

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2013-11-13-04 / NON-PRECEDENTIAL
ID: P-11-620-K
DATE: NOVEMBER 13, 2013
DISPOSITION: DENIED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

ORDER

Protestant, PROTESTANT has not participated in any proceedings with the Court although all notices were mailed in accordance with 68 O.S. 2011, § 208. 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

Utilizing the Convenience Store Gross Sales Computation ("CSGS Computation") and Protestant's 3.2 beer purchases as reported by the beer wholesalers, the Division estimated Protestant's gross taxable sales for the period inclusive of the months of June, 2008 through February, 2011. It was determined by this methodology that Protestant had unreported taxable sales. As a result, the Division by letter dated June 3, 2011 proposed the assessment of sales tax, interest and penalties against Protestant. Protestant timely protested the proposed assessment. A hearing was not requested in the protest letter.

On November 23, 2011, the Division's file consisting of a cover sheet, audit work papers, assessment letter, protest letter, *Field Audit Write Up* prepared May 13, 2011 and Protestant's *Your Business Registration Application* was referred to the Office of the Administrative Law Judges for further proceedings consistent with the Uniform Tax Procedure Code¹ and the Rules of Practice and Procedure before the Office of Administrative Law Judges². The protest was docketed as Case No. P-11-620-K.³

An introductory letter was mailed to Protestant on November 28, 2011 at the address reflected on the protest letter (address of the convenience store), advising that the protest had been assigned and that all proceedings were stayed pending further notification. A *Subpoena Duces Tecum* was issued to Protestant at the address of the convenience store on December 5, 2011, directing that the records set forth therein be delivered to the Division on or before January 9, 2012.

¹ 68 O.S. 2011, § 201 et seq., as amended.

² Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("OAC").

³ OAC 710:1-5-22(b).

A pre-hearing teleconference was scheduled for August 6, 2012, by *Prehearing Teleconference Notice* issued July 25, 2012.⁴ The conference was held as scheduled without Protestant's participation. A *Prehearing Conference Order* ("Order") was issued directing the Division to file a verified response to protest no later than thirty (30) days from the date of the *Order* and advising Protestant that a reply could be filed within thirty (30) days of the filing date of the verified response. The *Order* further directed that if an oral hearing was not requested, the record would be closed and the protest submitted for decision upon completion of the announced procedural schedule.⁵

Pursuant to the *Compliance Division's Motion to Stay*, an order was issued cancelling the directive to file a verified response to protest, staying further proceedings pending a decision regarding a similar issue in an unrelated case and directing the parties to file a status report. The *Compliance Division's Status Report* was filed December 10, 2012 advising that the similar issue in the unrelated case had not been resolved. By letter dated December 11, 2012, the parties were directed to file a further status report. An additional status report was directed to be filed on or before February 25, 2013.

The *Compliance Division's Request for Status Teleconference* was filed February 20, 2013, which was granted by letter dated February 20, 2013. The teleconference was held on March 19, 2013, without Protestant's participation. Pursuant to the conference, the Division was directed to file any revisions to the audit on or before April 18, 2013, and Protestant was allowed thirty (30) days from the file stamped date of the revision to file a reply.

The *Compliance Division's Notice of Revision* was filed April 12, 2013, inclusive of a Field Audit Report – Posting and Assessment Sheet, a *2nd Addendum to Field Audit Write Up* prepared on April 2, 2013 and audit work papers. Protestant did not file a reply to the revision. By letter dated May 21, 2013, the parties were directed to propose a procedural schedule for the submission of the protest for decision. The letter addressed to Protestant was returned undelivered.

The *Compliance Division's Motion to Set Date for Hearing* was filed May 21, 2013, wherein the Division advised that some attempts to contact Protestant by regular and certified mail at Protestant's last known addresses were unsuccessful and that attempts to contact Protestant by telephone on May 21, 2013 were also unsuccessful. An *Order Granting Compliance Division's Motion to Set Date for Hearing* was issued May 22, 2013, wherein the hearing on the protest was scheduled for July 18, 2013 and the date for filing pre-trial briefs or position statements was set for July 11, 2013. The order addressed to Protestant was mailed to two (2) different addresses. Both were returned undelivered.

