

STATE OF FLORIDA DEPARTMENT OF REVENUE
TALLAHASSEE, FLORIDA

DOR 2011-006 – FOF

FILED

Department of Revenue – Agency Clerk

Date Filed: December 27, 2011

By: April Warner

DOAH Case Number: 11-3548

FMG ENTERPRISES, INC.,

Petitioner,

vs.

DEPARTMENT OF REVENUE,

Respondent.

FINAL ORDER

This cause came before me, as Executive Director of the Florida Department of Revenue (the Department), for the purpose of issuing a Final Order. The Administrative Law Judge assigned by the Division of Administrative Hearings heard this cause and submitted a Recommended Order to the Department. A copy of the Recommended Order, issued on October 24, 2011, by Administrative Law Judge E. Gary Early, is attached to this order and incorporated by reference as if fully set forth herein as Exhibit 1. No exceptions to the Recommended Order were filed. The Department has jurisdiction in this cause.

FINDINGS OF FACT

The Department adopts and incorporates in this Final Order the factual findings set forth in the Recommended Order as if fully set forth herein.

CONCLUSIONS OF LAW

The Department adopts and incorporates in this Final Order the legal conclusions set forth in the Recommended Order as if fully set forth herein.

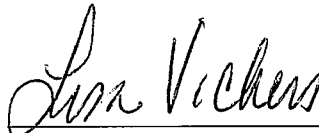
Subsection 120.57(1)(1), Florida Statutes, authorizes an agency to reject or modify legal conclusions "...over which it has substantive jurisdiction." See *Barfield v. Department of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001); *Deep Lagoon Board Club, Ltd.*, 784 So.2d 1140 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. School Board of Broward County*, 746 So.2d 1194 (Fla. 1st DCA 1999). Furthermore, an agency is not bound by the identification of a finding as a factual conclusion or a legal conclusion. "If a conclusion is improperly labeled as a finding of fact, the label is disregarded and the item is treated as though it were properly labeled." See *Battaglia Properties v. Florida Land and Water Adjudicatory Commission*, 629 So.2d 161 (Fla. 5th DCA 1994).

Clearly, a determination of the grounds for revocation of a dealer's sales and use tax certificate of registration pursuant to Section 212.18, Florida Statutes, constitutes a conclusion of law that falls within the substantive jurisdiction of the Florida Department of Revenue, as it is charged with administration of the provisions of Chapter 212, Florida Statutes. Contrary to the finding in paragraph 14 of the Recommended Order, the Department finds that submitting a payment for April 2011 which was returned for insufficient funds, and filing an untimely sales and use tax return for May 2011, standing alone, constitutes a sufficient basis to support a revocation of Petitioner's sales and use tax dealer's certificate of registration as a matter of law. Pursuant to Subsection 212.18(3)(d), Florida Statutes, revocation is authorized when a dealer fails to comply with Chapter 212, Florida Statutes.

Accordingly, it is ORDERED that the Administrative Law Judge's Order recommending that the Department enter a Final Order requiring Petitioner to post security in the amount of \$21,250.00 within 30 days is adopted. Petitioner is hereby required to post security in the form of a cash deposit, surety bond, or irrevocable letter of credit within 30 days of the date this order is filed. Should Petitioner fail to post the required security within 30 days, the Department will file an administrative complaint seeking revocation of the Petitioner's certificate of registration.

DONE AND ENTERED in Tallahassee, Leon County, Florida this 27th day of
December, 2011.

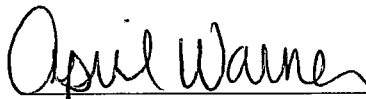
STATE OF FLORIDA
DEPARTMENT OF REVENUE



Lisa Vickers
Executive Director

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the foregoing FINAL ORDER has been filed in the official records of the Department of Revenue and that a true and correct copy of the Final Order has been furnished by United States mail, both regular first class and certified mail return receipt requested, to Petitioner C/O Michael R. Yokan, POB 40755, Jacksonville, Florida 32203 this 27th day of December, 2011.



April Warner
Agency Clerk

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.**

Copies furnished to:

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