



**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: Tokusen USA, Inc. v. Jim Hudson, Secretary, Arkansas Department of Finance and Administration, Case No. 23CV-24-1284, in the Circuit Court of Faulkner County, Arkansas

Docket Number: 23CV-24-1284

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 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: *Tokusen USA, Inc. v. Jim Hudson, Secretary, Arkansas Department of Finance and Administration*, Case No. 23CV-24-1284, in the Circuit Court of Faulkner 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 issued sales and use tax assessments for the following tax periods: (1) 2016; (2) 2017-2018; (3) April 1, 2019-December 31, 2019; (4) 2020; and (5) 2021. Tokusen was assessed a total of \$405,674.64 (taxes) and \$83,790.00 (interest). Tokusen appealed the 2016-2018 audits to the Office of Hearings and Appeals, which sustained the assessments. Tokusen did not seek administrative relief for the remaining tax periods. Tokusen appealed the assessments for each of the above periods to circuit court.

The parties have reached a settlement that will result in a partial interest waiver in the amount of \$48,000.00. Because Tokusen has already paid the assessments, the interest waiver will result in a refund.

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

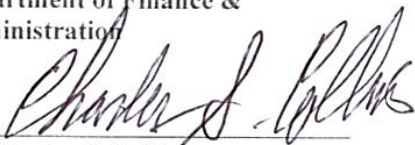
SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into 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 Tokusen USA, Inc. ("Tokusen"). Tokusen is the plaintiff, and the Department is the defendant, in Case No. 23CV-24-1284, *Tokusen USA, Inc., v. Jim Hudson, in his official capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration*; in the Circuit Court of Faulkner 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. Tokusen will dismiss the lawsuit with prejudice, with each party bearing that party's own attorneys' fees and costs.
2. The Department will refund \$48,000.00 of the interest Tokusen paid on the sales and use tax assessments that are the subject of the lawsuit, plus accrued interest on the refund amount at the statutory rate of 10% per annum.
3. Tokusen will accept this refund as full and final settlement of this matter.
4. The Agreement will be submitted for approval by the Arkansas Legislative Council. The Department and Tokusen 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. Pursuant to Ark. Code § 26-18-303(b)(5), Tokusen authorizes disclosure of this Agreement as may be required to obtain approval from the Legislative Council.
5. Within thirty (30) days from the date of approval of this agreement by the Legislative Council, Tokusen will file a motion to dismiss the lawsuit with prejudice in the Circuit Court of Faulkner County, Arkansas.
6. The Department will remit the funds, described above in paragraph 2, upon approval of this agreement by the Legislative Council.
7. This Agreement will become effective immediately upon approval by the Legislative Council.
8. 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 set their names for the purpose of validly and legally executing this Agreement, all parties intending to be legally bound by all of its terms and conditions.

Department of Finance &
Administration

By: 

Charles S. Collins
Commissioner of Revenue
Arkansas Department of Finance and
Administration

Date: 8/11/2025

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Tokusen USA, Inc.

By: Malcolm P. Bobo

Malcolm P. Bobo

BOBO LAW FIRM

Attorney for Tokusen U.S.A., Inc.

Date: August 1, 2025

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ELECTRONICALLY FILED Faulkner County Circuit Court Nancy Eastham, Circuit Clerk 2024-Jul-05 11:26:47 23CV-24-1284 C20D03 : 15 Pages
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IN THE CIRCUIT COURT OF FAULKNER, ARKANSAS
DIVISION

Tokusen USA, Inc.

PLAINTIFF

V.

