

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT IN AND  
FOR LEON COUNTY, FLORIDA

MST CONSTRUCTION, INC.,

Plaintiff,

vs.

CASE NUMBER: 2012 CA003624

STATE OF FLORIDA,  
THE FLORIDA DEPARTMENT  
OF REVENUE,

Defendant.

## Summons

TO: THE FLORIDA DEPARTMENT OF REVENUE  
C/O MS. LISA ECHEVERRI VICKERS  
2450 SHUMAR OAKS BOULEVARD  
BUILDING 1  
TALLAHASSEE, FL 32399

**IMPORTANT**

A lawsuit has been filed against you in this court. You have 20 calendar days after receiving this summons to file your written response to the attached complaint. This response must be filed with the clerk of the court at the address shown below.

If you do not file your response on time, you may lose your case. (The court could enter a judgment in favor of the plaintiff and you could lose wages, money and property without further warning.)

You may want to contact an attorney right away, as court proceedings can get involved and advise of counsel could be very important to you. If you do not know an attorney, you may call an attorney referral service or a legal aid office listed in the telephone directory. If you do not hire an attorney and choose to represent yourself in court, make sure that your response contains the case number and the names of the parties (as shown at the top of this page).

The original of your response must be filed with:

Circuit Civil Division  
Leon County Clerk of the Court  
Leon County Courthouse  
301 South Monroe Street  
Tallahassee, FL 32301

A copy of your response must also be mailed or delivered to the plaintiff's attorney:

Patrick R. Frank, Esquire  
3909 Reserve Drive, #634  
Tallahassee, Florida 32311

RECEIVED  
2012 NOV 30 PM 4:57  
DEPT. OF REVENUE  
EXECUTIVE DIRECTOR'S OFFICE  
TALLAHASSEE, FL  
B 20194  
11/30/12  
4:25pm

**RECEIVED**

DEC 04 2012

DEPARTMENT OF REVENUE  
OFFICE OF GENERAL COUNSEL

Remember to keep a copy of your response for your own referral.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

IMPORTANTE

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation de cette citation pour déposer une réponse écrite à la plainte ci-jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligés de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

Patrick R. Frank, Esquire  
3909 Reserve Drive, #634  
Tallahassee, Florida 32311

THE STATE OF FLORIDA

TO EACH SHERIFF OF THE STATE:

You are commanded to serve this Summons, a copy of the Complaint to Defendant, **STATE OF FLORIDA, THE FLORIDA DEPARTMENT OF REVENUE**, in this lawsuit on the above-named defendant(s).

Dated

November 5, 2012  
BOB INZER, CLERK OF THE CIRCUIT COURT



DEPUTY CLERK

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

**MST CONSTRUCTION, INC.,**

Plaintiff,

vs.

Case Number: 2012 CA003624

**STATE OF FLORIDA,  
THE FLORIDA DEPARTMENT  
OF REVENUE,**

Defendant.

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**COMPLAINT**

COMES NOW, the Plaintiff, **MST CONSTRUCTION, INC.** (hereinafter to be referred to as "MST"), which, by and through its undersigned counsel, and pursuant to the Florida Statutes, Chapter 86, hereby sues the Defendant, State of Florida, the Florida Department of Revenue, and further alleges:

**JURISDICTIONAL ALLEGATIONS:**

1. The Plaintiff, MST, is a Florida Corporation, authorized to do business in this State, and operating in Gadsden County, Florida.
2. The Department is an agency of the State of Florida with the responsibility for the administration and enforcement of Florida's state tax laws, including those dealing with Florida's sales tax as provided in the Florida Statutes, Chapter 212. The Department's principal address for the purpose of this proceeding is the General Counsel's Office, 2450 Shumard Oaks Boulevard, Building 1, Tallahassee, Florida 32399-0100.

3. The Defendant, in the Spring of 2012, of its own volition undertook an audit of the Plaintiff, MST, to determine whether or not sales tax had been accurately reported and/or tendered by the Plaintiff during the period commencing on June 1, 2008 and ending on May 31, 2011.

4. Pursuant to the audit conducted by the Defendant, said Defendant contended that the aggregate sum of Nine-Thousand Nine-Hundred and Sixty-Three (\$9,963.00) and Thirty (.30) Cents was allegedly due and owing. Said information was conveyed via "Notice of Proposed Assessment" to the Plaintiff, MST. (Please refer to a true copy of said document, as appended immediately hereto and marked as **Exhibit "1"**).

5. Pursuant to the aforementioned "Notice" (*i.e.*, **Exhibit "1"**, *supra*), the assessment at issue became a "Final Assessment" on September 10, 2012.

6. Thereafter, the Plaintiff, MST, was afforded a period of approximately Sixty (60) Days within which to initiate a judicial proceeding challenging the validity of the subject assessment.<sup>1</sup>

7. Accordingly, the instant Complaint and/or action is timely and the Plaintiff has complied with all conditions precedent to the initiation of this action or the Defendant has, otherwise, waived such conditions precedent.

8. The Court has jurisdiction of this action pursuant to the *Florida Statutes*, Chapter(s) 68.01, 72.011(1), 215.26, and 86.011, and Article V, Section 20(c)(3), Florida Constitution. Venue is proper in Leon County, Florida, pursuant to the *Florida Statutes*, Chapter 72.011(4).

