

FILED

Department of Revenue – Agency Clerk

Date Filed: *March 9, 2015*By: *April Warner*STATE OF FLORIDA
DEPARTMENT OF REVENUE
TALLAHASSEE, FLORIDA

SALMA PETROLEUM, INC.,

Petitioner,

vs.

DOAH Case Number: 14-3133

Audit Number: 200149872

DEPARTMENT OF REVENUE,

Respondent.
_____ /

GAUSIA PETROLEUM, INC.,

Petitioner,

vs.

DOAH Case Number: 14-3134

Audit Number: 200149749

DEPARTMENT OF REVENUE,

Respondent.
_____ /**FINAL ORDER**

This cause came before the State of Florida, Department of Revenue (Department) for the purpose of issuing a Final Order. Based upon the petitions for formal hearing filed by the Petitioners, these cases were referred to the Division of Administrative Hearings (DOAH) and were consolidated due to common witnesses, common exhibits (except for the figures) and similar testimony. The Administrative Law Judge considered this consolidated matter and submitted a Recommended Order ("Order") to the Department. A copy of the Order, issued on January 9, 2015, is attached to this order and incorporated by reference as if fully set forth herein as Exhibit 1. The Respondent filed Exceptions to the Order which are attached to this Final Order as Exhibit 2. Subsequent to issuance of the Order herein, each Petition filed a "Request for Written Exemption" with the DOAH. While the Administrative Law Judge denied these requests for lack of jurisdiction, they will be addressed herein as Exceptions to the Order, and are

attached hereto as Exhibits 3 and 4. The Notice of Proposed Assessment issued to each of the Petitioners is attached hereto as Exhibits 5 and 6. The Department has jurisdiction in this cause.

RULINGS ON EXCEPTIONS

Pursuant to subsection 120.57(1)(k), Florida Statutes, there is a three-prong threshold for exceptions to a recommended order that must be explicitly ruled upon in a final order. Such a final 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.

Petitioners' Exceptions

On January 26, 2015 each Petitioner filed a "Request for Written Exemption" with the DOAH, restating each Petitioner's position set forth in their original petitions for formal hearing in regard to the audit assessments at issue herein. Since these pleadings were filed on the last date exceptions could be filed, and requested further review, they are being treated as timely filed Exceptions to the Order. However, Petitioners' Exceptions are hereby denied for the following reasons:

- 1) They fail to identify disputed portions of the Order by page number or paragraph;
- 2) They fail to identify the legal basis for each Exception; and
- 3) They do not include appropriate and specific citations to the record.

Respondent's Exceptions

On January 26, 2015, Respondent filed its exceptions to the Order, which were timely pursuant to Rule 28-106.103, Florida Administrative Code, as the fifteen-day deadline fell on a Saturday.

Respondent identifies a single paragraph Conclusion of Law in the Order to which exception is taken. Respondent seeks to replace the definition of "dealer" found in paragraph 37 – which relates to the leasing or rental of tangible personal property – with the definition set

forth in subsection 212.06(2)(c), Florida Statutes, relating to the retail sale, use, consumption, or distribution of tangible personal property. As each Petitioner's business is a gas station and convenience store, these businesses are dealers as defined in subsection 212.06(2)(c), Florida Statutes, and Respondent's exception is granted pursuant to subsection 120.57(1)(k), Florida Statutes. This substituted Conclusion of Law is more reasonable than the rejected Conclusion of Law found in paragraph 37 of the Order. Paragraph 37 shall now read:

37. The term "dealer" is ... defined to mean every person, as used in this chapter, who sells at retail or who offers for sale at retail, or who has in his or her possession for sale at retail; or for use, consumption, or distribution; or for storage to be used or consumed in this state, tangible personal property..." Petitioners are dealers for the purpose of chapter 212, 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

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, with the modified finding in paragraph 37 set forth above.

The Department further modifies the Order, as the Conclusion of Law set forth in paragraph 43 misstates the Department's burden of proof in proceedings wherein a taxpayer is contesting an assessment. The first sentence of paragraph 43 is replaced with the following sentence:

The Department has the initial burden to show that it made an assessment against Petitioner and the factual and legal grounds upon which the assessment was made.

This substituted language is more reasonable and more accurate than the rejected language found in paragraph 43 of the Order.

DETERMINATION


Accordingly, it is ORDERED that the recommended findings in the Administrative Law Judge's Order are hereby adopted. Within 30 days of the date of this Final Order, Petitioner Salma shall remit the entire audit assessment balance owed in the amount of \$159,282.26 sales tax, and \$39,820.57 penalty, plus \$31,651.87 interest as of February 4, 2015, which shall continue to accrue at the statutory rate until the amount due is paid in full. In addition, within 30 days of the date of this Final Order, Petitioner Gausia shall remit the entire audit assessment balance owed in the amount of \$213,754.46 sales tax, and \$53,438.62 penalty, plus \$40,898.21 interest as of February 4, 2015, which shall continue to accrue at the statutory rate until the amount due is paid in full.

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party to this Final Order has the right to seek judicial review of the Final 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 Final Order is filed with the Clerk of the Department.**


DONE AND ENTERED in Tallahassee, Leon County, Florida this 9th day of
March, 2015.

STATE OF FLORIDA
DEPARTMENT OF REVENUE


Andrea Moreland
Deputy Executive Director

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the foregoing FINAL ORDER has been filed in the official records of the Department of Revenue and that a true and correct copy of the foregoing Final Order has been furnished by United States mail, both regular first class and certified mail return receipt requested, to Petitioners C/O Zersis Minocher at 12217 NW 35th Street, Coral Springs, Florida 33065 this 9th day of March, 2015.


Agency Clerk

Copies furnished to:

Mary Li Creasy
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Carrol Y. Cherry
Assistant Attorney General
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Revenue Litigation Bureau
The Capitol-Plaza Level 01
Tallahassee, Florida 32399-1050

Marshall Stranburg
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Department of Revenue
POB 6668
Tallahassee, Florida 32314-6668

FILED
DEPARTMENT OF REVENUE
Agency Clerk

By: April Warner
Date: January 13, 2015

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SALMA PETROLEUM, INC.,

Petitioner,

vs.

Case No. 14-3133

DEPARTMENT OF REVENUE,

Respondent.

GAUSIA PETROLEUM, INC.,

Petitioner,

vs.

Case No. 14-3134

DEPARTMENT OF REVENUE,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy by video teleconference at sites in Tallahassee and Lauderdale Lakes, Florida, on October 29, 2014.

