

**STATE OF FLORIDA
DEPARTMENT OF REVENUE**

**STATE OF FLORIDA,
DEPARTMENT OF REVENUE**

Petitioner,

vs.

**EXTREME PERFORMANCE & AUTO
CENTER, INC.,**

Respondent.

**DOR 2012-003 - FOF
FILED**

Department of Revenue – Agency Clerk
Date Filed: *March 27, 2012*
By: *April Warner*

**DOR Case No.: DOR-
DOAH Case No.: 11-4607**

FINAL ORDER

This cause came before the State of Florida, Department of Revenue ("Department"), for the purpose of issuing a final order. On August 10, 2011, the Department filed an Administrative Complaint ("Complaint") against Respondent. A true and correct copy of the Complaint is attached hereto and incorporated herein by reference as Exhibit 1. The Complaint sought to revoke Respondent's certificate of registration, in accordance with Sections 212.18 and 213.692, Florida Statutes, due to Respondent's non-compliance with Chapter 212, 220, and 443, Florida Statutes.

In response to the Complaint, Respondent elected a disputed fact hearing pursuant to Subsection 120.57(1), Florida Statutes, which was held on January 10, 2012. A true and correct copy of Respondent's request for hearing is attached hereto and incorporated herein by reference as Exhibit 2. The Division of Administrative Hearings (DOAH) issued its recommended order on January 31, 2012. A copy of the recommended order is attached hereto and incorporated herein by reference as Exhibit 3. There were no exceptions filed by either party.

FINDINGS OF FACT

The Department hereby adopts and incorporates by reference the findings of fact as set forth in the recommended order as the factual findings herein.

CONCLUSIONS OF LAW

The Department hereby adopts and incorporates by reference the conclusions of law as set forth in the recommended order as the conclusions of law herein.

DETERMINATION

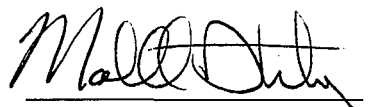
Accordingly, it is ORDERED:

That Respondent's Certificate of Registration, numbered 60-801478127-3 is hereby revoked.

ENGAGING IN THE BUSINESS OF SELLING OR LEASING TANGIBLE PERSONAL PROPERTY OR SERVICES OR ACTING AS A DEALER AFTER A CERTIFICATE HAS BEEN REVOKED IS PROHIBITED AND CONSTITUTES A CRIME PUNISHABLE AS PROVIDED IN SECTION 775.082 OR SECTION 775.083, FLORIDA STATUTES.

ENTERED in Tallahassee, Leon County, Florida, this 27th day of March, 2012.

State of Florida
DEPARTMENT OF REVENUE


Marshall Stranburg
Deputy Executive Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order has been filed in the official records of the Florida Department of Revenue and that a true and correct copy of the Final Order has been furnished by United States mail, both regular first class and certified mail return receipt requested, to Respondent at 4401 Annette St., West Palm Beach, FL 33409 and to Respondent c/o Michael Lawrence Cohen, Michael L. Cohen Law Offices, 1803 South Australian Avenue, West Palm Beach, Florida 33409 this 27th day of March, 2012

April Warner

Agency Clerk

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party who is adversely affected by this final order has the right to seek judicial review of the order under section 120.68, Florida Statutes, by filing a notice of appeal under Rule 9.190 of the Florida Rules of Appellate Procedure with the Agency Clerk of the Department of Revenue in the Office of the General Counsel, Post Office Box 6668, Tallahassee, Florida 32314-6668 [FAX (850) 488-7112], **AND** by filing a **copy** of the notice of appeal accompanied by the applicable filing fees with the District Court of Appeal, First District or with the District Court of Appeal in the appellate district where the party resides. **The notice of appeal must be filed within 30 days from the date this order is filed with the clerk of the Department.**

Copies furnished to:

Claude B. Arrington
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Joseph Mellichamp
Office of the Attorney General
Revenue Litigation Bureau
The Capitol-Plaza Level 01
Tallahassee, Florida 32399-1050

Nancy Terrel, Acting General Counsel
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Post Office Box 6668
Tallahassee, Florida 32314-6668

Lisa Vickers, Executive Director
Department of Revenue
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Tallahassee, Florida 32314-6668

Carol Y. Cherry
Office of the Attorney General
Revenue Litigation Bureau
The Capitol-Plaza Level 01
Tallahassee, Florida 32399-1050

STATE OF FLORIDA
DEPARTMENT OF REVENUE

STATE OF FLORIDA
DEPARTMENT OF REVENUE

Petitioner,

v.

