

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

In the Matter of the Revocation of
the Sales and Use Tax Permit of:
Richard Bates doing business as
Bates Manufacturing

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Beverly Jones Heydinger (“ALJ”) on October 1, 2003 for hearing. The hearing was continued from August 26, 2003 at the request of the Respondent and reset for October 1, 2003. The hearing was held pursuant to a Notice of and Order for Hearing dated July 18, 2003.

Wayne L. Sather, Attorney, Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220, appeared on behalf of the Minnesota Department of Revenue (“Department”). The Respondent, Richard Bates, did not appear in person or by counsel. There were no additional submissions subsequent to the Respondent’s default on October 1, 2003.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner’s decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) 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, St. Paul, MN 55146, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

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. Has the Respondent filed all sales and use tax returns?
2. Has Respondent paid all sales and use taxes owing to the state?

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

FINDINGS OF FACT

1. On July 18, 2003, a copy of the Notice of and Order for Hearing was sent to Richard Bates, doing business as Bates Manufacturing, 338 East Highway 12, Litchfield, MN 55355-2251, as appears in the Affidavit of Mailing to Last Known Address on file herein.

2. The Respondent did not appear at the first date scheduled for hearing, but called on that date and asked the ALJ for a continuance to see if the matter could be resolved with the Department in the meantime. When the ALJ was informed that the matter had not been resolved, the hearing was rescheduled for October 1, 2003. The letter resetting the hearing for October 1, 2003 was sent to Richard Bates, dba Bates Manufacturing, 338 East Highway 12, Litchfield, MN 55355-2251, on September 16, 2003.

3. The Respondent did not appear at the hearing, did not obtain the ALJ's prior approval to be absent from the hearing, did not file a Notice of Appearance, and did not request a second continuance or any other relief.

4. The Respondent agreed to the sales and use tax balance due, as shown in Exhibit 5.

5. The Notice of and Order for Hearing contained the following informational warning:

The Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

6. Because Respondent failed to appear, he is in default.

7. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Revenue are authorized to consider the charges against Respondent under Minn. Stat. §§ 297A.86, 289A.11, 289A.20 and 14.50 (2002).

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of his failure, without the ALJ's prior consent, to appear at the hearing.

6. The Respondent owes the sales and use tax balance due.

7. By failing to pay all sales and use tax due to the State of Minnesota, Respondent is in violation of Minn. Stat. § 289A.20.

8. Because of the violations the Respondent is subject to permit revocation pursuant to Minn. Stat. § 297A.86.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Revenue revoke the Sales and Use Tax Permit of Richard Bates dba Bates Manufacturing.

Dated this 24th day of October, 2003.

s/Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default

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.