APPEARANCES

For Petitioners: Zersis Minocher, pro se
12217 Northwest 35th Street
Coral Springs, Florida 33065

For Respondent: Carrol Y. Cherry, Esquire
Office of the Attorney General
Plaza Level 01, The Capitol
Revenue Litigation Bureau
Tallahassee, Florida 32399-1050

Exhibit 1

STATEMENT OF THE ISSUE

Whether Petitioners are liable for sales and use tax, penalty, and interest as assessed by the Department of Revenue (the Department)?

PRELIMINARY STATEMENT

These are consolidated cases involving the Department and audit assessments against two corporate taxpayers: Salma Petroleum, Inc. (Audit Number 200149872) (Salma), and Gausia Petroleum, Inc. (Audit Number 200149749) (Gausia). These cases were consolidated at hearing due to common witnesses, common exhibits (except for the figures), and similar testimony of the management of both taxpayers.

On March 6, 2014, the Department issued Petitioners each a Notice of Proposed Assessment (NOPA) assessing Salma additional sales and use tax in the sum of \$159,282.26, plus penalty, and interest. The Department assessed Gausia additional sales and use tax in the sum of \$213,754.46, plus penalty, and interest. Petitioners denied liability and requested formal hearings to contest the assessments.

The Department referred the cases to the Division of Administrative Hearings on July 9, 2014, and the matters were assigned to Administrative Law Judge D. R. Alexander. The final hearings were originally scheduled for October 14, 2014. Respondent's amended motions for continuance were granted on

August 13, 2014, and the final hearings were re-scheduled for October 29, 2014. The cases were transferred to the undersigned on October 17, 2014, and proceeded to final hearing as scheduled on October 29, 2014, at which time the cases were consolidated.

Petitioners called Arif Ahmed, manager of both entities, and submitted no exhibits.^{1/} Respondent called two witnesses: Ron Collier, Tax Audit Supervisor, and Richard Lawhon, Senior Tax Specialist with Compliance Campaigns. Respondent's Exhibits 1 through 8 pertaining to Salma, and Exhibits 1 through 8 pertaining to Gausia, were admitted.

Neither party ordered a transcript of the final hearing. Both parties timely submitted proposed recommended orders which were considered in the drafting of this Recommended Order.

Unless otherwise noted, all statutory references are to Florida Statutes (2013).

FINDINGS OF FACT

1. Salma is a Florida corporation with its principal place of business at 2231 Del Prado Boulevard, Cape Coral, Florida, 33990. Gausia is a Florida corporation with its principal place of business at 11571 Gladiolus Drive, Fort Myers, Florida, 33908.

2. Petitioners are in the business of operating gas stations with convenience stores.

3. The Department is an agency of the State of Florida and is authorized to administer the tax laws of the State of Florida.

4. Petitioners were selected for audit because their reported gross sales were less than the total cost of items purchased (inventory) for the audit period.

5. The Department issued Salma and Gausia each a Notice of Intent to Conduct a Limited Scope Audit or Self-Audit, dated April 26, 2013, for sales and use tax, for the period February 1, 2010, through January 31, 2013 (collectively referred to as the Notices).

6. The Notices requested that Petitioners provide the Department: (a) a list of all their vendors for alcohol, tobacco, soda, chips, candy, etc.; (b) their total purchases of alcohol and tobacco, by vendor, for the period July 2010 to June 2011; (c) copies of their federal tax returns for the examination period; (d) purchase receipts for all purchases for the last complete calendar month; and (e) daily register (Z tapes) for the last complete calendar month.

7. The Notices gave Petitioners 60 days to gather the requested documents before the audit was to commence. The Notices also requested that Petitioners complete an attached Questionnaire and Self Analysis Worksheet.

8. In response to the Notices, Petitioners requested a 30-day extension of time until July 18, 2013, to provide the requested documents and to designate a Power of Attorney.

9. Petitioners did not provide the Department any books and records for inspection, nor did they complete and return the questionnaire and self analysis worksheets. As a result, the Department's auditor determined the sales tax due based upon the best information available.

10. To calculate an estimated assessment of sales tax, the Department used the purchase data of Petitioners' wholesalers and distributors of alcoholic beverages and tobacco, for July 1, 2010, through June 30, 2011; the 2010 National Association of Convenience Stores average markups and in-store sales percentages of alcoholic beverage and tobacco products; and historical audit data.

11. After reviewing the purchase data for July 1, 2010, through June 30, 2011, and for July 1, 2011, through June 30, 2012, the Department's auditor determined that the data was missing a few vendors.

12. As a result, the Department's auditor estimated the amount of Petitioners' cigarette purchases, based on historical audit data that shows that cigarette sales are generally 4.31 times more than beer sales.

13. The Department's auditor and audit supervisor testified that the estimated gross sales seemed reasonable and consistent with the national averages and the purchase data for July 1, 2011, through June 30, 2012.

14. The Department estimated gross sales (i.e., the retail sale value of the goods sold) by marking up the taxable sales and exempt sales reported on the sales and use tax returns submitted to the Department by Petitioners.

15. For example, for July 1, 2010, through June 30, 2011, Salma purchased beer from its wholesalers and distributors for \$148,826.15, and the Department marked up the purchase price by 27 percent for a retail value of \$189,009.21.

16. For July 1, 2010, through June 30, 2011, Gausia purchased beer from its wholesalers and distributors for \$132,138.65, and the Department marked up the purchase price by 27 percent for a retail value of \$167,816.09.

17. The Department's markup on the alcoholic beverage and tobacco products is reasonable because the Department's auditor testified that he used a combination of 2010 National Association of Convenience Stores average markups and the competitive pricing and information from audits of other convenience stores.

18. The Department determined that the exemption ratio reported on the sales and use tax returns submitted to the Department by Petitioners was extremely high for their industry.

19. The Department used an exemption ratio of 15 percent, based on historical audit data for the industry, to calculate Petitioners' estimated taxable sales.

20. A review of Petitioners' sales and use tax returns revealed that they did not apply the tax bracket system to their taxable sales transactions, as required under sections 212.12(9) and (10), Florida Statutes.

21. Instead, Petitioners remitted sales tax on their taxable sales based on their gross receipts at a flat tax rate. The Department's auditor testified that this method of reporting tax is inappropriate and does not accurately reflect the sales activity of the business.

