

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

CASE NO.: 2011 CA 2411

DIVISION:

FORD MOTOR COMPANY,
a foreign corporation,

Plaintiff,

v.

STATE OF FLORIDA DEPARTMENT OF
REVENUE, an agency of the State of Florida,

Defendant.

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff of Said State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the
Complaints in the above-styled cause upon the Defendant:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
Office of General Counsel
2450 Shumard Oak Boulevard
Building CCOC-Building #1
Tallahassee, FL

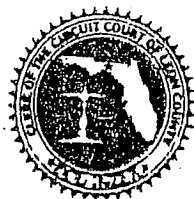
Rcvd 9/1/11 at 9:40 A.M. emd
Svd 9/1/11 at 1:00 P.M. by

[Signature] Chris J. Colson #142
Certified Process Server, 2nd Judicial Crct of Florida

The Defendant is required to serve written defenses to the Complaint on Plaintiff's attorney: **MICHAEL J. BOWEN, ESQUIRE, AKERMAN SENTERFITT** whose address is **50 NORTH LAURA STREET, SUITE 3100, JACKSONVILLE, FLORIDA 32202**, within **twenty (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.

Witness my hand and seal of this Court on AUG 31 2011

BOB INZER
Clerk of Court



By: [Signature]
Deputy Clerk

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 "Plaintiffs' Attorney." (Abogado de 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's Attorney" ("Avocat du Plaignant") nommé ci-dessous.

MICHAEL J. BOWEN
AKERMAN SENTERFITT
50 NORTH LAURA STREET, SUITE 3100
JACKSONVILLE, FLORIDA 32202

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STATE OF FLORIDA DEPARTMENT OF
REVENUE, an agency of the State of Florida,

Defendant.

COMPLAINT

Plaintiff, Ford Motor Company ("Ford") by and through counsel sues the State of Florida, Department of Revenue and alleges as follows:

The Parties

1. Ford is a Delaware corporation with its principal headquarters in Dearborn, Michigan.
2. Defendant, the Florida Department of Revenue (the "Department"), is an agency established under the laws of the State of Florida.

Jurisdiction and Venue

3. This is an action to contest an assessment by the Department against Ford for sales and use taxes, interest and penalties made pursuant to Chapter 212, Florida Statutes. This Court has subject matter jurisdiction pursuant to Section 72.011, Florida Statutes.

COPY - not verified against original

4. The Department denied Ford the relief sought in this Complaint. The Department's denial constitutes final agency action. Ford has exhausted all administrative remedies and an actual and justiciable case or controversy exists.

5. Ford obtained a waiver of the requirements of Section 72.011(3)(b), Florida Statutes pursuant to Fla. Admin. Code Rule 12-3.007. A true and correct copy of the Department's waiver is attached as Exhibit "A".

6. Venue is proper in this Court pursuant to Section 72.011(4)(a), Florida Statutes.

Nature of the Controversy

7. This action seeks to resolve a current controversy between Ford and the Department concerning a sales and use assessment by the Department against Ford. The Department contends Ford is responsible for sales and/or use tax on the value of parts and materials used to complete after-warranty repairs (the "Repairs") by independently owned and operated Ford dealerships in Florida (the "Dealerships") for retail purchasers of new Ford vehicles (the "Retail Purchasers").

8. On May 18, 2009, the Department issued a notice of proposed assessment to Ford for \$1,392,167.78 comprised of \$1,269,530.86 in sales and use tax, interest of \$260,774.94, penalties of \$125,288.56 and a credit for payments made of \$263,426.58 (the "Proposed Assessment"). The Proposed Assessment was issued with respect to the Florida sales and use taxation of the Repairs for the period January 1, 2006 through December 31, 2008 (the "Audit Period"). A copy of the Proposed Assessment is attached as Exhibit "B".

