

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO.:
DIVISION:

NAJMABADI, INC,

Plaintiff,

v.

TAX COLLECTOR FOR PALM BEACH
COUNTY; and DEPARTMENT OF REVENUE
FOR THE STATE OF FLORIDA; and SAM'S
EAST, INC d/b/a SAM'S CLUB.

Defendants.

COMPLAINT

COMES NOW, Plaintiff, NAJMABADI, INC, by and through undersigned counsel, files this complaint against Defendants, TAX COLLECTOR FOR PALM BEACH COUNTY; DEPARTMENT OF REVENUE FOR THE STATE OF FLORIDA; and SAM'S CLUB, INC. and alleges as follows:

PARTIES

1. Plaintiff, NAJMABADI, INC, hereinafter ("Najmabadi") is a Florida Corporation whose principal address is in Palm Beach County, FL that operates and conducts business in, among others, Palm Beach County, Florida, and is therefore, within the jurisdiction of this Court.

2. Defendant, PALM BEACH COUNTY TAX COLLECTOR, will be referred to herein as the "TAX COLLECTOR".

3. Defendant, DEPARTMENT OF REVENUE FOR THE STATE OF FLORIDA, will be referred to herein as "DEPARTMENT OF REVENUE".

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4. Defendant, SAM'S EAST, INC. owner of the Fictitious Name Sam's Club, hereinafter "SAM'S CLUB" is an Arkansas Corporation that operates and conducts business in, among others, Palm Beach County, Florida, and is therefore, within the jurisdiction of this Court.

JURISDICTION, AND VENUE

5. The Circuit Court of Palm Beach County, Florida has jurisdiction over this civil action pursuant to Florida Statute §72.011 and Rule Chapter 12-6 F.A.C., as this certain action is to challenge the validity of Najmabadi's 2011-2012; 2012-2013; and 2013-2014 Sales Tax assessment.

6. This court has jurisdiction over Plaintiff's claims because, at all times material to this Complaint, Plaintiff conducted business in Palm Beach County, Florida.

7. Pursuant to Florida Statute §72.011(2)(a) this complaint is filed within sixty (60) days of the date of the Notice of Decision and the assessment is not final.

8. Pursuant to Florida Statute §72.011(3), no payment is required as Plaintiff contests all amounts owed from the Department of Revenue's Notice of Decision.

STATEMENT OF FACTS

9. On or about March 2012 to November 2013, Najmabadi had a material reduction in taxable sales from the closure of the Ocean Ave Bridge connecting Manalapan to Lantana, its Eastern road.

10. On or about January 30, 2015, Najmabadi received a Notice of Intent to Make Audit Changes for the period of July 1, 2011 to June 30, 2014; Audit Number 200168299.

11. On or about April 22, 2015; Najmabadi by and through undersign counsel sent the Department of Revenue their informal protest, attached as Exhibit "A" is the letter without attachments.

12. The argument behind the April 22, 2015, informal protest is the Tax Collector and Department of Revenue use of incorrect data from Sam's Club that negligently misrepresented Najmabadi's cigarette purchases for the period of November 2011 to May of 2012, excluding January, February, and March of 2012 where the Workpapers stated Najmabadi purchased (\$563,636.04) worth of cigarettes, attached as Exhibit "B."

13. The Tax Collector and Department of Revenue admitted in their Explanation of Items attached as Exhibit "C" that data from Sam's Club was incorrect and was not used; however, the Tax Collector and Department of Revenue negligently believed other data from Sam's Club was accurate.

14. Therefore, the Tax Collector and Department of Revenue developed a ratio with no basis in fact and based upon inaccurate data for Najmabadi's cigarette purchases for the period of July 2011 to June 2012, attached as Exhibit "D."

15. Thereafter, the Tax Collector and Department of Revenue developed another ratio with no basis in fact as to the actual amount of purchases by Najmabadi to determine the underreported sales taxes (2.488489), attached as Exhibit "E" and multiplied that ratio against accurate data my client provided, after applying yet another estimated ratio for the effective sales tax, to provide an estimation of additional taxes due attached as Exhibit "F," without providing any sources for national data used.

16. Furthermore, Najmabadi gave the complete record of all purchases from Sam's Club for the period of January 2011 to December of 2012, in order for the Tax Collector and Department of Revenue to determine the actual and correct amount of cigarette purchases along with any and all vending purchases such as soda, water, candy and etc.

17. On or about September 16, 2015, undersign counsel sent requested information to Pamela Hernandez attorney for the Department of Revenue and demanded the Department of Revenue use the purchase information provided by Najmabadi.

18. On or about November 29, 2015, Najmabadi sent requested information of Daily Sales Report to Pamela Hernandez attorney for the Department of Revenue.