Case No. DOR-11-50 AC

EXTREME PERFORMANCE & AUTO CENTER, INC.,

Respondent.

**ADMINISTRATIVE COMPLAINT FOR
REVOCATION OF CERTIFICATE OF REGISTRATION**

Petitioner, the DEPARTMENT OF REVENUE, hereafter referred to as "Department," files this Administrative Complaint against **EXTREME PERFORMANCE & AUTO CENTER, INC.**, hereafter referred to as "Respondent," and in support thereof alleges:

BASED ON THE FOLLOWING FACTS, AND PURSUANT TO SECTIONS 120.60, 212.14, 212.15, and 212.18, FLORIDA STATUTES, THE DEPARTMENT INTENDS TO REVOKE YOUR SALES AND USE REGISTRATION CERTIFICATE. THE ENGAGING IN THE BUSINESS OF SELLING OR LEASING TANGIBLE PERSONAL PROPERTY OR SERVICES OR ACTING AS A DEALER AFTER A CERTIFICATE HAS BEEN REVOKED IS PROHIBITED AND CONSTITUTES A CRIME PUNISHABLE AS PROVIDED IN SECTION 775.082 OR SECTION 775.083, FLORIDA STATUTES.

1. The Department is an agency of the State of Florida lawfully created and organized pursuant to Section 20.21, Florida Statutes. By law, the Department is vested with the responsibility of collection and enforcement under the revenue laws of the State of Florida, including, specifically, the laws relating to the imposition and collection of the state's sales and use tax, pursuant to Chapter 212, Florida Statutes.

2. The Department is the state agency providing Unemployment Compensation Tax ("UCT") collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to Section 443.1316,

EXHIBIT 1

Florida Statutes.

3. Respondent is an active Florida Profit Corporation.
4. Respondent's principal address is 4401 ANNETTE ST, SUITE 1, WEST PALM BEACH FL 33409. Respondent's Registered Agent is Steven Small located at the same address.
5. Every person desiring to engage in or conduct business in this state as a dealer, as defined in Chapter 212, Florida Statutes, must be registered by the Department pursuant to Section 212.18, Florida Statutes, and Rule 12A-1.060, Florida Administrative Code. Pursuant to Subsection 212.05(1), Florida Statutes, the certificates of registration issued by the Department grant dealers the privilege of engaging in or conducting business in this state.
6. Respondent is a "dealer" as that term is defined in Subsection 212.06(2), Florida Statutes, and holds a certificate of registration issued by the Department.
7. Chapter 212, Florida Statutes, provides that sales and use tax shall be collected and remitted to the Department by dealers.
8. In accordance with Subsections 212.15(1) and (2), Florida Statutes, the taxes imposed pursuant to Chapter 212, Florida Statutes, become state funds at the moment of collection, and the intentional failure to remit these taxes constitutes a theft of state funds.
9. In accordance with Subsection 212.07(3), Florida Statutes, any dealer who fails, neglects, or refuses to collect the tax herein provided, either by himself or herself or through the dealers' agents or employees, is, in addition to the penalty of being liable for and paying the tax himself or herself, guilty of a misdemeanor in the first degree, punishable as provided in Section 775.082 or 775.083, Florida Statutes.
10. The Department is authorized to issue certificates of registration pursuant to Section 212.18, Florida Statutes, and to revoke such registrations upon the failure of a dealer to comply with the requirements of Chapter 212, Florida Statutes, including but not limited to, the requirement to pay taxes when due.
11. Section 213.692, Florida Statutes, authorizes the Department to revoke all certificates of registration, permits, or licenses issued by the Department to a taxpayer against whom the Department has filed a warrant, notice of lien, or judgment lien certificate.

