JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2014-07-22-19 / NON-PRECEDENTIAL**
ID: **P-13-051-K**
DATE: **JULY 22, 2014**
DISPOSITION: **DISMISSED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

ORDER OF DISMISSAL

Protestant, PROTESTANT is represented by ATTORNEY, Attorney at Law. 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

An *Application for Hearing* ("*Application*") was filed by Protestant with the Office of the General Counsel of the Oklahoma Tax Commission on March 19, 2013. The *Application* was forwarded to the Office of the Administrative Law Judges on March 22, 2013, and assigned case number P-13-051-K. On March 25, 2013, a request for the Division's records with respect to the *Application* was forwarded to the Division. The Division's records were received April 5, 2013.

A pre-hearing telephone conference was scheduled for May 13, 2013, by *Prehearing Teleconference Notice* issued March 27, 2013. A *Status Report in Lieu of Pre-Hearing Conference* was filed April 23, 2013. Pursuant to the status report, the pre-hearing conference was considered held and a *Scheduling Order and Notice of Hearing* was issued setting forth the procedure for the submission of the Division's dispositional motion. The hearing on the motion was scheduled for July 23, 2013.

The *Compliance Division's Motion to Dismiss and Brief in Support thereof* ("*Motion to Dismiss*") together with Exhibits A through J attached thereto were filed June 18, 2013. Protestant's *Response to Compliance Division's Motion to Dismiss and Brief in Support thereof* ("*Response*"), and Exhibit A were filed July 16, 2013.

An *Unopposed Motion to Strike Hearing and Reschedule* was filed by the Division on July 18, 2013. Pursuant to the motion, the hearing scheduled for July 23, 2013 was stricken and rescheduled for September 24, 2013.

The *Compliance Division's Motion for Leave to File Reply to Protestant's Brief* and *Compliance Division's Reply to Taxpayer's Response to the Compliance Division's Motion to Dismiss and Brief in Support thereof* were filed September 13, 2013. By letter dated September 16, 2013, the parties were advised that Protestant could file a written

response to the motion on or before the hearing or argue the same at the hearing scheduled for September 24, 2013.

A teleconference was held with the representatives of the parties on September 23, 2013. Pursuant to the conference, an *Order of Judicial Notice and Rescheduling Hearing on Motion to Dismiss* was issued. The order identified certain documents contained in the Court's file in Case No. FD-11-018-K of which official notice was taken for purposes of this proceeding, cancelled the hearing on the *Motion to Dismiss* scheduled for September 24, 2013, and rescheduled the same for October 16, 2013. Copies of the documents officially noticed were forwarded to the parties on September 23, 2013.

The *Motion to Dismiss* was heard on October 16, 2013, as rescheduled. Protestant did not appear. Initially, the Court instructed that the Division had the burden of proof to show the *Application* was subject to dismissal for lack of jurisdiction and then permitted the Division to present its case for dismissal, whereupon three (3) employees of the Division: AUDITOR 1, Auditor III; FIELD AUDITOR, Field Auditor; and AUDITOR 2, Auditor II testified with respect to the records, the systems and procedures for obtaining and maintaining addresses of taxpayers and the notification practices of the Division. Exhibits A through N were identified, offered and admitted into evidence. Upon conclusion of the Division's summation, the record was closed and the *Motion to Dismiss* was submitted for decision.

On October 17, 2013, a *Motion for Status Conference and to Reschedule Hearing* was filed by Protestant. By letter dated October 18, 2013, the parties were notified that the Division could file a response to the motion on or before October 28, 2013, and Protestant could file a reply on or before November 7, 2013. The *Response of the Compliance Division to Taxpayer's Motion for Status Conference and to Reschedule Hearing* was filed October 24, 2013. On November 5, 2013, the *Reply to the Response of the Compliance Division to Taxpayer's Motion for Status Conference and to Reschedule Hearing* was filed.

A limited supplemental hearing was scheduled for January 28, 2014, by *Notice of Supplemental Hearing* issued November 12, 2013. A transcript of the hearing held on October 16, 2013, was provided to the representatives of the parties.

