

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

GATE FUEL SERVICE, INC.,

Plaintiff,

Case No. 12-CA-379

vs.

STATE OF FLORIDA,  
DEPARTMENT OF REVENUE,

Defendant.

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ACCEPTANCE OF SERVICE

The undersigned hereby accepts service of the attached Summons and  
Complaint on behalf of the Defendant, State of Florida, Department of Revenue,  
on this 7<sup>th</sup> day of May, 2012.

April Warner

April Warner, Deputy Agency Clerk  
Office of the General Counsel  
Florida Department of Revenue  
2450 Shumard Oak Blvd., 1-2434  
Tallahassee, Florida 32399

CERTIFICATE OF SERVICE

I hereby certify that this 7<sup>th</sup> day of May, 2012, a true and correct copy of the foregoing has been delivered by U.S. mail to Rex Ware, Fowler, White, Boggs, P.A., 101 N. Monroe Street, Ste. 1090, Tallahassee, Florida 32301.



April Warner, Deputy Agency Clerk  
Office of the General Counsel  
Florida Department of Revenue  
2450 Shumard Oak Blvd., 1-2434  
Tallahassee, Florida 32399

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT, IN  
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GATE FUEL SERVICE, INC.,

Plaintiff,

v.

Case No. 12 CA 379

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

**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 Feb, 8, 2012.

Bob Inzer  
Clerk of Circuit Court

By: \_\_\_\_\_

*[Handwritten Signature]*  
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.

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

GATE FUEL SERVICE, INC.,

Plaintiff,

v.

STATE OF FLORIDA,  
DEPARTMENT OF REVENUE,

Defendant.

Case No. 12CA 379

FILED  
CLERK OF CIRCUIT COURT  
LEON COUNTY, FLORIDA

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COMPLAINT

Plaintiff, Gate Fuel Service, Inc. ("Gate" 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, authorized to do business in this State, operating at various locations in Florida. 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 Florida's sales tax as provided in Chapter 212, Florida Statutes. The Department's address for the purpose of this proceeding is the General Counsel's Office, 2450 Shumard Oaks Blvd., Building 1, Tallahassee, FL 32399-0100.

## VENUE AND JURISDICTION

3. Plaintiff timely filed for a refund of sales taxes and interest it had previously paid to DOR. The basis of the refund claim was that Plaintiff paid tax in error or where no tax was due concerning its purchase of underground gasoline storage tanks, piping and related systems and equipment for use at its Florida locations. Plaintiff claimed a total refund of \$45,071.00, plus further additional statutory interest.

4. On or about January 27, 2011, DOR issued a Notice of Refund Denial to Plaintiff.

5. On or about March 15, 2011, Plaintiff timely filed a protest of the denial. See Exhibit A attached hereto.

6. On or about December 12, 2011, DOR issued a Notice of Decision continuing to deny the refund to Plaintiff. See Exhibit B attached hereto.

7. Plaintiff has complied with all conditions precedent to filing this complaint and the complaint is timely filed.

8. 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.

9. 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 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 remit tax on the purchase of similar systems and equipment in the future for its ongoing business operations.



## FACTS

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

11. Plaintiff operates gasoline service stations with convenience stores in the southeastern United States with locations in the State of Florida. The Plaintiff's locations offer for sale a selection of general merchandise, gasoline and other petroleum products.

12. In order to comply with certain state and federal environmental protection laws and regulations, Plaintiff purchased gasoline storage tanks, blending, piping, monitoring and delivery/dispensing systems and equipment for use at its Florida locations in order to blend, filter, dispense and sell gasoline and other petroleum products at its store locations. The primary purpose of the particular systems and equipment purchased, under the circumstances, was to control or abate pollution or contaminants in the manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location.

13. All of the equipment purchased was subjected to approval, inspection and regulation by the Florida Department of Environmental Regulation as part of its programs to prevent the leak or spill of toxic products.

14. Prior to the purchase of this new equipment, Plaintiff could not manufacture, compound, blend or filter grades of gasoline to produce new products. With the purchase of this new equipment, Plaintiff could do so to create a new and distinctive product. Plaintiff purchased the systems and equipment prior to the date it began productive operations for the manufacture of the new product.

15. Plaintiff paid sales tax upon the purchase of the referenced equipment, however, because such purchase of pollution control equipment is exempt from sales tax per Section 212.051, Florida Statutes, Plaintiff paid sales tax in error or when no tax was due.

16. Alternatively, because the equipment purchased by Plaintiff was industrial equipment purchased for use in a new business that manufactured, compounded or produced tangible personal property for sale at fixed locations, Plaintiff paid sales tax in error or where no tax was due.