12. Section 212.11, Florida Statutes, requires that dealers, for the purpose of ascertaining the amount of tax payable under Chapter 212, Florida Statutes, file a return with the Department on or before the 20th day of the month for taxes due the preceding calendar month.

13. As set forth more fully in the chart attached hereto and incorporated herein as Exhibit A to this Administrative Complaint, Respondent failed to timely file a tax return for the months of February and June 2011. As a result of Respondent's failure to timely file the required returns, the Department, in accordance with Subsection 212.12(5), Florida Statutes, assessed an estimated tax liability of \$2,000.00 against Respondent as of July 1, 2011. This amount may increase or decrease based upon receipt of filed returns from the Respondent.

14. Subsection 212.15(1), Florida Statutes, requires that dealers collect and remit to the Department the taxes imposed by Chapter 212, Florida Statutes, on a monthly basis. Taxes are due on the first day of the succeeding calendar month and shall be paid to the Department on or before the 20th of each month for taxes due the preceding calendar month.

15. Subsection 212.14(3), Florida Statutes, provides that the filing of a return not accompanied by payment is prima facie evidence of conversion of the money due.

16. As set forth more fully in the chart attached hereto and incorporated herein as Exhibit A to this Administrative Complaint, Respondent failed to timely remit payment for the sales tax due and owing pursuant to Chapter 212, Florida Statutes. Specifically, for June, September, and December 2008, March, June, September, and December, 2009, all of 2010, and January, April, and May 2011, as indicated on Exhibit A, Respondent filed returns but did not timely remit to the Department the sum of \$24,529.84 in sales and use tax reported on Respondent's filed returns in violation of Subsection 212.15(1), Florida Statutes.

17. As set forth more fully in the chart attached hereto and incorporated herein as Exhibit A to this Administrative Complaint, Respondent failed to remit payment for interest due and owing pursuant to Subsection 212.12(3), Florida Statutes. Specifically, due to Respondent's failure to timely pay the taxes due, the sum of \$2,505.56 in interest is due as of July 01, 2011. Interest continues to accrue at the statutory rate from the aforementioned date until paid.

18. As set forth more fully in the chart attached hereto and incorporated herein as Exhibit A to this Administrative Complaint, Respondent failed to remit payment for

penalties due and owing pursuant to Subsection 212.12(2), Florida Statutes. Specifically, due to Respondent's failure to timely pay the taxes due, the sum of \$2,526.36 in penalties and \$2,687.47 in fees, is due as of July 1, 2011.

19. UCT contributions accrue and are payable by each employer for each calendar quarter such employer is subject to Chapter 443, Florida Statutes, for wages paid during each calendar quarter for employment, as defined in Subsection 443.036(21) and Section 443.1216, Florida Statutes.

20. The Department has determined that Respondent is an employing unit as defined in Subsection 443.036(20), Florida Statutes, and is subject to the provisions of Chapter 443, Florida Statutes, as provided in Section 443.1215, Florida Statutes. For the purpose of this Administrative Complaint, "employing unit" and "employer" shall be using interchangeably.

21. Pursuant to Subsection 443.141(4), Florida Statutes, an employer who fails to make return or pay contributions or reimbursements shall be enjoined from employing individuals in employment until the return is made and the contributions or reimbursements are paid to the tax collection service provider.

22. Pursuant to Rule 60BB-2.025, Florida Administrative Code, employers are required to file quarterly UCT reports that are due on or before the last day of the month following the calendar quarter to which the report applies. Such reports are required for each quarter during which an employer was liable, even if no contributions are payable.

23. Pursuant to Subsection 443.036(10), Florida Statutes, a calendar quarter means each period of 3 consecutive calendar months ending on March 31, June 30, September 30, and December 31 of each year.

