

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

In the Matter of the Revocation of the
Electrical Contractor Class A License of
Gary P. Heggem.

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

The above-entitled matter came on for hearing before Administrative Law Judge Barbara Neilson on February 26, 2003, at the Office of Administrative Hearings in Minneapolis, Minnesota. The hearing was held in accordance with a Notice and Order for Hearing issued on January 21, 2003. The record closed on the date of the hearing.

Wayne L. Sather, Staff Attorney, Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-0220, appeared on behalf of the Minnesota Department of Revenue ("the Department"). Gary P. Heggem ("Respondent"), 1161 Wayzata Boulevard, Wayzata, Minnesota 55391-1935, appeared on his own behalf without counsel.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the 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 Dan Salomone, Commissioner, MN Department of Revenue, 600 North Robert St., St. Paul, MN 55146 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Should the Department of Revenue issue a Notice of Revocation to the Minnesota Board of Electricity seeking to revoke the Electrical Contractor Class A License of Gary P. Heggem because Mr. Heggem owes the State \$500 or more in delinquent taxes, penalties or interest, or has not filed all tax returns due to the Commissioner?

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

FINDINGS OF FACT

1. Respondent is an electrical contractor who resides in Wayzata, Minnesota.
2. Respondent has not filed state income tax returns for any year after 1995.
3. On May 9, 2001, the Department issued a Request for Missing Returns to Respondent, directing him to file returns for the years 1996 and 1997 by June 8, 2001.^[1]
4. On June 11, 2001, the Department issued a Demand to File Individual Income Tax Returns to Respondent, directing him to file returns for the years 1996 through 1999 by July 11, 2001.^[2]
5. On or about June 18, 2001, Respondent submitted to the Department Minnesota Individual Income Tax forms for 1996 and 1997. On these forms, Respondent declared that he had no taxable income and owed no state taxes for both 1996 and 1997. Respondent also attached to each return a "Notice of Final Determination" wherein he declared that he was "a man in propria persona, a sovereign" and that the "presentment" by the Department contained false demands that threaten his "survival and liberty." In short, Respondent generally contends that the Department's allegations are false and contrary to law.^[3]
6. By letter dated June 21, 2001, M.J. Schaefer, Revenue Tax Specialist for the Department, directed Respondent to provide to the Department completed Minnesota Individual Income Tax returns for the years 1996 through 1999.^[4]
7. On July 2, 2001, Respondent submitted an affidavit, declaring himself a "sovereign", and attached several documents "in protest of Internal Revenue Code Section 6011."^[5]
8. The Department notified the Respondent on August 9, 2001, that it had prepared returns for him based on documented sources of income obtained by the Department under the authority of Minn. Stat. §§ 289A.35 and 289A.37. Those returns were prepared by M.J. Schaefer, a Revenue Tax Specialist with the Department. The return prepared for 1996 shows taxes due in the amount of \$3,347, plus penalties, interest, and other fees due as of August 9, 2001. The return prepared for 1997 shows taxes due in the amount of \$1,298.00, plus penalties, interest, and other fees due as of August 9, 2001.^[6]
9. On August 9, 2001, the Commissioner issued an Order directing Respondent to pay \$9,146.40 for taxes, interest and penalties owing for the years 1996 and 1997. Respondent was directed to pay this amount by October 9, 2001. The Order also informed Respondent of his right to file an appeal with the Department or with the Minnesota Tax Court within 60 days of the Order's date.^[7]
10. On October 5, 2001, the Department received the August 9, 2001 Order of the Commissioner back from Respondent with the following signed statement:

"Pursuant to the Uniform Commercial Code in Minn. Stat. § 336.3-501 'Presentment', I, Gary Paul., Heggem, hereby refuse and refute this presentment for cause and without dishonor, and hereby claim that I do not owe the amounts and duties demanded by this presentment, and

hereby declare that I do not agree with the claims contained in this presentment. All rights reserved, under protest, without prejudice, UCC 1-207.”^[8]

11. Respondent has also failed to file individual income tax returns for the years 1998 through 2001. The Department has not yet used the Section 289A.35 procedure to prepare returns for Respondent for those years.

12. On October 4, 2002, the Department issued a Notice of State Tax Lien to Respondent. The notice informed Respondent that the State had obtained a lien upon all his property and property rights in the amount of his unpaid taxes, plus penalties and interest.^[9]

13. On October 24, 2002, the Department issued a Notice of Intent to Revoke License to Respondent. The notice indicated that, unless Respondent paid the delinquent taxes, penalties, and interest he owed and filed returns for the years 1998 through 2001, the Department would notify the Minnesota Board of Electricity to revoke his Electrical Contractor Class A license. The notice also informed Respondent of his right to request a hearing before the Office of Administrative Hearings.^[10]

14. On November 22, 2002, Respondent did request a hearing.^[11] This contested case proceeding was initiated by issuance of a Notice of and Order for Hearing on January 21, 2003. The hearing took place on February 26, 2003.

