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***Claims Review/Litigation Reports Oversight Subcommittee
of the Arkansas Legislative Council
Claims Subcommittee of the Joint Budget Committee
Statement of Redaction of Confidential Information***

Style of Case: Cenark Construction & Excavation, vs. Jim Hudson, in his official capacity as Cabinet Secretary of the Arkansas
Department of Finance and Administration, Docket No. 60CV-21-997, in the Circuit Court of Pulaski County, Arkansas

Docket Number: 60CV-21-997

Type of Matter (please circle one):

Claims Review

Litigation Reports Oversight

As indicated by my signature below:

- I acknowledge that all documents submitted to the Subcommittee may be considered a public record pursuant to Arkansas Code § 25-19-103(7)(A) and may be published or disseminated by the Subcommittee for purposes of its consideration.
- I further acknowledge that it is my responsibility to review each document submitted to the Subcommittee and make any necessary redactions.
- I certify that I have reviewed each document submitted herein and have redacted any information in which an individual may be considered to have a reasonable expectation of privacy under state or federal law or that is considered confidential and required to be redacted under state or federal law.

/s/ Bradley B. Young
Signature

Bradley B. Young
Name

Revenue Legal Counsel,
Department of Finance and Administration
Title and Agency

May 19, 2025
Date



State of Arkansas
Bureau of
Legislative Research

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Estella Smith, Assistant Director
for Research Services

State Agency Litigation Notification Form

Dear Agency Director:

Arkansas Code § 10-3-312 requires that any agency or institution that is not represented by the Attorney General shall notify the Director of the Bureau of Legislative Research of pending litigation so that the appropriate legislative committee may "determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter."

In order to submit a report regarding pending litigation pursuant to Arkansas Code § 10-3-312, please complete the following form for each pending lawsuit, along with a cover letter to the Director of the Bureau of Legislative Research, and submit to desikans@blr.arkansas.gov.

DATE REPORTING:	
Agency:	Phone:
E-mail:	Contact:
1. STYLE OF THE CASE BEING LITIGATED	
2. IDENTITY OF THE TRIBUNAL BEFORE WHICH THE MATTER HAS BEEN FILED (COURT)	
3. BRIEF DESCRIPTION OF THE ISSUES INVOLVED	
3A. OTHER DESCRIPTION INFORMATION	
Docket Number	
Date Filed	
Defendant	
Defendant Attorney	
Plaintiff	
Plaintiff Attorney	
4. ANY OTHER RELEVANT INFORMATION	
4A. OTHER RELEVANT INFORMATION	
Case History	
Relief Sought	
Current Status	

A.C.A. § 10-3-312

Current through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 10 General Assembly
- Chapter 3 Committees
- Subchapter 3-- Legislative Council

10-3-312. NOTIFICATION OF LAWSUITS AFFECTING STATE.

- (a) In order that the General Assembly may take whatever steps it deems necessary concerning lawsuits which may affect the State of Arkansas, its officials, or its financial resources:
 - (1) The Attorney General shall notify the Director of the Bureau of Legislative Research who is the Executive Secretary to the Legislative Council as soon as possible after the Attorney General becomes involved in such litigation;
 - (2) **When any state agency or any entity which receives an appropriation of funds from the General Assembly becomes involved in litigation without representation by the Attorney General, the director or administrative head of the agency shall notify the Director of the Bureau of Legislative Research as soon as possible.**
- (b) The notice given by the Attorney General or by the director or administrative head of a state agency to the Director of the Bureau of Legislative Research shall include the style of the case being litigated, the identity of the tribunal before which the matter has been filed, a brief description of the issues involved, and other information that will enable the Legislative Council or the Joint Budget Committee to determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter.
- (c) Upon receipt of the notice, the Director of the Bureau of Legislative Research shall during the interim between legislative sessions transmit a copy of the notice to the cochairs of the Legislative Council and to the cochairs of the Joint Budget Committee during legislative sessions in order that those committees may schedule that matter upon their respective agendas at the earliest possible date.
- (d) During the interim between legislative sessions, the Legislative Council shall determine, and during legislative sessions the Joint Budget Committee shall determine, whether the General Assembly has an interest in the litigation and, if so, take whatever action deemed necessary to protect the General Assembly's and the state's interest in that matter.