9. On July 17, 2009, Ford filed a timely protest challenging the sales and use tax liability asserted in the Proposed Assessment. By letter dated November 24, 2009, the Department issued a notice of decision denying Ford's appeal and sustaining the sales and use

tax liability contained in the Proposed Assessment. On December 17, 2009, Ford filed a timely petition for reconsideration referencing, *inter alia*, certain misstatements of fact and again challenging the sales and use tax liability referenced in the Proposed Assessment. On August 9, 2011, the Department issued a notice of reconsideration (the "Notice of Reconsideration") sustaining the amount of the Proposed Assessment and concluding that Ford was liable for sales tax with respect to the Repairs. A copy of the Notice of Reconsideration is attached as Exhibit "C".

10. The Notice of Reconsideration constituted the final administrative decision from the Department with respect to Ford's protest of tax liability concerning the Repairs and therefore represents a final assessment with respect to the tax liabilities referenced therein.

11. Ford maintains that the sales and use tax liability referenced in the Proposed Assessment reflects the Department's unlawful attempt to pyramid the tax on the same tangible personal property because the cost of the Repairs is included in the price of the Ford vehicle sold by the Dealerships to the Retail Purchasers.

12. Ford further contends that it is the Retail Purchasers, and not Ford, that are responsible for use tax, if any, on the Repairs. Each Retail Purchaser, as recipient of the benefits of the Repairs, represents the ultimate consumer for purposes of the Florida use tax.

13. Alternatively, Ford asserts that it is the Dealerships, and not Ford, that are responsible for use tax, if any, on the Repairs. It is the Dealerships, and not Ford, that are liable for the Florida use tax because it is the Dealerships that own the parts and materials and take them out of their inventory for purposes of completing the Repairs.

14. Through this Complaint, Ford seeks a judgment from this Court declaring that: (1) Ford is not liable for sales or use tax on the Repairs because the anticipated cost of all Repairs is

included in the sale price of the Ford vehicle sold by the Dealerships to the Retail Purchasers; (2) in the alternative, Ford is not liable for use tax on the Repairs because it is each Retail Purchaser who receives the benefits of the Repairs; (3) in the alternative, Ford is not liable for use tax on the Repairs because it is the Dealerships that own the parts and materials and take them out of inventory to complete the Repairs; (4) Ford is not liable for the disputed tax liability because the Notice of Reconsideration wrongly states that Ford is responsible for "sales tax" with respect to the Repairs and Ford did not make taxable sales of the parts and materials; and (6) any and all penalties imposed under Chapter 212, Florida Statutes, must be abated as any noncompliance by Ford was due to reasonable cause and not willful negligence, willful neglect or fraud.

Factual and Legal Allegations

15. All factual allegations below are true and correct for all tax years comprising the Audit Period unless specifically stated otherwise.

16. Ford is a motor vehicle manufacturer headquartered in Dearborn, Michigan and is in the business of designing, manufacturing, marketing and selling motor vehicles to the Dealerships.

17. Ford sold the motor vehicles that it designed and manufactured through a network of independent retail dealers located across the United States, including the Dealerships.

18. All new vehicles that Ford manufactured were covered by a written warranty (each, a "Warranty") to be provided by the Dealerships to each Retail Purchaser.

19. The Dealerships furnished a Warranty to each Retail Purchaser.

20. The terms of the Warranty Administration Manual existing between Ford and the Dealerships (the "Manual") controlled all reimbursements from Ford to the Dealerships for the Repairs.

21. The Manual stated that Dealerships were to complete the Repairs pursuant to a recommended set of guidelines and also provided that certain of the Repairs were authorized to be completed on a "case-by-case" basis even if the Repairs were made after the stated expiration of the terms of the Warranty.

22. The Dealerships participated in Ford's Dealer Self Authorization Program with respect to the Repairs performed under the terms of the Manual.

23. The vast majority of the Repairs furnished by the Dealerships were self authorized pursuant to Ford's Dealer Self Authorization Program.

24. If a Dealership was unable to self authorize a Repair under Ford's Dealer Self Authorization Program, advanced approval was needed from a Ford representative.

