JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2012-02-02-06 / NON-PRECEDENTIAL**
ID: **FD-11-023-K**
DATE: **FEBRUARY 2, 2012**
DISPOSITION: **APPLICATION GRANTED**
TAX TYPE: **FORFEITURE AND DESTRUCTION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Notice of the forfeiture proceedings was served on the Respondent, BUSINESS. Respondent did not respond to the notice or appear at the hearing. The Compliance Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

On June 4, 2010, agents of the Division conducted a cigarette and tobacco enforcement survey at Respondent's business and confiscated noncompliant cigarettes. An *Application for Order Forfeiting Seized Cigarettes and Directing the Destruction Thereof ("Application")* was filed October 19, 2011.

A show cause hearing was scheduled for December 8, 2011, by *Notice to Show Cause Why the Application for Forfeiture of Seized Cigarettes and Destruction Thereof should not be Ordered ("Notice").* The *Notice* was served on October 21, 2011.

The hearing was held as scheduled. A representative of Respondent did not appear at the hearing. SUPERVISOR, Field Supervisor, District 1 of the Field Services Section of the Division testified with respect to the records of the Division and the reasons for the confiscations. Exhibits A through C were identified, offered and admitted into evidence. Upon conclusion of the Division's presentation, the record was closed and the *Application* was submitted for decision.

FINDINGS OF FACTS

Upon review of the file and records, including the tape recording of the hearing, the exhibit received into evidence and the *Application*, the undersigned finds:

1. Respondent is a licensed retailer of cigarettes.

2. Respondent is not licensed by any tribal entity as a retailer of cigarettes nor is Respondent's business located on any tribal land.

3. Respondent is not licensed as a wholesaler of cigarettes or as a purchaser of unstamped other tobacco products.

4. On June 4, 2010, authorized agents of the Division conducted a compliance check at Respondent's business, and identified items in Respondent's retail inventory and offered for sale which did not comply with the Oklahoma Cigarette Stamp Act ("Stamp Act")[1]. The identified items included unstamped and tribal compact stamped packages of cigarettes.

5. The noncompliant cigarettes were confiscated, and *Confiscation Inventory Lists* were prepared and executed showing the items seized and the estimated retail value of the items.

6. Respondent was properly notified of the forfeiture hearing.

CONCLUSIONS OF LAW

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. Supp. 2008, § 305(E)(2).[2]

2. Every retailer, like any unlicensed consumer who purchases or receives cigarettes[3] to which are not affixed the stamps[4] required by the Stamp Act is required to purchase and affix stamps upon all such cigarette packages in the "proper denomination and amount" as required by § 302 of the Stamp Act prior to making any sale or distribution for consumption thereof. 68 O.S. Supp. 2008, § 305(B) and (C). It is unlawful for any person to sell or consume cigarettes on which the tax, as levied by the Stamp Act, has not been paid, and which are not contained in packages to which are securely affixed the "proper" stamps evidencing payment of the tax imposed by the Stamp Act. 68 O.S. Supp. 2008, § 305(C).

3. All unstamped cigarettes found in the possession, custody or control of any person, for the purpose of being consumed, sold or transported from one place to another in this state, for the purpose of evading or violating the provisions of the Stamp Act, or with intent to avoid payment of the tax imposed may be seized by any authorized agent of the Tax Commission without process. 68 O.S. Supp. 2008, §§ 305(E)(1). "The same shall be, from the time of such seizure, forfeited to the State of Oklahoma. Id.

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[1] 68 O.S. 2001, § 301 et seq., as amended.

[2] In general, this provision requires the Tax Commission to hold a hearing to determine whether the seized product should be forfeited to the State of Oklahoma; giving the owner thereof at least ten (10) days notice, and if after hearing it is determined the seized product should be forfeited, to make an order of forfeiture and destruction.

[3] "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".

[4] "The term 'stamp' as herein used shall mean the stamp or stamps by use of which:

a. the tax levied pursuant to the provisions of § 301 et seq. of this title is paid,
b. the tax levied pursuant to the provisions of § 349 of this title is paid, or
c. the payment in lieu of taxes authorized pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section 346 of this title is paid".

68 O.S. Supp. 2003, § 301(8).

4. Cigarette packages to which are affixed stamps not in the proper denomination and amount applicable to the retail establishment are unstamped. See, 68 O.S. Supp. 2003, § 301(8) and Senate Bill No. 608, § 8(6), effective Jan. 1, 2010.

5. The uncontroverted evidence shows the cigarettes were properly seized and should be forfeited to the State of Oklahoma for destruction.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the cigarettes seized from Respondent, BUSINESS, be forfeited to the State of Oklahoma for destruction.

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."