JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-04-13-02 / NON-PRECEDENTIAL**
ID: **JM-09-003-H**
DATE: **APRIL 13, 2010**
DISPOSITION: **PERMIT REVOKED, PENALTY DENIED**
TAX TYPE: **TOBACCO**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

LLC d/b/a BUSINESS ("Licensee") appears through attorneys, ATTORNEY 1 and ATTORNEY 2, LAW FIRM. The Compliance Division ("Division") of the Oklahoma Tax Commission appears through OTC ATTORNEY, First Deputy General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On October 19, 2009, the Division filed its *Complaint for Revocation/Cancellation of Wholesaler Cigarette and Unstamped Tobacco Licenses, Sales Tax Permit and Beer Permit* ("*Complaint*") with the Office of Administrative Law Judges for proceedings consistent with the *Uniform Tax Procedure Code*[1] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[2]

On October 21, 2009, a *Notice to Show Cause Why the Complaint for Revocation/Cancellation of Your Wholesaler Cigarette and Unstamped Tobacco Licenses, Sales Tax Permit and Beer Permit Should Not Be Ordered* ("*Notice*") was sent by certified mail, return receipt requested, to the Licensee, along with a copy of the Division's *Complaint* advising that a show cause hearing had been set for December 1, 2009, at 9:30 a.m., at which time the Licensee could appear and show cause why the Division's request should not be granted.[3]

On November 23, 2009, ATTORNEY 1 and ATTORNEY 2 filed an Entry of Appearance as Counsel for the Licensee, along with the Licensee's Motion for Continuance. On November 30, 2009, the Division's Objection to 45 Day Continuance Request was filed with the clerk of the court ("Court Clerk")[4] On November 30, 2009, the Order Continuing Hearing was issued striking the hearing from the docket set for December 1, 2009, at 9:30 a.m. and resetting the hearing for December 17, 2010 [sic], at 9:30 a.m.[5] On November 30, 2009 a "Corrected"

[1] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[2] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[3] The *Notice* was sent to the Licensee by certified mail to ADDRESS. The return receipt was signed for on or about October 22, 2009. The name of the individual who signed is illegible.

[4] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 2009).

[5] The Order Continuing Hearing was sent to the Licensee, through Counsel, by certified mail.

Order was issued and sent to Counsel by facsimile correcting the date of the hearing to December 17, 2009, at 9:30 a.m.

On December 16, 2009, pursuant to an agreement between the parties, the Division filed a Continuance Request with the Court Clerk. On December 17, 2009, an Order granting the request was issued continuing the hearing to January 7, 2010, at 9:30 a.m. On December 24, 2009, the *Addendum to Complaint* was filed by the Division with the Court Clerk.

The Show Cause Hearing was held as scheduled on January 7, 2010, at approximately 9:30 a.m. The Licensee, through MANAGER, Manager, appeared at the hearing with ATTORNEY 1. Counsel stipulated to the admission into evidence of Division's Exhibits A through Q and S. No witnesses were called to testify on behalf of the parties; instead, Counsel offered oral argument on the Division's *Complaint* and *Addendum to Complaint.* Upon conclusion of the hearing, the record was closed and the case was submitted for decision on January 7, 2010.

ANNOUNCEMENTS AND STIPULATIONS

At hearing, OTC ATTORNEY announced the Licensee had turned in its "Retail Beer License" prior to hearing, so it was no longer at issue.

The Licensee, through ATTORNEY, also stipulated to "buying unstamped tobacco," that "some of the Licensee's returns were filed late," and the Licensee "owed approximately $13,320.59" for a previously issued assessment which is now final, but which is not part of the record.

Counsel stipulated to the identification, offer, and admission into evidence of Division's Exhibits A through Q, and S.

The Administrative Law Judge took judicial notice that the Division had filed a Tax Warrant against the Licensee during January 2010 for $132,691.58.[6]

During oral argument, ATTORNEY stated the Licensee is prepared to:

- Forfeit Tobacco License;
- Enter installment payment plan to retain Cigarette License until end of probationary period; and
- Request to retain Sales Tax Permit.