22. The Department calculated the average effective tax rate of 6.0856 percent, based on historical audit data for the industry.

23. To calculate the estimated tax due, the Department multiplied the effective tax rate by the estimated taxable sales and gave Petitioners credit for any tax remitted with their tax returns.

24. The Department issued Salma a Notice of Intent to Make Audit Changes, dated August 8, 2013, for audit number 200149872. The Department issued Gausia a Notice of Intent to Make Audit Changes, dated August 8, 2013, for audit number 200149749.

25. The Department assessed Petitioners sales tax on their sales of alcoholic beverages and tobacco.

26. The Notice of Intent to Make Audit Changes gave Petitioners 30 days to request a conference with the auditor or

audit supervisor, to dispute the proposed changes. Petitioners did not make such a request.

27. The Department issued a Notice of Proposed Assessment (NOPA) to Salma on March 6, 2014, for tax in the sum of \$159,282.26; for penalty in the sum of \$39,820.57; and interest as of March 6, 2013, in the sum of \$27,772.36.

28. The Department issued a NOPA to Gausia on March 6, 2014, for tax in the sum of \$213,754.46; for penalty in the sum of \$53,438.62; and interest as of March 6, 2013, in the sum of \$36,921.79.

29. Additional interest accrues at \$30.55 per day until the tax is paid.

30. The NOPAs became final assessments on May 5, 2014.

31. After filing a request for an administrative hearing, Petitioners completed the Questionnaire and Self Analysis Worksheet and produced the following documents to the Department:

- (a) a list of all of their vendors for alcohol, tobacco, soda, chips, candy, etc.;
- (b) a list of vendors for alcohol and tobacco, for the examination period of July 2010 to June 2011;
- (c) a summary of their taxable sales, for the period February 2010 through December 2012;
- (d) copies of their federal tax returns, for the tax years 2010 through 2013;
- (e) copies of its purchase receipts for the months of July 2013;

and (f) copies of their daily register (Z-tapes) for the month of July 2013.

32. The Department's auditor testified that aside from being untimely, the records and information provided by Petitioners during these proceedings were not reliable because Petitioners did not provide any source documents that would allow the Department to reconcile the reported figures and confirm the supplied information. In addition, the purchase receipts and Z-tapes were not relevant because they were from outside of the audit period.

33. The Z-tapes are also unreliable because the manager of the convenience store testified at the final hearing that employees purposely and routinely entered taxable sales into the cash registers as tax exempt sales.

34. Petitioners argue that the Department did not use the best information available when estimating the taxes due. Petitioners claim that because their businesses are combination gas station/convenience stores, the national data for standalone convenience stores is inapplicable. However, notably absent from Petitioners' testimony or evidence was any alternative data upon which the Department could have relied for more accurate estimates.^{2/}

CONCLUSIONS OF LAW

Jurisdiction

35. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this proceeding. § 120.57(1), Fla. Stat. (2014).

Sales and Use Tax Audits

36. The Department is authorized to conduct audits, relating to sales and use tax imposed under chapter 212, Florida Statutes, of a dealer and to request information to ascertain the dealer's liability, if any. § 212.13, Fla. Stat.

37. The term "dealer" is defined as any person who leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title to the property. § 212.06(2)(e), Fla. Stat.

38. The Department is authorized to prescribe the books and records to be maintained by all dealers that are subject to sales and use tax. § 212.12(6)(a), Fla. Stat. Further, the Department is authorized to audit or inspect the books and records of dealers and, if a deficiency exists, to make an assessment and collect it. § 212.12(5)(a), Fla. Stat.

39. Dealers are required to keep suitable books and records relating to sales tax and to preserve those books and records. §§ 212.12(6)(a), 212.13, and 213.35, Fla. Stat.

40. For conducting an audit, only records and information available when the audit commences are deemed acceptable.

§ 212.13(5), Fla. Stat.

41. If a dealer fails or refuses to make its records available for inspection so that no audit or examination has been made of the books and records, the Department has the affirmative duty to make an assessment from an estimate based upon the best information then available to it for the taxable period of retail sales, together with interest, plus penalty. § 212.12(5)(b), Fla. Stat. The Department must collect such taxes, interest, and penalty on the basis of such assessment which shall be considered prima facie correct, and the burden to show the contrary rests upon the dealer. Id.

Respective Burdens

42. Florida tax law creates the presumption of correctness of the Department's assessment of tax, penalty, and interest. § 212.12(5)(b), Fla. Stat.

43. The Department has the initial burden to show that it made an assessment against Petitioner and that the assessment was valid and correct. IPC Sports, Inc. v. State, Dep't of Rev., 829 So. 2d 330, 332 (Fla. 3d DCA 2002); Dep't of Rev. v. Nu-Life Health & Fitness Ctr., 623 So. 2d 747, 751-52 (Fla. 1st DCA 1992); § 120.80(14)(b)2., Fla. Stat. Once the Department has met this burden, the burden shifts to Petitioner to prove by a

preponderance of the evidence that the assessment is incorrect.

Id.; § 120.57(1)(j), Fla. Stat.

Florida Sales and Use Tax

44. The Florida sales and use tax is an excise tax on the privilege of engaging in business in the state, not a tax on the property sold. §§ 212.05 & 212.06, Fla. Stat.

45. The tax imposed by the Florida sales and use tax law generally includes sales and use, admissions, transient rentals and commercial rentals taxes. §§ 212.05 & 212.06, Fla. Stat.

46. The Florida sales tax and use tax are separate, but complementary taxes, although they are often referred to as one tax. U.S. Gypsum v. Green, 110 So. 2d 409 (Fla. 1958).

47. It is the legislative intent that every person is exercising a taxable privilege who engages in the business of selling items of tangible personal property at retail in this state. § 212.05, Fla. Stat., and Fla. Admin. Code R. 12A-1.038(1).

48. A tax, at the rate of six (6) percent of the sales price of each item of tangible personal property is levied on each taxable transaction when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale. § 212.05(1)(a)1.a., Fla. Stat.

49. The Department made a prima facie showing of the validity of the respective assessments of sales tax, penalty, and interest against Petitioners. Petitioners have not presented any credible evidence to refute the methodology used by the Department in the performance of its audit.

50. In order to set aside the findings of the audit, Petitioners should have kept records that would have accurately identified the inventory and sales made at the gas stations/convenience stores. Petitioners kept no records to support their claim. The conclusions reached by the Department regarding the taxable sales, exempt sales, presumption of markup percentages, and tax rate are deemed reasonable.

