JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2012-10-18-05 / NON-PRECEDENTIAL**
ID: **CR-08-005, CR-08-006**
DATE: **OCTOBER 18, 2012**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

ORDER

CLAIMANT ("Claimant") appears by and through its attorneys, ATTORNEY 1 and ATTORNEY 2, FIRM 1, and ATTORNEY 3, FIRM 2. The Credits and Refunds Section of the Account Maintenance Division ("Division"), Oklahoma Tax Commission, appears by and through OTC ATTORNEY, First Deputy General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

Due to the length of the procedural history of these matters, the following reflects selected portions with the remainder omitted.

On May 13, 2008, the protest files were received by this office 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 May 15, 2008, letters were mailed to the parties stating these matters had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number CR-08-005-H and Case Number CR-08-006-H. The letters also advised the parties that these matters had been set for hearing on June 11, 2008, at 9:00 a.m. and enclosed copies of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[3]

On June 9, 2008, the Division's Motions for Continuance were filed with the Court Clerk.[4] The parties requested additional time to resolve these matters. On June 10, 2008, Orders Granting Motions for Continuance were mailed to the parties, striking the hearing from the June 11, 2008 docket and setting these matters for prehearing conferences on August 5, 2008, at 9:30 a.m.

On August 5, 2008, the prehearing conferences were held as scheduled. The Division appeared via telephone. The Claimant appeared not.

---

[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] *Id.*

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

On November 3, 2008, a letter was mailed to the parties, as more fully set forth therein, which effectively consolidates these cases as a matter of judicial economy and convenience. The parties did not object thereto.

On April 16, 2009, OTC ATTORNEY 3 filed an Entry of Appearance as Counsel for the Claimant.

On May 12, 2009, the Claimant's *Motion to Associate Counsel* was filed with Exhibits A through B, attached thereto. ATTORNEY 2 was approved by the Oklahoma Bar Association to appear in these matters with ATTORNEY 3 as Local Counsel.

On July 16, 2010, OTC ATTORNEY filed a Notice of Substitution of Attorney and Entry of Appearance as Counsel for the Division.

On October 5, 2010, the Claimant's *Motion to Associate Counsel* was filed with Exhibits A through B, attached thereto. ATTORNEY 1 was approved by the Oklahoma Bar Association to appear in this matter, with ATTORNEY 3, as Local Counsel.

On November 28, 2011, the Scheduling Order was issued, as more fully set forth therein.

On December 8, 2011, the *Joint Stipulation of Facts* ("*Stipulations*"), with Exhibits A through M, attached thereto was filed with the Court Clerk.

On January 9, 2012, the Claimant's Status Report (Exhibit A Joint Stipulation of Fact Exhibit E, Operating Regulations, of the 1999 Merchant Agreement, was filed with a copy of the Affidavit of AFFIANT in Support of [Claimant]. On January 9, 2012, the Claimant's *Motion for Summary Disposition Pursuant to OKLA. ADMIN. CODE § 710:1-5-38(b)* ("*MSD*") was filed with attachments thereto.[5] On January 24, 2012, at 9:30 a.m., a teleconference was held with the parties at the request of the undersigned. On January 24, 2012, the Division's *Opposition to Summary Disposition of Issue Relating to Sufficiency of Claim Documentation and Request for Determination of Material Facts Relating to Entitlement to the Sales Tax Credit* ("*Opposition to MSD*") was filed with the Court Clerk. On January 25, 2012, an Order Striking Scheduling Order and Directing Filing of Responses, as follows, to-wit:

> Pursuant to the teleconference held in this matter on January 24, 2012, the *Scheduling Order* entered November 28, 2011, is hereby stricken. Additionally, Division is directed to file a response to the Affidavit of AFFIANT, attached to Claimant's report filed January 9, 2012, for purposes of clarifying the record.
>
> Following the teleconference the Division filed an *Opposition to Summary Disposition of Issue Relating to Sufficiency of Claim Documentation and Request for Determination of Material Facts Relating to Entitlement to the Sales Tax Credit*. Accordingly, Claimant may file a response to this filing on or before

[5] Attached to the *MSD* are copies of *In re Sales Tax Claim for Refund of Home Depot*, 2008 OK CIV APP 101, 198 P.3d 902 and *Duncan Medical Services v. State ex rel. Oklahoma Tax Com'n*, 1994 OK 91, 911 P.2d 247.

February 8, 2012. Thereafter, the parties will be notified of dates for any additional filings.

On January 30, 2012, the Division's Response to Affidavit of AFFIANT was filed withdrawing its requirement that Exhibit A to the *Stipulations* be supplemented.

On February 2, 2012, the mailing of the January 25th order to ATTORNEY 1 and ATTORNEY 2 was returned with a forwarding address. On February 7, 2012, the Court Clerk confirmed the new address with ATTORNEY 1.[6] On February 8, 2002, the Claimant's *Reply to Division's Opposition to MSD* ("*Reply*") was filed. On February 15, 2012, the Claimant's Motion to Set Hearing Date on *MSD* was filed.

On March 8, 2012, a *Notice to Appear* ("*Notice*") setting oral argument on the Claimant's *MSD* for April 17, 2012, at 9:30 a.m. was mailed to the parties.

