

STATE OF ARKANSAS
DEPARTMENT OF FINANCE & ADMINISTRATION
OFFICE OF HEARINGS & APPEALS

ADMINISTRATIVE DECISION

IN THE MATTER OF FIRESTONE
BUILDING PRODUCTS, LLC
ACCT. NO.: 00302572-SLS

COMPENSATING USE
TAX ASSESSMENT

DOCKET NO.: 16-327

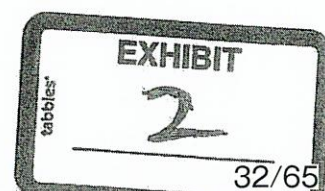
AUDIT NO.: A573007872
PERIOD: 4/1/09- 12/31/11
(\$1,239,991.72)

JESSICA DUNCAN, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated February 12, 2016, signed by David Cooper, on behalf of Firestone Building Products, LLC, the Taxpayer. The Taxpayer protested the assessment of Compensating Use Tax ("use tax") resulting from an audit conducted by the Department of Finance and Administration ("Department").

A telephone hearing was held in Little Rock, Arkansas, on April 6, 2016, at 9:00 a.m. The Department was represented by Michael Wehrle, Attorney at Law, Office of Revenue Legal Counsel. Present for the Department were Tamyé Lamb, Tax Auditor, Chris James, Tax Auditor, and Melissa Guin, Audit Supervisor. The Taxpayer was represented by Alfred Mayambu, Tax Manager - Bridgestone Americas, Inc. Charles Cathey, Tax Manager - Bridgestone Americas, Inc., and Bruce Douglas, Project Engineer -



Firestone Building Products, LLC ("Project Engineer") were present on behalf of the Taxpayer via telephone.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Taxpayer manufactures EPDM rubber roofing at its facility in Prescott, Arkansas. The only issue submitted for consideration by the parties is regarding the taxability of de-vulcanization machinery purchased by the Taxpayer during the audit period. In its Answers to Information Request, the Department summarized the facts regarding the assessment of use tax on the de-vulcanization system and provided, in part:

The Taxpayer manufactures an EPDM rubber roofing product at its plant in Prescott, Arkansas. Use tax was assessed on EPDM rubber de-vulcanization equipment purchased by the taxpayer out-of-state and subsequently brought into Arkansas for use at its Prescott facility. EPDM rubber waste material (cuttings and trimmings) from the roofing manufacturing process is collected by the taxpayer. The de-vulcanization equipment is then used to recycle the waste material into a product that the taxpayer can re-use as raw material in its manufacturing process. Since the de-vulcanization equipment is used to create a raw material for use in the manufacturing process, the equipment is used before the manufacturing process of the roofing has begun. The de-vulcanization equipment is therefore not used directly in the roofing product manufacturing process. Gross Receipts Rule GR-55(F)(3)(Example 1). [P. 1].

The Taxpayer's Answers to Information Request provided the basis for the protest of the assessment of use tax on the de-vulcanization machinery and provided, in pertinent part:

In 2010, Firestone Building Products (FSBP) expanded the rubber roofing plant at Prescott, AR to add machinery to manufacture devulcanized EPDM rubber from scrap and ultimately tear-off roofs. This machinery is used to process scrap EPDM by breaking the bonds formed by the vulcanization process, thereby creating a chemical

change in the rubber. This results in a new product with properties similar to virgin rubber and can be reintroduced to the roof manufacturing process. The fact that the devulcanized rubber can be reintroduced into the roof manufacturing process does not diminish the fact that the devulcanization process creates a new product. This product can be sold on the market to other manufacturers of rubber products.

Since this was an expansion of the current plant to include a new product line, it also satisfies the requirement for plant expansion. This machinery, therefore, qualifies for the manufacturing exemption under Ark. Code Ann. Sec § 26-52-402(a)(1)(A) and (B).

In conclusion, the scrap EPDM is the raw material. The machinery is not used to handle raw material before the production process, but rather to manufacture the material used in another step of the manufacturing process. The EPDM that is devulcanized is part of the continuous process to make rubber roofing when it is mixed with virgin rubber. As such, the machinery installed to expand the plant and take advantage of the scrap EPDM meets the requirements of the Arkansas manufacturing exemption. [P. 8].