NO. _____

**JIM HUDSON, Secretary
ARKANSAS DEPARTMENT OF FINANCE
AND ADMINISTRATION**

DEFENDANT

COMPLAINT

Come now the Plaintiff, Tokusen U.S.A., Inc., and for its Complaint against Defendant, Jim Hudson, Secretary, Arkansas Department of Finance and Administration, does hereby allege and state as follows:

1. Plaintiff, Tokusen U.S.A., Inc. ("Tokusen" hereafter) was incorporated on October 17, 1989, as a new American company primarily engaged in the business of manufacturing steel tire cord. It's parent company, TOKUSEN KOGYO, Ltd. (TKC) of Japan, has been a manufacturer of wire products since 1934. Taxpayer was incorporated to assume the responsibility of manufacturing wire products for the automobile tire industry in the United States that were previously manufactured by TOKUSEN, Japan. Taxpayer's manufacturing facility is in Conway, Arkansas. Taxpayer holds a direct pay permit issued under Ark. Code Ann. § 26-52-509 (Repl. 2020) and Arkansas Gross Receipts Tax Rule GR-87. The Taxpayer is

- accruing, reporting, and remitting Arkansas sales and use taxes directly to the Department.
2. Defendant, Jim Hudson, is the duly appointed and acting Secretary of the Arkansas Department of Finance and Administration (DFA).
 3. This Court's jurisdiction over the subject matter of this litigation is based upon the provisions of Ark. Code Ann. § 26-18-406(c) and venue is proper in Faulkner County.

AUDITS

4. DFA performed five (5) sales and compensating use tax audits covering the audit periods January 1, 2016, through December 31, 2016; January 1, 2017 through December 31, 2018; April 1, 2019 through December 31, 2019; January 1, 2020 through December 31, 2020; and January 1, 2021 through December 31, 2021.
5. On January 2, 2024, DFA issued the Final Assessments for the audit covering January 1, 2016, through December 31, 2016, which is attached hereto and incorporated herein as **Exhibit 1**, and the audit covering January 1, 2017 through December 31, 2018, which is attached hereto and incorporated herein as **Exhibit 2**.
6. DFA did not issue a Final Assessment for the last three audits covering the periods April 1, 2019, through December 31, 2019; January 1, 2020, through December 31, 2020; and January 1, 2021 through December 31, 2021. Attached hereto and incorporated herein as **Exhibit 3** contains the DFA auditor's emails explaining that DFA did not issue Final Assessments for these three audits because Tokusen paid the audit balance too quickly.

7. Tokusen paid the balance due on all five (5) audits covering the period of 2016 through 2021. Attached hereto and incorporated herein as **Exhibit 4** is a Summary of Tax and Payments reflecting the payments made for each audit.
On July 16, 2021, Tokusen paid the \$159,108.09 outstanding audit balance of the January 1, 2016, through December 31, 2016 audit.
On August 3, 2023, Tokusen paid the \$525,999.87 outstanding audit balance of the January 1, 2017, through December 31, 2018 audit.
On August 1, 2022, Tokusen paid the \$46,071.79 outstanding audit balance of the April 1, 2019 through December 31, 2019 audit.
On July 3, 2023, Tokusen paid the \$42,734.41 outstanding audit balance of the January 1, 2020 through December 31, 2020 audit.
On January 22, 2024, Tokusen paid the \$24,355.40 outstanding audit balance of the January 1, 2021 through December 31, 2021 audit.
8. Tokusen did not request DFA for administrative relief for either the January 1, 2020 through December 31, 2020 audit, or the January 1, 2021 through December 31, 2021 audit, and DFA did not issue a Final Assessment for either audit.
9. The audit spreadsheets for each of the five (5) audits are attached hereto and incorporated herein as **Exhibit 5**, titled DFA COMBINED FINAL AUDIT LISTINGS, which has a separate Tab for each audit period.
10. Attached hereto and incorporated herein as **Exhibit 6** is the PROTEST INVOICE LIST spreadsheet listing all the invoices for each audit which Tokusen asserts are nontaxable and should therefore be removed from the audit. This spreadsheet contains three (3) tabs, Protest Listing; Sort By Basis of Protest and Summary

Protest Reasons, which provides a legend for the Protest Reasons to identify the reason for each invoice challenge as nontaxable.

11. Tokusen is challenging the tax assessed on several invoices assessed in each of the five (5) audits with most of the challenges being applicable to multiple audit periods. The grounds for the challenge are listed below with the applicable audit periods identified for each challenge basis asserted.