[6] *See* Note 7, *infra.*

FINDINGS OF FACT

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

1. The Licensee[7] is the holder of a Wholesaler[8] Cigarette License,[9] an Unstamped Tobacco License, and a Sales Tax Permit, issued by the Tax Commission with effective dates of March 2, 2009. The Licensee's Retail Beer License was surrendered prior to hearing and is no longer at issue.

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[7] The Administrative Law Judge is taking judicial notice of the Oklahoma Secretary of State's website at https://www.sooneraccess.state.ok to complete the factual details and background of this matter. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999). According to the Oklahoma Secretary of State's website, the Licensee was registered with an effective date of February 20, 2009, and MANAGER as its Registered Agent.

[8] OKLA. STAT. ANN. tit. 68, § 301(3) (West Supp. 2010):

> The term "wholesaler", …is defined to mean and include a person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes to, and render service to retailers in the territory such person, firm or corporation chooses to serve, and that:
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> a. purchases cigarettes directly from the manufacturer,
> b. at least seventy-five percent (75%) of whose gross sales are made at wholesale,
> c. handles goods in wholesale quantities and sells through salespersons, advertising and/or sales promotion devices,
> d. carries at all times at its principal place of business a representative stock of cigarettes for sale, and
> e. comes into the possession of cigarettes for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail such cigarettes to consumers.
>
> In addition to the foregoing, and irrespective of the percentage or type of sales, the term "wholesaler", …shall also include all purchasers of cigarettes making purchases directly from the manufacturer for distribution at wholesale or retail sale and this shall not affect the requirements relating to retail licenses;

OKLA. STAT. ANN. tit. 68, § 401(c) (West Supp. 2001):

> The word "wholesaler" shall include dealers whose principal business is that of a wholesale dealer or jobber, and who is known to the trade as such, who shall sell any cigars or tobacco products to licensed retail dealers only for the purpose of resale, or giving them away, or exposing the same where they may be taken or purchased, or otherwise acquired by the retailer.

[9] OKLA. STAT. ANN. tit. 68, § 301(1) (West Supp. 2010):

> The term "cigarette" is defined to mean and include all rolled tobacco or any substitute therefor, wrapped in paper or any substitute therefor and weighing not to exceed three (3) pounds per thousand cigarettes;

2. The Licensee filed its monthly Cigarette Tax Reports ("Cigarette Reports") as follows, to-wit:

Month	Due Date	Date Filed	Days Late
March 09	04/10/09	04/10/09	0
April 09	05/11/09	05/18/09	7[10]
May 09	06/10/09	06/17/09	7[11]
June 09	07/10/09	07/14/09	4[12]
July 09	08/10/09	08/17/09	7
August 09	09/10/09	09/16/09	6
Sept. 09	10/12/09	10/19/09	7[13]
Oct. 09	11/10/09	11/23/09	13
Nov. 09	12/10/09	12/23/09	13[14]

3. Pursuant to a "Subpoena Duces Tecum," the Division received information from DEALER the Licensee had purchased untaxed tobacco products[15] during March 2009 totaling $394.12.[16]

4. The Licensee's March 2009 Oklahoma Tobacco Products Tax Reports ("Tobacco Reports") failed to report the purchase of untaxed tobacco products from DEALER totaling $394.12.[17]

5. The Division received information the Licensee had purchased 3,560[18] packs of unstamped Grand Prix cigarettes totaling $7,557.88 from STATE 1 DEALER, STATE 1

[10] Division's Exhibit N.

[11] Division's Exhibit O.

[12] Division's Exhibit P. The exhibit is not date stamped. It is dated July 14, 2009, and reflects the auditor received it July 20, 2009, so the Licensee gets the benefit of the doubt on this filing.

[13] Division's Exhibit Q.

[14] Division's Exhibit S.