At the hearing, Tamyé Lamb testified that: (1) she was the assistant auditor on this project; (2) the Taxpayer manufactures roofing products made to order upon request; (3) the Taxpayer produces large sheets of rubber that are cut down to size and this process creates waste rubber; (4) the devulcanization process recycles rubber waste that would otherwise go to the landfill; (5) the Taxpayer did not provide documentation that the raw material is being sold as an article of commerce; (6) the devulcanization equipment does not qualify as exempt machinery or equipment under GR-55; and (7) the devulcanization process is one-step removed from the manufacturing process and, therefore, is not being used directly in the manufacturing process of the roofing product.

The Project Engineer testified on behalf of the Taxpayer and stated: (1) the Taxpayer is reprocessing unusable scrap material; (2) the scrap material is gathered and transported to the de-vulcanization machinery (which is located in a different building); (3) the scrap material goes through a shredder, is then sent through a feed system that feeds the material into the extruder where the material is heated to a very high temperature, and is then sent to a cooling system and placed into a bag; (4) during the extrusion process, a chemical process is applied, processing oil is applied, and the physical condition of the product is changed so that it can be used as an input into the rubber manufacturing process; (5) the process is fully integrated with the manufacturing of the rubber sheets; (6) the Taxpayer consumes all of the material, but it could be sold as a raw material; and (7) this process is far more than a recycling operation because in this process there is a chemical change unlike most recycling operations.

ISSUE

Whether the assessment of Compensating Use Tax issued against the Taxpayer should be sustained? Yes.

CONCLUSIONS OF LAW

Standard of Proof

Ark. Code Ann. § 26-18-313(c) (Supp. 2015) provides, in pertinent part, as follows:

The burden of proof applied to matters of fact and evidence, whether placed on the taxpayer or the state in controversies regarding the

application of a state tax law shall be by preponderance of the evidence.

A preponderance of the evidence means the greater weight of the evidence. *Chandler v. Baker*, 16 Ark. App. 253, 700 S.W.2d 378 (1985). In *Edmisten v. Bull Shoals Landing*, 2014 Ark. 89, at 12-13, 482 S.W.3d 25, 33, the Arkansas Supreme Court explained:

A preponderance of the evidence is "not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

The Department bears the burden of proving that the tax law applies to an item or service sought to be taxed, and a taxpayer bears the burden of proving entitlement to a tax exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(d) (Supp. 2015). Statutes imposing a tax or providing a tax exemption, deduction, or credit must be reasonably and strictly construed in limitation of their application, giving the words their plain and ordinary meaning. Ark. Code Ann. § 26-18-313(a), (b), and (e) (Supp. 2015). If a well-founded doubt exists with respect to the application of a statute imposing a tax or providing a tax exemption, deduction, or credit, the doubt must be resolved against the application of the tax, exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(f)(2) (Supp. 2015).

Use Tax Assessment

Subject to the applicability of an exemption, deduction, or credit, use tax is imposed on sales of tangible personal property made by vendors/sellers from outside the State of Arkansas to in-state purchasers for storage, use, or consumption in the State of Arkansas. Ark. Code Ann. § 26-53-101 et seq. (Repl. 2014 & Supp. 2015). Ark. Code Ann. § 26-53-114 (Repl. 2014) provides an exemption from tax on purchases of machinery and equipment used directly in manufacturing an article of commerce and provides in pertinent part, as follows:

(a) There is specifically exempted from the taxes levied in this subchapter:

(1)(A) Only to the extent that the machinery and equipment is purchased and used for the purposes set forth in this subdivision (a)(1), machinery and equipment used directly in the producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas, including facilities and plants for manufacturing feed, processing of poultry and eggs and livestock, and the hatching of poultry.