25. In all cases in which a Dealership was required to seek advanced approval for a Repair, Ford approved the repair and reimbursed the Dealership for such costs.

26. For the period January 1, 2006 until on or about October 1, 2008, Ford budgeted one internal account from which each of the Dealerships received reimbursement for the Repairs. During this period, Ford did not maintain individual budgets with the Dealerships for the Repairs.

27. From on or about October 1, 2008 through December 31, 2008, Ford maintained dealer-by-dealer budgets for the Repair reimbursements. Despite the fact that Ford used dealer-by-dealer budgets for the period October 1, 2008 through December 31, 2008, almost without exception, reimbursements submitted by the Dealerships with respect to the Repairs during this period were fully paid by Ford.

28. Almost without exception, the Repairs were done by the Dealerships without knowledge by Ford.

29. Ford did not require that the Dealerships use any particular part or material in making the Repairs.

30. All parts and materials necessary for the Repairs were owned by and came out of the inventory of the Dealerships.

31. For purposes of reimbursement, the Dealerships relayed any and all required information with respect to the completed Repairs to Ford.

32. After receiving the information relating to the Repairs, Ford reimbursed the Dealerships for the cost of such Repairs under the terms of the Manual.

33. The manufacturer's suggested retail price ("MSRP") of the Ford vehicles sold by the Dealerships was determined by Ford and in all cases included the anticipated cost of the Repairs.

34. The sale of Ford vehicles by the Dealerships was subject to Florida sales tax calculated on the retail sales price of such motor vehicles.

35. The Dealerships collected and remitted to the Department all applicable sales tax due on their sales of new Ford vehicles to Retail Purchasers.

COUNT I

**FORD IS NOT LIABLE FOR SALES AND USE TAX WITH RESPECT TO THE
REPAIRS BECAUSE ALL APPLICABLE TAX WAS PREVIOUSLY COLLECTED
AND REMITTED TO THE DEPARTMENT BY THE DEALERSHIPS**

36. Ford realleges and reincorporates the allegations of paragraphs 1 through 35 as if fully set forth herein.

37. The Florida sales and use tax are mutually exclusive and must be administered by the Department in a manner that avoids duplication.

38. Under Section 212.12(12), Florida Statutes, the Florida sales and use tax is imposed on the end consumer or "last retail sale."

39. Under Section 212.02(16), Florida Statutes, the Florida sales and use tax is calculated based on the "sales price" of the tangible personal property.

40. Without exception, the anticipated cost of the Repairs was included by Ford in the MSRP of new Ford vehicles sold by the Dealerships to Retail Purchasers.

41. The "sales price" charged by the Dealerships with respect to the sales of new Ford vehicles to Retail Purchasers included the anticipated cost of all Repairs.

42. On each sale of a new Ford vehicle, the Retail Purchasers paid the Dealerships a "sales price" that included the anticipated cost of all Repairs.

43. The Dealerships collected and remitted to the Department any and all sales tax due on the sale of new Ford vehicles to Retail Purchasers based on the retail "sales price."

44. Because the applicable sales tax on the sale of new Ford vehicles to Retail Purchasers was collected by the Dealerships and remitted to the Department on the anticipated cost of *all* Repairs, it is unlawful for the Department to *again* seek tax with respect to the *same* Repairs.

45. Ford is not liable for use tax on the parts and materials owned and used by the Dealerships to complete the Repairs for Retail Purchasers because the Department has *already received* any and all sales tax due from the Dealerships with respect to the cost of the *same* Repairs at issue in this action.

COUNT II

**FORD IS NOT LIABLE FOR USE TAX WITH RESPECT TO THE REPAIRS
BECAUSE IT IS THE RETAIL PURCHASER THAT RECEIVED THE BENEFITS
RELATING TO SUCH REPAIRS**

46. Ford realleges and reincorporates the allegations of paragraphs 1 through 45 as if fully set forth herein.

47. Section 212.05(1)(B), Florida Statutes, provides that use tax is imposed on tangible personal property when it is not sold, but is "used, consumed, distributed, or stored for use or consumption in this state[.]"

