

**PROBABLE CAUSE AFFIDAVIT**

STATE OF FLORIDA  
COUNTY OF LEON

DEPARTMENT OF REVENUE  
CASE NUMBER: 3000005320

Defendant: Brian Anthony Cartenuto  
Sex: Male  
Date of Birth: April 12, 1981  
Race: White  
Height: 5'11"  
Weight: Unknown  
Eyes: Brown  
Hair: Black  
Driver's License: C635-061-81-132-0  
Address: 9 Coolwater Lane  
Niceville, Florida

2016 CF 2042A1 - A6

**OFFENSE (1): THEFT OF STATE FUNDS (SALES TAX)**  
Section 212.15(2)(c), Fla. Stat.  
Felony of the 2<sup>nd</sup> Degree (1) Count

**Applied Period Sales Tax Collected      Required Filing/Offense Date**

October 2014	November 21, 2014
November 2014	December 23, 2014
December 2014	January 21, 2015
January 2015	February 23, 2015
February 2015	March 23, 2015

**OFFENSE (2): REFUSAL TO FILE RETURNS AND PAY THE TAXES DUE (SALES TAX)**  
Section 212.14(3), Fla.Stat.  
Misdemeanor of the 1<sup>st</sup> Degree (5) Counts

**Applied Period Sales Tax Collected      Required Filing/Offense Date**

October 2014	November 21, 2014
November 2014	December 23, 2014
December 2014	January 21, 2015
January 2015	February 23, 2015
February 2015	March 23, 2015

RECEIVED  
DEPARTMENT OF REVENUE  
TALLAHASSEE, FLORIDA

2016 JUL 11 AM 11:08

FILED

IN  
COMPUTER

Business Name: Tunnel Investment Groups LLC doing business as Tucker Duke's Lunchbox

Business Address: 224 E. College Ave.  
Tallahassee, Florida 32301

Victim: STATE OF FLORIDA

Before me this day personally appeared Kevin W. Koch, who, being first duly sworn, deposes and says that the above-named defendant committed the offenses charged and the facts and circumstances showing probable cause to believe same are as follows:

I, Kevin W. Koch, am a Revenue Investigator-Criminal Enforcement with the State of Florida, Department of Revenue. I have conducted an investigation of Tunnel Investment Groups LLC doing business as Tucker Duke's Lunchbox a business engaging in the retail sales of prepared foods and beverages in Leon County, Florida.

In my official capacity as the custodian of records, I obtained and certified a copy of the Florida Business Tax Application for Tunnel Investment Groups LLC doing business as Tucker Duke's Lunchbox from the Department of Revenue's System for Unified Taxation database. The application shows that the closed business was registered with the Florida Department of Revenue and engaged in business as a full service restaurant. Business partner number 4377128 was assigned to Tunnel Investment Groups LLC on July 22, 2014. The application identifies Brian A. Cartenuto as a member of Tunnel Investment Groups LLC. The application bears the electronic signature of Brian A. Cartenuto as manager. The business was located at 224 E. College Ave., Tallahassee, Florida 32301. The business was required to file monthly sales tax returns with the Florida Department of Revenue.

I reviewed the Florida Department of State's online database and obtained an image of the Articles of Organization. The company name is Tunnel Investment Groups LLC. The company was organized on April 16, 2014. The address is listed as 9 Cool Water Lane, Niceville, Florida 32578. Brian Cartenuto is listed as manager. The business status is inactive effective September 25, 2015.

On May 27, 2016 I received the lease agreement from Amy Yandle, property manager, for the Southern Strategy Group Inc., landlord of the business property located at 224 E. College Ave. Tallahassee, Florida. Amy Yandle provided me with a copy of the original lease agreement. This lease agreement bears a signature that appears to be that of Brian Cartenuto as manager of Tunnel Investment Groups LLC. Brian Cartenuto entered into the lease agreement on behalf of Tunnel Investment Groups LLC.

