

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-02-07-003 / NOT PRECEDENTIAL  
**ID:** SJ010007  
**DATE:** 02-07-02  
**DISPOSITION:** APPLICATION GRANTED  
**TAX TYPE:** SALES TAX PERMIT APPLICATION  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 15th day of November, 2001, this matter comes on for consideration pursuant to a Notice of Intent to Deny Issuance of Tax Permit or License issued to APPLICANT on July 27, 2001. A hearing on the matter was held on August 21, 2001. At the hearing, Applicant was represented by AN Attorney. The Collections Division was represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission.

Upon review of the file and records, including the record of the hearing on the Notice of Intent to Deny Issuance of Tax Permit or License, and the exhibits received into evidence, the undersigned finds:

1. A business registration form, dated July 3, 2001, under the signature of APPLICANT was filed with the Tax Commission for APPLICANTS. Pursuant to the Business Registration, Ms. APPLICANT applied for a sales tax permit to operate a food service business, specifically a grill, at 9999 ANY STREET, ANONYMOUS, OK.

2. In accordance with 68 O.S. § 212, a Notice of Intent to Deny Issuance of Tax Permit or License was mailed to APPLICANT'S ATTORNEY regarding APPLICANTS grill. The basis of the intended action was 68 O.S. § 1364(F) and Attorney General Opinion 87-53. The notice advised that a show cause hearing was scheduled for August 21, 2001.

3. The previous owner of the grill located at 9999 ANY STREET, ANONYMOUS, OK, owes sales tax arising from the operation of the business for the period May 1999 through March 2001, as follows:

Tax	\$ 1,344.87
Interest through 8/21/01	305.39
Penalty	607.15
Warrant Penalty	302.15
Filing Fees	47.00
Service Charge	<u>75.00</u>
TOTAL	\$ 2,681.56

4. On June 1, 2001, APPLICANTS entered into a one-year lease agreement with ABC Company for a commercial building located at 9999 ANY STREET, ANONYMOUS, OK, for the purpose of operating a restaurant and grill.

5. Applicant provided documentation at the hearing in support of her testimony that she made deposits and initiated service of utilities at the business location.

6. At the hearing, the Applicant provided a list of equipment, fixtures, furniture, utensils, dishes and supplies purchased from THE PREVIOUS OWNER. APPLICANT testified that \$15,000.00 was paid for these items and for PREVIOUS OWNER'S assistance in demonstrating how to run the business. Subsequent to the payment, Applicant had the items purchased appraised. The items were valued at \$2,982.35. APPLICANT further testified that these items remained in the building at 9999 ANY STREET, ANONYMOUS, OK at the time of purchase. No inventory of food products was purchased.

7. APPLICANT testified that she did not pay any bills of the previous owner and that she established new accounts with the food suppliers.

8. Additionally, APPLICANT testified that PREVIOUS OWNER spent a short time showing her the equipment and how to work it, provided a typical list of food and supplies she thought would be needed to begin operations and demonstrated how she prepared the hamburgers for which the grill was known.

9. Sometime after June 1, 2001, APPLICANT'S grill opened for business in the same location that had previously been used by PREVIOUS OWNER. PREVIOUS OWNER ceased doing business in that location on March 14, 2001.

10. An article from a local newspaper dated April 22, 2001, stated that the grill was closed as of March 14 by the owners of 11 years.

11. 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*, 781 P.2d 1192 (Okl.Ct.App. 1989).

12. 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 710:65-4-4 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.

13. In the instant case, the transfer between the previous owner and the new owner is limited to the purchase of equipment, fixtures, furniture and miscellaneous supplies. The business remained in the same location, the name and nature of the business is similar to the previous one and the previous owner provided brief and limited advice and instruction. However, the business was closed approximately two months before Applicant began operation, the premises are leased by Applicant from a third party and Applicant has not paid any of the debts of the previous owner.

14. Pursuant to Oklahoma Administrative Code 710:65-9-4, the permit should be issued. Applicant is not a successor in business to the prior owner.

### **DISPOSITION**

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

**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.