STATE OF FLORIDA DEPARTMENT OF REVENUE
TALLAHASSEE, FLORIDA

DOR 2013-002 - FOF
FILED
Department of Revenue – Agency Clerk
Date Filed: March 7, 2013
By: April Warner

ASTRID SARMENTERO AS PRESIDENT FOR BELLA DONNA COUTURE, INC.,

Petitioner,

vs.

FLORIDA DEPARTMENT OF REVENUE

Respondent.

CASE NO. 11-4681

FINAL ORDER

This cause came before me, as Interim Executive Director of the Florida Department of Revenue (the Department) for the purpose of issuing a Final Order. The Administrative Law Judge assigned by the Division of Administrative Hearings heard this cause and submitted a Recommended Order to the Department. A copy of the Recommended Order, issued on November 27, 2012, by Administrative Law Judge Cathy M. Sellers (the ALJ), is attached to this order and is incorporated to the extent set forth herein. The Petitioner and Respondent requested an extension of time of 30 additional days to file exceptions to the Recommended Order on December 12, 2012. The request for extension of time was granted by the Department, and the Petitioner and Respondent timely filed exceptions to the Recommended Order, copies of which are also attached this Final Order. Rulings on the Petitioner's and Respondent's exceptions are set forth below. For the reasons expressed herein, the Department adopts the recommendations of the ALJ and specifically incorporates the Recommended Order except for Finding of Fact 31 and Conclusions of Law 40 and 45, which are modified as set forth below.

RULINGS ON PETITIONER'S EXCEPTIONS

Petitioner's exceptions to the Recommended Order state that Respondent did not meet the initial burden under section 120.80(14)(b)2., F.S., to establish a prima facie case showing that the assessment was factually and legally correct, that the assessment is time-barred by sections

95.091(2) and (3), F.S., and that Petitioner did not willfully attempt to evade or defeat payment of tax.

Section 120.57(1)(k), F.S., provides that "[t]he final order shall 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." Because Petitioner's exceptions to the Recommended Order failed to dispute the portion of the Recommended Order by page number or paragraph, fails to identify legal basis for exceptions, and does not include appropriate and specific citations to the record, the Department declines to rule on Petitioner's exceptions.

Even if the Department rules on Petitioner's exceptions, the Department must reject Petitioner's request to reject the findings of fact by the ALJ in Paragraphs 32–37 of the Recommended Order. Section 120.57(1)(*l*), F.S., provides that "the agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record ... that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law."

"Competent substantial evidence" is "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" and that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957). Agencies are bound to honor a presiding officer's findings of fact when they are based upon competent substantial evidence. Section 120.57(1)(*l*), F.S. There is competent substantial evidence on the record to support the finding of facts by the ALJ.

RULINGS ON RESPONDENT'S EXCEPTIONS

Respondent takes exception to Paragraphs 31, 40, and 45, to the extent that the paragraphs state that Petitioner must prove that the assessment departs from the requirements of law or is not supported by any reasonable hypothesis of legality. Respondent stated that this statement is incorrect to the extent it concludes that Petitioner must prove the Department's

assessment departs from the requirements of law or is not supported by any reasonable hypothesis of legality.

Section 120.80(14)(b)2., F.S., provides that "the applicable department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment." If the Department makes a prima facie showing of the factual and legal sufficiency of its assessment, the burden of proof then shifts to Petitioner to demonstrate by a preponderance of the evidence that the assessment is incorrect. IPC Sports v. Dept. of Revenue, 829 So.2d 330, 332 (Fla. 3d DCA 2002), and Latin Exp. Service, Inc. v. Dept. of Revenue, 687 So.2d 1342 (Fla. 1st DCA 1997).

Accordingly, Finding of Fact 31 and Conclusion of Law 40 and 45 are modified as set forth below.

ADOPTION AND MODIFICATION OF THE RECOMMENDED ORDER

The Statement of the Issue and the Preliminary Statement as set forth in the ALJ's Recommended Order are adopted in their entirety. The Department adopts and incorporates the Findings of Fact set forth in paragraphs 1 through 30 and 32 through 37 of the Recommended Order. The Department also adopts and incorporates the Conclusions of Law set forth in paragraphs 38, 39, 41 through 44, and 46 through 48 of the Recommended Order. Paragraph 31 of the Findings of Fact and Paragraphs 40 and 45 of the Conclusions of Law are modified as set forth below.

Finding of Fact 31

31. In this proceeding, Respondent has the initial burden under section 120.80(14)(b)2., F.S., to establish a prima facie case showing that an assessment was made against Taxpayer, and that the assessment was factually and legally correct. Once Respondent meets this burden, the ultimate burden of persuasion shifts to Petitioner to prove, by a preponderance of the evidence, that Respondent's assessment is incorrect.

Conclusion of Law 40

40. In this proceeding, Respondent has the initial burden to show that an assessment was made against Taxpayer, and that the factual and legal grounds for the assessment are correct. See Section 120.80(14)(b)2., F.S. The burden of persuasion then shifts to Petitioner, who must prove, by a preponderance of the evidence, that the factual and legal bases for Respondent's assessment were incorrect. See Latin Express Serv. v. Dep't of Revenue, 687 So.2d 1342 (Fla. 1st DCA 1997).

Conclusion of Law 45

45. As previously discussed, Respondent demonstrated, by a preponderance of the evidence, that Taxpayer owed taxes, interest, and penalties for nonpayment of sales tax for numerous reporting periods. Respondent issued and recorded several warrants in an effort to collect on the outstanding taxes. Respondent established the correctness of the assessed amounts, and Petitioner did not show that these amounts were incorrect.

The Recommended Order, subject to the modifications stated above, is adopted and attached below.

DONE AND ENTERED in Tallahassee, Leon County, Florida this 7th day of March, 2013.

STATE OF FLORIDA
DEPARTMENT OF REVENUE

Marshall Stranburg
Interim Executive Director

CERTIFICATE OF FILING

I HEREBY CERTIFY that the foregoing FINAL ORDER has been filed in the official records of the Department of Revenue this 7th day of March, 2013.