By memorandum filed December 10, 2013, the *Compliance Division's Status Report and Request for Teleconference* was filed. A teleconference was scheduled for December 17, 2013, by *Notice of Teleconference* issued December 10, 2013. Pursuant to the conference, the hearing scheduled for January 28, 2014, was stricken and a status report was directed to be filed.

The *Compliance Division's Status Report* was filed February 12, 2014. Pursuant to the report, the supplemental hearing was scheduled for April 8, 2014, by *Notice of Supplemental Hearing* issued February 13, 2014.

The supplemental hearing was held as rescheduled. BROKER, a real estate broker testified with respect to certain real estate transactions he brokered for Protestant. Exhibit 1 was identified, but upon objection was denied admission into evidence. Protestant testified with respect to his operation of the convenience store, the subsequent lease to another person and his non-involvement in the operation of the same, and where he was residing during the time of the issuance of the proposed assessments and his lack of notice of the same. Exhibits 2 through 4 were identified, offered and admitted into evidence. Exhibit O, a certified copy of the *Journal Entry of Judgment* entered in Case No. CV-2012-1388 was also admitted into evidence. Upon conclusion of the parties' closing statements, the record was closed and the *Motion to Dismiss* was submitted for decision.[1]

FINDINGS OF FACT

Upon review of the file and records, including the transcript of the hearing held on October 16, 2013, the recording of the supplemental hearing held on April 8, 2014, the exhibits received into evidence, the materials officially noticed and the pleadings of the parties, the undersigned finds:

1. On or about March 27, 2008, Protestant applied for and received a probationary sales tax permit to operate as a sole proprietorship a convenience store known as STORE. Exhibit A.

2. The convenience store was located at STORE ADDRESS in Oklahoma City. Exhibit A.

3. The mailing address for the sole proprietorship ("business") was MAILING ADDRESS, Protestant's residence at the time of the application. Exhibit A; Protestant's testimony.

4. In September, 2009, Protestant moved to his current residence located at NEW ADDRESS in Oklahoma City. Exhibits 3 and 4; Protestant's testimony.

5. Protestant has continuously leased his former residence located on MAILING ADDRESS from the time he moved to his current residence. Testimony of BROKER.

6. Protestant did not submit a change of address form to the postal service upon his change of residence. Exhibits E and L; Protestant's testimony.

[1] *OAC* 710:1-5-39.

7. Protestant did not notify the Oklahoma Tax Commission of a change of mailing address for the business. Protestant's testimony.

8. At the time of the application for the sales tax permit and since then, Protestant has worked full time as a design engineer in the HVAC industry. Protestant's testimony.

9. Protestant never directly operated the business, but did manage the operation of the convenience store for "only a couple of months". Protestant's testimony.

10. Protestant leased the operation of the convenience store to TENNANT on September 16, 2008. Exhibit 2.

11. According to the terms of the *Commercial Lease Agreement*, the tenant was "responsible for all sales tax, permits and any other fees associated with the operation of the business during the lease term." Exhibit 2.

12. The tenant never applied for nor received a sales tax permit to operate the convenience store. April 8, 2014 hearing, testimony of AUDITOR 1.

13. Protestant acknowledges that he was aware the tenant was using his sales tax permit to operate the convenience store, but claims to have instructed the tenant at the time of the first show cause matter represented by Exhibits B and C to get everything changed and out of his name.

14. Protestant admits that he took no action to cancel the sales tax permit issued to him, stating he "didn't know how it would affect the business", but assumed that when he leased the business his responsibility for the business no longer existed.

15. Protestant testified that after he leased the business to the tenant it was not his business, that he had no activity in the day to day operations of the business, had no control or authority over the operation of the business, did not collect any of the gross sales generated by the business, had no involvement in purchasing inventory for the business, did not see, maintain or review any of the records of the business and did not share in any of the profits of the business.

16. On August 7, 2009, a *Notice to Appear and Show Cause Why You should be Allowed to Continue the Operation of Your Business* and a *Notice of Proposed Assessment of Taxes* were forwarded by certified mail to Protestant at the mailing address of the business on MAILING ADDRESS. Exhibit B.

