

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

CORESLAB STRUCTURES TAMPA, INC.

Plaintiff,

v.

Case No. 2011 CA 002543

STATE OF FLORIDA,
DEPARTMENT OF REVENUE,

Defendant.

SUMMONS

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant, in accordance with Chapter 284.30 of the Florida Statutes:

Lisa Echeverri Vickers
Florida Department of Revenue
2450-Shumard-Oaks-Blvd.
Building 1
Tallahassee, FL 32399


Each defendant is hereby required to serve written defenses to the complaint or petition on

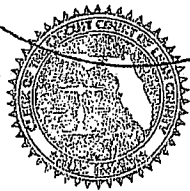
William D. Townsend
Rex D. Ware
Fowler, White, Boggs, P.A.
101 N. Monroe Street, Suite 1090
Tallahassee, FL 32301
(850) 681-0411

within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on September, 15, 2011.

Bob Inzer
Clerk of Circuit Court

By: 
Deputy Clerk



PERSONAL SERVICE ON AN INDIVIDUAL

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached Complaint in this Court. A phone call will not protect you; your written response, including the above case number and named parties, must be filed if you want the Court to hear your case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or take a carbon copy or photocopy of your written response to the "Plaintiff/Plaintiff's Attorney" named below.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene veinte (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 en dicho caso. 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).

IMPORTANT

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 obligé 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 au carbone ou une photocopie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

WILLIAM D. TOWNSEND
REX D. WARE
Attorney for Plaintiff
Fowler, White, Boggs, P.A.
101 N. Monroe Street, Suite 1090
Tallahassee, FL 32301

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

CORESLAB STRUCTURES TAMPA INC.

Plaintiff,

v.

Case No. 2011CA 002548

STATE OF FLORIDA,
DEPARTMENT OF REVENUE,

Defendant.

COMPLAINT

FILED
2011 SEP 14 P 3:11
CLERK OF COURT
LEON COUNTY, FLORIDA

COPY - not verified against original

Plaintiff, Coreslab Structures Tampa Inc. ("Coreslab" or "Plaintiff"), pursuant to Chapter 86 and Sections 72.011 and 215.26, Florida Statutes, sues Defendant, the State of Florida Department of Revenue, ("Department" or "DOR"), and alleges:

PARTIES

1. Plaintiff is a Florida corporation. For purposes of this proceeding, Plaintiff's address is that of the undersigned counsel.
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 the imposition and refund of Florida's sales and use tax as provided in Chapter 212, Florida Statutes. The Department's address for the purpose of this proceeding is the General Counsel's Office, Building 1, 2450 Shumard Oaks Blvd., Tallahassee, Florida 32399.

VENUE AND JURISDICTION

3. On or about December 2008, Plaintiff timely filed for a refund of use taxes and interest it paid to DOR concerning its business operations in Tampa, Florida for the period of

09/2005 through 09/2008. The basis of the claim was that Coreslab overpaid use taxes on its manufacture of "factory-built" buildings and otherwise erred in calculating its use tax on all its jobs for the period. The amount of the claim was \$945,609.21 plus interest (assigning \$201,162.43 for the overpaid use tax because of errors and \$747,291.16 overpaid use tax based on the "factory-built building" issue).

4. On or about April 22, 2010, DOR issued a Notice of Proposed Refund Denial to Coreslab, denying the refund in its entirety. See Exhibit A attached hereto.

5. On of about June 15, 2010, Coreslab timely filed a protest of the refund amounts denied. See Exhibit B attached hereto.

6. On or about July 18, 2011, issued its Notice of Decision of Refund Denial continuing to denying the amount set forth above. See Exhibit C attached hereto.

7. The Plaintiff sues Defendant and contests the denial of refund and asserts it is entitled to the entire refund claimed plus applicable statutory interest.

8. Plaintiff has complied with all conditions precedent to bringing this action, including all applicable registration requirements contained in Section 72.011, Florida Statutes.

9. The Court has jurisdiction of this action pursuant to Sections 68.01, 72.011(1), 215.26 and 86.011, Florida Statutes, and Article V, Section 20(c)(3), Florida Constitution.

Venue is proper in Leon County, Florida, pursuant to Section 72.011(4), Florida Statutes.

10. Plaintiff is uncertain of its rights and duties under Chapter 212, Florida Statutes, and seeks a judicial declaration thereof. Without such a declaration, Plaintiff will be deprived of taxes it overpaid, paid to the State of Florida in error and/or taxes it paid to the State of Florida when no taxes were due. The Plaintiff will also be unsure of its rights and responsibilities to accrue and remit tax on the subject transactions in its ongoing business operations.

FACTS

11. During all times pertinent to this action, Plaintiff was authorized to do business in Florida.

12. Coreslab is a real property contractor/manufacturer. Coreslab enters into a contract with a real property owner or general contractor to manufacture a building structure for the real property owner's site.

13. Coreslab manufactures the building at its own fabricating facility in Tampa, Florida. The facility sits idle, fabricating nothing until a construction contract is entered into with a general contractor or owner. Once completed, the building structure is transported by the Company from its facility in Tampa to the job site for erection on-site. The Company then erects the building structure onto the site and affixes the completed structure onto the property owner's land.