51. Further, without information to show that Petitioners paid the statutory amount of sales tax on all their taxable sales, the Department had the duty to make an estimated assessment that included estimated taxable sales and average effective tax rate.

52. Petitioners had the duty to maintain records and make them available to the Department for audit. Petitioners may not now argue that their untimely produced, incomplete, and non-responsive records contradict the audit results.

53. Petitioners failed to overcome the presumption of correctness of the assessment by a preponderance of the evidence. Accordingly, the assessments are valid and correct.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Revenue enter a final order denying Petitioners' requests for relief and assessing, in full, the Department's assessments of sales tax, penalty, and interest against both Salma and Gausia.

DONE AND ENTERED this 9th day of January, 2015, in Tallahassee, Leon County, Florida.

Mary Li Creasy

MARY LI CREASY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of January, 2015.

ENDNOTES

^{1/} Ahmed testified that he is the husband of the owner of both Gausia and Salma as well as the manager of the two establishments.

^{2/} Gausia also argued that the assessed tax is completely disproportionate to the inventory it carries and to the value of its business based upon the current listing of the business for sale. This testimony was not corroborated by admissible documents and was not persuasive. Gausia attached its business for sale listing and a monthly average balance sheet to its Proposed Recommended Order. However, these documents were not

considered because they were not identified as exhibits prior to the hearing, or admitted at the hearing.

COPIES FURNISHED:

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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

FILED
DEPARTMENT OF REVENUE
Agency Clerk

By: January 26, 2015

Date: April Warr

SALMA PETROLEUM, INC.,

Petitioner,

vs.

CASE NO. 14-3133

DEPARTMENT OF REVENUE,

Respondent.

GAUSIA PETROLEUM, INC.,

Petitioner,

vs.

CASE NO. 14-3134

DEPARTMENT OF REVENUE,

Respondent.

RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER

Respondent, DEPARTMENT OF REVENUE, by and through 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 January 9, 2015, and states as follows:

INTRODUCTION

1. The Department of Revenue (hereinafter the "Department") assessed Petitioner SALMA PETROLEUM, INC. additional sales and use tax in the sum of \$159,282.26, plus penalty and interest.

2. The Department also assessed Petitioner GAUSIA PETROLEUM, INC. additional sales and use tax in the sum of \$213,754.46, plus penalty and interest.

Exhibit 2

3. Petitioners denied liability and requested formal hearings to contest the assessments.

4. On July 9, 2014, the Department referred the cases to the Division of Administrative Hearings.

5. The final hearings were originally scheduled for October 14, 2014, but rescheduled for October 29, 2014, at which time the cases were consolidated.

6. Neither party ordered a transcript of the final hearing, but both parties timely submitted proposed recommended orders.

EXCEPTION TO CONCLUSIONS OF LAW

7. 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.

8. 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.*

9. In its Findings of Fact, the Recommended Order correctly finds that:

2. Petitioners are in the business of operating gas stations with convenience stores.

25. The Department assessed Petitioners sales tax on their sales of alcoholic beverages and tobacco.

10. However, in Paragraph 37, , the Recommended Order erroneously relies on the definition of the term "dealer" in section 212.06(2)(e), Florida Statutes, which reads:

The term "dealer" is defined as any person who leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title to the property.

11. Given that Petitioners are in the business of selling alcoholic beverages and tobacco, Petitioners are dealers as defined in section 212.06(2)(c), Florida Statutes, which reads:

The term "dealer" is further defined to mean every person, as used in this chapter, who sells at retail or who offers for sale at retail, or who has in his or her possession for sale at retail; or for use, consumption, or distribution; or for storage to be used or consumed in this state, tangible personal property as defined herein, including a retailer who transacts a mail order sale.

12. In its Final Order, the Department should reject and modify the conclusions of law in Paragraph 37, of the Recommended Order, and substitute the definition of the term "dealer", as follows:

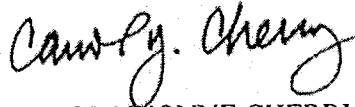
The term "dealer" is defined to mean every person who sells at retail or who offers for sale at retail in this state tangible personal property as defined in chapter 212, Florida Statutes. § 212.06(2)(c), Fla. Stat.

CONCLUSION

For the reasons set forth above, Respondent submits that the Final Order should reject the aforementioned conclusion of law in the Recommended Order.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL



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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by e-mail and U.S. Mail, on January 26, 2015, to Zersis Minocher, 12217 Northwest 35th Street, Coral Springs, Florida 33065, zminocher@yahoo.com.


CARROL YVONNE CHERRY
Senior Assistant Attorney General

F:\Users\TAX\Carrol Cherry\2_Sales and Use Tax\Saima Petroleum Inc\Pleadings\Exceptions to Recommended Order.doc

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

SALMA PETROLEUM INC.,

Petitioner(s),

Vs.

DEPARTMENT OF REVENUE

Case No.14-3133

Respondent(s).

Request for Written Exemption

The Petitioner, Salma Petroleum, Inc (hereinafter the "Petitioner") hereby submit request for exemption in accordance with Florida Administrative Code Rule 28-106,215 for the final hearing held on October 29th 2014.

The Petitioner and the Department of Revenue (hereinafter the "Department") do not agree on the Notice of Proposed Assessment in the \$ 226,875.19. The Petitioner thinks the amount is all estimates and is too high and unreasonable and do not coordinate with the nature of business and the location where the business is located. The department has derived their figures from industrial average and third party information that's all estimates. Sam Wholesale Club had wrongly reported total purchases to the "Department" and the "Department" adjusted by reducing the taxes by 2/3 the original due.

The Petitioner completely disagrees with this proposed assessment and would like to complete this audit as accurately as possible with no estimated amounts.

The Petitioner finds it too hard to believe that the tax due in the amount of \$159,282.26 as it has additional taxable sales of \$2,654,704.34 over and above the monthly sales already reported to the Department of Revenue in the DR-15. Plus the Penalty of \$ 39,820.57 and plus interest the \$ 27,772.36. The Petitioner also requests that the penalties be waived.

The Petitioner disputes the following issues of material fact:

The FDOR estimate of markup on purchase

The FDOR allocation percentages between taxable and non-taxable sales

The FDOR estimates of sales based on purchases

The FDOR ultimate estimate and/or assessment of total tax and interest for the audit period.