[15] OKLA. STAT. ANN. tit. 68, § 401(g) (West 2001):

> The words "tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing), however prepared; and shall include any other articles or products made of tobacco or any substitute therefor.

[16] Division's Exhibit G.

[17] Division's Exhibit H.

[18] Division's Exhibit I. The Division's Complaint contains a typographical error. The invoice is for the purchase of 3,560 packs, not 13,560 packs.

ADDRESS, during May 2009, in violation of Section 305(A) of Title 68.[19] STATE 1 DEALER is neither the manufacturer of Grand Prix cigarettes nor an importer of Grand Prix cigarettes who possesses a valid and current permit under Section 5712 of Title 26 of the United States Code.[20]

6. The Division received information from the STATE 2 Department of Revenue ("XDR") the Licensee had purchased untaxed tobacco products from STATE 2 DEALER, STATE 2 ADDRESS, during July 2009 totaling $35,492.63.[21]

7. The Licensee's July 2009 Oklahoma Tobacco Products Reports ("Tobacco Reports") failed to report the purchase of untaxed tobacco products from STATE 2 DEALER for $35,492.63.[22]

8. The Division received information the Licensee had purchased 17,400[23] packs of unstamped Grand Prix cigarettes totaling $37,131.60 from STATE 1 DEALER, STATE 1 ADDRESS, during July 2009 in violation of Section 305(A) of Title 68.[24] STATE 1 DEALER is neither the manufacturer of Grand Prix cigarettes nor an importer of Grand Prix cigarettes who possesses a valid and current permit under Section 5712 of Title 26 of the United States Code.[25]

9. The Licensee is authorized to file its sales tax reports on a semi-annual basis. Licensee's first sales tax report was due on July 20, 2009. At the hearing, the Licensee did not produce proof that a zero sales tax report had been filed for the first half of 2009.[26]

10. The Division received information from XDR the Licensee had purchased untaxed tobacco products from STATE 2 DEALER, during August 2009 totaling $205,888.87.[27]

11. The Licensee's August 2009 Tobacco Report failed to report the purchase of untaxed tobacco products from STATE 2 DEALER totaling $205,888.87.[28]

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[19] OKLA. STAT. ANN. tit. 68, § 305(A) (West 2001).

[20] 26 U.S.C.A. § 5712.

[21] Division's Exhibit A.

[22] Division's Exhibit B.

[23] Division's Exhibit J.

[24] *See* Note 19, *supra*.

[25] *See* Note 20, *supra*.

[26] ATTORNEY 1 indicated the Licensee had filed the semi-annual sales tax report indicating zero sales.

[27] Division's Exhibit D.

[28] Division's Exhibit E.

12. The Division received information from XDR the Licensee had purchased unstamped tobacco products from STATE 2 DEALER, during October 2009 totaling $89,899.86.[29]

13. The Licensee's October 2009 Tobacco Report failed to report the purchase of unstamped tobacco products from STATE 2 DEALER totaling $89,899.86.[30]

14. On October 13, 2009, the Division issued a proposed Tobacco Tax Assessment against the Licensee for July, 2009,[31] as follows, to-wit:

Tax:	$23,409.77
Interest through 12/15/09:	1,170.96
Tax and Interest Due Within 60 Days:	$24,580.72
Delinquent Penalty @ 10%:	2,340.98
Tax, Interest & Penalty Due After 60 Days:	$26,921.70

15. On October 13, 2009, the Division issued a proposed Tobacco Tax Assessment against the Licensee for August, 2009[32] as follows, to-wit:

Tax:	$101,792.71
Interest through 12/15/09:	3,797.89
Tax and Interest Due Within 60 Days:	$105,590.60
Delinquent Penalty @ 10%:	10,179.27
Tax, Interest & Penalty Due After 60 Days:	$115,769.87

16. On October 21, 2009, the *Notice* was sent to the Licensee by certified mail, return receipt requested.[33] The *Notice* advised the Licensee that a hearing had been scheduled for December 1, 2009, at 9:30 a.m. at which time the Licensee could appear and show cause why the Division's *Complaint* should not be granted. A copy of the Division's *Complaint* was enclosed with the *Notice*.[34]

[29] Division's Exhibit K.

