

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

In the Matter of the Proposed
Revocation of the Sales and Use Tax
Permit of Paul D. Brattensborg d/b/a All
Seasons Co.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis on February 7, 2006. Wayne Sather, Attorney, Appeals and Legal Services Division, Minnesota Department of Revenue, 600 North Robert Street, Mail Station 2220, St. Paul, MN 55146-2220, appeared on behalf of the Minnesota Department of Revenue ("Department"). Paul D. Brattensborg, 1513 Pine Siskin Avenue South, Sartell, MN 56377, appeared on behalf of himself and his business entity, All Seasons Company ("Respondent", "Taxpayer").

The hearing that convened on February 7, 2006, was continued by the Administrative Law Judge at the request of both parties, to allow the parties time to agree on a Payment Plan and for Mr. Brattensborg and/or all Seasons Company to begin making payments in connection with the Plan. This case reconvened on December 7, 2006 for a Status Conference. At the conclusion of the Status Conference, the Administrative Law Judge granted the Motion by counsel for the Department to close the hearing record in this matter and take the case under advisement. The hearing record closed December 7, 2006.

STATEMENT OF ISSUE

Whether the sales tax permit of Respondent/Taxpayer Paul D. Brattensborg, d/b/a All Seasons Company, should be revoked for noncompliance with the statutes and rules applicable to Minnesota Sales Taxes, pursuant to Minn. Stat. § 270C.722?¹

¹ The Notice and Order for Hearing in this case cites Minn. Stat. § 297A.86 as the authority authorizing the Commissioner of Revenue to revoke sales tax permits. Effective August 1, 2005, that statute was republished as Minn. Stat. § 270C.722.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent Paul D. Brattensborg holds a Sales and Use Tax Permit, Number 1324613, as issued by the Minnesota Department of Revenue.

2. The Respondent has not paid all sales and use tax due to the State of Minnesota. As of February 7, 2006, the amount the Department believed was owed for sales tax, penalties, interest and other charges was \$267,573.29.² Penalties and interest have continued to accrue where appropriate. At the time of the Status Conference, the total amount allegedly owed exceeded \$300,000.00.³ As of December 21, 2006, the Department calculates the total debt at \$310,278.54.⁴

3. The Respondent has not filed sales and use tax returns required to be filed with the Minnesota Department of Revenue. The Respondent has not filed quarterly sales and use tax returns for the quarter ending December, 2003, nor for any quarter ending thereafter. The Respondent has not filed most of its monthly tax returns since January, 2005.

4. Since this matter was continued after February 7, 2006, for the purpose of the parties to enter into a Memorandum of Understanding and the execution of a Payment Plan, neither document has been finalized and the Respondent/Taxpayer has made no payments of sales and use taxes to the Minnesota Department of Revenue.

5. On June 26, 2006, Mr. Brattensborg presented the Department of Revenue with a plan to pay \$50 per month in back sales taxes. The Department is unable to consider a payment plan spread over a period longer than 24 months.⁵ Given what the Department alleges the Taxpayer/Respondent owes in sales and use taxes, the Department would have to receive \$12,500.00 or more each month in order for the debt to be paid off, and the Taxpayer/Respondent would also have to file returns and pay the sales tax due on revenues for his business each month while the back taxes were being paid off.

6. Mr. Brattensborg operates a landscaping, lawn care and snow removal business. The business has operated since the early 1990s. The business was up to date on all of its sales and use tax obligations until approximately 2000-2001, when Mr. Brattensborg, the President of All Seasons Company, was afflicted with a long-lasting bout of major depression.

² Deptment's Ex. 3.

³ Testimony of Nancy Runyon, 12/7/06.

⁴ Telephone message to ALJ from Nancy Runyon, 12/21/06.

⁵ Testimony of Nancy Runyon, 12/7/06.

7. The disease of major depression, and its aftermath, contributed to Mr. Brattensborg's and All Seasons's non-payment of sales and use taxes and non-filing of returns over the next several years.

8. In connection with the December 7, 2006 Status Conference, Mr. Brattensborg filed copies of Schedule C tax returns for 2002 and 2003, showing his business losses during that period. The returns indicate that Mr. Brattensborg's business gross receipts and sales were approximately \$451,000.00 and \$296,000.00, respectively, for those two years.