STATUTORY PROVISIONS and PROTEST BASIS

12. Ark. Code Ann. § 26-52-402 provides manufacturers with an exemption from sales tax for machinery and equipment used in manufacturing, including pollution control machinery and equipment. DFA Rule GR-55. F. 2. defines "equipment" as:

"Equipment" means any tangible personal property other than machinery as defined in GR-55(F)(1) of this rule, used directly in the manufacturing process except those items specifically excluded from the exemption as provided in GR-55(B)(3). In certain circumstances chemicals can be considered "equipment" for purposes of this exemption. (See GR-55.1.)

These challenged items are identified in **EXHIBIT 6** PROTEST INVOICE LIST and each challenge basis is designated with a code letter specified in the SUMMARY PROTEST REASONS tab of **EXHIBIT 6** and these code letters identify the basis for the challenged items in the PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of **EXHIBIT 6**.

A. Spools – ALL Audits

Tokusen uses spools to convey the wire product through the manufacturing process and ultimately used to deliver the wire product to its customers. It is not

physically possible to convey the wire product through the manufacturing process unless it is wrapped on a spool. Additionally, the finished product could not be delivered to the customers without the wire being wound on a spool, because the wire would be irreparably damaged if it were not wound on a spool. Accordingly, the spools are exempt as equipment used directly in the production process and as exempt packaging materials that are sent to the customer with the product.

Spools meet the statutory exemption requirements of complexity and continuing utility because the spools' dimensions and construction are critical to the manufacturing process (complexity), and that the spools have continuing utility as they are returned by the customer, inspected and repaired if needed, and used again in the manufacturing process numerous times. The spools are often used to further process multiple strand wire products, so when the spool is filled initially it is returned to the beginning of the process to feed the wire through the process again to make multiple strand wires. Without the spools the wire could not be produced. Accordingly, the spools qualify as exempt manufacturing equipment because the absence of the spools would cause the manufacturing operation to cease. Arkansas Gross Receipts Tax Rule GR-55. F. 3. Tokusen uses the spools directly in the manufacturing process and they have both complexity and continuing utility. Therefore, Tokusen has met the burden of establishing entitlement to the exemption for the spools as manufacturing equipment.

The Spools are listed in **EXHIBIT 6** PROTEST INVOICE LIST and are identified on the tab SUMMARY PROTEST REASONS of **EXHIBIT 6** as "A" in column P (BASIS OF PROTEST). The code designation "A" is referenced in both the

PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of SUMMARY PROTEST REASONS of EXHIBIT 6.

B. Programmable Logic Controller (PLC) – Audits 2016, 2017, 2018 and 2019

Tokusen purchased new PLCs that control the production machinery to completely replace the previous controls which were operated manually. These PLCs control multiple machines independently, so the Protested PLCs are not dedicated to a single machine. The PLCs allow the machinery to be controlled with infinitesimal adjustments to the speed of the rollers winding and unwinding the wire on the spools during the production process. The increased control of the winding process made the overall process more efficient and productive. The old controls were completely replaced with the new PLCs.

DFA Rule GR-55. J. COMPUTERS AND RELATED PERIPHERAL EQUIPMENT states:

Computers and related peripheral equipment that directly control or measure the manufacturing process meet the “used directly” requirement for manufacturing machinery and equipment and are exempt provided they meet the other requirements for the exemption. Computers and related peripheral equipment must either (i) directly control, measure, or record an aspect of the manufacturing process itself; or (ii) directly control, measure, or record the operation of other items of exempt manufacturing machinery and equipment used in the manufacturing process. Except as provided in GR-66, computers and related peripheral equipment that controls, measures, or records the environment, processes other than the processes directly involved in manufacturing, or equipment that does not itself qualify for the exemption as manufacturing machinery and equipment are not exempt.