(B) The machinery and equipment will be exempt under this section if it is purchased and used to create new manufacturing or processing plants or facilities within this state or to expand existing manufacturing or processing plants or facilities within this state;

When a manufacturer purchases machinery and equipment that the manufacturer did not have before, the new items may qualify as exempt machinery or equipment. Arkansas Gross Receipts Tax Rule GR-55(C) addresses the tax exemption for machinery purchased for a plant expansion and states, in part:

C. PLANT EXPANSION. The gross receipts or gross proceeds derived from the sale of machinery and equipment purchased and used to expand a manufacturing plant or facility in Arkansas are exempt from tax if:

1. The machinery and equipment satisfy the requirements of GR-55(B)(1), (B)(2), and (B)(3); and either
2. The purchase of the machinery results in an economic expansion of the taxpayer's plant or facility (regardless of whether there is a physical expansion) by:
 - a. Increasing production, volume; or,
 - b. Increasing employment; or,
 - c. Increasing the number of different types or models of property that can be manufactured; or
3. The purchase of the machinery results in a physical expansion of the taxpayer's plant or facility regardless of whether there is an economic expansion.

As stated in the above regulation, new machinery and equipment must still be directly used in the manufacturing process for an article of commerce and otherwise qualify for the exemption to be exempt. The Taxpayer contends that the de-vulcanization machinery is new machinery and equipment that is manufacturing a new product line and, therefore, is exempt manufacturing machinery pursuant to Ark. Code Ann. § 26-53-114 (a)(1)(A) and Ark. Code Ann. § 26-53-114 (a)(1)(B).

The manufacturing exemption is limited to processes that produce an article of commerce.¹ "Article of commerce" is defined to "include any property to be placed on the market for retail sale to the general public and any property which becomes a recognizable integral part of a manufactured product in its finished and packaged form ready to be placed on the market

¹ See Ark. Code Ann. §26-53-114(a)(1)(A)(Repl. 2014) and Ark. Code Ann. § 26-52-402(a)(1)(A)(Repl. 2014).

for retail sale.”² Here, the recycled EPDM material is used by the Taxpayer as raw material to manufacture EPDM roofing and is not placed on the market for retail sale. The Taxpayer contends that the material “could” be sold on the market; however, the material has never been placed on the market for retail sale. Consequently, the Taxpayer has not established that the de-vulcanization machinery is manufacturing an article of commerce by a preponderance of the evidence.

Additionally, the Taxpayer asserts that the de-vulcanization machinery is used directly in the manufacturing of the EPDM rubber roofing and stated that, “[t]he machinery is not used to handle raw material before the production process, but rather to manufacture the material used in another step of the manufacturing process. The EPDM that is de-vulcanized is part of the continuous process to make rubber roofing when it is mixed with the virgin rubber. As such, the machinery installed to expand the plant and take advantage of the scrap EPDM meets the requirements of the Arkansas manufacturing exemption.”³ Ark. Code Ann. § 26-52-402(a) (Supp. 2015), Ark. Code Ann. § 26-58-114(a) (Repl. 2014), and Arkansas Gross Receipts Tax Rule GR-55(A) require that machinery and equipment be used directly in manufacturing in order to be exempt from taxation. In *Weiss v. Bryce Co., LLC*, 2009 Ark. 412, 330 S.W.3d 756, the Arkansas Supreme Court held that items of tangible personal property may be exempt manufacturing

² See GR-55(F)(6).

³ See Taxpayer's Answers to Information Request. [P.3].

equipment if the items: (1) possess some degree of complexity; (2) possess continuing utility; and (3) are used directly in the manufacturing process by causing "a recognizable and measurable mechanical, chemical, electrical, or electronic action to take place as a necessary and integral part of manufacturing, the absence of which would cause the manufacturing operation to cease." *Id.* at 5-6, 330 S.W.3d at 758-759. In *Pledger v. Baldor International, Inc.*, 309 Ark. 80, 827 S.W.2d 646 (1992), the Arkansas Supreme Court held that an environmental control system was not used directly in manufacturing even though it was an "essential part" of the manufacturing process.