The Petitioner Request for further review:

The petitioner request the Administrative law Judge Mary Li Creasy to give this case a further review and the petitioner will provide all documents requested again to the department of revenue for review we can provide.

1. "Z" tapes for all the 36 months of the audit period (Will tell you how much sales are done)

Exhibit 3

2. All purchase receipts for all 36 months (Will tell you how much purchasing we are doing and will also tell you how much are taxable purchasing and how much are exempt purchasing)
3. Picture of the store (Will tell you the pricing. Exempt and taxable inventory carried, amount of inventory carried and Square Footage of the store)

As per the petitioner the following are the sales as per Z tapes and outstanding tax due.

SALES TAX DUE BASED ON TOTAL SALES					
Calender Year	Total Sales	Taxable Sales	Sales Tax Due	Sales Tax Paid	Difference
	DR-15				
2010	972,711.00	826,804.35	49,608.26	40,080.29	9,527.97
2011	1,010,494.00	858,919.90	51,535.19	42,187.13	9,348.06
2012	1,164,566.00	989,881.10	59,392.87	51,390.04	8,002.83
TOTAL	3,147,771.00	2,675,605.35	160,536.32	133,657.46	26,878.86
TAXABLE 85%	2,675,605.35				
NON TAXABLE 15%	472,165.65				
Total Sales	3,147,771.00				
SALES TAX DUE BASED ON TOTAL PURCHASING					
			Sales Tax Due	Sales Tax Paid	Difference
ALCOHOL & TOBACCO					
TOTAL PURCHASING					
3 YEARS		1,754,495.30			
22% Profit Margin		385,988.97			
68% of Alc & Tob Sales		2,140,484.27	128,429.06		
17% other taxable sales		535,121.07	32,107.26		
15% Non Taxable Sales		472,165.65			
Total Sales		3,147,770.99			
Grand Total		3,147,771.00	160,536.32	133,657.46	26,878.86

The Petitioner Salma Petroleum Inc.

Calculation of Value of Goodwill (Sales Value)

As per the petitioner the total sales is \$3,147,771.00 in 36 months

The Goodwill value of the store is calculated as :

Sales (36 Months)	3,147,771.00
Less Cost of goods sold 69% (36 Months)	<u>(2,171,961.99)</u>
Gross Profit (36 Months)	975,809.01
Less operating expenses (36 Months)	<u>(903,591.00)</u>
EBIDA	72,218.01

EBIDA Is (Earnings Before Interest, Depreciation and Amortization)

Any buyer will want to recover his investment in 36 months to be a good buy.

The sale value of this store is \$ 72,218.01 plus Inventory at cost.

Contradict Calculation

The Respondent Department of Revenue.

Calculation of Value of Goodwill (Sales Value)

As per the Respondent their calculation of sale is	5,589,058.28
(non-reported Taxable sales of 2,654,704.34 plus Already reported by Petitioner 2,205,346.34 plus Exempt sales of \$ 729,007.60)	
Less Cost of goods sold 69% (36 Months)	<u>(3,856,450.21)</u>
Gross Profit (36 Months)	1,732,608.07
Less operating expenses (36 Months)	<u>(903,591.00)</u>
EBIDA	829,017.07

EBIDA Is (Earnings Before Interest, Depreciation and Amortization)

Any buyer will want to recover his investment in 36 months to be a good buy.

The sale value of this store is \$ 829,017.07 plus Inventory at cost.

Petitioner request to Department of Revenue.

If the Respondent "Department of Revenue" is very confident of their calculations and the accuracy that follows should not hesitate to give a certified and sworn in statement that the above sales figures are True and Correct so the Petitioner can sell this location for \$829,017.07.

Providing Documentation for this Sales and Used Tax Audit

All the required documents were provided to Ms. Carrol Y. Cherry three months before the hearing date and was informed that the auditors were looking into these documents send.

Conclusion:

- a. The auditors never changed the tax due after looking into the documents send. The auditors based their facts on estimates and never bothered to look into the documents and work sheets send by the Petitioner, their figures remained the same.

According to the auditors the estimates were accurate and Petitioners documents are "Trash".

- b. Ms. Carrol Y. Cherry returned the Petitioner's documents on Monday October 27th 2014, two days before the hearing date of October 29th 2014, giving the Petitioner no option to submit the documents five days before the hearing as required. The Petitioner could not submit the documents on the hearing date so Administrative Law Judge, Mary Li Creasy had no documents to review and documents send later were considered late.

Did Ms. Carrol Y. Cherry intentionally keep the documents to herself and intentionally sent documents to the Petitioner late as giving them no time to submit on time?

- c. Until today the Respondent never provided a detailed list of Vendors and the amount purchased requested by the Petitioner since day one. And very letter the Alcohol and tobacco purchases goes up by almost hundred thousand.
- d. All exhibits #1-9 were based on estimates the auditor were not able so say that ONE figure on all Exhibits in absolutely accurate and correct.

The Petitioner initially thought that requesting for an administrative hearing will help to resolve this case in a professional and unbiased manner and was under the presumption that the Administrative Judge was independent, fair and rational in giving decisions to the tax payers and citizens is now completely taken by surprise that none of the evidence provided by the petitioner were vaild, correct or were not timely presented and the taxpayer still owes the Respondent

(Department of Revenue) the initial estimated amount of \$226,875.19 (including penalty and interest) even after providing Ms. Carrol Y. Cherry all required documents three months before the hearing date.

Questions on the Educational Level and work Experience of the auditors

The Petitioner has questions on the education and the work experience of the Department of Revenue Auditors as the Petitioner is trying to convince the buyers to pay \$829,017.27 plus inventory based on the sales calculation of these highly educated auditors. The buyers mostly from thirds world countries like Pakistan and Bangladesh, have never attended college have enough common sense to know that this business is not worth \$829,017.27 as the annual purchases are between 650,000.00 to 700,000.00.

Disappointed with this Independent Administrative Hearing

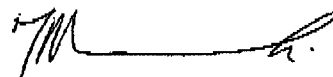
The Petitioner is greatly disappointed the way this independent Administrative Hearing was conducted and has come to a conclusion that it's a waste of time and was never independent in the first place and would rather appreciate Administrative law Judge Ms. Mary Li Creasy to order a Request for further review.

Recommendation

Please do not give taxpayers an option for an administrative hearing or judicial proceedings on the notice of Proposed Assessment as this gives tax payers false hopes of an independent review by judges and the willingness to spend thousands of dollars to lawyers who can do nothing but rip off the taxpayers blindly.

