JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2011-01-13-02 / NON-PRECEDENTIAL**
ID: **JM-10-006-H**
DATE: **JANUARY 13, 2011**
DISPOSITION: **FINES IMPOSED, LICENSES REVOKED**
TAX TYPE: **LICENSE REVOCATION**
APPEAL: **NO APPEAL TAKEN**

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 22nd day of November, 2010, the Commission makes the following Findings of Fact and Conclusions of Law and enters the following order.

PROCEDURAL HISTORY

On September 3, 2010, the Compliance Division of the Oklahoma Tax Commission filed its *Verified Complaint* ("*Complaint*")[1] with the Office for Administrative Law Judges for proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[3] The verification attached to the *Complaint* was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Compliance Division, Oklahoma Tax Commission.[4] On September 7, 2010, the Determination of Administrative Law Judge Upon Verified Complaint, Which Seeks Immediate, Temporary Suspension and Permanent Cancellation/Revocation of the Cigarette and Tobacco Products Retail Licenses of LLC was issued by Administrative Law Judge ALJ.

On September 9, 2010, the Order of the Oklahoma Tax Commission Imposing Immediate, Temporary Suspension of Cigarette and Tobacco Products Retail Licenses of LLC was issued by the Commissioners. On September 9, 2010, the Notice to Show Cause Why Temporary Suspension of the Cigarette and Tobacco Products Retail Licenses of LLC Should Not Continue and Remain in Force and Effect Until a Final Hearing Upon the Relief Requested by the Verified Complaint Filed Herein ("Notice of Temporary Suspension") was issued setting

[1] Attached to the Division's *Complaint* were the following "Collective" exhibits:

- Exhibit dated January 23, 2009
- Exhibit dated November 10, 2009
- Exhibit dated July 6, 2010
- Exhibit dated July 14, 2010
- Exhibit dated August 12, 2010

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

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

[4] *See* OKLA. ADMIN. CODE § 710:1-5-28(c).

the hearing for September 17, 2010, at 9:30 a.m. On September 9, 2010, the Notice to Show Cause Why Permanent Cancellation and Revocation of the Cigarette, Tobacco Products and Beer Retail Licenses and Sales Tax Permit of LLC Should Not Be Ordered, as Requested by Verified Complaint ("Notice of Permanent Revocation") was issued setting the hearing for September 30, 2010, at 2:30 p.m.

On September 10, 2010, the Certificate of Personal Service of the Notice of Temporary Suspension and Notice of Permanent Revocation was filed with the Court Clerk.[5] On September 10, 2010, the Certificate of Service by Certified Mail of the Notice of the Temporary Suspension and Notice of Permanent Revocation was filed with the Court Clerk.

On September 15, 2010, ATTORNEY filed an Entry of Appearance as Counsel of record for the Respondent.

On September 15, 2010, the Notice of Mootness of Scheduled Show Cause Hearing on the Temporary Suspension was filed with the Court Clerk. On September 15, 2010, the Order striking from the docket the hearing set for September 17, 2010, on the Notice of Temporary Suspension was issued. The hearing on the Notice of Permanent Revocation remained set for September 30, 2010, at 2:30 p.m. On September 15, 2010, proof of service on both Notices by certified mail return receipt requested (XXXX) was filed with the Court Clerk.[6]

On September 30, 2010, Stipulation to Allegations of the Complaint, Waiver of Hearing and Notice, and Consent to Entry of Relief Requested by Complaint was filed with the Court Clerk.

The record in this matter was closed and this case was submitted for decision on October 14, 2010.

STIPULATION TO ALLEGATIONS OF THE COMPLAINT, WAIVER OF HEARING AND NOTICE, AND CONSENT TO ENTRY OF RELIEF REQUESTED BY COMPLAINT

On September 30, 2010, the parties entered the following stipulation,[7] waiver, and consent to entry of relief:

1. **Stipulation to allegations of Complaint.** Respondent, LLC hereby stipulates to each and every of the allegations of the Complaint on file herein, and further that service has been made upon LLC, as required by statute and Rule, vesting this Tribunal with jurisdiction of LLC.

[5] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

[6] On September 13, 2010, the "green card" was signed on behalf of the Respondent by REPRESENTATIVE.

[7] The stipulations, as filed by the parties, are set out verbatim.

2. **Waiver of hearing and notice.** Respondent, LLC hereby waives hearing, and notice and consents to entry of relief upon the Complaint herein, instanter, and without hearing or notice thereof.

