

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

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DEPARTMENT OF REVENUE  
OFFICE OF GENERAL COUNSEL

CIRCLE K ENTERPRISES, INC.

Plaintiff,

v.

Case no. 2010 CA 1353

FLORIDA DEPARTMENT OF REVENUE,

Defendant.

**DEFENDANT'S ANSWER TO THE COMPLAINT**

The defendant, Florida Department of Revenue (DOR), answers the allegations set forth in the complaint.

**Identity of the Parties**

- 1. Admitted.
- 2. Admitted.

**Jurisdiction**

- 3. Admitted.
- 4. Admitted, except for 25 percent of the refund requested for tax year 2005 which is barred by the statute of limitations.

- 5. Admitted.
- 6. Admitted.
- 7. Admitted.
- 8. Admitted.

- 9. Admitted, except for 25 percent of the refund requested for tax year 2005 which is barred by the statute of limitations.

10. Admitted.

**Background Allegations Allegedly Common to All Counts**

11. DOR is without knowledge whether all alleged facts alleged in the complaint are true for all periods at issue in this case.

12. Admitted.

13. Admitted.

14. The transfer agreement speaks for itself.

15. The license agreement speaks for itself.

16. The license agreement speaks for itself.

17. DOR admits that Enterprises timely filed Florida corporate income tax returns for each of the refund years. DOR denies that Enterprises' determination that the royalties Stores paid Enterprises was error.

**Count I  
Income Subject to FCIT**

18. DOR incorporates here its answers in paragraphs 1 through 17, above.

19. Section 220.11(1), Florida Statutes, speaks for itself.

20. Admitted.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

**Count II**  
**Apportionment – Sales Factor**

28. DOR incorporates here its answers in paragraphs 1 through 27, above.

29. Section 220.15, Florida Statutes, speaks for itself.

30. Section 220.15, Florida Statutes, speaks for itself.

31. Section 220.15, Florida Statutes, speaks for itself. DOR admits Enterprises did not own real or tangible property in Florida during the refund years.

32. Section 220.15, Florida Statutes, speaks for itself. DOR admits Enterprises had no employees in Florida during the refund years.

33. Denied as stated.

34. Admitted.

35. Section 220.15(5)(a), Florida Statutes, speaks for itself.

36. Section 220.15(5)(a), Florida Statutes, speaks for itself.

37. Admitted.

38. DOR denies that section 220.15, Florida Statutes, governs apportionment in this case.

39. DOR denies that section 220.15, Florida Statutes, governs apportionment in this case.

40. DOR denies that section 220.15, Florida Statutes, governs apportionment in this case.

41. Denied.

42. DOR denies there was an error in the original return.

43. The Notice of Reconsideration speaks for itself.

44. Section 220.152, Florida Statutes, speaks for itself.

45. The *Roger Dean* case speaks for itself.

46. DOR denies that it ignores the legislature's direction and asserts that the necessary requirements of section 220.152, Florida Statutes, apply.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

**Count III**  
**Apportionment – Property Factor**

51. DOR incorporates here its answers in paragraphs 1 through 50, above.

52. The sales and property factors speak for themselves, respectively.

53. Admitted.

54. Admitted; and, further, DOR's application of section 220.152, Florida Statutes, fairly reflects Enterprises' tax base attributable to Florida.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

**Count IV**  
**Nexus**

59. DOR incorporates here its answers in paragraphs 1 through 58, above.

60. Admitted.

61. Admitted.

62. Admitted.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

**Count V  
Interest**

68. DOR incorporates here its answers in paragraphs 1 through 67, above.

69. Section 220.723, Florida Statutes, speaks for itself.

70. Admitted.

71. Section 220.723, Florida Statutes, speaks for itself.

**Enterprises Prayer for Relief**

1 – 6. DOR admits that Enterprises identifies in its prayer for relief, paragraphs 1 through 7, the relief to which Enterprises considers itself entitled.

DOR denies that Enterprises is entitled to each item of relief it seeks.

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### General Denial

All matters not specifically admitted are denied.

### DOR Request for Relief

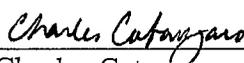
WHEREFORE DOR requests the court to uphold in full DOR's assessment of tax, interest and penalty, to deny in full the plaintiff's request for relief and to grant DOR all relief that is just and equitable.

### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing, Defendant's Answer to the Complaint, was mailed to the plaintiff's attorney, James K. Ervin, Esq., Holland & Knight, P. O. Drawer 810, Tallahassee, FL 32302, this 25<sup>th</sup> day of October, 2010.

Respectfully submitted,

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