JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-03-29-03
ID:	SJ-04-025-H
DATE:	MARCH 29, 2005
DISPOSITION:	DENIED
TAX TYPE:	SHOW CAUSE, SALES TAX PERMIT
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held on January 18, 2005, at approximately 9:30 a.m. On December 28, 2004, a Notice of Hearing was mailed to the Applicant, pro se,[1] at his last-known address.[2] The Applicant, did not appear at the hearing. The Division called one witness, COMPLIANCE OFFICER, Revenue Compliance Officer II, Notice To Show Cause Section, Collections Division, who testified regarding the records of the Division. The Division's Exhibit A was identified, offered, and admitted into evidence. Upon conclusion of the hearing the record was closed and this case was submitted for decision on January 18, 2005.

FINDINGS OF FACT

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

1. On June 15, 2004, the Oklahoma Tax Commission received a Business Registration signed and dated June 15, 2004, by APPLICANT d/b/a XYZ BUSINESS. Application was made for a sales tax permit to operate a business located at 123 FAKE STREET, ANYTOWN, OK, beginning February 24, 2004.[3]

2. The Business Registration indicates that the Applicant is a new business, which was purchased from the previous owner, OWNER d/b/a XYZS BUSINESS, located at 123 FAKE STREET, ANYTOWN, OK.[4] The registration does not indicate that the Applicant purchased fixtures, equipment, or inventory from the previous owner.[5]

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[1] "Pro se" is defined as "For himself; in his own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court." BLACK'S LAW DICTIONARY 1099 (5th ed. 1979).

[2] The notice was mailed to 123 FAKE STREET, ANYTOWN, OK 12345. The notice was returned to this office unclaimed on January 27, 2005.

[3] Division's Exhibit A.

[4] The court file contains an audit packet, which was forwarded by the Division as part of the protest file on this matter. The Administrative Law Judge is taking judicial notice of the materials contained in the court file for the purpose of completing the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36.

The court file contains a copy of a Business Registration, signed and dated May 30, 2001, OWNER X, for a sales tax permit (####2) on a business named XYZS BUSINESS (a bar), located at 123 FAKE STREET, ANYTOWN OK 12345. The registration also indicates that fixtures, equipment, and inventory were purchased from the previous owner.

3. The Division placed the application for a sales tax permit on hold June 15, 2004, because the previous business at the same address, XYZS BUSINESS, had (and still has) outstanding balances for sales and tourism taxes in the amount of $17,395.11, with interest calculated through January 31, 2005.[6]

4. According to the records of the Division and the Division's witness, the Applicant was assigned the sales tax permit number of ####1, while the application was pending. The Applicant has filed and remitted sales taxes under sales tax permit number ####1 since February 2004.[7]

5. On December 8, 2004, REPRESENTATIVE, appeared on behalf of the Applicant, before the Division on a Notice to Show Cause Docket, and signed a pay plan for the previous owne's liability, but the Applicant did not or could not provide the down payment, so the pay plan was never set up by the Division.[8]

6. On December 28, 2004, a *Notice of Intent to Deny Issuance of Tax Permit or License* was sent by this office, by certified mail, to the Applicant at 123 FAKE STREET, ANYTOWN, OK.[9] The basis of the intended denial was stated as follows:

> Title 68 O.S. 1991, Section 1364(F) prohibits the Oklahoma Tax Commission from issuing a sales tax permit to the purchaser of any ongoing business or concern until all claims for any unpaid and accrued taxes arising from the prior operation of the business or concern have been settled. *Attorney General Opinion No. 87-53.*[10]

The court file also contains a copy of a Business Registration, signed and dated July 23, 2003, by OWNER Y, for a sales tax permit (###2) on a business named ABC BUSINESS (a convenience store), located at 456 ANY STREET, ANYTOWN, OK 12345 The registration also indicates that fixtures and equipment were included in the lease. The social security numbers for OWNER Y and OWNER X. are one and the same.

It appears that due to a scrivener's error, the Division's worksheets indicate that the liability of the previous owner, OWNER Y, is for ABC BUSINESS, the convenience store, not the XYZS BUSINESS (under the same sales tax permit number), but correspondence, and an electronic copy of Tax Warrant STS1 was filed November 24, 2004, against OWNER X d/b/a XYZS BUSINESS. The court file also contains a copy of the comments by the Audit Division, Oklahoma Tax Commission, that a Field Audit was conducted on the XYZS BUSINESS for the period of June 1, 2001, through January 31, 2004.

[5] Division's Exhibit A.

[6] See Note 4.

[7] See Note 4. The court file contains un-filed copies of a zero sales tax report for the period of June 1, 2004, through October 31, 2004, and a zero tourism tax report for the same period. Both reports were signed on behalf of the Applicant by REPRESENTATIVE and undated.

[8] See Note 4.

[9] The notice was returned marked "Unclaimed" and was received in this office on January 27, 2005.

The notice advised the Applicant to appear at a hearing and show cause why the issuance of the permit should not be refused.

7. The Applicant did not respond to the notice or appear at the hearing.

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.[11]

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 copyrights.[12]

The Applicant has failed to meet his burden of proof in this matter. It is evident that the Applicant purchased an on-going business from the previous owner. The previous owner stopped business on January 31, 2004, and the Applicant began business on February 24, 2004. The business (a bar) remained at the same location with the same name. There is no appreciable difference between the name XYZ**S** BUSINESS and XYZ BUSINESS. The Applicant signed a proposed pay plan for the previous owner's liability, which would have enabled him to obtain a sales tax permit, but he did not or could not come up with the down-payment, so the Division did not set up the pay plan and no permit issued.

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 should be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.

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[10] The "notice" has since been corrected to reflect the correct cite of OKLA. STAT. ANN. tit. 68, § 1364(H).

[11] OKLA. STAT. ANN. tit. 68, § 1364(H). See also *Carlton Southwest, Inc. v. Oklahoma Tax Comm'n.,* 1989 OK CIV APP 40, 781 P.2d 1192, and Oklahoma Attorney General Opinion 87-53.

[12] OKLA. ADMIN. CODE § 710:65-9-4 (2004).