48. Section 212.02(20), Florida Statutes, defines the term "use" for purposes of the Florida use tax as "the exercise of any right or power over tangible personal property incident to the ownership thereof, or interest therein[.]"

49. In order for the Florida use tax to be imposed the taxpayer must have an ownership of other interest in the tangible personal property entitling the taxpayer to exercise a right or power over the property.

50. Ford never had title or possession to the parts or materials used by the Dealerships to complete the Repairs for Retail Purchasers.

51. On completion of the Repairs by the Dealerships, the Retail Purchasers received title to the parts and materials to make such Repairs.

52. On completion of the Repairs by the Dealerships, the Retail Purchasers received possession of the parts and materials to make such Repairs.

53. Having received both title and possession to the parts and materials used to make the Repairs, it is the Retail Purchasers that are responsible for the use tax.

54. Ford is not liable for use tax on the Repairs because it is the Retail Purchaser that is responsible for use tax relating to the receipt of title and possession to the parts and materials used by the Dealerships in making such Repairs.

COUNT III

**FORD IS NOT LIABLE FOR USE TAX WITH RESPECT TO THE REPAIRS
BECAUSE IT IS THE DEALERSHIPS THAT TAKE THE PARTS AND MATERIALS
OUT OF INVENTORY TO COMPLETE SUCH REPAIRS**

55. Ford realleges and reincorporates the allegations of paragraphs 1 through 54 as if fully set forth herein.

56. Section 212.05(1)(B), Florida Statutes, provides that use tax is imposed on tangible personal property when it is not sold, but is “used, consumed, distributed, or stored for use or consumption in this state[.]”

57. Section 212.02(20), Florida Statutes, defines the term “use” for purposes of the Florida use tax as “the exercise of any right or power over tangible personal property incident to the ownership thereof, or interest therein[.]”

58. In order for the Florida use tax to be imposed the taxpayer must have an ownership of other interest in the tangible personal property entitling the taxpayer to exercise a right or power over the property.

59. Ford never had title or possession to the parts or materials used by the Dealerships to complete the Repairs for Retail Purchasers.

60. The Dealerships had complete and unilateral discretion with respect to the purchases of parts and materials used to make the Repairs.

61. Ford had no direct or indirect control over the purchasing decisions of Dealerships with respect to the parts and materials purchased, owned and held in inventory by the Dealerships for purposes of completing the Repairs for Retail Purchasers.

62. The Dealerships had both title and possession to the parts and materials used to make the Repairs for Retail Purchasers.

63. All parts and materials used to complete the Repairs for Retail Purchasers were owned by taken out of the inventory of the Dealerships.

64. Because the Dealerships have both title and possession to the parts and materials held in inventory to make the Repairs, it is the Dealerships that are responsible for the use tax relating to such Repairs for Retail Purchasers.

65. Ford is not liable for use tax on the Repairs because it is the Dealerships that had both title and possession to the parts and materials relating to the Repairs for Retail Purchasers. Thus, the Dealerships, not Ford, are responsible for the use tax on the parts and materials used to make the Repairs for Retail Purchasers.

COUNT IV

FORD IS NOT RESPONSIBLE FOR THE DISPUTED TAX LIABILITY BECAUSE FORD CANNOT BE LIABLE FOR "SALES TAX" WITH RESPECT TO THE PARTS AND MATERIALS USED BY DEALERSHIPS TO MAKE THE REPAIRS FOR RETAIL PURCHASERS

66. Ford realleges and reincorporates the allegations of paragraphs 1 through 65 as if fully set forth herein.

67. Under Florida law, the legal conclusions contained in a notice of reconsideration reflect the Department's final administrative decision with respect to the tax liability disputed therein.