On April 13, 2012, the Brief of the Compliance Division ("April 13th Brief") was filed with the Court Clerk. On April 16, 2012, the Claimant's Objection to the Division's April 13th Brief was filed with the Court Clerk. On April 16, 2012, the Order Striking April 13th Brief from the record was issued and mailed to the parties. On April 17, 2012, closed[7] oral argument on the *MSD* was held was scheduled. During the hearing, OTC ATTORNEY 1 requested the Order Striking April 13th Brief be reconsidered.[8] The undersigned denied the Division's request.[9] On April 18, 2012, a letter was mailed to the parties confirming the announcements made at the end of oral argument.

On May 16, 2012, a letter was mailed to the parties stating "Enclosed for your review and file is a copy of the transcript of the [*MSD*] hearing held April 17, 2012. As previously discussed, any request for certification of an issue is to be filed on or before May 30, 2012."

On June 5, 2012, at 11:00 a.m., a teleconference was held with the parties to discuss the "Certification of Issue." On June 5, 2012, a telephone call was made to OTC COUNSEL, Counsel to the Commissioners confirming for the parties the Certification of Issue Form and Procedures.[10] On June 12, 2012, the Certification of Issue[11] was filed with the Office of Administrative Law Judges. On June 13, 2012, the Certification of Issue was filed with the Vice-Chairman of the Tax Commission.

---

[6] *See* Memorandum to court file.

[7] The Claimant, through ATTORNEY 1, invoked confidentiality pursuant to OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2012). Tr. at 3-4.

[8] Tr. at 22-25.

[9] Tr. at 42-44.

[10] *See* Memorandum to court file.

[11] *See* OKLA. ADMIN. CODE § 710:1-5-34(b) (July 12, 1993).

On July 3, 2012, the Commissioners issued OTC Order No. 2012-07-03-06 (July 3, 2012), finding the "…Order of the Administrative Law Judge entered on April 16, 2012, striking Brief of the Compliance Division filed April 13, 2012, should be and hereby is sustained." On July 9, 2012, a letter was mailed to the parties acknowledging receipt of OTC Order No. 2012-07-03-06 (July 3, 2012) advising the parties the record in this matter was closed and the Claimant's *MSD* was submitted for ruling on July 9, 2012.

STIPULATION OF FACTS

On December 8, 2012, the parties filed *Stipulations*,[12] with Exhibits A through M, attached thereto. The parties "…jointly stipulate to the following undisputed facts and agree that these facts are true and correct for sales made related to accounts charged off for the period of 2002 through 2006 and are admissible as evidence in the current proceeding before the Commission's Administrative Law Judge and any subsequent proceeding before the Oklahoma Tax Commission or judicial review or appeal. This Joint Stipulation shall not preclude either CLAIMANT or the Commission from submitting additional factual evidence in this case through affidavits or testimony."[13]

1. CLAIMANT is a nationwide retailer of office products and supplies headquartered in Boca Raton, Florida. CLAIMANT owns and operates retail stores in the State of Oklahoma. CLAIMANT is a "vendor" and a "taxpayer" as those terms are defined in the Oklahoma Sales Tax Code, Okla. Stat. tit. 68 §§ 1352, et. seq.

2. CLAIMANT makes sales of tangible personal property which are subject to Oklahoma sales tax. CLAIMANT collects and remits the applicable sales tax on each purchase made in Oklahoma to the Commission.

3. During the period covered by the claim(s) for refund, CLAIMANT entered into a Merchant Services Agreement for Commercial Accounts with BANK X, now BANK Y(collectively the "Bank") dated September 30, 1999. A copy of the Merchant Service Agreement is attached hereto as Exhibit "A" and made a part hereof.

4. CLAIMANT entered into an Amended and Restated Merchant Services Agreement with BANK Y dated February 1, 2004. A copy of the Amended and Restated Merchant Services Agreement is attached hereto as Exhibit "B" and made a part hereof. The Merchant Services Agreement for Commercial Accounts dated September 30, 1999, and the Amended and Restated Merchant Services Agreement dated February 1, 2004 are herein collectively referred to as the "Merchant Agreement."

5. The Bank issued private label credit cards to CLAIMANT customers (the "Customers") which are credit cards bearing the name of CLAIMANT and that may only be

[12] The *Stipulations*, as filed by the parties, are set out verbatim.

[13] *Stipulations* at 1.

used at CLAIMANT stores including catalog centers and can be used for mail, telephone and internet sales.

6. The Customers purchased taxable goods from CLAIMANT using Bank issued credit cards with CLAIMANT'S name and logo appearing on such cards in lieu of payment for the goods purchased, including the sales tax thereon (the "Accounts").

7. CLAIMANT remitted the full amount of the sales tax due on each sale to the State of Oklahoma on the entire taxable sales price of each sale transaction in which the customer used a Bank issued credit card.

8. Subsequent to the sale and the payment and remittance of the sales tax, certain Customers defaulted in payments owed the Bank for their Commercial Accounts.

9. It was determined by the Bank that certain unpaid Commercial Accounts constituted Bad Debts, and the unpaid balances due on such Commercial Accounts were worthless and uncollectible for Bank's federal income tax purposes.

10. Credit card reserve fees were claimed on line 26, Other Deductions, of U.S. Corporation Income Tax Returns filed by CLAIMANT for tax years 2002 through 2006. Copies of excerpts of the referenced tax returns are attached hereto as Exhibit "C" and made a part hereof.

