

JURISDICTION: OKLAHOMA TAX COMMISSION -- DECISION
CITE: 2003-07-22-08 / NOT PRECEDENTIAL
ID: SJ030051
DATE: 07-22-03
DISPOSITION: DENIED
TAX TYPE: SALES TAX PERMIT APPLICATION
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 30th day of May, 2003, 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 was received by the Tax Commission on January 23, 2001, for Applicant. Pursuant to the Business Registration, Applicant was applying for a sales tax permit to operate a motel at XXX ANONYMOUS Road, A City, 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. 1991, § 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.

3. After a payment of \$321.74, the previous owner of the motel, ABC, LLC, owes a balance of sales taxes arising from the operation of the business, in the aggregate amount of \$13,170.47, consisting of \$8,439.99 tax, penalty thereon totaling \$876.18, interest of \$3,284.30 through May 12, 2003, service charge of \$25.00, warrant penalty of \$482.00 and filing fee of \$63.00.

4. Applicant purchased the motel, including the real property with improvements, trade equipment, furniture, fixtures, supplies and personal property used in the motel's operation, from the previous owner. Pursuant to the contract between the parties, Applicant agreed to pay the previous owner \$735,118.98 for the above-referenced business assets. Included in the contract was the Applicant's forgiveness of a \$32,000.00 indebtedness the previous owner owed to the Applicant for past billboard advertising. Additionally, Applicant paid half of the previous owner's ad valorem tax due for 2000.

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 sales tax claims due have been settled. *Carlton Southwest, Inc. v. Oklahoma Tax Commission*, 781 P.2d 1192 (Okl.App.Div. 1, 1989).

6. *Oklahoma Administrative Code 710:65-9-4* addresses the denial of a sales tax permit to a successor. The code provision states, "The purchase or acquisition of a business may give rise to the denial of permit to the successor whether the consideration is money, property, assumption of liabilities or cancellation of indebtedness." The provision goes on to explain that a purchaser of a business may be denied a permit if 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.

7. In the instant case, the evidence presented at hearing indicates that ABC, LLC owes sales tax arising from the operation of the motel to the State and that APPLICANT purchased substantially all of the business assets of the motel located at XXX ANONYMOUS Road, A City, Oklahoma, from ABC, LLC. The location and character of the business remains the same. The only significant change is the change in name from Inn A to Inn B. Based upon the foregoing, it is concluded that Applicant is a successor in business to the previous owner.

DISPOSITION

THEREFORE, in accordance with 68 O.S. 1991, § 1364(F) and *Oklahoma Administrative Code 710:65-9-4*, the sales tax permit application of APPLICANT should 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.