

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA  
SOUTH COUNTY DIVISION

41 BY-PASS PROPERTIES OF VENICE, LLC,

Plaintiff,

v.

CASE NO.:

FLORIDA DEPARTMENT OF REVENUE,

Defendant.

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**COMPLAINT**

COMES NOW the Plaintiff, **41 BY-PASS PROPERTIES OF VENICE, LLC** (hereinafter the "Plaintiff"), by and through its undersigned attorney, and hereby files this action against the Defendant, **FLORIDA DEPARTMENT OF REVENUE** (hereinafter "DOR"), and states as follows:

**JURISDICTIONAL ALLEGATIONS**

1. This is a cause of action pursuant to Chapter 72 and Chapter 212, Florida Statutes contesting the validity of a sales and use tax assessment.
2. This Court has jurisdiction over this matter pursuant to Section 72.011(a), Florida Statutes.
3. Venue is proper in this Court pursuant to Section 72.011(4)(a), Florida Statutes, since Venice, Sarasota County, Florida, is where the Plaintiff maintains its principal commercial domicile in the State of Florida.
4. The Plaintiff has deposited \$48,250.00 into the registry of the court consisting of the contested amount, including accrued interest.

5. The Plaintiff has remitted to DOR the uncontested portion of the tax assessment, including accrued interest.

6. This complaint was filed on or before 60 days after the date the relevant tax assessment became final in accordance with Section 72.011(2)(a), Florida Statutes.

7. The Plaintiff has complied with all the applicable registration requirements under Chapter 212, Florida Statutes.

8. All conditions precedent to bringing this action have been met.

#### **FACTUAL ALLEGATIONS**

9. The Plaintiff is a limited liability company organized and existing under the laws of the State of Florida.

10. DOR is a Florida state agency.

#### **Naples Property**

11. On February 28, 2020, Plaintiff acquired the real property located at 3576 Plover Avenue, Naples, Florida (hereinafter the "Naples Property"), from Matthew N. Phillips and Mary J. Phillips (hereinafter "Mr. and Mrs. Phillips") via a Warranty Deed, a copy of which is attached hereto as Exhibit "1."

12. Prior to Plaintiff acquiring the Naples Property, Mr. and Mrs. Phillips were audited by the DOR.

13. On January 29, 2020, Mr. and Mrs. Phillips received a Notice of Intent to Conduct a Limited Scope Audit concerning the Naples Property.

14. The audit of the Naples Property consisted of the period beginning January 1, 2017, and ending December 31, 2019.

15. On August 31, 2020, Mr. and Mrs. Phillips received a Notice of Intent to Make Audit Changes concerning an audit of the Naples Property.

16. On September 10, 2020, Mr. and Mrs. Phillips remitted payment to DOR in the amount due as shown by the audit of the Naples Property.

17. On October 12, 2020, Mr. and Mrs. Phillips received a Notice of Proposed Assessment concerning the Naples Property, which showed (1) they had made a payment of the audit amount and (2) were owed a refund.

18. Nevertheless, on August 2, 2021, Plaintiff received a Notice of Final Assessment concerning the Naples Property that covered the period under the prior audit when it did not own the Naples Property, and for May 2020, a copy of which is attached hereto as Exhibit "2."

19. As a result of the audit and prior payment by Mr. and Mrs. Phillips, Plaintiff does not owe anything to DOR concerning the Naples Property other than the \$16.13 penalty assessed to May 2020.

Sarasota Property

20. Plaintiff owns the real property located at 1701 Cattlemen Road, Sarasota, Florida 34232 (hereinafter the "Sarasota Property").

21. Plaintiff was previously audited by the DOR concerning the Sarasota Property in Audit #200240951 that covered the period from July 1, 2015, through June 30, 2018.

22. Plaintiff paid the amounts assessed to the Sarasota Property under that audit.

23. Nevertheless, on August 2, 2021, Plaintiff received a Notice of Final Assessment concerning the Sarasota Property for the period encompassing January 1, 2017 through May 2020, a copy of which is attached hereto as Exhibit "3."

24. Under the prior audit of the Sarasota Property, Plaintiff paid all amounts owed up to and including May 2018.

25. A portion of the assessment concerning both the Naples Property and Sarasota Property is invalid for the following reasons:

a. The Plaintiff did not own the Naples Property until February 28, 2020. As a result, the assessments from January 1, 2017, up to and including December 2019, were improperly attributed to the Plaintiff. Notwithstanding the improper attribution, Mr. and Mrs. Phillips had already paid the assessments on the Naples Property for that period.

b. The Plaintiff paid the assessments for the Sarasota Property from January 1, 2017, up to and through May 2018, under a prior audit. As a result, assessments for that period were improperly assessed against the Plaintiff.

### **COUNT I (DECLARATORY JUDGMENT)**

The Plaintiff hereby realleges and incorporates the allegations contained in Paragraphs 1 - 25, above.

26. This is an action brought to contest the validity of a tax assessment by the DOR pursuant to Section 72.011, and Chapter 86, Florida Statutes.

27. DOR has assessed tax and interest against the Plaintiff in excess of triple of the tax that should have been assessed.

28. There is a bona fide, actual, present dispute between the Plaintiff and DOR regarding the validity of the contested tax assessment.

29. The dispute as to the validity of the contested tax assessment, along with the facts upon which this dispute is based, are properly before this Court for resolution in this action.

30. The Plaintiff is in doubt as to whether the contested tax assessment is valid.

31. The Plaintiff seeks a declaration as to the validity of the contested tax assessment.

WHEREFORE, the Plaintiff respectfully requests this Honorable Court to: (i) Take jurisdiction over this cause of action and the parties thereto; (ii) Enter an Order finding that no additional taxes are owed by the Plaintiff to the DOR other than that which has already been paid to the DOR; (iii) Enter an order invalidating the contested tax assessment; and (iv) Award the Plaintiff its costs incurred in bringing this action pursuant to Section 86.081, Florida Statutes, along with any other relief this Honorable Court may deem just and proper.

Dated: August 20, 2021

Respectfully Submitted,

**BERG & KESSLER**

**/s/ Bryan S. Kessler**

BY: \_\_\_\_\_

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