



**STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH**

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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: *Jim Hudson, in his Official Capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration v. Tyson Foods, Inc. & Subsidiaries, Case No. 72CV-24-3093, in the Circuit Court of Washington County, Arkansas*

Docket Number: 72CV-24-3093

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

August 1, 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, Litigation Manager
 Office of Revenue Legal Counsel
 Arkansas Department of Finance & Administration

DATE: August 1, 2025

RE: *Jim Hudson, in his Official Capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration v. Tyson Foods, Inc. & Subsidiaries*, Case No. 72CV-24-3093, in the Circuit Court of Washington 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

In 2020, Tyson claimed a corporation income tax refund in the amount of \$1,795,737 for tax year 2016 and \$1,091,044 for tax year 2017, plus interest. The Department denied \$1,549,179 of the tax year 2016 refund claim and \$740,742 of the tax year 2017 refund claim. Tyson appealed the refund claim denials to the Tax Appeals Commission. This litigation ensued. The litigation was originally filed in Pulaski County Circuit Court as 60CV-24-4992 but removed to Washington County Circuit Court.

The parties have reached a settlement. A copy of the settlement agreement is attached. The Department has agreed to refund \$1,549,179 plus interest of \$900,311 (for a total of \$2,449,490) for tax year 2016 and \$108,648 plus interest of \$70,300 (for a total of \$178,948) for tax year 2017.

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

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is made as of the 15th day of June 2025, by and between Tyson Foods, Inc. and its 19 subsidiaries listed below (hereinafter “Tyson”), and the Arkansas Department of Finance and Administration, an agency of the State of Arkansas, by and through its Cabinet Secretary, Jim Hudson (hereinafter “DFA”). Tyson and DFA are each a “Party” and are sometimes collectively referred to in this Agreement as the “Parties.”

RECITALS

WHEREAS, on August 14, 2020, Tyson filed an amended fiscal year 2016 consolidated income tax return, which included Tyson Foods, Inc. and 19 of its subsidiaries (listed below), claiming a refund of \$ 1,795,737 plus interest (hereinafter “2016 Refund Claim”):

- a. Artisan Bread Company, LLC
- b. Cobb-Vantress, Inc.
- c. Foodbrands America, Inc.
- d. Global Employment Services, Inc.
- e. Hillshire Brands Company
- f. National Comp Care, Inc.
- g. Oaklawn Capital Corporation
- h. The Pork Group, Inc.
- i. TYNET Corporation
- j. Tyson Breeders, Inc.
- k. Tyson Chicken, Inc.
- l. Tyson Deli, Inc.
- m. Tyson Fresh Meats, Inc.
- n. Tyson Mexican Original, Inc.
- o. Tyson Poultry, Inc.
- p. Tyson Prepared Foods, Inc.
- q. Tyson Sales & Distribution, Inc.
- r. Tyson Shared Services, Inc.
- s. WBA Analytical Laboratories, Inc.;

WHEREAS, on September 2, 2020, DFA allowed \$246,558 (plus interest of \$75,250.14), and disallowed \$1,549,179, of the \$1,795,737 claimed refund;

WHEREAS, Tyson protested the DFA’s refund claim denial, and on May 23, 2024, the Arkansas Tax Appeals Commission (hereinafter “TAC”) reversed the DFA’s refund claim denial, ordering the DFA to make adjustments consistent with the decision (TAC Docket No. 23-TAC-02064; hereinafter “TAC Decision”);

WHEREAS, in response to the TAC Decision, on June 20, 2024, DFA filed a lawsuit against Tyson in Pulaski County Circuit Court (60CV-24-4992), later transferred

to Washington County Circuit Court (72CV-24-3093) (hereinafter, “the Lawsuit”), seeking a *de novo* review and reversal of the TAC Decision;

WHEREAS, on August 14, 2020, Tyson filed an amended fiscal year 2017 consolidated income tax return claiming a refund of \$ 1,091,044 plus interest (hereinafter “2017 Refund Claim”);

WHEREAS, on July 21, 2022, DFA allowed \$350,302 (plus interest of \$110,272), and disallowed \$740,742, of the \$1,091,044 claimed refund;

WHEREAS, Tyson and DFA have agreed to a settlement to resolve all claims the Parties currently have or may have against each other arising from or related to the 2016 Refund Claim, the 2017 Refund Claim, the TAC Decision, and the Lawsuit, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DFA shall issue a refund payment of \$108,648 plus interest of \$70,300 (for a total of \$178,948) to Tyson in resolution of the 2017 Refund Claim subject to all terms and conditions of this Agreement.

2. DFA shall issue a refund payment of \$1,549,179 plus interest of \$900,311 (for a total of \$2,449,490) to Tyson in resolution of the 2016 Refund Claim subject to all terms and conditions of this Agreement.

3. The Parties acknowledge that the payments referenced in paragraphs 1 and 2, and thus this Agreement, are contingent upon and subject to approval of the terms and conditions of this Agreement by the Arkansas Legislative Counsel, which DFA will seek in good faith to obtain.

