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IN THE INDIANA TAX COURT

DREADED, INC. d/b/a V-LINE CORP.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 49T10-0209-TA-105
	)	
INDIANA DEPARTMENT OF STATE REVENUE,	)	
	)	
Respondent.	)	
	)	

ORDER ON PETITIONER'S MOTION TO CORRECT ERROR[1]

NOT FOR PUBLICATION
September 18, 2006

FISHER, J.

[1] Dreaded, Inc. d/b/a/ V-line Corp. (V-Line) filed a petition for rehearing with this Court on May 22, 2006. Nevertheless, a petition for rehearing is inappropriate in this instance. Indeed, when this Court hears cases protesting the final determinations of the Department, the Court acts as a trial court. *See* IND. CODE ANN. § 6-8.1-9-1(d) (West 2006); *Chrysler Fin. Co. v. Indiana Dep't of State Revenue*, 761 N.E.2d 909, 911 (Ind. Tax Ct. 2002), *review denied*. In turn, the proper method to challenge a judgment entered by a trial court, prior to filing an appeal, is a motion to correct error. *See* Ind. Trial Rule 59. The Court will, as a result, treat V-line's petition as a motion to correct error, referring to it as "motion."

The facts pertaining to the instant motion will be supplied as necessary. All other substantive and procedural facts as they relate to the Court's previous decision in this case are undisputed and can be found at *Dreaded, Inc. v. Indiana Department of State Revenue*, No. 49T10-0209-TA-105, slip. op. (Ind. Tax Ct. April 20, 2006).

On April 20, 2006, this Court issued an order in the case of *Dreaded, Inc. v. Indiana Department of State Revenue*, No. 49T10-0209-TA-105, slip. op. (Ind. Tax Ct. April 20, 2006). In *Dreaded*, the Court determined that V-Line's charges for delivery services during the 1994-1996 tax years were subject to Indiana gross retail tax (sales tax) pursuant to Indiana Code § 6-2.5-4-1.[2] Therefore, the Court granted summary judgment to the Indiana Department of State Revenue (Department), and required V-Line to pay proposed assessments totaling $98,754 (tax at issue). In so holding, the Court held that the administrative regulation upon which V-Line relied in not collecting sales tax from its customers, Indiana Administrative Code, title 45, rule 2.2-4-3(b)(3),[3] was invalid. V-Line now requests that the Court reconsider its decision to retroactively apply the invalidation to V-Line. After reviewing V-Line's motion and having held argument thereon, the Court now GRANTS the motion for the following reasons.

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[2] That statute provides in pertinent part:

> [s]ervices are subject to sales tax to the extent the income from the service represents "any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, *delivery*, or other service performed in respect to the property transferred *before its transfer and which are separately stated* on the transferor's records."

IND. CODE ANN. § 6-2.5-4-1(e)(2) (West 1995) (emphasis added).

[3] The regulation provides guidelines as to when a separately stated delivery charge is subject to sales tax based on an F.O.B. designation. While subsection (b)(3) of the regulation stated "[d]elivery charge[s] separately stated where no F.O.B. has been established [are] non-taxable[,]" *see* Indiana Administrative Code, title 45, rule 2.2-4-3(b)(3) (1996), the Court held this language not only conflicted with Indiana Code § 6-2.5-4-1, but with the remainder of the regulation itself. *See Dreaded*, No. 49T10-0209-TA-105, slip. op. at 6-7.

ANALYSIS AND ORDER

In *Dreaded*, the Court acknowledged that V-Line did not collect sales tax from its customers because the Department's invalid regulation indicated that it was not required to do so. Nevertheless, the Court held V-Line was still taxable for the tax at issue because the governing statute required V-line to collect the tax. V-Line now asserts the Court's decision in *Dreaded* is erroneous to the extent it retroactively applies the invalidation of 45 IAC 2.2-4-3(b)(3) to its case. More specifically, V-Line argues:

> [r]etail merchants are not the taxpayers of sales tax, but only the collection agents for the State. It is the State that adopted the regulations instructing retail merchants [as to] when, and when not, to collect sales tax. If a retail merchant, in fulfilling its obligations as collection agent, follows the instructions of its principal, the State, any financial harm that results from the State's faulty or invalid instructions should fall on the State, not the merchant.

(Pet. for Reh'g at 4.) The Court agrees.

The legislature did not intend for V-Line to pay sales tax; it was only required to collect the tax. Rather, V-Line's customers were liable for the tax. *See* IND. CODE ANN. § 6-2.5-2-1(b) (West 1995) (stating that [t]he person who acquires property in a retail transaction is liable for the tax on the transaction and . . . shall pay the tax to the retail merchant[, who] . . . collect[s] the tax as agent for the state). By its holding, however, the Court is requiring V-Line to pay its customers' sales tax liabilities on transactions that occurred over ten years ago merely because it relied on the Department's

regulation that was subsequently invalidated.[4] In the interest of fairness and equity, V-Line's reliance on the *Department's* inaccurate regulation should not be deemed an erroneous failure to collect sales tax nor result in a penalty for V-Line.

CONCLUSION

Because the retroactive application of the regulation's invalidation produces a result the legislature did not intend, this Court now amends its decision. The invalidation of the regulation is given prospective effect only and V-Line is not liable for the tax at issue. Accordingly, the Court GRANTS V-Line's motion to correct error.

SO ORDERED this 18th day of September, 2006.

_____
Thomas G. Fisher, Judge
Indiana Tax Court

[4] During the oral argument on the merits of its case, V-Line stated:

> by the time [the Department] decides to conduct an audit on V-Line it's far too late for V-Line to go back to its customer and say 'I know I [should have] invoiced you for $6 back [in the mid 1990's], we didn't, will you now give us that $6?'

(Oral Argument Tr. at 5.) Indeed, in 2006, not only would it be impractical for V-Line to contact its numerous customers from 1994, 1995 and 1996, its impractical to think V-Line would even be able to locate all of its customers from that period.

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