68. The legal conclusions stated in the Notice of Reconsideration finalized the asserted assessment contained in the Proposed Assessment.

69. The Notice of Reconsideration concludes that Ford is liable for "sales tax" with respect to the parts and materials used by the Dealerships in making the Repairs for Retail Purchasers.

70. Chapter 212, Florida Statutes, defines "retail sale" or a "sale at retail" as "a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter[.]"

71. The Retail Purchasers are the consumers or end users of all parts and materials relating to the Repairs performed by the Dealerships.

72. Ford did not make a sale of any parts or materials to Retail Purchasers relating to the Repairs performed by the Dealerships.

73. Because Ford did not make a "retail sale" or a "sale at retail" relating to the parts and materials used by Dealerships in completing the Repairs for Retail Purchasers, the Department's ultimate decision finalizing the assessment contained in the Notice of Reconsideration is in error. Therefore, the "sales tax" liability confirmed against Ford in the Notice of Reconsideration must be abated in full.

COUNT V

ANY AND ALL PENALTIES IMPOSED AGAINST FORD UNDER CHAPTER 212, FLORIDA STATUTES MUST BE ABATED IN FULL

74. Ford realleges and reincorporates the allegations of paragraphs 1 through 73 as if fully set forth herein.

75. The Department has imposed penalties against Ford under Chapter 212, Florida Statutes, for noncompliance with the applicable Florida sales and use tax laws.

76. The imposition of penalties under Chapter 212, Florida Statutes, is inappropriate where a taxpayer demonstrates that any noncompliance was due to reasonable cause, and not due to willful negligence, willful neglect or fraud.

77. Fla. Admin. Code Rule 12-13.002(3) defines "reasonable cause" for this purpose as the taxpayer's exercise of "ordinary care and prudence in complying with a revenue law of this state."

78. Any alleged noncompliance by Ford with respect to this dispute was due to reasonable cause and not willful negligence, willful neglect or fraud because Ford reasonably believed that it was not responsible for Florida sales or use tax with respect to the parts and materials owned and used by the Dealerships to make the Repairs for Retail Purchasers who ultimately obtained title and possession to such parts and materials.

79. Prior to the Audit Period, the Department had not previously audited Ford with respect to the Florida sales and use taxation of the Repairs.

80. Ford fully cooperated with the Department with respect to the Department's audit of the Florida sales and use taxation of the Repairs for the Audit Period.

81. Ford has adequately demonstrated its exercise of ordinary care and prudence in complying with the Florida sales and use tax laws. Because Ford has established reasonable cause for the alleged failure to comply with the Florida sales and use tax laws, any and all penalties imposed by the Department under Chapter 212, Florida Statutes, must be abated in full.

WHEREFORE, Ford respectfully requests that judgment be entered against the Department and in favor of Ford:

a. declaring that Ford is not liable for use tax on the Repairs because the anticipated cost of all such Repairs is included in the sale price of the Ford vehicle sold by the Dealerships to the Retail Purchasers;

b. alternatively, declaring that Ford is not liable for use tax on the Repairs because it is the Retail Purchasers that receive title and possession to the parts and materials used by the Dealerships to complete the Repairs;

c. alternatively, declaring that Ford is not liable for use tax on the Repairs because it is the Dealerships that take the parts and materials out of inventory to make the Repairs for Retail Purchasers;

d. alternatively, declaring that Ford is not liable for the disputed tax liability as finally stated in the Notice of Reconsideration because Ford did not make any "retail sale" or "sale at retail" of the parts and materials used by Dealerships to complete the Repairs for Retail Purchasers;

e. declaring that any and all penalties imposed by the Department under Chapter 212, Florida Statutes, must be abated in full because Ford has adequately demonstrated reasonable cause for any alleged failure to comply with the Florida sales and use tax laws; and

f. Such other relief as is just and equitable.

DATED this 30th day of August, 2011

AKERMAN-SENERFITT

By: 

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