JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-03-02-03
ID: SJ-03-069-H
DATE: MARCH 2, 2004
DISPOSITION: DENIED
TAX TYPE: SALES TAX PERMIT/SHOW CAUSE
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held in this matter on December 10, 2003, at approximately 1:00 p.m. Notice of hearing was mailed to COMPANY X d/b/a RESTAURANT (hereafter "Applicant") at its last known address, but the Applicant did not appear at the hearing. Upon conclusion of the hearing the record in this matter was closed and this case was submitted for decision December 10, 2003.

On December 18, 2003, the notice of hearing was returned to the Court marked "MOVED LEFT NO FORWARDING ADDRESS". On December 30, 2003, the Division advised the Court that the address used for the mailing the notice was the last known address according to the files and records of the Oklahoma Tax Commission.

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the undersigned finds:

FINDINGS OF FACT

1. That on August 27, 2003, the Oklahoma Tax Commission received a business registration form, signed and dated May 23, 2003, by MANAGER, as Manager of COMPANY X. Application was made for a sales tax permit to operate a business called RESTAURANT, located at OKLAHOMA ADDRESS 1, beginning June 15, 2003.[1]

2. The Applicant indicated on the registration form that the fixtures and equipment for the business were purchased from the previous owner, COMPANY Y d/b/a RESTAURANT. The Applicant also indicated that the building which houses the business is leased by the previous owner, COMPANY Y, and that the Applicant intended to retain the name of the prior business.[2]

3. On November 14, 2003, **A *Notice of Intent to Deny Issuance of Permit or License*** was sent by certified mail to OKLAHOMA ADDRESS 1.[3] The basis of the intended denial was 68 O.S. § 1364(F)[4] and Attorney General Opinion 87-53. The notice advised the applicant to appear at a hearing and show cause why the issuance of the permit should not be refused.[5]

4. The previous owner, COMPANY Y d/b/a RESTAURANT currently owes sales taxes, penalties and interest, through November 1, 2003, arising from the operation of the business for the period from January 30, 2001, through May 19, 2003[6], as follows:

Tax	$112,370.33
Penalty	$11,237.05
Interest	$ 18,898.40
TW Fees	$ 452.00
Total	$142,957.78

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is required by statute to refuse the 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.[7]

2. 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 include real property, or an interest therein, tangible personal property, including fixtures, equipment and vehicles, and intangible personal property, including accounts receivable, contracts, business name, business goodwill, customer lists, delivery routes, patents or copyright.[8]

Evidence was presented at the hearing that the Applicant acquired the fixtures and equipment of the previous owner, a leasehold interest in the property from the previous owner, and intended to retain the name of the previous business. The notice of hearing sent to the Applicant at the last known address of the Applicant according to the records of the Oklahoma Tax Commission also complied with statutory due process requirements. The failure of the Applicant to receive actual notice of the hearing shall not invalidate nor be grounds for invalidating any action taken at the hearing or pursuant to the hearing.[9]

It is the conclusion of the undersigned based upon an analysis of the facts and authority cited herein that a substantial portion of the business at issue was acquired from the previous owner, and that a new sales tax permit cannot be issued to the Applicant until the delinquent sales tax balance arising from the previous operation of the business is settled.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case that the application for a sales tax permit 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.

[1]See Exhibit "B".

[2]See Note One.

[3]68 O.S. § 212(b):

> Before any license, permit or duplicate copy thereof may be canceled, or the issuance, reinstatement, or extension thereof refused, the Tax Commission shall give the owner of such license or permit, or applicant therefor, twenty (20) days' notice by registered mail or certified mail with return receipt requested, of a hearing before said Tax Commission, granting said person an opportunity to show cause why such action should not be taken. If the notice of hearing has been mailed as required by this section, failure of the person to have received actual notice of the hearing shall neither invalidate nor be grounds for invalidating any action taken at the hearing or pursuant to the hearing.

[4] The Notice cited the 1991 version of the statute now codified in 68 O.S. § 1364 (H) which states:

> Any person operating under a permit as provided in this article shall, upon discontinuance of business by sale or otherwise, return such permit to the Tax Commission for cancellation, together with a remittance for any unpaid or accrued taxes. Failure to surrender a permit and pay any and all accrued taxes will be sufficient cause for the Tax Commission to refuse to issue a permit subsequently to such person to engage in or transact any other business in this state. In the case of a sale of any business, the tax shall be deemed to be due on the sale of the fixtures and equipment, and the Tax Commission shall not issue a permit to continue or conduct the business to the purchaser until all tax claims due the State of Oklahoma have been settled.

[5]See Note One.

[6]See Exhibit "A". The previous owner also owes taxes for tourism, mixed beverage and withholding in excess of $131,000.00.

[7]See Note 4; *Carlton Southwest, Inc. v. Oklahoma Tax Comm'n.,* 1989 OK CIV APP 40, 781 P. 2d 1192, and Oklahoma Attorney General Opinion 87-53.

[8]*OAC 710:65-9-4.*

[9]See Note 3.