Applying the law to the facts, the de-vulcanization machinery is recycling machinery that is one-step removed from the manufacturing operation. The function of the de-vulcanization machinery is to reprocess excess materials trimmed from the Taxpayer's finished products so that the excess material may be reused. The de-vulcanization machinery is not directly engaged in the manufacturing process of the EPDM rubber roofing. Instead, the machinery is acting upon waste materials to prepare the waste for subsequent reuse. Accordingly, the de-vulcanization machinery is not "directly" involved in the production of the EPDM rubber roofing as required by the exemption statute. Consequently, the Taxpayer has not established entitlement to the claimed manufacturing machinery and equipment exemption.

DECISION AND ORDER

The proposed assessment is sustained. The file is to be returned to the appropriate section of the Department for further proceedings in accordance with this Administrative Decision and applicable law. Pursuant to Ark. Code Ann. § 26-18-405 (Supp. 2015), unless the Taxpayer requests in writing within twenty (20) days of the mailing of this decision that the Commissioner of Revenues revise the decision of the Administrative Law Judge, this decision shall be effective and become the action of the agency. The revision request may be mailed to the Assistant Commissioner of Revenues, P.O. Box 1272, Rm. 2440, Little Rock, Arkansas 72203. The Commissioner of Revenues, within twenty (20) days of the mailing of this Administrative Decision, may revise the decision regardless of whether the Taxpayer has requested a revision. The Taxpayer may seek relief from the final decision of the Administrative Law Judge or the Commissioner of Revenues on a final assessment of a tax deficiency by following the procedure set forth in Ark. Code Ann. § 26-18-406 (Supp. 2015).

OFFICE OF HEARINGS & APPEALS


JESSICA DUNCAN
ADMINISTRATIVE LAW JUDGE

DATED: July 29, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2016, I mailed or hand delivered, a copy of the enclosed Administrative Decision, Docket Number 16-327 to the following parties or individuals:

Mr. Alfred Mayambu, Tax Manager
Bridgestone Americas, Inc.
535 Merriott Drive
Nashville, TN 37214-5092

Mr. Walter Anger
Assistant Commissioner
P.O. Box 1272, Room 2440
Ledbetter Building
Little Rock, Arkansas 72203

Mr. Paul Gehring
Attorney at Law
Chief Counsel
Office of Revenue Legal Counsel
P.O. Box 1272, Room 2380
Ledbetter Building
Little Rock, Arkansas 72203

Ms. Jan Moore
Administrative Analyst
Office of Revenue Legal Counsel
Jan.Moore@dfa.arkansas.gov

Mr. Will Keadle
Problems Resolution Officer
Problem Resolution Office
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Ms. Tamika Heard, Manager
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Office of Hearings and Appeals
Sheila.Host@dfa.arkansas.gov



STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
COLLECTION SECTION
P.O. BOX 8090, LITTLE ROCK, AR 72203-8090

1480666200-L175159248 Ref:013

ARFPG0149006900000010010100-21

September 02, 2016

Sales and Use Tax

FIRESTONE BUILDING PRODUCTS
535 MARIOTT DR
NASHVILLE TN 37214-5092

Letter ID: L1753599248
Account ID: 00302572-SLS
Period Ending: December 31, 2011

RE: NOTICE OF FINAL ASSESSMENT

DEAR FIRESTONE BUILDING PRODUCTS CO., LLC:

A liability has been determined by the Director of the Department of Finance and Administration in the following amount for the filing period and tax account above:

Tax	Penalty	Interest	Payments	Balance
\$823,906.40	\$0.00	\$474,983.35	(\$301.00)	\$1,298,588.75

This is a Final Assessment and Demand for Payment in accordance with Ark. Code Ann. § 26-18-401. The balance above has been assigned to Revenue Division Collection Section.

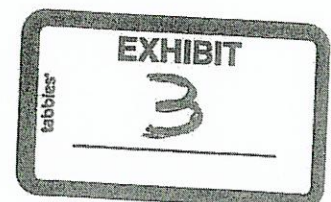
Failure to make payment within ten days will result in a Certificate of Indebtedness (state tax lien) being filed with the Circuit Clerk.

