

IT IS THEREFORE ORDERED that Respondent's Mixed Beverage Permit MB213911, is hereby **CANCELLED**.

This Order will become final and enforceable on the 15 day of May, 2015, unless a Motion for Rehearing is filed by the 14 day of May, 2015.

SIGNED this the 20 day of April, 2015, at Austin, Texas.



Sherry K-Cook, Executive Director
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 14 day of April, 2015.



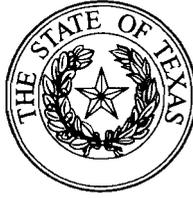
Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Lindy Hendricks
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-2061

Joseph Hosea Broussard
d/b/a Hispanos
RESPONDENT
24 North Canal
Texas City, TX 77591
VIA FIRST CLASS MAIL, CMRRR # 7012 0470 0001 3300 9962

Sandra Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: sandra.patton@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

November 10, 2014



Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: SOAH Docket No. 458-14-4438; Texas Alcoholic Beverage Commission vs. Joseph Hosea Broussard d/b/a Hispanos

Dear Ms. Cook:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Lindy Hendricks".

Lindy Hendricks
Administrative Law Judge

LH/mr

Enclosure

xc Sandra Patton, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008
- **VIA REGULAR MAIL**
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA REGULAR MAIL**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA REGULAR MAIL**
Joseph Hosea Broussard d/b/a Hispanos, 24 North Canal, Texas City, TX 77591 - **VIA REGULAR MAIL**

II. DISCUSSION

A. Background

The following facts are undisputed. Hispanos holds mixed beverage number MB21391 for the business located at 921 Texas Avenue in Texas City, Galveston County, Texas. The permit was issued on March 27, 1990. In July 2001, Respondent placed his permit in “voluntary suspension.”² After Respondent placed his permit in voluntary suspension, he continued to file annual renewal applications with the Commission and paid his state fees. However, Respondent has not paid any taxes to Galveston County since 2001.

B. Legal Standards and Applicable Law

Section 11.38 of the Texas Alcoholic Beverage Code (Code) provides:

(a) The governing body of a city or town may levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town.

(b) The commission or administrator may cancel a permit if it finds that the permittee has not paid a fee levied under this section.

(e) The commission or administrator may cancel or deny a permit for the retail sale or service of alcoholic beverages, including a permit held by the holder of a food and beverage certificate, if it finds that the permit holder or applicant has not paid delinquent ad valorem taxes due on that permitted premises or due from a business operated on that premises to any taxing authority in the county of the premise. For purposes of this subsection, a permit holder or applicant is presumed delinquent in the payment of taxes due if the permit holder or applicant:

² A permit may be placed in administrative suspension (or inactivation). During administrative inactivation (whether voluntary or involuntary), the license or permit holder may not engage in any authorized activities allowed under that license or permit. The term of the license or permit will not be tolled during administrative inactivation but will expire on the date indicated on the face of the license or permit. A license or permit may be renewed while on administrative inactivation only if, prior to the expiration date of the license or permit, a completed renewal application with required supporting documents and all necessary state fees and surcharges is filed in accordance with all applicable sections of the code and rules. Otherwise the license or permit will expire at the end of its existing term. 16 Tex. Admin. Code (Rules) § 33.31.

- (1) is placed on a delinquent tax roll prepared under Section 33.03, Tax Code;
- (2) has received a notice of delinquency under Section 33.04, Tax Code; and
- (3) has not made payment required under Section 42.08, Tax Code.

C. Evidence and Parties' Contention

Staff alleged that Respondent failed to pay a local fee, namely ad valorem taxes. Staff presented the testimony of Kimberly Renee Hall, Chief Deputy of Operations for the Galveston County Tax Assessor-Collector's Office (County). Ms. Hall testified that Respondent has not paid approximately \$4,500 in delinquent taxes owed to the County for his mixed beverage permit. She testified that the County sent Respondent three statements, giving him notice of the delinquency.

Staff presented certified records of the Commission, including letters from the County to Respondent. In a letter dated June 27, 2011, the County notified Respondent that he owed county taxes on MB213911 for the period from March 27, 2003, through March 26, 2013. A second letter, dated January 19, 2012, showed an outstanding amount of \$3,750 in taxes due. In a final letter dated May 27, 2014, the County notified Respondent that there was a final determination of taxes in the amount of \$4,500 owed to the County.³

Respondent did not dispute the existence of the delinquent ad valorem taxes. However, he does not believe he is responsible for those taxes after he placed his permit in voluntary suspension in 2001. Respondent testified that other licenses have been issued to the location and argued the County failed to inspect the premises to see that he was not operating there.⁴ Additionally, Respondent testified that any delinquent taxes should have been statutorily discharged pursuant to Tax Code §33.05(c).

