

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

In the Matter of the Revocation of the
Sales and Use Tax Permit of:

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

Emerald Perennial Corporation.

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on November 17, 2004, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. 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 Department of Revenue ("the Department"). There was no appearance by or on behalf of the Respondent, Emerald Perennial Corporation, 2515 Fourth Avenue, Anoka, MN 55303-2222. The OAH record closed on November 22, 2004, upon receipt of a letter from counsel for the Department.

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 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 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 the Department of Revenue, 600 North Robert Street, St. Paul, MN 55146, (651) 296-3403, 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

The issue presented in this case is whether the Respondent, Emerald Perennial Corporation, has failed to pay sales and use taxes owed to the Department as required

by law, thereby authorizing the revocation of the Respondent's sales and use tax permit.

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

FINDINGS OF FACT

1. The Notice and Order for Hearing with respect to the Respondent was issued by the Minnesota Department of Revenue on October 14, 2004. In the Notice and Order for Hearing, the Department alleged that the Respondent holds Sales and Use Tax Permit number 5936722 issued by the Minnesota Department of Revenue and has failed to pay all sales and use tax due to the State of Minnesota as required by Chapters 289A and 297A of the Minnesota Statutes.^[1]

2. The Notice and Order for Hearing contained the following passage: **“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.”**^[2]

3. The Notice and Order for Hearing was served on Emerald Perennial Corp, 2515 Fourth Avenue, Anoka, MN 55303-2222, by first class and certified mail on October 14, 2004.^[3]

4. Prior to the hearing, the collector for the Department of Revenue assigned to this case discussed the matter and the upcoming hearing in several conversations with the Respondent's principal officer. The officer told the collector and confirmed by fax to the collector that he was not appearing to contest the matter. The collector informed the officer that the revocation would still go forward and the officer acknowledged that he understood this.^[4]

5. The Respondent failed to file a Notice of Appearance with the Office of Administrative Hearings, failed to appear on the scheduled hearing date, and did not make a prehearing request for a continuance or any other relief. The Respondent is, therefore, in default.

6. The allegations and issues set forth in the Notice and Order for Hearing are incorporated herein by reference in their entirety.

7. The Respondent presently holds Sales and Use Tax Permit number 5936722.

8. Those who make taxable sales are by law required to collect and remit sales tax to the State of Minnesota.

9. As of October 12, 2004, the Respondent owed the total amount of \$22,514.55 for sales tax, penalty, and interest, with penalty and interest continuing to accrue as appropriate.

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 and Order for Hearing and to take the action proposed under Minn. Stat. §§ 289A.20, 297A.86 and 14.50.
2. The Department gave proper notice of the prehearing conference in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.
3. The Respondent is in default under Minn. Rules part 1400.6000 as a result of its failure to appear at the hearing.
4. Under Minn. Rules part 1400.6000, the allegations and the issues set out in the Notice and Order for Hearing may be taken as true or deemed proved without further evidence when a party defaults.
5. The Respondent has failed to pay sales and use taxes as required by Minn. Stat. § 289A.20 and Minn. Rules part 8130.7500.
6. As a result of the failure to pay sales taxes owed to the Department, including penalties and interest, reasonable cause exists to revoke the Respondent's sales tax permit under 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 Revenue revoke sales and use tax permit number 5936722 issued to Emerald Perennial Corporation.

Dated: November 29, 2004

/s/ Barbara L. Neilson

BARBARA L. NEILSON
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.

-
- ^[1] Notice and Order for Hearing, Allegations ¶¶ 1 and 2.
- ^[2] Notice and Order for Hearing, Additional Notice ¶ 1 (emphasis in original).
- ^[3] Affidavit of Mailing to Last Known Address of Joyce Kett, attached to Notice and Order for Hearing.
- ^[4] Letter of Nov. 18, 2004, to the Administrative Law Judge from counsel for the Department.