11. All of the Commercial Accounts included in the claim had an unpaid balance owed the Bank.

12. Attached hereto as Exhibit "D" and made a part hereof are computerized spreadsheets prepared from records of the Bank which comprise CLAIMANT'S claim for refund, including the details of the purchases and the CLAIMANT stores where the purchases were made.[14][1] The Division maintains that Exhibit "D" does not contain the following items enumerated in OAC 710:65-11-2: (1) the name of the purchaser/debtor, (2) the price of the property and the amount of the sales tax charged thereon, (3) the amount of interest, finance and service charges charged to the debt or account, (4) any amounts charged to the debt or account representing cost of collection, (5) the dates and amount of any payments made to the debtor's account, or (6) any portion of the debt or account which represents a charge that was not subject to sales tax in the original transaction. Because the Division does not believe that all of the information required has been provided, Division has not verified the correctness or mathematical accuracy of the data contained in the spreadsheets or that the amounts on the spreadsheet include only the taxable amount reflected on the original sales invoice.

[14] This is the footnote as it is numbered in the *Stipulations*:

> [1] The spreadsheets are provided in electronic form because the information can be more easily read than on printed pages. However, printouts of the spreadsheets contained in Exhibit D can be provided to the Court.

13. By letter dated January 18, 2007, CLAIMANT requested a refund or credit from the Commission for sales tax for the period of March 1, 2005 through October 31, 2006, in the total amount of $23,155.00 (the "January 18, 2007 Claim"). A copy of the January 18, 2007, Claim is attached as Exhibit "E" hereto and made a part hereof.

14. By letter dated February 27, 2007, CLAIMANT requested a refund or credit from the Commission for sales tax for the period of March 1, 2002 through December 31, 2005, in the total amount of $57,724.03 (the "February 27, 2007 Claim"). A copy of the February 27, 2007 Claim is attached as Exhibit "F" hereto and made a part hereof. The February 27, 2007, refund claim was submitted again on April 30, 2007, a copy of which is attached as Exhibit "G" hereto and made a part hereof. The February 27, 2007, Claim was resubmitted again on June 29, 2007, because the Commission had not acted on the Claim. A copy of the June 29, 2007, letter is attached as Exhibit "H" hereto and made a part hereof.

15. The Commission denied the January 18, 2007, Claim by letter dated April 7, 2008. A copy of Division's letter is attached as Exhibit "I" hereto and made a part hereof. The Commission denied the February 27, 2007, Claim by separate letter dated April 7, 2008. A copy of which is attached as Exhibit "J" is attached hereto and made a part hereof.

16. CLAIMANT timely protested the denials of the January 18, 2007, Claim and the February 27, 2007, Claim. A copy of the letter protesting the denial of the Claim is attached as Exhibit "K" hereto and made a part hereof.

17. The parties agree to the admission of the Exhibits "A" through "K" attached hereto as evidence in this matter.

18. Pursuant to the Sworn Affidavit, attached hereto as Exhibit "L", of MANAGER, Senior Manager, Strategic Vendor Relationships for CLAIMANT, MANAGER would present the testimony included in the Affidavit at hearing if one were held. Division does not stipulate to the veracity or accuracy of any statements made by the Affiant, but simply acknowledges that Affiant's testimony, if taken at hearing, would be contained in the Affidavit.

19. Pursuant to the Sworn Affidavit, attached hereto as Exhibit "M", of AFFIANT, SVP Client Development at BANK, AFFIANT would present the testimony included in the Affidavit at hearing if one were held. Division does not stipulate to the veracity or accuracy of any statements made by the Affiant, but simply acknowledges that Affiant's testimony, if taken at hearing, would be as contained in the Affidavit.

FINDING OF MATERIAL FACTS AS TO WHICH THERE IS NO CONTROVERSY

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the *Stipulations*, the Claimant's *MSD*, the Division's *Opposition to MSD*, the Claimant's *Reply*, the *Notice*, and the *Transcript* of the oral argument held on April 17, 2012, the undersigned finds that the following are material facts, as to which there is no controversy:

1. *Stipulations* 1 through 11, which includes Exhibits A through C.

2. *Stipulations* 13 through 17, which include Exhibits E through K.

3. It was determined by the Bank that certain unpaid *Commercial Accounts* constituted *Bad Debts*, and the unpaid balances due on such *Commercial Accounts* were *worthless and uncollectible for Bank's federal income tax purposes*.[15] (Emphasis added.)

4. *Each Account shall be deemed to be the property of [Bank] and [Bank]* will determine the terms and conditions under which *Accounts* will be established ("Account Issuance Criteria").[16]

5. *Credit card reserve fees were claimed* on line 26, *Other Deductions*, of U.S. Corporation Income Tax Returns filed *by [Claimant] for tax years 2002 through 2006*. … (Emphasis added.)[17]

6. The *Accounts* and Cardholder information compiled by *Bank* in connection with this Agreement *("Cardholder Lists") are the property of Bank* and, unless all *Accounts* are purchased by [Claimant] as provided in this Agreement, shall be retained by *Bank*.[18] (Emphasis added.)

7. *It is the understanding and intent of the parties that [Claimant] shall have no ownership or other interest in any of the Accounts or related information, including receivables, credit information, and account records*, unless and until [*Claimant*] purchases the *Accounts* as provided for in this Agreement. …In order to effectuate this Agreement and to assure that no such inference or implication can be made, *[Claimant] does hereby sell, transfer and assign to Bank all right, title or interest [Claimant] or any of its affiliates has or may be deemed to have in any of the Accounts or related property*…[19] (Emphasis added.)

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[20]

2. 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.[21]

---

[15] *Stipulation* # 9. "Bad debts are charged off by [Bank]." Tr. at 7.

[16] *See* Exhibit A at 1.

[17] *Stipulation* # 10. *See* Exhibit C.

[18] *See* Exhibit B at 10.
[19] *See* Exhibit B at 19.