24. Pursuant to Subsection 443.141(2)(a), Florida Statutes, if an employing unit determined by the tax collection service provider to be an employer subject to this chapter fails to make and file any UCT report as and when required by this chapter or by any rule of the Agency for Workforce Innovation or the state agency providing tax collection services, for the purpose of determining the amount of contributions due by the employer under this chapter, or if any filed report is found by the service provider to be incorrect or insufficient, and the employer, after being notified in writing by the service provider to file the report, or a corrected or sufficient report, as applicable, fails to file the report within 15 days after the date of the mailing of the notice, the tax collection service provider may:

A. Determine the amount of UCT contributions due from the employer based on the information readily available to it, which determination is deemed to be prima facie correct;

B. Assess the employer the amount of UCT contributions determined to be due; and

C. Immediately notify the employer by mail of the determination and assessment including penalties as provided in this chapter, if any, added and assessed, and demand payment together with interest on the amount of UCT contributions from the date that amount was due and payable.

25. As set forth more fully in the chart attached hereto and incorporated herein as Exhibit B to this Administrative Complaint, Respondent failed to timely file UCT reports for the calendar quarters ending June, September, and December 2009, March, June, September, and December 2010, and March and June 2011. As a result of Respondent's failure to timely file the required reports, the Department, in accordance with Subsection 443.141(2)(a), Florida Statutes, assessed an estimated UCT liability of \$4,500 against Respondent as of July 1, 2011. This amount may increase or decrease based upon receipt of filed reports from the Respondent.

26. As set forth more fully in the chart attached hereto and incorporated herein as Exhibit B to this Administrative Complaint, Respondent failed to remit payment for interest due and owing pursuant to Subsection 443.141(1)(a), Florida Statutes. Specifically, due to Respondent's failure to timely file the required reports and/or timely pay the UCT due, the sum of \$490.06 in interest is due as of date of worksheet. Interest continues to accrue at the statutory rate of 12% from the aforementioned date until paid.

27. As set forth more fully in the chart attached hereto and incorporated herein as Exhibit B to this Administrative Complaint, Respondent failed to remit payment for penalties due and owing pursuant to Subsection 443.141(1)(b), Florida Statutes. Specifically, due to Respondent's failure to timely pay the UCT due, the sum of \$450.00 in penalties and \$443.31 in fees, is due as of July 1, 2011.

28. Chapter 220, Florida Statutes, imposes a tax upon corporations as defined in Subsection 220.03(1)(e), Florida Statutes, for the privilege of conducting business, deriving income, or existing within the State of Florida.

29. Section 220.11, Florida Statutes, imposes a tax measured by net income upon taxpayers ("Taxpayer/Taxpayers"), as defined in Subsection 220.03(1)(z), Florida

Statutes.

30. Taxpayers subject to income tax pursuant to Chapter 220, Florida Statutes, are required to file a return with the Department for each taxable year in which such Taxpayer either is liable for tax pursuant to Chapter 220, Florida Statutes, or is required to make a federal income tax return, regardless of whether such Taxpayer is liable for tax pursuant to Chapter 220, Florida Statutes.

31. Returns filed pursuant to Chapter 220, Florida Statutes, must be filed as provided in Section 220.222, Florida Statutes, according to type of organization/entity.

32. Pursuant to Subsection 220.703(1), Florida Statutes, the amount of tax shown due on any return shall be deemed assessed on the date of filing the return, including any amended returns showing an increase of tax.

33. Respondent is a taxpayer as defined in Subsection 220.03(1)(z), Florida Statutes, and is subject to the filing of returns and payment of income tax as provided in Chapter 220, Florida Statutes.

34. As set forth more fully in the chart attached hereto and incorporated herein as Exhibit C to this Administrative Complaint, Respondent failed to remit payment for penalties due and owing pursuant to Subsections 220.801 and 220.803, Florida Statutes. Specifically, due to Respondent's failure to timely file and/or timely pay the income tax due, the sum of \$450 in penalties and \$25.00 in fees, is due as of July 1, 2011.

35. The Department has issued and filed one or more warrants, notices of lien, or judgment lien certificates in the public records for the collection of unpaid sales and use tax, unpaid UCT, and unpaid income tax directed against Respondent pursuant to Subsections 212.15(4), 443.141(3), and 220.813, Florida Statutes. True and accurate copies of those documents are attached hereto and incorporated herein as Exhibit D to this Administrative Complaint.