19. On or about December 17, 2015, Pamela Kruse provided a "settlement offer" and closing agreement with a reduced amount; however, the calculations are still based upon negligently reported data from Sam's Club.

20. The Tax Collector and Department of Revenue admitted in their December 17, 2015 Explanation of Items attached as Exhibit "G" that data from Sam's Club was incorrect and was put into the correct categories; however, the Tax Collector and Department of Revenue continued to rely on negligently reported cigarette purchases of Najmabadi from Sam's Club, see attached Workpapers as Exhibit "H".

21. Thereafter, the Tax Collector and Department of Revenue developed a ratio with no basis in fact as to the actual amount of cigarette purchases by Najmabadi to determine the underreported sales taxes (2.394513), attached as Exhibit "I" and multiplied that ratio against accurate data my client provided, after applying yet another estimated ratio for the effective sales tax, to provide an estimation of additional taxes due attached as Exhibit "J," without providing any sources for national data used.

22. On or about January 19, 2016, undersign counsel calculated two separate months of data from Sam's Club, see attached letter to Pamela Kruse of the Department of Revenue with attachments as Exhibit "K."

- a. Sam's Club negligently reported a cigarette purchases for the month of September 2012 in the amount of \$6,214.58, which upon undersign attorney's calculation is \$1,479.70 more than Najmabadi's total purchases including candy, soda, water, and etc. that totals \$4,734.88. Refer to Exhibit "J" under Exhibit "C."
- b. Sam's Club negligently reported a cigarette purchase for the month of November 2012 in the amount of \$5,769.99, which upon undersign attorney's calculation is \$1,566.60 more than Najmabadi's total purchases including candy, soda, water, and etc. that totals \$4,203.39. Refer to Exhibit "J" under Exhibit "D."

23. Department of Revenue refused to verify the validity of Najmabadi's cigarette purchases reported by Sam's Club for any and all relevant periods, July 2011 to June 2014 and incorrectly concluded Najmabadi's cigarette purchases for the period of July 2012 to June 2014 by stating Najmabadi purchased (\$166,966.72) worth of cigarettes.

24. On or about March 24, 2016, Department of Revenue by and through their attorney Pamela Hernandez, Esq. sent a Notice of Decision without any further reduction from their December 17, 2015 settlement offer, attached as Exhibit "L".

COUNT I PROFESSIONAL NEGLIGENCE AS TO SAM'S EAST INC.

Plaintiff restates and re-alleges paragraphs 1 through 24 and further states as follows:

25. Defendant, SAM'S CLUB has the duty of keeping and reporting accurate data for each and every retailer account to the Department of Revenue pursuant to Florida Statute §212.133.

26. SAM'S CLUB breached their duty and misrepresented NAJMABADI'S cigarette purchases and reported grossly negligent purchases for the time period from November 2011 to May of 2012, excluding January, February, and March of 2012.

27. In addition, SAM'S CLUB breached their duty and misrepresented NAJMABADI'S cigarette purchases and reported negligent purchases for all remaining months from July 2011 to June 2014 by overstating cigarette purchases into their report pursuant to Florida Statute §212.133.

28. The breach of SAM'S CLUB is the actual and proximate cause for NAJMABADI to receive a Notice of Decision, Exhibit "L" from the DEPARTMENT OF REVENUE for underreported sales tax.

29. As a direct result of SAM'S CLUB's negligent performance, NAJMABADI has suffered damages and is now due and owing to the DEPARTMENT OF REVENUE and TAX COLLECTOR the sum of \$34,724.20, plus interest in the amount of \$4.64 per day from March 23, 2016, attorney's fees and costs.

WHEREFORE, NAJMABADI respectfully requests a judgment for damages exceeding \$15,000.00, exclusive of attorney's fees, interest, costs, and such other relief as this Court deems just and proper.

**COUNT II ASSESSMENT FOR UNDERREPORTED SALES TAX
FROM JULY 2011 TO JUNE 2012**

Plaintiff restates and re-alleges paragraphs 1 through 24 and further states as follows:

30. The assessment for underreported Sales Tax in 2011 is invalid, unethical, unlawful, and void.

31. The DEPARTMENT OF REVENUE negligently believes NAJMABADI purchased \$166,966.72 of cigarettes from July 1, 2012 to June 30, 2014, see Exhibit "L". This equates to an average of \$6,956.95 per month for 24 months.

32. The DEPARTMENT OF REVENUE has admitted they received incorrect data from SAM'S CLUB, see Exhibit "C" and "G"; however, the DEPARTMENT OF REVENUE

incorrectly believes any cigarette purchase information received from SAM'S CLUB is correct and accurate.