On September 23, 2015, I interviewed Michael E. Moore, former general manager for Tunnel Investment Groups LLC. Michael E. Moore stated that he worked for Tunnel Investment Groups LLC during the period October 2014 through February 2015; that he

was hired by Brian Cartenuto who represented himself to be the owner of the business; that he would e-mail nightly manager's log reports to Brian Cartenuto; that these reports contained the daily sales and sales tax collected by Tunnel Investment Groups LLC; that sales tax was collected on all applicable sales; that cash from the daily sales was deposited into the business bank account with BB&T Bank; that deposits also included the sales tax collected by the business; that credit and debit card sales together with collected sales tax were electronically transferred to the business bank account with BB&T Bank; that he was authorized to sign Brian Cartenuto's signature on checks for business expenses, including payroll when necessary; that Brian Cartenuto had ultimate operational and financial control over the business, deciding which bills to pay or not pay; that Brian Cartenuto signed business checks and that Brian Cartenuto had the authority to hire and fire employees

On May 25, 2016, I interviewed Alexandra Ryman Price, former assistant manager for Tunnel Investment Groups LLC. Alexandra Ryman Price stated that she worked for Tunnel Investment Groups LLC during the period October 2014 through February 2015; that she was hired by Brian Cartenuto who represented himself to be the owner of the business; that nightly manager's log reports were sent by e-mail to Brian Cartenuto; that these reports contained the daily sales and sales tax collected by Tunnel Investment Groups LLC; that sales tax was collected on all applicable sales; that cash from the daily sales was deposited into the business bank account with BB&T Bank; that deposits also included the sales tax collected by the business; that credit and debit card sales together with collected sales tax were electronically transferred to the business bank account with BB&T Bank; that she was authorized to sign Brian Cartenuto's signature on checks to vendors for business expenses; that Brian Cartenuto had ultimate operational and financial control over the business, deciding which bills to pay or not pay; that Brian Cartenuto signed business checks and that Brian Cartenuto had the authority to hire and fire employees.

On May 27, 2016, I interviewed Misao Lyn Box, bookkeeper for Unicorn Airline Services LLC, doing business as Tucker Duke's Lunchbox, Niceville, Florida. Misao Lyn Box stated that she worked for Unicorn Airline Services LLC, doing business as Tucker Dukes Lunchbox during the period June 2014 through November 2014. Misao Lyn Box also stated that she worked at the direction of Brian Cartenuto; that she had signatory authority on the business bank account with BB&T; that Brian Cartenuto also owned Tunnel Investment Groups LLC, doing business as Tucker Dukes Lunch Box in Tallahassee, Florida; that Brian Cartenuto approved for payment and at his direction, she filed the sales tax return with the Department of Revenue for the period September 2014 and signed the payment check.

On September 28, 2015 I interviewed Jonathon Costello. Jonathon Costello stated that he invested in the business, Tunnel Investment Groups LLC doing business as Tucker Duke's Lunchbox of Tallahassee, Florida from October 2014 through February 5, 2015; that he did not have operational control or financial control over the business during this period; that he became signatory on the business bank account subsequent to Brian A. Cartenuto leaving Tunnel Investment Groups LLC; that Brian A. Cartenuto could hire and fire the

managers for Tunnel Investment Groups LLC doing business as Tucker Duke's Lunchbox in Tallahassee, Florida ; that during the period of October 2014 through February 5, 2015 Brian Cartenuto had ultimate financial and operational control of the business.

I obtained copies of the business' bank account signature card and canceled business checks from the BB&T through a subpoena duces tecum issued by the State Attorney for the Second Judicial Circuit, Leon County, Florida. These documents show that Brian A. Cartenuto is a signatory on the account and that he exercised that authority.

A review of the Florida Department of Revenue System for Unified Taxation database revealed that Brian A. Cartenuto did not file sales and use tax returns on behalf of Tunnel Investment Groups LLC for the period October 2014 through February 2015.

A review of Florida Department of Revenue records revealed that a sales tax return with payment was filed on behalf of Tunnel Investment Groups LLC for the period September 2014. In my official capacity as custodian of records I obtained an imaged copy of the return and the accompanying payment check from the Department of Revenue's System for Unified Taxation database. The payment check bears a signature that appears to be that of Misao Lyn Box. Misao Lyn Box gave a statement to me indicating that Brain A. Cartenuto authorized the filing and payment of this return indicating that Brian A. Cartenuto was aware of his legal responsibility to collect, report and remit the sales tax collections of Tunnel Investment Groups LLC.

A review of the Department of Revenue's System for Unified Taxation database indicated that on January 26, 2015 a tax specialist spoke to Brian Cartenuto in an effort to resolve the company's sales tax delinquencies and secure Brian A. Cartenuto's voluntary compliance. This contact was memorialized in a comment made by the Tax Specialist and entered into the Department's System for Unified Taxation database.

