PROBABLE CAUSE AFFIDAVIT

STATE OF FLORIDA
COUNTY OF PALM BEACH

DEPARTMENT OR REVENUE
CASE NUMBER: 3000008005

Defendant:	Oscar Alonso Herrera
Sex:	Male
Race:	Hispanic
Date of Birth:	August 20, 1980
Height:	5'6"
Weight:	Unknown
Eyes:	Unknown
Hair:	Unknown
Driver License Number:	Florida H660-641-80-300-0
Address:	4301 Oak Circle, Suite 28 Boca Raton, FL 33431-4200
Offense (1):	Tax Evasion (Sales Tax) Section 212.12(2)(e), Fla. Stat. (2005) Felony of the 3rd degree, 34 counts Dates: July 2016 through April 2019
Offense (2):	Failure to File Six Consecutive Returns (Sales Tax) Section 212.12(2)(c), Fla. Stat. (2003) Felony of the 3rd degree, 3 counts Dates: August 2017 through January 2019
Business Name:	Osyn Auto Repair Inc
Business Address:	4301 Oak Circle, Suite 28 Boca Raton, FL 33431-4200
Victim:	State of Florida

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 an Investigator with the Florida Department of Revenue. I have conducted an investigation of Osyn Auto Repair Inc a business engaged in automotive repair, located in Palm Beach County, Florida.

I obtained an image of Oscar Alonso Herrera's Florida Driver License and signature array from the Florida Department of Highway Safety and Motor Vehicles with the purpose of comparing the signature on the driver license with the records obtained through the course of the investigation.

As the designated custodian of records of the Department of Revenue with regard to Department of Revenue criminal cases, I am providing a certified copy of Osyn Auto Repair Inc's Florida Business Tax Application from the Department of Revenue's database. The application shows that the open business is registered with the Department of Revenue as a corporation. Oscar Alonso Herrera is listed on the application as president and sole corporate officer of Osyn Auto Repair Inc. The business opening date is listed as March 1, 2014. The Applicant Acknowledgement, Declaration and Signature line of the application, lists the name of Oscar Alonso Herrera, with the title of president electronically printed. The open business is required to file sales and use tax returns on a monthly basis with the Florida Department of Revenue.

I obtained and reviewed certified records produced by the Florida Department of State and found that the business registered with the Secretary of State as a corporation with an effective date of June 26, 2013, under the name Osyn Auto Repair Inc. The Articles of Incorporation list Oscar Herrera as a registered agent, incorporator, president and sole corporate officer. The business principal and mailing address listed on the original electronically filed Articles of Incorporation is 4301 Oak Circle, Unit 2, Boca Raton, FL, 33431.

The original Articles of Incorporation list Oscar Herrera as the registered agent, incorporator, president and sole corporate officer of Osyn Auto Repair Inc. The Annual Reports dated April 2014, April 2015, April 2016 and May 2017 lists Oscar Herrera as the registered agent, president and sole corporate officer of Osyn Auto Repair Inc. The Annual Reports for 2014, 2015, 2016 and 2017 were electronically signed, Oscar Herrera, as president. The corporation status is inactive per administrative dissolution on September 28, 2018.

My review of Department of Revenue records revealed that monthly Sales and Use Tax returns were filed on behalf of Osyn Auto Repair Inc for periods included in this investigation. These periods are June 2016 through June 2017. As the designated custodian of records of the Department of Revenue with regards to Department of Revenue criminal cases, I obtained certified copies of the filed Sales and Use Tax returns and payments for these periods. The periods of June 2016 through May 2017 sales tax returns were filed on a paper return. The returns filed for January 2017 through May 2017 are signed with a signature that appears to be that of Oscar Alonso Herrera.

The filed returns demonstrate that Oscar Alonso Herrera was aware of his legal responsibility to report and remit the state sales tax collection of Osyn Auto Repair Inc. It must be noted the sales tax returns filed for periods June 2016 through May 2017 were not timely filed and were filed without corresponding sales tax remittances. This shows that Oscar Alonso Herrera had knowledge of his legal responsibility and duty to collect, report and remit the sales tax collected by Osyn Auto Repair Inc. All returns filed demonstrate Oscar Alonso Herrera's knowledge of the sales and sales tax collection amounts listed on them. Moreover, the filing of sales tax returns after Department notification is tantamount to an admission that Oscar Alonso Herrera did not file returns timely as required by law.

Furthermore, this review reveals that after the Department of Revenue issued delinquency notices to the business, Oscar Alonso Herrera, did not file Sales and Use Tax returns on behalf of the business for the monthly periods of July 2017 through March 2019.

In addition to not filing returns, as required by law, Department of Revenue records reveal that Oscar Alonso Herrera, did not pay the taxes due for the monthly periods of June 2016 through May 2017 and July 2017 through March 2019.

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 the Department's records, I do not find where Osyn Auto Repair Inc, BP# 4252773, has filed Sales and Use Tax returns with the Department of Revenue for the period of July 2017 through March 2019."

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 Osyn Auto Repair Inc, BP# 4252773, has remitted Sales and Use Tax payments to the Department of Revenue for the periods of June 2016 through May 2017 and July 2017 through March 2019."

A review of the Department's System for Unified Taxation indicates that various Department of Revenue representatives had numerous contacts with Oscar Alonso Herrera, in an effort to resolve Osyn Auto Repair Inc's sales tax delinquencies for periods included in this investigation, and secure voluntary compliance with sales tax reporting and remitting requirements.