April Warner
Agency Clerk

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, 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.

Copies furnished to:

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ASTRID SARMENTERO AS PRESIDENT FOR BELLA DONNA COUTURE, INC.,	)	
Petitioner,	)	
vs.	)	Case No. 11-4681
DEPARTMENT OF REVENUE,	)	
Respondent.	)	

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011),[1/] before Cathy M. Sellers, an Administrative Law Judge of the Division of Administrative Hearings, on November 22, 2011, April 25, 2012, and July 30, 2012, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Carrol Y. Cherry, Esquire
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For Respondent: Carlos M. Samlut
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STATEMENT OF THE ISSUE

Whether Petitioner, as President of Bella Donna Couture, Inc., is liable for a penalty equal to twice the total amount of the sales and use tax owed by that entity to the State of Florida.

PRELIMINARY STATEMENT

By agency action letter dated June 20, 2011, Respondent, Florida Department of Revenue, notified Petitioner, Astrid Sarmentero, that it was assessing a penalty in the amount of $18,345.14 against her, as the President of Bella Donna Couture, Inc., for that entity's failure to remit sales taxes to the State of Florida. Petitioner timely requested a hearing pursuant to sections 120.569 and 120.57(1) and the matter was referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge and conduct of the hearing.

Mr. Carlos M. Samlut, Certified Public Accountant, was accepted as a qualified representative for Petitioner pursuant to Florida Administrative Code Rule 28-106.106.

The final hearing was held on November 22, 2011, February 8, 2012, and July 30, 2011. Petitioner presented the testimony of Astrid Sarmentero, Sonia Kings, and Genevieve Cockfield, and offered Petitioner's Exhibits 1 through 22 for admission into evidence. Petitioner's Exhibits 2 through 12, 15, 16, 18 and 19 were admitted into evidence without objection; Petitioner's

Exhibits 1, 13, 14, 17, and 20 through 22 were admitted into evidence over objection. Respondent presented the testimony of Barbara Chin and Mercedes Fajardo, and offered Respondent's Exhibits 1 through 17 for admission into evidence. Respondent's Exhibits 1 through 5, 7, and 9 through 17 were admitted into evidence without objection; Respondent's Exhibits 6 and 8 were admitted into evidence over objection. Additionally, Respondent's First Requests for Admission were admitted into evidence pursuant to Florida Rule of Civil Procedure 1.370(a).[2/]

Volumes I and II of the four-volume Transcript were filed on May 15, 2012, and May 22, 2012, respectively, and volumes III and IV were filed on August 16, 2012. The parties were given until August 27, 2012, to file Proposed Recommended Orders. Petitioner requested an extension of time to file its Proposed Recommended Order due to circumstances beyond its control (i.e., the impacts of Tropical Storm Isaac) so an extension of time was granted until September 4, 2012. The parties timely filed their Proposed Recommended Orders on September 4, 2012; both were considered in preparing this Recommended Order.

FINDINGS OF FACT

I. The Parties

1. Respondent is the agency charged with administering the revenue laws of the State of Florida, including chapter 212,

which imposes and authorizes the collection of sales and use tax in Florida.

2. Petitioner was President of Bella Donna Couture, Inc. ("Taxpayer"), a women's clothing store formerly located at 5819 Sunset Drive, South Miami, Florida.

3. Taxpayer is registered with Respondent as a dealer pursuant to section 212.18 and was issued Sales and Use Tax Certificate of Registration Number 23-8012167329-8.

II. Events Giving Rise to the Notice of Assessment

4. Taxpayer did not remit sales tax for November 2003, January 2004, June 2005, September 2005, January 2006, July 2006, September 2006, and November 2006, and so was delinquent in its statutory obligation to remit sales tax for these reporting periods.

5. To collect these outstanding tax liabilities, on January 17, 2007, Respondent issued Warrant No. 40490. The warrant stated that Taxpayer owed $11,471.59 in taxes, $2,060.00 in penalties, $1,623.22 in interest, and a filing fee of $20.00, for a total liability of $15,174.81. The warrant was recorded in the public records of Miami-Dade County on January 24, 2007.

6. In an effort to compromise and resolve Taxpayer's outstanding tax liabilities, on April 25, 2008, Respondent entered into a Stipulated Time Payment Agreement ("STPA") with Taxpayer. The STPA was executed by Petitioner, as Taxpayer's

President.[3/] Under the STPA, Taxpayer committed to pay $13,526.72, consisting of $9,078.36 in taxes, $1,220.70 in penalties, $3,187.66 in interest, and $40.00 in fees. The STPA established an amortization schedule under which Taxpayer would pay a specified amount per month for a 13-month period.

7. Pursuant to the STPA's terms, Taxpayer, by entering into the STPA, waived any and all rights to challenge the taxes and other liabilities assessed under the warrant giving rise to the STPA. Other key terms were that interest accrued at a rate of 12% per annum until the tax liability was paid; that Taxpayer agreed to meet each payment term on the amortization schedule; and that the STPA would become void if Taxpayer failed to follow the payment terms, file all tax returns that became due, or remit all taxes that became due and payable. The STPA further provided that Respondent was authorized to assess the responsible corporate officer a 200% penalty for failure to pay the taxes due.

8. In accordance with the STPA's terms, Taxpayer made a $2,000 downpayment and three $450 monthly payments, for a total payment of $3,350.00.

9. However, Taxpayer failed to make the stipulated monthly payment due on August 25, 2008. Thus, pursuant to the STPA's terms, it became void, and all taxes, penalties, interest, and

fees owed under Warrant No. 40490 became due and payable as of that date.

10. Section 213.75(2) establishes the order of priority for applying payments toward outstanding tax and other liabilities when a warrant has been filed and recorded. Specifically, payments are applied in the following order, with any remaining amounts applied to the subsequent obligation: (1) costs of recording the warrant; (2) administrative collection processing fee; (3) accrued interest; (4) accrued penalty; and (5) taxes due.

11. Once Taxpayer breached the STPA, all payments made under the STPA were applied as payments on Warrant No. 40490 in accordance with section 213.75(2).