The new PLCs qualify as an exempt "substantial replacement" since GR-55. J. clearly established computers controlling the manufacturing process are exempt if they meet the other exemption requirements like the "substantial replacement" criteria. The manufacturers machinery and equipment exemption is established by A.C.A. § 26-52-402 and explained by GR—55. Section 402 provides ""machinery purchased to replace existing machinery" means that substantially all of the machinery and equipment required to perform an essential function is physically replaced with new machinery." Section 402 further explains that "substantially" is intended to exclude routine repairs and maintenance and partial replacements that do not improve efficiency or extend the useful life of the entire machine, but it is not intended to mean that foundations and minor components that can be economically adapted, rebuilt, or refurbished must be completely replaced when replacement would be more expensive or impracticable than adapting, rebuilding, or refurbishing the old foundation or minor components. The new PLCs completely replaced the old controllers, and were not routine repairs, maintenance, or a partial replacement. The new PLCs extended the useful life of the entire machine, which fulfills the General Assemblies stated intent for the exemption to provide as an incentive for Arkansas manufacturing plants to modernize existing plants through the replacement of old, inefficient, or technologically obsolete machinery and equipment. Tokusen modernized its production process with the installation of the new PLCs, because the old controllers were obsolete and parts to repair them were no longer available.

Accordingly, the new PLCs meet all the criteria for an exempt replacement and should be removed from the audit.

Additionally, DFA Administrative Decision #18-339, attached hereto and incorporated herein as **Exhibit 7**, held that a process control system (PLC) which controls various machines is exempt as a single stand-alone machine, refusing DFA's argument that the PLCs were integrated into the machines they control and therefore not an exempt substantial modification. In that case the taxpayer replaced manual controls with PLCs to automatically control various machines, just as Tokusen did in the present case. There is no difference between the two cases, so Tokusen's PLCs should be exempt just as they were found to be in case #18-339.

The Programmable Logic Controllers (PLC) are listed in **EXHIBIT 6** PROTEST INVOICE LIST and are identified on the tab SUMMARY PROTEST REASONS of **EXHIBIT 6** as "B" in column P (BASIS OF PROTEST). The code designation "B" is referenced in both the PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of SUMMARY PROTEST REASONS of **EXHIBIT 6**.

C. Pollution Control Repairs and Replacements – Audits 2017, 2018, 2019, and 2020

DFA Rule GR-66. C. provides that replacement and repair parts for pollution control machinery and equipment are exempt from tax if the machinery or equipment to be repaired or refurbished was initially exempt under this rule. DFA erroneously assessed sales and use tax on pollution control machinery and equipment that Tokusen repaired or replaced.

The Pollution Control machinery and equipment items are listed in **EXHIBIT 6 PROTEST INVOICE LIST** and are identified on the tab SUMMARY PROTEST REASONS of **EXHIBIT 6** as "C" in column P (BASIS OF PROTEST). The code designation "C" is referenced in both the PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of SUMMARY PROTEST REASONS of **EXHIBIT 6**.

D. GR-55 Manufacturers Exemption and GR-56 Molds and Dies Exemption – Audits 2016, 2017, 2019 and 2020

The GR-55 MFG EXEMPTION and GR-56 Mold and Die exemption - Machinery Rentals and Die invoices are listed in **EXHIBIT 6 PROTEST INVOICE LIST** and are identified on the tab SUMMARY PROTEST REASONS of **EXHIBIT 6** as "M" in column P (BASIS OF PROTEST). The code designation "M" is referenced in both the PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of SUMMARY PROTEST REASONS of **EXHIBIT 6**.

13. Tax Paid to Vendor – Audits 2016, 2017, 2018, and 2019

DFA erroneously assessed sales and use tax on invoices which Tokusen had already paid tax to the vendor as reflected by the vendor's invoice, thereby subjecting Tokusen to double taxation. DFA should only be entitled to collect the tax once.

The Tax Paid To Vendor invoices are listed in **EXHIBIT 6 PROTEST INVOICE LIST** and are identified on the tab SUMMARY PROTEST REASONS of **EXHIBIT 6** as "D" in column P (BASIS OF PROTEST). The code designation "D" is referenced in both the PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of SUMMARY PROTEST REASONS of **EXHIBIT 6**.

14. **Chemicals, Catalyst, and Solutions – Audits 2016 and 2019**

Ark. Code Ann. § 26-52-401 (35) provides an exemption for chemicals, catalysts, reagents, and solutions consumed or used in manufacturing, stating:

(A) Gross receipts or gross proceeds derived from the sale of catalysts, chemicals, reagents, and solutions which are consumed or used:

(i) In producing, manufacturing, fabricating, processing, or finishing articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas; and

(ii) By manufacturing or processing plants or facilities in the state to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility.