4. Upon execution of this Agreement by all Parties and receipt of the payments referenced in paragraphs 1 and 2, Tyson releases and forever discharges the DFA of and from any and all claims, demands, applications or requests for refunds, credits, payments or repayments of any kind, including interest, related to any Arkansas income tax return of Tyson for 2017 and any prior year. Likewise, upon execution of this Agreement by all Parties and delivery to Tyson of the payments referenced in paragraphs 1 and 2, DFA, on behalf of the State of Arkansas, will close and irrevocably deem final and complete all review, recalculation and assessment of income tax liability of Tyson related to any Arkansas income tax return of Tyson for 2017 and any prior year, and DFA specifically releases and forever discharges Tyson of and from any and all claims, demands, assessments or payments of any kind related to any Arkansas income tax return of Tyson for 2017 or any prior year.

5. Upon execution of this Agreement by all Parties and receipt by Tyson of the payments referenced in paragraphs 1 and 2, the DFA will dismiss the Lawsuit with

prejudice. To accomplish this dismissal with prejudice, the Parties shall jointly submit to the Court in the Lawsuit a joint motion in the form attached hereto as Exhibit A and a proposed order in the form attached hereto as Exhibit B. It is the desire of both Parties that the Court in the Lawsuit will enter the proposed order in substantially the same form as Exhibit B, but both Parties acknowledge that neither Party controls the terms of any final order that the Court may enter. Accordingly, so long as Exhibit A and B are submitted by the Parties to the Court and an order is entered with language dismissing the Lawsuit with prejudice, the conditions of this paragraph 5 are satisfied.

6. This Agreement shall be binding upon and inure to the benefit of the respective Parties and their successors and assigns. Each Party acknowledges, represents and warrants that, as of the date of its execution of this Agreement, it is authorized to enter into this Agreement. Each person executing this Agreement warrants that he/she has the full authority to do so on his/her own behalf and on behalf of any Party for which he/she is acting.

7. This Agreement embodies the entire understanding and agreement of the Parties concerning the subject matter herein, and thus supersedes any previous negotiations, discussions and understandings regarding such matters.

8. This Agreement shall be governed by the laws of the State of Arkansas.

9. The Parties to this Agreement hereby irrevocably consent to the sole and exclusive jurisdiction of the Circuit Court of Washington County, Arkansas, to resolve any and all claims, disputes or causes of action arising out of or connected to this Agreement.

10. No term or provision of this Agreement may be amended, altered, waived, modified, rescinded or terminated, except upon the express written consent of the Party against whom the same is sought to be enforced.

11. The Parties acknowledge that they have consulted with their respective counsel and that this Agreement is the product of negotiations between and among the Parties and, in the enforcement hereof, is to be interpreted in a neutral manner, with no presumption for or against any Party being afforded by reason of the fact that a Party has drafted or caused to be drafted this Agreement, or any portion of it.


12. The provisions of this Agreement are severable, existing separately from one another, and if any part of this Agreement is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

13. The Parties shall bear their own attorneys' fees and costs incurred in connection with the Lawsuit and negotiation and execution of this Agreement.

WHEREFORE, the undersigned acknowledge their assent to the terms and conditions set forth herein, and agree to the foregoing as of the date of this Agreement.

TYSON FOODS, INC. and subsidiaries:

Artisan Bread Company, LLC,
Cobb-Vantress, Inc.,
Foodbrands America, Inc.,
Global Employment Services, Inc.,
Hillshire Brands Company,
National Comp Care, Inc.,
Oaklawn Capital Corporation,
The Pork Group, Inc.,
TYNET Corporation,
Tyson Breeders, Inc.,
Tyson Chicken, Inc.,
Tyson Deli, Inc.,
Tyson Fresh Meats, Inc.,
Tyson Mexican Original, Inc.,
Tyson Poultry, Inc.,
Tyson Prepared Foods, Inc.,
Tyson Sales & Distribution, Inc.,
Tyson Shared Services, Inc.,
WBA Analytical Laboratories, Inc.

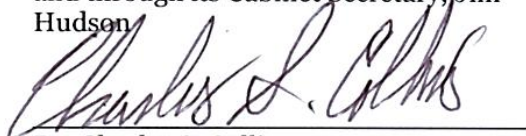
By:  _____

Its: VP-Tax _____

Date: 6/30/2025 _____

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ARKANSAS DEPARTMENT OF
FINANCE AND ADMINISTRATION, by
and through its Cabinet Secretary, Jim
Hudson



By: Charles S. Collins

Its: Commissioner of Revenue
Arkansas Department of Finance and
Administration

Date: 7/1/2025

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Exhibit A

Joint Motion

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION**

**JIM HUDSON, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY OF THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION**

PLAINTIFF

v.

CASE NO.: 72CV-24-3093

TYSON FOODS, INC. & SUBSIDIARIES

DEFENDANTS

JOINT MOTION FOR DISMISSAL WITH PREJUDICE

Plaintiff, Jim Hudson, in his Official Capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration, and Defendant, Tyson Foods, Inc. and Subsidiaries, file this joint motion to dismiss with prejudice.

