

STATE OF INDIANA,
COUNTY OF GREENE

IN THE GREENE CIRCUIT COURT

CAUSE NO.: 28C01-1012-MI- 591

INDIANA DEPARTMENT OF
STATE REVENUE,

Plaintiff,

v.

IN THE MATTER OF
DARLENE J. CLARK and
DARLENE J. CLARK d/b/a
LOVE MY PETS and
LOVE MY PETS

Defendants.

FILED
DEC 01 2010

Jackie Winstead
GREENE CIRCUIT COURT CLERK

**INDIANA DEPARTMENT OF REVENUE'S
VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER**

The Plaintiff, the Indiana Department of State Revenue (the "Department"), by counsel, Gregory F. Zoeller, Attorney General of Indiana, requests that the Court grant the Department a temporary restraining order against the Defendants, Darlene J. Clark, Darlene J. Clark d/b/a Love My Pets, and Love My Pets, pursuant to Ind. Code § 6-8.1-8-5 and Ind. Trial Rule 65.

1. The Department obtained judgments against Darlene J. Clark, Darlene J. Clark d/b/a Love My Pets, and Love My Pets, by virtue of jeopardy tax warrants for unpaid gross retail tax ("sales tax") filed in this Court on December 1, 2010:

	Warrant #	Notice #	Liability Period	Amount Due as of 11/30/2010
(1)	08232601	10032722183	12/31/2001	\$26,976.78
(2)	08232602	10032722189	12/31/2002	\$26,599.84
(3)	08232603	10032722192	12/31/2003	\$30,658.75
(4)	08232604	10032722198	12/31/2004	\$30,168.09
(5)	08232605	10032722201	12/31/2005	\$29,779.39
(6)	08232606	10032722208	12/31/2006	\$29,264.69
(7)	08232607	10032722214	12/31/2007	\$32,189.80
(8)	08232608	10032722217	12/31/2008	\$32,347.03
(9)	08232609	10032722220	12/31/2009	\$31,359.51

(10)	08232668	10032724621	01/31/2010	\$2,502.15
(11)	08232669	10032724637	02/28/2010	\$2,498.39
(12)	08232670	10032724663	03/31/2010	\$2,494.23
(13)	08232671	10032724676	04/30/2010	\$2,489.93
(14)	08232672	10032724697	05/31/2010	\$2,486.04
(15)	08232673	10032724717	06/30/2010	\$2,482.01
(16)	08232674	10032724739	07/31/2010	\$2,477.85
(17)	08232675	10032724754	08/31/2010	\$2,473.69
(18)	08232676	10032724771	09/30/2010	\$2,469.39
(19)	08242897	10032738690	10/31/2010	\$2,575.50
(20)	08232610	10032722418	12/31/2004	\$3,573.86
(21)	08232627	10032722703	12/31/2005	\$1,961.83
(22)	08232633	10032722892	12/31/2006	\$3,185.70
(23)	08232640	10032723017	12/31/2007	\$3,376.21
(24)	08232641	10032723163	12/31/2008	\$3,265.64
(25)	08232642	10032723320	12/31/2009	\$1,805.33
			TOTAL:	\$311,461.63

2. The Defendants' liability was established pursuant to Ind. Code § 6-2.5-9.3 which states:

Sec. 3. An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
 - (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;
- holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

3. A jeopardy tax warrant arises from a jeopardy finding and jeopardy notice of assessment and demand issued pursuant to the Department's statutory authority under Indiana Code Section § 6-8.1-5-3(a):

If at any time the department finds that a person owing taxes intends to quickly leave the state, remove his property from the state, conceal his property in the state, or do any other act that would jeopardize the collection of those taxes, the department may declare the person's tax period at an end, may immediately make an assessment for the taxes owing, and may demand immediate payment of the amount due, without providing the notice required in IC 6-8.1-8-2.¹

4. Pursuant to Ind. Code § 6-8.1-5-3(c), the Department's authority to issue a jeopardy tax warrant follows from a person's failure to immediately pay the amounts due pursuant to the Department's jeopardy finding and jeopardy notice of assessment and demand:

If the payment is not made immediately, the department may issue or request the state police department to serve a jeopardy tax warrant against the person and, either without or with the assistance of the sheriffs of any counties in the state, may levy on and sell the person's property which is located in those counties. In place of the levy and sale procedure, the department may accept from the person a bond for the payment of the taxes, if the bond is in an amount at least equal to the amount of the total liability and if the bond is through a surety acceptable to the department.²

5. After a tax warrant has been entered in the judgment debtor column of a court's judgment record, the judgment becomes, by operation of law, "a judgment against the person owing the tax." Ind. Code § 6-8.1-8-2(e). Furthermore, "[t]he judgment creates a lien in favor of the state that attaches to all the person's interest in any: (1) chose in action in the county; and (2) real or personal property in the county; excepting only negotiable instruments not yet due." *Id.* "Once a tax warrant becomes a judgment lien, the day for disputing the tax is over, and the matter has progressed to the collection stage." *State ex rel. Ind. Dep't of Revenue v. Deaton*, 755 N.E.2d 568, 571 (Ind. 2001).

