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R. O. No. 76 - 22 - 23. By CITY CLERK. November 7, 2022.

Submitting a Summons and Complaint in the matter of Midstate Amusement Games, LLC vs. City of Sheboygan.

FHP

\_\_\_\_\_  
CITY CLERK

STATE OF WISCONSIN

CIRCUIT COURT

SHEBOYGAN

Midstate Amusement Games, LLC vs. City of Sheboygan

**Electronic Filing  
Notice**Case No. 2022CV000400  
Class Code: Money Judgment

FILED

07-29-2022

Sheboygan County

Clerk of Circuit Court

2022CV000400

Honorable Kent Hoffmann

Branch 2

CITY OF SHEBOYGAN  
SUITE 103  
828 CENTER AVENUE  
SHEBOYGAN WI 53081

Process Server

Date: 10/21/22 Time: 8:33 am/pm

☐ Personal☐ Substitute☐ Posted☐ Corporate

Case number 2022CV000400 was electronically filed with/converted by the Sheboygan County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party. This fee may be waived if you file a Petition for Waiver of Fees and Costs Affidavit of Indigency (CV-410A) and the court finds you are indigent under §814.29, Wisconsin Statutes.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

**Pro Se opt-in code: 183e07**

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-459-3068.

Sheboygan County Circuit Court  
Date: July 29, 2022

**FILED**  
**07-29-2022**  
**Sheboygan County**  
**Clerk of Circuit Court**  
**2022CV000400**  
**Honorable Kent Hoffmann**  
**Branch 2**

STATE OF WISCONSIN  
CIRCUIT COURT  
SHEBOYGAN COUNTY

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MIDSTATE AMUSEMENT GAMES, LLC  
1161 Industrial Parkway  
Fond du Lac, Wisconsin 54937,

Plaintiff,

v.

Case No. \_\_\_\_\_  
Money Judgment - 30301

CITY OF SHEBOYGAN  
828 Center Avenue, Suite 103  
Sheboygan, Wisconsin 53081,

Defendant.

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**SUMMONS**

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THE STATE OF WISCONSIN, To each person named above as a defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Sheboygan County Circuit Court, 615 N. 6th Street, Sheboygan, Wisconsin 53081, and to Plaintiff's attorneys, Reinhart Boerner Van Deuren s.c., whose address is 1000 N. Water Street, Suite 1700, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 29th day of July, 2022.

Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 1700  
Milwaukee, WI 53202  
Telephone: 414-298-1000  
Facsimile: 414-298-8097

Mailing Address:  
P.O. Box 2965  
Milwaukee, WI 53201-2965

*Electronically signed by*

*Kristina E. Somers*

Kristina E. Somers

State Bar ID No. 1026028

Don M. Millis

State Bar ID No. 1015755

Sara Stellpflug Rapkin

State Bar ID No. 1076539

Attorneys for Plaintiff

FILED  
07-29-2022  
Sheboygan County  
Clerk of Circuit Court  
2022CV000400  
Honorable Kent Hoffmann  
Branch 2

STATE OF WISCONSIN  
CIRCUIT COURT  
SHEBOYGAN COUNTY

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MIDSTATE AMUSEMENT GAMES, LLC  
1161 Industrial Parkway  
Fond du Lac, Wisconsin 54937,

Plaintiff,

v.

Case No. \_\_\_\_\_  
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CITY OF SHEBOYGAN  
828 Center Avenue, Suite 103  
Sheboygan, Wisconsin 53081,

Defendant.

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**COMPLAINT**

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Plaintiff Midstate Amusement Games, LLC (the "Plaintiff"), by its undersigned counsel Reinhart Boerner Van Deuren s.c., for its Complaint against Defendant City of Sheboygan (the "City"), alleges as follows:

**INTRODUCTION AND PARTIES**

1. This is an action under Wis. Stat. § 74.35 to recover unlawful taxes that were imposed on Plaintiff by the City for the 2021 tax year, plus statutory interest, with respect to certain personal property located in the City (the "Property").
2. Plaintiff is a Wisconsin limited liability company with its principal office located at 1161 Industrial Parkway, Fond du Lac, Wisconsin 54937.
3. Plaintiff is the owner of the Property, is responsible for the payment of property taxes and the prosecution of property tax disputes involving the Property, and is authorized to bring this claim in its own name.

