

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF REVENUE,)
)
 Petitioner,)
)
 vs.) Case No. 12-0083
)
 JAMES BRADEN, d/b/a ACTION)
 SIGNS AND GRAFIX,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On March 15, 2012, an administrative hearing in this case was held by teleconference in Port Richey and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Maricruz Rahaman Fincher, Esquire
John Mika, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

For Respondent: James Braden, pro se
Action Signs and Grafix
8103 Monarch Drive
Port Richey, Florida 34668

STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent's certificates of registration should be revoked for an alleged failure to file tax returns and to remit taxes to the Petitioner.

PRELIMINARY STATEMENT

By an Administrative Complaint for Revocation of Certificate of Registration (Complaint) dated December 8, 2011, the Department of Revenue (Petitioner) alleged that James Braden, d/b/a Action Signs and Grafix (Respondent), failed to comply with statutory requirements to file tax returns and remit taxes and that the Petitioner's two certificates of registration should therefore be cancelled. The Respondent challenged the allegations in the Complaint and requested an administrative hearing. On January 6, 2012, the Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of one witness and had Exhibits 1 through 13 admitted into evidence. The Respondent testified on his own behalf.

A Transcript of the hearing was filed on March 23, 2012. On April 2, 2012, the Petitioner filed a Proposed Recommended Order that has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is the state agency responsible for collection of sales and use taxes in Florida, pursuant to chapter 212, Florida Statutes (2011).^{1/}

2. The Respondent is a Florida company doing business at 7810 U.S. Highway 19, Port Richey, Florida, and is a "dealer" as defined at section 212.06(2).

3. The Respondent holds two certificates of registration issued by the Petitioner (Certificate No. 61-8012297146-3 and Certificate No. 61-8012297147-0) and is statutorily required to file tax returns and remit taxes to the Petitioner.

4. As set forth herein, the Respondent has failed to file tax returns or has filed returns that were not accompanied by the appropriate tax payments.

5. During the time the Respondent has held the certificates, the Petitioner has filed 15 separate warrants against the Respondent related to unpaid taxes, fees, penalties, and interest.

6. The Petitioner is authorized to cancel a dealer's certificate of registration for failure of a dealer to comply with state tax laws. Prior to such cancellation, the Petitioner is required by statute to convene a conference with a dealer.

7. On June 24, 2011, the Petitioner issued a Notice of Conference on Revocation of Certificate of Registration (Notice).

8. The conference was scheduled for July 27, 2011. The Respondent received the Notice and attended the conference.

Certificate of Registration No. 61-8012297146-3

9. The Respondent failed to file tax returns related to Certificate No. 61-8012297146-3 for the period of August through December 2001. The Petitioner assessed estimated taxes of \$587.50, fees of \$110.95, and a penalty of \$285.00. As of the date of the Notice, the accrued interest due was \$633.79.

10. Additionally, the Respondent failed to remit taxes of \$5,623.63 related to Certificate No. 61-8012297146-3 that were due according to his filed tax returns. Based thereon, the Respondent assessed fees of \$994.58 and a penalty of \$2,478.26. As of the date of the Notice, the accrued interest due was \$4,702.27.

11. As of the date of the Notice, the Respondent's total unpaid obligation on Certificate No. 61-8012297146-3 was \$15,415.98, including taxes of \$6,211.13, fees of \$1,105.53, penalties of \$2,763.26, and accrued interest of \$5,336.06.

Certificate of Registration No. 61-8012297147-0

12. The Respondent failed to file tax returns related to Certificate No. 61-8012297147-0 for the months of June 2000, September 2000, May 2001, and August 2001. The Petitioner assessed estimated taxes of \$619.00 and fees of \$202.00. As of the date of the Notice, the accrued interest due was \$782.56.

13. Additionally, the Respondent failed to remit taxes related to Certificate No. 61-8012297147-0 of \$4,332.48 that were

due according to his filed tax returns. Based thereon, the Respondent assessed fees of \$771.71 and a penalty of \$1,576.87. As of the date of the Notice, the accrued interest due was \$4,725.27.

14. As of the date of the Notice, the Respondent's total unpaid obligation related to Certificate No. 61-8012297147-0 was \$13,009.89, including taxes of \$4,951.48, fees of \$973.71, penalties of \$1,576.87, and accrued interest of \$5,507.83.

The Audit

15. A separate audit of the Respondent's business records for the period of February 2004 through January 2007 resulted in an additional assessment totaling \$9,314.07, including taxes of \$5,048.23, fees of \$661.76, and a penalty of \$252.42. As of the date of the Notice, the accrued interest due was \$3,351.66.

16. At the July 27, 2011, conference, the parties negotiated a compliance agreement under which the Respondent would have retained the certificates of registration. The agreement required the Respondent to make an initial deposit of \$2,000.00 by August 15, 2011, and then to make periodic payments towards satisfying the unpaid obligation.

17. The Respondent failed to pay the \$2,000.00 deposit, and the Petitioner subsequently filed the Complaint at issue in this proceeding.

18. As of the date that the Complaint was filed, the Respondent owed a total of \$37,797.66 to the State of Florida, including taxes of \$15,004.34, estimated taxes of \$1,206.50, fees of \$2,741.00, penalties of \$4,592.55, and accrued interest of \$14,253.27.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

20. To prevail in this case, the Petitioner must demonstrate the truthfulness of the allegations in the Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The burden has been met.

21. As a dealer, the Respondent was required to obtain a certificate of registration from the Petitioner. See § 212.18, Fla. Stat., and Fla. Admin. Code R. 12A-1.060. The Petitioner had issued two certificates to the Respondent.

22. Section 212.11(1)(b) requires the Respondent to file tax returns with the Petitioner on a monthly basis.

23. Section 212.15(1) requires that the Respondent collect taxes from customers and remit such taxes to the Petitioner on a monthly basis.

24. Section 212.28 authorizes the Petitioner to revoke a dealer's certificate of registration for the failure to file a tax return or to remit taxes.

25. As referenced herein, the evidence established that the Respondent has failed to file tax returns. Section 212.12(5)(b) states that, in the absence of a filed tax return, the Petitioner must assess a dealer's tax liability based on the best information available. The cited section also states that the Petitioner's assessment of taxes, along with related interest and penalties, is deemed correct, and the burden to show otherwise falls to the Respondent. Although the Respondent disagreed with the assessment, the Respondent offered no credible evidence at the hearing that the Petitioner's assessment was incorrect.

26. The evidence also established that the Respondent filed returns indicating that taxes were due but failed to remit the funds. Section 212.14(3) states that the filing of a tax return without the accompanying payment of funds is "prima facie evidence of conversion of the money due."

27. Section 213.692, Florida Statutes, specifically authorizes the Petitioner to revoke a dealer's certificate of registration if the Petitioner has filed a warrant against a dealer for the failure to file a tax return or to remit taxes. The evidence established that the Petitioner has filed

15 warrants against the Respondent for failing to file tax returns or remit taxes.

28. Section 213.692(1)(a) states that the Petitioner may proceed to revoke a certificate after conducting a conference with a dealer and offering the dealer an opportunity to provide additional information or resolve the dispute through a compliance agreement. In this case, such a conference occurred, and the parties agreed to resolve the matter through execution of a compliance agreement. The Respondent failed to pay the initial down payment required by the agreement, and the Petitioner subsequently filed the Complaint in this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Revenue issue a final order revoking the certificates of registration held by the Respondent.

DONE AND ENTERED this 1st day of May, 2012, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of May, 2012.

ENDNOTE

^{1/} All references to Florida Statutes are to the 2011 version,
unless otherwise indicated.

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.