3. **Consent to entry of relief in absentia.** Respondent, LLC hereby consents to entry of relief upon the Complaint herein, in the absence of Respondent, pursuant to its waiver herein of hearing and notice.

4. **Consent to entry of relief as prayed for by Complaint.** Respondent, LLC hereby consents to entry of relief upon the Complaint herein, as prayed for by said Complaint, in the absence of Respondent, pursuant to its waiver herein of hearing and notice and consent to entry, in absentia, of the relief sought by the Complaint filed herein.

5. **No monetary fine or penalty to be imposed upon LLC'S principals.** Complainant stipulates that the Complaint herein does not seek imposition or collection of monetary fine or penalty against LLC'S principals, but only as against Respondent, LLC.

6. **LLC'S principals subject to disqualification to receive another license pursuant to the provisions of 68 O.S. §§ 301, et seq. for a period of ten (10) years, pursuant to 68 O.S. § 316.F..** Respondent, LLC stipulates that its principals are subject to disqualification to received another license pursuant to the provisions of 68 O.S. §§ 301, et seq. for a period of ten (10) years from the date of adjudication of Respondent's third violation of 68 O.S. § 316.D., pursuant to 68 O.S. § 316.F..

7. **LLC'S stipulation as to the identity of its principals.** Respondent, LLC hereby stipulates that the identity of its principals, who are subject to disqualification to receive another license pursuant to the provisions of 68 O.S. §§ 301 et seq. for a period of ten (10) years from the date of adjudication of Respondent's third violation of 68 O.S. § 316.D., pursuant to 68 O.S. § 316.F., are:

PRINCIPAL 1, a/k/a ALIAS 1, a/k/a ALIAS 2
(Respondent does not stipulate that the above principal has used the above aliases)

PRINCIPAL 2

8. **LLC'S stipulation to specification of the identity of its principals in Dispositive Order herein for purposes of disqualification of principals to receive another license pursuant to the provisions of 68 O.S. §§ 301, et seq., pursuant to 68 O.S. § 316.F..** Respondent, LLC , hereby agrees and stipulates that the identity of its principals:

PRINCIPAL 1, a/k/a ALIAS 1, a/k/a ALIAS 2
(Respondent does not stipulate that the above principal has used the above aliases)

PRINCIPAL 2

may be and will be specified in the Dispositive Order entered herein, for purposes of disqualification of the aforesaid principals to receive another license pursuant provisions of 68 O.S. §§ 301, et seq., pursuant to 68 O.S. § 316.F.

Wherefore, having thus so stipulated and agreed, the parties agree that a Dispositive Order may be entered herein, in absentia, and without hearing and notice, all in accordance with the above and foregoing Stipulation.

FINDINGS OF FACT

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

9. Respondent currently holds a retail cigarette license, ######, and retail tobacco license, ######. Additionally, Respondent holds a retail beer license, ######, and a sales tax license, ######.

10. Respondent operated a convenience store, doing business as "STORE, ADDRESS. OTC records, true copies of which are attached to the Complaint as a separate Collective Exhibit thereto, establish seizures of non-tax paid cigarettes and other tobacco products, as well as sale of cigarettes in lots less than a pack have been made at Respondent's business premises as follows:

> (a) January 23, 2009: unstamped cigarettes (276 packs, 27.6 cartons), sales of single cigarettes and other tobacco products ("OTP") without proof of payment of tax.[8]
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> (b) November 10, 2009: unstamped cigarettes (261 packs, 26.1 cartons) and OTP without proof of tax payment.[9]
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> (c) July 6, 2010: A total of 140 packs: unstamped cigarettes (138 packs, 13.8.0 cartons), sales of single cigarettes and sales of cigarettes bearing tribal (reduced rate) tax stamps (2 packs).[10]
>
> (d) July 14, 2010: unstamped cigarettes (13 packs, 1.3 cartons) and OTP without proof of tax payment.[11]

[8] Division's Collective Exhibit January 23, 2009. The estimated value of confiscated cigarettes is $1,069.83 and the estimated value of the confiscated OTP is $1,084.40.

[9] Division's Collective Exhibit November 10, 2009. The estimated value of confiscated cigarettes is $1,036.16 and the estimated value of the OTP is $1,469.62.

[10] Division's Collective Exhibit July 6, 2010. The estimated value of the confiscated cigarettes is $500.18.

[11] Division's Exhibit July 14, 2010. The estimated value of the confiscated cigarettes is $44.20 and the OTP is $78.00.