12. After the $3,350.00 paid under the STPA was applied toward Warrant No. 40490, and $434.44 was paid on the warrant from a bank levy, Taxpayer continued to owe $9,172.57 in taxes, as well as interest and penalties from its outstanding obligations for November 2003, January 2004, June 2005, September 2005, January 2006, July 2006, September 2006, and November 2006. Pursuant to the terms of the warrant, interest on the amount of taxes due continued to accrue at a rate of 12% per annum.

13. Taxpayer subsequently failed to remit its sales tax for December 2008. In response, Respondent levied Taxpayer's

MetroBank account in the amount of $4,000.00 on February 18, 2009. Portions of this levy were applied toward previously-issued Warrant No. 110461 and toward Notices of Liability for outstanding taxes due for the December 2008 and September 2008 sales tax collection periods.

14. In early 2009, Taxpayer and Respondent attempted to negotiate another STPA to again compromise the amount of taxes, interest, penalties, and fees that Taxpayer owed for the November 2003, January 2004, September 2005, January 2006, July 2006, September 2006, and November 2006 sales tax collection periods. However, the parties were unable to reach agreement, so Respondent continued its collection efforts.

15. In March 2011, Respondent again attempted to work with Taxpayer to resolve its outstanding tax and other liabilities. To that end, Barbara Chin, a revenue specialist with Respondent, attempted to contact Petitioner by telephone. Her telephone messages went unanswered, so on March 22, 2011, Ms. Chin sent Petitioner a Demand to Appear, informing Petitioner that an appointment had been set with Respondent for April 4, 2011, for her to discuss Taxpayer's outstanding liabilities. The Demand to Appear specifically informed Petitioner that failure to comply with the letter would result in issuance of a tax warrant and any other legal action Respondent deemed necessary to collect the outstanding taxes. Petitioner failed to appear, so

Ms. Chin made a follow-up telephone call to Petitioner, which also went unanswered.

16. Taxpayer failed to remit its sales tax or file a return for April 2011. In response, Respondent issued Warrant No. 219580, for the amount of $1,500.00 due in taxes. The warrant was recorded in the Miami-Dade County public records on June 14, 2011.

17. Petitioner subsequently contacted Ms. Chin to discuss Taxpayer's outstanding liabilities. At this time, Petitioner informed Ms. Chin that she was going to file for bankruptcy of Taxpayer.

18. In response, Ms. Chin sent a letter to the NAFH Bank, with which Taxpayer had an account, freezing the transfer of Taxpayer's credits, debts, and personal property in the bank's control.

19. On June 6, 2011, Petitioner sent Respondent a completed Closing or Sale of Business form, dated May 30, 2011, indicating that Taxpayer's business had been closed.

20. Ms. Chin made two site visits to Taxpayer's location in or about May 2011. On her first visit, Ms. Chin discovered that a business bearing the name "Alexis Nicolette Design Studio and Boutique" was operating at this location, and that Petitioner was working there. Ms. Chin informed Petitioner that this entity needed to obtain its own sales tax number.

21. On Ms. Chin's second visit, Petitioner showed her a certificate of registration for Alexis Nicolette Design Studio and Boutique having the same sales tax number but showing a different business location.[4/] Ms. Chin again informed Petitioner that the owner of this entity needed to obtain a new sales tax number for the entity for the new location.

22. Ms. Chin reviewed the Articles of Incorporation for Alexis Nicolette Design Studio and Boutique; this document showed this entity's business address as being the same as Taxpayer's address.

23. Ms. Chin surmised that Petitioner was attempting to avoid Taxpayer's sales tax liabilities and obligations by operating Taxpayer's business under a new name.

24. Respondent sent Petitioner a Notice of Assessment ("NOA") dated June 20, 2011, setting forth Taxpayer's outstanding tax liabilities and notifying her that Respondent was personally assessing a penalty against her for double the amount of tax owed by the Taxpayer. The NOA included the taxes owed under Warrant Nos. 40490 and 219580, and specifically stated that the penalty being assessed was for the period from November 2003 through April 2011.

25. It is undisputed that between November 2003 and April 2011, Petitioner was the President of Taxpayer, and thus was the person having administrative control over the collection and

payment of sales tax by Taxpayer for purposes of section 213.29.

III. Petitioner's Defenses Against the Notice of Assessment

26. The parties disagree on the amount of taxes that Taxpayer owes. Petitioner claims that Taxpayer owes approximately $194.00 in taxes, while Respondent claims that Taxpayer owes $9,182.60 in taxes.

27. Petitioner claims that pursuant to section 213.29(1), Respondent incorrectly applied Taxpayer's payments made under the STPA, and that all payments Taxpayer made should have been applied first toward outstanding taxes, then interest, then penalties, then toward any applicable fees. This argument is the linchpin of Petitioner's position that the assessments in the June 20, 2011, NOA are incorrect.

28. Petitioner also asserts that the April 2008 STPA is defective because it does not contain a detailed amortization schedule.

29. Petitioner further claims that subsections 95.091(2) and (3)(a)1.a. time-bar Respondent from bringing an action to collect taxes that were due before June 21, 2006.

30. Finally, Petitioner argues that under any circumstances, Respondent did not establish that she sought to willfully evade or defeat Taxpayer's tax liabilities, so she cannot be held personally liable for the penalty assessed under the NOA.

IV. Findings of Ultimate Fact

31. In this proceeding, Respondent has the initial burden under section 120.80(14)(b)2., to establish a prima facie case showing that an assessment was made against Taxpayer, and that the assessment was factually and legally correct. Once Respondent meets this burden, the ultimate burden of persuasion shifts to Petitioner to prove, by a preponderance of the evidence, that Respondent's assessment is incorrect, departs from the requirements of law, or is not supported by any reasonable hypothesis of legality.

32. Upon consideration of the credible and persuasive evidence in the record, it is determined that Respondent met its prima facie burden and that Petitioner failed to meet its ultimate burden of persuasion in this proceeding.