This case is a judicial appeal from a decision by the Arkansas Tax Appeals Commission. The parties have settled and compromised their differences in the above-captioned matter. Through their attorneys, the parties jointly move the Court to overturn the decision of the Tax Appeals Commission and to dismiss this case with prejudice, with each party to bear its own attorney's fees and costs.

Respectfully Submitted,

Arkansas Department of Finance and
Administration

By: _____

Keith K. Linder (Ark. Bar No. 2018127)
Bradley B. Young (Ark. Bar No. 2015028)
Christopher L. Palmer (Ark. Bar No. 1985125)
Office of Revenue Legal Counsel
P. O. Box 1272, Room 2380
Little Rock, Arkansas 72203
(501) 682-7030
keith.linder@dfa.arkansas.gov
brad.young@dfa.arkansas.gov
christopher.palmer@dfa.arkansas.gov

Attorneys for Plaintiff

David D. Wilson (Ark. Bar No. 2015028)
Alexis Bibbs (Ark. Bar No. 2021261)
Friday, Eldredge & Clark, LLP
400 West Capitol, Suite 2000
Little Rock, AR 72201-3522
wilson@fridayfirm.com
abibbs@fridayfirm.com

Attorneys for Defendants

Exhibit B

Proposed Order

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION**

**JIM HUDSON, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY OF THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION**

PLAINTIFF

v.

CASE NO.: 72CV-24-3093

TYSON FOODS, INC. & SUBSIDIARIES

DEFENDANTS

ORDER GRANTING JOINT MOTION FOR DISMISSAL WITH PREJUDICE

Comes before the Court the Parties' Joint Motion for Dismissal with Prejudice. The Court, being well and fully advised, finds as follows:

1. It appears that the parties have settled and compromised their differences.
2. The Arkansas Tax Appeals Commission's decision in Docket No. 23-TAC-02064, dated May 23, 2024, is overturned.
3. The complaint of Jim Hudson, in his Official Capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration, is dismissed with prejudice.
4. Each party shall bear its own costs and attorneys' fees.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Honorable Doug Martin
Circuit Court, 1st Division

Date: _____

APPROVED:

By: _____
Keith K. Linder (Ark. Bar No. 2018127)
Office of Revenue Legal Counsel
P. O. Box 1272, Room 2380
Little Rock, AR 72203
(501) 682-7030
keith.linder@dfa.arkansas.gov

Attorneys for Plaintiff

David D. Wilson (Ark. Bar No. 2015028)
Friday, Eldredge & Clark, LLP
400 West Capitol, Suite 2000
Little Rock, AR 72201-3522
wilson@fridayfirm.com

Attorneys for Defendants

<p>ELECTRONICALLY FILED Pulaski County Circuit Court Terri Hollingsworth, Circuit/County Clerk 2024-Jun-20 14:52:45 60CV-24-4992 C06D12 : 10 Pages</p>
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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

**JIM HUDSON, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY OF THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION**

PLAINTIFF

v. CASE NO.: 60CV-__-__

TYSON FOODS, INC. & SUBSIDIARIES

DEFENDANTS

COMPLAINT

Now comes Jim Hudson, in his official capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration, and files this, his Complaint:

1. The Department of Finance and Administration (the “Department”) denied Tyson Foods, Inc. & Subsidiaries (collectively “Tyson”) a \$1,795,737 refund of corporate income tax because the refund was prohibited by Arkansas law. The Arkansas Tax Appeals Commission (“TAC”) erroneously overturned the Department’s refund denial. This lawsuit is necessary to prevent the perversion of clear and unambiguous Arkansas statutes regarding the statute of limitations for amending tax returns and claiming refunds for overpayment of tax. This Court should sustain the Department’s refund claim denial.

2. The Department is an agency of the State of Arkansas charged, in part, with administering the corporate income tax. Jim Hudson, in his official capacity as Cabinet Secretary of the Department, is authorized to institute and prosecute in his name all suits on behalf of the Department. Ark. Code Ann. § 26-17-304.

3. Tyson Foods, Inc. is a Delaware Corporation registered to do business in Arkansas. Its registered agent for service is United Agent Group Inc., 609 SW 8th Street, #600, Bentonville, Arkansas 72712.

4. The Department brings this suit under Arkansas Code Annotated §§ 26-18-406(b)(2) & 26-18-1117(b). This Court has jurisdiction and venue is appropriate in Pulaski County.

5. The filing of this suit is timely under Ark. Code. § 26-18-406(b)(2).

6. On August 14, 2020, Tyson filed an amended fiscal year 2016 consolidated income tax return claiming a refund of \$1,795,737 plus interest. The amended 2016 return was filed on the final day before the statute of limitations for amending the original 2016 return (and thereby claim a refund) expired.