The *Compliance Division's Pre-hearing Brief* was filed July 11, 2013. Protestant did not file a position statement or memorandum brief.

⁴ OAC 710:1-5-28(a).

⁵ OAC 710:1-5-28(b) and (c).

A closed hearing was held as scheduled.⁶ Protestant did not appear. As a preliminary matter, Counsel for the Division announced the concession of the assessment of the 25% negligence penalty. AUDITOR, Auditor III testified with respect to the records received from Protestant, the conduct of the original audit and the audit resulting in the revision. Exhibits A through G were identified and admitted into evidence. The Court announced that official notice of the original audit work papers attached to the *Field Audit Write Up* and Protestant's *Your Business Registration Application* ("*Registration Application*") was taken. OAC 710:1-5-36. Upon conclusion of the Division's presentation, the record was closed and the protest was submitted for decision.⁷

Findings, Conclusions and Recommendations were issued by the Court on July 31, 2013. On August 5, 2013, the *Compliance Division's Motion for Extension to File Motion for Reconsideration* was filed which was granted by *Order Granting Compliance Division's Motion for Extension to File Motion for Reconsideration* issued August 5, 2013. The order addressed to Protestant was mailed to two (2) different addresses. Both were returned undelivered.

On August 22, 2013, the *Compliance Division's Motion for Rehearing, or in the Alternative, Motion for Reconsideration, and Brief in Support thereof* ("*Division's Motion*") was filed. Attached to the motion are Exhibits E1 and G1 which are basically addendums to Exhibits E and G admitted at the hearing. Protestant did not file a response to the motion. An *Order Granting Motion for Reconsideration* was issued September 11, 2013, which order also vacated the *Findings, Conclusions and Recommendations* issued July 31, 2013.

This cause now comes before the Court for further consideration.

FINDINGS OF FACT

Upon review of the file and records, including the recording of the hearing, the Exhibits received into evidence and the *Division's Motion* and exhibits, the undersigned finds:

1. At all times relevant⁸, Protestant owned and operated under sales tax permit number ###, a convenience store known as STORE, at a location of STORE ADDRESS in Oklahoma City. Protestant listed the address of the convenience store as his mailing address. *Registration Application*.
2. The *Registration Application* lists the principal type of business for the location as retail and indicates that the principal products sold are "Beer, Cig, Candy, Chips, & drinks".

⁶ Confidentiality of the proceedings was invoked by the Court. 68 O.S. 2011, § 205.

⁷ OAC 710:1-5-39(a).

⁸ The audit period includes the months of June, 2008 through February, 2011.

3. An audit notification letter and Records Request were mailed to Protestant on January 14, 2011. Exhibit A. Protestant was selected for an audit because his beer purchases according to information from his wholesalers exceeded his reported taxable sales for the audit period. Auditor's testimony and Exhibit E, pp. 3.
4. The Records Request provides as follows:

Provide the following records and information for the periods of **January 1, 2008** through **December 31, 2010**. (Periods audited may be adjusted from dates listed, if needed, by the OTC)

 1. **Complete the Retail Price/Product Cost Form and all other forms included, sign the forms, and return them with the documents requested.**
 2. A list of **ALL** vendors and suppliers.
 3. Copies of **ALL** purchases for 3 years for **ALL products**.
 4. Daily sales sheets for 3 years.
 5. **Daily cash register tapes for 3 years.**
 6. Monthly P&L statements (profit/loss statements)
 7. **Provide the Product Mix (p-mix) of items sold.**
 8. Bank statements, deposits, and check stubs for all bank accounts.
 9. Federal and State Income Tax Returns.
 10. Payroll records, including daily/monthly payroll, 941's, OESC, OTC reports, W2's, W4's.
 11. General Ledgers
 12. Provide information on free or complimentary items given to customers.
 13. Provide copies of OTC reports filed for this business.
 14. Police reports or insurance claims filed during the period listed above.
 15. PROVIDE COPIES OF ANY LETTER RULINGS, OPINIONS, OR ORDERS FROM THE OTC RECEIVED DURING THE AUDIT PERIOD.