33. Petitioner's position that all payments made by Taxpayer under the STPA, as well as payments made toward other warrants, should first have been applied toward its tax liability lacks merit. That argument may have had force if warrants against Taxpayer had not been filed and recorded. However, in this case, by the time Taxpayer began making payments toward its outstanding tax liabilities, those liabilities were the subject of Warrant No. 40490 and other warrants. Once Taxpayer breached the STPA, it became void and all liabilities under Warrant No. 40490 became immediately due.

The payments under the STPA were applied to Warrant No. 40490, and other payments toward liabilities not addressed in the STPA made were applied to Warrant No. 40490 and other outstanding warrants, all in accordance with section 213.75(2). Thus, the payments were allocated first toward fees, then penalties, then interest, and, finally, taxes. Respondent established the correctness of amounts assessed, and Petitioner did not show that Respondent incorrectly applied the payments pursuant to section 213.75(2) or that the taxes and other liabilities set forth in the June 20, 2011, NOA were inaccurate.

34. Petitioner's argument that the STPA was "defective" as lacking a detailed amortization schedule also lacks merit. The STPA contained a "Stipulation Amortization Table" that established a detailed 13-month repayment schedule specifying the date on which each payment was due and the specific amount due for each payment.[5/]

35. The NOA is not time-barred by section 95.091(2). That statute imposes a five-year limitation period for filing an action to collect taxes if a lien to secure the payment is not provided by law. However, this proceeding was brought against Petitioner to impose penalties for willful nonpayment of Taxpayer's tax liabilities; it is not an action against Taxpayer to collect taxes. Thus, by its plain terms, section 95.091(2) does not apply to this proceeding.

36. Section 95.091(3)(a)1.a. also does not time-bar the NOA. That statute authorizes Respondent to determine and assess the amount of tax, penalty, or interest with respect to sales tax within three years after the date that the tax is due, any return with respect to such tax is due, or such return is filed. Here, Respondent filed warrants and assessments as far back as January 2003 to collect taxes owed by Taxpayer; all were filed well within any applicable three-year limitation period.

37. The greater weight of the evidence also supports the determination that Petitioner, as the corporate officer required to collect and pay sales tax on behalf of Taxpayer, willfully attempted to evade or defeat payment of Taxpayer's tax obligations. Of particular significance is Petitioner's lack of responsiveness to Ms. Chin's multiple attempts to communicate with her to resolve Taxpayer's obligations, and her evasiveness regarding the relationship between Taxpayer and the business entity operating under a new name at Taxpayer's business address and using Taxpayer's sales tax collection number. The evidence gives rise to the inference that Petitioner was attempting to operate the same business under a new name to evade or defeat Taxpayer's outstanding tax liabilities.[6/]

CONCLUSIONS OF LAW

38. The Division of Administrative Hearings has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to sections 120.569 and 120.57(1).

39. Every person who engages in the business of selling tangible personal property at retail exercises privilege that is taxable under Florida law. See § 212.05, Fla. Stat. Taxes imposed pursuant to chapter 212 become state funds at the moment of collection and are required to be remitted on a monthly basis. Failure to timely remit sales taxes owed renders them delinquent. See § 212.15(1), Fla. Stat.

40. In this proceeding, Respondent has the initial burden to show that an assessment was made against Taxpayer, and that the factual and legal grounds for the assessment are correct. See § 120.80(14)(b)2. The burden of persuasion then shifts to Petitioner, who must prove, by a preponderance of the evidence, that the factual and legal bases for Respondent's assessment were incorrect or unreasonable. See Latin Express Serv. v. Dep't of Revenue, 687 So. 2d 1342 (Fla. 1st DCA 1997); see also Southern Bell Tel. and Tel. Co. v. Broward County, 665 So. 2d 272 (Fla. 4th DCA 1995) (taxpayer challenging an assessment has burden to show it could not be sustained under any reasonable hypothesis of legal assessment).

41. Section 213.21 authorizes Respondent to enter into STPAs to compromise the amount of taxes, interest, and penalties due and to schedule the repayment of these obligations.

42. To implement this authority, Respondent has adopted rule 12-17.008 which sets forth the specific items that must be included in STPAs. Among these is that the STPA must address is how Respondent "will allocate each payment to reduce the outstanding debt of tax, penalty, or interest as provided by section 213.75." Fla. Admin. Code R. 12-17.008(1)(e)(emphasis added).

43. Section 213.75(2) provides:

> If a warrant or lien has been filed and recorded by the department, a payment shall be applied in priority order as follows:
> (a) First, against the costs to record the warrant or lien, if any;
> (b) The remaining amount, if any, shall be credited against the administrative collection processing fee;
> (c) The remaining amount, if any, shall be applied to accrued interest;
> (d) The remaining amount, if any, shall be credited against any accrued penalty; and
> (e) The remaining amount, if any, shall be credited to any tax due.
> § 213.75(2), Fla. Stat. (emphasis added).

44. Rule 12-17.008(3)(b) further provides that execution of an STPA does not invalidate or withdraw a warrant covered by the STPA, and rule 12-17.008(3)(c) states that an STPA becomes void if the taxpayer fails to comply with its conditions, submit

all tax returns, and pay all taxes in full that become due during the term of the STPA.

45. As previously discussed, Respondent demonstrated, by a preponderance of the evidence, that Taxpayer owed taxes, interest, and penalties for nonpayment of sales tax for numerous reporting periods. Respondent issued and recorded several warrants in an effort to collect on the outstanding taxes. Respondent established the correctness of the assessed amounts, and Petitioner did not show that these amounts were incorrect, departed from the requirements of law, or were unsupported by any reasonable hypothesis of legality.

