

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:
Thomas M. O'Meara.

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

The above-entitled matter came on for hearing before Kathleen D. Sheehy, Administrative Law Judge, on April 11, 2006, at the Office of Administrative Hearings in Minneapolis. The hearing record closed that day.

Wayne L. Sather, Esq., Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, Minnesota 55146-2220, appeared for the Department of Revenue (Department).

There was no appearance by or on behalf of the Respondent, Thomas M. O'Meara, d/b/a Michael's Restaurant, 10815 Sumac Lane, Minnetonka, MN 55305-2948.

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 of Revenue 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 of Revenue. Parties should contact Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-2220 or 651/296-8228 for specifics of how to file exceptions or present argument. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so.

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 Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

The issue is whether the Respondent 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.

The Administrative Law Judge concludes that the permit should be revoked.

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

FINDINGS OF FACT

1. The Commissioner of the Minnesota Department of Revenue issued the Notice and Order for Hearing in this matter on March 1, 2006. The Notice and Order for Hearing was served that day by first class and certified mail on Thomas M. O'Meara, d/b/a Michael's Restaurant, 10815 Sumac Lane, Minnetonka, MN 55305-2948.

2. In the Notice and Order for Hearing, the Department alleged that the Respondent holds Sales and Use Tax Permit number 6767788 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.

3. 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. ^[1]

4. The Respondent did not file a Notice of Appearance with the Office of Administrative Hearings, failed to appear on the scheduled hearing date, and failed to contact the Administrative Law Judge to seek a continuance or any other relief. The Respondent is, therefore, in default.

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

6. Persons who make taxable sales are by law required to collect and remit sales tax to the State of Minnesota. As of March 1, 2006, the Respondent owed the total amount of \$19,050.31 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 OF LAW

1. The Department 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. §§ 14.50, 289A.20, and 270C.722, subd. 1.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied in all other respects with the procedural requirements of law and rule.

3. The Respondent is in default under Minn. R. 1400.6000 as a result of his failure to appear at the hearing.

4. Under Minn. R. 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, subd. 4, and 297A.62, subd. 1.

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. § 270C.722, subd. 1.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue revoke sales and use tax permit number 6767788 issued to Thomas M. O'Meara, d/b/a Michael's Restaurant.

Dated this 5th day of May, 2006.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default

NOTICE

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

^[1] Notice and Order for Hearing, March 1, 2006, at page 2 (emphasis in original).