

STATE OF FLORIDA  
DEPARTMENT OF REVENUE

CLUB TWENTY-FOUR, INC.

Petitioner,

vs.

DOAH CASE NO.: 95-2869

DOR CASE NO.:

96-33-FOF

STATE OF FLORIDA,  
DEPARTMENT OF REVENUE,

Respondent.

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FINAL ORDER

This cause came on before me for the purpose of issuing a final order. The Hearing Officer assigned by the Division of Administrative Hearings in the above styled case submitted a Recommended Order of Dismissal to the Department of Revenue. A copy of the Petition for Administrative Hearing and Recommended Order of Dismissal is attached to this Final Order and is incorporated as if fully set forth herein.

Petitioner Club Twenty-Four, Inc., has failed to pursue its request for hearing pursuant to section 120.57(1), Florida Statutes. Therefore the Department adopts the findings and conclusions contained in the Recommended Order of Dismissal.

Pursuant to Chapter 120, Florida Statutes, the Department has jurisdiction of this cause.

FINDINGS OF FACT

The Department hereby adopts and incorporates by reference the Findings of Fact set forth in the Recommended Order of Dismissal.

CONCLUSIONS OF LAW

The Department hereby adopts and incorporates by reference the Conclusions of Law set forth in the Recommended Order of Dismissal.

CONCLUSION

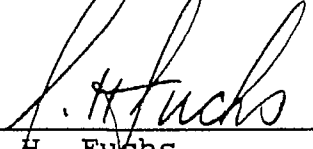
Therefore, based on the Findings of Fact and the Conclusions of Law as set forth in the Recommended Order of Dismissal, it is hereby ORDERED that the Petitioner's application for a consumer's certificate of exemption be denied.

Any party to this Final Order has the right to seek judicial review of the Final Order as provided in Section 120.68, Florida Statutes, by the filing of a Notice of Appeal as provided in Rule

9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, Post Office 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 Final Order is filed with the Clerk of the Department .

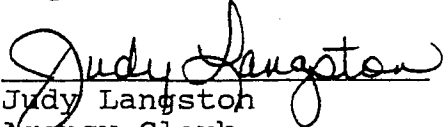
DONE AND ENTERED in Tallahassee, Leon County, Florida this 16<sup>th</sup> day of July, 1996.

STATE OF FLORIDA  
DEPARTMENT OF REVENUE

  
L. H. Fuchs  
Executive Director

#### Certificate of Filing

I HEREBY CERTIFY that the foregoing Final Order has been filed in the official records of the Department this 16<sup>th</sup> day of July, 1996.

  
Judy Langston  
Agency Clerk

Copies to:

L. H. Fuchs  
Executive Director  
Department of Revenue  
104 Carlton Building  
Tallahassee, Florida 32399-0100

Linda Lettera  
General Counsel  
Department of Revenue  
201 Carlton Building  
Tallahassee, Florida 32399-0100

Jennie Rosa, President  
Club Twenty-Four, Inc.  
8530 Northwest 44th Street  
Sunrise, Florida 33351

Attachments: Petition for Administrative Hearing  
Recommended Order of Dismissal



State of Florida  
Division of Administrative Hearings  
The DeSoto Building, 1230 Apalachee Parkway  
Tallahassee, FL 32399-1550  
(904) 488-9675 • SunCom: 278-9675

Sharyn L. Smith  
Director

Ann Cole  
Clerk

May 15, 1996

Linda Lettera  
General Counsel  
Department of Revenue  
204 Carlton Building  
Tallahassee, FL 32399-0100

In Re: Club Twenty-Four, Inc.  
v. Department of Revenue

DOAH Case No. 95-2869

Dear Ms. Lettera:

Enclosed is my Recommended Order of Dismissal in the referenced case.

This letter will serve to notify the parties that my recommended order has been forwarded to you on this date for appropriate action.

Please send a copy of the final order rendered in this case to the Division of Administrative Hearings so that the Division's files will be complete. Thank you for your cooperation.

Sincerely yours,

*Joyous D. Parrish*  
Joyous D. Parrish  
Hearing Officer

JDP/rg  
Enclosure

cc: Larry Fuchs, Executive Director  
Kevin J. ODonnell, Assistant General Counsel  
Jennie Rosa, President of Club Twenty-Four, Inc.

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CLUB TWENTY-FOUR, INC., )  
 )  
Petitioner, )  
 )  
vs. ) CASE NO. 95-2869  
 )  
DEPARTMENT OF REVENUE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice, the Division of Administrative Hearings, by its designated Hearing Officer, Joyous D. Parrish, held a formal hearing in the above-styled case on April 18, 1996, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Kevin J. ODonnell  
Assistant General Counsel  
Department of Revenue  
Post Office Box 6668  
Tallahassee, Florida 32314-6668

STATEMENT OF THE ISSUES

The central issue in this case is whether the Petitioner is entitled to a consumer's certificate of exemption.

PRELIMINARY STATEMENT

This case began on March 15, 1995, when the Department of Revenue (Department) issued a notice of intent to deny which advised Petitioner, Club Twenty-Four, Inc., that its application for a consumer's certificate of exemption had been denied

pursuant to Section 212.08(7), Florida Statutes. Thereafter, Jennie Rosa, as president of the Petitioner, filed a request for a hearing. The matter was forwarded to the Division of Administrative Hearings for formal proceedings on June 6, 1995.

The hearing was originally scheduled for October 26, 1995, but a joint motion for continuance was granted and the case was subsequently rescheduled.

The amended notice of hearing entered in this cause provided, in pertinent part:

Failure to appear at this hearing shall be grounds for entry of an order of dismissal or recommended order of dismissal, as appropriate.

On the rescheduled date, Petitioner failed to appear. Notice of the hearing date was provided to Petitioner at its address of record and such notice has not been returned as undelivered. To date, Petitioner has provided no explanation for the failure to appear.

#### FINDINGS OF FACT

1. The Department is the state agency charged with the responsibility of reviewing and, where appropriate, authorizing a consumer's certificate of exemption.
2. On March 15, 1995, the Department issued a notice of intent to deny to Petitioner advising that the consumer's certificate of exemption would not be approved.
3. Petitioner timely requested a hearing.
4. No evidence has been presented in support of Petitioner's request for a consumer's certificate of exemption.

5. The Department entered an ore tenus motion for a recommended order of dismissal when Petitioner failed to appear at the hearing and present evidence.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

7. Petitioner bears the burden of proof in this cause to establish it is entitled to the consumer's certificate of exemption. By failing to appear or to presenting evidence in support of the request, Petitioner has failed to meet that burden.

RECOMMENDATION

Based on the foregoing, it is, hereby,

RECOMMENDED:

That the Petitioner's application for a consumer's certificate of exemption be denied and this cause be dismissed.

DONE AND ENTERED this 15th day of May, 1996, in Tallahassee, Leon County, Florida.

*Joyous D. Parrish*  
\_\_\_\_\_  
JOYOUS D. PARRISH, Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904)488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of May, 1996.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 95-2869

Proposed findings of fact have not been submitted.

COPIES FURNISHED:

Larry Fuchs  
Executive Director  
Department of Revenue  
104 Carlton Building  
Tallahassee, Florida 32399-0100

Linda Lettera  
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204 Carlton Building  
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Sunrise, Florida 33351

Kevin J. ODonnell  
Assistant General Counsel  
Department of Revenue  
Post Office Box 6668  
Tallahassee, Florida 32314-6668

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.