HISTORY

Acts 1987, No. 798, §§ 1, 2.

Arkansas Code of 1987 Annotated Official Edition
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A.C.A. § 10-3-312 (Lexis Advance through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission)

MEMORANDUM

TO: Arkansas Legislative Council
Litigation Reports Oversight Subcommittee
Sen. Jim Dotson, Co-Chair
Rep. DeAnn Vaught, Co-Chair

FROM: Brad Young, Managing Attorney
Arkansas Department of Finance & Administration

DATE: May 19, 2025

RE: *Cenark Construction & Excavation, vs. Jim Hudson, in his official capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration*, Case No. 60CV-21-997, in the Circuit Court of Pulaski County, Arkansas

REQUEST FOR REVIEW AND APPROVAL OF SETTLEMENT BY
THE LEGISLATIVE COUNCIL OF THE ARKANSAS GENERAL ASSEMBLY
Ark. Code Ann. § 10-3-312(d)

SETTLEMENT AGREEMENT

The Department audited a group of businesses – A-1 Recovery Rental, A-1 Recovery Towing & Recovery, Cenark Construction & Excavation, Cenark Investment Group, G&T Enterprises of NLR, and Triskole Excavating, Inc. – and the businesses’ owners – Terry L. Wyatt, Gerald E. Kennon and Teri Kennon, Kyle L. Wyatt, and Trey E. Wyatt. The businesses shared office space and bookkeeping, and the businesses and individuals all used the same tax preparer. The businesses and individuals sued the Department to oppose a series of income tax assessments that arose from the audit. The Department filed answers denying each of the plaintiffs’ claims and denying plaintiffs’ entitlement to any judicial relief.

As a result of the underlying audit, the Department assessed a combined total of \$137,337.00 in additional taxes, \$23,943.50 in penalties, and \$46,251.19 in interest for tax periods beginning 2012 and continuing through 2018. Interest has continued to accrue since the date of assessment.

The parties have reached a settlement. A copy of the Settlement Agreement is attached. Based on additional information that plaintiffs provided during the litigation, the Department has agreed to adjust the audit. The Department also has agreed to reduce the accrued interest by 35%. After audit adjustments, plaintiffs have agreed to pay a combined total of \$92,350.00 in tax, \$15,718.50 in penalties, and \$47,144.01 in interest.

The parties request that this matter be placed on the Legislative Council’s agenda for review at the earliest possible date.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of January 13, 2025 by and between Jim Hudson, in his official capacity as Secretary of the Department of Finance and Administration of the State of Arkansas (the "Department") and A-1 Recovery Rental, A-1 Recovery Towing & Recovery, Cenark Construction & Excavation, Cenark Investment Group, G&T Enterprises of NLR, Triskole Excavating, Inc., Terry L. Wyatt, Gerald E. Kennon and Teri Kennon, Kyle L. Wyatt, and Trey E. Wyatt (the "Plaintiffs"). A-1 Recovery Rental, A-1 Recovery Towing & Recovery, Cenark Construction & Excavation, Cenark Investment Group, G&T Enterprises of NLR, Triskole Excavating, Inc., Terry L. Wyatt, Gerald E. Kennon and Teri Kennon, Kyle L. Wyatt, and Trey E. Wyatt are the plaintiffs, and the Department is the defendant, in Case No. 60CV-21-997, *Cenark Construction & Excavation, vs. Jim Hudson, in his official capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration*, in the Circuit Court of Pulaski County, Arkansas (the "lawsuit"). The terms of this Agreement are authorized by law, including Ark. Code Ann. § 26-18-705(b)(1) of the Arkansas Tax Procedure Act.

1. The Plaintiffs will dismiss the lawsuit with prejudice, with each party bearing that party's own attorneys' fees and costs.

2. Plaintiffs will pay the outstanding amounts of the assessments of individual income tax as follows:

Terry L. Wyatt: \$34,788.00 for tax years 2012 through 2017 plus penalty of \$7,845.80 and interest of \$21,031.85 for a total due of \$63,665.66.

Terry L. Wyatt: \$7,409.00 for tax year 2018 plus penalty of \$2,593.15 and interest of \$2,553.32 for a total due of \$12,555.47.

