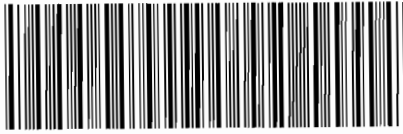


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A.M. APR 15 2011 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STEAK, County Clerk
BY _____ REPLY



11-1-01627-9 36230028 ADPC 04-15-11

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7 STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

8 THE STATE OF WASHINGTON,
9 Plaintiff,

NO. 11-1-01627-9

AFFIDAVIT FOR DETERMINATION
OF PROBABLE CAUSE

10 v.

11 SMOKE & BEER & MORE, a
12 Washington company,

13 Defendant.

14 Gregory D. Mixsell, being first duly sworn upon oath deposes and states:

15 I am an investigator with the Criminal Justice Division of the Attorney General's
16 Office (AGO-CRJ) for the State of Washington. I am familiar with the investigation of Smoke
17 and Beer and More and its owner/operator Jong S. Cheon, a resident of Lakewood,
18 Washington, doing business in Pierce County, Lakewood, Washington.

19 I have been employed as an investigator with the AGO-CRJ since April, 2008. Before
20 joining the AGO-CRJ, I was employed for twenty-six years as a police officer/detective with
21 the Seattle Police Department, Seattle Washington. In twenty-two years as a detective, I was
22 assigned to investigate crimes of sexual assault, robbery, assault and homicide.

23 As an investigator with the AGO-CRJ, I have as one of my main responsibilities the
24 investigation of tax fraud in which the State of Washington Department of Revenue and other
25 State agencies are the victims. I am familiar with the facts and circumstances contained in this
26 certification, either through personal investigation or through personal discussions with the

1 Washington State Department of Revenue (DOR) personnel who have obtained information in
2 the normal course of their duties. The investigation of Smoke and Beer and More and Jong S.
3 Cheon has primarily been conducted with personnel from the DOR. The reports of this
4 investigation contained the following information, upon which this Affidavit of Determination
5 of Probable Cause is based.

6 Jong S. Cheon registered with the DOR in November of 2005 and began conducting
7 business as a sole proprietorship, operating as a retail outlet selling cigarettes, beer, soda,
8 clothing, magazines, gifts and other merchandise in Lakewood, Washington, doing business as
9 Smoke and Beer and More. The business reported to the DOR under retailing and retail sales
10 tax and takes exempt food deductions.

11 All individuals and businesses entities wishing to conduct business in the State of
12 Washington must file a Master Business Application (MBA) and receive a Unified Business
13 Identifier prior to engaging in business. If the business (taxpayer) intends to engage in activity
14 subject to retail sales tax, the business must also obtain a Certification of Registration from the
15 DOR. Businesses that are engaged in the sales of retail goods and personal property in the
16 State of Washington are required to collect Washington State sales tax from their customers.
17 RCW 82.08.050 requires the taxpayer/seller to collect retail sales tax, which is "deemed to be
18 held in trust by the seller until paid to the department (DOR)". Businesses are required to
19 report their gross receipts from the retail sales and remit the appropriate amount of sales tax by
20 the due date of the tax return for the reporting period.

21 An audit of Smoke and Beer and More was performed by the Washington State
22 Department of Revenue covering the period January 1, 2006 through March 31, 2009. It was
23 observed that two cash registers were in use at the business. The DOR auditor went to the
24 taxpayers' accountant office to review the business records and the accountant provided only
25 one set of cash register tapes for the two cash registers used at the business. A second set of
26 cash register tapes should have been presented for the second registered, but were not present.

1 The sales detail on this one set of tapes were attached to the business excise tax returns and
2 closely reconciled to the amounts deposited in the business' bank account. Less than ten
3 percent of the deposits were from cash or checks. More than ninety percent of the deposits
4 were made from credit/debit card purchases. According to the bank statements, a majority of
5 the months in the audit period had no cash or checks deposited.

6 Despite the reporting to DOR of only minimal cash transactions, the taxpayer provided
7 his accountant over three hundred receipts for cash purchases of cigarettes, totaling at least
8 \$837,636.00. These were provided to and reviewed by the DOR auditor. Only \$359,727.00 of
9 this cash was deposited in the business bank account during the audit period. The record did
10 not indicate that cash had been withdrawn from the account to purchase the cigarettes sold at
11 the business. The cigarette purchases grossly exceeded the reported income on the excise tax
12 returns and federal income tax returns reviewed by the auditor. Based upon this analysis, the
13 taxpayer, remitted approximately twenty-seven percent (27%) of the sales tax collected during
14 the audit period, January 1, 2006 through March 31, 2009. The audit revealed that the taxpayer
15 collected and failed to remit to the DOR at least \$92,543.00. The majority of this amount
16 relates to collected and unremitted retail sales tax. During this period, the tax payer exerted
17 unauthorized control over trust funds belonging to the State of Washington. These funds were
18 rightfully paid to Smoke and Beer and More by its customers, with the belief that the owner of
19 Smoke and Beer and More, Jong S. Cheon, would forward them to the DOR as required by
20 law.

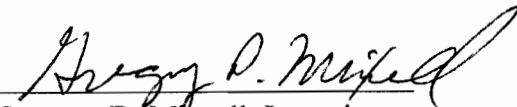
21 Including applicable penalties and interest, the taxpayer, Cheon, had an outstanding,
22 assessed tax liability of at least \$146,768.00. The Department of Revenue issued an
23 assessment for this amount due. On February 18, 2010, Jong. S. Cheon filed an Appeal
24 Petition with the Department of Revenue. Contained in the appeal petition filed by Cheon and
25 Smoke and Beer and More was the statement by Cheon that "tobacco shops only make a profit
26 of \$0.40 per pack of cigarettes that are sold. Due to the tough economic times, we did what we

1 had to stay open. We needed to pay bills to remain open, and in order to do that, it was
2 necessary to cheat on the taxes. It doesn't justify what we did, and we recognize our fault, but
3 we would like to request a reassessment of the fine because of our situation. Thank you". This
4 Appeal Petition was signed by Jong S. Cheon, the owner/operator of Smoke and Beer and
5 More.

6 Based upon my information and belief, Smoke and Beer and More, an "unincorporated
7 association" as defined in RCW 9A.04.110(17), was headquartered in Pierce County and all of
8 the above acts and/or omissions occurred in Pierce County, State of Washington.

9 I certify, under penalty of perjury under the laws of the State of Washington that the
10 foregoing is true and correct.

11 Dated this 12TH day of April, 2011.

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14 Gregory D. Mixsell, Investigator
15 Criminal Justice Division
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