

PROBABLE CAUSE AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF PALM BEACH

DEPARTMENT OF REVENUE  
CASE NUMBER 3000010077

Defendant: Patrick Malcolm McNiven  
Also Known As: Patrick M McNiven and Patrick McNiven  
Sex: Male  
Race: Caucasian  
Date of Birth: October 12, 1967  
Height: 6' 0"  
Weight: Unknown  
Eyes: Unknown  
Hair: Unknown  
FL Driver License: M251-673-67-372-0

Address: 5038 NW 24<sup>th</sup> Circle  
Boca Raton, FL 33431

Offense (1) Tax Evasion (Sales Tax)  
Section 212.12(2)(e), Fla. Stat.  
Felony of the 3<sup>rd</sup> Degree, 14 Counts

Applied Dates: September 2018, October 2018, November 2018, December 2018,  
January 2019, February 2019, March 2019, April 2019, May 2019, June  
2019, July 2019, August 2019, September 2019 and October 2019

Offense Dates: October 23<sup>rd</sup>, 2018, November 21<sup>st</sup>, 2018, December 21<sup>st</sup>, 2018,  
January 22<sup>nd</sup>, 2019, February 21<sup>st</sup>, 2019, March 21<sup>st</sup>, 2019, April 22<sup>nd</sup>,  
2019, May 21<sup>st</sup>, 2019, June 21<sup>st</sup>, 2019, July 23<sup>rd</sup>, 2019, August 21<sup>st</sup>,  
2019, September 23<sup>rd</sup>, 2019, October 22<sup>nd</sup>, 2019 and November 21<sup>st</sup>,  
2019.

Offense (2) Failure to File Six Consecutive Returns (Sales Tax)  
Section 212.12(2), Fla. Stat.  
Felony of the 3<sup>rd</sup> Degree, 2 Counts

Applied Dates: August 2018 through January 2019 and February 2019 through  
July 2019

Offense Dates: February 21<sup>st</sup>, 2019 and August 21<sup>st</sup>, 2019

Business Name: Boca Styling, Inc. doing business as Tint World

Business Address: 90 NW Spanish River Boulevard  
Boca Raton, FL 33431

Victim: State of Florida

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JOSEPH ABRUZZO, CLERK  
PALM BEACH COUNTY, FL  
CRIMINAL CIRCUIT

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FILED

Before me this day personally appeared Anthony Martino, who, being first duly sworn, deposes and says that the above-named defendant committed the offenses charged and the facts and circumstances showing probable cause to believe same are as follows:

I, Anthony Martino, am a Revenue Investigator-Criminal Enforcement with the State of Florida Department of Revenue. I have conducted an investigation of Boca Styling, Inc. The business was engaged in the retail sales and installation of automotive accessories. The closed business was located in Palm Beach County, Florida.

As a custodian of records for the Department of Revenue with regard to criminal cases I am providing a certified copy of the closed businesses' Florida Business Tax Application. Review of the application revealed that the business registered with the Department of Revenue as an S-corporation. The name of the business is Boca Styling, Inc. doing business as Tint World. The sole owner of the business is Patrick Malcolm McNiven who is listed on the application as President with 100% ownership/control. Patrick M McNiven is listed on the application as the contact person for electronic payments to the Department and for electronic filing of returns. The application bears the electronic signature of Patrick Malcolm McNiven as President. The closed business was required to file Sales and Use Tax Returns with the Department of Revenue on a monthly basis.

I obtained and reviewed certified corporate records of Boca Styling, Inc. from the Florida Department of State Division of Corporations. The records included Florida Profit Corporation Annual Reports, Application for Registration of Fictitious Name and Transaction Details for payment. Patrick M McNiven is the sole corporate officer listed on corporate documents during the periods included within the scope of this investigation. The corporate records bear the electronic signature of Patrick M McNiven or Patrick McNiven as president of the corporation. The status of the corporation is inactive. The Application for Registration of Fictitious Name "Tint World" lists Boca Styling, Inc. as owner of the fictitious name. The document bears the electronic signature of Patrick McNiven as owner. In addition, review of the certified Transaction Details depicting payments made to the Florida Department of State Division of Corporations list Patrick McNiven as the customer name associated with the payments.