[20] OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

3. A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact.[22] The procedures for such motion are as follows:

> (1) The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.[23]
>
> (2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judges.
>
> (3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.
>
> (4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.
>
> (5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing

---

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

[22] OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

[23] In this matter, the parties stipulated to the facts. *See* Tr. at 23-24.

> limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.
>
> (6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts *and that one of the parties is entitled to a decision in its favor as a matter of law*, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to *OAC* 710:1-5-10, 710:1-5-40 and 710:1-5-41. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.
>
> (7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial summary disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge. (Emphasis added.)

4. The text of Section 1366 of Title 68 ("Bad Debt Statute") prior to November 1, 2003,[24] was as follows, to-wit:

> Taxes paid on gross receipts[25] represented by *accounts receivable*[26] which, on or after December 31, 1990, *are found to be worthless or uncollectible and that are eligible to be claimed if the taxpayer*[27] kept accounts on a

[24] OKLA. STAT. tit. 68, § 1366 (West 2001).

[25] OKLA. STAT. tit. 68, § 1352(7) (West 2001). *See* OKLA. STAT. tit. 68, § 1352(12) (West 2008)

[26] "***account receivable***" (*usu. pl.*) An account reflecting a balance owed by a debtor; a debt owed by a customer to an enterprise for goods or services. -- Often shortened to *receivable*. -- Also termed *note receivable*. Pl. **accounts receivable.** BLACK'S LAW DICTIONARY (9th ed. 2009), available at *http://westlaw.com*.

[27] "Taxpayer" means any person liable to pay a tax imposed by the Oklahoma Sales Tax Code. OKLA. STAT. ANN. tit. 68, § 1352 (18) (West 2001). *See* OKLA. STAT. ANN. tit. 68, § 1352 (25) (West 2008).

> "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number. OKLA.

> cash basis[28] or could be eligible to be claimed if the taxpayer kept accounts on an accrual basis,[29] as a deduction pursuant to Section 166 of he Internal Revenue Code,[30] or the unpaid portion of any account at the time repossession is accomplished under the terms of a conditional sales contract, may be credited upon subsequent reports and remittances of the tax levied in this article, in accordance with the rules and regulations of the Tax Commission. If such accounts are thereafter collected, the same shall be reported and the tax shall be paid upon the amount so collected. (Emphasis added.)

5. The current version (Effective November 1, 2003) of the Bad Debt Statute,[31] states as follows, to-wit:

> A. There is herein provided a deduction to the vendor from taxable sales for bad debts. Any deduction taken that is attributed to bad debts shall not include interest.
>
> B. The federal definition of "bad debt" in 26 U.S.C., Section 166 shall be the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C., Section 166, shall be adjusted to exclude:
>
> 1. Financing charges or interest;

STAT. ANN. tit. 68, § 1352 (12) (West 2001). *See* OKLA. STAT. ANN. tit. 68, § 1352 (18) (West 2008).

[28] "***cash-basis accounting method"*** An accounting method that considers only cash actually received as income and cash actually paid out as an expense. Cf. *accrual accounting method*. BLACK'S LAW DICTIONARY 9th ed. 2009), available at *http://westlaw.com*.

[29] "***accrual accounting method***" (<<schwa>>-**kroo**-<<schwa>>l). An accounting method that records entries of debits and credits when the liability arises, rather than when the income or expense is received or disbursed. -- Also termed *accrual basis*. Cf. *cash-basis accounting method*. BLACK'S LAW DICTIONARY 9th ed. 2009), available at *http://westlaw.com*.

[30] 26 U.S.C.A. § 166, which in pertinent part states:

> (a) General rule. --
> (1) Wholly worthless debts. -- There shall be allowed as a deduction any debt which becomes worthless within the taxable year.
> (2) Partially worthless debts. -- When satisfied that a debt is recoverable only in part, the Secretary may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

See Treas. Reg. § 1.166-1(c), which in pertinent part provides, "Bona fide debt required. Only a bona fide debt qualifies for purposes of section 166. A bona fide debt is a debt which arises from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed sum of money."

[31] OKLA. STAT. ANN. tit. 68, § 1366 (West 2008).

2. Sales or use taxes charged on the purchase price;

3. Uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid; and

4. Expenses incurred in attempting to collect any debt and repossessed property.

C. Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes if the taxpayer kept accounts on a cash basis or could be eligible to be claimed if the taxpayer kept accounts on an accrual basis. For purposes of this subsection, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

D. If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

E. When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the statute of limitations for refund claims provided in Section 227 of this title; however, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

F. Where filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.

G. For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

H. In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the states which are members of the Streamlined Sales and Use Tax Agreement, the allocation will be permitted.

6. The Tax Commission has promulgated rules as provided by law for the purpose of compliance with the Oklahoma Administrative Procedures Act[32] and to facilitate the administration, enforcement, and collection of taxes under the Oklahoma Sales Tax Code.[33]

7. The text of the Tax Commission Rule ("Bad Debt Rule"), prior to November 1, 2003,[34] was as follows, to-wit:

> (a) The vendor may take a credit against the current month remittances for sales tax previously paid which have been determined to be worthless and have been or will be actually charged off on the vendor's books for the month and will be or have been written off or could be eligible to be claimed if taxpayer kept accounts on a cash basis or could be eligible to be claimed if taxpayer kept records on the accrual basis on the current year's Income Tax Return, or for the unpaid portion of an account at the time of a repossession.[35]
>
> (b) The fact that a credit has been taken against the current month must be so indicated on the face of the sales tax report. If the accounts are thereafter collected, the amount received shall be included in the gross receipts for the period in which the account is collected.
>
> (c) The burden of establishing the right to, and the validity of a bad debt credit is on the vendor. In order to verify each credit taken for a bad debt, the vendor must retain and make available:
>
> (1) The name of the purchaser/debtor;
>
> (2) The date of the sale or sales giving rise to the bad debt;
>
> (3) The price of the property and the amount of sales tax charged thereon;
>
> (4) The amount of interest, finance and service charges charged to the debt or account;

[32] *See* Note 21, *supra*.