Additional records may be requested as needed.

Exhibit A, (emphasis original).

5. Pursuant to this records request, Protestant submitted one (1) envelope of records. Auditor's testimony and Exhibit G, pp. 3.
6. Protestant was allowed additional time to provide further records. Exhibit B.
7. Pursuant to the second records request, Protestant submitted one (1) box of records consisting of "various purchase invoices from vendors" and "handwritten notepads for the years 2008, 2009 and 2010" which contained "z-totals, food

stamps and other such items”, Exhibit E, pp. 3; “z-totals, coupons, credit cards and other such items”, Exhibit G, pp. 3. Pursuant to the *Subpoena Duces Tecum*, Protestant submitted the previously provided records. Auditor’s testimony.

8. According to the *Field Audit Write Up* (“*Write Up*”), the CSGS Computation was utilized to estimate Protestant’s sales because the records provided were “incomplete”. The Auditor noted the following with respect to the records, “[t]he notepads only contained hand written amounts and were not actual Z-Tapes” and “[t]he purchase invoices provided did not have beer invoices and appeared to be incomplete”. Exhibit E, pp. 3. In the 2nd *Addendum to Field Audit Write Up* (“*Addendum*”), the Auditor noted the following with respect to the records, of the purchase invoices provided “\$978,177.75 out of \$1,022,845.10 were tobacco invoices.” Exhibit G, pp. 3.
9. The CSGS Computation calculates a convenience store’s expected gross taxable sales in various categories based on the dollar amount of 3.2 beer purchases. The national average sales margins and product mixes from the National Association of Convenience Stores (“NACS”) State of the Industry Report were utilized in the computation. Exhibit E, pp. 3.
10. Protestant purchased 3.2 beer from Premium Beers of Oklahoma and Capital Distributing LLC during the audit period. These wholesalers reported the dollar amount of their 3.2 beer sales to Protestant for 2008 through 2010. Exhibit E, pp. 3.⁹
11. The *Write Up* erroneously indicates credit for food stamp sales was allowed in the original audit. Exhibit E, pp. 3. However, credit for food stamp sales was not allowed because Protestant did not provide any bank statements or documents from the Department of Human Services to substantiate those sales. Auditor’s testimony and Exhibit E1.
12. Utilizing this methodology, the Division determined that Protestant had unreported taxable sales for the audit period in the total amount of \$1,505,325.02. Original audit work papers.
13. As a result of the audit, the Division by letter dated June 3, 2011, proposed the assessment of sales tax, interest and penalties against Protestant as follows:

⁹ It is noted in the *Write Up*, “[t]he amount of beer purchases for 2011 were computed by 2010 totals divided by 12 and multiplied by 2 to get totals for Jan [sic] to Feb [sic] 2011.”

Sales Tax:	\$ 126,070.97
Interest @ 15% to 08/31/11:	26,870.92
Negligence Penalty @ 25%	<u>31,517.75</u>
Tax, Interest & Penalty due within 30 days:	\$ 184,459.64
30 day delinquent Penalty @ 10%:	<u>12,607.10</u>
Total:	\$ 197,066.74

Exhibit C. The “25% negligence penalty was assessed because the taxpayer’s beer purchases were more than taxable sales on the sales tax reports.” Exhibit E, pp. 3.

14. Protestant timely protested the proposed assessment by letter marked received August 1, 2011. Exhibit D.
15. The *Compliance Division’s Notice of Revision (“Audit Revision”)*¹⁰ was filed April 12, 2013, inclusive of a Field Audit Report – Posting and Assessment Sheet, 2nd Addendum and audit work papers. Exhibit G. The notice advises that “to the extent possible”, the audit was revised based on records provided by Protestant.
16. The *Audit Revision* describes the method used to calculate Protestant’s unreported sales as follows:

Total Gross Sales (from taxpayer notebooks), less taxable sales previously reported, less tobacco purchases marked up 18.1% (2008 NACS).

Exhibit G, pp. 3.

17. In the *Audit Revision*, the Auditor notes the following:

The taxpayer provided purchase invoices for the audit of which \$978,177.75 out of \$1,022,845.10 were tobacco invoices. The taxpayer provided \$100,863.49 (tobacco purchases) in just two months of 2011, therefore the auditor disallowed all 2011 tobacco exemptions because the permit was closed in March and no proof was given for what happened to the excess inventory.¹¹

The taxpayer provided handwritten note pads for the entire audit period.¹² The auditor used the amount ‘Z-Out After Over Rings’ as the amount of

¹⁰ Evidence by official notice. OAC 710:1-5-36.

¹¹ The *Write Up* notes that “[t]he OTC received a letter from the taxpayer on 03/02/11 to stop Permit ###.” Exhibit E, pp. 3.

¹² The Auditor testified that note pads for every month of the audit period were provided except for two months which is confirmed by the schedule in Exhibit G, at pp. 8. The schedule notes that no note pad was provided for the month of March, 2010 and that the sales figure for that month was an average of the monthly sales for that year. The schedule also notes that no note pad was provided for the month of February, 2011.

yearly sales as this was the only sales figures [provided]. * * * * Credit was given for the amount of tobacco purchases for the year multiplied by the 18.1% markup derived from the 2008 NACS Report.

Exhibit G, pp. 3.

18. The Auditor testified that Protestant's tobacco purchases for the two months of 2011 were a "little unusual" in that they were more than what Protestant had been purchasing when compared to Protestant's tobacco purchase totals in previous years.
19. The *Audit Revision* determined that Protestant had unreported taxable sales for the audit period in the total amount of \$668,683.31. Exhibit G, pp. 6.
20. The *Audit Revision* proposes an aggregate amount due of \$101,046.41, consisting of State and City of Oklahoma City sales taxes in the amount of \$56,002.22, interest accrued through April 30, 2013, in the amount of \$25,443.41, a 10% delinquent penalty in the amount of \$5,600.22 and a 25% negligence penalty in the amount of \$14,000.56.
21. The Division has conceded the assessment of the 25% negligence penalty.
22. To account for the 2011 tobacco purchases, the Division proposes the allowance of \$65,253.19 in estimated tobacco sales for January and February, 2011, calculated by dividing Protestant's estimated¹³ tobacco sales of \$1,036,108.14 for the remaining prior audit period by Protestant's estimated¹⁴ gross sales of \$1,676,070.01 for that period. Exhibit G1.
23. On September 18, 2013, the *Compliance Division's Notice of Revision Pursuant to Order Granting Motion for Reconsideration* was filed ("*Second Revision*"). OAC 710:1-5-36.
24. The amount in controversy as proposed by the *Second Revision* is \$83,126.54, inclusive of State and City of Oklahoma City sales taxes of \$50,537.27, interest accrued through October 31, 2013 of \$27,535.54 and delinquent penalty of \$5,053.73.

Protestant did not file a sales tax report for February, 2011. The gross sales as reported on the note pad for January, 2011 were used as gross sales for February, 2011 in the *Audit Revision*. Exhibit G, pp. 8.

¹³ A mark-up of 18.1% based on data from the 2008 NACS report was applied to Protestant's tobacco purchases. Exhibit G1.

¹⁴ Protestant's audited gross sales for the month of March, 2010 was an average of the monthly sales for 2010. Exhibit G, pp. 8.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant has shown by a preponderance of evidence that the proposed amount due as reflected by the *Second Revision* is incorrect, and in what respect.

Protestant has not participated in any proceedings before the Court and has not offered any factual or legal challenges to the *Audit Revision* or the Division's calculation of his 2011 tobacco exemptions.

The Division contends that the protest should be denied because Protestant has failed to provide any evidence to justify a change to the *Audit Revision*. In support of this contention, the Division argues that the *Audit Revision* is supported on substantial evidence because it is based on Protestant's records. The Division further argues that Protestant failed to prove by a preponderance of evidence that the proposed amount due as reflected by the *Audit Revision* is erroneous. The Division further argues that the calculation of Protestant's 2011 tobacco exemptions is based on Protestant's records and conforms to Protestant's assertion that sixty percent of his total sales were sales of cigarettes and tobacco products.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. Jurisdiction of the parties and the subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 221(D).
2. The collection and remittance of sales tax is governed by the Oklahoma Sales Tax Code ("Code").¹⁵ An excise tax is levied upon the gross receipts or gross proceeds of all sales, not otherwise exempted by the Code. 68 O.S. 2011, § 1354(A). Incorporated cities, towns, and counties are authorized to levy taxes as the Legislature may levy for purposes of state government, including a consumer sales tax. 68 O.S. 2011, §§ 2701 et seq. and 1370 et seq., as amended.
3. The sale of "tangible personal property"¹⁶ is expressly made subject to sales tax. 68 O.S. 2011, § 1354(A) (1). It is presumed for purposes of the proper administration of the provisions of the Code that "all gross receipts are subject to

¹⁵ 68 O.S. 2011, § 1350 et seq., as amended.

¹⁶ Defined by the Code to mean "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses" and "includes electricity, water, gas, steam and prewritten computer software." 68 O.S. 2011, § 1352(24).

tax until they are shown to be tax exempt”, *OAC 710:65-1-4(A)*; and all sales of tangible personal property are subject to tax until the contrary is established, *OAC 710:65-3-30(b)*. The burden of proving that a sale is not a taxable sale is on the person who made the sale. 68 O.S. 2011, § 1365(F).

4. Every tax remitter¹⁷ required to make a sales tax report and pay any tax under the Code has the duty to keep and preserve for a period of three (3) years suitable records of the gross daily sales together with invoices of purchases and sales, bills of lading, bills of sale and other pertinent records and documents which may be necessary to determine the amount of tax due and such other records of goods, wares and merchandise, and other subjects of taxation under the Code as will substantiate and prove the accuracy of such returns. 68 O.S. 2011, § 1365(F). See, *OAC 710:65-3-31(a)*¹⁸. The records and books shall cover receipts from all sales and distinguish taxable from nontaxable receipts, and must clearly document all the information (deductions as well as gross receipts) required for the sales tax report. *OAC 710:65-3-30(a)(1)*. See, *OAC 710:65-3-4(a)* (1) and (3).¹⁹
5. Every person required to collect any tax imposed by the Code is personally liable for the tax. 68 O.S. 2011, § 1361(A) (1).
6. Rules promulgated pursuant to the Administrative Procedures Act²⁰ are presumed to be valid until declared otherwise by a court of competent jurisdiction. 75 O.S. 2011, § 306(C). They are valid and binding on the persons they affect, have the

¹⁷ Defined to mean “any person required to collect, report or remit the tax imposed by the [Code]. A tax remitter who fails, for any reason, to collect, report, or remit the tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by the [Code]”. 68 O.S. 2011, § 1352(27)

¹⁸ This rule provides:

Required records. The following records constitute a minimum requirement for the purposes of the Sales Tax Code for vendors selling tangible personal property:

- (1) Sales journal or log of daily sales in addition to cash register tapes and other data which will provide a daily record of the gross amount of sales.
- (2) A record of the amount of merchandise purchased. To fulfill this requirement, copies of all vendors’ invoices and taxpayers’ copies of purchase orders must be retained serially and in sequence as to date.
- (3) A true and complete inventory of the value of stock on hand taken at least once each year.

¹⁹ This rule in general provides that every vendor shall file a monthly report for sales made the preceding month disclosing among other things: (1) total gross receipts for the preceding month from sales, both taxable and non-taxable, and (2) deductions allow by law. Deductions not specifically delineated on the face of the report must be fully explained in the space provided.