Staff does not dispute the fact that other alcoholic beverage permits have been issued to the premises after Respondent placed his permit in voluntary suspension. Staff argues that the issuance

³ TABC Ex. 1 at 4.

⁴ Resp. Exs. 2-4, 10-16.

of other permits does not negate Respondent's tax responsibility which exists even while his permits are in suspension.

D. Analysis

The relevant facts are clear and undisputed. Respondent holds mixed beverage permit MB213911 for the premises located at 921 Texas Avenue in Galveston County, Texas. The permit was originally issued on March 27, 1990. In 2001, Respondent placed his permit in voluntary suspension. Respondent has filed annual renewal applications to maintain his mixed beverage permit with the Commission, up to and including the renewal application the subject of this hearing. Respondent has not paid any taxes to the County since 2001 when he placed his permit in voluntary suspension.

Respondent argued that the delinquent taxes have been statutorily discharged. The ALJ finds Tax Code § 33.05 is not applicable in this hearing. Section 33.05 applies to a suit to collect taxes on real and personal property. In this hearing, Staff is seeking denial or cancellation of a permit due to a violation of the Code. Additionally, a TABC permit is a purely personal privilege and does not constitute real or personal property.⁵

Respondent argued he should not be responsible for the taxes because his permits have been placed in voluntary suspension and other permits have been issued to the premises. Pursuant to Rules § 33.31(h), a permit that has been placed in voluntary suspension may be renewed only if a completed renewal application with required supporting documents and *all necessary state fees and surcharges* is filed in accordance with all applicable sections of the Code and Rules. In accordance with Code § 11.38, a city or town may levy and collect a fee *for each permit issued for premises* located within the city or town. The fee applies to each permit issued for the premises. The Code does not distinguish or exempt permits that have been placed in voluntary suspension or inactivation.

⁵ Code § 6.01.

The evidence shows Respondent was issued a permit for the premises at 921 Texas Avenue in Galveston County in 1990 and that the permit has been continuously renewed. Having a permit issued for the premises, Respondent is responsible for local fees and taxes. Respondent has failed to pay delinquent ad valorem taxes owed to the County for his mixed beverage permit. He was placed on the delinquent tax roll, received notice of the delinquency, and has not made the required payment. For these reasons, the ALJ finds Respondent violated Code §§ 11.38 and 11.61(b)(2) and recommends that Respondent's Mixed Beverage Permit, MB231911, be denied or cancelled.

III. FINDINGS OF FACT

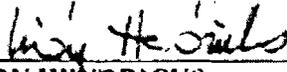
1. Joseph Hosea Broussard d/b/a Hispanos (Hispanos or Respondent) holds a mixed beverage permit, MB231911, for the premises located at 921 Texas Avenue, Texas City, Galveston County, Texas.
2. Staff of the Texas Commission on Alcoholic Beverages (Commission) issued its notice of hearing, dated July 21, 2014, alleging a violation of the Texas Alcoholic Beverage Code (Code).
3. The notice stated the time, place, and nature of the hearing; legal authority and jurisdiction under which the hearing was to be held; statutes and rules involved; and matters asserted.
4. The hearing on the merits convened on September 19, 2014, at 2020 North Loop West, Suite 111, in Houston, Texas. Staff attorney Sandra K. Patton represented Staff. Respondent appeared and represented himself. The record closed at the conclusion of the hearing.
5. Respondent failed to pay taxes owed to the Galveston County Tax Office and was placed on the delinquent tax roll.
6. Respondent was provided with notice of said delinquency by first class mail on June 27, 2011; January 19, 2012; and May 27, 2014.
7. Respondent has not made the required payment.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case pursuant to Code ch. 5 and § 11.61.

2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Code § 5.43 and Tex. Gov't Code ch. 2003.
3. Respondent received notice of the hearing, pursuant to Tex. Gov't Code §§ 2001.051, 2001.052.
4. Based upon Proposed Findings of Fact Nos. 5 - 7, Respondent violated Code §§ 11.38 and 11.61(b)(2).
5. Based upon Conclusion of Law No. 4, Respondent's Mixed Beverage Permit, MB213911, should be denied or cancelled.

SIGNED November 10, 2014.



LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS