

PROBABLE CAUSE AFFIDAVIT

STATE OF FLORIDA
COUNTY OF: BREVARD

DEPARTMENT OF REVENUE
CASE NUMBER: 3000013809

Defendant: Shae M. Malachowski
Sex: Female
Date of Birth: July 23, 1987
Race: Caucasian
Height: 5'1"
Hair: Brown
Driver's License: M422-793-87-763-0
Address: 681 Old Country Road
Palm Bay, Florida 32909

OFFENSE (1): Theft of State Funds (Sales Tax)
Section 212.15 (2) (d), Fla. Stat.
Felony of the 1st Degree, One (1) Count
Offense Periods: July 2022 through July 2022
Applied Periods: June 2022 through June 2023

Business Name: Shae Malachowski LLC d/b/a Crumbl Cookies and Crumbl Viera
Business Address: 2270 Town Center Ave, Suite 111
Melbourne, Florida

Victim: STATE OF FLORIDA

Before me this day personally appeared Lindsay Davis, who, being first duly sworn, deposes and says that the above-named defendant committed the offense(s) charged and the facts and circumstances showing probable cause to believe same are as follows:

I, Lindsay Davis am a Revenue Investigator with the State of Florida, Department of Revenue. I have conducted an investigation of Shae Malachowski LLC doing business as Crumbl Cookies and Crumbl Viera, an open business engaging in the retail sales of baked goods, located in Brevard County, Florida. During the course of the investigation, through the acquisition of documentary and testimonial evidence, I found that for the periods June 2022 through June 2023, Shae M. Malachowski, the member of the business, collected and failed to remit **\$102,203.29** in sales tax to the State of Florida Department of Revenue, thereby depriving the State of Florida of sales tax revenue, in violation of Florida Statute 212.15.

It is substantiated by documentary and testimonial evidence that Shae M. Malachowski, through the business Shae Malachowski LLC, doing business as Crumbl Cookies and Crumbl Viera, collected, and failed to remit Florida sales tax on the retail sales of specialty baked goods. The business is located at 2270 Town Center Ave, Suite 111 in Melbourne, Florida, and is operated as a limited liability company. During the course of the investigation, it was established that for the periods June 2022 through June 2023, Shae Malachowski collected and failed to remit **\$102,203.29** in sales tax to the State of Florida Department of Revenue. Shae M. Malachowski has decision-making authority for the business including the disbursement of funds and the

responsibility to remit the tax monies that were collected. The tax monies were diverted to Shae Malachowski's use.

As the designated custodian of records for Department of Revenue criminal cases, I obtained and certified a copy of the Florida Business Tax Application from the Department of Revenue's System for Unified Taxation. The application revealed that the business is registered with the Florida Department of Revenue as a limited liability company and is engaged in the retail sale of baked goods. The application identifies Shae Malachowski as an owner of the business. The declaration and signature line bears the name of Shae Malachowski as owner of Shae Malachowski LLC, who also acknowledged thereon she understands that it is a criminal offense to: fail or refuse to register; not timely file a tax return or report; underreport a tax, surcharge or fee on a return or report filed; fail or refuse to collect a required tax, surcharge or fee; not remit a collected tax, surcharge or fee; and make a worthless check, draft, debit card payment, or electronic funds transfer payment to the Department.

A review of the Department's System for Unified Taxation indicated that the business is registered with the Florida Department of Revenue as a limited liability company. The business address listed on the account is 2270 Town Center Ave Ste 111 in Melbourne, Brevard County, Florida. The business was assigned a business partner number and is required to file monthly sales and use tax returns with the Department. The business is open. The System for Unified Taxation documents the history of the account.

I reviewed the records of the Florida Department of State concerning the business Shae Malachowski LLC, an active Florida Limited Liability Company. The business was formed on June 1, 2023. The sole managing member for Annual report years 2022 and 2023 is listed as Shae Malachowski. The original filing bears what appears to be the written signature of Shae Malachowski and annual reports bear the electronic signature of Shae Malachowski as owner.

I reviewed the records of the Florida Department of State and found that the business is not registered with the Secretary of State as a fictitious name for Crumbl Cookies or Crumbl Viera. However, the fictitious name being used, as displayed at the business, is "Crumbl Cookies".

On September 12, 2023, I traveled to the last known residence of Shae Malachowski at 681 Old Country Road in Palm Bay, Florida. While there, I spoke with Shae Malachowski. I introduced myself as an Investigator with the Florida Department of Revenue. Also present was Revenue Investigator. Shae stated that her employee let her know I was at the business and provided my card with contact information. She states she will have her attorney call me. I provided her with a DR-835 Power of Attorney Form and explained how to complete the form for the investigation. I requested to review her Driver's License for identification. She provided her Florida Driver's License Number M422-793-87-763-0, legal name Shae Marie Malachowski. I stated that since I've reviewed her identity, she can complete the form for a representative to contact me and discuss the case once the Power of Attorney form is completed. I provided my business card as well.

Shae Malachowski voluntarily stated she had a previous attorney who was trying to help her get into a payment plan with the Florida Department of Revenue since April 2023, but stopped working with them because they were not helping. She also stated that she had an accountant who didn't file the returns like they were supposed to. Shae Malachowski further stated that the

business was profitable making over \$200,000 a month but then sales went down about \$100,000 due to circumstances regarding the business location. She also claimed that the Florida Department of Revenue froze her bank account without notifying her.

I informed her that as an Investigator with the Florida Department of Revenue, I am investigating the possibility of criminal violations of Florida Tax Law. I stated for example, Theft of State funds is when sales tax is collected, but not remitted to the Florida Department of Revenue. I stated that if it is found during the investigation that a violation of Florida Tax Law occurred, the case may be referred to the State Attorney's Office for Review. If the State Attorney files criminal charges, an arrest warrant may be issued.

Shae Malachowski stated that this was not intentional. I informed her that at this time, it appears approximately \$101,000 in sales tax was collected by the business, but not paid to the Department of Revenue, in which she stated "Yeah, I know. I filed the returns." I advised that she has my card, and Power of Attorney Form, and can reach out with any additional questions. An Interview Report was completed.

On September 14th, 2023, I received by email a completed DR-835 Power of Attorney Form executed by Shae Malachowski as owner, authorizing representation.

On September 20, 2023, I spoke with the Power of Attorney by phone regarding client Shae Malachowski LLC. I advised that a criminal investigation has commenced regarding the possibility of criminal violations of Florida tax law, for example, theft of state funds and/or tax evasion. I advised at this time, I will review any statements her client wishes to make, or any documents they wish to provide. The Attorney advised that her client was initially making around \$250,000.00 in gross sales a month at the business. She states that the franchise allowed another franchisee to open within the area, which caused the business' gross sales to drop to around \$100,000.00 a month. She also states that there was fraud that occurred on one of the business merchant service accounts and it took 2 to 3 months to get the monies placed back in and issue corrected. The Attorney also stated the franchise did not and would not give tax advice to the client. She confirmed that Shae Malachowski collected the sales tax due on the account for periods June 2022 through May 2023. She states that the business is no longer collecting sales tax. I advised that in terms of taxability of specific bakery items, this should be discussed with the Department's Tax Specialists, but for the purpose of the investigation, I only investigate the facts and circumstances regarding the collection and non-remittance of sales tax money. I stated that the sales tax shown to be due at this time is \$101,384.01. The Attorney asked if she could proceed with negotiating a payment plan. I advised due to the open criminal case; I cannot enter into or negotiate payment arrangements. I stated that if there is probable cause that violation of Florida tax law took place, the case may be referred to the State Attorney's Office for possible criminal prosecution, and the case will go through the court process. I stated that her client may make voluntary payments at any time to reduce the sales tax liability. The Attorney states she suggested to her client to begin doing so. I advised if she has any further questions to contact me.

On November 10, 2023, and November 16, 2023, I received Point of Sale records for the business by email from the Power of Attorney on behalf of Shae Malachowski LLC for the periods June 2022 through October 2023. The records showed the amounts of sales tax collected on behalf of the business. The records indicate that sales tax was collected, and not remitted for the months of June 2022 through June 2023.

A review of the Department's System for Unified Taxation indicated that Department of Revenue specialists made numerous contacts with representatives from Shae Malachowski LLC in an effort to resolve the company's sales tax delinquencies and secure Shae Malachowski's voluntary compliance. These contacts were memorialized in comments made by the revenue specialists and entered into the Department's System for Unified Taxation.

In addition to the revenue specialists documented comments, I obtained a statement from a Revenue Specialist II with the Florida Department of Revenue, who was previously assigned to this account. The statement revealed that:

On August 26, 2022, called Member Shae Malachowski, and went over the account's liabilities. She stated she had issues filing and paying online. Offered to walk her through the steps to register but requested an email with a link to register for online filing and payment. An email was sent with the link to register to file and pay sales tax online.

On April 25, 2023, called and spoke with Shae Malachowski regarding outstanding sales tax. She stated her accountant filed the returns. She states she thinks that she absolutely does not owe that much in sales tax. I went over Florida Statute 212.15, that states the tax collected becomes the property of the state at the moment of collection and further states that failure to file and remit those taxes when due is deemed theft of state funds. She stated she understands. She wanted email sent to her to see what she actually owes. A breakdown of the Amount Outstanding ZT09 was emailed to Shae Malachowski.

On April 28, 2023, called and spoke to Shae Malachowski. She stated she talked to the accountant, and they had tried to log in to pay the open bills but was having a problem, then had to go into a meeting. She stated she will make sure that the bills get paid, and the January 2023 and March 2023 sales tax gets paid. An Affidavit was Completed. **(Exhibit 10)**

A statement was also obtained from a Revenue Specialist III with the Florida Department of Revenue, who was also previously assigned to this account. The statement revealed that:

On June 14, 2023, spoke with a Power of Attorney regarding sales tax items for June 2023 through March 2023. I explained that DOR made multiple attempts to make contact with Ms. Malachowski. Explained to him that there are no estimated assessments on this account all amounts of tax due are from reports that she submitted. DOR added are penalties, interest, and fees, which are due since all returns were received without payment. I informed him that DOR doesn't abate interest and there is not any room for negotiation with penalty and fees based of the history of the account. She was made aware of her liabilities over a year ago. He stated that he understood. Also emailed F.S. 212.15 & 213.29 and asked him to share that with his client.

On June 27, 2023, spoke with a Power of Attorney regarding sales tax items for June 2022 through March 2023. She just received Ms. Malachowski as a client. I explained that Ms. Malachowski has been submitting sales tax returns reporting tax collected without payment since June 2022. Stated that DOR has made multiple attempts to try to resolve the issue with Ms. Malachowski. Ms. Malachowski believes that she doesn't owe DOR what we say, but account has no estimated assessments and balance due includes penalty, interest, and fees. Told her that I

would forward the amount outstanding with the date to respond. Informed that this will be the second time that DOR is sending this.

On July 19, 2023, called and spoke with Power of Attorney, regarding sales tax items for June 2023 through May 2023. We discussed a proposal received. Attempted to gather information. Asked who has decision making authority for the business? Shae Malachowski. Who makes the day-to-day decisions for the business? Shae Malachowski. Who has the authority to sign checks? Shae Malachowski. Current bank Information? JP Morgan Chase. Explained according to F.S. 212.15(1) the tax money collected is the property of the State at the moment of collection. Explained F.S. 212.15 that failing to remit tax is theft of state funds and may be a criminal offense.

On August 8, 2023, received email from Power of Attorney, with updated proposal. Called Attorney regarding the proposed offer and stated that the proposal has been rejected. She stated that she will discuss with Ms. Malachowski.

