

5-28-03

STATE OF FLORIDA, DEPARTMENT OF REVENUE  
TALLAHASSEE, FLORIDA

FILED  
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TALLAHASSEE, FLORIDA  
LPS CWS

MY OIL COMPANY, INC., )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA )  
 DEPARTMENT OF REVENUE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

At

DOAH CASE NO. 02-3527  
DOR CASE NO. 03-4-FOF

FINAL ORDER

This cause came before me, as Executive Director of the Florida Department of Revenue, for the purpose of issuing a Final Order. The Administrative Law Judge assigned by the Division of Administrative Hearings submitted a Recommended Order to the Florida Department of Revenue ("Department"). A copy of that Recommended Order, issued on May 28, 2003, by Administrative Law Judge Lawrence P. Stevenson, is attached to this order and incorporated to the extent described herein. Petitioner filed exceptions to the Recommended Order. The Department has jurisdiction of this cause.

STATEMENT OF THE ISSUE

Whether the Department's denial of Petitioner's application for a Florida fuel license should be upheld.

PRELIMINARY STATEMENT

The Department adopts and incorporates in this Final Order the Preliminary Statement contained in the Recommended Order as if fully set forth herein.

RULINGS ON PETITIONER'S EXCEPTIONS

Petitioner filed two exceptions to the Recommended Order on June 3, 2003, asserting that the Department's denial of a fuel license under section 206.026, Florida Statutes, is a violation of the due process and the equal protection clauses of the United States Constitution and Florida Constitution.

Administrative law judges and administrative agencies are without jurisdiction to consider questions of constitutional import regarding administrative actions of the agency. Hays v. State Dept. of Business Regulation, 418 So.2d 332 (Fla. 3<sup>rd</sup> DCA 1982); Division of Alcoholic Beverages & Tobacco v. E.L. Asbury, 460 So.2d 1026 (Fla. 4<sup>th</sup> DCA 1984).

The exceptions are therefore denied.

FINDINGS OF FACT

The Department adopts and incorporates in this Final Order the Findings of Fact contained in the Recommended Order as if fully set forth herein.

CONCLUSIONS OF LAW

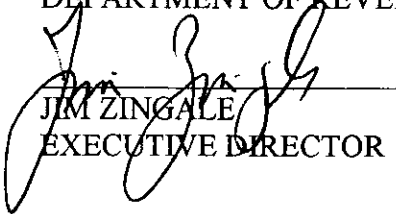
The Department adopts and incorporates in this Final Order the Conclusions of Law contained in the Recommended Order as if fully set forth herein.

Based on the forgoing, it is,

ORDERED that the Department's denial of Petitioner's application for a Florida fuel license be upheld.

DONE AND ENTERED in Tallahassee, Leon County, Florida this 8<sup>th</sup> day of September, 2003.

STATE OF FLORIDA  
DEPARTMENT OF REVENUE

  
\_\_\_\_\_  
JIM ZINGALE  
EXECUTIVE DIRECTOR

CERTIFICATE OF FILING

I HEREBY CERTIFY that the foregoing Final Order has been filed in the official records of the Department of Revenue, this 8<sup>th</sup> day of September 2003.

  
\_\_\_\_\_  
JUDY LANGSTON  
AGENCY CLERK

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Fla. Stat., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of the General Counsel, Post Office Box 6668, Tallahassee, Florida 32314-6668, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Order is filed with the Clerk of the Department.

Attachment: Administrative Law Judge's Recommended Order

Copies furnished to:

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