7. Tyson's amended 2016 consolidated income tax return included Tyson Foods, Inc. and the following 19 subsidiaries:

- a. Artisan Bread Company, LLC
- b. Cobb-Vantress, Inc.
- c. Foodbrands America, Inc.
- d. Global Employment Services, Inc.
- e. Hillshire Brands Company
- f. National Comp Care, Inc.
- g. Oaklawn Capital Corporation
- h. The Pork Group, Inc.
- i. TYNET Corporation
- j. Tyson Breeders, Inc.

- k. Tyson Chicken, Inc.
- l. Tyson Deli, Inc.
- m. Tyson Fresh Meats, Inc.
- n. Tyson Mexican Original, Inc.
- o. Tyson Poultry, Inc.
- p. Tyson Prepared Foods, Inc.
- q. Tyson Sales & Distribution, Inc.
- r. Tyson Shared Services, Inc.
- s. WBA Analytical Laboratories, Inc.

Except for Global Employment Services, Inc., each subsidiary's registered agent is United Agent Group Inc., 609 SW 8th Street, #600, Bentonville, Arkansas 72712.

8. Tyson claimed additional business incentive credits on its amended 2016 return that it did not claim on its original 2016 return.

9. When the Department reviewed the refund claim, business incentive credits were not available to Tyson in the amount claimed because Tyson already claimed the credits on tax returns in other tax years.

10. The Department adjusted the claim accordingly on September 2, 2020, and a notice of refund claim denial was issued on September 3, 2020 that disallowed \$1,549,179.00 of the claimed \$1,795,737.00 refund. The notice of refund claim denial is attached to this Complaint as **Exhibit A**.

11. The Department authorized a refund of the remaining \$246,558.00 plus interest of \$75,250.14.

12. On October 26, 2020, after the time for Tyson to claim a refund (or the Department to assess tax) for both fiscal year 2015 and 2016 returns had passed, Tyson filed an amended fiscal year 2015 return seeking to claim additional net operating loss carryover in 2015.

13. Tyson contended that the increased net operating loss carryover claimed on the amended 2015 return freed up credits claimed on the original 2015 return to instead be claimed on the 2016 amended return, thus creating the claimed 2016 refund that is the subject of this lawsuit.

14. Tyson filed a protest with the Department's Office of Hearings and Appeals challenging the Department's decision to partially deny its refund request for fiscal year 2016.

15. Tyson's protest was transferred to TAC. On May 23, 2024, TAC issued a decision reversing the Department's refund claim denial and ordering the Department to issue the full refund claimed by Tyson on its amended 2016 income tax return with interest. The Department files this suit in response to TAC's decision.

16. This Court is to try this matter *de novo* to determine Tyson's entitlement to the claimed credits and resulting refund. Ark. Code Ann. § 26-18-1117(b)(3).

17. Tyson bears the burden of proving entitlement to the claimed credits by a preponderance of the evidence. Ark. Code Ann. § 26-18-313.

18. Because Tyson claims entitlement to a tax credit, the statute providing the credit is to be strictly construed in limitation of the credit. *Dep't of Fin. & Admin. v. Wilson*, 2024 Ark. 25, 8, 684 S.W.3d 575, 579.

19. The general limitations period for filing an amended return is three years from the date the original return was filed or two years from the date the tax was paid, whichever date is later. Ark. Code Ann. § 26-18-306(i)(1)(A)-(B).

20. Tyson filed its original 2016 return on August 15, 2017.

21. Tyson made its final payment related to its fiscal year 2016 tax balance in December 2016. Because the statute of limitations runs until the later of three years after the filing of the return or two years after payment, the statute of limitations for claiming a refund expired on August 15, 2020, three years after Tyson filed its original 2016 return.

22. Tyson's 2016 refund claim was properly denied based on the contents of Tyson's other tax returns on file with the Department at the time. The credits Tyson sought to claim on its amended 2016 return had already been claimed by Tyson.

23. Tyson amended its 2015 income tax return on October 26, 2020, to allegedly demonstrate entitlement to the credits claimed on the 2016 refund request. This amendment sought to claim additional net operating loss carryover for tax year 2015 and utilize less business incentive credits than claimed on the original 2015 return.

24. The statute of limitations for Tyson to amend its 2015 return expired on August 15, 2019. Tyson's amended 2015 return was filed after the statute of limitations had expired for amending both tax year 2015 and 2016.

25. Tyson's filing of the amended 2015 return roughly two months after the Department denied the 2016 refund claim did not revive the refund claim that had been properly denied and was by then time barred.


26. Tyson's tax credits claimed on its 2015 return cannot be adjusted by a return filed after the expiration of the statute of limitations. Ark. Code Ann. § 26-18-306(i)(1)(B) (barring amendment after the statute of limitations for *any purpose*). Therefore, even if the 2016 refund claim was not time barred, Tyson could not amend 2015 to change the number of credits claimed in that year because the statute of limitations for 2015 had expired by more than a year.

27. The Department's refund claim denial should be sustained.

FOR THESE REASONS, Plaintiff, Jim Hudson, Secretary of the Arkansas Department of Finance and Administration, prays that the Court enter judgment sustaining the Department's refund claim denial, that the Court award court costs pursuant to Ark. Code § 26-18-406(e), and for such other relief to which the Court determines the Department is entitled.