In addition to a tax specialist's comments, I interviewed the tax specialist assigned to the business' account on May 19, 2016. The tax specialist stated that on January 26, 2015 he spoke with Brian A. Cartenuto concerning the sales tax delinquencies of Tunnel Investment Groups LLC dba Tucker Duke's Lunchbox; he advised Brian A. Cartenuto of his legal responsibilities to timely report and remit the business' sales tax collections to the Florida Department of Revenue; Brian A. Cartenuto acknowledged to the tax specialist that he is the owner and is ultimately responsible for the filing of the delinquent sales tax returns for Tunnel Investment Groups LLC dba Tucker Duke's Lunchbox; Brian A. Cartenuto was made aware of the September 2014 tax action and the October 2014 and December 2014 notices of delinquency; Brian Cartenuto promised to file the missing returns and pay the bill for September 2014 notice of tax action as soon as possible; Department of Revenue records indicate that Brian Cartenuto has failed to file returns and pay collected sales taxes for the period of October 2014 through February 2015.

A Notice of Final Assessment was asserted on these delinquencies and tax warrant numbers 1000000664142, 1000000669644 and 1000000707919 in the total amount of \$23,087.25 was filed with the clerk of the court, Leon County, Florida.

I sent four taxpayer contact letters to Brian A. Cartenuto to his last two known addresses; I sent two letters by certified mail and two letters by general mail, requesting an interview with him set for June 2, 2016 at 10:00 a.m. at the Tallahassee Service Center. Brian A. Cartenuto did not show. I have received the two certified letters and one general mail letter back unopened from the United States Postal Service marked return to sender unable to forward. I have also called all telephone numbers listed in the account file on the Department's System for Unified Taxation database; I have been unsuccessful in my final attempts to contact Brian A. Cartenuto.

I obtained business records from Michael E. Moore consisting of e-mails and e-mail attachments of daily sheets. These records were obtained through a subpoena duces tecum issued by the State Attorney, Second Judicial Circuit, Leon County, Florida. These records were kept on Michael E. Moore's e-mail account as items sent to Brian Cartenuto during the course of his employment as general manager for Tunnel Investment Groups LLC. These records document the sales and sales tax collected on behalf of Tunnel Investment Groups LLC during the period October 30, 2014 through February 2, 2015.

A Senior Tax Specialist for the Florida Department of Revenue, examined the business records received from Michael E. Moore former general manager of Tunnel Senior Tax Specialist for the Florida Department of Revenue, examined the daily sheets received from Michael E. Moore former general manager of Tunnel Investment Groups LLC. These documents revealed that Tunnel Investment Groups LLC collected \$ 21,951.48 in state sales tax for the period October 30, 2014 through February 2, 2015. These business records were compared with Department of Revenue records regarding Tunnel Investment Groups LLC doing business as Tucker Duke's Lunchbox. This comparison indicated that Brian A. Cartenuto, while acting in his capacity as an agent of the State failed to report and remit \$21,951.48 in state sales tax for the periods October 30, 2014 through February 2, 2015. As a result, a total of \$21,951.48 in state sales tax was collected and not remitted to the Florida Department of Revenue as was required by law; tax monies that pursuant to Florida Statute §212.15(1) became State funds at the moment of collection.

I obtained copies of the business' bank account statements from BB&T for the period October 2014 through February 2015 through a subpoena duces tecum issued by the State Attorney for the Second Judicial Circuit, Leon County, Florida. These documents show that Brian A. Cartenuto had enough funds in the account to pay the Department of Revenue the taxes due during this period.

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.

Kevin W Koch  
Kevin W. Koch

Sworn to and subscribed before the undersigned Notary Public this 11<sup>th</sup> day of July, 2016, by Kevin W. Koch.

Personally Known:   
Produced Identification: \_\_\_\_\_  
Type: \_\_\_\_\_

William Asifor-Tuoyo  
NOTARY PUBLIC  
STATE OF FLORIDA

WILLIAM ASIFOR-TUOYO  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# EE876862  
Expires 2/20/2017

Probable Cause is Sufficient  
 Probable Cause IS NOT Sufficient

\_\_\_\_\_  
ASSISTANT STATE ATTORNEY

**ORDER**

THIS CAUSE coming before me as a First Appearance Magistrate and having reviewed the preceding Affidavit, this court finds:

Probable Cause IS Sufficient  
 Probable Cause IS NOT Sufficient

Will Asifor-Tuoyo  
JUDGE  
*Semo*

7/11/16  
PC and  
Affidavit  
ASA