17. The listed tax delinquencies on the notice to appear were sales tax for the

periods inclusive of the months of April, 2008 through and including August, 2009 and income tax for the tax years 2001 through 2008. Exhibit B.

18. The return receipt for the notices reflects a delivery date of August 12, 2009 and execution by the addressee. Exhibit B.

19. With respect to Exhibit B, Protestant testified that he was not living at nor receiving mail from that address on the date of the notices, that he does not recall receiving the notices, that the signature appearing on the return receipt is not his and that he has never authorized anyone to receive mail on his behalf.

20. Protestant was made aware sales taxes were not paid for the business when the tenant asked him to authorize the issuance of a cashier's check in his name to pay for the taxes owed during the periods inclusive of the months of April, 2008 through September, 2009. Exhibit C; Protestant's testimony.

21. Protestant agreed to this because part of the money owed was for the period he managed the operation of the business. Protestant's testimony.

22. The tenant gave Protestant the cash to purchase the cashier's check. Protestant's testimony.

23. The signatures on the sales tax reports included in Exhibit C are not that of Protestant and he does not know who signed the reports. Exhibit C; Protestant's testimony.

24. The sales tax reports contain a social security number that is not associated with either Protestant or his wife.

25. The sales tax reports do not reflect a change of address either for mailing or for the business, but do show the name of the business as STORE and the mailing address as the physical location of the store on STREET OF STORE ADDRESS. Exhibit C.

26. On June 10, 2010, the Division mailed an audit notification letter for the business to Protestant at the STREET OF MAILING ADDRESS. Exhibit K.

27. The audit notification letter was not returned to the Division by the postal service. October 16, 2013 hearing, Tr. 35.

28. Protestant's expected gross receipts from the operation of the convenience store during the period of April 1, 2008 through June 30, 2010 ("audit

period") were calculated based on the 3.2 beer purchases of the store as reported by the wholesalers and the Convenience Store Gross Sales Computation developed by the Division from the National Association of Convenience Stores 2008 State of the Industry Report of national average sales margins and product mixes. Page 2, Field Audit Write Up prepared July 20, 2010.[2]

29. As a result of the audit, the Division by letter dated August 13, 2010, but mailed August 12, 2010, proposed the assessment of sales tax, interest and penalty for the audit period in the total estimated amount of $246,145.85 against Protestant doing business as STORE. Exhibit L.

30. The proposed assessment was mailed to the MAILING ADDRESS of the business. Exhibit L.

31. The proposed assessment was returned to the Division on August 17, 2010 with the notations "Return to Sender", "Moved Left No Address", "Unable to Forward" and "Return to Sender". Exhibit L.

32. Upon return of the proposed assessment, a search of the "profiles" database which is a "conglomeration of all the databases" of the Tax Commission inclusive of income tax and permit databases was conducted to determine whether there were any other addresses to which the assessment could be sent. October 16, 2013 hearing, Tr. 40-41.

33. The search only produced two (2) addresses for the "account", October 16, 2013 hearing, Tr. 42; the mailing address on the original application and the address of the physical location of the convenience store, October 16, 2013 hearing, Tr. 40-41.

34. The proposed assessment was re-mailed on August 25, 2010 to the address of the convenience store. Exhibit M; October 16, 2013 hearing, Tr.42.

35. The assessment sent to the address of the convenience store was not returned to the Division. October 16, 2013 hearing, Tr. 37; 42-43.

36. Protestant denies ever seeing either proposed assessment.

37. On October 13, 2011, a *Notice to Appear and Show Cause Why You should be Allowed to Continue the Operation of Your Business* and a *Notice of Proposed Assessment of Taxes* were forwarded by certified mail to Protestant at the mailing address of the business on MAILING ADDRESS STREET. Exhibit E.

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[2] Evidence by official notice. *OAC* 710:1-5-36(a).

38. The listed tax delinquencies on the notice to appear were sales tax for the periods inclusive of the months of July, 2010 through and including September, 2011 and income tax for the tax years 2001 through 2010. Exhibit E.