Ark. Code Ann. § 26-18-101 et seq., authorizes the Director to impose penalties and interest against delinquent taxes, to file a Certificate of Indebtedness, and to direct legal action to levy upon real and personal property.

To pay the balance of this final assessment, return the lower part of this notice with your remittance to the address on the payment voucher. If you have questions, please contact a customer service representative at (501) 682-5000, toll free (800) 292-9829 or fax to (501) 682-3534. Provide your Account ID and the Letter ID (shown above) when you call or write us about this letter.

Sincerely,

Dale Breshears
Manager





ROSE LAW FIRM

(501) 377-0328
clntr@roselawfirm.com

February 10, 2017

Via Hand Delivery

Arkansas Department of Finance &
Administration
Office of Field Audit
Ledbetter Building
1816 W 7th St, Room 1420
Little Rock, AR 72201

Re: Firestone Building Products Co., LLC
Account ID: 00302572-SLS

To Whom It May Concern:

I represent Firestone Building Products Co, LLC. Enclosed is a check in the amount of \$1,326,582.77 payable on their behalf. As noted on the check and as confirmed by this letter, the payment is being made under protest. My client disputes all of the imposed tax and interest and intends to file a claim for refund.

Please apply this payment as a deposit to stop the imposition of interest. The payment is not intended as an admission nor intended to alter the legal arguments advanced by my client during its appeal at an earlier hearing.

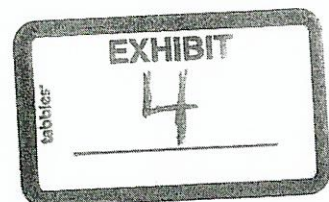
A state tax lien was filed in the Circuit Court of Nevada County January 23, 2017. With this payment, we request that this state tax lien be released.

If you have any questions, please do not hesitate to call me.

Sincerely yours,

Craig S. Lair

CSL/pr
Enclosure
cc: client



A Professional Association

120 E. Fourth Street | Little Rock, AR | 72201 | roselawfirm.com | (501) 375-9131 | (501) 375-1309 (fax)



STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
COLLECTION SECTION
P.O. BOX 8090, LITTLE ROCK, AR 72203-8090

02/06/17

January 23, 2017

FIRESTONE BUILDING PRODUCTS
535 MARRIOTT DR
NASHVILLE, TN 37214-6092

Letter ID: L1811635216
Account ID: 00302572-SLS

RE: Taxpayer Lien Notice

DEAR FIRESTONE BUILDING PRODUCTS CO., LLC,

You are advised that a Certificate of Indebtedness (also referred to as a state tax lien) is being filed this date in the Circuit Court of NEVADA county concerning the indebtedness stated below:

DBA: FIRESTONE BUILDING PRODUCTS

Tax: Sales and Use Tax

Account ID: 00302572-SLS

Account Type: Sales and Use Tax

Lien Amount: \$1,326,582.77

Filing Periods: 12/31/2011

If an agreement has not been reached with this Department to satisfy this indebtedness, it will be necessary to refer this matter to the proper authorities for legal action.

To assure proper credit for payment, please return the payment voucher provided on the bottom portion of this letter with your remittance. Mail the voucher and your payment to the address provided on the voucher. Please write your Account ID on your check.

If you have any questions, please contact a customer service representative at (501) 682-5000, (800) 252-9829 outside of Pulaski County, or fax to (501) 682-3534. Provide your Account ID and Letter ID shown above when you call or write about this letter.

Sincerely,

Dale Broshears
Manager



Department of Finance & Administration
Payment Voucher

Taxpayer Name:

FIRESTONE BUILDING
PRODUCTS

Make your check payable to "Department of Finance &
Administration".