[30] Division's Exhibit L.

[31] Division's Exhibit C. The Licensee did not protest the proposed assessment and it is final.

[32] Division's Exhibit F. The Licensee did not protest the proposed assessment and it is final.

[33] *See* Note 3, *supra.*

[34] *See* Procedural History herein.

17. On December 2, 2009, the Division issued a proposed Tobacco Tax Assessment against the Licensee for October 2009[35] as follows, to-wit:

Tax:	$53,732.24
Interest through 01/31/10:	2,004.75
Tax and Interest Due Within 60 Days:	$55,736.99
Delinquent Penalty @ 10%:	5,373.22
Tax, Interest & Penalty Due After 60 Days:	$61,110.22

18. On December 16, 2009, pursuant to an agreement between the parties, the Division filed a Continuance Request with the Court Clerk. On December 17, 2009, an Order granting the request was issued continuing the hearing to January 7, 2010, at 9:30 a.m. On December 24, 2009, the Division filed an *Addendum to Complaint*.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[36] On October 21, 2009, the *Notice* was sent to the Licensee by

[35] Division's Exhibit M.

[36] OKLA. STAT. ANN. tit. 68, § 212 (West 2001), which states in pertinent part:

> (a) The Tax Commission is authorized to cancel or to refuse the issuance, extension or reinstatement of any license, permit or duplicate copy thereof, under the provisions of any state tax law or other law, to any person, firm, or corporation who shall be guilty of:
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> (1) Violation of any of the provisions of this article;
> (2) Violation of the provisions of any state tax law;
> (3) Violation of the rules and regulations promulgated by the Tax Commission for the administration and enforcement of any state tax law, or
> (4) Failure to observe or fulfill the conditions upon which the license or permit was issued, or
> (5) Nonpayment of any delinquent tax or penalty.
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> (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 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.
>
> …

See OKLA. ADMIN. CODE § 710:1-5-100 (June 25, 1999):

> When a Tax Division contests the taxpayer's compliance with State tax laws or Commission Rules, the Division may cause notice to be issued to the taxpayer requiring him to appear before the Administrative Law Judge or an Administrative Hearing Officer to show why his license or permit should not be cancelled. The notice shall contain a date certain for the hearing. Failure to appear at the hearing may result in the cancellation of license or permit. The taxpayer may represent himself or be represented by an attorney, an accountant or other representative approved by the Commission. The taxpayer is to bring all reports and payments

certified mail return receipt requested, giving the Licensee the requisite twenty (20) day notice of the hearing. On December 17, 2009, an Order granting the parties' request was issued continuing the hearing to January 7, 2010, at 9:30 a.m.

2. Pursuant to Section 212(a) of Title 68, the violation of any provision of the *Uniform Tax Procedure Act*,[37] 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.[38]

3. The Tax Commission has promulgated rules, as provided by law, to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to cigarettes,[39] tobacco, and tobacco products.[40]

4. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[41]

5. In addition to any other criminal or civil penalty, upon a finding that a licensee has violated any of the provisions of the Cigarette Tax Stamp Act ("Cigarette Act"),[42] the Tax Commission may revoke or suspend any license issued pursuant to the Cigarette Act.[43]

6. Whoever knowingly omits, neglects, or refuses to comply with any duty imposed upon the person by the Cigarette Act, or to do, or cause to be done, any of the things required by the Cigarette Act, or does anything prohibited by the Cigarette Act, shall, in addition to any other penalty provided in the Cigarette Act, pay an administrative penalty of One Thousand Dollars ($1,000.00).[44]

> for delinquent taxes, penalty and interest to the hearing. Evidence and testimony of witnesses may be presented at the hearing.

See also OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2010).

[37] *See* Note 1.