A small recommendation from my professional experience.

Dated: January 26, 2015



Zersis Minocher
12217 NW 35th Street
Coral Springs, FL 33065
PTIN: P01513739
Tel: 954-494-3535 / Fax: 954-905-4315
E-mail: avafinancials@gmail.com
Accountant & Representative for
Salma Petroleum Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via facsimile to the Office of General Counsel, Florida Department of Revenue at 850-488-7112 and the original was furnished via US Mail to P O Box 6668, Tallahassee, Florida 32314-6668, both on this the 26th day of January 2015.

Copies Furnished:

Hon. Mary Li Creasy
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060
Fax: 850-921-6847

Ms. Carol Y. Cherry
Sr. Assistant Attorney General
Florida Office of the Attorney General
Revenue Litigation Bureau
PL-01, The Capitol
Tallahassee, FL 32399-1050
Fax: 850-488-5865
E-mail: Carol.Cherry@myfloridalegal.com

DEPARTMENT OF REVENUE ADMINISTRATIVE HEARINGS

GAUSIA PETROLEUM INC, a Florida Corporation,

Petitioner,

Vs.

FLORIDA DEPARTMENT OF REVENUE,

Respondent,

Case No.14-3134

Request for Written Exemption

The Petitioner, Gausia Petroleum Inc (hereinafter the "Petitioner") hereby submit request for exemption in accordance with Florida Administrative Code Rule 28-106,215 for the final hearing held on October 29th 2014.

The Petitioner and the Department of Revenue (hereinafter the "Department") do not agree on the Notice of Proposed Assessment in the \$304,114.87. The Petitioner thinks the amount is all estimates and is too high and unreasonable and does not coordinate with the nature of business and the location where the business is located. The Department has derived their figures from industrial average and third party information that's all estimates. Sam Wholesale Club had wrongly reported total purchases to the "Department" and the "Department" adjusted by reducing the taxes by 2/3 the original due.

The Petitioner completely disagrees with this proposed assessment and would like to complete this audit as accurately as possible with no estimated amounts.

The Petitioner finds it too hard to believe that the tax due in the amount of \$213,754.46 as it has additional taxable sales of \$3,562,574.36 over and above the monthly sales already reported to the Department of Revenue in the DR-15. plus the Penalty of \$53,438.62 plus interest of \$36,921.79. The Petitioner also requests that the penalties be waived.

The Petitioner disputes the following issues of material fact:

The FDOR estimate of markup on purchase

The FDOR allocation percentages between taxable and non-taxable sales

The FDOR estimates of sales based on purchases

The FDOR ultimate estimate and/or assessment of total tax and interest for the audit period.

The Petitioner Request for further review:

The petitioner request the Administrative law Judge Mary Li Creasy to give this case a further review and the petitioner will provide all documents requested again to the department of revenue for review we can provide.

1. "Z" tapes for all the 36 months of the audit period (Will tell you how much sales are done)

Exhibit 4

2. All purchase receipts for all 36 months (Will tell you how much purchasing we are doing and will also tell you how much are taxable purchasing and how much are exempt purchasing)
3. Picture of the store (Will tell you the pricing. Exempt and taxable inventory carried, amount of inventory carried and Square Footage of the store)

As per the petitioner the following are the sales as per Z tapes and outstanding tax due.

SALES TAX DUE BASED ON TOTAL SALES					
Calender Year	Total Sales	Taxable Sales	Sales Tax Due	Sales Tax Paid	Difference
	DR-15				
2010	222,167.00	177,733.60	10,664.02	8,276.59	2,387.43
2011	282,113.00	225,690.40	13,541.42	11,178.41	2,363.01
2012	463,782.00	371,025.60	22,261.54	19,908.48	2,353.06
TOTAL	968,062.00	774,449.60	46,466.98	39,363.48	7,103.50
TAXABLE 80%	774,449.60				
NON TAXABLE 20%	193,612.40				
Total Sales	968,062.00				
SALES TAX DUE BASED ON TOTAL PURCHASING					
			Sales Tax Due	Sales Tax Paid	Difference
ALCOHOL & TOBACCO					
TOTAL PURCHASING					
3 YEARS		533,254.50			
18% Profit Margin		95,985.81			
65% of Alc & Tob Sales		629,240.31	37,754.42		
15% other taxable sales		145,209.30	8,712.56		
20% Non Taxable Sales		193,612.40			
Total Sales		968,062.01			
Grand Total		968,062.00	46,466.98	39,363.48	7,103.50

The Petitioner Gausia Petroleum Inc.

Calculation of Value of Goodwill (Sales Value)

As per the petitioner the total sales is \$968,062.00 in 36 months

The Goodwill value of the store is calculated as:

Sales (36 Months)	968,062.00
Less Cost of goods sold 69% (36 Months)	<u>(667,972.78)</u>
Gross Profit (36 Months)	300,089.22
Less operating expenses (36 Months)	<u>(244,867.85)</u>
EBIDA	55,221.37

EBIDA Is (Earnings Before Interest, Depreciation and Amortization)

Any buyer will want to recover his investment in 36 months to be a good buy.

The sale value of this store is \$55,221.37 plus inventory at cost.

Contradict Calculation

The Respondent Department of Revenue.

Calculation of Value of Goodwill (Sales Value)

As per the Respondent their calculation of sale is 4,888,980.92

(non-reported Taxable sales of 3,562,574.36 plus

Already reported by Petitioner 688,713.40 plus

Exempt sales of \$637,693.16)

Less Cost of goods sold 69% (36 Months) (3,373,396.83)

Gross Profit (36 Months) 1,515,584.09

Less operating expenses (36 Months) (244,867.85)

EBIDA 1,270,716.24

EBIDA Is (Earnings Before Interest, Depreciation and Amortization)

Any buyer will want to recover his investment in 36 months to be a good buy.

The sale value of this store is \$1,270,716.24 plus Inventory at cost.

Petitioner request to Department of Revenue.

If the Respondent "Department of Revenue" is very confident of their calculations and the accuracy that follows should not hesitate to give a certified and sworn in statement that the above sales figures are True and Correct so the Petitioner can sell this location for \$1,270,716.24.

Providing Documentation for this Sales and Used Tax Audit

All the required documents were provided to Ms. Carrol Y. Cherry three months before the hearing date and was informed that the auditors were looking into these documents send.

Conclusion.