I reviewed Department of Revenue records of the filing history on the sales tax account of Boca Styling, Inc. My review revealed that numerous monthly Sales and Use Tax Returns were electronically filed with the Department prior to the periods included in this investigation. The contact name associated with the filed Sales and Use Tax Returns is Patrick McNiven.

I reviewed Department of Revenue records of the payment history on the sales tax account of Boca Styling, Inc. My review revealed numerous electronic payments were made to the Department of Revenue prior to the periods included in this investigation. The contact

name associated with the majority of the payments is Patrick McNiven. Review of the payment information revealed numerous payments were made in the amount of sales tax listed on filed returns. By making payments for sales tax, Patrick Malcolm McNiven demonstrated having knowledge of his legal obligation to remit the sales tax collections of Boca Styling, Inc. and demonstrated knowledge of the sales tax amounts listed on filed Sales and Use Tax Returns.

As an officially designated custodian of records for the Florida Department of Revenue, I am providing a certified statement indicating that, after a diligent search, I do not find where Boca Styling Inc. has filed sales and use tax returns with the Department of Revenue for the periods of August 2018, September 2018, October 2018, November 2018, December 2018, January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, July 2019, August 2019, September 2019 and October 2019 as set forth in Chapter 212 Florida Statutes.

By failing to file Sales and Use Tax Returns on behalf of this business for six consecutive monthly filing periods - August 2018 through January 2019 and February 2019 through July 2019, Patrick Malcolm McNiven twice violated Florida Statute 212.12(2).

As an officially designated custodian of records for the Florida Department of Revenue, I am providing a certified statement indicating that, after a diligent search, I do not find where Boca Styling Inc. has remitted sales and use tax payments to the Department of Revenue for the periods of September 2018, October 2018, November 2018, December 2018, January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, July 2019, August 2019, September 2019 and October 2019 as set forth in Chapter 212 Florida Statutes

A review of the Department of Revenue System for Unified Taxation indicated that Department of Revenue specialists made numerous contacts with Patrick Malcolm McNiven regarding delinquencies on the sales tax account of Boca Styling, Inc. in an attempt to resolve delinquencies on the account and to secure Patrick McNiven's voluntary compliance. These documented contacts were memorialized in comment log entries made by the revenue specialists and entered into the Department's System for Unified Taxation.

The comment log entry dated June 26<sup>th</sup>, 2018 denotes that Patrick Malcolm McNiven confirmed that he is responsible for the operation and finances of Boca Styling, Inc., that Patrick Malcolm McNiven was responsible for filing returns; that Patrick Malcolm McNiven was advised that failure to remit sales tax collected is a crime; and that Patrick Malcolm McNiven was able to electronically access the sales tax account of Boca Styling, Inc. to make payments to the Department.

In addition to the documented comment log entries in the Department of Revenue's System for Unified Taxation, I made contact with a Department of Revenue specialist who was assigned the sales tax account of Boca Styling, Inc. The revenue specialist confirmed having made numerous contacts with Patrick McNiven regarding the sales tax account of

Boca Styling, Inc. prior to the periods included within the scope of this investigation; that Patrick Malcolm McNiven advised that he filed and paid sales tax; that Patrick Malcolm McNiven was able to electronically access the sales tax account of Boca Styling, Inc. to make payments to the Department of Revenue; and that Patrick McNiven directed the revenue specialist to use credits on the sales tax account of Boca Styling, Inc.

On October 8, 2019, I traveled to the business location and found the business was open and operating. Patrick Malcolm McNiven was present at the business location at the time of the visit. I provided Patrick Malcolm McNiven a letter which contained a request for the voluntary production of business records of Boca Styling, Inc. and a business card with my contact information. The letter contained a compliance date of November 4, 2019 to produce the records. To date, no business records have been received as requested in the letter. In addition, I provided Patrick McNiven with a Department of Revenue Statement of Rights which he acknowledged signed and waived. I asked Patrick McNiven if he collects sales tax from customers and he stated that he does. I asked Patrick McNiven if he has had contacts with the Department of Revenue regarding sales tax and he acknowledged that he had. I asked Patrick McNiven how sales tax is calculated when he advised that he uses a point of sale system that calculates the sales tax. A customer entered the business and the interest of protecting Patrick McNiven's privacy, I concluded the interview and I requested Patrick Malcolm McNiven contact me using the telephone number listed on the letter I hand delivered to him and on my business card. To date, Patrick Malcolm McNiven has not contacted me as requested.

