

PROBABLE CAUSE AFFIDAVIT

STATE OF FLORIDA
COUNTY OF PALM BEACH

DEPARTMENT OF REVENUE
CASE NUMBER: 3000006691

Defendant: Kevin Alan Tvenstrup
Sex: Male
Race: White
Date of Birth: March 15, 1968
Height: 6'0"
Weight: Unknown
Eyes: Unknown
Hair: Unknown
Driver License: Florida T152-501-68-095-0

Address: 12124 Temple Boulevard
West Palm Beach, FL 33412-2921

Offense (1): Tax Evasion (Sales Tax)
Section 212.12(2)(e), Fla. Stat. (2005)
Felony of the 3rd degree, 15 counts
Dates: May 2014 through September 2014 and
through January 2017

Business Name: Enclosures Unlimited, Inc.
12124 Temple Boulevard
West Palm Beach, FL 33412-2921

Victim: State of Florida

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SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CRIMINAL

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

I, Toni Ricciardelli, am a Financial Investigator with the Florida Department of Revenue. I have conducted an investigation of Enclosures Unlimited, Inc., a business engaged in retail sales and installation of boat enclosures, located in Palm Beach County, Florida.

I obtained an image of Kevin Alan Tvenstrup's Florida Driver's License and other personal information, such as social security number and driver license number, from the

Florida Department of Highway Safety and Motor Vehicles, with the purpose of comparing that information with records obtained through the course of the investigation.

As a designated custodian of records of the Department of Revenue with regard to Department of Revenue criminal cases, I am providing a certified copy of the business' Application to Collect and/or Report Tax in Florida filed on behalf of Enclosures Unlimited, Inc. The application reveals that the open business, Enclosures Unlimited, Inc., registered with the Department of Revenue as a corporation engaging in the retail sales and installation of boat enclosures. The application lists Kevin Tvenstrup as incorporator. In that same section Kevin Tvenstrup's social security is provided as an identifier. Further, Section H of the application, "Applicant Declaration and Signature", shows the printed name Kevin Tvenstrup, with the title of "incorporator".

I obtained and reviewed certified records produced by the Florida Department of State and found that, on June 26, 2000, the business registered with the Secretary of State as a corporation under the name Enclosures Unlimited, Inc. These records show Kevin Tvenstrup as president and registered agent of Enclosures Unlimited, Inc. Further, these records show the principal place of business address as 1603 SW 2nd Avenue, Ft. Lauderdale, FL, 33315 and later changed to 16214 91st Place North, Loxahatchee, FL, 33470, which is the address of record provided by the Florida Department of Highway Safety and Motor Vehicles. The corporation was administratively dissolved on September 23, 2016 and is presently inactive.

My review of the Florida Department of Revenue records revealed that the business voluntarily registered through the Department of Revenue's website to file Sales and Use Tax returns and remit payments electronically using Internet File & Pay (ACH-Debit). This system allows taxpayers to file their Sales and Use Tax Returns and make payments online. The bank account numbers used for the electronic payments is Bank of America, National Association, account numbers ending in [REDACTED]

I reviewed records of the Department of Revenue which revealed that a Sales and Use Tax Return was filed on behalf of Enclosures Unlimited, Inc. for a period not included in this investigation. This period was January 2016. The electronically filed return shows the electronic filer contact information as Kevin Tvenstrup. The electronic payment information shows payment was made from a Bank of America Bank account ending in [REDACTED].

Moreover, I obtained certified copies of the Sales and Use Tax Returns the business electronically filed for the periods April 2014 through August 2014 and March 2016 through June 2016. The electronically filed returns for the monthly periods of April 2014 through August 2014 shows the electronic filer contact information as Kevin Tvenstrup. It must be noted that all of these returns were filed without corresponding sales tax remittances.

The filing of these returns demonstrates that Kevin Tvenstrup, had knowledge of his legal responsibility and duty to collect, report and remit the sales tax collected by Enclosures

Unlimited, Inc. In addition, these returns and remittance, demonstrate Kevin Alan Tvenstrup had knowledge of the sales and sales tax collection amounts listed on the electronically filed Sales and Use Tax returns.