4. The City is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 828 Center Avenue, Sheboygan, Wisconsin 53081.

5. The Property is identified in City records as Account Nos. 59281860858P and 59281860857P.

6. The Property consists of amusement devices, including video games, arcade games, jukeboxes, electronic dart boards, ATMs and other machines.

### **JURISDICTION AND VENUE**

7. The Court has personal jurisdiction over the City pursuant to Wis. Stat. § 801.05(1).

8. Venue is appropriate in Sheboygan County pursuant to Wis. Stat. § 801.50(2).

### **FACTS**

9. Plaintiff is a coin machine operator that provides a wide spectrum of gaming products and services to businesses in East Central Wisconsin including Oshkosh, Fond du Lac, Sheboygan, West Bend, Campbellsport, Kewaskum, Random Lake, Jackson, Plymouth, Ripon, Waupun, and the surrounding communities.

10. Plaintiff timely filed Statements of Personal Property with the City as of January 1, 2021 (the "Statements").

11. The Statements properly excluded personal property that was exempt by law from taxation.

12. For example, "machinery," which is defined by Wis. Stat. § 70.111(27)(a) to mean "a structure or assemblage of parts that transmits force, motion, or energy from one part to

another in a predetermined way by electrical, mechanical, or chemical means," is exempt from personal property tax.

13. The Property includes exempt "machinery."

14. Notwithstanding the Statements, the City assessed Account No. 59281860858P at \$600,000 and Account No. 59281860857P at \$14,150 as of January 1, 2021 (the "2021 Assessments").

15. Based on the 2021 Assessments, the City issued Plaintiff a 2021 tax bill for Account No. 59281860858P in the amount of \$15,726.25 and a 2021 tax bill for Account No. 59281860857P in the amount of \$370.87 (the "Tax Bills").

16. Plaintiff timely paid the Tax Bills issued by the City, and is aggrieved by the levy and collection of unlawful taxes against the Property.

17. The 2021 Assessments contained one or more palpable errors specified in Wis. Stat. § 74.33(1). Specifically, the Property was exempt from general property taxation pursuant to Wis. Stat. § 70.111(27) as of January 1, 2021 because most of the Property consisted of machinery not used in manufacturing.

18. Accordingly, following the procedure set forth in Wis. Stat. § 74.35 to recover taxes with respect to exempt property, on January 31, 2022, Plaintiff timely and personally served on the City Clerk a claim for refund to recover the taxes paid in connection with the Tax Bills (the "Refund Claim"). A true and correct copy of the Refund Claim as served on the City is attached hereto as Exhibit A and is incorporated herein by reference.

19. By letter received on or about May 19, 2022, Plaintiff received a notice of disallowance with respect to its Refund Claim from the City (the "Notice"). A true and correct copy of the Notice is attached hereto as Exhibit B and is incorporated herein by reference.

20. Plaintiff was aggrieved by the levy and collection of taxes on the Property and the City's failure to grant the Refund Claim.

21. Moreover, the City's failure to exempt the Property violated the rule of uniform taxation pursuant to Article VIII, Section 1 of the Wisconsin Constitution ("Uniformity Clause").

#### **CLAIM FOR RELIEF**

22. All of the foregoing paragraphs are incorporated as if fully re-alleged herein.

23. A tax with respect to property that was exempt by law is an "unlawful tax" pursuant to Wis. Stat. §§ 74.35(1) and 74.33(1)(c).

24. Plaintiff is a person aggrieved by the levy and collection of unlawful taxes by the City, and is, therefore, entitled to a refund of the tax pursuant to Wis. Stat. § 74.35(2), together with interest as provided by Wis. Stat. § 74.35(4).

25. With respect to the Refund Claim, Plaintiff is entitled to a refund in the amount of approximately \$16,097.12, or such greater amount as may be determined by the Court, plus interest.