46. Section 213.29 provides:

> Any person who is required to collect, truthfully account for, and pay over any tax enumerated in chapter 201, chapter 206, or chapter 212 and who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat such tax or the payment thereof; or any officer or director of a corporation who has administrative control over the collection and payment of such tax and who willfully directs any employee of the corporation to fail to collect or pay over, evade, defeat, or truthfully account for such tax shall, in addition to other penalties provided by law, be liable to a penalty equal to twice the total amount of the tax evaded or not accounted for or paid over. The filing of a protest based upon doubt as to liability or collection of a tax shall not be determined to be an attempt to evade tax under this section. The penalty imposed hereunder shall be in addition to any other penalty

> imposed or that should have been imposed under the revenue laws of this state, but shall be abated to the extent that the tax is paid. Any penalty may be compromised by the executive director of the Department of Revenue as set forth in s. 213.21. An assessment of penalty made pursuant to this section shall be deemed prima facie correct in any judicial or quasi-judicial proceeding brought to collect this penalty.

47. Respondent presented evidence sufficient to establish Petitioner's willful attempt to evade or defeat her responsibility, as President of Taxpayer, to collect and pay sale tax on behalf of Taxpayer; Petitioner did not present sufficiently persuasive evidence to counter this showing.

48. Accordingly, for the reasons set forth herein and pursuant to the foregoing statutes and rules, it is determined that Petitioner, as President of Taxpayer, is liable to Respondent for a penalty of $18,345.14, which is twice the total amount of the sales and use tax owed by Taxpayer to the State of Florida.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that Respondent, the Department of Revenue, enter a Final Order determining that Petitioner, Astrid Sarmentero, is liable for to Respondent for a penalty of $18,345.14.

DONE AND ENTERED this 27th day of November, 2012, in Tallahassee, Leon County, Florida.

CATHY M. SELLERS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of November, 2012.

ENDNOTES

[1/] Unless otherwise stated, all references are to 2011 Florida Statutes.

[2/] Petitioner failed to timely respond to Respondent's First Requests for Admission, which therefore were deemed admitted.

[3/] Petitioner testified that she entered into the STPA under the threat of her business being closed, and argues that under these circumstances, she should not be strictly held to the terms of the April 2008 STPA—specifically, with respect to the provision that establishes the priority order for payments pursuant to statute in the event of Taxpayer's breach of the STPA. However, the evidence does not show that Petitioner was forced to execute the STPA; to the contrary, the evidence establishes that Petitioner chose to enter into the STPA—albeit under less than ideal circumstances—in an effort to save her business.

[4/] During Ms. Chin's visits to the business location, Petitioner was the only person working at the business.

[5/] The STPA in this case consists of a completed form agreement. Respondent has adopted the form, Form DR-68, as a rule, to implement rule 12-17.007, Florida Administrative Code, which prescribes the requirements for STPAs. Petitioner has not

challenged either rule 12-17.007 or Form DR-68 pursuant to section 120.56.

[6/] Further, by failing to timely respond to Respondent's First Requests for Admission, Petitioner is deemed to have admitted the statement that "Petitioner willfully did not remit sales and use tax to the Department."

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DEPARTMENT OF REVENUE

ASTRID SARMENTERO AS PRESIDENT
FOR BELLA DONNA COUTURE, INC.,

Petitioner,

v. DOAH Case No. 11-4681

DEPARTMENT OF REVENUE,

Respondent.

RESPONDENT'S REQUEST FOR EXTENSION OF TIME TO FILE EXCEPTIONS TO RECOMMENDED ORDER

Respondent, DEPARTMENT OF REVENUE (hereinafter the "Department"), by and through undersigned counsel, pursuant to Florida Administrative Code Rule 28-106.217, hereby requests this agency grant the parties an extension of time of 30 additional days, up to and including January 11, 2013 to serve their Exceptions to the Recommended Order, entered on November 27, 2012, and as grounds therefor states:

1. The parties may file exceptions to findings of fact and conclusions of law contained in recommended orders with the agency responsible for rendering final agency action within 15 days of entry of the recommended order. Rule 28-106.217, Fla. Admin. Code.

2. The parties currently have until December 12, 2012, to file their exceptions to the Recommended Order entered in this case.

3. This request is not made to cause delay or unduly burden the agency.

4. Undersigned counsel was unable to confer with the representative for the petitioner.

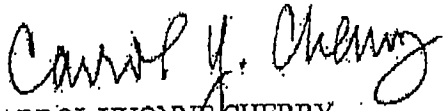
WHEREFORE, the parties request that the agency grant an extension the time within which to file Exceptions to the Recommended Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was furnished by facsimile on December 12, 2012 to: Carlos M. Samlut, CPA, Post Office Box 557243, Miami, Florida 33255.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL



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ATTORNEYS FOR RESPONDENT

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DOR

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ASTRID SARMENTERO AS PRESIDENT
FOR BELLA DONNA COUTURE, INC.,

Petitioner,

v. Case No. 11-4681

DEPARTMENT OF REVENUE,

Respondent.

PETITIONER'S EXCEPTION TO THE RECOMMENDED ORDER

The Petitioner, Astrid Sarmentero, as President for Bella Donna Couture, Inc., submits its exception to the Administrative Law Judge (ALJ) Recommended Order dated November 27, 2012.

EXCEPTIONS

Petitioner takes exception that Respondent has met the initial burden under section 120.80(14)(b)(2)., to establish a prima facie case showing that the assessment was factually and legally correct.

Petitioner takes exception that the NOA is not time-barred by section 95.091(2) and (3), which imposes a five year limitation period for filing an action to collect taxes.

Petitioner takes exception that she willfully attempted to evade or defeat payment of Taxpayer's tax obligation.

MEMORANDUM IN SUPPORT

On June 20, 2011, Respondent issued its Notice of Assessment which notified Petitioner, she was being assessed a monetary penalty in the amount of $18,345.14, pursuant to Section 213.29, Fla. Stat.

DOR has not met its burden of proving the facts and the legal grounds on which it based its assessment. DOR did not provide any supporting documentation on how the actual tax was derived. DOR did not provide any sales tax report, or in case of an estimate, any supporting factual evidence or methodology to support an estimate. In addition, DOR failed to provide any competent and substantial evidence that the alleged penalty and tax in the DOR computer system was correct. Witnesses Chin, Fajardo and Kings, although admittedly were able to read, and obtain data from DOR computer system, none were able to testify as to the accuracy of the data. Petitioner testified that the amounts alleged owed were always questioned by Petitioner [TR April 25, 2012, P154] and Petitioner sent numerous letters to the DOR requesting reconciliation and correction to DOR records. Further, Petitioner introduced underlying documentation which provided inaccuracies in the DORs records [P EX 12, 20, 21]. The DOR assessment cannot be considered prima facie correct.

