

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF REVENUE,

Petitioner,

vs.

Case No. 14-5048

DIVE PROFESSIONALS, INC., d/b/a
ATLANTIS DIVE CENTER,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy by video teleconference at sites in Tallahassee and Miami, Florida, on January 5, 2015.

APPEARANCES

For Petitioner: Angel Eason, Esquire
Office of the Attorney General
Plaza Level 01
The Capitol
Tallahassee, Florida 32399

For Respondent: (No Appearance)

STATEMENT OF THE ISSUE

Whether Respondent's sales and use Certificate of Registration should be revoked for failure to abide by the repayment terms agreed to in a Compliance Agreement entered into with Petitioner on August 29, 2013, as alleged in the Amended

Administrative Complaint for Revocation of Certificate of Registration.

PRELIMINARY STATEMENT

Petitioner, Department of Revenue (Department), seeks to revoke the Certificate of Registration issued to Respondent, Dive Professionals, Inc., d/b/a Atlantis Dive Center, because of Respondent's alleged long history of failing to comply with chapters 212 and 443, Florida Statutes. As a result of Respondent's alleged noncompliance, the Department initiated the administrative proceeding to revoke Respondent's Certificate of Registration pursuant to sections 212.18(3)(e) and 213.692(1), Florida Statutes (2014). On or about September 23, 2014, the Department filed an Amended Administrative Complaint for Revocation of Certificate of Registration (Amended Administrative Complaint) against Respondent. Respondent timely requested an administrative hearing, and this matter was referred to the Division of Administrative Hearings on October 27, 2014.

At the final hearing, the Department called one witness, Maria V. Fernandez, a Revenue Specialist III at the Department, and offered Petitioner's Exhibits 1 through 7, 9, and 10 that were admitted into evidence. Respondent did not appear for the scheduled hearing and did not produce any exhibits or witnesses.

Official recognition was taken of five tax warrants recorded in the official records of Monroe County.

Neither party ordered a transcript of the final hearing. The parties were permitted to file their proposed recommended orders (PROs) by January 15, 2015. Petitioner filed its PRO on January 13, 2015. Respondent did not file a PRO. The Petitioner's PRO has been taken into consideration in the drafting of this Recommended Order.

Unless otherwise indicated, all statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. The Department is the state agency charged with administering and enforcing Florida's revenue laws, including the laws related to the imposition and collection of sales and use tax pursuant to chapter 212, Florida Statutes (2014).

2. Respondent is a Florida Profit Corporation doing business at 90791 Old Highway, Unit 1, Tavernier, Florida 33037. Respondent is a "dealer" as defined in section 212.06(2) and is required to comply with chapter 212.

3. Respondent holds Certificate of Registration number 54-8013269710-0 issued by the Department. A certificate of registration is required in order to do business in the state of Florida and authorizes its holder to collect and remit sales tax pursuant to chapter 212.

4. The Department is authorized to revoke a dealer's certificate of registration for failure to comply with state tax

laws. Prior to such revocation, the Department is required by statute to schedule a conference with the dealer. The dealer is required to attend the informal conference and may either present evidence to refute the Department's allegations of noncompliance or to enter into a compliance agreement with the Department to resolve the dealer's failure to comply with chapter 212.

5. The Department issued and recorded warrants in the public records of Monroe County to secure collection of delinquent sales and use tax, plus penalties, filing fees, and interest from Respondent.^{1/}

6. The Department initiated the process of revoking Respondent's Certificate of Registration by sending Respondent a Notice of Conference on Revocation of Certificate of Registration (Notice of Conference). The Notice of Conference advised that the informal conference would be held on August 29, 2013, and that the Department had initiated the process to revoke Respondent's Certificate of Registration for failure to remit sales and use tax and pay the reemployment tax that was determined to be due. The notice also informed Respondent that it would have the opportunity to make payment or present evidence to demonstrate why the Department should not revoke Respondent's Certificate of Registration.

7. Respondent's President and Registered Agent, Spencer Slate, attended the informal conference on behalf of Respondent

and entered into a Compliance Agreement with the Department. During the informal conference, Mr. Slate admitted to using the collected tax to pay for Respondent's payroll, fuel, and other business expenses instead of remitting the tax to the State.

8. The Compliance Agreement states that due to Respondent's failure to timely file returns and pay all taxes due, Respondent admits to a past due sales and use tax liability of \$51,506.55, consisting of tax, penalty, interest, and fees. The Compliance Agreement requires Respondent to make a down payment of \$16,349.14 by August 29, 2013, and to make 12 monthly payments. The Compliance Agreement also provides that:

IN CONSIDERATION for the Department refraining from pursuing revocation proceedings at this time, the taxpayer agrees:

* * *

C. To accurately complete and timely file all required returns and reports for the next 12 months, beginning with the first return/report due for 08/31/2013, payable on or before 09/20/2013.