Gerald E. Kennon and Teri Kennon: \$36,908.00 for tax years 2013 through 2018 plus penalty of \$3,690.80 and interest of \$17,434.79 for a total due of \$58,033.59.

Kyle L. Wyatt: \$11,591.00 for tax years 2015 through 2018 plus penalty of \$1,317.10 and interest of \$5,424.60 for a total due of \$18,332.70.

Trey E. Wyatt: \$1,654.00 for tax years 2015 through 2018 plus penalty of \$271.65 and interest of \$699.45 for a total due of \$2,625.10.

3. The Department will accept these payments as full and final settlement of all the Plaintiffs' individual income tax liabilities for these periods.

4. The Plaintiffs will pay all amounts due on or before the 30th day from the effective date of this Agreement.

5. Upon receipt of all the payments described by paragraphs 2-4 above, the Department will release all claims against the Plaintiffs for the individual income tax periods described above.

6. Interest will continue to accrue on the full balance due at the rate of 10%. In the event that the Plaintiffs default on their obligation to remit full payment of the amounts due, the Department may seek collection of the full balance of taxes assessed plus penalties and accrued interest.

7. The Agreement will be submitted for approval to the Legislative Council. The Department and the Plaintiffs agree to work cooperatively and to use their best efforts to secure approval from the Legislative Council. The parties understand and agree that such legislative approval is a condition precedent to the enforceability of this Agreement.

8. Within thirty (30) calendar days from the date that this Agreement receives legislative approval, the Plaintiffs will remit the funds described by paragraphs 2-4 above, and file a motion to dismiss the lawsuit with prejudice in the Circuit Court of Pulaski County, Arkansas.

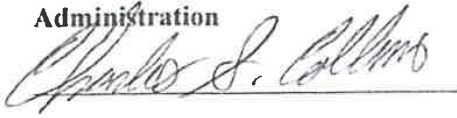
9. This Agreement will become effective immediately upon approval by the Legislative Council.

10. Each party recognizes that this is a legally binding contract and acknowledges and agrees that they have had the opportunity to consult with legal counsel of their choice. In any construction to be made of this Agreement, the parties agree the Agreement shall not be construed against any party on the basis of that party being the drafter of such language. The parties agree and acknowledge that they have read and understand this Agreement, are entering into it freely and voluntarily, and have had ample opportunity to seek counsel prior to entering into this Agreement.

IN WITNESS WHEREOF, the Parties have hereunto set their names for the purpose of validly and legally executing this Agreement on the 13th day of January, 2025, all parties intending to be legally bound by all terms and conditions contained herein.

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**Department of Finance &
Administration**

A handwritten signature in cursive script, appearing to read "Charlie S. Collins", is written over a horizontal line.

By: _____

Charlie Collins
Commissioner of Revenue
Arkansas Department of Finance and
Administration

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Cenark Construction & Excavation, Inc.

By: Kyle Wyata

Title: president

[Remainder of page intentionally left blank]

A-1 Recovery Towing & Recovery, Inc.

By: Henry Wyatt
Title: President

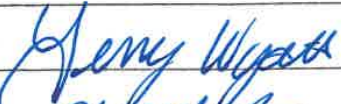

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A-1 Recovery Rental, LLC

By: Henry Wyatt
Title: President

[Remainder of page intentionally left blank]

Cenark Investment Group, LLC

By: 
Title: 

[Remainder of page intentionally left blank]

G&T Enterprises of NLR, LLC

By: Henry Wyet
Title: President

[Remainder of page intentionally left blank]

Triskole Excavating, Inc.

By: Henry W. Wynn
Title: President

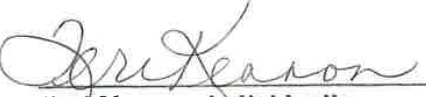
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Terry L. Wyatt, individually

[Remainder of page intentionally left blank]


Gerald Kennon, individually

[Remainder of page intentionally left blank]



Teri Kennon, individually

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Kyle L. Wyatt, individually

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Trey E. Wyatt, individually

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ELECTRONICALLY FILED Pulaski County Circuit Court Tern Hollingsworth, Circuit/County Clerk 2021-Feb-02 16:19:15 60CV-21-997 C06D04 : 7 Pages

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

DIVISION

CENARK CONSTRUCTION & EXCAVATION, INC. CASE NO. _____

v.