36. The specific amount(s) of Respondent's tax liabilities are fluid and ever changing. Based upon payments for amounts reflected herein, non-payment for periods subsequent to those reflected herein, accrual of interest, accrual of collection fees and accrual of other costs of collection, the specific amount of Respondent's tax liabilities may increase or decrease between the effective date of any attached worksheet(s) and the date of any subsequent hearing(s).

37. Respondent has a significant history of failing to abide by the tax laws. Despite repeated demands for payment, Respondent has failed to pay tax that was due. Approximately 30 Notices of Amount Due and approximately 23 Notices of Final Assessment Letters were sent to Respondent. However, those collection efforts have been unsuccessful.

38. In addition, Respondent has issued dishonored checks to the Department for the periods June 2008, December 2008, and March 2009. Pursuant to Subsection 215.34(2), Florida Statutes, the Department is authorized to assess a service fee for such dishonored checks.

39. A Notice of Conference on Revocation of Certificate of Registration was served via certified mail pursuant to Subsections 212.18(3) and 213.692(1)(a), Florida Statutes, on May 23, 2011. The notice explained that the Department had initiated the process to revoke Respondent's certificate of registration and scheduled a conference for June 22, 2011 to provide Respondent the opportunity to present evidence regarding the department's intended revocation or enter into a Compliance Agreement with the Department which resolves the Respondent's failure to comply with Chapters 212, 443 and 220, Florida Statutes. A true and correct copy of the Notice of Conference on Revocation of Certificate of Registration, as well as proof of its service upon Respondent, is attached hereto and incorporated herein as Exhibit E to this Administrative Complaint.

40. Peter Bromber, representing Respondent, did appear for the scheduled conference but no Compliance Agreement was entered into.

41. Respondent has not filed a dispute or protest regarding this debt.

42. The Department has complied with all conditions precedent to the filing of this action.

WHEREFORE, the Department files its Administrative Complaint for Revocation of Certificate of Registration, and requests that an order be entered permanently revoking Respondent's sales and use tax certificate of registration.

AS A RESULT OF THE FOREGOING, THIS IS NOTIFICATION OF THE DEPARTMENT'S INTENT TO CANCEL RESPONDENT'S CERTIFICATE OF REGISTRATION NUMBERED 60-8014787127-3 PURSUANT TO CHAPTERS 120, 212, and 443, FLORIDA STATUTES, AND THAT A FINAL ORDER WILL BE ENTERED WITHOUT FURTHER NOTICE IF RESPONDENT DOES NOT REQUEST A HEARING AS DESCRIBED BELOW.

NOTICE OF RIGHTS

You have the right to seek review of this Administrative Complaint in accordance with Sections 120.569 and 120.57, Florida Statutes, by filing a request for an administrative hearing. You may request either: 1) a formal hearing involving disputed issues of material fact before the Division of Administrative Hearings, or 2) an informal administrative hearing, NOT involving disputed issues of material fact before the Department. All hearings are conducted in English. If you request a hearing in this matter, you are entitled to at least fourteen (14) days notice prior to the hearing unless all parties waive the fourteen (14) day notice requirement.

YOUR REQUEST FOR HEARING MUST BE FILED NO LATER THAN 21 DAYS FROM YOUR RECEIPT OF THIS ADMINISTRATIVE COMPLAINT TO:
Agency Clerk, Office of the General Counsel, Florida Department of Revenue, Post Office Box 6668, Tallahassee, Florida 32314-6668. If your request for an administrative hearing is not received by the Department no later than 21 days following receipt of this Administrative Complaint, you lose your right to request an administrative hearing, and the Department will enter a final order in this matter. The final order will revoke your certificate of registration and/or require such other relief as may be authorized by Chapter 212, Florida Statutes. The petition for hearing may be faxed to (850) 488-7112.

MANDATORY REQUIREMENTS FOR HEARING REQUESTS

A request for hearing must contain the information required by Subsection 28-106.2015(5), Florida Administrative Code, including:

1. Your name, address, telephone number, and facsimile number (if any).
2. The name, address, telephone number, and facsimile number of your attorney or other representative (if any), which shall be the address for service of pleadings and other papers during the course of the proceeding.
3. A statement requesting an administrative hearing **and identifying those material facts alleged in the Administrative Complaint which you dispute**. If there are no material facts alleged in the Administrative Complaint which are disputed, you must indicate this in your request for hearing.
4. A statement of when you received the Administrative Complaint.
5. The case number reflected on the first page of the Administrative Complaint.

