous owner of the car dealership owes a balance of sales and withholding taxes and waste tire fees arising from the operation of the business, in the amount of $2,714.96 tax, penalty thereon totaling $2,303.37, interest of $1,566.52 through January 1, 2000, tax warrant penalty of $648.94 and tax warrant filing fees totaling $208.00.

4. An Agreement between THE CORPORATION, THE PREVIOUS OWNER and A LAND COMPANY was submitted at the show cause hearing. Under the Agreement, THE CORPORATION purchased from THE PREVIOUS OWNER its interest in the franchise agreements for the automobile dealership in ANYTOWN, telephone numbers and listings, specialized tools, equipment, furniture, product literature racks, outdoor lighting, flagpole, fixtures, furnishings and good will for the sum of $100,000.00. Pursuant to Sections 5C and 5D, respectively, of the Agreement, THE CORPORATION purchased THE PREVIOUS OWNER'S entire inventory of "current, new, not used and saleable parts and accessories" and THE PREVIOUS OWNER'S new 1997 and 1998 Chrysler, Plymouth, Dodge, Dodge Truck, Jeep or Eagle motor vehicles at the prices invoiced to THE PREVIOUS OWNER.

5. Section 1364(F) of Title 68 of the Oklahoma Statutes requires that a permit holder, upon discontinuation of a business, surrender the permit and pay all accrued taxes. In the event the business is sold and taxes remain outstanding, the Commission cannot issue to the purchaser a sales tax permit to continue or conduct the business until all tax claims due have been settled. *Carlton Southwest, Inc. v. Oklahoma Tax Commission*, 789 P.2d 1192 (Okl.App.Div. 1, 1989).

6. A person who directly or indirectly acquires a portion of a business or stock of goods may be denied a sales tax permit as a successor where he purchases or acquires substantially all of the business assets or stock of goods. *Oklahoma Administrative Code* 710:65-4-4. Business assets are defined in *Oklahoma Administrative Code* 710:65-4-44 as real property or an interest therein, tangible personal property, including fixtures, equipment and vehicles; and intangible property, including accounts receivable, contracts, business name, business goodwill, customer lists, delivery routes, patents, trademarks or copyright.

7. In the instant case, the evidence presented at the hearing indicated that THE PREVIOUS OWNER owes taxes arising from the operation of the car dealership to the State and that THE CORPORATION purchased substantially all the business assets of the car dealership located IN ANYTOWN, Oklahoma, from THE PREVIOUS OWNER. Accordingly, the Commission concurs with the Administrative Law Judge's conclusion that the sales tax permit application of THE CORPORATION, the Applicant herein, must be denied until all prior tax claims have been settled.

WAIVER OF PENALTY AND INTEREST

Applicant has requested, in the event that the Administrative Law Judge's conclusions are affirmed, that the interest and penalty be waived. For the reasons stated by the Applicant, we agree. Therefore, the interest above stated, plus any additional interest accruing on the delinquent tax through February 29, 2000, and the penalty and tax warrant penalty herein stated, are hereby waived.

IT WAS THEREFORE ORDERED, that the sales tax permit application of THE CORPORATION be, and the same hereby is, denied until the tax claims above stated, together with any amounts not herein waived, be settled and paid.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.