9. During the years 2002 and 2003, the Department estimated Mr. Brattensborg's business sales and receipts at \$837,887.20 for each of the years 2002 and 2003. Based on those estimates, broken down into revenue estimates of nearly \$210,000.00 per quarter, the Department estimated a tax liability for each quarter of \$13,615.00.⁶

10. The tax debt for the years 2002 and 2003, if re-figured based on the numbers represented for gross sales and receipts for those years in the tax returns presented by Mr. Brattensborg in connection with the Status Conference, would yield a lower total debt than the current amount estimated by the Department.

11. At this juncture, Mr. Brattensborg requests the Department to recalculate the amount of taxes he owes, based in part on the recently-presented Schedule C information showing far fewer gross sales and receipts than the Department had estimated for 2002 and 2003.

12. As of the time of the Status Conference, the Department had not sent a written response to the plan submitted in June, 2006 by Mr. Brattensborg to pay back the Department at a rate of \$50 per month.

Based on the Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Revenue have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 270C.722 (formerly Minn. Stat. § 297A.86).

2. The Notice and Order for Hearing in this matter were proper, and the Department has fulfilled all procedural requirements.

3. The Respondent/Taxpayer, Paul D. Brattensborg, d/b/a All Seasons Company, is in debt to the Minnesota Department of Revenue for non-payment of sales and use taxes in an amount up to approximately \$311,000.00.

⁶ Brattensborg filing, 12/7/06.

4. The Taxpayer/Respondent has not filed sales and use tax returns since the quarter ending December 2003, and has not filed most of its monthly returns since January 2005.

5. It is appropriate for the Commissioner of Revenue to take appropriate disciplinary action against the Respondent/Taxpayer, by way of revocation of its sales and use tax permit, unless a Memorandum of Understanding and Payment Agreement is entered into by the Respondent/Taxpayer and the Department within a reasonable time, and the Taxpayer/Respondent begins to make payments in connection with that Agreement.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Revenue REVOKE the sales and use tax permit of Paul D. Brattensborg, d/b/a All Seasons Company, unless the Department and Mr. Brattensborg enter into a Memorandum of Understanding and a Payment Agreement, and Mr. Brattensborg pays 1/24 of the total amount of the Respondent/Taxpayer's debt to the Department within 30 days of the execution of the Memorandum of Understanding and Payment Agreement, and continues to pay the monthly amount due for gross receipts and revenues of All Seasons Company.

Dated this 22nd day of December, 2006

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Taped
No transcript prepared

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 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 Ward Einess, Commissioner, Minnesota Department of Revenue, 600 North Robert Street, St. Paul, MN 55146 to learn 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.

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 Administrative Law Judge held the record open in this matter for a period of time that was more than sufficient for Mr. Brattensborg to enter into a Memorandum of Understanding and Payment Agreement with the Department. His proposed plan to pay back his debts with an initial payment schedule calling for \$50.00 month in payments is completely inadequate. Unless Mr. Brattensborg can show good faith by paying off 1/24 of his debt, and by filing current returns and paying current sales taxes, for each month during the next two years, the Commissioner is justified in revoking the sales and use tax permit of Mr. Brattensborg and All Seasons Company

The Administrative Law Judge is sympathetic to the medical and personal situation faced by Mr. Brattensborg. However, it is not reasonable for him to put off payments simply because the Department has not replied formally to his offer to make payments at a rate (\$50 per month) that is so totally inadequate as to be equivalent to no offer at all. For its part, the Department admits that it has not replied formally to the Respondent/Taxpayer's offer, but that inactivity by the Department does not excuse the enormity of the debt or strip the Commissioner of power to proceed with a disciplinary sanction, such as revocation of the sales and use tax permit involved in this case.

It is assumed that the Department will soon re-calculate what Mr. Brattensborg owes in back sales and use taxes,⁷ and present him with a proposed Memorandum of Understanding and Payment Plan for signature. The Administrative Law Judge believes that a reasonable period of time, until approximately January 31, 2007, should be allowed for that process. If Mr. Brattensborg does not pay his initial payment under that Plan within 30 days of the effective date, then the Administrative Law Judge believes revocation of the permit would be appropriate.

⁷ The re-calculation of the debt should give appropriate weight to the establishment of business revenues receipts for the years involved, which can be made by Mr. Brattensborg's filing of Schedule C returns for the relevant periods. Filings showing lower amounts in revenues and receipts than those amounts estimated by the Department could lower the tax liability, but Mr. Brattensborg must be diligent in filing the appropriate returns.

R. C. L.