

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

In the Matter of the Revocation of the  
Sales and Use Tax Permit of Laen,  
Inc.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

This matter was heard by Administrative Law Judge Beverly Jones Heydinger, commencing at 10:30 a.m., September 24, 2003, at the Office of Administrative Hearings. The hearing was held pursuant to a Notice of and Order for Hearing dated July 15, 2003, signed by Rose A. Underhill. Wayne Sather, Staff Attorney, Mail Station 2220, 600 North Robert Street, Saint Paul, MN 55146-2220, appeared for the Department of Revenue. Lee Lansing, Owner, 618 Division Street South, Northfield, MN 55057-2425, appeared on behalf of Laen, Inc. The record closed at the end of the hearing.

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 and may adopt, reject or modify these 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 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, Minnesota Department of Revenue, 600 North Robert Street, Saint Paul, MN 55146 to ascertain 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.

STATEMENT OF ISSUES

1. Did Laen, Inc. file all sales and use tax returns due to the State of Minnesota?
2. Did Laen, Inc. pay all sales and use tax due to the State of Minnesota?

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

### FINDINGS OF FACT

1. Laen, Inc. holds a Sales and Use Tax Permit, I.D. Number 5313010.
2. By letter dated April 18, 2003, Laen, Inc., also referred to as Lansing Enterprises, Inc., received Notice of Intent to Revoke Sales and Use Tax Permit (“Revocation Notice”). The Revocation Notice stated that, to avoid revocation, the taxpayer must pay \$11,773.49, and file and pay taxes for March, 2003. The Notice also informed the taxpayer of the right to request a hearing.<sup>[1]</sup>
3. The taxpayer notified the Department that he had discovered computer problems, and understood that he was obligated to file amended returns, or “live with the filings already completed”. He also requested a hearing.<sup>[2]</sup>
4. On September 17, 2003, the taxpayer submitted corrected returns for several months, from April 2001 through July 2003.<sup>[3]</sup> Based on the corrected returns, the Department recalculated the taxes owed. The total reduction for taxes owed through February, 2003, the period covered by the Revocation Notice, was \$19,094.<sup>[4]</sup> This exceeded the amount the Department claimed was owing in its Revocation Notice. There was no evidence that any amount remained owing for the period up to and including the date of the Notice of Intent to Revoke Sales and Use Tax Permit.
5. The Department’s witness acknowledged that the sales and use tax returns had been filed.<sup>[5]</sup> There was no evidence to the contrary.
6. At the hearing, the Department’s witness stated that the only months at issue in the proceeding for taxes owed were May, June and July 2003.<sup>[6]</sup>
7. On September 9, 2003, Wayne Sather, Staff Attorney for the Department, sent Mr. Lansing a letter stating the liability owed at that time. This was prior to the recalculation of taxes based on the amended filings. That letter did not include any liability for May 2003. Also, the figures for December 2002 through February 2003 were less than the amount stated on the Revocation Notice.<sup>[7]</sup>
8. The day before the hearing, James L. Jones, Revenue Collection Officer, notified the taxpayer by facsimile transmission, of his liability for May, June and July 2003.<sup>[8]</sup> No Revocation Notice was sent for this period.

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.<sup>[9]</sup>

2. The Department gave proper notice of this hearing.
3. The holder of a sales tax permit is required to pay taxes by the 20<sup>th</sup> day of the month following the sales.<sup>[10]</sup> The Department is authorized to assess penalties for late payments<sup>[11]</sup> and charge interest on late payments and penalties.<sup>[12]</sup>
4. The Department has the burden of proving by a preponderance of the evidence that Laen, Inc. has not filed its sales and use tax returns and has failed to pay the tax that is owing.
5. The Department has failed to show that Laen, Inc. did not file its sales and use tax returns.
6. The Department has failed to show that Laen, Inc. did not pay the tax that it owed.
7. This report is subject to review by the Commissioner of Revenue; it is not the final disposition.
8. Any Findings of Fact that are more appropriately described as Conclusions are adopted as Conclusions.

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

#### RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Department's decision to revoke the sales tax permit of Laen, Inc. should be REVERSED.

Dated this 24<sup>th</sup> day of October, 2003

S/ Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Tape-recorded (one tape).

#### NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

## MEMORANDUM

The Notice and Order for Hearing stated two bases for revocation of the sales and use tax permit: failure to file sales and use tax returns and failure to pay sales and use taxes. The Department failed to prove either basis.

The Department did not produce any evidence that the taxpayer failed to file sales and use tax returns. The Department's witness acknowledged at hearing that all returns had been filed. Accordingly the sales and use tax permit should not be revoked for failure to file returns.

The holder of sales and use tax permit is required to pay taxes by the 20<sup>th</sup> day of the month following the sales.<sup>[13]</sup> The Department is authorized to assess penalties for late payments<sup>[14]</sup> and charge interest<sup>[15]</sup>. The Department did produce evidence that the taxpayer may owe sales and use tax, but the evidence was confusing, and inconsistent with the Notice of Intent to Revoke Sales and Use Tax Permit ("Revocation Notice") that triggered the appeal. The taxpayer appealed the notice issued on April 18, 2003. That notice stated that the taxpayer owed \$11,773.49, for taxes owing through February 2003, plus any amount owing for March 2003.