39. A tax adjustment was also listed on the notice to appear for sales tax for the field audit period of April, 2008 through June, 2010. Exhibit E.

40. The proposed amount of sales tax due for the delinquent periods of July, 2010 through September, 2011 was estimated at $4,473.00. Exhibit E.

41. The adjustment for the field audit period of April, 2008 through June, 2010 was listed as an actual amount of $260,162.08. Exhibit E.

42. The notice to appear and proposed assessment were returned to the Division on October 17, 2010 with the notations "Return to Sender", "Moved Left No Address", "Unable to Forward" and "Return to Sender". Exhibit L.

43. According to AUDITOR 1, when a notice to appear is returned undeliverable the Notice to Show Cause Section of the Division ("Section") attempts to first contact the taxpayer by telephone and then by other means including by e-mail. October 16, 2013 hearing, Tr. 15-16.

44. The attempt to contact Protestant by telephone in regards to the second show cause proceeding was unsuccessful. Exhibit F.

45. The telephone number listed on the summary page, Exhibit G; and the number identified on the *Call Log* as dialed, Exhibit F; is the telephone number listed for the business on the *Application*, Exhibit A.

46. The *Call Log* indicates among other things that the telephone number dialed was in service, that it belonged to an individual other than Protestant or his wife and that a check of the business pages of a telephone directory did not reveal a number for the business. Exhibit F.

47. The summary page and attached worksheets list the tax delinquencies and tax adjustment listed on the notice to appear. Exhibits G and E.

48. Protestant testified that he was not residing at the MAILING ADDRESS when the notice to appear and proposed assessment were mailed to that address and that Exhibit E shows the letters were not delivered to anyone.

49. The Section also attempted to contact Protestant by e-mail in regard to the second show cause proceeding. Exhibit H.

50. The Section did not receive a notification that the e-mail was undeliverable. October 16, 2013 hearing, Tr. 22-23.

51. Protestant admits that the address to which the e-mail was sent is his e-mail address, but does not recall seeing the e-mail and does not know what happened to it.

52. Protestant theorized that the e-mail went to his spam box or junk mail and stated that he does not look in those folders unless he knows who sent the e-mail or is looking for e-mail from the address from which it originated.

53. The second show cause proceeding resulted in a *Cease and Desist Order* issued November 16, 2011. Exhibit I.

54. The *Cease and Desist Order* was served on November 28, 2011, at the address of the physical location of the business by posting the same on the front window of the premises. Exhibit J.

55. Protestant denied ever seeing or receiving the *Cease and Desist Order*.

56. Protestant was not given a copy of Exhibit J, the *Return of Service Order*. Protestant's testimony.

57. The person identified on the *Return of Service Order* as an employee was not Protestant's employee and Protestant does not know him or her. Protestant's testimony.

58. Protestant identified the certified mail return receipt which is part of the documentation officially noticed and stated the signature appearing thereon is not his signature and he does not know whose signature appears thereon.

59. Protestant also stated with respect to the officially noticed documentation that he was not aware of any show cause proceeding before the Tax Commission.

60. Protestant also identified the *Cigarette and Tobacco Enforcement Survey* contained in the officially noticed documentation and testified that the signature appearing on the line reserved for "Taxpayer" is not his nor does he know who signed the survey.

61. Protestant admits that as of April 16, 2013, he had not filed his personal income tax returns for the tax years 2001 through 2011.

62. The *Application* was filed on March 19, 2013. Exhibit N.

ISSUES AND CONTENTIONS

The issue presented for decision is whether the Oklahoma Tax Commission is without jurisdiction to consider the substantive claims contained in Protestant's *Application*.

The Division contends that the Commission is without jurisdiction to hear Protestant's *Application*. In support of this contention, the Division argues that whether the *Application* was timely filed must be judged under the provisions of § 221 of the Uniform Tax Procedure Code since the errors alleged to have been committed by the Commission in the *Application* involve the issuance of proposed assessments against Protestant. The Division further argues that it complied with the notice provisions of the Uniform Tax Procedure Code with respect to the mailing of the proposed assessments and that the provisions are compliant with the procedural due process requirements of our common law. Further, the Division argues that Protestant has not been denied his due process rights to a hearing, but in fact has been afforded a hearing where he was allowed to present evidence showing he did not receive proper notice of the proposed assessments.