Furthermore, this review reveals that after the Department of Revenue issued delinquency notices to the business, Kevin Alan Tvenstrup did not file Sales and Use Tax returns on behalf of the business for the monthly periods of July 2016 through December 2016.

In addition to not filing returns, as required by law, Department of Revenue records reveal that Kevin Alan Tvenstrup did not pay the taxes due for the monthly periods of April 2014 through August 2014 and March 2016 through December 2016.

As the designated custodian of records of the Department of Revenue with regard to Department of Revenue criminal cases, I am providing a certified statement indicating that "after a diligent search of Department's records, I do not find where Enclosures Unlimited, Inc., BP# 1965788, has filed Sales and Use Tax returns with the Department of Revenue for the monthly periods of July 2016 through December 2016."

As the designated custodian of records of the Department of Revenue with regard to Department of Revenue criminal cases, I am providing a certified statement indicating that "after a diligent search of Department's records, I do not find where Enclosures Unlimited, Inc., BP# 1965788 has remitted Sales and Use Tax payments to the Department of Revenue for the monthly periods of April 2014 through August 2014 and March 2016 through December 2016."

I conducted a review of the Department's System for Unified Taxation, which indicates that Department of Revenue specialists made numerous contacts with Kevin Alan Tvenstrup in an effort to resolve the company's sales tax delinquencies and secure Kevin Alan Tvenstrup's voluntary compliance with sales tax reporting and remitting requirements. These contacts were memorialized in comments made by the revenue specialists and entered into the Department's System for Unified Taxation. These comments demonstrate that Kevin Alan Tvenstrup was aware of the sales tax liability associated with the operation of his business, made promises to pay said liability, but failed to do so.

In addition to the Department of Revenue specialists' documented comments, I obtained affidavits from revenue specialists assigned to monitor Enclosures Unlimited, Inc.'s sales tax account. The affidavits reveal that Kevin Alan Tvenstrup was advised of the sales tax liability of the business. The affidavits also indicate that Kevin Alan Tvenstrup was familiar with the sales tax reporting and remitting requirements associated with Enclosures Unlimited, Inc. and aware of his legal responsibility to remit the tax collections of his business to the Department of Revenue. The affiants also reveal that unremitted sales tax was used for other bills and medical expenses. Payment arrangements were entered into with the Department of Revenue for payment of the outstanding sales tax liabilities. These payment arrangements defaulted for nonpayment and the failure to keep current with monthly sales tax remittance.

Moreover, the affidavits also reveal that Kevin Alan Tvenstrup was notified about the Florida Statute 212.15, which states that taxes imposed by this chapter become state funds and at the moment of collection and any person who fails to remit taxes collected may be guilty of theft of state funds.

I sent a letter to Kevin Alan Tvenstrup, advising that the Department of Revenue was conducting an investigation of the business and requesting the voluntary production of business records. No business records or other information was produced in response to the letter.

In an effort to establish the sales volume of the business, I subpoenaed bank records for Enclosures Unlimited, Inc. from Bank of America, N.A. These bank accounts were identified during the course of the investigation as accounts used by Enclosures Unlimited, Inc. to remit sales tax collections to the Department of Revenue.

Bank of America, N.A. provided records consisting of signatory cards, corporate certificate of resolution, canceled checks, deposits with offsets, and bank statements for three (3) business checking accounts titled Enclosures Unlimited, Inc. The corporate certificate of resolutions and signatory cards for the three (3) business accounts list Kevin Tvenstrup and Kevin A. Tvenstrup as president, along with his Florida driver license number.

Furthermore, my review of canceled checks from Bank of America, N.A. for the periods of May 2014, February 2015 and November 2016, revealed that Kevin Tvenstrup exercised his authority as a bank signatory in that canceled checks are signed with a signature that appears to be that of Kevin Tvenstrup.