14. Part of Coreslab's business is the construction and manufacture of "factory-built buildings," including parking structures, that are manufactured at Coreslab's offsite facility and then transported to a customer's site to be erected and installed as a finished building.

15. Coreslab contracts to provide these factory-built buildings to customers for a fixed price, pursuant to lump sum contracts. Coreslab manufactures the structure at its facility, delivers and then erects and finishes the structure on site.

16. As a real property contractor, in the past, Coreslab has remitted use tax to the Defendant on the entire manufactured cost of the factory -built buildings it has manufactured and erected and installed. Coreslab accrued and remitted use tax on the cost of materials and other items such as associated labor, services, transportation, etc.

17. However, as the manufacturer of factory built buildings, Coreslab should not have accrued and remitted use tax on the "other items" such as associated labor, services, transportation, etc. Plaintiff also generally overpaid use tax on all the structures it constructed or manufactured by applying factors it should not have. It miscalculated the correct use tax due, based, in part, on applying incorrect cost percentages that were too high for plant overhead labor and payroll burden, steel fabrication labor and payroll burden and drafting overhead and payroll burden.

18. Plaintiff is thus entitled to a refund of the taxes it overpaid, paid in error or where no taxes were due, plus additional statutory interest.

STATUTES AND RULES

19. Section 212.06(1), Florida Statutes, states, in part:

(b) Except as otherwise provided, any person who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for his or her own use shall pay a tax upon the cost of the product manufactured, produced, compounded, processed, or fabricated without any deduction therefrom on account of the cost of material used, labor or service costs, or transportation charges, notwithstanding the provisions of s. 212.02 defining "cost price."

A person who manufactures factory-built buildings for his or her own use in the performance of contracts for the construction or improvement of real property shall pay a tax only upon the person's cost price of items used in the manufacture of such buildings.

20. Further, Rule 12A-1.043, Florida Administrative Code, states, in part:

(1)(a) Any person who manufactures, produces, compounds, processes, or fabricates in any manner an article of tangible personal property for his own use shall pay a tax upon the cost of the property manufactured, produced, compounded, processed, or fabricated without any deduction therefrom on account of the cost of material used, labor or service costs, or transportation charges.

(b) Elements of cost will include the following materials, labor, service, or transportation costs that are attributable to manufacturing, producing, compounding, processing, or fabricating an article of tangible personal property

for one's own use and which are properly chargeable to the cost of the product under generally accepted cost accounting standards.

1. Material costs include the following:

a. All direct materials and related freight costs that are physically observable as being identified to the finished tangible personal property, that are consumed in producing the property, or that become a component or ingredient of the finished property. See paragraphs (c) and (d), below, for calculating the tax on the cost of the finished product when sales tax has or has not been paid on direct materials.

b. Material handling and warehousing of direct materials and goods in process. c. Manufacturer's excise taxes on materials.

2. Labor costs include the following:

a. The total direct labor costs for employees or contract labor that are allocable to the production of the finished property, including the entire amount of payroll burden, which includes but is not limited to overtime premium, vacation and holiday pay, sick leave pay, shift differential, payroll taxes, payments to a supplemental unemployment benefit plan, and employee fringe benefits.

b. Compensation of officers, to the extent it is allocated to production and not administrative functions.

c. Costs of service, engineering, design or other support employees allocated to production.

3. Service costs include the costs of non-employee services that are allocated to the production of the tangible personal property, such as engineering, design or similar consulting or professional services.

(c) Direct materials on which the tax has been paid shall not be included when computing the tax on the cost of items of tangible personal property manufactured, produced, compounded, processed, or fabricated.

(d) Persons who manufacture, produce, compound, process, or fabricate items of tangible personal property for resale or for their own use or consumption may purchase direct materials tax exempt but shall include the cost of the direct materials when computing tax on the cost of the items so manufactured, produced, compounded, processed, or fabricated for such persons' own use or consumption. If tax has been paid on the direct materials, the method described in paragraph (c) should be used when computing the tax on the cost of the items so manufactured, produced, compounded, processed, or fabricated.

(e)1. To purchase direct materials tax exempt, dealers registered with the Department to sell tangible personal property may extend a copy of their Annual Resale Certificate (form DR-13) to the selling dealer in lieu of paying tax at the time of purchase. The cost of such materials is subject to tax on the cost of the items so manufactured, produced, compounded, processed, or fabricated, as provided in paragraph (d).

2. Persons who do not sell tangible personal property are not required to register with the Department as a dealer. However, to purchase direct materials tax exempt, such persons may extend an Exemption Certificate, as provided in Rule 12A-1.038, F.A.C., to the selling dealer in lieu of paying tax at the time of purchase. The cost of such materials is subject to tax on the cost of the items so manufactured, produced, compounded, processed, or fabricated, as provided in paragraph (d).

(f) The tax is due at the time the article of tangible personal property is manufactured, produced, compounded, processed, or fabricated for use or consumption, and such tax shall be remitted to the Department of Revenue in accordance with Rule 12A-1.056, F.A.C.

