

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

In the Matter of the Proposed
Revocation of the Sales Tax Permit of
L & M Restaurant Co., Inc., 9 Smiley
Road, Nisswa, Minnesota 56468-
9515; MN ID No. 3195242

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came duly on for hearing before Administrative Law Judge Steve M. Mihalchick, on March 18, 1998, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The record closed in this matter at the close of the hearing.

Donald Brown, Staff Attorney, Minnesota Department of Revenue, 5270 W. 84th Street, Suite 400, Bloomington, Minnesota 55437-1378, appeared on behalf of the Department of Revenue (Department). Mark Pearl and Leroy Pearl, 933 Edna Lake Road, Nisswa, Minnesota 96468, appeared on behalf of the L & M Restaurant Co., Inc., 9 North Smiley Road, Nisswa, Minnesota 56468-9515 (Respondent).

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of the Department of Revenue shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with the Commissioner of Revenue, James L. Girard, 10 River Park Plaza, St. Paul, Minnesota 55146.

STATEMENT OF ISSUE

Should Respondent's sales tax permit be revoked for failure to pay Minnesota sales tax as required by Minn. Stat. §§ 297A.26 and 289A.20.

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

FINDINGS OF FACT

1. Respondent L & M Restaurant Co., Inc. is a small business in Minnesota, holding Minnesota sales and use tax permit number 3195242. Respondent is making retail sales and collecting sales tax on those sales.

2. Sportland Cafe, Inc. (Sportland) operated a business at 9 Smiley Road, Nisswa, Minnesota. In 1996 and 1997, Sportland incurred unpaid tax liability for 13 months. Exhibit 4. On May 8, 1997, L & M Restaurant Co., Inc. (L&M) was incorporated with the Secretary of State. Exhibit 6. The business address of L&M was listed as 9 Smiley Road on the Articles of Incorporation. *Id.*

3. On June 13, 1997, the Department issued a successor liability notice to L&M assessing L&M for the unpaid taxes assessed against Sportland. Exhibit 4. No appeal was taken from the assessment against L&M.

4. Respondent has not filed sales tax returns for October, November, and December, 1997 and January, 1998. Exhibit 2. Sales tax returns have been filed for May, June, July, August, and September, 1997. *Id.* Through the assessment of Sportland's unpaid taxes, Respondent has unpaid taxes from February, March, April, May, July, August, September, October, and November, 1996 and January, February, and March, 1997. Exhibit 1. As of March 14, 1998, the total amount of taxes and penalties identified in Respondent's returns as unpaid and overdue was \$38,941.41. Exhibit 1.

5. Respondent had not entered into a repayment agreement with the Department to pay the amount owed as of the date of the hearing.

6. The Department issued a Notice of Intention to Revoke Sales Tax Permit to Respondent on December 19, 1997. Exhibit 3. Respondent requested a hearing on the revocation. The Notice and Order for Hearing in the matter was issued on February 13, 1998.

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

CONCLUSIONS

1. The Notice of Hearing is proper as to form and content and all other procedural and substantive requirements of statute and rule have been duly complied with.

2. The Department and the Administrative Law Judge have jurisdiction over this matter under Minn. Stat. §§ 297A.07 and 14.50.

3. Respondent owes the Department at least \$38,941.41 as of the date of the hearing for sales taxes, penalties, and interest.

4. Respondent has failed to file sales tax returns for several months and owes additional amounts to the Department for sales taxes, penalties, and interest for those months.

5. Respondent is obligated to file sales tax returns within one month of the month in which the tax was collected by Minn. Stat. § 289A.11. Respondent is

obligated to pay the sales tax owed by the twentieth day of the month following the month when the tax was collected under Minn. Stat. § 289A.20, subd. 4.

6. As of the date of the hearing, no plan for repayment of the taxes owed had been entered into by Respondent and the Department.

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

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RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue revoke Sales Tax Permit number 3195242 held by L & M Restaurant Co., Inc.

Dated this th day of April, 1998.

STEVE M. MIHALCHICK.
Administrative Law Judge

Reported: Taped, not transcribed.

NOTICE

Pursuant to 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

Respondent does not dispute the amount owed to the Department or that several sales tax returns have not been filed. Failure to pay sales tax owed and to file appropriate returns are grounds for revoking a sales tax permit. Respondent is in the process of selling the business and expects to resolve the arrears as part of the sale. The Administrative Law Judge is issuing this Recommendation in the event that the sale is not finalized.

S.M.M.