

STATE OF FLORIDA DEPARTMENT OF REVENUE
TALLAHASSEE, FLORIDA

DOR 2014-002 - FOF
FILED

RHINEHART EQUIPMENT CO.,

Petitioner,

vs.

DEPARTMENT OF REVENUE,

Respondent.

Department of Revenue – Agency Clerk

Date Filed: August 4, 2014

By: April Warner

DOAH Case Number: 11-2567

Audit Number: 400019813

AMENDED FINAL ORDER

This cause came before the State of Florida, Department of Revenue (the Department) for the purpose of issuing an Amended Final Order. The Administrative Law Judge assigned by the Division of Administrative Hearings considered this cause and submitted a Summary Recommended Order (“Order”) to the Department. A copy of the Order, issued on August 27, 2012 by Administrative Law Judge W. David Watkins, is attached to this order and incorporated by reference as if fully set forth herein as Exhibit 1. The Petitioner filed exceptions to the Order which are attached to this Amended Final Order as Exhibit 2. The Respondent filed a response to Petitioner’s exceptions which is attached to this Amended Final Order as Exhibit 3. The Department has jurisdiction in this cause.

PRELIMINARY STATEMENT

The Order issued by Judge Watkins recommends that the Department allow a reasonable amount of time for Petitioner to determine whether any farm equipment sales made during the audit period would have been exempt pursuant to s. 212.08(3), F.S., and to obtain the required certifications thereof from the purchasers. On March 25, 2013, the Department issued a Final Order adopting Judge Watkins’ recommendations, and allowing the Petitioner 30 days to provide the certifications that would document exempt sales during the audit period. In lieu of providing the certifications, the Petitioner chose to file an appeal of the Final Order, and the First District

Court of Appeal dismissed the appeal for lack of jurisdiction based upon its determination that the Final Order was not a final administrative order since it did not bring the administrative adjudicative process to a close. In an effort to provide the Petitioner formal notice and a final opportunity to provide the certifications of exempt sales, on May 28, 2014 the Department issued a Notice of Pending Agency Action that allowed Petitioner to submit certification(s) of exempt sales until July 14, 2014 and advised Petitioner that a Final Order would be issued thereafter. Again, the Petitioner has not submitted any documentation of exempt farm equipment sales from the audit period.

RULINGS ON EXCEPTIONS

On October 19, 2012, Petitioner served its exceptions to the Order upon the Respondent, Florida Department of Revenue. Pursuant to subsection 120.57(1)(k), Florida Statutes, a final order issued as a result of a recommended order:

[S]hall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. (Emphasis added)

This statutory pleading requirement provides a three-prong threshold for exceptions to a recommended order that must be explicitly ruled upon in a final order. Petitioner identifies three aspects of the Order to which exception is taken in the first paragraph of its exceptions. However, the numbered paragraphs seem to go beyond those three rulings, and numerous pages and paragraphs in the Order are cited in Petitioner's exceptions. For the most part, Petitioner has identified the legal basis it believes would support its exceptions. However, only the exception identified in paragraph 9 of Petitioner's exceptions includes a specific citation to the record. The exception set forth in paragraph 9 of Petitioner's exceptions cites to stipulated exhibit 1 at page 2 for its authority.

Upon thorough review of the record in this matter, Petitioner's exceptions are denied pursuant to subsection 120.57(1)(k), Florida Statutes. To the extent that Petitioner's exceptions seek to reverse findings of fact, including the exception set forth in paragraph 9 of Petitioner's

exceptions, it cannot be said that the findings in the Order were not based upon competent substantial evidence, or that the proceedings upon which the findings were based did not comply with essential requirements of law. To the extent that Petitioner's exceptions seek to reverse conclusions of law, it cannot be said that Petitioner's legal conclusions are as reasonable, or more reasonable, than the findings in the Order.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

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

Accordingly, it is ORDERED that the recommended findings in the Administrative Law Judge's Order are hereby adopted. Within 30 days of the date of this Amended Final Order, Petitioner shall remit the entire audit assessment balance owed in the amount of \$229,695.00 sales tax plus \$126,704.97 statutory interest as of July 23, 2014, which shall continue to accrue until the amount due is paid in full.

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal pursuant to Rule 9.110 Florida Rules of Appellate Procedure, with the Agency Clerk of the Department of Revenue in the Office of the General Counsel, P.O Box 6668, Tallahassee, Florida 32314-6668 [FAX (850) 488-7112], **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.**

DONE AND ENTERED in Tallahassee, Leon County, Florida this 4th day of August, 2014.

STATE OF FLORIDA
DEPARTMENT OF REVENUE

Andrea J. Moreland

Andrea Moreland
Deputy Executive Director

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the foregoing AMENDED FINAL ORDER has been filed in the official records of the Department of Revenue and that a true and correct copy of the Amended Final Order has been furnished by United States mail, both regular first class and certified mail return receipt requested, to Petitioner C/O Richard L. Winston, P.A., 7741 SW 53rd Avenue, Miami, Florida 33143 this 4th day of August, 2014.

April Warner

Agency Clerk

Copies furnished to:

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