

Department of Revenue – Agency Clerk  
Date Filed: *March 9, 2015*  
By: *April Warner*

STATE OF FLORIDA  
DEPARTMENT OF REVENUE  
TALLAHASSEE, FLORIDA

SALMA PETROLEUM, INC.,

Petitioner,

vs.

DOAH Case Number: 14-3133  
Audit Number: 200149872

DEPARTMENT OF REVENUE,

Respondent.

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GAUSIA PETROLEUM, INC.,

Petitioner,

vs.

DOAH Case Number: 14-3134  
Audit Number: 200149749

DEPARTMENT OF REVENUE,

Respondent.

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**FINAL ORDER**

This cause came before the State of Florida, Department of Revenue (Department) for the purpose of issuing a Final Order. Based upon the petitions for formal hearing filed by the Petitioners, these cases were referred to the Division of Administrative Hearings (DOAH) and were consolidated due to common witnesses, common exhibits (except for the figures) and similar testimony. The Administrative Law Judge considered this consolidated matter and submitted a Recommended Order (“Order”) to the Department. A copy of the Order, issued on January 9, 2015, is attached to this order and incorporated by reference as if fully set forth herein as Exhibit 1. The Respondent filed Exceptions to the Order which are attached to this Final Order as Exhibit 2. Subsequent to issuance of the Order herein, each Petition filed a “Request for Written Exemption” with the DOAH. While the Administrative Law Judge denied these requests for lack of jurisdiction, they will be addressed herein as Exceptions to the Order, and are

attached hereto as Exhibits 3 and 4. The Notice of Proposed Assessment issued to each of the Petitioners is attached hereto as Exhibits 5 and 6. The Department has jurisdiction in this cause.

### RULINGS ON EXCEPTIONS

Pursuant to subsection 120.57(1)(k), Florida Statutes, there is a three-prong threshold for exceptions to a recommended order that must be explicitly ruled upon in a final order. Such a final 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.

#### Petitioners' Exceptions

On January 26, 2015 each Petitioner filed a "Request for Written Exemption" with the DOAH, restating each Petitioner's position set forth in their original petitions for formal hearing in regard to the audit assessments at issue herein. Since these pleadings were filed on the last date exceptions could be filed, and requested further review, they are being treated as timely filed Exceptions to the Order. However, Petitioners' Exceptions are hereby denied for the following reasons:

- 1) They fail to identify disputed portions of the Order by page number or paragraph;
- 2) They fail to identify the legal basis for each Exception; and
- 3) They do not include appropriate and specific citations to the record.

#### Respondent's Exceptions

On January 26, 2015, Respondent filed its exceptions to the Order, which were timely pursuant to Rule 28-106.103, Florida Administrative Code, as the fifteen-day deadline fell on a Saturday.

Respondent identifies a single paragraph Conclusion of Law in the Order to which exception is taken. Respondent seeks to replace the definition of "dealer" found in paragraph 37 – which relates to the leasing or rental of tangible personal property – with the definition set

forth in subsection 212.06(2)(c), Florida Statutes, relating to the retail sale, use, consumption, or distribution of tangible personal property. As each Petitioner's business is a gas station and convenience store, these businesses are dealers as defined in subsection 212.06(2)(c), Florida Statutes, and Respondent's exception is granted pursuant to subsection 120.57(1)(k), Florida Statutes. This substituted Conclusion of Law is more reasonable than the rejected Conclusion of Law found in paragraph 37 of the Order. Paragraph 37 shall now read:

37. The term "dealer" is ... defined to mean every person, as used in this chapter, who sells at retail or who offers for sale at retail, or who has in his or her possession for sale at retail; or for use, consumption, or distribution; or for storage to be used or consumed in this state, tangible personal property..." Petitioners are dealers for the purpose of chapter 212, Florida Statutes.

#### FINDINGS OF FACT

The Department adopts and incorporates in this 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 Final Order the Conclusions of Law set forth in the Recommended Order as if fully set forth herein, with the modified finding in paragraph 37 set forth above.

The Department further modifies the Order, as the Conclusion of Law set forth in paragraph 43 misstates the Department's burden of proof in proceedings wherein a taxpayer is contesting an assessment. The first sentence of paragraph 43 is replaced with the following sentence:

The Department has the initial burden to show that it made an assessment against Petitioner and the factual and legal grounds upon which the assessment was made.

This substituted language is more reasonable and more accurate than the rejected language found in paragraph 43 of the Order.

#### DETERMINATION

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 Final Order, Petitioner Salma shall remit the entire audit assessment balance owed in the amount of \$159,282.26 sales tax, and \$39,820.57 penalty, plus \$31,651.87 interest as of February 4, 2015, which shall continue to accrue at the statutory rate until the amount due is paid in full. In addition, within 30 days of the date of this Final Order, Petitioner Gausia shall remit the entire audit assessment balance owed in the amount of \$213,754.46 sales tax, and \$53,438.62 penalty, plus \$40,898.21 interest as of February 4, 2015, which shall continue to accrue at the statutory rate until the amount due is paid in full.

#### NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party to this Final Order has the right to seek judicial review of the Final 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 Final Order is filed with the Clerk of the Department.**

DONE AND ENTERED in Tallahassee, Leon County, Florida this 9<sup>th</sup> day of March, 2015.

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 FINAL ORDER has been filed in the official records of the Department of Revenue and that a true and correct copy of the foregoing Final Order has been furnished by United States mail, both regular first class and certified mail return receipt requested, to Petitioners C/O Zersis Minocher at 12217 NW 35<sup>th</sup> Street, Coral Springs, Florida 33065 this 9<sup>th</sup> day of March, 2015.

April Warner  
Agency Clerk

Copies furnished to:

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