Respectfully submitted,

ARKANSAS DEPARTMENT OF
FINANCE AND ADMINISTRATION

By: 

Keith K. Linder (Ark. Bar No. 2018127)
Bradley B. Young (Ark. Bar No. 2015028)
Christopher L. Palmer (Ark. Bar. No. 1985125)
Office of Revenue Legal Counsel
P. O. Box 1272, Room 2380
Little Rock, Arkansas 72203
(501) 682-7030 – Telephone
(501) 682-7599 – Facsimile
keith.linder@dfa.arkansas.gov
brad.young@dfa.arkansas.gov
christopher.palmer@dfa.arkansas.gov

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

JIM HUDSON, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY OF THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION

PLAINTIFF

v.

CASE NO.: 60CV-__-__

TYSON FOODS, INC. & SUBSIDIARIES

DEFENDANTS

EXHIBIT A



**STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
CORPORATION INCOME TAX SECTION
PO BOX 919, LITTLE ROCK, AR 72203-0919**

September 03, 2020

Corporation Income Tax

TYSON FOODS INC & SUBSIDIARIES
CP131
PO BOX 2020
SPRINGDALE AR 72765-2020

Letter ID: L0199306896
Account ID: 15976349-CIT

RE: NOTICE OF CLAIM DENIAL

DEAR TYSON FOODS, INC.:

In accordance with Ark. Code Ann. § 26-18-507(e), a portion of your Corporation Income Tax claim for refund claimed on your amended return(s) dated August 15, 2020 for the account stated above has been denied by the Director of the Department of Finance and Administration. The claim for refund is denied in the following amount and filing period(s):

Tax Period Beginning:	October 1, 2015
Tax Period Ending:	September 30, 2016
Total Claimed:	\$1,795,737.00
Total Denial:	\$1,549,179.00

Your Corporation Income Tax claim for refund has been denied in the amount shown above due to the following reason(s): Business Incentive Credits claimed on the amended return exceeded the available amount of credit. Total credits claimed can not exceed total credits established. Some credits had already been claimed in prior or subsequent years.

See attached schedules.

If you wish to request a copy of the information supporting this denial, please contact a customer service representative at (501) 682-4791 or fax to (501) 682-7114. Provide your Account ID and the Letter ID shown above when you call or write about this letter.

If you do not agree with or do not accept the findings of the Department, you must file a written protest of the disallowance with the Director within 60 days after service of this Notice. You may use the Protest Form, attached. This specific form is not required with your protest, but it does provide guidance concerning information that should be submitted if you protest this Claim Denial.

If you file a protest within the time required by law, your protest must request relief either on the basis of written documents submitted with the protest or by a request for an Administrative Hearing. The written protest must be signed by you or your duly authorized agent. Failure to make a written protest either by submitting documents or by request for a hearing, or by failing to appear at the time for such Administrative Hearing, shall constitute a waiver of your rights to any administrative relief by the Department. If you choose not to request administrative relief, you may seek judicial review by filing a lawsuit in circuit court within one (1) year from the date of this notice.

Tommy Burns, Tax Auditor
Phone: (501) 682-4791, Fax: (501) 682-7114
Corporation.Income@dfa.arkansas.gov

Enclosures - Taxpayer Bill of Rights and Protest Form



**STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
YOUR RIGHTS AS A TAXPAYER**

You have the right to a full explanation of all actions by any employee of the Director of the Department of Finance and Administration both during an audit and during collection activities.

