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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of the
Journeyman Pipefitter License of Troy A.
Pearson

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

This matter came on for a hearing before Administrative Law Judge Kevin Snell on July 25, 2013, pursuant to an Order for Continued Hearing, dated March 7, 2013, and a Second Prehearing Order and Order for Continued Hearing, dated April 23, 2013. On October 1, 2013, this matter was reassigned to Chief Administrative Law Judge Tammy L. Pust.

Joan Tujetsch appeared on behalf of the Department of Revenue (Department). There was no appearance by, or on behalf of Respondent Licensee, Troy A. Pearson.

STATEMENT OF THE ISSUES

Whether Respondent owes the state \$500.00 or more in delinquent taxes, penalties, and/or interest, and is thus subject to revocation of his journeyman pipefitter license, pursuant to Minn. Stat. § 270C.72?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 6, 2013, a Notice and Order for Prehearing Conference and Hearing (Notice and Order for Hearing) in this matter was mailed to Respondent at his last known address.¹
2. The Notice and Order for Hearing indicated that the hearing would be held on March 7, 2013 at 9:30 a.m. at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN.²
3. The Notice and Order for Hearing specified that a Prehearing Conference would be held on February 19, 2013 at 10:30 a.m., by telephone. Included in the Notice

¹ See Affidavit of Kathy Boeck dated February 6, 2013.

² *Id.*

and Order for Hearing were call-in directions and a toll free call-in telephone number for the Prehearing Conference.³

4. The Notice and Order for Hearing requires that any party intending to “appear at the prehearing conference and hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service” of the Notice and Order for Hearing.⁴

5. The Notice and Order for Hearing in this matter also includes the following statements:

Respondent’s failure to appear at the prehearing conference, settlement conference, or hearing may result in a finding that the Respondent is in default, that the allegations contained in this Notice and Order for Prehearing Conference and Hearing may be accepted as true, and its proposed action may be upheld.

If any party has good cause for requesting a delay of the prehearing conference or hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the prehearing conference or hearing. A copy of the request must be served on the other party.⁵

6. Respondent did not file a Notice of Appearance with the undersigned.

7. A Prehearing Conference was held by telephone on February 19, 2013 at 10:30 a.m., before Administrative Law Judge Kevin Snell.

8. On March 7, 2013, the Administrative Law Judge granted an Order for Continued Hearing pursuant to a request made by Respondent and with no objection by the Department.⁶

9. The Hearing was rescheduled for April 24, 2013 at 9:30 a.m., with the terms of the February 6, 2013 Notice and Order for Hearing remaining in full force and effect, except for the change to the date.⁷

10. The day before the rescheduled hearing, the Administrative Law Judge received a request from the parties for a second continuance of the hearing in order to give the parties more time to settle their grievance.⁸

11. Pursuant to the request from the parties, the Administrative Law Judge granted a Second Prehearing Order and Order for Continued Hearing on April 23, 2013

³ Notice and Order for Hearing 1.

⁴ Notice and Order of Hearing, Additional Notice ¶ 3.

⁵ *Id.*, ¶¶ 1-2.

⁶ Order for Continued Hearing.

⁷ Order for Continued Hearing ¶ 2.

⁸ E-mail from Joan Tujetsch (Minn. Dep’t of Revenue) to Kevin Snell (Administrative Law Judge), dated April 23, 2013 (On file with Office of Administrative Hearings).

for the rescheduled hearing to take place July 25, 2013 at 9:30 a.m., with the terms of the February 6, 2013 Notice and Order for Hearing remaining in full force and effect, except for the change to the date.⁹

12. No one appeared at the scheduled July 25, 2013 hearing on behalf of Respondent. No request was made for a continuance, nor was any communication received by the undersigned from Respondent, prior to the July 25, 2013 hearing.

13. The Notice and Order for Hearing alleges that:

- (a) Respondent holds a journeyman pipefitter license issued by the Minnesota Department of Labor and Industry/Electrical.¹⁰
- (b) Respondent has not paid all sales and use tax and withholding tax due to the State of Minnesota. As of February 4, 2013, the total amount owed for tax, penalty, interest, and lien filing fees for the Minnesota sales and use tax audit for the period of April 1, 2009 through June 30, 2009 and the withholding tax for the periods July 1, 2009 through June 30, 2010, is \$80,388.51 with penalty and interest continuing to accrue where appropriate.¹¹

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Department of Revenue have authority to consider the issues set out in the Notice and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50 and 270C.72.

2. The Respondent received timely and proper notice of the Hearing in this matter when the Department sent the Notice and Order for Prehearing Conference and Hearing to his last known address.

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. Minn. Stat. § 270C.72, subd. 1, provides that the state or a political subdivision of the state may not issue, transfer, or renew, and must revoke a license for the conduct of a profession, occupation, trade, or business, if the Commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest.¹²

⁹ Second Prehearing Order and Order for Continued Hearing ¶ 2.

¹⁰ Notice and Order for Hearing, Allegations ¶ 1.

¹¹ *Id.* ¶ 2.

¹² Minn. Stat. § 270C.72, subd. 1.

5. The Commissioner will notify the licensing authority if the applicant taxpayer owes \$500 or more in delinquent taxes, penalties, or interest, or has not filed returns and the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed.¹³

6. Under Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled hearing.

7. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a hearing without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner take appropriate action against Respondent Troy A. Pearson, including the revocation of his journeyman pipefitter license.

Dated: October 29, 2013

s/Tammy L. Pust

TAMMY L. PUST
Chief Administrative Law Judge

Reported: Default

¹³ *Id.*

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Myron Frans, Commissioner, Minnesota Department of Revenue, 600 North Robert St., St. Paul, MN 55146 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.