LARRY WALTHER, SECRETARY OF THE
ARKANSAS DEPARTMENT OF FINANCE
& ADMINISTRATION

COMPLAINT

Comes now Cenark Construction & Excavation, Inc. ("Cenark Construction"), by and through its attorneys Wingfield & Corry, P.A., and for its Complaint against Larry Walther, Secretary of the Arkansas Department of Finance & Administration ("DFA" or "Department"), states as follows:

NATURE OF THE PROCEEDING

1. This action is for judicial relief pursuant to Ark. Code Ann. § 28-18-406 as a result of certain adjustments made by DFA to Plaintiff's taxable income and adjustments to its shareholder's account. A subsequent determination was made by the Administration Law Judge ("ALJ") who sustained the adjustments.

2. Plaintiff prays that the adjustments made by DFA and sustained by the ALJ be abated and set aside by this Court, based on the applicable provisions of law set out in this Complaint.

PARTIES

3. The allegations contained in paragraphs 1 through 2 above are re-alleged and incorporated by reference.

4. Plaintiff Cenark Construction is an Arkansas Subchapter S corporation, with its principal place of business located in North Little Rock, Arkansas.

5. Defendant Larry Walther is the current Secretary of DFA and he is named as a party in his official capacity. Mr. Walther may be served with process at his place of employment which is the Arkansas Department of Finance & Administration, 1509 West 7th Street, Room 401, Little Rock, AR 72201. DFA is an agency of the State of Arkansas that administers and collects taxes for the State of Arkansas.

JURISDICTION AND VENUE

6. The allegations contained in paragraphs 1 through 5 above are re-alleged and incorporated by reference.

7. This action is an appeal *de novo* from a determination by DFA of adjustments to the taxable income of Plaintiff, acting through the Office of Hearings and Appeals. The ALJ sustained the assessments made by DFA, and a copy of the decision by the ALJ is attached as Exhibit 1 and incorporated herein by reference.

8. Jurisdiction and venue are proper in this Court pursuant to Ark. Code Ann. § 26-18-406(a). A copy of DFA's final assessment of a deficiency in tax is attached as Exhibit 2 and incorporated herein by reference.

9. The Court has subject matter jurisdiction over this action. Venue is proper pursuant to Ark. Code Ann. § 16-60-103. Further, as this action is brought against the Secretary, an officer of the State, venue is proper under Ark. Code Ann. § 16-60-104. Further, subject matter jurisdiction is vested in this Court under Ark. Code Ann. § 26-18-406(c), which provides in part:

(1) Jurisdiction for a suit to contest a final assessment or determination of the secretary under this section shall be in the Pulaski County Circuit Court or the circuit

court of the county in which the taxpayer resides or has his or her principal place of business, where the matter shall be tried de novo.

(3) A presumption of correctness or weight of authority shall not attach to a final assessment or determination of the secretary in a trial de novo or an appeal under this section.

PROCEDURAL BACKGROUND

10. The allegations contained in paragraphs 1 through 9 above are re-alleged and incorporated by reference.

11. The Department issued a Schedule of Audit Adjustments for the 2015- 2018 tax years to Cenark Construction, as follows:

<u>Tax Year</u>	<u>Audit Adjustment</u>
2015:	88,339.00
2016:	36,598.00
2017:	43,131.00
2018	6,071.00

These adjustments resulted in an increase each year in income that flowed through the entity to the sole shareholder. During the audit, adjustments also were made to the shareholder's Schedule K-1, including basis.

12. Cenark Construction filed a timely administrative protest that was received on January 31, 2020.

13. An administrative hearing on these protests were held on July 30, 2020, which resulted in an administrative Decision and Order dated August 6, 2020. The Decision and Order upheld the adjustments made by the Department and the Secretary.

14. Pursuant to Ark. Code Ann. § 26-18-406(a), Cenark Construction seeks judicial relief from the ALJ Ruling and Secretary's Notice of Final Assessment.

SPECIFIC ALLEGATIONS OF FACT

15. The allegations contained in paragraphs 1 through 14 above are re-alleged and incorporated by reference.

16. Amy Patton ("Auditor") conducted the audit. The Auditor disallowed \$27,413 of claimed deductions for Rent (business property), Bank Charges, Taxes and Licenses, Fuel, Janitorial, Meals, Utilities, and Office Expenses/ Supplies in 2015 as being unverified. Additionally, the auditor increased gross sales in 2015 by \$55,312 and decreased Costs of Goods Sold by \$5,614 based solely on bank deposits.

