

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

ST. ROCH DESIGN DISTRICT, LLC,

Plaintiff,

Case No.

v.

FLORIDA DEPARTMENT OF REVENUE,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, ST. ROCH DESIGN, DISTRICT, LLC (“St. Roch”) hereby files this Complaint for Declaratory Judgment against Defendant, FLORIDA DEPARTMENT OF REVENUE (“Department”), and alleges:

NATURE OF THE ACTION

1. This is an action for declaratory judgment brought pursuant to chapter 86, Florida Statutes (“F.S.”).
2. St. Roch seeks a declaratory judgment that (1) its agreement with independent contractors is a non-taxable agreement for services; (2) that sales and use tax is not due under the service agreement because St. Roch is not engaged in the business of renting, leasing, letting, or granting a license for the use of real property; (3) that sales and use tax is not due under the agreement because St. Roch not engaged in the business of selling, renting, or leasing tangible personal property; and (4) that sales and use tax due on its service agreement would constitute an improper duplication of tax.

PARTIES

3. St. Roch is a Florida limited liability corporation with its principal place of business in Miami, Florida. For this proceeding, St Roch's address is that of the undersigned counsel.

4. The Department is an agency of the State of Florida with the responsibility for the administration and enforcement of Florida's sales and use tax laws as provided in Chapter 212, Florida Statutes ("F.S."). For this proceeding, the Department's is Office of the General Counsel, P.O. Box 6668, Tallahassee, FL 32314.

VENUE AND JURISDICTION

5. Pursuant to section 86.011, F.S., this Court has subject matter jurisdiction to determine St. Roch's rights, obligations and responsibilities.

6. Pursuant to section 47.011, F.S., venue is proper in this county because that is where the Department is located.

APPLICABLE LAW

7. Article VII, section 1(a) of the Florida Constitution provides that, "no tax shall be levied except in pursuance of law."

8. Further, it is well established that tax laws are to be construed strongly in favor of the taxpayer and against the government, and all ambiguities are to be resolved in the taxpayer's favor. *Maas Bros. v. Dickinson*, 195 So. 2d 193 (Fla. 1967).

a. Non-taxable Services

9. Pursuant to specific statutory mandate, only certain services are subject to sales and use tax. § 212.05, F.S. These include: protection services, nonresidential cleaning services, nonresidential pest control services, and information services. § 212.05(1)(i)1., F.S. Without statutory authority, taxes on services cannot be levied. *Warning Safety Lights of Georgia, Inc. v. Fla. Dep't of Revenue*, 678 So. 2d 1377 (Fla. 4th DCA 1996).

b. Rental of Real Property

10. A person who engages in the business of renting, leasing, letting or granting a license for the use of real property in Florida is exercising a taxable privilege, unless such property is otherwise exempt from taxation. § 212.031(1)(a), F.S.

11. Additionally, the tax is due on the rental or license fee paid by the “tenant or person actually occupying, using, or entitled to the use” the real property and is charged by the person receiving the rent or payment. §§ 212.031(2)-(3), F.S.;

12. The Department has adopted administrative rule 12A-1.070(4)(b) to implement section 212.031, F.S. This rule similarly provides that the “tax shall be paid . . . on all considerations **due and payable by the tenant or other person** actually occupying, using, or entitled to use any real property to his landlord or other person for the privilege of use, occupancy, or the right to use or occupy any real property for any purpose.” (Emphasis added).

c. Rental of Tangible Personal Property

13. A person who engages in the business of leasing or renting tangible personal property in Florida is also exercising a taxable privilege. § 212.05, F.S.

14. Section 212.02(10)(g), F.S., defines “lease” or “rental” as the “leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a **consideration**, without transfer of the title of such property . . .” (Emphasis added).

15. Additionally, the tax is “due and payable by the lessee to the lessor” on the total consideration agreed to by the parties.

d. Duplication of sales tax.

16. Section 212.12(12), F.S., states that there shall be “no duplication or pyramiding of the tax.”

FACTS

17. St. Roch has the legal and contractual right to operate a full-service food hall in Miami-Dade County, Florida. As a requirement of its lease of the food-hall, St. Roch is obligated to remit sales tax to its landlord.