6. Indiana Code § 6-8.1-8-5 gives the Department the authority to obtain a restraining order until the judgment against the Defendants is paid in full:

At any time after a judgment arising from a tax warrant has been recorded, the department may obtain a court order restraining the person owing the tax from conducting business in Indiana. The restraining order is valid as long as the judgment remains in effect, but the department may have the order dissolved if it feels that by dissolving the order the judgment will be easier to collect.

7. A post-judgment temporary restraining order is sought against the Defendants, the Defendants'

¹ Ind. Code § 6-8.1-5-3(a).

² Ind. Code § 6-8.1-5-3(c).

agents, successors and assigns, and all persons natural or corporate acting in concert or in participation with the Defendants, to temporarily restrain and enjoin the Defendants in any manner or by any means from selling, procuring, trading, breeding, swapping, or otherwise transferring dogs, puppies, or canines in Indiana or across from state lines, or doing business in Indiana and from dissipating, distributing, transferring, encumbering, assigning, paying over or otherwise disposing of any monies or assets owned by or in the possession of the Defendants as a result of the Defendants' business activities in Indiana, unless and until the Defendants provide payment in the entirety of the judgment entered in this Court against the Defendants, including statutory interest and penalty.

8. A post-judgment temporary restraining order is necessary to protect the Department's interest until the Department can collect on the judgments recorded in this matter. See Affidavit of Larry Harshman attached and incorporated as Exhibit A.

9. If the Defendants are not restrained from selling, procuring, trading, breeding, swapping, or otherwise transferring dogs, puppies, or canines; and dissipating, distributing, transferring, encumbering, assigning, paying over or otherwise disposing of any monies or assets owned by or in the possession of the Defendants, the Department will be irreparably harmed.

10. There is a likelihood that the Defendants' property has been or may be sold, transferred out-of-state, conveyed or otherwise disposed of with the intent to cheat, hinder, or delay the Department's efforts to collect on the judgment recorded in this matter.

11. The Department filed its Verified Motion for Injunction contemporaneously with filing this Verified Motion for Temporary Restraining Order.

12. A post-judgment temporary restraining order is necessary to preserve the status quo until the issues raised by the Department's Verified Motion for Injunction can be heard and considered by this Court.

13. Pursuant to Ind. Trial Rule 65(B)(1), the Department verified its Motion and attached an affidavit in support of its Motion.

14. Pursuant to Ind. Trial Rule 65(B)(2), the Department provided Notice to the Defendants by hand delivery.

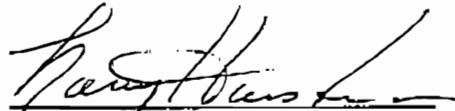
15. The Department is a governmental organization and is not required to offer security pursuant to Ind. Trial Rule 65(C).

16. The Department requests that the Court grant a hearing on its Verified Motion for Injunction within ten (10) days, specifically, on or before December 10, 2010.

WHEREFORE, the Plaintiff, the Indiana Department of State Revenue, by counsel, Gregory F. Zoeller, Attorney General of Indiana, respectfully requests that the Court: (1) enter a temporary

restraining order that restrains and enjoins the Defendants and the Defendants' agents, successors and assigns and all persons natural or corporate acting in concert or in participation with the Defendants in any manner or by any means from selling, procuring, trading, breeding, swapping, or otherwise transferring dogs, puppies, or canines in Indiana or across from state lines, or doing business in Indiana and from dissipating, distributing, transferring, encumbering, assigning, paying over or otherwise disposing of any monies or assets owned by or in the possession of the Defendants as a result of the Defendants' business activities in Indiana, unless and until the Defendants provide payment in the entirety of the judgment entered in this Court against the Defendants, including statutory interest and penalty, (2) grant the Plaintiff costs and reasonable attorney's fees, and (3) grant the Plaintiff all just and proper relief.

I affirm, under penalties for perjury, that the foregoing representations are true to the best of my knowledge, information and belief.



Larry Harshman
Supervisor of Special Investigations Unit
Indiana Department of State Revenue

Respectfully Submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By: 

Nancy M. Hauptman
Deputy Attorney General
Attorney No. 12698-98

Office of the Attorney General
Indiana Government Center South, 5th floor
302 W. Washington Street
Indianapolis, IN 46204-2770
(317) 232-4847

CERTIFICATE OF SERVICE

I certify that on December 1, 2010, a copy of the foregoing pleading was duly served by hand delivery upon the following persons:

Darlene J. Clark and
Darlene J. Clark d/b/a Love My Pets and
Love My Pets
10203 E. Dobson Road
Bloomfield, Indiana 47424



Nancy M. Hauptman
Nancy M. Hauptman
Deputy Attorney General
Attorney No. 12698-98

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