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R. O. No. 130 - 22 - 23. By CITY CLERK. April 5, 2023.

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

FAP

CITY CLERK

STATE OF WISCONSIN**CIRCUIT COURT****SHEBOYGAN****MIDSTATE AMUSEMENT GAMES, LLC vs. CITY OF
SHEBOYGAN****Electronic Filing
Notice**Case No. 2023CV000151
Class Code: Money Judgment

FILED

03-20-2023

Sheboygan County

Clerk of Circuit Court

2023CV000151

Honorable Rebecca L.
Persick

Branch 4

CITY OF SHEBOYGAN
828 CENTER AVENUE, SUITE 103
SHEBOYGAN WI 53081

MAR 21 '23 PM 2:46

Case number 2023CV000151 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: ed4fe1

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: March 20, 2023

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03-20-2023
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Persick
Branch 4

STATE OF WISCONSIN

CIRCUIT COURT

SHEBOYGAN COUNTY

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

Plaintiff,

Case No. _____

v.

Money Judgment - 30301

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

Defendant.

SUMMONS

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 Douglas A. Pessefall, Pessefall Law, LLC, Plaintiff's attorney, whose address is 2512 N. 89th Street, Wauwatosa, Wisconsin, 53226. 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 20th day of March, 2023.

Pessefall Law, LLC
2512 N. 89th Street
Wauwatosa, WI 53226
(414) 698-1301

Douglas A. Pessefall
State Bar No. 1034109
doug@pessefall-law.com

Electronically signed by Douglas A. Pessefall
Attorney for Plaintiff
Midstate Amusement Games, LLC

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STATE OF WISCONSIN

CIRCUIT COURT

SHEBOYGAN COUNTY

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

Plaintiff,

v.

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

Defendant.

Case No. _____

Money Judgment - 30301

COMPLAINT

Plaintiff Midstate Amusement Games, LLC, by and through its attorney, Douglas A. Pessefall of Pessefall Law, LLC, and pursuant to Wis. Stat. §§ 74.35 and 801.02, states and alleges its Complaint against Defendant City of Sheboygan as follows:

INTRODUCTION AND PARTIES

1. This is an action under Wis. Stat. § 74.35 to recover unlawful taxes that were imposed on Plaintiff Midstate Amusement Games, LLC by Defendant City of Sheboygan for the 2022 tax year, plus statutory interest, with respect to certain personal property located in the City of Sheboygan ("Property").

2. The Property is identified on City records as Account 59281860858P.

3. The Property consists of taxable and non-taxable personal property, including office fixtures, equipment, amusement devices, including video games, arcade games, jukeboxes, electronic dart boards, ATMs and other machines.

4. Plaintiff Midstate Amusement Games, LLC ("Midstate") is a Wisconsin limited

liability company with its principal office located at 1161 Industrial Parkway, Fond du Lac, Wisconsin 54937.

5. Midstate is the owner of the Property, and 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.

6. Defendant City of Sheboygan ("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.

JURISDICTION AND VENUE

7. The Court has personal jurisdiction over the City pursuant to Wis. Stat. §§ 74.35(3)(d) and/or 801.05(2).

8. Venue is appropriate in Sheboygan County pursuant to Wis. Stat. §§ 74.35(3)(d) and/or 801.50(2).

FACTS

9. Midstate 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. In Wisconsin, personal property generally is subject to taxation unless an exemption applies. Taxpayers report the original cost of their non-exempt personal property by year of acquisition on an annual Statement of Personal Property ("Statement"). Taxpayers file the Statement with their local tax assessor who, in turn, uses the Statement to assess the value of the Taxpayer's personal property for the year.

11. In early 2022, Midstate timely filed its Statement with the City on which Midstate reported its assessable personal property as of January 1, 2022 and excluded its non-assessable or exempt personal property, in accordance with the Statement's instructions.

12. Notwithstanding the foregoing, the City assessed the Property at \$540,000 as of January 1, 2022 (the "2022 Assessment").