Utilizing bank statements provided by Bank of America, N.A., I prepared a schedule titled "Summary of Bank Deposits" listing the bank deposits of each account by month. The schedule shows that, for the periods of April 2014 through August 2014 and March 2016 through December 2016, a net total of **\$557,950.16** was deposited in the two (2) accounts titled Enclosures Unlimited, Inc. This review also shows that for all the periods included in this investigation, there were enough funds in the accounts to pay the Department of Revenue the taxes due.

Using the bank statements, I prepared a schedule titled "Schedule of Bank Deposits/Unreported or Additional Taxable Revenue" listing all bank deposits for April 2014 through August 2014 and March 2016 through June 2016, when Sales and Use Tax Returns were filed without remittance, and July 2016 through December 2016, when Sales and Use Tax Returns were not filed. I excluded and deducted from the schedule all deposits that did not appear to be generated from regular business' sales or were unidentified. The schedule reveals that the business gross revenue/sales (net deposits/income) for the periods identified above is **\$557,950.16**. Reported and calculated exempt sales were deducted from this amount, leaving a taxable income revenue/sales, including sales tax, of **\$475,260.41**. I then divided the

taxable income revenue/sales (including sales tax) amount of each period by 1.06, resulting in net taxable income revenue of **\$448,358.89**. I then subtracted this amount from the taxable income revenue amount (which includes sales tax collected) amount of **\$475,260.41**, leaving a minimum sales tax collected amount of **\$26,901.52** for the periods included in this investigation.

In addition, after completing the bank deposits' analysis, and applying all the payments made by Enclosures Unlimited, Inc., I verified that no additional payments were received by the Department of Revenue towards the offense period. Further, I confirmed that Sales and Use Tax Returns for the period April 2014 through August 2014 and March 2016 through December 2016 were filed without remittance.

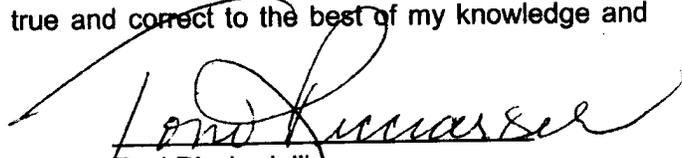
I then concluded that Kevin Alan Tvenstrup, evaded paying a minimum of **\$26,901.52** in sales tax during the period of April 2014 through August 2014 and March 2016 through December 2016 by willfully failing to remit the sales tax owed by his business Enclosures Unlimited, Inc.

Additional review of the subpoenaed bank records, which included the deposits with offsets, revealed images of deposited items. From these images, I contacted the business customers, who made a payment to Enclosures Unlimited, Inc., using a personal check. The checks were payable to Enclosures Unlimited, Inc., and deposited into the business accounts of Enclosures Unlimited, Inc., ending in [REDACTED]

I requested and obtained from these customer's a copy of the invoice associated with these checks. I then reviewed the copies of Enclosures Unlimited, Inc., invoices, which lists the sales tax as a separate charge from the sales price. This shows the business charges and collects sales tax in its normal course of business taxable operations.

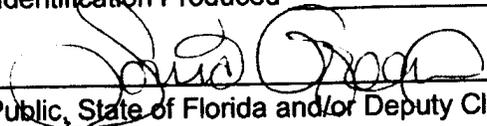
On March 10, 2017, I spoke to Kevin Alan Tvenstrup via telephone, he stated that he received a letter requesting voluntary production of business records. He added that it would take him two weeks to produce the records. I inquired that I also would like to request a voluntary interview concerning his involvement with Enclosures Unlimited, Inc. He replied that he would return my call to arrange the records delivery and the voluntary interview. As of April 25, 2017, Kevin Alan Tvenstrup has not produced business records nor responded to my interview request.

Under penalties of perjury, I declare that I have read the foregoing probable cause affidavit and that the facts stated in it are true and correct to the best of my knowledge and belief.


Toni Ricciardelli

Sworn to (or affirmed) and subscribed before me this 10th day of May, 2016 by Toni Ricciardelli.

Personally known
Produced Identification
Type of Identification Produced _____



Notary Public, State of Florida and/or Deputy Clerk of the Court


SONIA GREEN
MY COMMISSION #FF860717
EXPIRES: FEB 15, 2020
Bonded through 1st State Insurance

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