17. The Auditor disallowed \$21,095 of claimed deductions for Repairs & Maintenance, Rent (business property), Bank Charges, Taxes and Licenses, Fuel, Gifts, Legal and Professional Expenses, Janitorial, Meals, Utilities, Uniforms and Office Expenses/ Supplies in 2016 as being unverified. Additionally, the auditor increased gross sales in 2016 by \$6,570 and decreased Costs of Goods Sold by \$8,933 based solely on bank deposits.

18. The Auditor disallowed \$20,804 of claimed deductions for Interest Expense, Fuel, Janitorial, Meals, Utilities, Subcontractor Expenses, Uniforms and Office Expenses/ Supplies in 2017 as being unverified. Additionally, the auditor increased gross sales in 2017 by \$22,327 based solely on bank deposits.

19. The Auditor disallowed \$4,900 of claimed deductions for Fuel, Meals, Utilities, Uniforms and Office Expenses/ Supplies in 2018 as being unverified. Additionally, the auditor increased gross sales in 2018 by \$1,171 based solely on bank deposits.

20. The methodology used by the Auditor is arbitrary and capricious. The Auditor used an improper method as the basis for her adjustments. The Auditor failed to inspect the books and

records of the company, even though they were made available to her. The act of failing to inspect all company records resulted in an arbitrary and capricious method to make adjustments.

21. In addition to these adjustments, the Auditor made arbitrary and capricious adjustments to the shareholder's Schedule K-1 for tax years 2015 through 2018.

22. All Auditor adjustments are challenged as arbitrary and capricious.

CLAIMS FOR RELIEF

COUNT 1-DFA'S ASSESSMENTS ARE ARBITRARY, CAPRICIOUS AND NOT REASONABLE PURSUANT TO THE ARKANSAS CODE

23. The allegations contained in paragraphs 1 through 22 above are re-alleged and incorporated by reference.

24. In the administration of any tax law, the Department may make an examination of a taxpayer's books and records, provided the examiner employs proper and reasonable audit methods. Ark. Code Ann. § 26-18-305(a)(1)(A) and (a)(2)(A).

25. From the beginning of the audit, DFA failed to take into account the books and records of the Plaintiff, even though the records were made available to the Auditor at all times, including visits to Plaintiff's offices.

26. The ALJ concluded that the Plaintiff failed to demonstrate that the methodology used by the Auditor was not reasonable; however, by ignoring the documentation that was available at the offices of the Plaintiff and the Auditor's refusal to review them, the conclusions reached by the ALJ are themselves suspect and arbitrary.

27. Due to the arbitrary and capricious nature of the adjustments, Plaintiff challenges each adjustment. All allegations cited under Specific Allegations of Fact are incorporated herein by reference as a Cause of Action.

COUNT 2-PLAINTIFF WAS DENIED DUE PROCESS

28. The allegations contained in paragraphs 1 through 27 above are re-alleged and incorporated by reference.

29. Pursuant to Ark. Code Ann. § 26-18-307, *Notice*, the Department is required to send notice to the taxpayer of an assessment as follows:

(a)(1) The Secretary of the Department of Finance and Administration shall give a taxpayer notice of any assessment, demand, decision, or hearing before the secretary which directly involves that taxpayer.

(2)(A) All notices required to be given by the secretary to a taxpayer shall be either served by personal service or sent by regular mail to the taxpayer's last address on record with the particular tax section of the Revenue Division of the Department of Finance and Administration in question.

30. An Arkansas taxpayer is entitled to due process of law. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires a State to provide an owner with notice and an opportunity to be heard before it may take his property and sell it for unpaid taxes. *Jones v. Flowers*, 547 U.S. 220 (2006).

31. Plaintiff was denied the opportunity to challenge the proposed adjustments of the Auditor at the time that they were determined by the Auditor. At the time the Auditor came to Plaintiff's offices, all books and records, with documentation, were made available. The Auditor failed to review this documentation in light of acceptable audit methods but, rather, chose to deny many expenses on a wholesale basis as being "unverified."