(e) August 12, 2010: sales of unstamped cigarettes: Total, 809 packs, 80.9 cartons (59 packs, 5.9 cartons, in store and 75 cartons in trunk of a nearby vehicle [accessed by a search warrant].[12]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[13] On September 9, 2010, the Notice of Permanent Revocation

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[12] Division's Exhibit August 12, 2010. The estimated value of the confiscated cigarettes is $2,731.10. ALIAS 2 executed a COUNTY Sheriff's Office Witness Statement, which states as follows, to-wit:

> I pick up the cigarettes unstamped from DISTRIBUTOR. They sell it at a discounted price of $25.00. They would sell it any time, as there is no specific times to purchase them. We keep some in the black Acura in the trunk and sell them by the cartoons to the customers. I have picked up other tobacco products from DISTRIBUTOR at a discounted price without any kind of invoice. I truly understand it is a big mistake and we will never ever sell unstamped cigs again.

The 2001 black Acura, VIN ########, Tag ###### referred to in the Witness Statement was confiscated by the COUNTY Sheriff's Office.

[13] 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;
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> (2) Violation of the provisions of any state tax law;
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> (3) Violation of the rules and regulations promulgated by the Tax Commission for the administration and enforcement of any state tax law, or
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> (4) Failure to observe or fulfill the conditions upon which the license or permit was issued, or
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> (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.
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> …

See OKLA. ADMIN. CODE § 710:1-5-100:

> 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

was issued setting the hearing for September 30, 2010, at 2:30 p.m. On September 10, 2010, the Certificate of Personal Service of the Notice of Permanent Revocation was filed with the Court Clerk.[14] On September 10, 2010, the Certificate of Service by Certified Mail of the Notice of Permanent Revocation was filed with the Court Clerk.

2. It shall be unlawful for any person to sell or consume cigarettes on which the tax, as levied by the Oklahoma Cigarette Tax Stamp Act[15] ("Cigarette Act"), has not been paid, and which are not contained in packages to which are securely affixed the stamps evidencing payment of the tax imposed by the Cigarette Act.[16]

3. The Cigarette Act provides that "[i]n addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provision of [the Cigarette Act], 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 Section 316 of [the Cigarette Act]".[17]

> representative approved by the Commission. The taxpayer is to bring all reports and payments for delinquent taxes, penalty and interest to the hearing. Evidence and testimony of witnesses may be presented at the hearing.

[14] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

[15] OKLA. STAT. ANN. tit. 68, § 301 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, § 303 (West 2001).

[16] OKLA. STAT. ANN. tit. 68, § 305(C) (West Supp. 2010).

[17] OKLA. STAT. ANN. tit. 68, § 304 (G) (West Supp. 2006):

> In addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provision of Section 301 et seq. of this title, 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 Section 316 of this title.

OKLA. STAT. ANN. tit. 68, § 316 (West Supp. 2010):

> A. Any person, other than a consumer, who shall:
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> 1. Sell, offer for sale or present as a prize or gift cigarettes without a stamp being then and there affixed to each individual package;
>
> 2. Sell cigarettes in quantities less than an individual package;
>
> 3. Knowingly cancel or mutilate any stamp affixed to any individual package of cigarettes for the purpose of concealing any violation of Section 301 et seq. of this title or with any other fraudulent intent;
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> 4. Use any artful device or deceptive practice to conceal any violation of Section 301 et seq. of this title;
>
> 5. Refuse to surrender to the Oklahoma Tax Commission upon demand any cigarettes possessed in violation of any provision of Section 301 et seq. of this title; or
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> 6. Knowingly or intentionally make a first sale of cigarettes without a stamp being then and there affixed to each individual package; shall be fined not more than Two Hundred Dollars ($200.00), where specific penalties are not otherwise provided.

B. Any consumer, who shall:

1. Sell, offer for sale or present as a prize or gift cigarettes without a stamp being then and there affixed to each individual package;

2. Knowingly consume, use or smoke any cigarettes upon which a tax is required to be paid without a stamp being affixed upon each individual package;

3. Knowingly cancel or mutilate any stamp affixed to any individual package of cigarettes for the purpose of concealing any violation of the Cigarette and Tobacco Products Tax Codes or with any other fraudulent intent;

4. Use any artful device or deceptive practice to conceal any violation of the Cigarette and Tobacco Products Tax Codes; or

5. Refuse to surrender to the Tax Commission upon demand any cigarettes possessed in violation of any provision of Section 301 et seq. of this title,

shall be fined not more than Two Hundred Dollars ($200.00), where specific penalties are not otherwise provided.

