

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BEST DAY CHARTERS, INC.,)
)
 Petitioner,)
)
vs.) Case No. 05-1752
)
DEPARTMENT OF REVENUE,)
)
 Respondent.)

)

RECOMMENDED ORDER

On August 23, 2005, a final hearing was held in Tampa, Florida, before Bram D. E. Canter, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Brenda J. Dohring, pro se
Best Day Charters, Inc.
518 North Tampa Street, Suite 300
Tampa, Florida 33602

For Respondent: John Mika, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether the Petitioner is liable for sales tax, interest, and penalties as alleged by the Department of Revenue (Department).

PRELIMINARY STATEMENT

On February 23, 2005, the Department issued a "Notice of Final Assessment for Sales or Use Tax, Penalty, and Interest Due on a Boat" (Final Assessment) to the Petitioner, pertaining to the Petitioner's purchase of a catamaran sailboat and an inflatable "tender." The Petitioner protested the Final Assessment and the case was referred to the Division of Administrative Hearings for an evidentiary hearing.

At the final hearing, the Department presented the testimony of John Isaacs. The Department's Composite Exhibit 1 was admitted into evidence. The Petitioner presented the testimony of Brenda Dohring, Joshua Dohring, and David Erdman. The Petitioner's Exhibits 1 through 5 and 7 were admitted into evidence.

The one-volume Transcript of the hearing was filed on September 8, 2005. The Department filed a Proposed Recommended Order on September 16, 2005, and it was considered in the preparation of this Recommended Order. No post-hearing papers were submitted by the Petitioner.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following Findings of Fact are made:

1. The Petitioner is a Florida corporation formed in October 2004. The principal office and mailing address of the

Petitioner is 518 North Tampa Street, Suite 300, Tampa, Florida 33602.

2. The directors of the corporation are Brenda Dohring and Robert Hicks (husband and wife), and Joshua Dohring (their son).

3. Brenda Dohring and Robert Hicks are residents of Tampa, Florida, and registered voters in Hillsborough County.

4. Brenda Dohring and Robert Hicks hold Florida driver's licenses.

5. Joshua Dohring is a resident of the United States Virgin Islands, where he operates a charter boat business.

6. On November 8, 2004, the Petitioner purchased, in St. Petersburg, Florida, a 36-foot catamaran sailboat (hull No. QPQ0000D089) for \$113,000.

7. On November 15, 2004, the Petitioner purchased, in St. Petersburg, Florida, an inflatable tender with outboard motor and accessories (hull No. XMO18119G405) for \$4,865.

8. The catamaran and tender were purchased for the use of Joshua Dohring in his charter boat business in the Virgin Islands. They were to replace his previous boat that was destroyed by Hurricane Ivan.

9. Because Joshua Dohring did not have sufficient financial resources or credit, Brenda Dohring and Robert Hicks decided to make the purchases for him. They created the Petitioner corporation to purchase and own the catamaran and

tender because they wanted protection from personal liability that might arise from Joshua Dohring's use of the vessels in the Virgin Islands.

10. At the time of each purchase, Joshua Dohring was provided a Department affidavit form to be completed and filed with the Department to claim exemption from sales tax. Joshua Dohring indicated the name of the Petitioner corporation on the affidavit forms along with the names of the corporation's directors.

11. The Department's affidavit form for sales tax exemption includes several statements that the affiant must attest to, including the following:

4. I represent a corporation which has no officer or director who is a resident of, or makes his or her permanent place of abode in Florida.

12. David Erdman, a licensed yacht broker in Florida who assisted Joshua Dohring in the purchase of the catamaran and tender, believed that the purchases were exempt from Florida sales tax because Joshua Dohring was not a Florida resident and was going to remove the vessels from Florida. Mr. Erdman did not understand that, because the purchaser was not Joshua Dohring, but a Florida corporation, the sales tax exemption did not apply. Mr. Erdman advised Joshua Dohring that the purchases were exempt from Florida sales tax.

13. There is no evidence in the record, and the Department did not allege, that the Petitioner intended to defraud the State. On this record, it is clear that the Petitioner's directors were simply mistaken in their belief that the purchases of the boats were exempt from Florida sales tax, based primarily on the erroneous advice of Mr. Erdman.

