
2013 WL 1364292 (Fla.Div.Admin.Hrgs.)

Division of Administrative Hearings

State of Florida

AMERICAN BUSINESS USA CORP., Petitioner

v.

DEPARTMENT OF REVENUE, Respondent

DOAH Case Number: 12-2527

Audit Number: 200105422

DOR 2013-005 - FOF

March 29, 2013

FINAL ORDER

*1 This cause came before the State of Florida, Department of Revenue (the Department) for the purpose of issuing a Final Order. The Administrative Law Judge (“ALJ”) assigned by the Division of Administrative Hearings (“DOAH”) heard this cause and submitted a Recommended Order (“Order”) to the Department. A copy of the Order, issued on February 27, 2013 by Judge Claude B. Arrington, is attached to this order and incorporated by reference as if fully set forth herein as Exhibit 1.

The deadline for exceptions to the Order to be filed with the Department was March 14, 2013. Although the Order clearly directs that exceptions should be filed with the agency that will issue the final order, the Petitioner filed a “Notice of Filing Exceptions to Recommended Order and Motion for Re-Hearing” as well as a “Request for Extension/Motion for Leave to Amend Exceptions to Recommended Order” with the DOAH on March 15, 2013. These pleadings were not received by the Department until March 19, 2013. As the DOAH no longer had jurisdiction upon the issuance Order, the Motion for Re-Hearing is moot. Petitioner’s exceptions were received by the Department four (4) days beyond the deadline, in violation of [Rule 28-106.217, Florida Administrative Code](#). No amended exceptions were filed with the Department, and no response to exceptions was filed. Although not timely filed with the Department, Petitioner’s exceptions have been addressed herein. A copy of Petitioner’s exceptions is attached to this order as Exhibit 2. The Department has jurisdiction in this cause.

RULINGS ON EXCEPTIONS

On March 15, 2013, Petitioner filed its exceptions to the Order with the DOAH. Pursuant to subsection 120.57(1)(k), Florida Statutes, a Final Order issued as a result of a Recommended Order:

[S]hall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. (Emphasis added)

This statutory pleading requirement provides a three-prong threshold for exceptions to a recommended order that must be explicitly ruled upon in a Final Order. While each of Petitioner’s exceptions sufficiently identifies the specific paragraphs to which exception is being taken, none include a specific citation to the record, and most do not include any legal basis for the exception. Thus, Petitioner’s exceptions are denied pursuant to subsection 120.57(1)(k), Florida Statutes.

FINDINGS OF FACT

The Department adopts and incorporates in this Final Order the Findings of Fact set forth in the Recommended Order as if

fully set forth herein.

CONCLUSIONS OF LAW

*2 The Department adopts and incorporates in this Final Order the Conclusions of Law set forth in the Recommended Order as if fully set forth herein.

Accordingly, it is ORDERED that the assessment of sales and use tax against Petitioner is hereby upheld, with statutory interest thereon continuing to accrue until the amount due is paid in full.

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party to this Order has the right to seek judicial review of the Order pursuant to [Section 120.68, Florida Statutes](#), by filing a Notice of Appeal pursuant to [Rule 9.110 Florida Rules of Appellate Procedure](#), with the Agency Clerk of the Department of Revenue in the Office of the General Counsel, P.O Box 6668, Tallahassee, Florida 32314-6668 [FAX (850) 488-7112], **AND** by filing a **copy** of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. **The Notice of Appeal must be filed within 30 days from the date this Order is filed with the Clerk of the Department.**

DONE AND ENTERED in Tallahassee, Leon County, Florida this 29th day of March, 2013.

Marshall Stranburg
Interim Executive Director

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