(B) As used in this subdivision (35), "manufacturing" and "processing" mean the same as set forth in § 26-52-402(b).

Tokusen uses a "Test Rubber Compound" to test the adhesion of the wire produced to assure quality control. The test rubber is consumed in the testing process. The wires produced by Tokusen are predominately used as steel cords in tires and it is important for steel belts to stay in tires (this is caused by adhesion). Tokusen tests for adhesion (this is how well the cord bonds to the rubber) by placing cord between two [2] pieces of rubber, in a mold, and then pressing and heating those items in an oven until they vulcanize (this process simulates what happens when tires are manufactured). This testing is required by Tokusen's customers. The types of hydrocarbons and rubbers (used in testing) are specified by the customers. Hydrocarbons and rubber form a chemical bond that has to happen between copper, brass, and rubber and this is required quality control testing.

DFA Rule GR-55.1 C. 2. B. ("Chemicals Used In Manufacturing") provides,

"Substances used in testing the quality of the finished article of commerce are exempt."

The rubber purchased by Tokusen is a substance (a combination of elements including sulfur) used in testing the quality of the finished article of commerce. The purchases of rubber are exempt from tax under GR-55.1(C)(2)(b).

The Chemicals, Catalyst and Solutions invoices are listed in **EXHIBIT 6** PROTEST INVOICE LIST and are identified on the tab SUMMARY PROTEST REASONS of **EXHIBIT 6** as "E" in column P (BASIS OF PROTEST). The code designation "E" is referenced in both the PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of SUMMARY PROTEST REASONS of **EXHIBIT 6**.

15. **Reduced Tax Rate for Manufacturer Repair and Replacement Parts – 2018 and 2019**

DFA erroneously assessed tax at the full rate of tax on manufacturing machinery and equipment repairs and replacements, rather than assessing it at the reduced rate of tax.

The Reduced Tax Rate for Manufacturer Repair and Replacement Parts invoices are listed in **EXHIBIT 6** PROTEST INVOICE LIST and are identified on the tab SUMMARY PROTEST REASONS of **EXHIBIT 6** as "G" in column P (BASIS OF PROTEST). The code designation "G" is referenced in both the PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of SUMMARY PROTEST REASONS of **EXHIBIT 6**.

16. **Nontaxable Telephone Support – Audit 2018**

DFA erroneously assessed tax on Tokusen's contract with KEATHLEY-

PATTERSON ELECTRIC CO for telephone support which was strictly limited to telephone support and no other services or products were provided under the contract. Telephone support is not a taxable service.

The Nontaxable Telephone Support invoices are listed in **EXHIBIT 6** PROTEST INVOICE LIST and are identified on the tab SUMMARY PROTEST REASONS of **EXHIBIT 6** as "H" in column P (BASIS OF PROTEST). The code designation "H" is referenced in both the PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of SUMMARY PROTEST REASONS of **EXHIBIT 6**.

17. **Local Tax Cap/Ceiling – Audits 2018 and 2019**

The local tax ceiling limits the local tax to being applied to a maximum of \$2,500.00, so any invoice over \$2,500.00 will only have the local tax applied to \$2,500.00, not the entire invoice amount. DFA erroneously listed invoices in excess of \$2,500 multiple times and applied the local tax to each audit listing of the same invoice thereby negating the local tax ceiling. DFA Rule GR-91 details the limits on local tax as follows:

GR-91. LOCAL GROSS RECEIPTS TAXES: The collection and administration of a gross receipts tax collected for any town, city, or county by the Commissioner shall be collected and administered in accordance with these rules.

A. MAXIMUM TAX LIMITATION.

1. All local taxes shall be collected only on the first \$2,500.00 of gross receipts, gross proceeds, or sales price of a single motor vehicle, aircraft, watercraft, modular home, manufactured home, or mobile home.
 - a. The term "motor vehicle" means a self-propelled vehicle registered for highway use.
 - b. The term "watercraft" is defined to mean a boat, canoe, kayak, sailboat, party barge, raft, jet ski, houseboat, or amphibious vehicle. Watercraft does not include a tug boat or barge.
2. Sellers should apply the \$2,500.00 cap on the sale of a single motor vehicle, aircraft, watercraft, modular home, manufactured home, or mobile home. The purchase of additional tangible personal property in conjunction with the above enumerated items are eligible for the cap if the property is installed, affixed, or otherwise becomes a part of the motor vehicle, aircraft, watercraft, modular home, manufactured home, or mobile home prior to purchase.