- a. The auditors never changed the tax due after looking into the documents send. The auditors based their facts on estimates and never bothered to look into the documents and worksheets send by the Petitioner, their figures remained the same.

According to the auditors the estimates were accurate and Petitioners documents are "Trash".

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Did Ms. Carrol Y. Cherry intentionally keep the documents to herself and intentionally sent documents to the Petitioner late so as to give them no time to submit on time.

- c. Until today the Respondent never provided a detailed list of Vendors and the amount purchased requested by the Petitioner since day one. And very letter the Alcohol and tobacco purchases goes up by almost hundred thousand.
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The Petitioner initially thought that requesting for an administrative hearing will help to resolve this case in a professional and unbiased manner and was under the presumption that the administrative judge was independent, fair and rational in giving decisions to the tax payers and citizens is now completely taken by surprise that none of the evidence provided by the petitioner were valid, correct or were not timely presented and the taxpayer still owes the Respondent (Department of Revenue) the initial estimated amount of \$304,114.87 (including penalty and interest) even after providing Ms. Carrol Y. Cherry all required documents three months before the hearing date.

Questions on the Educational Level and work Experience of the Auditors

The Petitioner has questions on the education and the work experience of the Department of revenue auditors as the Petitioner is trying to convince the buyers to pay \$1,270,716.24 plus inventory based on the sales calculation of these highly educated auditors. The buyers mostly from third world countries like Pakistan and Bangladesh are not educated cannot speak English, have never attended college have enough common sense to know that this business is not worth \$1,270,716.24 if the annual purchases are between 175,000.00 to 200,000.00.


Disappointed with this Independent Administrative Hearing

The Petitioner is greatly disappointed the way this independent Administrative hearing was conducted and has come to a conclusion that it's a waste of time and was never independent in the first place and would rather appreciate Administrative Law Judge Ms. Mary Li Creasy to order a Request for further review.

Recommendation

Please do not give taxpayers an option for administrative hearing or judicial proceedings on the notice of Proposed Assessment as this gives taxpayers false hopes of independent reviews by judges and the willingness to spend thousands of dollars to lawyers who can do nothing but rip off the taxpayers blindly. Just small recommendation

Dated: January 26, 2015



Zersis Minocher
12217 NW 35th Street
Coral Springs, FL 33065
PTIN: P01513739
Tel: 954-494-3535
Fax: 954-905-4315
E-mail: avafinancials@gmail.com
Accountant & Representative for
Gausia Petroleum Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via facsimile to the Office of General Counsel, Florida Department of Revenue at 850-488-7112 and the original was furnished via US Mail to P O Box 6668, Tallahassee, Florida 32314-6668, both on this the 26th day of January 2015.

Copies Furnished:

Hon. Mary Li Creasy
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060
Fax: 850-921-6847

Ms. Carrol Y. Cherry
Sr. Assistant Attorney General
Florida Office of the Attorney General
Revenue Litigation Bureau
PL-01, The Capitol
Tallahassee, FL 32399-1050
Fax: 850-488-5865
E-mail: Carrol.Cherry@myfloridalegal.com



NOTICE OF PROPOSED ASSESSMENT

DR-831C
R. 01/13
Page 1 of 2

03/06/2014

C/O ZERSIS MINECHER
SALMA PETROLEUM INC
12217 NW 35TH ST
CORAL SPRINGS FL 33065-2509

Audit Number : 200149872
Tax : Sales and Use Tax
ID Number : XXXXXXXXXX
Audit Period : 02/01/2010 - 01/31/2013

The *Notice of Proposed Assessment* ("Notice") identifies the deficiency resulting from an audit of your books and records for the audit period indicated. The Department has previously provided you with schedules of the various transactions supporting the basis for the proposed assessment. A desk audit, limited scope audit, and/or self-audit does not prevent the Department from assessing any further deficiency in the manner provided by law. Should additional tax information come to our attention concerning the referenced tax and tax years, we reserve the right to reopen the audit period.

Assessment Authority: Chapter 212, F.S.

Tax		\$	159,282.26
Penalty		\$	39,820.57
Penalty - Fraud		\$	0.00
Penalty - Other		\$	0.00
Interest Through	03/06/2014	\$	27,772.36
Total Deficiency		\$	226,875.19
Less: Payment(s)		\$	0.00
Less: Offset (s)		\$	0.00
Balance Due		\$	226,875.19

Plus additional daily interest at 30.55 per day from 03/07/2014, through the payment date. See Page 2, "Addendum to Notice of Proposed Assessment" for explanation of interest rates (if applicable).

If you do not agree with the proposed assessment, you may request a review through one of the following:

- informal protest
- administrative hearing
- judicial proceeding

The enclosed brochure provides you with the procedures for requesting a review.

If you file an **informal written protest**, you must file it with the Department no later than 05/05/2014, unless you request and receive an extension prior to this date. If you fail to file an informal written protest, the proposed assessment will become a FINAL ASSESSMENT on 05/05/2014.

If you request an **administrative hearing** or **judicial proceeding**, you must file your request no later than 07/07/2014 or 60 days from the date the assessment becomes a Final Assessment. Florida Statutes mandate this time limit and the Department cannot extend it. You must file the petition for an administrative hearing with the Department of Revenue. For judicial proceedings, you must file a complaint with the appropriate Clerk of the Court.

If a balance is due and you agree with the proposed assessment, please pay the balance due within 60 days from the notice date. Please return your payment in the enclosed envelope and include the NOPA remittance coupon.

The amount shown on this notice may not include: credits, payments, notices of tax action, delinquency notices or other billings previously issued by the Department.

NOTE: If you are protected by Federal Bankruptcy Law, you are not required to pay except as provided by Title 11 United States Code (U.S. Bankruptcy Code).