[38] *See* Note 36, *supra*.

[39] OKLA. STAT. ANN. tit. 68, § 322 (West 2001). *See* OKLA. ADMIN. CODE § 710:70-2-1 (May 13, 2004).

[40] OKLA. STAT. ANN. tit. 68, § 420 (West 2001). *See* OKLA. ADMIN. CODE § 710:70-1-1.

[41] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002).

[42] OKLA. STAT. ANN. tit. 68, § 301 et seq. (West 2001).

[43] OKLA. STAT. ANN. tit. 68, § 324 (West 2001).

[44] OKLA. STAT. tit. 68, § 316(H) (West Supp. 2008).

7. The Tax Commission is authorized to cancel or to refuse the issuance, extension or reinstatement of any license, permit or duplicate copy thereof, under the provisions of any state tax law or other law, to any person, firm, or corporation who shall be guilty of:

(1) Violation of any of the provisions of the *Uniform Tax Procedure Code*;

(2) Violation of the provisions of any state tax law;

(3) Violation of the rules and regulations promulgated by the Tax Commission for the administration and enforcement of any state tax law, or

(4) Failure to observe or fulfill the conditions upon which the license or permit was issued, or

(5) Nonpayment of any delinquent tax or penalty.[45]

8. No cigarette license shall be granted, maintained, or renewed pursuant to Tax Commission Rules and the Cigarette Act, if any owner of an interest of ten (10) percent in the applicant, or holder of a license, meets any of the following conditions:

(1) Applicant owes Five Hundred Dollars ($500.00) or greater in cigarette taxes that are delinquent;

(2) Applicant has been convicted of a crime relating to or for receiving stolen or counterfeit cigarettes;

(3) Applicant is a manufacturer, and is not a participating manufacturer as defined in 37 O.S. § 600.22;

(4) Applicant is not a participating manufacturer as defined 37 O.S. § 600.22 and is not in full compliance with 37 O.S. § 600.23(A).

(5) Applicant is a manufacturer, and cigarettes have been imported into the United States by the applicant in violation of 19 U.S.C. § 1681a; or,

(6) Applicant is a manufacturer and has manufactured or imported into the United States, cigarettes that do not fully comply with the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq. [68 O.S. § 304(E)]

In addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provisions of 68 O.S. § 301 et seq., the Tax Commission may revoke or suspend the license or licenses of the licensee pursuant to the procedures applicable to revocation of a license set forth in 68 O.S. § 316. [68 O.S. § 304(G)][46]

[45] *See* Note 36, *supra*.

[46] OKLA. ADMIN. CODE § 710:70-2-4 (May 13, 2004).

9. Cigarette Reports are to be filed no later than the tenth (10th) day of each calendar month.[47]

10. The Oklahoma Tobacco Products Act[48] ("Tobacco Act") provides that "[a]ll…, wholesalers,[49]…selling or distributing such tobacco products[50] under the three (3) preceding Sections shall comply with the provisions of such Sections, and the rules and regulations of the Oklahoma Tax Commission as to such sale or distribution, and failure to so comply shall constitute grounds for revocation of any license issued to said…, wholesaler, …by the Tax Commission."[51]

11. 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 its *Complaint* seeking the revocation/cancellation of the Licensee's Wholesaler Cigarette and Unstamped Tobacco Licenses and Sales Tax Permit and imposition of fines and civil penalties, shifting the burden of proof to the Division.

DISCUSSION

The grounds for the Division's *Complaint* and *Addendum to Complaint* can be summarized as follows, to-wit:

(1) Licensee has consistently failed to timely file its monthly Cigarette Reports;

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[47] OKLA. STAT. ANN. tit. 68, § 312 (West 2001). *See* OKLA. STAT. tit. 68, § 312.1 (West Supp. 2008).

[48] OKLA. STAT. ANN. tit. 68, § 401 et seq. (West 2001). The purpose of the tax is to provide revenue for the expense of the state government. *See* OKLA. STAT. ANN. tit. 68, § 404 (West 2001).

