JURISDICTION:	**OKLAHOMA TAX COMMISSION DECISION**
CITE:	**2006-10-10-08 / NOT PRECEDENTIAL**
ID:	**JM-06-020-H**
DATE:	**OCTOBER 10, 2006**
DISPOSITION:	**TEMPORARY SUSPENSION OF CIGARETTE WHOLESALER LICENSE**
TAX TYPE:	**TEMPORARY SUSPENSION AND PERMANENT REVOCATION OF CIGARETTE WHOLESALER LICENSE, SALES TAX PERMIT, AND IMPOSITION OF CIVIL FINES AND PENALTIES**
APPEAL:	**NO APPEAL TAKEN**

The above matter comes on for entry by the Oklahoma Tax Commission of an order on request for the temporary suspension of the cigarette wholesaler license and sales tax permit of RESPONDENT. Having reviewed the files and records herein, the Commission hereby adopts the Findings of Fact and Conclusions of Law made and entered by the Administrative Law Judge on the 9th day of October, 2006. Based on the Findings of Fact and Conclusions of Law attached hereto, the Oklahoma Tax Commission hereby orders the temporary suspension of the cigarette wholesaler license of RESPONDENT. The sales tax permit of RESPONDENT is unaffected by this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 3, 2006, the Division filed its "Complaint for Temporary and Permanent Revocation of All OTC-Issued Licenses and Imposition of Fines and Civil Penalties" ("Complaint") with the Office of the Administrative Law Judge. The complaint was verified, under oath, by FIELD REPRESENTATIVE of the Division, on behalf of the Division.

On October 3, 2006, "Findings, Conclusions and Recommendation as to Complainant's Request for Temporary and Permanent Revocation of Respondent's Cigarette Wholesaler License and Sales Tax Permit" ("Findings") was filed in this matter.

On October 3, 2006, Commission Order No. 2006-10-03-03 directing Respondent to appear on Friday, October 6, 2006, at 9:30 a.m. and show cause why Respondent's cigarette wholesaler license and sales tax permit should not be temporarily revoked, pending a hearing upon Division's request for a permanent revocation of Respondent's cigarette wholesaler license and sales tax permit and imposition of penalties for violation of Oklahoma's tax laws, was issued. MEMBER of Respondent, was personally served with copies of the Complaint, Findings, and Order on October 3, 2006.

On October 5, 2006, the Respondent filed a Motion for Continuance requesting that the hearing on the temporary revocation be continued from October 6, 2006, to October 26, 2006. At the scheduled hearing time, Respondent reasserted its Motion for Continuance. The Division objected to Respondent's Motion for Continuance, but agreed to a continuance to the afternoon

of October 6, 2006. Respondent's Motion for Continuance was denied. The hearing was continued to October 6, 2006, at approximately 3:00 p.m.

The show cause hearing was held as scheduled on October 6, 2006, at approximately 3:00 p.m. The Division called three (3) witnesses, SUPERVISOR of the SECTION, Audit Division; FIELD REPRESENTATIVE and FIELD REPRESENTATIVE SUPERVISOR, Collections Division, who testified regarding the records of the Tax Commission pertaining to the licenses of Respondent, the compliance check, and confiscation of cigarettes on September 29, 2006. The Division's Exhibits A through C were identified, offered, and admitted into evidence.

FINDINGS OF FACT

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

1. Respondent is the holder of a cigarette wholesaler license No. XXXXXX and sales tax permit No. XXXXXX.

2. On September 29, 2006, the Division conducted a compliance check of the Respondent's location at ADDRESS, CITY, Oklahoma. Upon entering the location, the Division's representative, FIELD REPRESENTATIVE, identified herself and advised that the Division was conducting a compliance check.

3. During the compliance check, FIELD REPRESENTATIVE discovered cigarette packages to which were attached one-half (1/2) of an Oklahoma Tax Stamp ("Half-Stamped Cigarettes") and two (2) brands of cigarettes ("Skydancers and Senecas") not included in the directory compiled by the Oklahoma Attorney General pursuant to the Oklahoma "Master Settlement Complementary Act" ("MSA Noncompliant Cigarettes").

4. After discovery of the Half-Stamped Cigarettes, the Division proceeded to sample all boxes containing cartons of cigarettes, other than MSA Noncompliant Cigarettes, at the Respondent's licensed location. If a sampled carton contained Half-Stamped Cigarettes, all cartons in the box were included on the Confiscation Inventory List. Division Exhibit "B". According to the testimony of FIELD REPRESENTATIVE, any doubts as to whether a carton of cigarettes should be confiscated was resolved in favor of the Respondent.