13. In so doing, the 2022 Assessment of the Property included personal property that was exempt by law from taxation.

14. For example, the 2022 Assessment included "machinery," defined in 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," which is exempt from personal property tax.

15. Based on the 2022 Assessment, the City issued Midstate a 2022 tax bill in the amount of \$10,400.71 ("Tax Bill").

16. Midstate timely paid the Tax Bill issued by the City, and now is aggrieved by the levy and collection of an unlawful tax against the Property.

17. The Assessment contained one or more palpable errors specified in Wis. Stat. § 74.33(1). Specifically, some of the Property was exempt from general property taxation pursuant to Wis. Stat. §§ 70.111(27)(a) as of January 1, 2022 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, 2023, Midstate timely served on the City a claim for refund to recover the tax paid in connection with the Tax Bill ("Refund Claim"). A true and correct copy of the Refund Claim as served on the City is attached hereto as Exhibit A.

19. By letter dated February 21, 2023, Midstate received a notice of disallowance with respect to its Refund Claim from the City ("Notice"). A true and correct copy of the Notice is attached hereto as Exhibit B.

20. Midstate was aggrieved by the levy and collection of tax 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 the foregoing paragraphs are incorporated as if fully re-alleged.

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. Midstate 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, Midstate is entitled to a refund in the amount of approximately \$10,400.71, or such greater amount as may be determined by the Court, plus interest.

WHEREFORE, Midstate respectfully requests that the Court:

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 2022 Assessment included the

value of exempt property;

D. A determination that Plaintiff paid tax on the 2022 Assessment;

E. A determination that the tax paid on the 2022 Assessment constituted an unlawful tax for which Plaintiff is entitled to a refund;

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

1. \$10,400.71, plus statutory interest on the tax paid for the period between the time when the tax was due and the date on which the tax is refunded by the City;
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 20th day of March, 2023.

Pessefall Law, LLC
2512 N. 89th Street
Wauwatosa, WI 53226
(414) 698-1301

Douglas A. Pessefall
State Bar No. 1034109
doug@pessefall-law.com

Electronically signed by Douglas A. Pessefall
Attorney for Plaintiff
Midstate Amusement Games, LLC

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Pessefall Law, LLC

2512 N. 89th Street
Wauwatosa, WI 53226
doug@pessefall-law.com ▪ (414) 698-1301

January 31, 2023

CLAIM OF UNLAWFUL TAX

HAND DELIVERED

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

Re: Midstate Amusement Games, LLC
Parcel No. 59281860858P

Dear Ms. DeBruin:

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 allowance or 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 2022 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 Number 59281860858P.

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

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 a Statement of Personal Property on which the Claimant reported all of its assessable personal property located within the City as of January 1, 2022 ("Statement"). The Statement properly excluded personal property that was exempt by law from taxation.

6. Notwithstanding the Statement, the City assessed the Property subject to this claim, which was assessed by the City at \$540,000.00 as of January 1, 2022 ("Assessed Value").

7. Based on the Assessed Value, the City issued the Claimant a 2022 tax bill in the amount of \$10,400.71 ("Tax Bill").

8. The Claimant timely paid the Tax Bill 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 \$10,400.71, 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,

s/Douglas A. Pessefall

Douglas A. Pessefall

February 21, 2023

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03-20-2023
Sheboygan County
Clerk of Circuit Court
2023CV000151
Honorable Rebecca L.
Persich
Branch

CERTIFIED & RESTRICTED MAIL

Pessefall Law, LLC
c/o Douglas Pessefall
2512 N 89th Street
Wauwatosa, WI 53226

Re: Your Claim Against the City of Sheboygan
Your Client: Midstate Amusement Games, LLC
Date of Loss: Tax Year 2022

Dear Attorney Pessefall:

City of Sheboygan staff have reviewed and considered your claim filed on January 31, 2023, concerning damages you 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/mmf

CITY ATTORNEY'S OFFICE

CITY HALL
828 CENTER AVENUE
SUITE 210
SHEBOYGAN, WI 53081

920/459-3917
FAX 920/459-3919

www.sheboyganwi.gov

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