(3)(A) Any person who manufactures factory-built buildings for his own use in the performance of contracts for the construction or improvement of real property shall pay a tax only upon the person's cost price of items used in the manufacture of such buildings.

(b) For the purpose of this exemption, "factory-built building" means a structure manufactured in a manufacturing facility for installation or erection as a finished building; "factory-built building" includes, but is not limited to, residential, commercial, institutional, storage, and industrial structures.

21. Section 212.02(7), Florida Statutes, defines "factory-built buildings" as:

"Factory-built building" means a structure manufactured in a manufacturing facility **for installation or erection as a finished building**; "factory-built building" includes, but is not limited to, residential, commercial, institutional, storage, and industrial structures (emphasis added).

22. Section 215.26, Florida Statutes, dictates that a refund is due to a taxpayer when

there has been:

- (a) An overpayment of any tax, license, or account due;
- (b) A payment where no tax, license, or account is due; and
- (c) Any payment made into the State Treasury in error.

23. Section 213.255, Florida Statutes, mandates that a taxpayer be paid interest on a refund granted based on taxes paid in error or where no tax is due.

24. Coreslab, having applied the wrong percentages to many items of costs and as a manufacturer of factory-built buildings, erroneously accrued and remitted taxes on items other than the materials used in the manufacture of the buildings and thus overpaid taxes, paid tax in error or where no tax was due.

COUNT I

25. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 24 and further alleges:

26. As set forth above, Section 212.06, Florida Statutes, and Rule 12A-1.043, Florida Administrative Code, dictate how a manufacturer, in a real property improvement context, should accrue and remit use tax on construction/manufacturing costs.

27. Based on the type of business Coreslab is engaged in, as stated above, it overpaid accrued use tax for the refund period on items of plant overhead labor and payroll burden, steel fabrication labor and payroll burden and drafting overhead and payroll burden, based, in part, on applying incorrect percentages to the various identified categories.

28. Upon discovery of its error, Coreslab corrected the errors, recalculated to obtain the correct percentages and submitted the corrections as part of the subject refund application.

29. In a prior audit of a related company in Miami that operates in the same fashion as this Plaintiff operates, Coreslab and the DOR auditor agreed on certain adjustments, including adjustments to be made to the percentages for the same categories of items identified above. Plaintiff's refund claim in this matter was based on the same methodology accepted by DOR in the related matter.

30. However, in this case, DOR refused to correct the errors, apply correct the percentages and otherwise improperly denied the refund to Plaintiff. Correctly applying Rule 12A-1.043 and applying the same methodology to this facility, Plaintiff is entitled to a refund of \$201,162.43.

31. Pursuant to Section 215.26, Florida Statutes, because Plaintiff overpaid tax, paid tax in error or when no tax was due, Plaintiff is entitled to a refund of the use tax based on the correct percentages.

32. Therefore, the denial of refund by DOR is invalid, illegal and must be overturned and the Department must be ordered to approve the refund claim submitted.

COUNT II

33. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 32 above.

34. As set forth above, Chapter 212, Florida Statutes, requires a real property contractor to accrue and remit use tax on the manufactured cost of the real property improvement being manufactured. However, a manufacturer of "factory-built buildings" is only required to accrue and remit tax on the materials that are used to manufacture the buildings.

35. Coreslab is a manufacturer of factory-built buildings wherein it manufactures buildings at its offsite facility and then transports the buildings to a customer's site to be erected and installed as a finished building.

36. A portion of the use tax (\$747,291.16) that is the subject of the refund claim at issue was tax incorrectly accrued and remitted by Coreslab, to the State of Florida, on items other than the materials incorporated into the factory-built buildings.

37. As to the factory-built buildings, Coreslab should not have remitted tax on items other than materials and thus, overpaid tax, paid tax in error or where no tax was due.

38. Pursuant to Section 215.26, Florida Statutes, because Plaintiff overpaid, paid tax in error or where no tax was due, Plaintiff is entitled to a refund of the use tax claimed.

39. Therefore, the denial of refund by DOR is invalid, illegal and must be overturned and the Department must be ordered to approve the refund.

COUNT III

40. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 39 above and further alleges:

41. Section 213.255, Florida Statutes, provides: "Interest shall be paid on overpayments of taxes, payment of taxes not due, or taxes paid in error" when certain conditions are met. Plaintiff has met all the subject conditions.

42. Because the Department must be ordered to pay the refunds as claimed, the Department must further be ordered to pay the appropriate interest pursuant to Section 213.255, Florida Statutes.

WHEREFORE, Plaintiff respectfully requests the Court grant the following relief;

- A. Enter a Judgment that the Department's action in denying the refund is invalid and illegal;
- B. Enter a Judgment that Plaintiff is entitled to the refund claimed, plus appropriate interest pursuant to the statute;
- C. Order the Department to approve the refunds and pay statutory interest;
- D. Award the Plaintiff its costs;

E. Provide such other and further relief as the Court deems appropriate.

Respectfully submitted,



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