Mail payment and this voucher to:

DEPARTMENT OF FINANCE &
ADMINISTRATION
P.O. BOX 8090
LITTLE ROCK, AR 72203-8090

Account ID:

00302572-SLS

Amount Due:

\$1,326,582.77

Amount Paid:

\$ 1,326,582.77

SLXXXXXXXXXXXXXXXX12319999C0LPY000000000000016705295527

BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC
ACCOUNTS PAYABLE DISBURSEMENTS
585 GARRIGT DRIVE
NASHVILLE, TN 37214

VOID

VOID

VOID

CHECK NUMBER: 1615429
CHECK DATE: 02-08-17

ONE MILLION THREE HUNDRED TWENTY-SIX THOUSAND FIVE HUNDRED EIGHTY-TWO DOLLARS AND
77 CENTS

PAY
TO THE
ORDER
OF

STATE OF ARKANSAS
DEPARTMENT OF FINANCE & ADM
BOX 3861
LITTLE ROCK AR 72203-3861

**1,326,582.77 USD

VOID AFTER 90 DAYS

JPMorgan Chase Bank, N.A.

Under Protest

Schindler

[Signature]

AUTHORIZED SIGNATURE

1615429 0071923226 009429743

COURIER REQUEST		DATE: 2-10-17	
		FROM: CSL	
		DEADLINE: (To File, Pick Up OR Deliver) 2 pm	
<u>DELIVER TO</u>	<u>PICK UP FROM</u>	CLIENT-MATTER #	028368-147
NAME: DF#A - Ledbetter Building			
ATTENTION:			
ADDRESS: 1816 W 7th Street		FLR/STE # 2460	
CR			
TELEPHONE: ()		REC'D BY: J. Pitt, CSM	
OTHER INSTRUCTIONS: please deliver			

207863-1

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
6th DIVISION

FIRESTONE BUILDING PRODUCTS COMPANY, LLC

PLAINTIFF

v.

Case No. 60CV-18-782

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

DEFENDANT

ANSWER

COMES NOW the Defendant, LARRY WALTHER, DIRECTOR, DEPARTMENT OF FINANCE AND ADMINISTRATION, by and through the undersigned counsel, and for his ANSWER, states as follows:

1. The allegations contained in Paragraph 1 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.
2. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 2 allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.
3. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 3 allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.
4. The Defendant admits the allegations contained in Paragraph 4 of Plaintiff's Complaint.
5. The allegations contained in Paragraph 5 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

6. The allegations contained in Paragraph 6 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

7. The Defendant admits the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. The Defendant states affirmatively that Exhibit 1 speaks for itself.

9. The Defendant admits that this matter involves the assessment of compensating use tax and interest applicable thereto. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 9 of Plaintiff's Complaint.

10. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 10 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

11. The Defendant admits the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12. The Defendant admits the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. The Defendant affirmatively states that Exhibit 3 speaks for itself.

14. The Defendant admits the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. The Defendant denies the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. The Defendant affirmatively states that Ark. Code Ann. § 26-18-401 *et seq.* speaks for itself.

17. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Complaint, and affirmatively states that Ark. Code Ann. § 26-18-406(a)(1)(A) speaks for itself.

18. The allegations contained in Paragraph 18 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations of Paragraph 18 call for a response, the Defendant denies the allegations contained therein.

19. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 19 of Plaintiff's Complaint allege that Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

20. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 20 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

21. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 21 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

22. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 22 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

23. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of Plaintiff's Complaint. To the extent the

allegations contained in Paragraph 23 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

24. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 24 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

25. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 25 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

26. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 26 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

27. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 27 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

28. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 28 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

29. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of Plaintiff's Complaint. To the extent the

allegations contained in Paragraph 29 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

30. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 30 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

31. The allegations contained in Paragraph 31 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations of Paragraph 31 call for a response, the Defendant denies all allegations contained therein.

32. The allegations contained in Paragraph 32 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

33. The allegations contained in Paragraph 33 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

34. The allegations contained in Paragraph 34 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

35. The allegations contained in Paragraph 35 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

36. The allegations contained in Paragraph 36 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

37. The allegations contained in Paragraph 37 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

38. The allegations contained in Paragraph 38 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

39. The allegations contained in Paragraph 39 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

40. The allegations contained in Paragraph 40 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

41. The allegations contained in Paragraph 41 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

42. The allegations contained in Paragraph 42 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

43. The allegations contained in Paragraph 43 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

44. The allegations contained in Paragraph 44 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

45. The allegations contained in Paragraph 45 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

46. The allegations contained in Paragraph 46 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

47. The allegations contained in Paragraph 47 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

48. The allegations contained in Paragraph 48 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

49. The allegations contained in Paragraph 49 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

50. The allegations contained in Paragraph 50 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

51. The allegations contained in Paragraph 51 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

52. The allegations contained in Paragraph 52 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations of Paragraph 52 call for a response, the Defendant denies the allegations contained therein.