[33] OKLA. STAT. ANN. tit. 68, §§ 1351 *et seq.* (West 2008).

[34] OKLA. ADMIN. CODE § 710:65-11-2.

[35] The Claimant cites *Southwestern Bell Yellow Pages, Inc. v. State of Oklahoma ex rel. Oklahoma Tax Commission*, Case No. TC-90261, an unpublished decision of the Court of Civil Appeals of the State of Oklahoma (Division I), for the proposition that "a vendor who was eligible to take a bad debt deduction for federal income tax purposes may nevertheless be entitled to the credit under Section 1366 for debts that became worthless or uncollectible" and that "the purpose of the Section 166 reference in Section 1366 is to ensure that bad debts are 'bona fide,' not to preclude credit for taxpayers that do not claim a Section 166 deduction for federal income tax purposes." In *Southwestern Bell* the Court held that the Tax Commission's application of a previous version of Section 1366 and a previous version of the Tax Commission rule resulted in unequal treatment of taxpayers by forcing a taxpayer to chose one method of accounting over another. Such is not the situation in this matter. *See* Exhibit C. *See also* Note 5, *supra* and Note 44, *infra*.

(5) Whether the property was retained by the vendor or repossessed;

(6) Any amounts charged to the debt or account representing costs of collection;

(7) The dates and amounts of any payments made on the debtor's account;

(8) Any portion of the debt or account which represents a charge that was not subjected to the tax in the original transaction; and

(9) Records documenting that the account has been or will be written off or could be eligible to be claimed if taxpayer kept accounts on a cash basis or could be eligible to be claimed if taxpayer kept records on the accrual basis on the Federal Income Tax Return for the year, or that the item was repossessed.

(d) The information in (c) of this Section may be requested by the Commission at any time.

(e) The credit for bad debts is limited to the tax shown on the invoice that is being or will be charged off as a bad debt and must be adjusted to reflect any remuneration previously taken on a sales tax report. This tax credit is allowable only to the person who remitted and reported the tax to the Commission. Subsequent recoveries of bad debts that have been taken as a credit are to be reported in the month of the recovery. [**See:** 68 O.S. §1366]

8. The current version of the Bad Debt Rule[36] is as follows, to-wit:

(a) A vendor may take a deduction for bad debts on the return for the period during which the bad debt is written off as uncollectible in the vendor's books and records and is eligible to be deducted for Federal Income Tax purposes, if the vendor kept accounts on a cash basis, or could be eligible to be claimed if the vendor kept accounts on an accrual basis. For purposes of this Section a vendor who is not required to file Federal Income Tax Returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the vendor's books and records and would be eligible for a bad debt deduction if the vendor were required to file a Federal Income Tax Return.

(b) The fact that a deduction has been taken against the current month must be so indicated on the face of the sales tax report. If the accounts are thereafter collected, the amount received shall be included in the gross receipts for the period in which the account is collected.

[36] OKLA. ADMIN. CODE § 710:65-11-2 (June 25, 2004).

(c) The "bad debt" deduction is calculated based upon the federal definition provided in 26 U.S.C. § 166 and the amount should be adjusted to exclude:

(1) *Financing charges or interest;*
(2) *Sales or use taxes charged on the purchase price;*
(3) *Uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid; and,*
(4) *Expenses incurred in attempting to collect any debt and repossessed property.* [68 O.S.Supp.2003, § 1366(B)]

(d) The burden of establishing the right to, and the validity of a bad debt deduction is on the vendor. In order to verify each deduction taken for a bad debt, the vendor must retain and make available:

(1) The name of the purchaser/debtor;

(2) The date of the sale or sales giving rise to the bad debt;

(3) The price of the property and the amount of sales tax charged thereon;

(4) The amount of interest, finance and service charges charged to the debt or account;

(5) Whether the property was retained by the vendor or repossessed;

(6) Any amounts charged to the debt or account representing costs of collection;

(7) The dates and amounts of any payments made on the debtor's account;

(8) Any portion of the debt or account which represents a charge that was not subjected to the tax in the original transaction; and

(9) Records documenting that the account has been or will be written off or could be eligible to be claimed if taxpayer kept accounts on a cash basis or could be eligible to be claimed if taxpayer kept records on the accrual basis on the Federal Income Tax Return for the year, or that the item was repossessed.

(e) The information in subsection (d) may be requested by the Commission at any time.

(f) The deduction for bad debts is limited to the amount shown on the invoice that is being or will be charged off as a bad debt. This tax deduction is allowable only to the person who remitted and reported the tax to the Commission. Subsequent recoveries of bad debts that have been

> taken as a deduction are to be reported in the month of the recovery. [**See:** 68 O.S. §1366]
>
> (g) *When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the statute of limitations for refund claims provided in Section 227 of this title; however, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.*
>
> (h) *Where filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.*
>
> (i) *For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.*
>
> (j) *In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the states which are members of the Streamlined Sales and Use Tax Agreement, the allocation will be permitted.* [68 O.S.Supp.2003, § 1366] (Emphasis original.)