33. The DEPARTMENT OF REVENUE use of incorrect data for cigarette purchases from SAM'S CLUB has resulted in an underreported sales ratio with no basis in fact of the actual amount of Taxable Sales for NAJMABADI.

34. The DEPARTMENT OF REVENUE's underreported ratio of 2.394513 to NAJMABADI'S gross sales results in an invalid assessment of taxes owed, whereas NAJMABADI gave accurate data regarding their purchases from SAM'S CLUB that the DEPARTMENT OF REVENUE refuses to use.

WHEREFORE, PLAINTIFF, NAJMABADI, INC. respectfully requests that this Court hold the assessment challenged herein invalid and order the DEPARTMENT OF REVENUE and TAX COLLECTOR to accept NAJMABADI, INC.'s reported Sales Tax from July 2011 to June 2012; IN THE ALTERNATIVE, order the DEPARTMENT OF REVENUE to use accurate data supplied by Plaintiff regarding Sam's Club purchases from July 2011 to June 2012; and Plaintiff request such other general relief as this Court may deem just and proper.

**COUNT III ASSESSMENT FOR UNDERREPORTED SALES TAX
FROM JULY 2012 TO JUNE 2013**

Plaintiff restates and re-alleges paragraphs 1 through 24 and further states as follows:

35. The assessment for underreported Sales Tax in 2012 is invalid, unethical, unlawful, and void.

36. The DEPARTMENT OF REVENUE negligently believes NAJMABADI purchased \$166,966.72 of cigarettes from July 1, 2012 to June 30, 2014, see Exhibit "L". This equates to an average of \$6,956.95 per month for 24 months.

37. The DEPARTMENT OF REVENUE has admitted they received incorrect data from SAM'S CLUB, see Exhibit "C" and "G"; however, the DEPARTMENT OF REVENUE incorrectly believes any cigarette purchase information received from SAM'S CLUB is correct and accurate.

38. The DEPARTMENT OF REVENUE use of incorrect data for cigarette purchases from SAM'S CLUB has resulted in an underreported sales ratio with no basis in fact of the actual amount of Taxable Sales for NAJMABADI.

39. The DEPARTMENT OF REVENUE's underreported ratio of 2.394513 to NAJMABADI'S gross sales results in an invalid assessment of taxes owed, whereas NAJMABADI gave accurate data regarding their purchases from SAM'S CLUB that the DEPARTMENT OF REVENUE refuses to use.

WHEREFORE, PLAINTIFF, NAJMABADI, INC. respectfully requests that this Court hold the assessment challenged herein invalid and order the DEPARTMENT OF REVENUE and TAX COLLECTOR to accept NAJMABADI, INC.'s reported Sales Tax from July 2012 to June 2013; IN THE ALTERNATIVE, order the DEPARTMENT OF REVENUE to use accurate data supplied by Plaintiff regarding cigarette purchases from July 2012 to June 2013; and Plaintiff request such other general relief as this Court may deem just and proper.

**COUNT IV ASSESSMENT FOR UNDERREPORTED SALES TAX
FROM JULY 2013 TO JUNE 2014**

Plaintiff restates and re-alleges paragraphs 1 through 24 and further states as follows:

40. The assessment for underreported Sales Tax in 2011 is invalid, unethical, unlawful, and void.

41. The DEPARTMENT OF REVENUE negligently believes NAJMABADI purchased \$166,966.72 of cigarettes from July 1, 2012 to June 30, 2014, see Exhibit "L". This equates to an average of \$6,956.95 per month for 24 months.

42. The DEPARTMENT OF REVENUE has admitted they received incorrect data from SAM'S CLUB, see Exhibit "C" and "G"; however, the DEPARTMENT OF REVENUE incorrectly believes any cigarette purchase information received from SAM'S CLUB is correct and accurate.

43. The DEPARTMENT OF REVENUE use of incorrect data for cigarette purchases from SAM'S CLUB has resulted in an underreported sales ratio with no basis in fact of the actual amount of Taxable Sales for NAJMABADI.

44. The DEPARTMENT OF REVENUE's underreported ratio of 2.394513 to NAJMABADI'S gross sales results in an invalid assessment of taxes owed, whereas NAJMABADI gave accurate data regarding their purchases from SAM'S CLUB that the DEPARTMENT OF REVENUE refuses to use.

WHEREFORE, PLAINTIFF, NAJMABADI, INC. respectfully requests that this Court hold the assessment challenged herein invalid and order the DEPARTMENT OF REVENUE and TAX COLLECTOR to accept NAJMABADI, INC.'s reported Sales Tax from July 2013 to June 2014; IN THE ALTERNATIVE, order the DEPARTMENT OF REVENUE to use accurate data supplied by Plaintiff regarding cigarette purchases from July 2013 to June 2014; and Plaintiff request such other general relief as this Court may deem just and proper.

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