JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-12-02-05 / NOT PRECEDENTIAL**
ID: **SJ030057**
DATE: **12-02-03**
DISPOSITION: **DENIED**
TAX TYPE: **SALES TAX**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 30th day of October, 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, dated September 18, 2001, under the signature of APPLICANT was filed with the Tax Commission. Pursuant to the Business Registration, APPLICANT was applying for a sales tax permit to operate a food establishment at XXX S. ANONYMOUS Avenue, ANYTOWN, Oklahoma 99999.

2. In accordance with 68 O.S. ϶ 212, a *Notice of Intent to Deny Issuance of Tax Permit or License* was mailed to APPLICANT d/b/a THE Cafe. The basis of the intended denial was 68 O.S. 1991, ϶ 1364(F) and Attorney General Opinion 87-53. The Notice advised that she 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 July 23, 2003.

3. The files and records of the Tax Commission indicate that THE CORPORATION'S corporate charter was suspended on March 23, 2001.

4. Pursuant to a Bill of Sale submitted at the hearing, MS. Y and MS. Z d/b/a THE Diner sold the contents and business of THE Diner located at XXX S. ANONYMOUS Avenue, ANYTOWN, Oklahoma, to APPLICANT on September 17, 2001, for the sum of $60,000.00. According to Applicant, the purchase of the business included inventory and equipment booths, tables, cash register, grills and deep freezers.

5. Applicant leases the building where the business is located from a third party, MR. O.

6. Applicant testified that she changed the menu and the name of the restaurant to THE Cafe. She also testified that she had previously managed the business and had been responsible for ordering groceries and supervising the help.

7. THE CORPORATION d/b/a THE Diner[1], located at XXX S. ANONYMOUS Avenue, ANYTOWN, Oklahoma, and MS. Y[2], and MS. Z[3], currently owe sales tax arising from the operation of the business for the period of July, 2000 and November, 2000 through September 17, 2001 in the aggregate amount of $16,871.09, consisting of tax in the amount of $11,494.16, interest through July 15, 2003, in the amount of $3,897.51, penalty in the amount of $1,149.42, warrant penalty in the amount of $200.00 and fees in the amount of $130.00.

8. Section 1364(F)[4] 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).

9. *Oklahoma Administrative Code 710:65-9-4* addresses the denial of a sales tax permit to a successor. This rule explains that 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. 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.

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[1] Tax Warrant No. STS 9999999999-00 was filed against THE CORPORATION in ANONYMOUS County on April 4, 2002.

[2] Tax Warrant No. STS 9999999999-01 was filed against MS.Y, President, THE CORPORATION and as an individual in ANONYMOUS County on April 4, 2002.

[3] Tax Warrant No. STS 9999999999-02 was filed against MS. Z, Vice President, THE CORPORATION and as an individual in ANONYMOUS County on April 4, 2002.

[4] This section was renumbered 68 O.S. Supp. 1997, э 1364(H), effective July 1, 1997.

10. In the instant case, evidence presented at hearing indicated that APPLICANT purchased substantially all the business assets of the diner located at XXX S. ANONYMOUS Avenue, ANYTOWN, Oklahoma. Although the name of the business changed, the business remained in the same location and the character and nature of the business has not changed. 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.

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.