

STATE OF FLORIDA DEPARTMENT OF REVENUE
TALLAHASSEE, FLORIDA

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

BEST DAY CHARTERS, INC.,)
)
 Petitioner,)
)
 vs.)
)
 FLORIDA DEPARTMENT OF REVENUE)
)
 Respondent.)
)
 _____)

DOR 05-15-FOF
CASE NO. 05-1752 BDC
(DOAH) closed

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 issued a Recommended Order, sustaining the Department's assessment with a full compromise of the penalty. A copy of the Recommended Order issued on the 22nd day of September, 2005, by Administrative Law Judge Bram D. E. Canter is attached to this Final Order and incorporated to the extent described herein. The Department timely filed exceptions to certain conclusions of law in the Recommended Order, a copy of which is also attached to this Final Order. The Petitioner did not file any exceptions nor did the Petitioner file responses to the Department's exceptions. The Department adopts and incorporates in this Final Order the Conclusions of Law contained in the Recommended Order with the exception of Conclusion of Law 29, which is modified as reflected below. The Department has jurisdiction of this cause.

STATEMENT OF THE ISSUE

Whether Petitioner's purchase of two vessels in Florida, a thirty-six foot catamaran and a nine foot inflatable, qualified for exemption from sales tax pursuant to Section 212.05(1)(a)2, Fla. Stat.. The Department determined that Petitioner did not qualify and assessed Petitioner sales tax, interest and penalties.

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.

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, in its Final Order, may reject or modify the recommended conclusions of law over which it has substantive jurisdiction. Section 120.57(1)(1), Fla. Stat. When rejecting or modifying such conclusions, the Department must state with particularity its reasons for rejecting or modifying each such conclusion. Id. The Department must also find that its substituted conclusion is as reasonable, or is more reasonable than that which was rejected or modified. Id.

While the Administrative Law Judge accurately cited to Florida Administrative Code Rule 12-13.007(4), in paragraph 29, he did not provide an important legal conclusion that when there is a finding of reasonable cause based on good faith reliance on erroneous advice, that the penalty can be waived. The Department finds its conclusion is as reasonable or more reasonable than that which was modified. The Department modifies Conclusion of 29 to provide:

29. Florida Administrative Code Rule 12-13.007(4) makes good faith reliance on erroneous advice a basis for finding reasonable cause for noncompliance and hence for compromise of penalties.

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

RULINGS ON RESPONDENT'S EXCEPTIONS

Respondent requests that the agency clarify in the Final Order that the Petitioner, in addition to being liable for six percent on the purchase of the two vessels, is liable for paying the local government sales surtax of one percent on those purchases. Paragraph 16 in the Findings of Fact of the Recommended Order correctly states the total tax due, including penalty and interest. The tax referenced in that sentence includes both the applicable six percent state sales tax as well as the local government sales surtax of one percent. While the Administrative Law Judge cited the correct dollar amount due in tax, in his final recommendations, he referenced the state sales tax portion but not the local option surtax part. In support of the request to clarify the recommendation on page nine of the Recommended Order, Respondent cites to the trial transcript where the senior tax specialist in the Boat Enforcement Unit within DOR testified that, "[t]he tax is based on

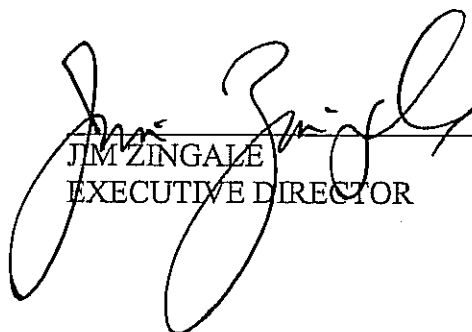
the six percent on the affidavit price. It's six percent of the purchase price plus the applicable local option tax for this county." (TR p. 27 lines 17-19). The two taxes were aggregated together for purposes of identifying the "Total Tax Due" in the Notice of Final Assessment dated February 23, 2005. Because all applicable sales taxes were due on the purchase of the two vessels, this final order clarifies that the assessment due includes sales tax of six percent as well as the local government sales surtax. The department finds its substituted conclusion is as or more reasonable than that which was modified.

Based on the forgoing, it is,

ORDERED that the Department's assessment as set forth in the Notice of Final Assessment, dated February 23, 2005 for tax including sales tax of six percent and local government sales surtax of one percent, plus interest (accruing at \$1.54 per day until date paid), is sustained. The penalty is compromised in full.

DONE AND ENTERED in Tallahassee, Leon County, Florida this 18th day of October, 2005.

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 19th day of October, 2005.



NANCY PURVIS
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 filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Agency Clerk in the Department of Revenue 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 along with the applicable filing fees in 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:

Bram D. E. Canter
Administrative Law Judge
Division of Administrative Hearings
The Desoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Brenda J. Dohring
Best Day Charters, Inc.
518 North Tampa Street, Suite 300
Tampa, Florida 33602

Jarrell A. Murchison, Senior Assistant Attorney General
John Mika, Assistant Attorney General
Office of Attorney General
The Capitol, Plaza Level 01,
Tallahassee, FL 32399-1050

Bruce Hoffmann, General Counsel
Rick McClure, Assistant General Counsel
Department of Revenue
204 Carlton Building
Tallahassee, Florida 32399-0100

James Zingale, Executive Director
Department of Revenue
104 Carlton Building
Tallahassee, Florida 32399-0100