**WHEREFORE**, Plaintiff respectfully requests the following relief:

A. A determination that the Property was exempt as machinery pursuant to Wis. Stat. § 70.111(27)(a);

B. A determination that the Property was non-uniform with the assessments of other exempt and/or non-exempt property;

C. A determination that the Property subject to the 2021 Assessments included the value of exempt property;

D. A determination that Plaintiff paid tax on the 2021 Assessments;

E. A determination that the taxes paid on the 2021 Assessments constituted unlawful taxes for which Plaintiff is entitled to a refund;

F. Entry of judgment in favor of Plaintiff and against the City in the amount of:

1. \$16,097.12, plus statutory interest; and
2. Costs and attorney's fees as allowed by law; and
3. Grant such other and further relief as the Court deems just and equitable.

Dated this 29th day of July, 2022.

Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 1700  
Milwaukee, WI 53202  
Telephone: 414-298-1000  
Facsimile: 414-298-8097

Mailing Address:  
P.O. Box 2965  
Milwaukee, WI 53201-2965

*Electronically signed by*

*Kristina E. Somers*

Kristina E. Somers  
State Bar ID No. 1026028  
Don M. Millis  
State Bar ID No. 1015755  
Sara Stellpflug Rapkin  
State Bar ID No. 1076539  
Attorneys for Plaintiff

**AFFIDAVIT OF SERVICE**

## Claim Of Unlawful Tax

Case Number: \_\_\_\_\_

Plaintiff:

Midstate Amusement Games, LLC

vs.

Defendant:

City Of Sheboygan

For:

Kristina E. Somers  
Reinhart, Boerner, Van Deuren S.C.  
1000 North Water Street, Suite 1700  
P.O. Box 2965  
Milwaukee, WI 53201-2965

Received by East Central Wisconsin Process to be served on City Of Sheboygan, 828 Center Avenue, Suite 103, Sheboygan, WI 53081.

I, Patrick Lamb, being duly sworn, depose and say that on the **31st** day of **January**, 2022 at 11:28 am, I:

served a **GOVERNMENT AGENCY** by delivering a true copy of the Claim Of Unlawful Tax with the date and hour of service endorsed thereon by me, to: **Meredith Debruin** as City Clerk for City Of Sheboygan, and informed said person of the contents therein, in compliance with State Statutes.

I certify that I am not a party to the action, that I am an adult resident of the State of Wisconsin, that I am of legal age and have proper authority in the jurisdiction in which this service was completed.

Subscribed and Sworn to before me on the 31st day of January, 2022 by the affiant who is personally known to me.

Julie A. Lamb  
NOTARY PUBLIC

My Commission Expires: 6-5-24



Patrick Lamb  
Patrick Lamb  
Process Server

East Central Wisconsin Process  
P.O. Box 1211  
Sheboygan, WI 53083  
(920) 458-2109

Our Job Serial Number: EWP-2022000054  
Service Fee: \$60.00

**EXHIBIT****A**



Reinhart Boerner Van Deuren s.c.  
P.O. Box 2965  
Milwaukee, WI 53201-2965

1000 North Water Street  
Suite 1700  
Milwaukee, WI 53202-3197

Telephone: 414.298.1000  
Fax: 414.298.8097  
Toll Free: 800.553.6215  
reinhardtlaw.com

January 31, 2022

Kristina E. Somers  
Direct Dial: 414-298-8249  
ksomers@reinhardtlaw.com

### CLAIM OF UNLAWFUL TAX

#### SERVED BY PROCESS SERVER

Ms. Meredith DeBruin  
Clerk  
City of Sheboygan  
828 Center Avenue, Suite 103  
Sheboygan, WI 53081

Process Server *R. Miller*  
Date 1/31/22 Time 11:28 am  
☐ Personal ☐ Substitute  
☐ Posted ☒ Corporate

Dear Ms. DeBruin:

Re: Midstate Amusement Games, LLC  
Account Nos. 59281860858P and  
59281860857P

On behalf of Midstate Amusement Games, LLC ("Claimant"), we hereby serve this claim of unlawful tax ("Claim") on the City of Sheboygan ("City") with respect to the above-referenced personal property account ("Property"). You are directed to serve a copy of any notice of disallowance on the undersigned agent of the Claimant.

1. This Claim is brought pursuant to Wis. Stat. § 74.35 for a refund of unlawful taxes collected from the Claimant by the City for the 2021 tax year, plus interest as provided by law, with respect to certain property located in the City and known by the personal property tax Account Numbers 59281860858P and 59281860857P.
2. At all times relevant to this Claim, the Claimant was the owner of the Property, was responsible for the payment of taxes imposed with respect to the Property and the prosecution of tax disputes involving the Property, and is authorized to bring this Claim in its own name.
3. The City is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 828 Center Avenue, Suite 103, Sheboygan, Wisconsin 53081.
4. The basis for this Claim is that one or more palpable errors specified in Wis. Stat. § 74.33(1) were made. Specifically, the Property included machinery, tools and/or patterns exempt from taxation pursuant to Wis. Stat. § 70.111(27); the Property included assets no longer

Ms. Meredith DeBruin  
January 31, 2022  
Page 2

used in a trade or business as of the assessment date; the Property included real property that was not subject to personal property tax and was, therefore, subject to double taxation; and/or the assessment of the Property violated the Uniformity, Due Process and Equal Protection clauses of the Wisconsin Constitution.

5. The Claimant timely filed Statements of Personal Property on which the Claimant reported all of its assessable personal property located within the City as of January 1, 2021 ("Statements"). The Statements properly excluded personal property that was exempt by law from taxation.

6. Notwithstanding the Statement, the City assessed the Property subject to this claim at the following amounts as of January 1, 2021 ("Assessed Values"):

Account No.	Assessment
59281860858P	\$600,000
59281860857P	\$ 14,150

7. Based on the Assessed Values, the City issued the Claimant 2021 tax bills in the following amounts ("Tax Bills"):


Account No.	Tax
59281860858P	\$15,726.25
59281860857P	\$ 370.87

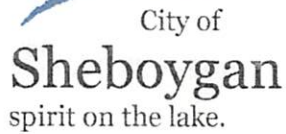
8. The Claimant timely paid the Tax Bills issued by the City, and is aggrieved by the levy and collection of an unlawful tax against the Property.

9. The amount of this Claim is \$16,097.12, plus interest.

By this letter, the Claimant stated a valid claim to recover the unlawful tax paid with respect to its Property. The Claimant respectfully requests the City to grant this Claim within 90 days from the date of service hereof.

Yours very truly,

  
Kristina E. Somers



May 18, 2022

**CERTIFIED & RESTRICTED MAIL**

Reinhart Boerner Van Deuren s.c.  
c/o Attorney Kristina Somers  
P.O. Box 2965  
Milwaukee, WI 53201

Re: Your Claimant: Midstate Amusement Games, LLC  
Date of Loss: 2021 Tax Year

Dear Attorney Somers:

City of Sheboygan staff have reviewed and considered your claim filed on January 31, 2022, concerning damages your claimant allegedly received, and denied it in full.

Please be advised that no lawsuit may be brought on this claim against the City of Sheboygan or any of its officials, officers, agents or employees after six (6) months from the date of receipt of this letter.

If you have any further questions on this claim, contact the City Attorney's office at 459-3917.

Sincerely,

  
Charles C. Adams  
CITY ATTORNEY

CCA/mms

cc: City Clerk Meredith DeBruin  
Financial Reporting Analyst Margo Wagner  
Director of Liability Claims Allison DeFranze

CITY ATTORNEY'S OFFICE

CITY HALL  
828 CENTER AVENUE  
SUITE 210  
SHEBOYGAN, WI 53081

920/459-3917  
FAX 920/459-3919

[www.sheboyganwi.gov](http://www.sheboyganwi.gov)

EXHIBIT

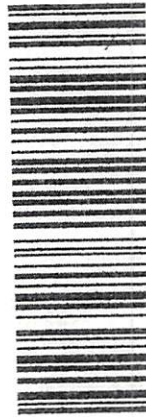
B

SHEBOYGAN CITY ATTORNEY  
828 CENTER AVENUE, SUITE 210  
SHEBOYGAN, WI 53081

RETURN RECEIPT  
REQUESTED

RESTRICTED DELIVERY

CERTIFIED MAIL®



7016 2710 0000 7505 1673

Reinhart Boerner Van Deuren s.c.  
c/o Attorney Kristina Somers  
1000 North Water Street, Suite 1700  
Milwaukee, WI 53202-3197

ES20283186 0054

RESTRICTED DELIVERY



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