RELIEF REQUESTED

32. The allegations contained in paragraphs 1 through 31 above are re-alleged and incorporated by reference.

33. As set forth above, adjustments to taxable income and other adjustments made by

DFA should be set aside and abated. Accordingly, any adjustments to the account of the owner of the pass through entity also should be abated and set aside. DFA did not follow reasonable methods to make adjustments; rather, the adjustments and the underlying methodology used to compute them were arbitrary and capricious. The Auditor had access to all documents when she visited Plaintiff's businesses' offices; however, she failed to request documents that would have validated the deductions or otherwise serve as explanations.

34. The Administrative Law Judge failed to apply the criteria required by law to sustain DFA's adjustments, and his determination was arbitrary and capricious.

WHEREFORE, Plaintiff prays for a *de novo* review of the Defendant's actions complained of herein and a finding that the adjustments and assessments made by DFA should not be sustained but, rather, set aside, for its costs of suit, including attorney fees, and for any and all other just and proper relief.

FEBRUARY 2, 2021

Respectfully submitted,

CENARK INVESTMENT GROUP, LLC

By Their Attorneys:

WINGFIELD & CORRY, P.A.
920 West Second Street, Suite 101
Little Rock, Arkansas 72201
(501) 372-5990 phn and (501) 372-5999 fax
Email: nc@wcfirm.net

By: /s/ Nicolas Corry
Nicolas Corry, AR Bar No. 2006116

ELECTRONICALLY FILED
Pulaski County Circuit Court
Terri Hollingsworth, Circuit/County Clerk
2021-Apr-12 14:33:42
60CV-21-997
C06D04 : 7 Pages

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FOURTH DIVISION

CENARK CONSTRUCTION & EXCAVATION, INC.

PLAINTIFF

vs.

CASE NO.: 60CV-21-997

LARRY WALTHER, DIRECTOR
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

ANSWER

Comes now the Defendant, Larry Walther, Secretary of the Arkansas Department of Finance and Administration, (“Department”), by and through his attorneys, David G. Scott and Bradley B. Young, of the Office of Revenue Legal Counsel, and for his Answer to Cenark Construction & Excavation, Inc.'s original Complaint, hereby states as follows:

1. The Department admits that the plaintiff initiated an administrative proceeding pursuant to the Arkansas Tax Procedure Act, Ark. Code Ann. §§ 26-18-101 *et seq.* to protest the Department’s income tax assessments against the plaintiff for tax years 2015-2018. The Department admits that a Hearing Officer in the Office of Hearings and Appeals considered the protests upon written documents, that the parties submitted briefs and exhibits, and that the Hearing Officer sustained the Department’s assessment. The remainder of paragraph 1 contains conclusions of law to which no response is required. However, to the extent a response is necessary, the Department denies the remainder of the allegations in paragraph 1.

2. Paragraph 2 contains a request for relief to which no response is required. However, to the extent a response is necessary, the Department denies the allegations in paragraph 2.

3. The Department incorporates by reference its responses to paragraphs 1 and 2 of the Complaint.

4. The Department admits that the plaintiff is an Arkansas Subchapter S corporation. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 4 regarding the location of the plaintiff's principal place of business.

5. The Department admits the allegations in paragraph 5.

6. The Department incorporates by reference its responses to paragraphs 1 through 5 of the Complaint.

7. The Department admits that the Hearing Officer sustained the Department's assessments. The Department admits the remainder of the allegations in paragraph 7.

8. The Department admits the allegations in paragraph 8.

9. Arkansas Code Ann. § 26-18-406(c) (Repl. 2020) speaks for itself. The remainder of paragraph 9 contains conclusions of law to which no response is required. However, to the extent a response is necessary, the Department denies the remainder of the allegations in paragraph 9.

10. The Department incorporates by reference its responses to paragraphs 1 through 9 of the Complaint.

11. The Department's Schedule of Audit Adjustments for tax years 2015 – 2018 issued to plaintiff speak for themselves. The Department admits that the assessments included adjustments to income that flowed through to the shareholder and that adjustments were made to the shareholder's Schedule K-1 including basis, but denies the remaining allegations in paragraph 11.

12. The Department admits that it received the plaintiff's administrative protest on February 5, 2020. The Department denies the remainder of the allegations in paragraph 12.

