

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

In the Matter of the Revocation of the
Registered Nurse License of Tracy L.
Wallis, 3600 Lonetree Circle, Prior Lake,
MN 55372-1788; Tax ID No. 475965723

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on January 18, 2001 at the Office of Administrative Hearings in Minneapolis.

The Department of Revenue was represented by Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, Minnesota 55146-2220.

There was no appearance by, or on behalf of, Tracy L. Wallis. Pursuant to a prior agreement, she was not expected to attend the hearing.

The record in this matter closed on February 6, 2001, with a letter from the Administrative Law Judge to the parties.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner 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 of Revenue 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 of Revenue. Parties should contact Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, Minnesota 55146-2220 at 651/296-8228.

STATEMENT OF ISSUE

Should Ms. Wallis' Registered Nurse License be revoked for failure to pay delinquent taxes, penalties and interest?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 15, 2000, the Department sent a Notice of Intent to Revoke License to Tracy L. Wallis indicating that an amount due of \$15,810.44 was now overdue.^[1] The Notice also indicated that the Department intended to notify the Minnesota Board of Nursing to revoke her Registered Nurse License by October 16, 2000. The Notice went on to state that Ms. Wallis could request a hearing before the Office of Administrative Hearings by stating, in writing, the basis for her protest and submitting it by October 16, 2000. The amount due referred to individual income tax for the year ending December 31, 1999, a penalty for filing a frivolous return for that same year, plus individual income tax for the years ending December 31, 1998, 1996, 1995 and 1994.

2. On October 5, 2000, Wallis requested an Administrative Hearing, alleging that she had filed a return for 1999 as well as submitting "the necessary documents to prove that I am not a "taxpayer" as defined in U.S.C. 26."^[2] Wallis' hearing request stated that: "As my 'earnings' showed I made 0 on my tax forms for the I.R.S., I should also owe zero to the State of Minnesota."^[3]

3. On November 8, 2000, a Notice and Order for Hearing was issued by the Department, and served on Ms. Wallis by U.S. Mail. The Notice set a hearing for Friday, December 15, in Minneapolis. The Notice specifies:

Should a party fail to appear at the hearing, the allegations made in this order will be taken as true and issues set out deemed proved. If the allegations are taken as true or deemed proved, the Commissioner will issue the Notice of License Revocation. Upon receipt of the Notice, the licensing authority will revoke the taxpayer's license.^[4]

4. On November 29, 2000, Wallis requested a continuance of the hearing set for December 15 on the basis "that I did not receive notification of the State Department of Revenue's intent to revoke my nursing license as alleged by the State on September 14, 2000. This petition is to allow adequate time to prepare a defense to these allegations."

5. A telephone conference was held on December 7, 2000 to arrange a hearing date. Wallis' spouse participated in the conference. The date for the hearing was left to be determined, but all parties agreed that the hearing would occur no later than January 12, 2001.

6. Wallis was reminded of the hearing deadline and the need to arrange a hearing date by letter from the Administrative Law Judge dated December 19, 2000.

7. The Department informed the Administrative Law Judge that there had been no contact from Wallis regarding the hearing. The Administrative Law Judge set the hearing date as January 12, 2001 and informed Wallis of the hearing date by letter.

8. A telephone conference was conducted on January 9, 2001. The parties agreed to a hearing date of January 18, 2001.

9. Wallis' spouse contacted the Department on January 18, 2001 and indicated that neither Wallis nor her spouse would be attending the hearing. By agreement with the Department, the Administrative Law Judge's recommendation would not be issued prior to February 6, 2001.^[5] The Department submitted its hearing exhibits for inclusion in the record of this matter.

10. Wallis' spouse contacted the Administrative Law Judge on February 6, 2001 and requested an additional delay in the issuance of the Administrative Law Judge's recommendation. The Administrative Law Judge denied the request and the parties were informed that the recommendation would be issued in the ordinary manner, as time permitted.