A review of the Florida Department of Revenue records revealed that sales and use tax returns were filed on behalf of Shae Malachowski LLC for the periods June 2022 through June 2023. As the designated custodian of records of the Department of Revenue, criminal investigations, I obtained and certified a copy of those returns from the Department of Revenue's System for Unified Taxation. These returns demonstrate that Shae Malachowski was aware of her legal responsibility to collect, report and remit sales tax collections of Shae Malachowski LLC. Moreover, these returns demonstrate Shae Malachowski's knowledge of the sales and sales tax collection amounts listed on these returns.

As the designated custodian records of the Department of Revenue with regards to the Department of Revenue criminal cases, a Senior Tax Specialist provided a certified statement indicating that "after a diligent search of Department's records, I do not find where Shae Malachowski LLC, Business Partner # 6330225 has remitted Sales and Use Tax payments to the Department of Revenue for the periods of July 2022 through June 2023."

A Notice of Final Assessment and Jeopardy Finding was asserted on these delinquencies and tax liens were filed with the clerk of the court, Brevard County, Florida.

A review of the business' point of sale records indicated that from June 2022 through June 2023, Shae Malachowski LLC collected **\$103,203.29** in sales tax from retail sales of fresh baked goods. These figures were compared to records maintained by the Florida Department of Revenue which revealed that **\$1,000** in sales tax was remitted to the Department of Revenue during the same time periods. As a result, a total of **\$102,203.29** in state sales tax was collected and not remitted to the Florida Department of Revenue as was required by law. This comparison indicated that Shae Malachowski, while acting in her capacity as an agent of the State, failed to remit **\$102,203.29** in state sales tax during the periods June 2022 through June 2023.

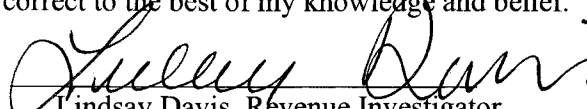
The total amount of the theft was certified by a Senior Tax Specialist with the Florida Department of Revenue, who also completed a tax, penalty, and interest summary.

Signature cards, bank statements and a sample of cancelled checks and deposits were subpoenaed from Chase Bank. The bank statements showed that Shae M. Malachowski was a

signatory on the business bank accounts and exercised that authority. Business funds were also deposited into a personal account for Shae Malachowski. The bank records show that there were enough funds to pay the Department of Revenue taxes due.

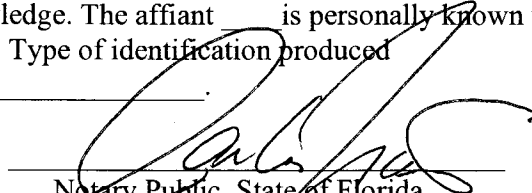
It is apparent from all documentary and testimonial evidence obtained that Shae M. Malachowski had knowledge of the actual amount of sales taxes, which she collected through the business. Shae M. Malachowski exercised control over the business, including the responsibility to pay all expenditures and remit all of the taxes which had been collected. The collection and non-remittance of the sales tax monies was an intentional act to deprive or defraud the State of Florida of its monies and the use and benefit thereof. The defendant, while acting in her capacity as an agent of the state as Member of Shae Malachowski LLC, collected and failed to remit **\$102,203.29** in sales tax thereby depriving the State of Florida of its monies and the use and benefit thereof in violation of Florida Statute 212.15.

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.


Lindsay Davis, Revenue Investigator

Sworn to (or affirmed) and subscribed before me this 4th of Dec. 2023.

Before me, a notary public of the State of Florida, the affiant, Lindsay Davis, who appeared personally ___ or by means of audio-video communication technology ___, after being duly sworn, says under penalty of perjury that the foregoing affidavit and the facts stated therein are true and correct to the best of their knowledge. The affiant ___ is personally known to me or ___ produced a valid form of identification. Type of identification produced _____


Notary Public, State of Florida