If there is a **disputed fact (formal) hearing**, you have the right to be represented by an attorney or qualified representative, bring witnesses and evidence, cross-examine any witnesses produced against you by the state, and have subpoenas and subpoenas duces tecum issued on your behalf. You will be notified of the location, date, and time of the hearing by the Administrative Law Judge assigned to the case by the Division of Administrative Hearings. You may file exceptions to the Administrative Law Judge's Recommended Order with the Department of Revenue.

If there is a **non-disputed fact (informal) hearing**, you have the right to be represented by an attorney or qualified representative and you have the right to bring witnesses and evidence, and provide the Department with any legal arguments that you wish the Department to consider in opposition to the charges contained in this Administrative Complaint. In a non-disputed fact (informal) hearing the facts alleged in the Administrative Complaint are deemed admitted and only evidence in mitigation of the agency action to be taken may be presented. If you have requested an informal proceeding, you will be notified as to the time, place and date of said hearing by the hearing officer designated by the Department.

SECTION 120.573, FLORIDA STATUTES MEDIATION DISCLOSURE: This is an action that may affect your substantial interests. Mediation of this administrative dispute is not available. However, you may request a hearing on the charges, pursuant to Chapter 120, Florida Statutes, and as further detailed in this Administrative Complaint.

AMERICANS WITH DISABILITIES ACT: In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Agency Clerk no later than seven (7) days prior to the proceeding or hearing at which such special accommodation is required. The Department Clerk may be contacted at: Office of the General Counsel, Florida Department of Revenue, Post Office Box 6668, Tallahassee, Florida 32314-6668; FAX (850) 488-7112. If you are hearing or speech impaired, please contact the agency by calling 800-367-8331 or 850-922-1115 (TDD).

Dated this 10th day of August, 2011 in Tallahassee, Florida.

Respectfully submitted,



JUSTIN GREEN
Florida Bar No. 20535
Assistant General Counsel
Department of Revenue
Post Office Box 6668
Tallahassee, Florida 32314-6668
Telephone No. (850) 617-8347
Facsimile No. (850) 488-7112

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been forwarded by certified mail, return receipt requested, to Respondent at 4401 ANNETTE ST, SUITE 1, WEST PALM BEACH FL 33409 and c/o Respondent to Peter Bromber, 430 S Congress Ave. 1B, Delray beach, Florida 33445 this 10th day of August, 2011.



JUSTIN GREEN

TO THE,

AGENCY CLERK FOR REQUEST FOR HEARING.

CASE # DOR-11-50 AC

EXTREME PERFORMANCE & AUTO CENTER
4401 ANNETTE ST
W.P.B. FL. 33409

PHONE # 561-656-4990 FAX NUMBER # 561-656-4985 (BRIAN SMALL)

ATTORNEY INFORMATION

MICHAEL COHEN
1803 S. AUSTRALIAN AVE
W.P.B. FL. 33409

PHONE # 561-502-5261 FAX # 561-683-9039

AMOUNT OF MONIES OWED IS THE DISPUTE. WOULD LIKE TO RESOLVE
THIS MATTER AT THE HEARING.

PLEASE SEND ALL CORRESPONDENCE TO FAX # 561-656-4985
OR TO EXTREME PERFORMANCE

THANK YOU

Brian Small

RECEIVED

SEP 02 2011

DEPARTMENT OF REVENUE
OFFICE OF GENERAL COUNSEL

EXHIBIT 2

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF REVENUE,)	
)	
Petitioner,)	
)	
vs.)	
)	Case No. 11-4607
EXTREME PERFORMANCE & AUTO)	
CENTER, INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on January 10, 2012, by video teleconference between West Palm Beach and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Carrol Y. Cherry, Esquire
Office of the Attorney General
Revenue Litigation Bureau
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

For Respondent: Michael L. Cohen, Esquire
Michael L. Cohen Law Offices
1803 South Australian Avenue
West Palm Beach, Florida 33490

STATEMENT OF THE ISSUES

Whether Respondent committed the violations alleged in the "Administrative Complaint for Revocation of Certificate of

Registration" (Administrative Complaint) filed with DOAH on September 13, 2011, and, if so, the action that should be taken.