C. Any wholesaler, retailer or distributing agent who shall intentionally:

1. Commit any of the acts specifically enumerated in subsection A of this section, where such acts are applicable to such person;

2. Sell any cigarettes upon which tax is required to be paid by Section 301 et seq. of this title without at the time of making such sale having a valid license;

3. Make a first sale of cigarettes without at the time of first sale having a license posted so as to be easily seen by the public; or

4. Fail to deliver an invoice required by law to a purchaser of cigarettes;

shall be punished by an administrative fine of not more than Ten Thousand Dollars ($10,000.00) for the first offense, and not more than Twenty-five Thousand Dollars ($25,000.00) for the second offense, where specific penalties are not otherwise provided.

D. Any distributing agent who shall:

1. Commit any of the acts specifically enumerated in subsections A and B of this section where such provisions are applicable to such distributing agent; or

2. Store any unstamped cigarettes in the state or deliver or distribute any unstamped cigarettes within this state, without at the time of storage or delivery having a valid license posted so as to be easily seen by the public;

shall be punished by an administrative fine of not more than Ten Thousand Dollars ($10,000.00) for the first offense, and not more than Twenty-five Thousand Dollars ($25,000.00) for the second offense.

E. Any retailer violating the provisions of Section 301 et seq. of this title may:

1. For a first offense, be punished by an administrative fine of not more than One Hundred Dollars ($100.00);

2. For a second offense, be punished by an administrative fine of not more than One Thousand Dollars ($1,000.00); and

3. For a third or subsequent offense, be punished by an administrative fine of not more than Five Thousand Dollars ($5,000.00).

F. Any wholesaler violating the provisions of Section 305.1 of this title shall:

1. For a first offense, be punished by an administrative fine of not more than Five Thousand Dollars ($5,000.00); and

2. For a second or subsequent offense, be punished by an administrative fine of not more than Twenty Thousand Dollars ($20,000.00).

Administrative fines collected pursuant to the provisions of this subsection shall be deposited to the revolving fund created in Section 305.2 of this title.

G. The Tax Commission shall immediately revoke the license of a person punished for a violation pursuant to the provisions of paragraph 3 of subsection E of this section or a person punished for a violation pursuant to the provisions of subsection F of this section. A person whose license is so revoked shall not be eligible to receive another license pursuant to the provisions of Section 301 et seq. of this title for a period of ten (10) years.

H. Whoever, with intent to defraud Oklahoma:

1. Fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by Section 301 et seq. of this title or rules promulgated thereunder;

2. Refuses to pay any tax imposed by Section 301 et seq. of this title, or attempts in any manner to evade or defeat the tax or the payment thereof; or

3. Fails to comply with any requirement of Section 301 et seq. of this title;

shall, for each such offense, be punished with an administrative fine of not more than Ten Thousand Dollars ($10,000.00).

I. Whoever knowingly omits, neglects, or refuses to comply with any duty imposed upon the person by Section 301 et seq. of this title, or to do, or cause to be done, any of the things required by Section 301 et seq. of this title, or does anything prohibited by Section 301 et seq. of this title, shall, in addition to any other penalty provided in Section 301 et seq. of this title, pay an administrative fine of One Thousand Dollars ($1,000.00).

J. Whoever fails to pay any tax imposed by Section 301 et seq. of this title at the time prescribed by law or rules, shall, in addition to any other penalty provided in Section 301 et seq. of this title, be liable to a penalty of five hundred percent (500%) of the tax due but unpaid.

K. 1. All cigarettes which are held for sale or distribution within the borders of Oklahoma, in violation of the requirements of Section 301 et seq. of this title, and the machinery used to manufacture counterfeit cigarettes shall be forfeited to Oklahoma. All cigarettes and machinery forfeited to Oklahoma under this paragraph shall be destroyed.

2. All fixtures, equipment, and all other materials and personal property on the premises of any distributor or retailer who, with intent to defraud the state, fails to keep or make any record, return, report, or inventory; keeps or makes any false or fraudulent record, return, report, or inventory required by Section 301 et seq. of this title; refuses to pay any tax imposed by Section 301 et seq. of this title; or attempts in any manner to evade or defeat the requirements of Section 301 et seq. of this title shall be forfeited to Oklahoma.

L. Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes, or the sale or possession for sale of counterfeit cigarettes by a manufacturer, distributor, or retailer shall result in the seizure of the product and related machinery by the Tax Commission or any law enforcement agency and shall be punishable as follows:

1. A first violation with a total quantity of less than two cartons of cigarettes or the equivalent amount of other cigarettes shall be punishable by an administrative fine not to exceed Ten Thousand Dollars ($10,000.00);

2. A subsequent violation with a total quantity of less than two cartons of cigarettes, or the equivalent amount of other cigarettes shall be punishable by an administrative fine not to exceed Twenty-five Thousand Dollars ($25,000.00), and shall also result in the revocation by the Tax Commission of the manufacturer, wholesaler, or retailer license;

4. The Oklahoma Tobacco Products Act[18] ("Tobacco Act") provides that "[a]ll manufacturers, wholesalers, jobbers, retailers,[19] or other person, selling or distributing such tobacco products[20] under the three (3) preceding Sections shall comply with the provisions of such Sections, and the rules and regulations of the Oklahoma Tax Commission[21] as to such sale or distribution, and failure to so comply shall constitute grounds for revocation of any license

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> 3. A first violation with a total quantity of more than two cartons of cigarettes, or the equivalent amount of other cigarettes, shall be punishable by an administrative fine not to exceed Twenty-five Thousand Dollars ($25,000.00); and
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> 4. A subsequent violation with a quantity of two cartons of cigarettes or more, or the equivalent amount of other cigarettes shall be punishable by an administrative fine not to exceed Fifty Thousand Dollars ($50,000.00), and shall also result in the revocation by the Tax Commission of the manufacturer, wholesaler, or retailer license.
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> For the purposes of this section, "counterfeit cigarettes" includes cigarettes that have false manufacturing labels or tobacco product packs without tax stamps or the applicable tax stamp or with counterfeit tax stamps or a combination thereof. Any counterfeit cigarette seized by the Tax Commission shall be destroyed.
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> M. The Tax Commission shall immediately revoke the license of a person punished for a violation pursuant to the provisions of subsection H of this section. A person whose license is so revoked shall not be eligible to receive another license for a period of five (5) years.

[18] 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).

[19] 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.

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

> The term "cigars" shall include any roll of tobacco for smoking, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredients, where such roll has a wrapper made chiefly of tobacco.

[21] OKLA. STAT. ANN. tit. 68, § 420 (West 2001):

> The Oklahoma Tax Commission shall prescribe such rules and make such regulations as to the sale of such tobacco products and the exemption from the tobacco products tax thereon, as shall be deemed necessary to comply with the provisions of the preceding Section.

issued to said manufacturer, wholesaler, jobber, retailer or other person, by the Tax Commission."[22]

5. The Cigarette Act provides that the Tax Commission shall have the right to inspect any premises where cigarettes are sold, offered for sale or exchange, and to examine all of the records required by the Cigarette Act to be kept or any other records that may be kept incident to the conduct of the cigarette business of the retail dealer.[23]

6. The Tobacco Act provides that the Tax Commission shall have the right to enter upon the premises of any taxpayer to examine, or cause to be examined any books, invoices, papers, records or memoranda bearing upon the amount of taxes payable, and to secure other information directly concerned with the enforcement of the Tobacco Act.[24]

7. Beginning July 1, 2005, a retailer of tobacco products, as defined by the Tobacco Act, shall maintain copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities, effectively eliminating "tobacco stamps".[25] The retailer shall maintain invoices or documentation showing the name

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

[23] OKLA. STAT. ANN. tit. 68, § 315 (West 2001):

> For the purpose of enabling the Oklahoma Tax Commission to determine the tax liability of a distributor, wholesale dealer, retail dealer, distributing agent or any other person dealing in cigarettes, or to determine whether a tax liability has been incurred, it shall have the right to inspect any premises where cigarettes are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange, and to examine all of the records required herein to be kept or any other records that may be kept incident to the conduct of the cigarette business of such distributor, wholesale dealer, retail dealer, distributing agent, or any other person dealing in cigarettes. The authorized agent of the Oklahoma Tax Commission shall also have the right, as an incident, to determine the said tax liability, or whether a tax liability has been incurred, to examine all stocks of cigarette stamps, and for the foregoing purpose such authorized agent shall also have the right to remain upon the premises for such length of time as may be necessary to fully determine such tax liability, or whether a tax liability has been incurred; and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Tax Commission, or any of its authorized agents, any records herein required to be kept, or to hinder or prevent in any manner the inspection of said records, or the examination of said premises.

[24] OKLA. STAT. ANN. tit. 68, § 410 (West 2001):

> The Tax Commission shall administer and enforce all provisions of this Article. It shall have the power to enter upon the premises of any taxpayer and to examine, or cause to be examined by an agent or representative designated by it for such purpose, any books, invoices, papers, records or memoranda bearing upon the amount of taxes payable, and to secure other information directly concerned in the enforcement of this Article.