- All tax information contained in the records and files of the Director of the Department of Finance and Administration (hereinafter "Director") pertaining to you or your business is confidential subject to exceptions in Ark. Code Ann. § 26-18-303.
- You may represent yourself in any proceeding or interview before the Director or you may be represented by anyone whom you authorize in writing to be your representative.
- You have the right to consult with a lawyer, accountant, or other representative at any time during an interview with an employee of the Director. The Director shall suspend the interview to allow you to consult with your representative.
- You may record any interview with the Director or his or her employee at your own expense. You should let the Director or his or her employee know in advance of your intention to record the interview. The Director may likewise record an interview, and a copy may be obtained within a reasonable time at your expense.
- You may request an administrative review (file a protest) of any proposed assessment of tax. You must request this review in writing within 60 days of your receipt of a Notice of Proposed Assessment. The administrative review may be based on an in-person hearing, a telephone hearing, or consideration of written documents. If you do not request an administrative hearing, you may still pursue your judicial remedies by filing an action in the circuit court.
- If you receive an unfavorable decision from your administrative review, then you may request a review of the decision by the Director. This request must be in writing and must be received by the Director within 20 days of the mailing of the hearing decision. If you receive an unfavorable decision from the Director on any issue, you may pursue judicial remedies as discussed below.
- After the issuance of the Notice of Final Assessment or the final determination of the hearing officer or Director, you may appeal the tax assessment to circuit court, regardless of whether you protested the assessment and requested an administrative review. To pursue your appeal of a tax assessment to circuit court you must do one of the following:
 - (1) File suit within 180 days of the date of the Notice of Final Assessment or final determination of the hearing officer or Director if the taxpayer does not make any payment of the tax, penalty, or interest due; or
 - (2) Pay the entire amount of tax due within one year of the date of the Notice of Final Assessment or final determination of the hearing officer or Director and file suit within one year of the date of payment; or
 - (3) File suit within one year of the date of the final determination of the hearing officer or Director to recover assessed tax, penalty, and interest paid prior to the time for issuance of the Notice of Final Assessment.
- A taxpayer may file an amended return or a verified claim for credit or refund of an overpayment of any state tax within three years from the date the return was filed or two years from the date the tax was paid, whichever is later. Any amended return or claim for refund should be filed with the office of the Revenue Division which administers the type of tax in question. The ability to file an amended return is not available to a taxpayer whose liability was determined as a result of an audit by the Department.
- If the Director disallows the refund claim either in whole or in part, the Director will issue a Notice of Claim Denial. You may request an administrative review (protest) of the Notice of Claim Denial. This request must be made within 60 days of your receipt of the Notice of Claim Denial. If you receive an unfavorable decision from your administrative review, you may request a review of the decision by the Director. This request must be made in writing within 20 days of the mailing of the hearing decision.
- Following an administrative hearing and corresponding review, the taxpayer may seek judicial relief from the Notice of Claim Denial by appealing the decision to circuit court. Judicial review is available whether or not you requested an administrative review. To pursue your appeal to circuit court, you must file suit within one year of the date of the mailing of the Notice of Claim Denial, the final determination of the hearing officer, or revision decision of the Director, whichever is later. If the Director fails to issue a written decision in response to the refund claim within six months of the date a claim for refund is filed, the taxpayer may then file suit to recover the amount claimed.
- Any taxpayer who wishes to file a request for administrative review (protest) of a proposed assessment or a complaint regarding any activity concerning the administration or collection of any state tax by the Revenue Division should make the protest or complaint in writing to:
ASSISTANT COMMISSIONER FOR POLICY AND LEGAL
Mailing Address: LEDBETTER BUILDING, ROOM 2440, P.O. BOX 1272 LITTLE ROCK, AR 72203-1272
Overnight Mailing Address: LEDBETTER BUILDING, ROOM 2440, 1816 W. 7TH ST. LITTLE ROCK, AR 72201
Email Address: protest@dfa.arkansas.gov
Fax: (501) 683-1161

- In administering the state tax laws, the Director is authorized by law to make an examination or investigation of the business, books, and records of the taxpayer. If the Director determines that an additional amount of tax is due, then a Notice of Proposed Assessment shall be issued to the taxpayer. The taxpayer may seek relief from the Notice of Proposed Assessment as outlined above. If the taxpayer fails to preserve and maintain records suitable to determine the amount of tax due or to prove accuracy of any return, the Director may make an estimated assessment based upon the best information available as to the amount of tax due by the taxpayer.
- The Director may issue a jeopardy assessment against any taxpayer (1) whose tax liability exceeds any bond on file indemnifying the state for the payment of a state tax, (2) who intends to leave the State, remove his or her property, or conceal himself or herself or his or her property, (3) who intends to discontinue his or her business without making adequate provisions for payment of state taxes or, (4) who does any other act tending to prejudice or jeopardize the Director's ability to compute, assess, or collect any state tax. Any taxpayer seeking relief from a jeopardy assessment must request an administrative hearing within five days from the receipt of the Notice of Proposed Assessment.
- When collecting any state tax due from a taxpayer, the Director is authorized to file a Certificate of Indebtedness (state tax lien) with the circuit clerk of any county of this state certifying that the person named therein is indebted to the state for the amount of tax due as established by the Director. The Certificate of Indebtedness shall have the same force and effect as the entry of a judgment rendered by a circuit court and shall constitute a lien upon the title of any real and personal property of the taxpayer in the county where the Certificate of Indebtedness is recorded.
- After the filing of the Certificate of Indebtedness, the Director may take all steps authorized by law for the collection of the tax, including the issuance of a writ of execution, garnishment, and cancellation of any state tax permits or registrations.

Any court costs or sheriff's fees which result from the Director's attempt to collect delinquent taxes shall be collected from the taxpayer in addition to the tax, interest, and penalties included in the Certificate of Indebtedness.



**STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
CORPORATION INCOME TAX SECTION
PO BOX 919, LITTLE ROCK, AR 72203-0919**

PROTEST OF REFUND CLAIM DENIAL

TYSON FOODS INC & SUBSIDIARIES
CP131
PO BOX 2020
SPRINGDALE AR 72765-2020

Letter ID: L0199306896
Account ID: 15976349-CIT
Account Type: Corporation Income Tax

Total Claimed: \$1,795,737.00

Total Denial: \$1,549,179.00

I, _____, received a Notice of Claim Denial for refund of Arkansas Corporation Income Tax.

I protest the refund claim denial and request: (Check 1, 2 or 3 below)

- ☐ 1. Consideration of written documents submitted:
 ___ (a) documents included with the protest (complete statement below), or
 ___ (b) documents to be submitted according to a briefing schedule set by
 Hearing Board.