13. The Department admits that the Hearing Officer issued an administrative decision dated August 6, 2020 that sustained the Department's assessments against the plaintiff. The Department denies the remainder of the allegations in paragraph 13. The Office of Hearings and Appeals did not conduct a hearing. At the plaintiff's request, the Hearing Officer considered his protests upon the submission of written documents.

14. Arkansas Code Annotated § 26-18-406(a) speaks for itself. The Department lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 14.

15. The Department incorporates by reference its responses to paragraphs 1 through 14 of the Complaint.

16. The Department admits that auditor Amy Patton conducted the audit and made audit adjustments for tax year 2015. The Department denies the remaining allegations in paragraph 16.

17. The Department admits that the auditor made audit adjustments for tax year 2016. The Department denies the remaining allegations in paragraph 17.

18. The Department admits that the auditor made audit adjustments for tax year 2017. The Department denies the remaining allegations in paragraph 18.

19. The Department admits that the auditor made audit adjustments for tax year 2018. The Department denies the remaining allegations in paragraph 19.

20. The Department admits that the auditor made audit adjustments. The Department denies the remaining allegations in paragraph 20.

21. The Department denies the allegations in paragraph 21.

22. Paragraph 22 contains conclusions of law to which no response is required. However, to the extent a response is necessary, the Department denies the allegations in paragraph 22.

23. The Department incorporates by reference its responses to paragraphs 1 through 22 of the Complaint.

24. Arkansas Code Annotated § 26-18-305 (Repl. 2020) speaks for itself. The remainder of paragraph 24 contains conclusions of law to which no response is required. However, to the extent a response is necessary, the Department denies the remainder of the allegations in paragraph 24.

25. The Department denies the allegations in paragraph 25.

26. The text of the Hearing Officer's administrative decision speaks for itself. The remainder of Paragraph 26 contains conclusions of law to which no response is required. However, to the extent a response is necessary, the Department denies the remainder of the allegations in paragraph 26.

27. The Department denies the allegations in paragraph 27. The Department incorporates by reference its responses to paragraphs 1 – 27 of the Complaint.

28. The Department incorporates by reference its responses to paragraphs 1 – 27 of the Complaint.

29. Arkansas Code Annotated § 26-18-307 (Repl. 2020) speaks for itself. The remainder of paragraph 29 contains conclusions of law to which no response is required. However, to the extent a response is necessary, the Department denies the remainder of the allegations in paragraph 29.

30. *Jones v. Flowers*, 547 U.S. 220 (2006) speaks for itself. The remainder of paragraph 30 contains conclusions of law to which no response is required. However, to the extent a response is necessary, the Department denies the allegations in paragraph 30.

31. The Department denies the allegations in paragraph 31.

32. The Department incorporates by reference its responses to paragraphs 1 – 31 of the Complaint.

33. The Department denies the allegations in paragraph 33. The remainder of paragraph 33 contains a request for relief to which no response is required. However, to the extent a response is necessary, the Department denies that the law entitles the plaintiff to the relief requested in paragraph 33.

34. The Department denies the allegations in paragraph 34. Because this is a trial *de novo*, the correctness of the Hearing Officer's administrative decision is not relevant. *See Douglas Cos., Inc. v. Walther*, 2020 Ark. 365, at 3.

35. The paragraph that begins with the word "WHEREFORE" contains a request for relief to which no response is required. However, to the extent a response is necessary, the Department denies the allegations in the "WHEREFORE" paragraph and denies that the law entitles the plaintiff to the relief requested.

36. The Department denies each and every allegation contained in the Complaint that the Department has not specifically admitted.

37. To the extent any of the headings in the Complaint contain allegations that require response, the Department denies the allegations contained in those headings.

38. The Department denies that the plaintiff is entitled to attorney's fees. Ark. Code Ann. § 26-18-507 (Repl. 2020) only provides for recovery of attorney's fees if the hearing officer rules in the taxpayer's favor. Because the Hearing Officer sustained the assessment against the plaintiff, the plaintiff cannot satisfy this statutory prerequisite to the recovery of attorney's fees.

39. The Department reserves the right to amend this Answer and plead further upon discovery in this case.

WHEREFORE, Defendant, Larry Walther, Secretary of the Arkansas Department of Finance and Administration, prays that Plaintiff's Complaint be dismissed, and for all other just and proper relief to which he may be entitled.