9. Great weight is accorded an agency's construction of a statute when the administrative interpretation is made contemporaneously with the enactment of the statute and the construction is longstanding and continuous by the agency charged with its execution.[37]

10. Where the Legislature is made repeatedly aware of the operation of the statute according to the construction placed upon it by an agency and the Legislature has not expressed its disapproval with the agency's construction, the Legislature silence may be regarded as acquiescence in the agency's construction;[38] and the agency's construction is given controlling weight and will not be disregarded except in cases of serious doubt.[39]

11. The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless they are beyond the scope of the statute, are in conflict with the statute, or are unreasonable.[40] Generally, it is presumed that administrative rules and

---

[37] *Schulte Oil Co., Inc. v. Oklahoma Tax Commission*, 1994 OK 103, 882 P.2d 65.

[38] *R.R. Tway, Inc. v. Oklahoma Tax Commission*, 1995 OK 129, 910 P.2d 972.

[39] *Cox v. Dawson*, 1996 OK 11, 911 P.2d 272.

[40] *Arkansas Louisiana Gas Co. v. Travis*, 1984 OK 33, 682 P.2d 225. *See Boydston v. State*, 1954 OK 327, 277 P.2d 138.

regulations are fair and reasonable and that the complaining party has the burden of proving the contrary by competent and convincing evidence.[41]

12. Tax statutes are penal in nature. Where there is reasonable doubt about the taxing act's meaning, all ambiguity must be resolved in favor of the taxpayer. Legislative intention—ascertained from a general consideration of the entire act—must be given effect. Nonetheless, courts cannot enlarge the taxing act's ambit to make its provision's applicable to cases not clearly within the Legislature's contemplation or to fill lacunae in the revenue law in a manner that would distort the enactment's plain language.[42]

13. When the opinions are issued marked as "NOT FOR OFFICIAL PUBLICATION," the opinion[43] cannot be considered as precedent by any court or cited in any brief or other material presented to any court, *"…except to support a claim of res judicata, collateral estoppel, or law of the case."*[44]

14. The burden of establishing the right to, and the validity of a bad debt credit is on the vendor.[45]

ISSUE

Is a Motion for Summary Disposition deemed confessed when a party fails to file a response to specific issues raised in the Motion for Summary Disposition?

The Tax Commission Rule on Motions for Summary Disposition ("*MSD Rule*")[46] became effective June 25, 1999. Prior to that date the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*[47] did not make this procedural device available to the parties. The *MSD Rule* provides in pertinent part, "Any party opposing summary disposition of issues *shall* file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion."[48] (Emphasis added.)

---

[41] *State ex rel. Hart v. Parham*, 1966 OK 9, 412 P.2d 142.

[42] *Globe Life and Acc. Ins. Co. v. Oklahoma Tax Commission*, 1996 OK 39, ¶¶ 11-14, 913 P.2d 1322. (Citations omitted).

[43] *See* Note 35, *supra*.

[44] *See* Okla.Sup.Ct.R. 1.200.

[45] *See* Notes 34 and 36, *supra.*

[46] *See* Note 22, *supra*.

[47] *See* Note 2, *supra.*

[48] *See* Note 22, *supra*.

The Claimant asserts because the Division's *Response* did not meet the procedural requirements of the *MSD Rule* that the undersigned should grant its *MSD*.[49] The Claimant further asserts that because "The Response filed by the Division does not dispute [Claimant's} claim that it is entitled to summary disposition a matter of law that it is legally entitled to the bad debt refund claim under [the Bad Debt Statute],"[50] and "In its Response, the Division makes no attempt to dispute any material fact supporting [Claimant's] claim for summary disposition under *Duncan Medical*."[51]

The Oklahoma Court of Civil Appeals held in the *Spirgis*[52] case, "A party's failure to respond to a motion for summary judgment results not in a confession of judgment, but in admission of all material facts set forth in statement of movant which are supported by admissible evidence." "Granting of summary judgment motion on merits of cause of action is adjudication on merits even when no response is made to motion."[53] The Claimant's *MSD* is not deemed confessed because the Division failed to file a response to specific issues set forth in the *MSD*, but rather all material facts supported by admissible evidence set forth in the Claimant's *MSD* are admitted.

STANDARD OF REVIEW

An order that grants summary relief, in whole or in part, disposes solely of law questions.[54] Summary judgment should be granted only if it is perfectly clear that there is no material fact at issue. For summary judgment to be appropriate, the trial court must not only find there is no substantial controversy as to any material fact, but also that reasonable people could not reach differing conclusions from the undisputed facts.[55] A fact is material for purposes of summary judgment if proof of the fact would establish or refute an essential element of a cause of action or a defense.[56]

---

[49] Claimant's *Reply* at 2.

[50] *Id.* at 5.

[51] *Id.* at 7. *See* Note 5, *supra*. *See also* Note 90, *infra*.

[52] *Spirgis v. Circle K Stores, Inc.*, 1987 OK CIV APP 45, 743 P.2d 682. *See White v. White*, 2007 OK 86, 173 P.3d 78. *See also* OKLA. STAT. ANN. tit. 12, Ch. 2, App., Rule 4 (West 2009).

[53] *Union Oil Company of California v. Board of Equalization of Beckham County*, 1996 OK 40, 913 P.2d 1330.

[54] *Ashikian v. Oklahoma Horse Racing Commission*, 2008 OK 64, 188 P.3d 148.