D. To timely remit all taxes due for the next 12 months, following the date of this agreement.

9. Respondent made the down payment of \$16,349.14, as required by the Compliance Agreement, and the first four scheduled payments, but defaulted on the terms of the Compliance Agreement as follows:

a. Failed to make the monthly payments due, beginning with the fifth payment.

b. Failed to timely remit taxes due for September 2013, October 2013, and November 2013. In addition, the payment for sales tax due September 2013 was returned due to insufficient funds.

c. Failed to timely file sales and use tax returns and remit the taxes due for the tax periods May 2014, June 2014, and July 2014.

10. The Compliance Agreement provides that "[i]f the taxpayer fails to comply with any obligation under this agreement, the Department has the right to pursue revocation of the taxpayer's certificate of registration."

11. As provided by the Department's revocation worksheet dated December 5, 2014, Respondent currently has an outstanding sales and use tax liability in the amount of \$67,501.98 and reemployment tax liability of \$667.08, including tax, penalty, interest, and fees.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014).

13. The Department has the burden of proving by clear and convincing evidence the allegations in the Amended Administrative Complaint on which the Department relies to seek revocation of Respondent's Certificate of Registration. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996).

14. Before engaging in or conducting business in this state as a "dealer" under chapter 212, Respondent was required to, and did, obtain a certificate of registration from the Department. § 212.18, Fla. Stat.

15. As a dealer, Respondent is required to collect the tax imposed by chapter 212 at the time of making the sale from the purchaser. § 212.06(3), Fla. Stat.

16. In accordance with sections 212.15(1) and (2), the taxes imposed pursuant to chapter 212 become State funds at the moment of collection, and the intentional failure to remit these taxes constitutes theft of State funds.

17. Respondent is required to file tax returns and remit the taxes due with the Department on a monthly basis. §§ 212.11(1)(b) & 212.15, Fla. Stat. The tax is due on the first day of the succeeding calendar month and is delinquent on the 21st day of such month. § 212.15(1), Fla. Stat.

18. Respondent failed to timely file the required returns and remit sales tax due as required. The Department filed

warrants against Respondent to secure outstanding liabilities resulting from Respondent's failure to remit taxes due.

19. The Department is authorized to revoke Respondent's Certificate of Registration due to Respondent's failure to timely file the required returns and remit sales tax due as required by chapter 212. § 212.18(3)(e), Fla. Stat. The Department may also revoke a dealer's certificate of registration if the Department has filed a warrant, notice of lien, or judgment lien against a dealer. § 213.692, Fla. Stat.

20. In accordance with section 212.18(3)(e), the Department proceeded to revoke Respondent's Certificate of Registration after conducting an informal conference with Respondent and entering into a Compliance Agreement with Respondent to provide Respondent an opportunity to satisfy the outstanding liabilities. Respondent defaulted the terms of the Compliance Agreement by failing to make the agreed payments and by failing to timely file tax returns and remit the amount of tax due for the subsequent 12 months.

21. Late payment constitutes a material breach of the Compliance Agreement. In addition to not timely filing the required returns and remitting the tax due for the 12 months following the execution of the Compliance Agreement, Respondent continues its noncompliance by not timely filing the returns and remitting the tax due.

22. The Department followed the procedure as provided by section 212.18 to revoke Respondent's Certificate of Registration. Respondent defaulted on the Compliance Agreement and continues to violate chapter 212 by not timely filing the tax returns and remitting the tax due. The Department has met its burden in providing clear and convincing uncontested evidence in support of the allegations in its Amended Administrative Complaint to revoke Respondent's Certificate of Registration.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Department of Revenue revoking the Certificate of Registration issued to and held by Respondent.

DONE AND ENTERED this 30th day of January, 2015, in Tallahassee, Leon County, Florida.



MARY LI CREASY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of January, 2015.

ENDNOTE

^{1/} The tax warrants filed in Monroe County are as follows:

<u>Book/Page</u>	<u>Date Recorded</u>	<u>Amount</u>
2703/2092	09/19/2014	\$12,712.97
2671/159	02/12/2014	\$5,599.22
2669/960	01/03/2014	\$19,835.30
2631/1266	06/03/2013	\$32,409.31
2612/836	02/07/2013	\$17,084.77

COPIES FURNISHED:

Amy L. Mattern, Esquire
20/20 Tax Resolution
Suite 400
11800 Ridge Parkway
Broomfield, Colorado 80021

Angel Eason, Esquire
Office of the Attorney General
Plaza Level 01
The Capitol
Tallahassee, Florida 32399
(eServed)

Nancy L. Staff, General Counsel
Department of Revenue
Post Office Box 6668
Tallahassee, Florida 32314-6668
(eServed)

Marshall Stranburg, Executive Director
Department of Revenue
Post Office Box 6668
Tallahassee, Florida 32314-6668
(eServed)

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.