As to the time periods involved in this proceeding, the DOR seeks payment of taxes from October 2002 through April 2011 from the Petitioner. Since the Notice of Assessment received by the Petitioner in this cause from the DOR claimed additional taxes from her in June 20, 2011, the limitations period contained in Section 95.091(2) and (3)(a)1a[i], Florida Statutes, bars the DOR from claiming taxes beyond a 5-year period. Petitioners argues that the dispositive date beyond which the DOR cannot seek unpaid taxes from them is June 21, 2006. The DOR has not

disputed that date as the appropriate date if the statute of limitations is applied [TR July 30, 2012, P 11]. The DOR presented no argument as to why the statute of limitations would be inapplicable here. The DOR did not attempt to collect from Petitioner on its October 2002, November 2003, January 2004, June 2005, September 2005 and January 2006 assessment until June 20, 2011. The Petitioner and the Taxpayer are mutually exclusive. Even though the DOR issued warrants and liens against the Taxpayer, these were never issued against the Petitioner. The DOR should be barred from recovering most of the money it claims from Petitioners, even had the DOR proven its case.

Furthermore, the proposed agency action is based on Section 213.29 [ii] , Fla. Stat. which imposes a penalty equal to twice the amount of tax, on any officer or director who willfully fails to pay over to the State such a tax. The assessment in this case issued by the DOR on June 20, 2011, must be set aside since it lacks any evidentiary support. Since the DOR seeks unpaid taxes from Petitioner in her corporate capacity, the DOR is restricted by the language in Section 213.29, Florida Statutes. That statute permits the DOR to collect taxes from:

> . . .any officer or director of a corporation
> who has administrative control over the collection
> and payment of such tax and who
> willfully directs any employee of the corporation
> to fail to collect or pay over,
> evade, defeat, or truthfully account for
> such tax. . . .

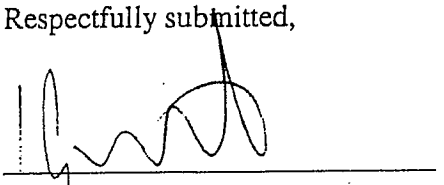
Although Petitioner admittedly is the principal in Bella Donna Couture, Inc., the DOR offered, no evidence Petitioner willfully failed to pay sales tax covered by the DOR. Accordingly, Petitioner could not have willfully failed to pay sales tax when she rightfully

believed the amounts were not owed. Petitioner requested review of her accounts over and over again due to doubt as to liability. Petitioner had previously requested a reconciliation of the amounts in question. Respondents' Witness Fajardo acknowledged that after the account allegedly became delinquent a lot of checks were made for the period with the return [TR April 25, 2012, P 18]. Petitioner requested Respondent on numerous occasions to reconcile the alleged amounts due. Petitioner introduced underlying documents which proved, Witness Kings re-allocation of payments, after a DOR payment coupon had been printed [P Ex 8] to a newly created Notice of Liability dated the same date of the payment [P Ex 10]. Witness Kings did not provided adequate notification to the Petitioner as required by Fla. Stat. 213.731. [TR July 30, 2012, P. 26-29]. The re-allocation caused a system error to incorrectly state a payment of $2,201.53, when in fact the payment was for $4,000 [TR April 25, 2012, P37]. This caused Witness Fajardo to misstate the payment when comparing to the SAP report to only $2,201.53 [TR April 25, 2012, P 25]. This provides substantial doubt as to liability, since there is a possibility of substantial inaccuracies in the DOR system.

By way of further examples of inaccuracies, the June 2005 sales tax return was filed timely [TR April 25, 2012, P79]. The system applied a payment of $2,201.53 to June 2005 [TR April 25, 2012, P26]. However, the Respondents system erred in applying a payment of $2,201.53 to a period that had already been paid and closed. This has caused an overpayment for the period of June 2005 in excess of $2,201.53. This provides additional doubt as to liability, since there is a possibility of substantial inaccuracies in the DOR system. Accordingly, this provides grounds for reasonable cause for the compromise of penalties pursuant to The Florida Administrative Code 12-13.007 (14).

The Florida Administrative Code 12-13.007 (14) provides grounds for reasonable cause for the compromise of penalties, whenever the penalty at issue relates to tax or interest which is compromised on the basis of doubt as to liability or doubt as to collectability. Respondent fail to provide any reconciliation between the sales tax return and the tax listed on the Notice of Assessment dated June 20, 2011.

Respectfully submitted,



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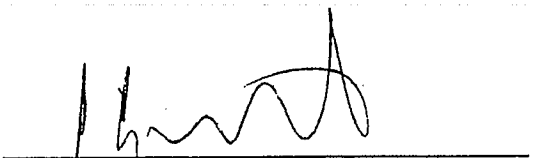
REPRESENTATIVE FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was furnished by facsimile to the following parties on December 11, 2012 to:

Carrol Cherry, Esq.

1-850-488-5865



CARLOS SAMLUT, CPA
REPRESENTATIVE FOR PETITIONER

ENDNOTES

[i] 95.091 Limitation on actions to collect taxes.—

(1)(a) Except for taxes for which certificates have been sold, taxes enumerated in s. 72.011, or tax liens issued under s. 196.161 or s. 443.141, any tax lien granted by law to the state or any of its political subdivisions, any municipality, any public corporation or body politic, or any other entity having authority to levy and collect taxes expires 5 years after the date the tax is assessed or becomes delinquent, whichever is later. An action to collect any tax may not be commenced after the expiration of the lien securing the payment of the tax.
(b) Any tax lien granted by law to the state or any of its political subdivisions for any tax enumerated in s. 72.011 or any tax lien imposed under s. 196.161 expires 20 years after the last date the tax may be assessed, after the tax becomes delinquent, or after the filing of a tax warrant, whichever is later. An action to collect any tax enumerated in s. 72.011 may not be commenced after the expiration of the lien securing the payment of the tax.