[55] *Fulton v. People Lease Corporation*, 2010 OK CIV APP 84, 241 P.3d 255.

[56] *Winston v. Stewart & Elder, P.C.*, 2002 OK 68, 55 P.3d 1063.

ISSUE

Whether there is no substantial controversy as to the material facts and the Claimant is entitled to a decision in its favor as a matter of law. In other words, has the Claimant established that it is entitled to relief as provided in the Bad Debt Statute and Bad Debt Rule (pre and post November 1, 2003) as a matter of law?[57]

DISCUSSION

The Claimant's argument in the *MSD* is that "…there is no substantial controversy as to the material facts in this case and technical requirements of Section 1366 and Okla. Admin. Code § 710:65-11-2 have been met, [Claimant] is entitled to summary disposition as a matter of law under Okla. Admin. Code § 710:1-5-38(b)(6)."[58] In support of its argument, the Claimant asserts that there is no substantial controversy as to the following facts,[59] to-wit:

- Claimant is as a "vendor" and a "taxpayer" as those terms are defined in the Oklahoma Sales Tax Code.[60]
- The Customers purchased taxable goods from Claimant using the private label credit cards, in lieu of payment of the goods purchased, including the sales tax thereon (the "Accounts").[61]
- Claimant remitted the full amount of the sales tax due on each sale.[62]
- Pursuant to the Merchant Agreement, the Bank maintains a Reserve Fee Account and each month the Bank will charge against the Reserve Fee Account the Losses[63] on all Commercial Accounts.[64]

---

[57] *See MSD* at 5, Note 2, states "… [Claimant] realizes that Section 1366 was amended effective November 1, 2003. However, [Claimant] does not believe that such amendments materially affect the analysis contained herein."

[58] *MSD* at 5.

[59] *MSD* at 2-4.

[60] *See* Material Fact # 1.

[61] *Id.*

[62] *Id.*

[63] *Id. See* Exhibit A at 3. *See also* Exhibit B at 4. "Losses" means the total balance of Card Sales, interest and fees included in any Account which is more than one hundred eighty (180) days past due, or which Bank writes off as an uncollectible Account or writes off an invoice on an Account prior to one hundred eighty (180) days past due. Accounts may be deemed uncollectible as a result of certain events, including without limitation, lack of a Cardholder signature on an Account Application which is not remedied within ninety (90) days after a reasonable effort to collect has been made, fraud, undue hardship, bankruptcy or death of a Cardholder.

[64] *Id. See* Exhibit A at 12. *See also* Exhibit B at 23.

- Subsequent to the sale and the payment and remittance of the sale tax by Claimant, certain Customers defaulted in payments owed the Bank for their Commercial Accounts.[65]
- It was determined by the Bank that certain unpaid Commercial Accounts constituted Bad Debts, and the unpaid balances due on such Commercial Accounts were worthless and uncollectible for Bank's federal income tax purposes.[66]
- Credit Card Reserve Fees were claimed on line 26, Other Deductions, of U.S. Corporation Income Tax Returns filed by the Claimant for the 2002 through 2006 Tax Years.[67]
- All of the Commercial Accounts determined to constitute Bad Debts by the Bank included in the claims had an unpaid balance owed to the Bank.[68]
- As evidenced by the January 18, 2007 Claim and the February 27, 2007 Claim, Claimant has made no claim for interest attributable to any deduction taken related to bad debts.[69]

The Claimant argues in the *MSD* that the Bad Debt Statute (pre and post November 1, 2003)[70] "…makes clear that the federal income tax characterization of a 'bad debt' is meant only to serve as 'the *basis for calculating* the bad debt recovery[.] (Emphasis added). The only purpose of the reference 26 U.S.C., Section 166 is to ensure that bad debts are 'bona fide.' …Thus, Section 1366 looks to the write-off on a federal income tax return as an administrative mechanism to establish the <u>time and amount</u> of the write-off and, concomitantly, the time and amount for which a sales tax refund claim can be made. …that a vendor need not prove it deducted the claimed bad debts under 26 U.S.C., Section 166 in order to qualify for a deduction. All that is required under Section 1366(B) is that the bad debts comprising the vendor's refund claim fit within the 'federal definition of 'bad debt' in 26 U.S.C., Section 166. …the record demonstrates that requisites of Section 1366(B) have been satisfied in this case."[71]

The Division's position is essentially a systematic analysis of Section 1366 and OTC Rule 710:65-11-2 (pre and post November 1, 2003). Specifically, the Division responds that the Accounts "…weren't the accounts receivable of the Claimant; they were the accounts receivable of the bank. …that in this case Claimant did not claim them as a federal deduction on

---

[65] *Id.*

[66] *Id.*

[67] *Id.* *See* Exhibit C.

[68] *Id.*

[69] *See* Material Fact # 2. *See* Exhibits E through F.