²⁰ 75 O.S. 2011, § 250 et seq., § 301 et seq.

force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 2011, § 308.2(C). The legislature is deemed to have adopted an administrative construction of a statute when, subsequent to such construction, it amends the statute or reenacts it without overriding such construction. *Branch Trucking Co. v. Oklahoma Tax Commission*, 1990 OK 41, 801 P.2d 686.

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. See, *Arkansas Louisiana Gas Co. v. Travis*, 1984 OK 33, 682 P.2d 225; *Boydston v. State*, 1954 OK 327, 277 P.2d 138. Agency rules need not be specifically authorized by statute, but must generally reflect the intent of the Legislature as expressed in the statute. *Jarboe Sales Company v. Oklahoma Alcoholic Beverage Laws Enforcement Commission*, 2003 OK CIV APP 23, 65 P.3d 289. As a general rule, it is presumed that administrative rules and regulations are fair and reasonable, and that the complaining party has the burden of proving the contrary by competent and convincing evidence. *State ex rel. Hart v. Parham*, 1966 OK 9, 412 P.2d 142.

7. In administrative proceedings, the burden of proof is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *OAC 710:1-5-47. In re Adway Properties, Inc.*, 2006 OK CIV APP 14, 130 P.3d 302; *Geoffrey, Inc. v. Oklahoma Tax Commission*, 2006 OK CIV APP 27, 132 P.3d 632. The burden of proof standard is “preponderance of evidence.” 2 Am.Jur.2d *Administrative Law* § 357. “Preponderance of evidence” means “[e]vidence which is of greater weight or more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows the fact sought to be proved is more probable than not * * * evidence which is more credible and convincing to the mind * * * that which best accords with reason and probability.” BLACK’S LAW DICTIONARY 1064 (5th ed. 1979). Each element of the claim must be supported by reliable, probative, and substantial evidence of sufficient quality and quantity as to show the existence of the facts supporting the claim are more probable than their nonexistence. 2 Am.Jur.2d *Administrative Law* § 357. If the taxpayer fails to prove a prima facie case, the protest may be denied solely on the grounds of failure to prove sufficient facts which would entitle the taxpayer to the requested relief. *OAC, 710:1-5-47; Continental Oil Company v. Oklahoma Tax Commission*, 1976 OK 23, 570 P.2d 315.
8. An order of the Tax Commission must be supported by substantial evidence. *Dugger v. State ex rel. Oklahoma Tax Commission*, 1992 OK 105, 834 P.2d 964. Likewise, the audit upon which a portion of the record is formed and order issued, must be supported by substantial evidence. Oklahoma Tax Commission Order No. 2003-07-22-09, 2003 WL 2347117.

An audit is supported by substantial evidence when an evidentiary foundation for the audit has been established. In a majority of cases, the evidentiary foundation will be established by the records reviewed by the auditor. In those cases where an evidentiary foundation has been established, the taxpayer has the burden of proving in what respect the action of the Tax Commission in assessing the tax is incorrect. *OAC 710:1-5-47; Enterprise Management Consultants, Inc.*, supra. However, where an evidentiary foundation has not been laid or the records upon which the audit is based do not establish a basis for assessing a tax, the audit and assessment in the initial instance cannot be sustained as being supported by substantial evidence. *Dugger*, supra.

ANALYSIS

The *Audit Revision* clearly and unmistakably shows Protestant understated his gross receipts on his sales tax reports for the audit period. Exhibit G, pp. 8. It is presumed that “all gross receipts are subject to tax until they are shown to be tax exempt”. *OAC 710:65-1-4(A)*. Protestant failed to show by a preponderance of evidence that the audited under-reported gross receipts are tax exempt.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT be denied. It is further ORDERED that the amount in controversy as proposed by the *Second Revision*, inclusive of any additional accrued and accruing interest, be fixed as the deficiency due and owing.

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.”