

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2011-03-17-03 / NON-PRECEDENTIAL
ID: SJ-10-005-H
DATE: MARCH 17, 2011
DISPOSITION: AGREEMENT ACCEPTED
TAX TYPE: TOBACCO
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

LLC (“Protestant”) appears through attorney, ATTORNEY, LAW FIRM. The Taxpayer Assistance Division (“Division”), Oklahoma Tax Commission, appears through OTC ATTORNEY 1, First Deputy General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On September 16, 2010, the protest letter was received by the Office of Administrative Law Judges for further 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 September 23, 2010, OTC ATTORNEY 1 and OTC ATTORNEY 2 filed an Entry of Appearance as Co-Counsel of record for the Division. On September 23, 2010, a Notice to Show Cause was sent by certified mail return receipt requested (XXXX), scheduling a hearing for October 4, 2010, at 1:30 p.m., at which time the Licensee could appear and show cause by the intent not to renew licenses should not be upheld.³ On September 30, 2010, due to a scheduling conflict, ATTORNEY filed a letter request for a continuance of the show cause hearing to November 5, 2010, at 9:30 a.m. There being no objection by the Division, on October 14, 2010, a Notice to Show Cause was sent by certified mail return receipt requested (XXXX), setting the hearing for November 5, 2010, at 9:30 a.m.⁴

On October 25, 2010, the Protestant filed a Motion for Continuance of the show cause hearing set for November 5, 2010, at 9:30 a.m. On October 26, 2010, the Objection of Taxpayer Assistance Division to Protestant’s October 25, 2010 Motion for Continuance was filed with the Court Clerk.⁵ On October 27, 2010, an Order Denying the Protestant’s Motion for Continuance was mailed to Counsel.

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 mailed to ATTORNEY. On September 24, 2010, the return receipt was signed by SIGNEE.

⁴ The Notice was mailed to ATTORNEY. On October 15, 2010, the return receipt was signed by someone at ATTORNEY’S law firm. The signature is illegible.

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

On November 4, 2010, Counsel filed a Letter Agreement, which eliminated the hearing set for November 5, 2010, at 9:30 a.m. On November 4, 2010, a letter was mailed to Counsel acknowledging receipt of the Letter Agreement, striking the hearing from the docket, and advising Counsel that a status report was due on or before December 6, 2010.

On December 6, 2010, Counsel did not file a status report.

On January 18, 2011, Counsel filed a Recommendation of Dispositive Order, Per Parties' Agreement ("*Agreement*") with a copy of the Letter Agreement attached thereto.

On February 10, 2011, a teleconference was held with Counsel regarding the *Agreement*. At the request of Counsel, the *Agreement* is incorporated as part of the Findings, Conclusions and Recommendations in this matter.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings and the *Agreement*, the undersigned finds:

1. On September 7, 2010, the Division mailed a letter⁶ to the Protestant advising that the Tax Commission did not intend to issue a Joint Wholesaler Cigarette/Tobacco License or renew the Protestant's Cigarette Wholesaler and Unstamped Tobacco Licenses for the following reasons, to-wit:

- (1) sold unstamped cigarettes to retailers and others in violation of 68 O.S. § 301 et seq.;
- (2) sold tobacco products to retailers without providing retailers invoices which comply with the statutes and Oklahoma Tax Commission rules; and
- (3) filed false or fraudulent unstamped Other Tobacco Products Reports by failing to include on those reports your purchases of untaxed purchases of tobacco products from DISTRIBUTOR in CITY, STATE.

Additionally, the Oklahoma Tax Commission confiscated noncompliance cigarettes and/or other tobacco products from you on more than one occasion.

2. On September 16, 2010, the protest letter was filed disputing the allegations as set forth in the Division's letter and requested a show cause hearing.⁷

⁶ See Note 7, *infra*. The Division's letter is attached as Exhibit A. The letter does not reflect the Protestant's license and/or permit numbers.

⁷ The Administrative Law Judge is taking judicial notice of the materials contained in the court file to complete the factual details and background of this matter. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999).

3. On October 5, 2006, the Division issued a renewal of the Protestant's Sales Tax Permit Number XXXXXX to expire October 5, 2012.⁸

4. On November 4, 2010, the parties filed a Letter Agreement dated November 1, 2010, which was signed by ATTORNEY as Counsel for the Protestant and its principal, PRINCIPAL, the Protestant by PRINCIPAL as principal of the Protestant and as an individual, and OTC ATTORNEY 2.⁹

5. On January 18, 2010, the parties filed the *Agreement*, with a copy of the Letter Agreement attached thereto. The *Agreement* is signed by ATTORNEY as Counsel for the Protestant and its principal, PRINCIPAL, the Protestant by PRINCIPAL as principal of the Protestant and as an individual, and OTC ATTORNEY 2.

6. The *Agreement* requests the Administrative Law Judge to recommend to the Commissioners that a (Commission) order be entered, as more fully set forth therein.

7. The *Agreement* signed by the Administrative Law Judge is attached hereto as Exhibit A.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.¹⁰

2. The Tax Commission shall immediately revoke the license of a person punished for a violation pursuant to the provisions of Subsection H of Title 68.¹¹ A person whose license is so revoked shall not be eligible to receive another license for a period of five (5) years.¹²

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that a Commission Order should be issued in accordance with the *Agreement* attached hereto.

OKLAHOMA TAX COMMISSION

⁸ *Id.* The Administrative Law Judge is taking judicial notice of the Permit Lookup System on the Tax Commission's website at <http://www.oktax.state.ok.us>. Counsel is aware that the *Agreement* does not mention any determination concerning the Protestant's sales tax permit. Per the teleconference, PRINCIPAL has liquidated and sold the Protestant.

⁹ See Note 10, *infra*.

¹⁰ OKLA. STAT. tit. 68, § 212 (West 2001) and OKLA. STAT. tit. 68, 316(M) (West 2009).

¹¹ See OKLA. STAT. tit. 68, § 316(H) (West 2009).

¹² See Note 10, *supra*.

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.”