Example: J.T. purchases a motorcycle. While at the dealer, J.T. picks out a windshield, saddle bags, pipes, and a helmet. If the windshield, saddle bags, and pipes are installed prior to the purchase, then those items are eligible for the cap. Tax should be calculated on the helmet separately.
3. A rebate of local sales and use tax is available for certain qualifying purchases of tangible personal property or a taxable service. (See Ark. Code Ann. § 26-52-523 and GR-92.)

The Local Tax Cap/Ceiling invoices are listed in **EXHIBIT 6 PROTEST INVOICE LIST** and are identified on the tab **SUMMARY PROTEST REASONS** of **EXHIBIT 6** as "L" in column P (BASIS OF PROTEST). The code designation "L" is referenced in both the **PROTEST LISTING** tab and the **SORT BY BASIS OF PROTEST** tab of **SUMMARY PROTEST REASONS** of **EXHIBIT 6**.

18. Cleaning Services Subject to Tax – Audits 2018

DFA erroneously assessed tax on a WASTE SERVICES, INC. invoice for remediating an acid spill outside Tokusen's plant which required digging up dirt to remediate the area because acid is a hazardous waste. A truck picking up waste acid was over-filled, and acid spilled onto the ground and onto the concrete area

where the truck was parked. The acid got into gravel and Tokusen had to prevent the soil from being contaminated further. Equipment was brought in to dig up dirt, rocks, and grass (pH testing was being performed). This was not basic cleaning of a parking lot. The location where the acid spilled was not a parking area (if someone parked at that location, they would be asked to move). The location where the acid spilled was a loading/unloading zone but not a parking lot. DFA erroneously assessed tax on this acid remediation and removal as taxable parking lot cleaning even though this area is not a parking lot under DFA Rule GR-9.7. GR-9.4 provides in pertinent part, "Generally, the service of cleaning streets, sidewalks, driveways, or other areas that are not part of the interior or exterior of a building is not taxable." This was not a taxable cleaning service.

The Cleaning Services Subject to Tax invoices are listed in **EXHIBIT 6** PROTEST INVOICE LIST and are identified on the tab SUMMARY PROTEST REASONS of **EXHIBIT 6** as "W" in column P (BASIS OF PROTEST). The code designation "W" is referenced in both the PROTEST LISTING tab and the SORT BY BASIS OF PROTEST tab of SUMMARY PROTEST REASONS of **EXHIBIT 6**.

WHEREFORE, premises considered, Tokusen requests this Court to enter an Order directing the Arkansas Department of Finance and Administration to remove the challenge invoices from the audits and to refund the tax paid on these challenged invoices with interest as provided by

law, granting court costs, and all other relief to which Tokusen is entitled.

July 2, 2024
DATE

Respectfully submitted,

By:



Malcolm P. Bobo
Sup. Ct. No. 87016
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bobolawfirm@gmail.com
Attorney for Plaintiff
Tokusen U.S.A., Inc.,

ELECTRONICALLY FILED Faulkner County Circuit Court Nancy Eastham, Circuit Clerk 2024-Nov-01 13:09:44 23CV-24-1284 C20D03 : 7 Pages
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**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION**

TOKUSEN USA, INC.

PLAINTIFF

vs.

CASE NO.: 23CV-24-1284

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

DEFENDANT

ANSWER

Now comes Jim Hudson, Secretary of the Arkansas Department of Finance and Administration (“Department”), and files this, his original answer.

1. The Department admits that plaintiff is a corporation and a direct pay permit holder. The Department lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 1.