In addition to the revenue specialists' documented comments, I obtained an affidavit from a tax specialist who reviewed business documented comments of a Revenue Specialist that visited the business March 2, 2017. The affidavit reveals that Oscar Alonso Herrera was familiar with the sales tax collection, reporting and remittance requirements associated with the operations of the business and acknowledged being the person responsible for making business decisions and paying the bills.

Moreover, the Department's System for Unified Taxation shows sales tax warrants were filed with the Clerk of the Court, Palm Beach County, Florida.

I hand delivered a letter to the business records custodian, Oscar Alonso Herrera, at the business location, advising that the Florida Department of Revenue was conducting an investigation of Osyn Auto Repair Inc and requested voluntary production of business records for the period of April 1, 2014 through and including March 31, 2019. No business records were produced in response to my request.

Based upon documents reviewed from the Department of Revenue database, I was able to determine that a banking relationship existed between Osyn Auto Repair Inc, Wells Fargo Bank, NA and SunTrust Bank.

In an effort to confirm the sales volume of the business, I subpoenaed bank records for Osyn Auto Repair Inc from Wells Fargo Bank, NA and SunTrust Bank. These bank accounts were identified during the course of the investigation as accounts used by Osyn Auto Repair Inc, to remit sales tax collections to the Department of Revenue.

In addition, I obtained copies of Osyn Auto Repair Inc's bank signature cards from Wells Fargo Bank, NA and SunTrust Bank. These documents show Oscar A. Herrera as the sole signatory on all bank accounts provided.

Furthermore, my review of canceled checks from Wells Fargo Bank, NA and SunTrust Bank, for the periods of June 2016 through March 2019, revealed that Oscar A. Herrera exercised his authority as a sole bank signatory in that canceled checks are signed with a signature that appears to be that of Oscar A. Herrera on all accounts provided.

No business records were received from the business; as a result, bank statements were used to identify the taxable revenue for periods included in this investigation.

I reviewed the bank statements, provided by Wells Fargo Bank, NA, and SunTrust Bank and scheduled the bank deposits of the accounts by month. This review shows that for the monthly periods of June 2016 through March 2019 a total of **$705,912.16** was deposited in the accounts maintained by the subject's business. 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.

In addition, using the bank statements, I prepared a schedule of bank deposits of the business bank account for the monthly periods of June 2016 through March 2019. I excluded and deducted all the non-income deposits and credits and any deposits that did not appear to be generated from regular business' sales or were unidentified. The review reveals that a minimum of **$681,017.92** appears to be the gross revenue/sales (net deposits/income) from the taxable activities of the business during the monthly periods of June 2016 through March 2019.

In addition, using the exempt sales provided in the filed Sales and Use Tax Returns for the periods June 2016 through June 2017; I calculated a ratio of exempts sales for the remaining periods from July 2017 through March 2019 where Sales and Use Tax Returns were not filed. The filed exempts sales and the ratio have a total of **$150,705.07**. I then deducted this exempt sales amount from each period from the gross revenue/sales (net deposits/income), leaving a taxable income revenue/sales, including sales tax of **$530,312.85.**

I then divided the taxable income revenue/sales (including sales tax) amount of each period by 1.06 for the periods of June 2016 through December 2016 where the sales tax rate for Palm Beach County was 6 percent, and by 1.07 for the periods of January 2017 through March 2019 where the sales tax rate for Palm Beach County was 7 percent, resulting in net taxable income revenue of **$496,653.02**. I then subtracted this amount from the taxable income revenue amount (which includes sales tax collected) amount of **$530,312.85**, leaving a minimum sales tax collected amount of **$33,659.83** for those periods.

After completing the bank deposits' analysis, and applying all the payments made by Osyn Auto Repair Inc I verified that **$816.17** was received by the Department of Revenue towards the offense periods.

I then concluded that Osyn Auto Repair Inc evaded paying a minimum of **$32,843.66** in sales tax during the monthly periods of June 2016 through March 2019 by willfully failing to remit the sales tax due for these periods on the taxable activities being conducted by the business of Osyn Auto Repair Inc.

In addition, I obtained a copy of a customer receipt that was presented in a business record request to a customer of the business. This customer receipt dated May 28, 2019, shows sales tax collected as a separate line item on the retail sale of the business and demonstrates the business charged and collected sales tax from its customers during its regular business operation.

Furthermore, on June 3, 2019, a Revenue Investigator traveled to the business address and hand delivered a letter requesting a voluntary interview to Oscar Alonso Herrera concerning his involvement with Osyn Auto Repair Inc. The letter sealed in an envelope was addressed to Oscar Alonso Herrera and given by hand to an office employee as Mr. Herrera was not present at the business that day. The employee promised to give the letter to Oscar Alonso Herrera when he returned to the business on June 5, 2019.

In addition, I sent a certified letter via the United States Postal Service requesting the voluntary interview concerning Oscar Alonso Herrera's involvement with Osyn Auto Repair Inc. The letter was signed for at the business location on May 28, 2019.

I have left numerous messages on the verified phone numbers for Osyn Auto Repair Inc and Oscar Alonso Herrera. As of July 12, 2019, I have not heard from Oscar Alonso Herrera.

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

Toni Ricciardelli

Sworn to (or affirmed) and subscribed before me this 6th day of July, 2019 by Roxana Ramos.

Personally known ✓
Produced Identification ____
Type of Identification Produced ______________

TERRY-ANN LEON
MY COMMISSION #GG108477
EXPIRES: MAY 25, 2021
Bonded through 1st State Insurance

NOTARY PUBLIC STATE OF FLORIDA

T Leon

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