5. The Division witnesses testified that the directory listing MSA Compliant Cigarette Brands is found on the Oklahoma Attorney General's website, that they either personally compare the current directory to previous directories to determine what brands are MSA Noncompliant Cigarettes, or are provided the information by supervisors. None of the witnesses knew of any requirement that the Respondent have internet access or of any listing of brands removed from the directory.

6. The brands of MSA Noncompliant Cigarettes discovered during the compliance check were deleted from the directory on August 1, 2006. One brand of the MSA Noncompliant

Cigarettes was physically segregated from the Respondent's cigarette inventory; while the other brand of MSA Noncompliant Cigarettes was intermixed with the Respondent's other cigarette inventory. All cartons of MSA Noncompliant Cigarettes were listed on the Confiscation Inventory List. Division Exhibit "B".

7. The Confiscation Inventory List contains the number of cartons, description or type of cigarette, and the estimated retail value, based on prices provided by the representative of Respondent, of all Half-Stamped Cigarettes and MSA Noncompliant Cigarettes confiscated by the Division. Each page of the Confiscation Inventory List was signed by the Division and a representative of Respondent.

8. The estimated retail value of the cigarettes confiscated from the Respondent on September 29, 2006, is $87,856.63. The estimated retail value of the MSA Noncompliant Cigarettes was calculated as $24,448.46. The estimated retail value of the Half-Stamped Cigarettes was calculated as $63,408.17.

9. Subsequent to the confiscation, FIELD REPRESENTATIVE SUPERVISOR sampled cartons of MSA Noncompliant Cigarettes to determine what kind of stamps, if any, were affixed. All of the MSA Noncompliant Cigarettes sampled were stamped with salmon-colored Oklahoma tax stamps issued prior to January 1, 2005.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding. 68 O.S. § 212.

2. Pursuant to 68 O.S. § 212(a), the violation of any provision of the Uniform Tax Procedure Act, the violation of any state tax law, or violation of the rules and regulations promulgated for the administration and enforcement of any state tax law is grounds for the cancellation of any license issued under any state tax law or other state law.

3. Pursuant to 68 O.S. § 212(d), the Oklahoma Tax Commission may enter its Order, temporarily suspending a license, permanent revocation of which is sought, pending a final hearing upon the revocation of such license.

4. Pursuant to 68 O.S. § 304(G), in addition to any other criminal or civil penalty, upon a finding that a licensee has violated any of the provisions of Section 301 et seq. of Title 68, the Cigarette Tax Stamp Act, the Oklahoma Tax Commission may revoke or suspend any license issued pursuant to the Cigarette Tax Stamp Act.

5. The Respondent was in possession of cigarettes bearing one-half (1/2) of an Oklahoma Cigarette Tax Stamp in violation of 68 O.S. § 317. See also 68 O.S. § 316.

6. In all proceedings before the Tax Commission, the taxpayer has the burden of proof unless otherwise provided by law. In this matter, the Division filed a complaint seeking the

temporary suspension of Respondent's cigarette wholesaler license and sales tax permit pending a hearing on the Division's request for permanent revocation of Respondent's cigarette wholesaler license and sales tax permit, shifting the burden of proof to the Division.

In summary, the Division's Complaint alleges violations by Respondent of the Cigarette Stamp Tax Act, as follows, to-wit:

a. Being in possession of MSA Noncompliant Cigarette Brands which are deemed "contraband" in violation of 68 OS. § 360.4.C.2. See also 68 O.S. §360.7.

b. Being in possession of "counterfeit" cigarettes in violation of 68 O.S. § 316.

The Division has met its burden of proving that Respondent has violated the provisions of the Cigarette Tax Stamp Act by possessing Half-Stamped Cigarettes. The Respondent has failed to come forward and present any evidence and has cited no authority that the Division's request to temporarily suspend Respondent's cigarette wholesaler license and sales tax permit pending a hearing on Division's request for permanent revocation of Respondent's cigarette wholesaler license and sales tax permit should not be granted.

DISPOSITION

It is ordered, based on the specific facts and circumstances of this case, that the Division's request to temporarily suspend the Respondent's cigarette wholesaler license and sales tax permit pending a hearing on the Division's request for permanent revocation of Respondent's cigarette wholesaler license and sales tax permit should be granted.

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.