2. The Department admits the allegations in paragraph 2.

3. Paragraph 3 contains allegations of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in that paragraph.

4. The Department admits the allegations in paragraph 4.

5. The Department admits the allegations in paragraph 5.

6. The Department admits that it did not issue Final Assessments for the audit periods identified in paragraph 6. The Department denies that the auditor said plaintiff paid its tax debts “too quickly”: the text of the emails attached to **Exhibit 3** speaks for itself.

7. The Department admits the allegations in paragraph 7.

8. With respect to paragraph 8, the Department admits that the plaintiff did not seek administrative relief for the audit periods identified in paragraph 8. The Department pleads that it did not issue Final Assessments for the audit periods identified in paragraph 8 as required by Ark. Code § 26-18-401(b)(2)(C)(i), which provides: “If the taxpayer has paid the assessment before the time for the issuance of the final assessment, no final assessment shall be issued.”.

9. With respect to paragraph 9, the Department admits that the plaintiff attached spreadsheets as **Exhibit 5**. The attached spreadsheets speak for themselves.

10. With respect to paragraph 10, the Department admits that the plaintiff attached spreadsheets as **Exhibit 6**. The attached spreadsheets speak for themselves.

11. Paragraph 11 contains a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

12. The text of Ark. Code Ann. § 26-52-402 cited in paragraph 12 speaks for itself, and the text of the administrative rule cited in paragraph 12 speaks for itself. The Department lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 12.

A. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12(A). Paragraph 12(A) also contains a conclusion of law and a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

B. With respect to paragraph 12(B), the text of the administrative rule cited in paragraph 12(B) speaks for itself. The Department lacks knowledge or information sufficient to form a belief as

to the truth of the allegations in paragraph 12(B). Paragraph 12(B) also contains a conclusion of law and a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

C. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12(C). Paragraph 12(C) also contains a conclusion of law and a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

D. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12(D). Paragraph 12(D) contains a conclusion of law and a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

13. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13. Paragraph 13 contains a conclusion of law and a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

14. With respect to paragraph 14, the text of the Arkansas code section and the text of the administrative rule cited in paragraph 14 speaks for itself. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14. Paragraph 14 also contains a conclusion of law and a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

15. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15. Paragraph 15 also contains a conclusion of law and a request

for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

16. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16. Paragraph 16 also contains a conclusion of law and a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

17. With respect to paragraph 17, the text of the administrative rule cited in paragraph 17 speaks for itself. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17. Paragraph 17 also contains a conclusion of law and a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

18. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18. Paragraph 18 also contains a conclusion of law and a request for judicial relief to which no response is necessary. However, to the extent that the Court determines a response is necessary, the Department denies the allegations in this paragraph.

19. The “WHEREFORE” paragraph contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in that paragraph and denies that plaintiff is entitled to the requested relief.

20. The Department denies each and every material allegation contained in the complaint that the Department has not specifically admitted.

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

22. Pleading affirmatively, the Department asserts all defenses available to it under Rule 8(c) of the Arkansas Rules of Civil Procedure.

23. The Department asserts the affirmative defense of limitations for the audit periods ending December 31, 2019 and December 31, 2020. Ark. Code § 26-18-406(f) requires a taxpayer who has paid the tax, penalty, and interest assessed under Ark. Code § 26-18-403 and who does not request administrative relief under Ark. Code § 26-18-404 to seek judicial relief from the assessment within one year from the date of payment of the assessment.

24. The Department asserts the affirmative defense of sovereign immunity for the audit periods ending December 31, 2019 and December 31, 2020. A taxpayer's failure to file suit within the time limitations provided by the Tax Procedure Act means that there has been no waiver of the Department's sovereign immunity and, therefore, the circuit court cannot acquire jurisdiction.¹

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

¹ *Baker Refrigeration Sys., Inc. v. Weiss*, 360 Ark. 388, 403, 201 S.W.3d 900, 908-09 (2005).

PRAYER

FOR THESE REASONS, Defendant, Jim Hudson, Secretary of the Arkansas Department of Finance and Administration, prays that the Court deny the plaintiff's complaint in all respects as to the relief plaintiff has requested against the Department and for all other just and proper relief to which the Department may be entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

On November 1, 2024, I served a copy of this document on the following person(s) through the Court's electronic filing system:

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