9. The Plaintiff, MST, is uncertain of its rights and duties under the *Florida*

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<sup>1</sup> Pursuant to the Notice provided by the Defendant, the period terminates on or about November 7, 2012.

*Statutes, Chapter 212*, and seeks a judicial declaration thereof. Without such a declaration, the Plaintiff, MST, will be compelled to pay sales taxes it, in good faith, believes it does not, in fact, actually owe. The Plaintiff, MST, will also be unsure of its rights and responsibilities to remit tax on the purchase and utilization of similar equipment, parts, and construction implements in the future for its ongoing business operations.

**GENERAL ALLEGATIONS:**

10. The Plaintiff, MST, is a construction company which specializes in the construction, installation, and/or maintenance of gas and/or petroleum tank systems for various commercial entities throughout the region.

11. In connection with its business, the Plaintiff, MST, has occasion to purchase various machine parts and construction implements from various sources both inside the State of Florida, as well as from other states.

12. Predictably, one (1) of the principal criteria utilized by the Plaintiff, MST, in connection with determining “when” and “where” to purchase parts and/or materials is the selling price. By virtue of the fact that, on many occasions, the most beneficially priced materials are only available from locations substantially distant from the Plaintiff, many of the items purchased are transacted online and, only then, subsequently shipped to the Plaintiff, MST.

13. Because of the practice of engaging in purchases both in and out-of-state, the Plaintiff is confronted with multiple occasions pursuant to which the Plaintiff pays the sales tax of other states at the time of the purchase of the subject materials.

14. Accordingly, and as a result of the inevitable tax issues and/or questions

arising from the above-chronicled scenario, the President of the Plaintiff company, Ms. Maelene Tyson, sought out—and received—assistance from the Defendant’s tax representatives relating to the Plaintiff’s sales tax obligations as they related to the procedures and/or protocols for addressing the amount and/or timeliness of withholding, reporting, and/or tendering sales tax associated with the purchase and use of the above-referenced construction materials and/or parts.

15. The President of the Plaintiff’s company, Ms. Maelene Tyson, to date, has previously paid, withheld, and/or reported sales tax to the Defendant consistent with the advise that was provided to her by the agents and/or representatives of the Defendant.

16. Despite this, the Defendant now contemporaneously seeks to impose tax liability upon the Plaintiff, MST, pursuant to a scenario in which said prospective tax liability derives specifically from the Plaintiff adhering to the self-same advice provided by the Defendant.

17. The pertinent Florida case law precedent with regard to the imposition of sales tax provides that the instant Defendant is estopped from collecting taxes and/or any penalties associated therewith in instances in which the subject tax liability, as alleged, has been generated as a direct and/or proximate result of incorrect and/or deficient advise to the taxpayer.

**COUNT ONE (1)**

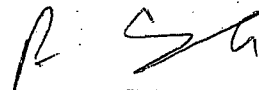
18. Plaintiff realleges and/or incorporates by reference Paragraphs One (1) through Seventeen (17), as if set forth in their entirety herein.

19. As indicated, Florida case law provides for relief from tax liability

illegal;

- C. Enter a Judgment that the construction materials pursuant to which the subject sales tax is sought are exempt from such sales tax;
- D. Award the Plaintiff its costs; and
- E. Provide for any such other relief as this Court should deem equitable and just.

Respectfully Submitted:



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Patrick R. Frank, Esq.  
Florida Bar Number: 0642770  
Patrick R. Frank, P.A.  
3909 Reserve Drive, #634  
Tallahassee, Florida 32311  
Telephone: (850) 694-8723  
Attorney for the Plaintiff,  
**MST CONSTRUCTION, INC.**

pursuant to instances in which the subject tax liability was brought about by the taxpayer's reliance on the advice and/or representations erroneously supplied by the Defendant's representatives and/or agents.

20. By way of addition, the Florida Statutes, Chapter 212, provides for a variety of sales tax exemptions in connection with the purchase of industrial machinery and/or equipment when such equipment is to be utilized in connection with a business which produces tangible personal property for sale and pursuant to which sales tax is, presumably, charged and, ultimately, tendered to the instant Defendant.

21. The Plaintiff, MST, would, respectfully, submit that it was provided with erroneous information regarding the charging, reporting, and/or payment of sales tax in connection with the purchase of construction materials utilized in its business operations and, therefore, said sales tax assessment which is retroactively sought to be enforced by the Defendant is invalid.

22. Alternatively, the Plaintiff, MST, would assert that the materials purchased which are at issue in this case and which have given rise to the proposed assessment are exempt from sales tax, thereby rendering the assessment at issue as *per se* invalid.

**WHEREFORE**, the Plaintiff, **MST CONSTRUCTION, INC.**, respectfully, requests that this Court grant the following relief:

- A. Enter a Judgment that the Department is equitably estopped from pursuing the monies chronicled in the sales tax assessment at issue herein by virtue of the erroneous information and/or advise provided to the Plaintiff;
- B. Enter a Judgment that the Department assessment is invalid and