- ☐ 2. An administrative hearing to be held at (circle one)

Hot Springs Fort Smith Jonesboro Little Rock Pine Bluff Bentonville

I agree to appear on the date and at the time and place set for such hearing as provided by law.

- ☐ 3. Request for administrative hearing by telephone. Please include telephone number: _____. (This number will be called for the hearing unless you write/fax/email to change number in advance of hearing.)

I disagree with the claim denial for the following reasons (add additional page if necessary):

Signature of Taxpayer/Business Official

Print Name

Date

Phone

Sign and return protest to:

**Assistant Commissioner Policy and Legal
P.O. Box 1272 - Room 2440
Little Rock, AR 72203-1272**

Fax : (501) 683-1161

Email : protest@dfa.arkansas.gov

<p>ELECTRONICALLY FILED Pulaski County Circuit Court Terri Hollingsworth, Circuit/County Clerk 2024-Aug-01 15:01:45 60CV-24-4992 C06D12 : 6 Pages</p>
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**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION**

**JIM HUDSON, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY OF THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION**

PLAINTIFF

VS.

CASE NO. 60CV-24-4992

TYSON FOODS, INC. & SUBSIDIARIES

DEFENDANTS

ANSWER TO COMPLAINT

Come now the Defendants, designated as “Tyson Foods, Inc. & Subsidiaries,” and for their Answer to the Complaint of Jim Hudson, in his Official Capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration, and state:

1. The allegations of paragraph 1 of Plaintiff’s Complaint are denied.
2. The allegations of paragraph 2 of Plaintiff’s Complaint are denied as pled. Defendants affirmatively state that Ark. Code Ann. § 26-17-304 speaks for itself. To the extent the allegations in paragraph 2 differ from the actual language contained in Ark. Code Ann. § 26-17-304, such allegations are denied on this additional basis.
3. The allegations of paragraph 3 of Plaintiff’s Complaint are admitted.
4. In response to paragraph 4 of Plaintiff’s Complaint, Defendants state that the allegations contained therein are legal conclusions to which no response is required. To the extent a response is required, Defendants state that the jurisdiction and venue of this Court is subject to the Defendants’ right to removal to the Circuit Court of the county in which the Defendants reside or have their principal place of business pursuant to Ark. Code Ann. §26-18-1117, and therefore venue is improper in this Court upon exercise of Defendants’ right of removal, which is exercised contemporaneously herewith.

5. The allegations contained in paragraph 5 of Plaintiff's Complaint contain legal conclusions to which no response is required. To extent a response is required, to the knowledge of these Defendants, the allegations of paragraph 5 of Plaintiff's Complaint are admitted.

6. These Defendants admit that they timely amended their 2016 consolidated tax return on August 14, 2020 to claim a refund of \$1,795,737 plus interest to reflect (a) changes in taxable income reflected on their amended federal tax return, and (b) changes to tax credits from the recalculation of the 2015 tax return, all resulting from a form 1120X – Amended U.S. Corporation Income Tax Return filed for the 2014 tax year. To the extent the allegations of paragraph 6 of Plaintiff's Complaint are inconsistent with this response, those allegations are denied.

7. The allegations of paragraph 7 of Plaintiff's Complaint are admitted, with the exception of the last sentence, which is denied.

8. These Defendants admit that they timely amended their 2016 consolidated tax return on August 14, 2020 to claim additional incentive credits resulting from a form 1120X – Amended U.S. Corporation Income Tax Return filed for the 2014 tax year. To the extent the allegations of paragraph 8 of Plaintiff's Complaint are inconsistent with this response, those allegations are denied.

9. The allegations of paragraph 9 of Plaintiff's Complaint are denied.

10. To the knowledge of these Defendants, the allegations of paragraph 10 of Plaintiff's Complaint are admitted. Defendants further state that the document attached as Exhibit A speaks for itself. To the extent the allegations in Paragraph 10 are inconsistent with the actual language contained in Exhibit A, such allegations are denied on this basis.

11. The allegations of paragraph 11 of Plaintiff's Complaint are admitted.

12. As stated, the allegations of paragraph 2 of Plaintiff's Complaint are denied. As the Plaintiff is well aware, the filing of the October 6, 2020 amended 2015 tax return provided a record of the calculation support for the timely filed August 14, 2020 amended 2016 tax return.

13. The allegations of paragraph 13 of Plaintiff's Complaint are admitted.

14. The allegations of paragraph 14 of Plaintiff's Complaint are admitted, and these Defendants further state that such protest was timely filed.

15. The allegations of paragraph 15 of Plaintiff's Complaint are admitted, and the May 23, 2024, decision of the Tax Appeal Commission ("TAC") correctly dismissing the arguments of Plaintiff and ruling in favor to the Defendants is attached hereto as Exhibit "1" in full and incorporated herein.

16. The allegations of paragraph 16 of Plaintiff's Complaint are admitted.

17. The allegations of paragraph 17 of Plaintiff's Complaint simply state a legal conclusion to which no response is required, but to the extent there are any factual allegations requiring a response from the Defendants, those allegations are denied.

