

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY**

JAMES U. HUGHES,

Plaintiff,
vs.

CASE NO.:
DIVISION:

FLORIDA DEPARTMENT OF REVENUE,

Defendant,
_____ /

COMPLAINT

Plaintiff, James U. Hughes, by and through his undersigned counsel, and pursuant to Fla. Stat. §72.011, hereby contests the legality of the assessment of taxes claimed by the Florida Department of Revenue in Case No. 400074032, and hereby supports this Complaint as follows:

PARTIES

1. Plaintiff, JAMES U. HUGHES, was at all material times hereto, an individual residing in Hillsborough County, Florida.
2. Defendant, FLORIDA DEPARTMENT OF REVENUE., is an agency established under the laws of the State of Florida.

JURISDICTION AND VENUE

3. This is an original action brought pursuant to Section 72.011(1)(a), Florida Statutes, to contest the legality of the assessment of taxes claimed by the Florida Department of Revenue, for the assessments from November 1, 2011 through September 30, 2015.
4. The amount in controversy exceeds \$15,000. This Court has jurisdiction under Section 72.011(1)(a), Florida Statutes.
5. Venue is proper in this Court pursuant to Section 72.011(4)(a), Florida Statutes because Plaintiff/taxpayer resides in Hillsborough County.

FACTUAL ALLEGATIONS

6. On or about January 1, 2015, after being notified by the department of Revenue that they needed additional information, Hughes submitted his Commercial Rental Income Questionnaire to a Mr. Wendel Griffin as an Agent of the Department of Revenue. *See Exhibit A.*

7. After submitting the Commercial Rental Income Questionnaire in January 2015, Hughes did not hear anything further from the Department of Revenue until October 27, 2016, when Ivis Lopez contacted Hughes about enforcement of an assessment.

8. Ms. Lopez advised Hughes that the Department of Revenue had assessed additional taxes, penalties, and interest for rental income on property located at 7917 N. Armenia Avenue, Tampa, Florida 33604, and that under Chapter 212.031, Hughes was liable.

9. Due to the terms of the divorce between Hughes and his former wife, any rental income on the property was paid to the former wife and Hughes did not benefit from the property.

10. The Department of Revenue assessed a use tax against Hughes, personally, although Hughes did not receive any rental income on the property for the years assessed. Hughes is not liable for this assessment under Fla. Stat. §212.031.

11. After making its final assessment the Department of Revenue sent its “Notice of Final Assessment” on or about March 21, 2016 (*Exhibit B*) to the address of the former wife’s business. Hughes, in his earliest communication with Mr. Wendell Griffin, had indicated that Notice should be communicated to Hughes at: 7917 N. Armenia Avenue, Tampa, Florida 33604. Hughes’s Notice was not communicated to the taxpayer.

12. Instead of giving appropriate Notice to the tax payer as required by the Department of Revenue’s rules, the Notice was sent to an incorrect address.

13. Hughes was not notified of the actions taken by the Department of Revenue until he was contacted by Ivis Lopez almost 5 months after the review and appeal deadline had passed per the Notice.

14. Further, Ms. Lopez encouraged Hughes to reach out to Wendell Griffin, the auditor, to provide additional information to dispute the assessment.

15. On or about October 27, 2016, the same date upon which Ms. Lopez informed Hughes of the action taken by the Department of Revenue, Hughes contacted Technical Assistance and Dispute Resolution (TADR) for dispute resolution and sent the dispute letter to Brenda Rowen, the Tax Audit Supervisor, in an attempt to dispute the final assessment, and to provide additional details regarding the rental income and the divorce decree that established the beneficial interest of the income went to the former wife. *See Exhibit C.*

16. On January 8, 2017, after additional communications with the Department of Revenue, Hughes submitted his second Dispute letter, once again providing additional details regarding the rental income and the assessment. *See Exhibit D.*

17. Effectively, between the additional communications with Mr. Griffin, and the notification to TADR, Hughes had reinstated the audit and review process regarding the assessments from 11/1/2011 – 9/30/2015.

18. On February 28, 2017, TADR sent an Acknowledgement of Protest to counsel for Hughes. The Department Notified Hughes that it would stay any attempts at enforcement until the dispute process was completed. *See Exhibit E.*

19. Counsel for Hughes followed up with TADR on several occasions to once again provide additional information regarding the income from the rental property before finally

receiving the Notice on May 30, 2017 that the time for appeal rights had expired after March 21, 2016. See *Exhibit F*.

20. Hughes disputes that the time for appeal ended 60 days after the Notice was sent to the incorrect address, and further, has had multiple communications with the DOR since that time wherein the Department indicated they were still considering additional information regarding the audit. The Department has failed to adequately notify Hughes of the deadlines he is required to meet, and the procedures he is entitled to use, to protect his rights in the audit process.

21. Despite the lack of proper Notice of the Assessment, and despite the months of additional communications between the Department of Revenue and Hughes post-assessment, the ultimate conclusion of the Department was that the appeal deadline had expired 60 days after the assessment was sent to the incorrect address.

22. Hughes has attempted to make the Department aware of the improper Notice, and the Department appeared to be reconsider, and to take additional information regarding the illegal assessment, only to ultimately dismiss the additional consideration on an improper basis.

WHEREFORE, Plaintiff James U. Hughes, hereby respectfully requests an Order from this Court declaring the appeal period on the Final Assessment tolled for the failure of the Department of Revenue to send adequate Notice to Hughes, and further, invalidating the assessment of the taxes against Hughes, and granting any such further relief as deemed necessary and proper.

DATED: This 31st of July 2017.

Respectfully Submitted,

/s/ Jesse L. Ray
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