Exhibit 4 shows that the taxpayer submitted amended returns and the Department recalculated the tax owing for every month from April 2001 through July 2003. Based on the recalculated figures, it is not entirely clear what amount, if any, the taxpayer owes through February, 2003. The revised figures show that the tax liability for April 2001 through February 2003 decreased by approximately \$19,000, which is significantly higher than the \$11,773.49 that was stated as owing in the Revocation Notice.<sup>[16]</sup> There was no other evidence to support the Department's position that sales and use taxes were owing for this period. In addition, the Department's witness testified at the hearing that the only months at issue in this proceeding were May, June and July 2003.<sup>[17]</sup>

The taxpayer received notice of the amount owing for May, June and July by facsimile transmission on the day before the hearing.<sup>[18]</sup> The only other communication that might be construed as notice was a letter from Mr. Sather dated September 9, 2003.<sup>[19]</sup> It did not list any amount owing for May, and the figures for June and July were inconsistent with the figures sent to the taxpayer on September 23, based on the amended returns. The amounts for June and July were not owed until after the Notice and Order for Hearing was issued on July 16, 2003, but at no time did the Department attempt to amend its Notice and Order for Hearing, or send a revised Revocation Notice to the taxpayer.

The applicable statute requires that the taxpayer be given 30 days' written notice specifying the violations. Although the taxpayer received notice that revocation of the sales and use tax permit was proposed because of failure to pay sales and use taxes, that was in response to the April Revocation Notice that specified that the taxpayer owed \$11,773, through February 2003. The Department acknowledged that it had credited the taxpayer with over \$19,000 for the period covered by the Revocation

Notice. It is inconsistent with the statute and unfair to the taxpayer for the Department to claim at the hearing that later months were at issue and provide a statement of the taxpayer's liability for the later months a day prior to the hearing. To revoke the sales and use tax permit based on such procedures would amount to a denial of due process of law.<sup>[20]</sup>

An administrative hearing does not provide all of the procedures of a formal judicial proceeding, but it is fundamental that the individual who is subject to the proposed government action must be given clear, timely notice of the proposed action and the grounds for it. The focus of the inquiry must be whether the agency's failure to clarify the facts at issue prohibited the taxpayer from effectively preparing for the hearing. The essence of due process is that a person in jeopardy of a serious loss of property, as a sales tax permit surely is, must be given notice of the case against him and the opportunity to meet it.<sup>[21]</sup>

In this case, it was unfair to inform the taxpayer the day before the hearing of the months at issue and the Department's calculation of the amounts owed, even if the calculations were based on the taxpayer's amended returns. The taxpayer had no time to prepare to address those allegations. Furthermore, the amount the Department claimed was owing on Exhibit 6 for May 2003 was \$1,142.63 which cannot be reconciled with page 1 of Exhibits 3 and 5. The Department's presentation at hearing was confusing and inconclusive.

Based on the evidence presented, the Department failed to prove that the taxpayer did not pay taxes owing.<sup>[22]</sup>

**B.J.H.**

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<sup>[1]</sup> Ex. 1.

<sup>[2]</sup> Ex. 2.

<sup>[3]</sup> Ex. 4, pages 2 and 3.

<sup>[4]</sup> Ex. 4, page 1.

<sup>[5]</sup> Testimony of James L. Jones.

<sup>[6]</sup> Test. of Jones.

<sup>[7]</sup> Ex. 11.

<sup>[8]</sup> Ex. 6.

<sup>[9]</sup> Minn. Stat. §§ 14.55, 297A.86.

<sup>[10]</sup> Minn. Stat. § 289A.20, subd. 4.

<sup>[11]</sup> Minn. Stat. § 289A.60, subd. 1 (e).

<sup>[12]</sup> Minn. Stat. § 289A.55, subds. 2 and 9.

<sup>[13]</sup> Minn. Stat. § 289A.20, subd. 4.

<sup>[14]</sup> Minn. Stat. § 289A.60, subd. 1 (e).

<sup>[15]</sup> Minn. Stat. § 289A.55, subds. 2 and 9.

<sup>[16]</sup> Ex. 4.

<sup>[17]</sup> Exs. 3, 5 and 6.

<sup>[18]</sup> Test. of Jones; Ex. 6.

<sup>[19]</sup> Ex. 11.

<sup>[20]</sup> The Revocation Notice cited four statutes as the basis for action. One, Minn. Stat. § 297A.07, has been repealed and replaced with Minn. Stat. § 297A.86. The Notice and Order for Hearing contained the correct citation. The Revocation Notice also references Minn. Stat. § 289A.63. That addresses criminal penalties and has no relevance to this proceeding.

<sup>[21]</sup> Mathews v. Eldridge, 424 U.S. 319, 348, 96 S.Ct. 893, 909 (1976).

<sup>[22]</sup> Mr. Lansing submitted additional information on October 22, 2003. That information was not considered, but is included in the file.