In the *Application*, Protestant "requests an oral hearing before the Oklahoma Tax Commission to protest the assessment of sales tax". *Application*, Conclusion, page 5. Protestant argues in the *Application* that during the periods in question he did not operate the convenience store, did not collect or share in the proceeds of the convenience store and was not a vendor or required to collect sales tax from the consumers of the convenience store. He maintains that he leased the operations of the convenience store to another, and that the tenant operated the convenience store in his individual capacity and not as his agent.[3] *Application*, Errors Committed by the Oklahoma Tax Commission, page 2. Protestant further argues that the proposed assessments were mailed to the incorrect address. *Application*, Errors Committed by the Oklahoma Tax Commission, page 3. Protestant maintains that he did not occupy the property located AT STORE ADDRESS in August, 2010, or the property located on STREET OF MAILING ADDRESS in October, 2011. Protestant argues that he was not authorized to receive correspondence at those addresses during the relevant time periods, did not receive said notices and had no opportunity to protest or otherwise respond to the notices. *Id.*

In the *Response*, Protestant contends that the assessment notices did not accomplish the demands of due process arguing that he did not receive the notices and therefore the notices were not meaningful and effective. Protestant further contends that the Division's action of filing the *Motion to Dismiss* denies him the right to a meaningful, fair and open hearing. In support of this contention, Protestant argues the *Application* was filed under the provisions of § 207 of the Uniform Tax Procedure Code, that § 207 grants him a hearing and that he should be allowed to present evidence showing he was not a person required to collect and remit sales tax during the periods in question and to

[3] Although not at issue, the Court is not entirely persuaded that the tenant was not an agent of Protestant.

show the audit methodology has been found to be arbitrary and capricious.

At hearing, Protestant contended that the *Motion to Dismiss* should be denied. In support of this contention, Protestant argues that the *Application* was filed pursuant to the provisions of § 207 and that a motion to dismiss a request for hearing under § 207 is not proper. In support of this contention, Protestant argues that he did not file a protest to the assessments under § 221 and concedes that had a protest to the assessments been filed under § 221, the protest would be untimely. Protestant asserts that the purpose of filing the *Application* was to seek a determination of whether under the circumstance he should be held liable for the sales taxes of a business he was not operating and for which he did not collect the taxes.

CONCLUSIONS OF LAW

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

1. Jurisdiction of the parties and subject matter of this proceeding, including the dismissal thereof is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 221; *OAC* 710:1-5-46(c) and (d).

2. The authority of the Oklahoma Tax Commission to assess taxes or additional taxes as levied by any state tax law is set forth in § 221(A) of Title 68 of the Oklahoma Statutes which provides in part:

> If any taxpayer[4] shall fail to make any report or return as required by any state tax law, the Oklahoma Tax Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period. If a report or return has been filed, the Tax Commission shall examine such report or return and make such audit or investigation as it may deem necessary. If , in cases where no report or return has been filed, the Tax Commission determines that there is a tax due for the taxable period, or if, in cases where a report or return has been filed, the Tax Commission shall determine that the tax disclosed by such report or return is less than the tax disclosed by its examination, it shall in writing propose the assessment of taxes or additional taxes, as the case may be, and shall mail a copy of the proposed assessment to the taxpayer at the taxpayer's last-known address. Proposed

[4] Defined to "mean (1) Any person owing or liable to pay any state tax; (2) Any person required to file a report, a return, or remit any tax required by the provisions of any state tax law; (3) Any person required to obtain a license or a permit or to keep any records under the provisions of any state tax law[.]" 68 O.S. 2011, § 202(d).

assessments made in the name of the 'Oklahoma Tax Commission' by its authorized agents shall be considered as the action of the Tax Commission.