17. Plaintiff is thus entitled to a refund of the taxes it paid in error or where no taxes were due, plus applicable interest.

#### **STATUTES AND RULES**

18. Chapter 212, Florida Statutes, imposes a sales tax on the sale of tangible personal property in this State. However, certain sales of tangible property are excluded or otherwise exempted from the sales tax based upon the nature of the property or the use of the property.

19. Section 212.051, Florida Statutes, states, in part:

(1) Notwithstanding any provision to the contrary, sales, use, or privilege taxes shall not be collected with respect to any facility, device, fixture, equipment, machinery, specialty chemical, or bioaugmentation product used primarily for the control or abatement of pollution or contaminants in manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location, or any structure, machinery, or equipment installed in the reconstruction or replacement of such facility, device, fixture, equipment, or machinery. To qualify, such facility, device, fixture, equipment, structure, specialty chemical, or bioaugmentation product must be used, installed, or constructed to meet a law implemented by, or a condition of a permit issued by, the Department of Environmental Protection; however, such exemption shall not be allowed unless the purchaser signs a certificate stating that the facility, device, fixture, equipment, structure, specialty chemical, or bioaugmentation product to be exempted is required to meet such law or condition.

20. Further, Section 212.08(5)(b), Florida Statutes, states, in part:

1. Industrial machinery and equipment purchased for ...use in new businesses which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used in a new business in this state. Such purchases must be made prior to the date the business first begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

21. The equipment at issue in this proceeding was exempt from sales tax either because it was qualified pollution control equipment pursuant to Section 212.051, Florida Statutes, or because, pursuant to Section 212.08(5)(b), Florida Statutes, it was industrial machinery and equipment purchased for use in a new business which manufactures, processes, compounds or produces items of tangible personal property for sale at a fixed location in this State.

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.

### COUNT I

24. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 23 and further alleges:

25. As set forth above, Chapter 212, Florida Statutes, imposes a sales tax on the purchase of tangible personal property.

26. However, pursuant to Section 212.051, Florida Statutes, no tax is due on the purchase of tangible personal property “used primarily for the control or abatement of pollution or contaminants in manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location.”

27. The systems and equipment purchased by Plaintiff, as identified in the refund application, were all subject to approval by the Florida Department of Environmental Regulation and were used primarily for the control or abatement of pollution or contaminants in Plaintiff’s business of manufacturing, processing, compounding, or producing gasoline products for sale at its fixed locations in the State. Plaintiff could not replace the systems and equipment it purchased with non-conforming or non-DEP approved systems and equipment.

28. Thus, Plaintiff’s purchases of the subject systems and equipment were not subject to Florida sales tax and taxes paid thereon were paid in error or where no tax was due.

29. Pursuant to Section 215.26, Florida Statutes, because Plaintiff paid tax in error or where no tax was due, Plaintiff is entitled to a refund of the sales tax it paid.

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

## COUNT II

31. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 30 and further alleges:

32. As set forth above, Chapter 212, Florida Statutes, imposes a sales tax on the purchase of tangible personal property.

33. However, pursuant to Section 212.08(5)(b)1., Florida Statutes, “industrial machinery and equipment purchased for ...use in new businesses which manufacture, process,

compound, or produce for sale items of tangible personal property at fixed locations are exempt from the tax imposed by this chapter ....”

34. The systems and equipment purchased by Plaintiff, as identified in the refund application, consisted of industrial machinery and equipment purchased for use in the new business of altering, compounding, blending and filtering a gasoline product that it could not sell prior to the purchase of the new machinery and equipment. Plaintiff’s operations, after the purchase of the new systems and equipment, qualified as “new” businesses manufacturing or producing tangible personal property for sale at fixed locations in this State.

35. Thus, Plaintiff’s purchases of the subject systems and equipment were not subject to Florida sales tax and taxes paid thereon were paid in error or where no tax was due.

36. Pursuant to Section 215.26, Florida Statutes, because Plaintiff paid tax in error or where no tax was due, Plaintiff is entitled to a refund of the sales tax it paid.

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

### COUNT III

38. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 37 and further alleges:

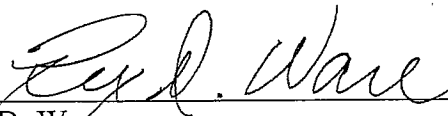
39. Section 213.255, Florida Statutes, provides: “Interest shall be paid on overpayments of taxes, payment of taxes not due, or taxes paid in error” when certain conditions are met. Plaintiff has met all the subject conditions.

40. 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 and pay the refund plus 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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Attorneys for Plaintiff