In the course of this investigation I learned that the business had a banking relationship with BankUnited, N.A. I obtained and served a subpoena on the bank. The subpoena sought the production of the banking records of Boca Styling, Inc. In response to the subpoena, BankUnited, N.A. provided the banking records of Boca Styling, Inc. doing business as Tint World. The bank records included a BankUnited Business Signature Card, a BankUnited Beneficial Ownership Certification, canceled checks and bank statements for an account maintained on behalf of the business with that banking institution.

The BankUnited Business Signature Card, dated October 13<sup>th</sup>, 2017, lists Patrick M McNiven as a signatory on the business' bank account.

The BankUnited Beneficial Ownership Certification, dated October 13<sup>th</sup>, 2017, defines "Beneficial Owner" as an individual (a natural person), either directly or indirectly, with 10% or greater ownership in the Depositor. The authorized officer of the Depositor certifies to BankUnited, N.A., under penalty of perjury that they provide a complete list of Beneficial Owners. The sole Beneficial Owner listed on the document is Patrick M McNiven with 100% ownership of Boca Styling Inc doing business as Tint World. The document bears the signature of Patrick M McNiven as President.

BankUnited, NA. provided over one hundred canceled checks drawn on an account named Tint World Boca Styling, Inc. My review of the canceled checks revealed that the

majority of the checks drawn on the businesses bank account bear a signature that appears to be that of Patrick Malcolm McNiven. In addition, numerous canceled checks written during periods included within the scope of this investigation appear to have been for payment of business expenses. By paying businesses expenses during periods when sales tax was due the Department of Revenue, Boca Styling, Inc. benefitted from the use of State funds and enjoyed an unfair advantage over other Florida businesses.

I used BankUnited monthly bank statements to generate a Schedule of Net Bank Deposits. The schedule depicts Net Deposits as Gross Deposits less credits that do not appear to be sales to customers. Review of the schedule revealed that in the period September 2018 through October 2019 **\$788,918.65** net deposits were made into bank account of Boca Styling, Inc. that were under the signatory control of Patrick Malcolm McNiven.

In the absence of business records, I used the Schedule of Net Bank Deposits to generate a Schedule of the Deposit Method of Proof. The deposit method of proof is used to deduce sales collected based upon net bank deposits. Review of the Schedule of the Deposit Method of Proof revealed that in the period September 2018 through October 2019 a minimum of **\$47,788.42** in state sales tax was collected from the customers of Boca Styling, Inc. that was not remitted to the Department of Revenue as follows:

Sep-18	\$3,483.13
Oct-18	\$3,903.88
Nov-18	\$2,665.60
Dec-18	\$3,222.37
Jan-19	\$5,433.61
Feb-19	\$4,087.32
Mar-19	\$3,035.44
Apr-19	\$3,665.77
May-19	\$3,198.27
Jun-19	\$2,797.98
Jui-19	\$3,188.06
Aug-19	\$3,092.50
Sep-19	\$3,115.98
Oct-19	\$2,898.51

Therefore, Patrick Malcolm McNiven, while acting in his capacity as an agent of the state, and as corporate officer of Boca Styling, Inc., collected and failed to remit a minimum of \$47,788.42 in sales tax as required by law.



Before me, a notary public of the State of Florida, the affiant, Anthony Martino who appeared personally  or by means of audio-video communication technology , after being duly sworn, says under penalty of perjury that the foregoing affidavit and the facts stated therein are true and correct to the best of their knowledge. The affiant  is personally known to me, or  produced a valid form of identification. Type of identification produced \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this 25<sup>th</sup> day of August, 2020

(SEAL)



Signature of Notary Public

Public



(Print, Type or Stamp Commissioned name of Notary

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