18. Additionally, as part of its business, St. Roch enters into service agreements with various independent contractors. The primary purpose of the agreements is for the independent contractors to provide the service of preparing specified food products from stalls within the food hall.¹

19. Pursuant to the express terms of the service agreement, St. Roch “**does not lease any space or equipment**” to the independent contractors and **receives no consideration** from the independent contractors. (Emphasis added).

20. Therefore, the stalls and any equipment used in the preparation of the food products are not rented or leased by St. Roch to the independent contractors and there is no consideration received by St. Roch for the contractor’s use of such.

21. Rather, under the service agreement, the independent contractors are responsible for purchasing specified food products and specified equipment to be used in preparing the food products.

22. Although St. Roch provides some equipment and the food product preparation can occur in the kitchen and prep room at the food hall, St. Roch does not receive any consideration for such use.

23. After being prepared, the independent contractors, on behalf of St. Roch, sell the food products to the customers.

1. A copy of the standard form agreement is attached hereto as Exhibit A and incorporated herein.

24. Sales tax is collected and remitted by St. Roch on the sales of the food products. Additionally, pursuant to the service agreement, all revenues from the food product sales become the sole property of St. Roch.

25. In exchange for their services in preparing the food products, St. Roch then pays the independent contractors a portion of the revenue derived from the food product sales.

26. Thus, there is nothing due and payable by the independent contractors to St. Roch in exchange for their use of the stalls or any equipment.

27. On September 7, 2017, St. Roch requested a Letter of Technical Advice from the Department requesting its advise on whether sales tax is due under the agreement with independent contractors.²

28. On September 21, 2017, the Department issued a response concluding that the total revenues retained by St. Roch and those paid to the independent contractors are subject to sales tax as commercial rentals.³

29. Without any basis in fact, the Department concluded that the revenues were consideration for a license to use real property.

30. However, pursuant to the agreement, St. Roch does not receive any consideration from the independent contractors for their use of the stalls or otherwise. Further, the Department is already receiving sales tax under the lease between St. Roch and its landlord and on the food product sales.

31. The Department's conclusion that the revenues were consideration for a license to use the real property is, therefore, contrary to the express terms of the agreement. Additionally,

2. A copy of the request is attached hereto as Exhibit B.

3. A copy of the Letter of Technical Advice is attached hereto as Exhibit C.

the Department's mischaracterization of an agreement for assessing sales tax under section 212.031, F.S., has previously been rejected. *See Dep't of Revenue v. Ruehl No. 925, LLC*, 76 So. 3d 389 (Fla. 1st DCA 2011); *Lord Chumley's of Stuart, Inc. v. Dep't of Revenue*, 401 So. 2d 817 (Fla. 4th DCA 1981).

32. St. Roch disputes the Department's conclusion and now seeks a declaration of its rights as set forth herein.

33. St. Roch has retained the services of the undersigned to represent it in this action and is obligated to pay its attorney a reasonable fee for its services.

34. All conditions precedent to the filing of this action have been performed, waived or otherwise satisfied.

COUNT I
DECLARATORY JUDGMENT

35. Plaintiff adopts, realleges and incorporates by reference the allegations contained in paragraphs one (1) through thirty-four (34) above.

36. As more fully explained above, there exists a bona fide, actual, and present practical need for a declaration that the agreement between St. Roch and its independent contractors is a non-taxable service agreement.

37. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy regarding respective rights and obligations of St. Roch.

38. The rights and obligations of St. Roch are dependent upon the facts or the law applicable to those facts.

39. St. Roch and the Department have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or in law.

40. As set forth above, the purpose of the agreement is for the independent contractors to provide a service to St. Roch.

41. The service performed under the agreement is for the preparation of specified food products under the terms of the agreement.

42. Because the agreement is for independent contractors to provide a food service, and food services are not included in the enumerated list of taxable services under section 212.05, F.S., the agreement is a non-taxable service agreement.

43. Issuance of a declaratory judgment as to the rights and obligations of the parties will, therefore, contribute to the efficient resolution of this dispute and any future dispute arising thereunder.

44. All antagonistic and adverse interests are before the Court.

WHEREFORE, Plaintiff respectfully requests this Court grant the following relief:

- A. Enter a Judgment that St. Roch is not liable for sales tax as its agreement with independent contractors is a non-taxable agreement for services; and
- B. Provide such other relief as the Court deems appropriate.