LARRY WALTHER, SECRETARY
ARKANSAS DEPARTMENT OF FINANCE
AND ADMINISTRATION,
DEFENDANT

By: /s/ David G. Scott
David G. Scott, ABN #06030
Office of Revenue Legal Counsel
P.O. Box 1272, Room 2380
Little Rock, AR 72203
(501) 682-7030 - Phone
(501) 682-7599 - Fax
David.Scott@dfa.arkansas.gov

-and-

/s/ Bradley B. Young
Bradley B. Young, ABN #2015028
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 12th day of April 2021, the above foregoing Answer was served by the Court's electronic filing system, to the following:

Nicolas Corry
WINGFIELD & CORRY, P.A.
920 West Second Street, Suite 101
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/s/ David G. Scott

David G. Scott

ELECTRONICALLY FILED
Pulaski County Circuit Court
Terri Hollingsworth, Circuit/County Clerk
2023-Apr-27 12:31:12
60CV-21-997
C06D04 : 3 Pages

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FOURTH DIVISION

CENARK CONSTRUCTION & EXCAVATION, INC.

PLAINTIFF

VS.

CASE NO.: 60CV-21-997

LARRY WALTHER, SECRETARY
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

KYLE WYATT

PLAINTIFF

VS.

CASE NO.: 60CV-21-974

LARRY WALTHER, SECRETARY
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

A-1 RECOVERY RENTAL, L.L.C.

PLAINTIFF

VS.

CASE NO.: 60CV-21-999

LARRY WALTHER, SECRETARY
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

A-1 RECOVERY TOWING & RECOVERY, INC.

PLAINTIFF

VS.

CASE NO.: 60CV-21-961

LARRY WALTHER, SECRETARY
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

CENARK INVESTMENT GROUP, L.L.C.

PLAINTIFF

VS.

CASE NO.: 60CV-21-998

LARRY WALTHER, SECRETARY
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

G&T ENTERPRISES OF NLR, LLC

PLAINTIFF

VS.

CASE NO.: 60CV-21-965

LARRY WALTHER, SECRETARY
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

GERALD AND TERI KENNON

PLAINTIFF

VS.

CASE NO.: 60DV-21-966

LARRY WALTHER, SECRETARY
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

TERRY WYATT

PLAINTIFF

VS.

CASE NO.: 60CV-21-964

LARRY WALTHER, SECRETARY
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

TRISKOLE EXCAVATING, INC.

PLAINTIFF

VS.

CASE NO.: 60CV-21-963

LARRY WALTHER, SECRETARY
OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

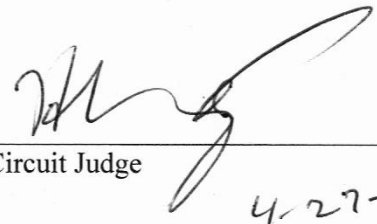
DEFENDANT

AGREED ORDER TO CONSOLIDATE

Comes before the Court, the Parties, having evidenced their agreement to this Order by their signatures affixed herein, and the Court, being well and fully advised and in consideration of the facts and circumstances presented, does hereby find that consolidation of these matters would advance the fair and efficient administration of justice and avoid the possibility of inconsistent rulings on substantially similar questions of law and fact.

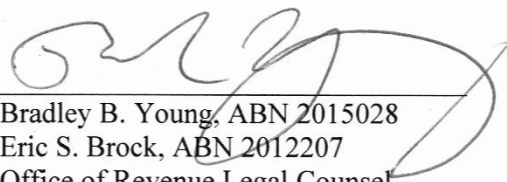
Accordingly, consolidation of these matters is granted, and the Circuit Clerk is ordered and directed to consider the above-captioned matters as consolidated into Pulaski County Civ. No. 60CV-21-997.

IT IS SO ORDERED

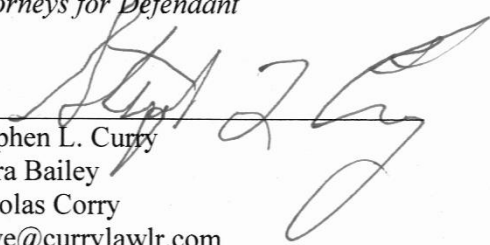

Circuit Judge

4-27-23
Date

Approved and Agreed:


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