[25] OKLA. STAT. ANN. tit. 68, § 420.1 (West Supp. 2006):

> B. Each retailer of tobacco products, as defined in Section 401 of Title 68 of the Oklahoma Statutes, shall maintain copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities. The

and address of the distributor from whom, or the address of another facility of the same retailer from which, the tobacco products were received, the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number.[26]

8. The Respondent has stipulated to each and every one of the allegations of the *Complaint*. The parties have stipulated that no monetary fine or penalty be imposed upon the Respondent's principals, PRINCIPAL 1, a/k/a ALIAS 1, a/k/a ALIAS 2, and PRINCIPAL 2 ("Principals"), but only as against the Respondent.

9. The seizure of unstamped cigarettes from Respondent on January 23, 2009, as alleged in the Complaint and admitted by the Respondent in the Stipulations filed herein justify the imposition of an administrative fine in the amount of $100.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(D)(1) (2001) and the imposition of an administrative penalty of $1,000.00 pursuant to the provisions of Section OKLA. STAT. tit. 68, §316(H) (2001).

10. The seizure of unstamped cigarettes from Respondent on November 10, 2009, as alleged in the Complaint and admitted by the Respondent in the Stipulations filed herein justify the imposition of an administrative fine in the amount of $1,000.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(D)(2) (2001)and the imposition of an administrative penalty of $1,000.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(H) (2001).

11. The seizure of unstamped cigarettes from Respondent on July 6, 2010, as alleged in the Complaint and admitted by the Respondent in the Stipulations filed herein justify the imposition of an administrative fine in the amount of $5,000.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(E)(3) (Supp. 2010) and the imposition of an administrative penalty of $10,000.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(H) (Supp. 2010) and an administrative fine of $1,000.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(I) (Supp. 2010).

> invoices or documentation shall show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the tobacco products were received, the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number.

[26] *Id*. Under the Tobacco Act, a typical retailer uses its sales tax permit number for the purpose of purchasing tobacco products. A tobacco license is required in limited circumstances, as more fully set out in the Tobacco Act.

See also OKLA. ADMIN. CODE § 710:70-5-1:

> (a) Pursuant to the authority and power granted by statute, the Oklahoma Tax Commission hereby directs that excise tax levied upon the sale, distribution, use, exchange, barter or possession of tobacco products within this State shall be paid through monthly tobacco products tax reporting procedures as established by rules of this Commission and shall be administered in accordance with the laws of this State and the provisions of this Subchapter establishing procedures for monthly tobacco tax reporting system.
> (b) The purchasing of stamps to pay the excise tax levied and the affixing of stamps as evidence of payment of the excise tax are hereby abolished.

12. The seizure of unstamped cigarettes from Respondent on July 14, 2010, as alleged in the Complaint and admitted by the Respondent in the Stipulations filed herein justify the imposition of an administrative fine in the amount of $5,000.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(E)(3) (Supp. 2010) and the imposition of an administrative penalty of $10,000.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(H) (Supp. 2010) and an administrative fine of $1,000.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(I) (Supp. 2010) and the imposition of an administrative fine of $500.00 pursuant to OKLA. STAT. tit. 68, §418(B) (Supp. 2010).

13. The seizure of unstamped cigarettes from Respondent on August 12, 2010, as alleged in the Complaint and admitted by the Respondent in the Stipulations filed herein justify the imposition of an administrative fine in the amount of $5,000.00 pursuant to the provisions of OKLA. STAT. tit. 68, §316(E)(3) (Supp. 2010) and the imposition of an administrative penalty of $10,000.00 pursuant to the provisions of Section OKLA. STAT. tit. 68, §316(H) (Supp. 2010) and an administrative fine of $1,000.00 pursuant to the provisions of Section OKLA. STAT. tit. 68, §316(I) (Supp. 2010) and an administrative fine of $25,000.00 pursuant to the provisions of Section OKLA. STAT. tit. 68, §316(L) (Supp. 2010).

ORDER

The Oklahoma Tax Commission orders that Respondent LLC'S Retail Cigarette License (ACL ######), Retail Tobacco License (ATL ######), Retail Beer License (ABL ######) and Sales Tax Permit (STS ######) are hereby revoked. It is further ordered that administrative fines and penalties in the total amount of $76,600.00 are imposed against the Respondent, LLC.

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."