Refer questions and correspondence to:

Compliance Support Process
P.O. Box 5139
Tallahassee, FL 32314-5139
Phone: 850-617-8565 Fax: 850-245-5981

Exhibit 5



Addendum to Notice of Proposed Assessment
Schedule of Tax, Penalty and/or Interest

DR-831C
R. 01/13
Page 2 of 2

03/06/2014

C/O ZERSIS MINECHER
SALMA PETROLEUM INC
12217 NW 35TH ST
CORAL SPRINGS FL 33065-2509

Audit Number : 200149872
Tax : Sales and Use Tax
ID Number : XXXXXXXXXX
Audit Period : 02/01/2010 - 01/31/2013

I. 12% Interest Rate		II. Market Interest		III. Combined Liability			
Applied Period		Applied Period		Combined Applied Period			
Tax	Interest Through 03/06/2014	Tax	Interest Through 03/06/2014	Tax	Penalties	Interest Through 03/06/2014	Total
\$	\$	\$	\$	\$	\$	\$	\$
0.00	0.00	159,282.26	27,772.36	159,282.26	39,820.57	27,772.36	226,875.19
				Less: Payments			0.00
				Offsets			0.00
				Balance Due			\$ 226,875.19

- I. Twelve (12) Percent Interest Rate: For taxes due on or before December 31, 1999, an interest rate of 12% per annum applies, except for Corporate Income and Emergency Excise Taxes. The additional daily interest amount for this portion of the liability is \$ 0.00.
- II. Market Interest Rate: For taxes due on or after January 1, 2000, a floating interest rate applies. This rate will be updated January 1 and July 1 of each year. The additional daily interest amount for this portion of the liability is \$ 30.55. Current and prior interest rates are posted on our Internet site at: www.myflorida.com/dor or you can contact Taxpayer Services at 800-352-3671 and select Information on Taxes from the option menu.
- III. Combined Liability: This column combines columns I and II and represents the total tax, penalties and interest assessed. The combined daily interest amount is \$ 30.55. Please include additional interest accrued from 03/07/2014 through the date your payment is postmarked.

Refer questions and correspondence to:

Compliance Support Process
P.O. Box 5139
Tallahassee, FL 32314-5139
Phone: 850-817-8565 Fax: 850-245-5981



NOTICE OF PROPOSED ASSESSMENT

DR-831C
R. 01/13
Page 1 of 2

03/06/2014

C/O ZERSIS MINECHER
GAUSIA PETROLEUM INC
12217 NW 35TH ST
CORAL SPRINGS FL 33065-2509

Audit Number : 200149749
Tax : Sales and Use Tax
ID Number : XXXXXXXXXX
Audit Period : 02/01/2010 - 01/31/2013

The *Notice of Proposed Assessment* ("Notice") identifies the deficiency resulting from an audit of your books and records for the audit period indicated. The Department has previously provided you with schedules of the various transactions supporting the basis for the proposed assessment. A desk audit, limited scope audit, and/or self-audit does not prevent the Department from assessing any further deficiency in the manner provided by law. Should additional tax information come to our attention concerning the referenced tax and tax years, we reserve the right to reopen the audit period.

Assessment Authority: Chapter 212, F.S.

Tax		\$	213,754.46
Penalty		\$	53,438.62
Penalty - Fraud		\$	0.00
Penalty - Other		\$	0.00
Interest Through	03/06/2014	\$	36,921.79
Total Deficiency		\$	304,114.87
Less: Payment(s)		\$	0.00
Less: Offset(s)		\$	0.00
Balance Due		\$	304,114.87

Plus additional daily interest at 40 99 per day from 03/07/2014, through the payment date. See Page 2, "Addendum to Notice of Proposed Assessment" for explanation of interest rates (if applicable).

If you do not agree with the proposed assessment, you may request a review through one of the following:

- informal protest
- administrative hearing
- judicial proceeding

The enclosed brochure provides you with the procedures for requesting a review.

If you file an **Informal written protest**, you must file it with the Department no later than 05/05/2014, unless you request and receive an extension prior to this date. If you fail to file an informal written protest, the proposed assessment will become a **FINAL ASSESSMENT** on 05/05/2014.

If you request an **administrative hearing** or **judicial proceeding**, you must file your request no later than 07/07/2014 or 60 days from the date the assessment becomes a **Final Assessment**. Florida Statutes mandate this time limit and the Department cannot extend it. You must file the petition for an administrative hearing with the Department of Revenue. For judicial proceedings, you must file a complaint with the appropriate Clerk of the Court.

If a balance is due and you agree with the proposed assessment, please pay the balance due within 60 days from the notice date. Please return your payment in the enclosed envelope and include the NOPA remittance coupon.

The amount shown on this notice may not include: credits, payments, notices of tax action, delinquency notices or other billings previously issued by the Department.

NOTE: If you are protected by Federal Bankruptcy Law, you are not required to pay except as provided by Title 11 United States Code (U.S. Bankruptcy Code).

Refer questions and correspondence to:

Compliance Support Process
P O. Box 5139
Tallahassee, FL 32314-5139
Phone: 850-617-8565 Fax: 850-245-5981

Exhibit 6



Addendum to Notice of Proposed Assessment
Schedule of Tax, Penalty and/or Interest

DR-831C
R. 01/13
Page 2 of 2

03/06/2014

C/O ZERSIS MINECHER
GAUSIA PETROLEUM INC
12217 NW 35TH ST
CORAL SPRINGS FL 33065-2509

Audit Number : 200149749
Tax : Sales and Use Tax
ID Number : XXXXXXXXXX
Audit Period : 02/01/2010 - 01/31/2013

i. 12% Interest Rate Applied Period		ii. Market Interest Applied Period		iii. Combined Liability Combined Applied Period			
Tax	Interest Through 03/06/2014	Tax	Interest Through 03/06/2014	Tax	Penalties	Interest Through 03/06/2014	Total
\$	\$	\$	\$	\$	\$	\$	\$
0.00	0.00	213,754.46	36,921.79	213,754.46	53,438.62	36,921.79	304,114.87
Less: Payments							0.00
Offsets							0.00
Balance Due							\$ 304,114.87

- I. Twelve (12) Percent Interest Rate: For taxes due on or before December 31, 1999, an interest rate of 12% per annum applies, except for Corporate Income and Emergency Excise Taxes. The additional daily interest amount for this portion of the liability is \$ 0.00.
- II. Market Interest Rate: For taxes due on or after January 1, 2000, a floating interest rate applies. This rate will be updated January 1 and July 1 of each year. The additional daily interest amount for this portion of the liability is \$40.99. Current and prior interest rates are posted on our Internet site at: www.myflorida.com/dor or you can contact Taxpayer Services at 800-352-3671 and select Information on Taxes from the option menu.
- III. Combined Liability: This column combines columns I and II and represents the total tax, penalties and interest assessed. The combined daily interest amount is \$40.99. Please include additional interest accrued from 03/07/2014 through the date your payment is postmarked.

Refer questions and correspondence to:

Compliance Support Process
P.O. Box 5139
Tallahassee, FL 32314-5139
Phone: 850-617-8565 Fax: 850-245-5981