14. The Department made a routine investigation after its receipt of the sales tax exemption affidavits signed by Mr. Dohring and determined that the exemption did not apply because the Petitioner is a Florida corporation with directors who are residents of Florida.

15. In January 2005, the Department notified the Petitioner of its billing for the sales tax due on the boat purchases, plus penalty and interest, totaling \$8,474.67. An informal conference regarding the billing was requested by the Petitioner, and a conference was held in an attempt to resolve the matter.

16. Subsequently, the Department's Final Assessment was issued on January 23, 2005, indicating tax, penalty, and interest totaling \$9,229.26.

17. Because of the circumstances indicating that the Petitioner's failure to pay was due to a mistake and bad advice, the Department proposes to eliminate the penalty.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Sections 120.569 and 120.57, and Subsection 72.011(1)(a), Florida Statutes (2004).¹

19. Subsection 120.80(14)(b), Florida Statutes, provides in pertinent part:

1. In any administrative proceeding brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent". . . .

2. In any such administrative proceeding, the applicable department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

20. The Legislature has declared its intention in Subsection 212.21(2), Florida Statutes, to tax each and every sale of tangible property in Florida, subject only to the specific exemptions within Chapter 212, Florida Statutes.

21. Subsection 212.05(1)(a)1.a., Florida Statutes, imposes a six percent sales tax on the sales price of each article of tangible personal property when sold in retail in this state, unless specifically exempt. Subsection 212.05(1)(a)2., Florida Statutes, creates an exemption from

sales tax for the sale of boats to nonresident purchasers, when other specific statutory criteria for the exemption are met.

22. Subsection 212.05(1)(a)2., Florida Statutes, provides in pertinent part:

This paragraph does not apply to the sale of a boat or airplane by or through a registered dealer under this chapter to a purchaser, who, at the time of taking delivery, is a nonresident of this state, does not make his or her permanent place of abode in this state, and is not engaged in carrying on in this state any employment, trade, business, or profession in which the boat will be used in this state, or is a corporation none of the officers or directors of which is a resident of, or makes his or her permanent place of abode in, this state.

The statements in the Department's sales tax exemption affidavit forms are derived from this statute.

23. Florida Administrative Code Rule 12A-1.007(9) provides that Florida residency in this context can be established by place of abode in Florida, voter registration in Florida, or by possession of a Florida driver's license.

24. Exemptions to the taxing statutes are to be strictly construed against the taxpayer. State ex rel. Szabo Food Service of North Carolina, Inc. v. Dickinson, 286 So. 2d 529 (Fla. 1973).

25. Because the Petitioner is a Florida corporation with two directors who reside in Florida, are registered voters in

Florida, and possess Florida driver's licenses, the Petitioner did not qualify for the statutory exemption from sales tax on the purchase of the catamaran and tender.

26. Pursuant to Subsection 212.12(4), Florida Statutes, when interest and penalty are imposed, they are payable in the same manner as if they were part of the tax imposed.

27. A taxpayer's liability for interest can be "compromised" if there are grounds for doubt as to the liability for the tax, or if there is a delay in the determination of the amount due attributable to the action or inaction of the Department. § 213.21(3)(a), Fla. Stat. No circumstances exist in this case for compromising the interest imposed.

28. A taxpayer's liability for a penalty may be settled or compromised if noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. Id.

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

30. Although the Petitioner's directors were mistaken in their belief that the purchases of the catamaran and tender were exempt from sales tax, there is no statutory basis for excusing the tax. The directors realized a benefit from the use of a corporation to purchase and own the vessels, and the value of that benefit could easily exceed the sales tax.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department issue an final order:

1. finding that the Petitioner's purchases of the catamaran and inflatable tender are subject to sales tax; and
 2. assessing sales tax of six percent on the purchases;
- and
3. imposing interest on the taxes until paid; and
 4. imposing no penalty.

DONE AND ENTERED this 22nd day of September, 2005, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of September, 2005.

ENDNOTE

1/ All references to the Florida Statutes are to Florida Statutes (2004).

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.