[49] OKLA. STAT. ANN. tit. 68, § 401(d) (West 2001):

> The word "retailer" shall include every dealer, other than a wholesale dealer as defined above, whose principal business is that of selling merchandise at retail, who shall sell, or offer for sale, cigars or tobacco products, irrespective of quantity, number of sales, giving the same away or exposing the same where they may be taken, or purchased, or otherwise acquired by the consumer.

[50] OKLA. STAT. ANN. tit. 68, § 401(g) (West 2001):

> The words "tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing), however prepared; and shall include any other articles or products made of tobacco or any substitute therefor.

See Note 15, *supra*.

[51] OKLA. STAT. ANN. tit. 68, § 422 (West 2001).

(2) Licensee made numerous purchases of untaxed tobacco and other tobacco products without reporting the purchases and remitting the tax due thereon. The tax on such purchases is estimated by Division as exceeding $178,000.00;

(3) Licensee purchased cigarettes from other than a manufacturer or an importer who possesses a valid and current permit under Section 5712 of Title 26 of the United States Code; and

(4) Licensee is delinquent in the filing of its semi-annual sales tax report.

The Division maintains these violations evidence a course of conduct, as described, such that the suspension of Licensee's Wholesaler Cigarette and Unstamped Tobacco Licenses and Sales Tax Permit is inappropriate; only revocation and cancellation of the licenses and permit will insure that the Licensee will no longer violate the Cigarette and Tobacco Acts and Sales Tax Code and the rules promulgated by the Tax Commission for the enforcement of the aforementioned statutes.

The Licensee does not dispute the allegations in the Division's *Complaint* and *Addendum to Complaint*. The Licensee is prepared to:

- Forfeit Tobacco License;
- Enter installment payment plan to retain Cigarette License until end of probationary period; and
- Request to retain Sales Tax Permit.

The Licensee purchased 20,960 packs of unstamped cigarettes from STATE 1 WHOLESALER, which is neither the manufacturer of Grand Prix cigarettes nor an importer of Grand Prix cigarettes which possesses a valid and current permit under Section 5712 of Title 26 of the United States Code. The Division has not assessed the Licensee for all if its violations, but based upon the assessments which are part of the record,[52] the total liability is as follows, to-wit:

Tobacco Tax:	$178,934.72
Interest through 12/15/09:	4,968.85
Interest through 01/31/10:	2,004.75
Delinquent Penalty @ 10%:	17,893.47
Total:	$203,801.79

The troubling aspects of the Licensee's violations, late-filings aside, are the frequency and magnitude of the Licensee's violations since it began business in March 2009. The Division has met its burden of proof that the Licensee's Wholesale Cigarette and Unstamped Tobacco Licenses and Sales Tax Permit should be revoked and/or cancelled.

[52] The Licensee acknowledges it also owes approximately $13,320.59 for an assessment which is not part of the record.

The Tax Commission has found in a proceeding with proper notice given to the Licensee the imposition of an administrative penalty pursuant to Section 316(H) of Title 68 for violation of the Act could be imposed.[53] In this matter, the Division gave the proper notice to the Licensee fines and penalties could be imposed. The monthly Cigarette Reports at issue were filed late (except March 2009), but the majority of the late filed reports were filed no more than seven (7) days late.

The Division has not met its burden of proof that the imposition of administrative penalties for each of the Licensee's failure to file its monthly Cigarette Reports is warranted in this matter.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based on the facts and circumstances of this case, the Licensee's Wholesaler Cigarette and Unstamped Tobacco Licenses and Sales Tax Permit should be revoked and/or cancelled.

It is further the ORDER of the OKLAHOMA TAX COMMISSION, based on the facts and circumstances of this case, an administrative penalty of $1,000.00 for each violation of the Licensee for the failure to file its monthly Cigarette Reports 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.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."

[53] OKLA. STAT. ANN. tit. 68, § 316(H) (West 2001).