15. With interest, penalties, and other fees, the total amount Respondent owed as of February 26, 2003, for 1996 and 1997 was \$9,904.34.^[12]

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 jurisdiction in this matter pursuant to Minn. Stat. § § 14.50 and 270.72 (2001).

2. The Department gave proper notice of the hearing in this matter and has fulfilled all other relevant substantive and procedural requirements of law and rule.

3. Minn. Stat. § 270.72, subd. 1 provides, in part, as follows:

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 clearance to the authority. The Commissioner may issue a clearance certificate only if the applicant does not owe the state any uncontested delinquent taxes, penalties, or interest and has filed all required returns.

4. Minn. Stat. § 289A.35 provides, in part, as follows:

The Commissioner has the authority to make determinations, corrections, and assessments to taxes, and assessable penalties. The Commissioner may audit and adjust the taxpayer's computation of federal taxable income, items of federal tax preferences, or federal credit amounts to make them conform with the provisions of chapter 290 or section 298.01. If a taxpayer fails to file a required return, the Commissioner, from information in the Commissioner's possession or obtainable by the Commissioner, may make a return for the taxpayer. The return will be prima facie correct and valid. If a return has been filed, the Commissioner shall enter the liability reported on the return and may make any audit or investigation that is considered necessary.

5. The Minnesota Board of Electricity is a "licensing authority" within the meaning of Minn. Stat. § 270.72, subd. 1.

6. The Department provided Respondent with notice of the Commissioner's intent to require revocation of his license, and Respondent did request a hearing in a timely manner.

7. Respondent owes the State more than \$9,900.00 in delinquent taxes, penalties and interest for tax years 1996 and 1997. Respondent has also failed to file returns and pay taxes, penalties and interest for tax years 1998 through 2001.

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

RECOMMENDATION

IT IS RECOMMENDED: That the Commissioner of Revenue require the Board of Electricity to revoke the Electrical Contractor Class A license issued to Gary P. Heggem.

Dated: March 27th, 2003

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape recorded (not transcribed)

NOTICE

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.

MEMORANDUM

The Respondent generally contends that the Department's allegations are false, that the Department failed to comply with provisions of the Uniform Commercial Code, that compensation for labor does not constitute taxable wages, that the Department acted illegally by not registering with the Secretary of State as doing business in Minnesota, and that he is a sovereign and is therefore not subject to tax or to this proceeding. Other courts have rejected similar tax protester arguments. See, e.g., *United States v. Sloan*,^[13] *United States v. Andra*,^[14] *Casper v. Commissioner of Internal Revenue*,^[15] and numerous unpublished decisions. The Administrative Law Judge finds Respondent's arguments to be without merit. The Judge specifically finds the requirement that corporations doing business in Minnesota register with the Secretary of State to be inapplicable to the Department. Furthermore, the Respondent's complaints about the federal Internal Revenue Service are not pertinent in this proceeding, which was instituted by the Minnesota Department of Revenue.

The Department has borne its burden to establish that Mr. Heggem owes more than \$500 in delinquent state taxes, penalties and interest and that he has not filed tax returns due to the Commissioner for the years 1995 through 2001. Accordingly, the Administrative Law Judge recommends that, pursuant to Minn. Stat. § 270.02, the Commissioner require the Board of Electricity to revoke Mr. Heggem's Electrical Contractor Class A license.

B.L.N.

[\[1\]](#) Ex. 5.

[\[2\]](#) Ex. 6.

[\[3\]](#) Exs. 7 and 8.

[\[4\]](#) Ex. 9.

[\[5\]](#) Ex. 10.

[\[6\]](#) Ex. 11.

[\[7\]](#) Ex. 11.

[\[8\]](#) Ex. 12.

[\[9\]](#) Ex. 4.

[\[10\]](#) Ex. 1.

[\[11\]](#) Ex. 2.

[\[12\]](#) Exs. 1, 4, 11.

[\[13\]](#) 939 F.2d 499, 500-501 (7th Cir. 1991) (holding that the Internal Revenue Code imposes tax on all income, including wages, and that all individuals, freeborn and non-freeborn, natural and unnatural alike, must pay federal income tax on their wages).

[\[14\]](#) 923 F.Supp. 157 (D.Idaho 1996) (Chapter 3 of the U.C.C. is only applicable to “negotiable instruments” and not to matters involved in tax lien case).

[\[15\]](#) 805 F.2d 902 (10th Cir. 1986) (rejecting argument that compensation for labor does not constitute taxable wages).