18. The allegations of paragraph 18 of Plaintiff's Complaint simply state an inapplicable legal conclusion to which no response is required, but to the extent there are any factual allegations requiring a response from the Defendants, those allegations are denied. The Plaintiff's denial of the Defendants' 2016 refund based upon Plaintiff's erroneous interpretation of, and erroneous attempt to apply, the statute of limitations is the only issue before the Court. As the TAC correctly concluded:

This focus on the date of submission of the amended 2015 return is a red herring. The fact that the 2015 amended return was filed after the expiration of the statute of limitations for 2016 is unimportant because Taxpayer was not required to file the 2015 amended return but did so to demonstrate the collateral effects of the net operating loss adjustment. The 2015 amended return was supporting, supplemental information for the [timely filed] 2016 amended return. The filing of the 2016 amended return is sufficient for Taxpayer to claim the corrected credits utilization in that period.

Exhibit "1," p. 9.

19. The allegations of paragraph 19 of Plaintiff's Complaint simply state an inapplicable legal conclusion to which no response is required, but to the extent there are any factual allegations requiring a response from the Defendants, those allegations are denied. See analysis of the TAC set forth in Exhibit "1."

20. The allegations of paragraph 20 of Plaintiff's Complaint are admitted.

21. As stated, the allegations of paragraph 21 of Plaintiff's Complaint are denied, as Defendants did not claim a refund for 2015, as Plaintiff is well aware, and the 2015 amended return provided supporting supplemental information for the timely filed 2016 amended return. See analysis of the TAC set forth in Exhibit "1."

22. The allegations of paragraph 22 of Plaintiff's Complaint are denied.

23. As stated, the allegations of paragraph 23 of Plaintiff's Complaint are denied.

24. The allegations of paragraph 24 of Plaintiff's Complaint are denied.

25. As stated, the allegations of paragraph 25 of Plaintiff's Complaint are denied.

26. The allegations of paragraph 26 of Plaintiff's Complaint are denied. As the TAC determined:

The refund claim in question is the result of a net operating loss deduction adjustment properly made for 2015 and the attendant impact on credits utilization. The "making of adjustments necessary to correct the NOL deduction" [ADFA Rule 1.26-51-427] would be incomplete if DFA was allowed to adjust the net operating loss amount and then deny the tax benefit appurtenant thereto.

Exhibit "1," p. 9.

27. The allegations of paragraph 27 of Plaintiff's Complaint are denied.

28. All allegations of Plaintiff's Complaint not specifically admitted herein are denied.

29. The Defendants move to dismiss or, in the alternative, to remove the case to the Circuit Court of Washington County pursuant to Ark. Code Ann. §26-18-1117. Defendants incorporate their contemporaneously filed motion seeking removal.

AFFIRMATIVE DEFENSES

1. The Defendants affirmatively reserve their rights to file additional pleadings and motions to dismiss, raise additional defenses and assert counterclaims pending further investigation after the filing of this Answer.

2. The Defendants affirmatively plead and preserve Rules 12(b)(2) of the Arkansas Rules of Civil Procedure as grounds for the dismissal of Plaintiff's Complaint.

3. The Defendants affirmatively plead and preserve Rules 12(b)(4) and 12(b)(5) of the Arkansas Rules of Civil Procedure as separate and distinct grounds for the dismissal of Plaintiff's Complaint.

4. The Defendants affirmatively seek recovery of their costs and attorney's fees in defense of this action pursuant to Ark. Code Ann. §26-18-406(e).

WHEREFORE, the Defendants designated as "Tyson Foods, Inc. & Subsidiaries," pray that the refund set forth in its 2016 amended tax return be ordered and the decision of the Arkansas Tax Appeal Commission otherwise confirmed, for their costs and attorney's fees incurred herein, and for all other relief to which they may be entitled.

Respectfully Submitted,

David D. Wilson, Ark. Bar No. 90112
 Alexis Bibbs, Ark. Bar No. 2021261
 FRIDAY, ELDREDGE & CLARK, LLP
 400 West Capitol, Suite 2000
 Little Rock, AR 72201-3522
 501-370-1564- Telephone
 501-376-2147- Facsimile
wilson@fridayfirm.com
abibbs@fridayfirm.com

By: /s/ David D. Wilson
 David D. Wilson

CERTIFICATE OF SERVICE

I, David D. Wilson, do hereby certify that a copy of the foregoing was served upon all counsel and parties registered to receive notice in this action via the eFlex electronic filing system of the Administrative Office of the Courts on this 1st day of August, 2024, filed with the Pulaski County Circuit Court.

Keith K. Linder
Bradley B. Young
Christopher L. Palmer
Ark. Dept. of Finance and Administration
Office of Revenue, Legal Counsel
P. O. Box 1272, Room 2380
Little Rock, AR 72203
Keith.linder@dfa.arkansas.gov
Brad.young@dfa.arkansas.gov
Christopher.palmer@dfa.arkansas.gov

/s/ David D. Wilson

David D. Wilson