(2) If a lien to secure the payment of a tax is not provided by law, an action to collect the tax may not be commenced [i]after 5 years following the date the tax is assessed or becomes delinquent, whichever is later.

(3)(a) With the exception of taxes levied under chapter 198 and tax adjustments made pursuant to ss. 220.23 and 624.50921, the Department of Revenue may determine and assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011 which it has authority to administer and the Department of Business and Professional Regulation may determine and assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011 which it has authority to administer:

1.a. For taxes due before July 1, 1999, within 5 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later; and for taxes due on or after July 1, 1999, within 3 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later;
b. Effective July 1, 2002, notwithstanding sub-subparagraph a., within 3 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later;

2. For taxes due before July 1, 1999, within 6 years after the date the taxpayer makes a substantial underpayment of tax or files a substantially incorrect return;

3. At any time while the right to a refund or credit of the tax is available to the taxpayer;

4. For taxes due before July 1, 1999, at any time after the taxpayer filed a grossly false return;

5. At any time after the taxpayer failed to make any required payment of the tax, failed to file a required return, or filed a fraudulent return, except that for taxes due on or after July 1, 1999, the limitation prescribed in subparagraph

1. applies if the taxpayer disclosed in writing the tax liability to the department before the department contacts the taxpayer; or

6. In any case in which a refund of tax has erroneously been made for any reason:
a. For refunds made before July 1, 1999, within 5 years after making such refund; and
b. For refunds made on or after July 1, 1999, within 3 years after making such refund,

or at any time after making such refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

(b) For the purpose of this paragraph, a tax return filed before the last day prescribed by law, including any extension thereof, is deemed to have been filed on such last day, and payments made before the last day prescribed by law are deemed to have been paid on such last day.
(4) If administrative or judicial proceedings for review of the tax assessment or collection are initiated by a taxpayer within the period of limitation prescribed in this section, the running of the period is tolled during the pendency of the proceeding. Administrative proceedings include taxpayer protest proceedings initiated under s. 213.21 and department rules.

History.—s. 20, ch. 74-382; s. 37, ch. 85-342; s. 49, ch. 87-6; ss. 29, 66, ch. 87-101; s. 4, ch. 88-119; s. 19, ch. 92-315; s. 25, ch. 94-353; s. 1, ch. 99-239; s. 10, ch. 2000-151; s. 2, ch. 2000-355; s. 1, ch. 2004-26; s. 1, ch. 2005-280; s. 4, ch. 2010-90; s. 2, ch. 2010-138.
[i]Note.—As amended by s. 2, ch. 2010-138. The amendment by s. 4, ch. 2010-90, used the language "5 years after the date" instead of "after 5 years following the date."

[ii] 213.29 Failure to collect and pay over tax or attempt to evade or defeat tax.—Any person who is required to collect, truthfully account for, and pay over any tax enumerated in chapter 201, chapter 206, or chapter 212 and who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat such tax or the payment thereof; or any officer or director of a corporation who has administrative control over the collection and payment of such tax and who willfully directs any employee of the corporation to fail to collect or pay over, evade, defeat, or truthfully account for such tax shall, in addition to other penalties provided by law, be liable to a penalty equal to twice the total amount of the tax evaded or not accounted for or paid over. The filing of a protest based upon doubt as to liability or collection of a tax shall not be determined to be an attempt to evade tax under this section. The penalty imposed hereunder shall be in addition to any other penalty imposed or that should have been imposed under the revenue laws of this state, but shall be abated to the extent that the tax is paid. Any penalty may be compromised by the executive director of the Department of Revenue as set forth in s. 213.21. An assessment of penalty made pursuant to this section shall be deemed prima facie correct in any judicial or quasi-judicial proceeding brought to collect this penalty.

History.—s. 46, ch. 85-342; s. 55, ch. 87-224; s. 104, ch. 90-136; s. 15, ch. 90-351; s. 21, ch. 92-320; s. 123, ch. 95-417.

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STATE OF FLORIDA
DEPARTMENT OF REVENUE

ASTRID SARMENTERO AS PRESIDENT
FOR BELLA DONNA COUTURE, INC.,

Petitioner,

v. DOAH Case No. 11-4681

DEPARTMENT OF REVENUE,

Respondent.

RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER

Respondent, DEPARTMENT OF REVENUE, by and through its undersigned counsel, in accordance with section 120.57(1)(k), Florida Statutes, and submits these Exceptions to the Recommended Order entered in this case on November 27, 2012, and states as follows:

INTRODUCTION

1. The Department of Revenue (hereinafter the "Department") assessed Petitioner Astrid Sarmentero, as President of Bella Donna Couture, Inc., a penalty of $18,345.14, which is twice the total amount of the sales and use tax owed by Bella Donna Couture, Inc. to the State of Florida. Petitioner denied liability and requested a formal hearing to contest the assessment.

2. On September 16, 2011, the Department referred the request for an administrative hearing to the Division of Administrative Hearings (DOAH).

3. A formal hearing was conducted in this proceeding before the Honorable Cathy M. Sellers, a duly designated Administrative Law Judge (ALJ), on November 22, 2011, February 8, 2012, and July 30, 2011.

4. Testimony, exhibits, and rulings are reported in the transcript of the formal hearing filed with DOAH on August 20, 2012.

EXCEPTION TO CONCLUSIONS OF LAW

The Department, in its final order, may reject or modify the conclusions of law over which it has substantive jurisdiction. §120.57(1)(l), Fla. Stat. When rejecting or modifying such conclusion of law, the Department must state with particularity its reasons for rejecting or modifying such conclusion of law. *Id.* In doing so, the Department must also make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. Id.