PRELIMINARY STATEMENT

The Department of Revenue (Petitioner) seeks to revoke the certificate of registration held by Extreme Performance and Auto Center, Inc. (Respondent) for failure to pay unemployment compensation taxes, sales and use taxes, and corporate income taxes in the amounts and for the periods set forth in the Findings of Fact section of this Recommended Order. In addition, Petitioner alleges that Respondent attempted to pay certain taxes with checks that were dishonored due to insufficient funds.

At the formal hearing, Petitioner offered six sequentially-lettered exhibits, each of which was admitted into evidence. Petitioner presented no testimony. Respondent offered no witnesses and no exhibits.

No transcript has been filed. Petitioner timely filed its Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order. Respondent did not file a proposed recommended order.

Unless otherwise noted, all statutory references are to Florida Statutes (2011). There has been no change to the statutes cited in this Recommended Order at any time relevant to this proceeding.

FINDINGS OF FACT

1. Petitioner is the agency of the State of Florida responsible for administering the revenue laws of the State of Florida, including the imposition and collection of the state's sales and use taxes pursuant to chapter 212, Florida Statutes, and the state's corporate income taxes pursuant to chapter 220. Petitioner provides unemployment compensation tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to section 443.1316.

2. Respondent is an active for-profit corporation with its principal address at 4401 Annette Street, West Palm Beach, Florida 33409.

3. Respondent is a "dealer" as that term is defined by section 212.06(2), and holds certificate of registration number 60-8014787127-3.

4. Respondent failed to timely file sale tax returns for the months of February and June 2011. Petitioner assessed Respondent an estimated tax liability of \$2,000 for the months of February 2011 and June 2011.

5. Respondent filed returns but failed to timely remit payment for the sale and use tax in the amount of \$24,529.84 due and owing for the months of June, September, and December 2008; March, June, September, and December 2009; January through December 2010; and January, April, and May 2011.

6. Due to its failure to timely file and/or remit taxes due, Respondent is liable for interest in the sum of \$2,505.56, penalty in the sum of \$2,526.36, and fees in the sum of \$2,687.47, as of July 1, 2011.

7. Respondent is an employing unit as defined in subsection 443.036(2), and is subject to the unemployment compensation tax provisions of chapter 443, as provided in section 443.1215.

8. Respondent failed to timely file unemployment compensation tax reports for the calendar quarters ending June 30, September 30, and December 31, 2009; March 31, June 30, September 30, and December 31, 2010; and March 31 and June 30, 2011. As a result, Petitioner assessed Respondent an estimated unemployment compensation tax liability of \$4,500.00 as of July 1, 2011.

9. Due to its failure to timely file the unemployment compensation tax reports, Respondent is liable for interest thereon in the sum of \$490.06, penalty in the sum of \$450.00, and fees in the sum of \$443.31, as of July 1, 2011.

10. Respondent issued Petitioner worthless checks for the unemployment taxes due for the calendar quarters ending June 30, 2006; December 31, 2008; and March 31, 2009. As a result, Respondent still owes Petitioner unemployment compensation taxes

in the sum of \$425.34, interest in the sum of \$119.09, and fees in the sum of \$111.70.

11. Respondent is required to file with Petitioner corporate income tax returns each year pursuant to the provisions of chapter 220. Respondent failed to timely file corporate income tax returns and/or pay the tax due to Petitioner for the tax years 2008, 2009, and 2010.

12. Due to its failure to timely file corporate income tax returns and/or pay the tax due, Respondent is liable for penalties in the sum of \$450.00 and fees in the sum \$25.00, as of July 1, 2011.