11. As of the date of the hearing, Wallis owed past due Minnesota state individual income tax in the amount of \$6,136.02, plus penalties of \$1,238.60, plus interest in the amount of \$830.91, and other charges of \$139.24 for a total due and owing of \$8,344.77.^[6] The unpaid tax arises from the collection periods for 1994, 1995, 1996, and 1999.^[7]

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

CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50 and 270.72, subd. 1.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. Respondent has failed to appear at the hearing in this matter and failed to meaningfully participate in these proceedings. Therefore, the Respondent is default under Minn. Rule 1400.6000. The allegations in the Notice and Order for Hearing are taken as true.

4. The Respondent has delinquent taxes, penalties and interest within the meaning of Minn. Stat. § 270.72, subd. 1, in excess of \$500.00.

5. As a result of the Respondent's failure to pay income taxes, penalties, and interest owed to the Department, the Commissioner of Revenue may issue a Notice

of License Revocation, pursuant to Minn. Stat. § 270.72, subd. 1, to the Minnesota Board of Nursing indicating that the Board of Nursing may not renew and must revoke the Respondent's nursing license.

6. The Memorandum attached hereto is incorporated by reference.

Based upon the foregoing Conclusions, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

That the Commissioner of Revenue issue a Notice of License Revocation, to the Minnesota Board of Nursing indicating that the Board of Nursing may not renew and must revoke the nursing license of Tracy Wallis.

Dated this _____ day of March, 2001.

ALLAN W. KLEIN
Administrative Law Judge

Reported: Default

MEMORANDUM

The Department's proposed revocation of Ms. Wallis' registered nurse license is based on Minn. Stat. § 270.72, subd. 1, which states:

Subdivision 1. **Tax clearance required.** 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. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes or has not filed returns. If the applicant taxpayer does not owe delinquent taxes but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed. A licensing authority that has received a notice from the commissioner may issue, transfer, renew, or not revoke the applicant's license only if (a) the commissioner issues a tax clearance certificate and (b) the commissioner or the applicant forwards a copy of the clearanceto the authority. The commissioner may issue a clearance certificate only if

the applicant does not owe the state any contested delinquent taxes, penalties, or interest and has filed all required returns

Wallis was notified on September 15, 2000 that revocation of her nursing license would result from failure to pay delinquent taxes, penalties, or interest.^[8] More than ninety days have elapsed since that notice. The delinquent amount is over \$500.00 and, as of the close of the record in this matter, all appropriate returns have not been filed.^[9] Wallis has introduced no evidence or argument to indicate that there is no delinquency or that returns are not required.^[10]

The Department has amply informed Wallis of the effect of failing to participate in this proceeding. Several extensions have been granted to allow Wallis more time to prepare for hearing or settle the matter. Wallis has neither appeared for hearing nor settled this matter. This continued failure to participate constitutes a default. Under Minn. Rule 1400.6000, Wallis is in default and the allegations in the Notice and Order for Hearing are taken as true. Those allegations support the issuance of a Notice of License Revocation to the Minnesota Board of Nursing that Wallis' nursing license be revoked.

A.W.K.

^[1] Exhibit 1. The amount appears to be based on the joint tax liability for Wallis and her spouse. Compare, Finding 11.

^[2] Exhibit 2.

^[3] *Id.* (emphasis in original).

^[4] Notice and Order for Hearing, at 2 (emphasis in original).

^[5] Department Letter, January 18, 2001.

^[6] Exhibit 3.

^[7] Exhibit 3.

^[8] Exhibit 1.

^[9] See ALJ Letter, February 6, 2001.

^[10] Wallis asserted that indicating zero on the federal return means that no tax is owed. But the Department has issued corrected forms based on income information available to the Department. Exhibit 7. To succeed in asserting an affirmative defense, a taxpayer must introduce evidence to support the defense and show that it is not frivolous. See e.g. **Van Stafford v. United States**, No. 99-1287 (10th Cir. 2000)(citing **Lonsdale v. United States**, 919 F.2d 1440, 1448 (10th Cir. 1990) (providing list of court-rejected tax protester arguments)).