3. The authority of the Oklahoma Tax Commission to cancel or to refuse the issuance, extension or reinstatement of any license, permit or duplicate copy thereof is set forth in § 212 of Title 68 of the Oklahoma Statutes which provides in pertinent part:

(A) The Tax Commission is authorized to cancel or to refuse the issuance, extension or reinstatement of any license, permit or duplicate copy thereof, under the provisions of any state tax law or other law, to any person, firm, or corporation who shall be guilty of:

1. Violation of any of the provisions of this article;
2. Violation of the provisions of any state tax law;
3. Violation of the rules and regulations promulgated by the Tax Commission for the administration and enforcement of any state tax law;
4. Failure to observe or fulfill the conditions upon which the license or permit was issued; and
5. Nonpayment of any delinquent tax or penalty.

(B) Before any license, permit or duplicate copy thereof may be canceled, or the issuance, reinstatement, or extension thereof refused, the Tax Commission shall give the owner of such license or permit, or applicant therefor, twenty (20) days' notice by registered mail or certified mail with return receipt requested, of a hearing before said Tax Commission, granting said person an opportunity to show cause why such action should not be taken. If the notice has been mailed as required by this section, failure of the person to have received actual notice of the hearing shall neither invalidate nor be grounds for invalidating any action taken at the hearing or pursuant to the hearing.

4. "Any notice required by [the Uniform Tax Procedure Code], or any state tax law, to be given by the Tax Commission shall be in writing and may be served personally or by mail." 68 O.S. 2011, § 208. Section 208 further provides:

If mailed, it shall be addressed to the person to be notified at the last-known address of such person. As used in this article or any other state tax law, 'last-known address' shall mean the last address given for such person as it appears on the records of the division of the Tax Commission giving such notice, or if no address appears on the records of that division, the last address

> given as appears on the records of any other division of the Tax Commission. If no such address appears, the notice shall be mailed to such address as may reasonably be obtainable. If the Tax Commission receives an address from the United States Postal Service as a result of a change of address submitted to the United States Postal Service, 'last-known address' shall mean the address provided to the United States Postal Service. The mailing of such notice shall be presumptive evidence of receipt of the same by the person to whom addressed. If the notice has been mailed as provided in this section, failure of the person to receive such notice shall neither invalidate nor be grounds for invalidating any action taken pursuant thereto, nor shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.

5. A taxpayer may file a written protest within sixty (60) days after the mailing of a proposed assessment. 68 O.S. 2011, § 221(C). "If the taxpayer fails to file a written protest within the sixty-day period * * * then the proposed assessment, without further action of the Tax Commission, shall become final and absolute." 68 O.S. 2011, § 221(E). Where a taxpayer fails to preserve his or her administrative remedy within the sixty (60) day period by protesting the assessment, the Tax Commission is without jurisdiction to hear the protest. ***Matter of Phillips Petroleum Co.,*** 1982 OK 112, 652 P.2d 283.

6. Every statute is deemed constitutionally valid until a court of competent jurisdiction declares otherwise. ***State ex rel. York v. Turpen***, 1984 OK 26, 681 P.2d 763, 767. The Tax Commission is not empowered to decide the constitutional validity of a taxing statute. ***Dow Jones & Company, Inc. v. Oklahoma Tax Commission***, 1990 OK 6, 787 P.2d 843, 845.

ANALYSIS

1. Both proposed assessments at issue were mailed to Protestant's last-known addresses as reflected by the records of the Division. The failure of Protestant to receive the proposed assessments is not a defense to the tax warrants issued with respect thereto nor relieves Protestant from the liability established by the proposed assessments. 68 O.S. 2011, §§ 208 and 212(B).

2. Notwithstanding how Protestant characterizes the *Application*, he seeks to challenge the liability established by the proposed assessments. Section 221 and extant common law clearly provide a mandatory procedure for challenging a proposed assessment issued by the Tax Commission. Where this procedure is not followed, § 221 and extant common law clearly provide that a proposed assessment is final and absolute, and the Tax Commission is without jurisdiction to hear a challenge thereto.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the *Application* be dismissed for lack of jurisdiction.

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. 2014) 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."