COUNT II
DECLARATORY JUDGMENT

45. Plaintiff adopts, realleges and incorporates by reference the allegations contained in paragraphs one (1) through thirty-four (34) above.

46. As more fully explained above, there exists a bona fide, actual, and present practical need for a declaration that St. Roch is not liable for sales tax under section 212.031, F.S.

47. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy regarding respective rights and obligations of St. Roch.

48. The rights and obligations of St. Roch are dependent upon the facts or the law applicable to those facts.

49. St. Roch and the Department have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or in law.

50. As set forth above, there is nothing due and payable from the independent contractors to St. Roch in exchange for the use of the stalls or any other real property.

51. St. Roch does not otherwise receive any consideration from the independent contractors in exchange for the services provided.

52. Because there are no considerations due and payable by the independent contractors, St. Roch is not exercising a taxable privilege of renting, leasing, letting or granting a license for the use of the real property.

53. Issuance of a declaratory judgment as to the rights and obligations of the parties will, therefore, contribute to the efficient resolution of this dispute and any future dispute arising thereunder.

54. All antagonistic and adverse interests are before the Court.

WHEREFORE, Plaintiff respectfully requests this Court grant the following relief:

- A. Enter a Judgment that St. Roch is not liable for sales tax under section 212.031, F.S., as it is not engaged in the business of renting, leasing, letting or granting a license for the use of real property; and
- B. Provide such other relief as the Court deems appropriate.

COUNT III
DECLARATORY JUDGMENT

55. Plaintiff adopts, realleges and incorporates by reference the allegations contained in paragraphs one (1) through thirty-four (34) above.

56. As more fully explained above, there exists a bona fide, actual, and present practical need for a declaration that St. Roch is not liable for sales tax under section 212.05, F.S.

57. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy regarding respective rights and obligations of St. Roch.

58. The rights and obligations of St. Roch are dependent upon the facts or the law applicable to those facts.

59. St. Roch and the Department have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or in law.

60. As set forth above, there is nothing due and payable from the independent contractors to St. Roch in exchange for the use of any equipment.

61. St. Roch does not otherwise receive any consideration from the independent contractors in exchange for the services provided.

62. Because there are no considerations due and payable by the independent contractors, St. Roch is not exercising a taxable privilege of renting or leasing tangible personal property.

63. Issuance of a declaratory judgment as to the rights and obligations of the parties will, therefore, contribute to the efficient resolution of this dispute and any future dispute arising thereunder.

64. All antagonistic and adverse interests are before the Court.

WHEREFORE, Plaintiff respectfully requests this Court grant the following relief:

- A. Enter a Judgment that St. Roch is not liable for sales tax under section 212.05, F.S., as it is not engaged in the business of renting or leasing tangible personal property; and
- B. Provide such other relief as the Court deems appropriate.

COUNT IV
DECLARATORY JUDGMENT

65. Plaintiff adopts, realleges and incorporates by reference the allegations contained in paragraphs one (1) through thirty-four (34) above.

66. As more fully explained above, there exists a bona fide, actual, and present practical need for a declaration that sales and use tax due under the service agreement would be a duplication or pyramiding of tax.

67. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy regarding respective rights and obligations of St. Roch.

68. The rights and obligations of St. Roch are dependent upon the facts or the law applicable to those facts.

69. St. Roch and the Department have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or in law.

70. As set forth above, St. Roch remits sales tax to its landlord for the lease of the food hall.

71. Because sales tax is already collected and remitted on the lease of the food hall, tax due on the service agreement between St. Roch and its independent contractors would be a duplication or pyramiding of tax.

72. Issuance of a declaratory judgment as to the rights and obligations of the parties will, therefore, contribute to the efficient resolution of this dispute and any future dispute arising thereunder.

73. All antagonistic and adverse interests are before the Court.

WHEREFORE, Plaintiff respectfully requests this Court grant the following relief:

- A. Enter a Judgment that sales and use tax due under the service agreement would be a duplication or pyramiding of tax; and
- B. Provide such other relief as the Court deems appropriate.

Respectfully submitted this 5th day of January 2018,

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