[70] *See* Notes 24 and 31, *supra.*

[71] *MSD* at 6-7.

its federal income tax as a bad debt deduction on line 15 of its federal return. It claimed them on line 26 as an other legal deduction."[72]

The Claimant counters with the argument that "It is important to highlight at the outset a key distinction between this case and the recently decided case of [*Home Depot*].[73] Unlike in *Home Depot*, the amount of bad debt charge-offs in this case were fully recourse to the merchant – [Claimant]."[74] "In this case, our claim is, under the merchant services agreement, that we pay – that we bear the risk of loss on the bad debts. …That's exactly the reason why Home Depot failed to prevail before you. It's exactly the reason why they failed to prevail before the Civil Court of Appeals. They bore no risk of loss."[75]

Despite, the Claimant's assertions, the core issue in *Home Depot*[76] was whether Home Depot had sustained its burden of establishing the right to statutory relief as provided in the Bad Debt Statute and Bad Debt Rule (pre November 1, 2003), not "who bears the risk of loss."[77]

In *Home Depot*,[78] the Court held "There is no evidence that Home Depot could deduct the Service Fee, or a portion of the Service Fee, as a bad debt pursuant to Section 166 of the Internal Revenue Code.[79] Rather, Home Depot could not satisfy its burden of proving a right to a refund of sales tax under that statute. Section 1366 implicitly requires the owner of the bad debt account to be the entity allowed the deduction where it also requires the owner to report subsequent collections of bad debt accounts as income."[80]

When the Claimant's Customers purchased tangible personal property using the private label credit card, the Bank financed the purchases and the Customers made their payments to the Bank. Pursuant to the Merchant Agreement, "Each Account shall be deemed to be the property of [Bank]…,"[81] "It is the understanding and intent of the parties that [Claimant] shall have no ownership or other interest in any of the Accounts or related information, including receivables, credit information, and account records, unless and until [Claimant] purchases the Accounts as

---

[72] Tr. at 26.

[73] *See* Note 5, *supra.*

[74] *MSD* at 1.

[75] Tr. at 38.

[76] *See* Note 5, *supra.*

[77] *Id.* In *Home Depot*, the claimant's primary argument focused on "who bore the risk of loss," Home Depot or the bank(s). Tr. at 13.

[78] *Id.*

[79] *Id.*

[80] *Id.* at ¶ 7.

[81] *See* Material Fact # 4.

provided for in this Agreement."[82]

When the Accounts comprising the January 18, 2007 Claim and February 7, 2007 Claim were determined to be worthless and were charged off, it was the accounts receivable on the Banks books that the Accounts could be written off, not the Claimant's.[83] It was the Bank which was eligible to take the bad debt deduction under IRC 166,[84] not the Claimant, and the Bank is the entity which took the bad debt deduction on its Federal Returns for the Accounts comprising the January 18, 2007 Claim and the February 27, 2007 Claim.[85] The Claimant deducted the Reserve Fees as "Other Deductions" on Line 26 of its Federal Returns for the 2002 through 2006 Tax Years.[86]

In this matter, there is no dispute that the Claimant is not the owner of the Accounts and the Claimant was not eligible to take the Bad Debt Deduction on its Federal Returns, pursuant to Section 166 of Title 26.[87] Only a bona fide debt qualifies for purposes of Section 166. A bona fide debt which arises from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money…"[88] In this matter, the debtor-creditor relationship was between the Bank and the Customers, not the Claimant and the Customers. It is also undisputed that Claimant could not deduct the Reserve Fees, or a portion of the Reserve Fees, as bad debt pursuant to Section 166 of the Internal Revenue Code.[89]

In its *MSD*, and *Reply*, the Claimant states "Even if it is determined that [Claimant] failed to meet the statutory requirements contained in Section 1366, [Claimant] is still entitled to a remedy for its overpaid sales tax under the authority of *Duncan Medical Services v. Oklahoma State Tax Com'n*, 1994 OK 91, 911 P.2d 247.[90]

The Claimant fails to note that same argument was made in *Home Depot*, and the Court stated "Home Depot also claims that OTC has collected sales tax on an amount greater than authorized by the legislature. For this reason, it asserts that it is entitled to a refund for the amount it overpaid independently of § 1366. Home Depot cites *Duncan Medical Services.…* in support of this proposition. We do not find that *Duncan Medical Services* stands for that

[82] *See* Material Fact # 7.

[83] *See* Material Fact # 3.

[84] *See* Note 30, *supra*.

[85] *See* Material Facts #s 3 and 5.

[86] *Id.*

[87] *Id.* Tr. at 39.

[88] *See* Note 30, *supra*.

[89] *Id. See* Material Facts #s 1-7.

[90] *MSD* at 16-21. *Reply* at 7-8. Tr. at 18-21.

proposition and decline to adopt it. Title 68, OS.2001 § 1366 controls this matter and Home Depot has not carried its burden of proving a right to a sales tax refund pursuant to its terms."[91]

The Claimant has not met its burden of establishing the right to the statutory relief provided by the Bad Debt Statute and Bad Debt Rule (pre and post November 1, 2003).[92]

This case was submitted for ruling upon the *MSD* filed by the Claimant and although the Division did not file a Cross-Motion for Summary Disposition, Tax Commission Rule 710:1-5-38(b)(6)[93] provides, "If the Administrative Law Judge finds that there is no substantial controversy as to the material facts *and that one of the parties is entitled to a decision in its favor as a matter of law*, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations." (Emphasis added.)

Based upon the record, reasonable minds would reach the same conclusion, that there is no substantial controversy as to the material facts and the Division is entitled to a decision in its favor as a matter of law, making any discussion of whether Exhibit D, in conjunction with Exhibits L through M, is sufficient to substantiate the amounts of the January 18, 2007, Claim and the February 27, 2007, Claim a moot point.

[91] *See* Note 5, *supra*, at ¶ 9. (Footnote omitted.)

[92] *See* Notes 24, 31, 34, and 36, *supra.*

[93] *See* Note 22, *supra*.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the Claimant's *MSD* should be denied, as more fully set forth herein.

It is further the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the Division is entitled to a decision in its favor as a matter law, as more fully set forth herein.

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."