

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-12-02-04 / NOT PRECEDENTIAL
ID: SJ030055
DATE: 12-02-03
DISPOSITION: DENIED
TAX TYPE: SALES TAX PERMIT
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. A Business Registration form was received by the Tax Commission on March 4, 2003, for Applicant. Pursuant to the Business Registration, Applicant was applying for a sales tax permit to operate a convenience store at XXX East ANONYMOUS, ANYTOWN, Oklahoma 99999. In response to a question on the form, Applicant indicated he purchased the business inventory from the previous owner, WY a/k/a WXY.

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 denial was 68 O.S. 1991, § 1364(F) and Attorney General Opinion 87-53. The Notice advised that he could appear at a hearing and show cause why the issuance of the tax permit or license should not be refused.

3. CORPORATION A d/b/a STORE B and WXY, President of CORPORATION A, owe a balance of sales taxes, for the period of July 1999 through February 2000, February 2001 through July 2001, September 2001 and April 2002 through March 2003, arising from the operation of the business located at XXX East ANONYMOUS, ANYTOWN, Oklahoma 99999, in the aggregate amount of \$112,036.84, consisting of \$73,376.31 tax (after payment of \$62,844.57), penalty thereon totaling \$13,054.94, interest of \$24,200.59 through September 19, 2003, service charge of \$25.00, warrant penalty of \$1,200.00 and filing fees of \$180.00.

4. The franchise tax returns filed on behalf of CORPORATION A for tax years 2000/2001, 2001/2002 and 2002/2003 indicate that WXY is President of the corporation.

5. By Commission Order, sales tax permit number 999999 of CORPORATION A d/b/a STORE B at XXX E. ANONYMOUS, ANYTOWN, Oklahoma, was canceled and revoked on February 19, 2003.

6. Applicant testified that he purchased the inventory of the business, which included groceries, gasoline and beer, for \$29,000.00. Applicant further testified that based on "advise from Commission employees, he has not begun operating the business" and that it is currently being operated by his father, WXY.

7. A lease for the convenience store was entered into between CORPORATION C and Applicant on March 6, 2003.

8. By letter dated September 4, 2003, additional information or documentation was requested from the parties. The return receipt card addressed to APPLICANT was returned, bearing the signature of MS. M. The letter requested that Applicant provide a copy of the sales agreement showing purchase of the inventory of the business and proof of payment. No response was received from Applicant.

An updated statement of the amount due was provided by the Division, as requested. Additionally, the Division advised that CORPORATION A was not in good standing with the tax laws of the State of Oklahoma during the operation of the business.

9. Section 1364(F)¹ of Title 68 of the Oklahoma Statutes requires the Tax Commission to refuse issuance of a sales tax permit to the purchaser of a business until all sales tax claims due the State of Oklahoma by the previous owner have been settled. *Carlton Southwest, Inc. v. Oklahoma Tax Commission*, 781 P.2d 1192 (Okl.Ct.App. 1989).

10. 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.

11. Here, the facts show that CORPORATION A and WXY owe sales tax arising from the operation of the convenience store to the State and that APPLICANT purchased substantially all of the business assets of the convenience store located at XXX East ANONYMOUS, ANYTOWN, Oklahoma. The location and character of the business remains the same. The only significant change is the change in name from STORE B to STORE D. Accordingly, pursuant to the above-cited rule, the sales tax permit application of Applicant herein must be denied until all prior sales tax claims have been satisfied.

¹ This section was renumbered 68 O.S. Supp. 1997, § 1364(H), effective July 1, 1997.

DISPOSITION

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.