JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-06-05-017 / NOT PRECEDENTIAL**
ID: **SJ0100002**
DATE: **06-05-01**
DISPOSITION: **DENIED**
TAX TYPE: **SALES TAX PERMIT**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 2nd day of May, 2001, the above-styled matter comes on for consideration. Upon review of the file and records, including the record of the hearing on the *Notice of Intent to Deny Issuance of License or Permit*, and the exhibits received into evidence, the undersigned finds:

1. A Business Registration Form, dated January 5, 2001, under the signature of APPLICANT, was filed with the Tax Commission for APPLICANT d/b/a COMPANY ONE. Pursuant to the Business Registration, APPLICANT was applying for a sales tax permit to operate a retail beer, tobacco and mixed drink establishment at 123 STREET, ANYCITY, Oklahoma.

2. In accordance with 68 O.S. § 212, a *Notice of Intent to Deny Issuance of Tax Permit or License* was mailed to APPLICANT. The basis of the intended action was 68 O.S. § 1364(F) and *Attorney General Opinion 87-53*. The Notice advised APPLICANT that he could appear at a hearing and show cause why the issuance of the tax permit or license should not be refused. The hearing was heard on February 20, 2001.

3. The previous owner, MS. ANONYMOUS, of COMPANY ONE located at 123 STREET, ANYCITY, Oklahoma, owes sales tax, mixed beverage tax and tourism tax arising from the operation of the business in the amounts of $31,526.35, $47,296.55 and $434.19, respectively.

4. At the hearing, Applicant testified that on July 31, 2000, he entered into an agreement to purchase COMPANY ONE from MR. AND MS. ANONYMOUS for $40,000.00 and that it was his understanding included in the sale were all inventory and equipment of the business and the building where the business was located. Applicant stated that in December, 2000, he discovered that MR. AND MS. ANONYMOUS did not own all the inventory and equipment purchased or the building. Applicant stated that in actuality, the equipment he purchased from MR. AND MS. ANONYMOUS consisted of video machines, CD players, speakers, tape players and miscellaneous items. Applicant advised that MR. A owned the building and that he was presently leasing the club premises from him.

5. A *Rental Lease* dated July 31, 2000, between MR. and/or MS. ANONYMOUS, property managers, and APPLICANT was submitted subsequent to the show cause hearing. Under the *Rental Lease*, APPLICANT leased the premises at "123 STREET", ANYCITY, OKLAHOMA, with agreements as to any repairs and the care of the lawn.

6. Applicant submitted an Affidavit of MR. A wherein MR. A stated that he is the owner of the premises where COMPANY ONE is located and that MR. A agreed to lease COMPANY ONE premises to Applicant in exchange for a monthly payment of $2,100.00, beginning on December 3, 2000.

7. On January 8, 2001, a petition was filed in AN ANONYMOUS County District Court by Applicant against MR. AND MS. ANONYMOUS alleging, among other things, that MR. AND MS. ANONYMOUS falsely represented to Applicant that they owned the real and personal property known as COMPANY ONE when, in fact, they did not own the real property nor the bulk of the personal property. Applicant is seeking the return of the purchase price paid for COMPANY ONE and other damages.

8. 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).

9. 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 710:65-9-4*. Business assets are defined in *Oklahoma Administrative Code 710:65-9-4* 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.

10. In the instant case, the transfer between the previous owner and the new owner includes the purchase of inventory, some equipment and miscellaneous supplies. The business remained in the same location, the character and the name of the business has not changed and the business remained open during the transition in ownership.

11. Pursuant to *Oklahoma Administrative Code 710:65-9-4*, the permit should be denied. APPLICANT is a successor in business to the prior owner, MS. ANONYMOUS.

THEREFORE, IT IS ORDERED that the sales tax permit application of APPLICANT be denied.

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.