The Department should reject the findings of fact contained in Paragraph 31 of the Recommended Order, because it is a legal conclusion that incorrectly raises Petitioner's burden of proof:

> 31. In this proceeding, Respondent has the initial burden under section 120.80(14)(b)2., to establish a prima facie case showing that an assessment was made against Taxpayer, and that the assessment was factually and legally correct. Once Respondent meets this burden, the ultimate burden of persuasion shifts to Petitioner to prove, by a preponderance of the evidence, that Respondent's assessment is incorrect, departs from the requirements of law, or is not supported by any reasonable hypothesis of legality.

(Emphasis added). This paragraph is incorrect to the extent it concludes that Petitioner must prove the Department's assessment departs from the requirements of law or is not supported by any reasonable hypothesis of legality.

The Department should also reject the conclusions of law contained in Paragraphs 40 and 45 of the Recommended Order, for the same reason:

> 40. In this proceeding, Respondent has the initial burden to show that an assessment was made against Taxpayer, and that the factual and legal grounds for the assessment are correct. See § 120.80(14)(b)2. The burden of persuasion then shifts to Petitioner, who must prove, by a preponderance of the evidence, that the factual and legal bases for Respondent's assessment were incorrect or unreasonable. See Latin Express Serv. v. Dep't of Revenue, 687 So.2d 1342 (Fla. 1st DCA 1997); see also Southern Bell Tel. and Tel. Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA 1995) (taxpayer challenging an assessment has burden

to show it could not be sustained under any reasonable hypothesis of legal assessment).

45. As previously discussed, Respondent demonstrated, by a preponderance of the evidence, that Taxpayer owed taxes, interest, and penalties for nonpayment of sales tax for numerous reporting periods. Respondent issued and recorded several warrants in an effort to collect on the outstanding taxes. Respondent established the correctness of the assessed amounts, and Petitioner did not show that these amounts were incorrect, departed from the requirements of law, or were unsupported by any reasonable hypothesis of legality.

"The general rule is, that as in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal." Young v. Department of Community Affairs, 625 So.2d 831, 833-34 (Fla. 1993) (citing Balino v. Department of Health and Rehabilitative Services, 348 So.2d 349 (Fla. 1st DCA 1977). In administrative proceedings specifically involving the Department, section 120.80(14)(b)2., Florida Statutes, provides that:

> In any such administrative proceeding, the applicable department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

In other words, the Department must make a prima facie showing that the assessment is correct. If the Department makes a prima facie showing of the factual and legal sufficiency of its assessment, the burden of proof then shifts to Petitioner. IPC Sports v. Department of Revenue, 829 So.2d 330, 332 (Fla. 3d DCA 2002). To meet its burden, Petitioner must establish by a preponderance of evidence that the assessment is incorrect. Id.; § 120.57(1)(j), Fla. Stat. The parties burdens should be reciprocal or match. The Department has the burden of showing the assessment is factually and legally correct; therefore, the petitioner's burden should be to prove the contrary, that is, that the assessment is incorrect.

In this case, Petitioner is challenging a penalty assessment made pursuant to section 213.29, Florida Statutes, which reads:

> Any person who is required to collect, truthfully account for, and pay over any tax enumerated in chapter 201, chapter 206, or chapter 212 and who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat such tax or the payment thereof; or any officer or director of a corporation who has administrative control over the collection and payment of such tax and who willfully directs any employee of the corporation to fail to collect or pay over, evade, defeat, or truthfully account for such tax shall, in addition to other penalties provided by law, be liable to a penalty equal to twice the total amount of the tax evaded or not accounted for or paid over. The filing of a protest based upon doubt as to liability or collection of a tax shall not be determined to be an attempt to evade tax under this section. The penalty imposed hereunder shall be in addition to any other penalty imposed or that should have been imposed under the revenue laws of this state, but shall be abated to the extent that the tax is paid. Any penalty may be compromised by the executive director of the Department of Revenue as set forth in s. 213.21. An assessment of penalty made pursuant to this section shall be deemed prima facie correct in any judicial or quasi-judicial proceeding brought to collect this penalty.

(Emphasis added). The "prima facie correct" language of section 213.29 creates a presumption under section 90.302(2), Florida Statutes, "that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact." Accordingly, once the Department has established the Petitioner's responsibility and willfulness, the assessment is presumed correct and the burden of proof shifts to Petitioner to prove the contrary by a preponderance of the evidence.

The Department should reject the conclusions of law in Paragraphs 31, 40 and 45 of the Recommended Order, to the extent that they erroneously conclude that Petitioner must prove that the assessment departs from the requirements of law or is not supported by any reasonable hypothesis of legality and substitute the following:

> 31. In this proceeding, Respondent has the initial burden under section 120.80(14)(b)2., to establish a prima facie case showing that an assessment was made against Taxpayer, and that the assessment was factually and legally correct. Once Respondent meets this burden, the ultimate burden of persuasion shifts to Petitioner to prove, by a preponderance of the evidence, that Respondent's assessment is incorrect.

40. In this proceeding, Respondent has the initial burden to show that an assessment was made against Taxpayer, and that the factual and legal grounds for the assessment are correct. See § 120.80(14)(b)2. The burden of persuasion then shifts to Petitioner, who must prove, by a preponderance of the evidence, that the factual and legal bases for Respondent's assessment were incorrect. See Latin Express Serv. v. Dep't of Revenue, 687 So.2d 1342 (Fla. 1st DCA 1997).

45. As previously discussed, Respondent demonstrated, by a preponderance of the evidence, that Taxpayer owed taxes, interest, and penalties for nonpayment of sales tax for numerous reporting periods. Respondent issued and recorded several warrants in an effort to collect on the outstanding taxes. Respondent established the correctness of the assessed amounts, and Petitioner did not show that these amounts were incorrect.

CONCLUSION

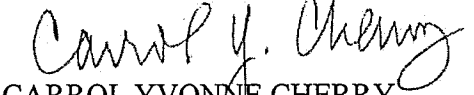
For the reasons set forth above, the Department submits that the Final Order should reject the aforementioned conclusions of law in the Recommended Order and uphold the penalty assessment made against Petitioner.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was furnished by e-mail on February 6, 2013 to: Carlos M. Samlut, CPA, Post Office Box 557243, Miami, Florida 33255.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL



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