13. Petitioner has issued and filed against Respondent delinquent tax warrants, notices of liens, or judgment lien certificates in the public records for the collection of delinquent sales and use tax, delinquent unemployment compensation tax, and delinquent corporate income tax.

14. Petitioner served upon Respondent a Notice of Conference on Revocation of Registration via mail on May 23, 2011, advising Respondent of a conference to be held June 22, 2011. No one appeared on behalf of Respondent at the conference scheduled on June 22.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the subject matter of and the parties to this proceeding pursuant to sections 120.569, 120.57(1), and 212.18, Florida Statutes.

16. Petitioner has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Dep't of Agric. & Consumer Servs., 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994). The following statement has been repeatedly cited in discussions of the clear and convincing evidence standard:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief of (sic) conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

17. Section 212.06(2) defines the term "dealer."
Respondent is a dealer within the meaning of that definition.

18. Section 212.15(1) requires that dealers collect and remit taxes imposed by chapter 212 on a monthly basis.

19. In accordance with section 212.15, the taxes imposed pursuant to chapter 212 become state funds at the moment of

collection, and the intentional failure to remit those taxes constitutes a theft of state funds.

20. Pursuant to section 212.18(3)(b), except for circumstances inapplicable to this proceeding, "no person shall engage in business as a dealer . . . without first having obtained such a certificate or after such certificate has been cancelled"

21. Section 212.18(3)(d) provides as follows:

(d) The department may revoke any dealer's certificate of registration when the dealer fails to comply with this chapter. Prior to revocation of a dealer's certificate of registration, the department must schedule an informal conference at which the dealer may present evidence regarding the department's intended revocation or enter into a compliance agreement with the department. The department must notify the dealer of its intended action and the time, place, and date of the scheduled informal conference by written notification sent by United States mail to the dealer's last known address of record furnished by the dealer on a form prescribed by the department. The dealer is required to attend the informal conference and present evidence refuting the department's intended revocation or enter into a compliance agreement with the department which resolves the dealer's failure to comply with this chapter. The department shall issue an administrative complaint under s. 120.60 if the dealer fails to attend the department's informal conference, fails to enter into a compliance agreement with the department resolving the dealer's noncompliance with this chapter, or fails to comply with the executed compliance agreement.

22. Petitioner has complied with the foregoing procedures.

23. Petitioner established by clear and convincing evidence that Respondent has repeatedly failed to comply with the provisions of chapter 212.

24. Unemployment compensation tax contributions accrue and are payable by each employer for each calendar quarter the employer is subject to the provisions of chapter 443.

25. Pursuant to Florida Administrative Code Rule 60BB-2.025, employers are required to file quarterly unemployment compensation tax reports that are due on or before the last day of the month following the calendar quarter to which the report applies. Such reports are required for each quarter, even if no contributions are payable.

26. Petitioner established by clear and convincing evidence that Respondent repeatedly failed to comply with the provisions of chapter 443.

27. Petitioner established by clear and convincing evidence that Respondent repeatedly failed to comply with the provisions of chapter 220 relating to the filing and payment of corporate income taxes.

28. In addition to the authority given to Petitioner to revoke Respondent's certificate of registration pursuant to section 212.18(3)(d), the provisions of section 213.692(1)(a)

authorize Petitioner to revoke Respondent's certificate of registration and provide, in relevant part, as follows:

(1) If the department files a warrant, notice of lien, or judgment lien certificate against the property of a taxpayer, the department may also revoke all certificates of registration, permits, or licenses issued by the department to that taxpayer.


(a) Before the department may revoke the certificates of registration, permits, or licenses, the department must schedule an informal conference that the taxpayer is required to attend. At the conference the taxpayer may present evidence regarding the department's intended action or enter into a compliance agreement. The department must provide written notice to the taxpayer of the department's intended action and the time, date, and place of the conference. The department shall issue an administrative complaint to revoke the certificates of registration, permits, or licenses if the taxpayer does not attend the conference, enter into a compliance agreement, or comply with the compliance agreement.

29. Petitioner complied with the notice requirements contained in section 213.692(1)(a).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Revenue enter a final order that revokes Respondent's certificate of registration.

DONE AND ENTERED this 31st day of January, 2012, in
Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.