53. The allegations contained in Paragraph 53 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations of Paragraph 53 call for a response, the Defendant denies the allegations contained therein.

54. The allegations contained in Paragraph 54 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

55. The allegations contained in Paragraph 55 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations of Paragraph 55 call for a response, the Defendant denies the allegations contained therein.

56. The allegations contained in Paragraph 56 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

57. The Defendant denies the allegations contained in Paragraph 57 of Plaintiff's Complaint.

58. The Defendant denies the allegations contained in Paragraph 58 of Plaintiff's Complaint.

59. The Defendant denies the allegations contained in Paragraph 59 of Plaintiff's Complaint.

60. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of Plaintiff's Complaint. To the extent the

allegations contained in Paragraph 60 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

61. The Defendant denies the allegations contained in Paragraph 61 of Plaintiff's Complaint.

62. The allegations contained in Paragraph 62 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. To the extent the allegations contained in Paragraph 62 call for a response, the Defendant denies the allegations therein.

63. The Defendant denies the allegations contained in Paragraph 63 of Plaintiff's Complaint.

64. The Defendant denies the allegations contained in Paragraph 64 of Plaintiff's Complaint.

65. The Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Complaint.

66. The Defendant denies the allegations contained in Paragraph 66 of Plaintiff's Complaint.

67. The allegations contained in Paragraph 67 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

68. The Defendant denies the allegations contained in Paragraph 68 of Plaintiff's Complaint.

69. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 69 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

70. The Defendant denies the allegations contained in Paragraph 70 of Plaintiff's Complaint.

71. The allegations contained in Paragraph 71 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

72. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of Plaintiff's Complaint.

73. The Defendant denies the allegations contained in Paragraph 73 of Plaintiff's Complaint, and states affirmatively that Ark. Admin. Code 006.05.212-GR-55(F)(6) speaks for itself.

74. The Defendant denies the allegations contained in Paragraph 74 of Plaintiff's Complaint.

75. The allegations contained in Paragraph 75 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

76. The allegations contained in Paragraph 76 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

77. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of Plaintiff's Complaint.

78. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of Plaintiff's Complaint.

79. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of Plaintiff's Complaint.

80. The allegations contained in Paragraph 80 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

81. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of Plaintiff's Complaint.

82. The allegations contained in Paragraph 82 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. To the extent that the allegations contained in Paragraph 82 require a response, the Defendant denies the allegations contained therein.

83. The Defendant denies the allegations contained in Paragraph 83 of Plaintiff's Complaint.

84. The Defendant admits to the denial of the exemption.

85. The Defendant denies the allegations contained in Paragraph 85 of Plaintiff's Complaint.

86. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of Plaintiff's Complaint.

87. The Defendant denies the allegations contained in Paragraph 87 of Plaintiff's Complaint, and affirmatively states that Ark. Code Ann. § 26-53-114(c)(2) speaks for itself.

88. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 of Plaintiff's Complaint.

89. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 89 of Plaintiff's Complaint.

90. The Defendant denies the allegations contained in Paragraph 90 of Plaintiff's Complaint, and affirmatively states that Ark. Code Ann. § 26-53-114(c)(3)(A)(i) speaks for itself.

91. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 91 of Plaintiff's Complaint.

92. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 92 of Plaintiff's Complaint, and states affirmatively that Ark. Code Ann. § 26-53-114(c)(1)(A) speaks for itself.

93. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 93 of Plaintiff's Complaint, and states affirmatively that Ark. Code Ann. § 26-53-114(c)(3)(A)(i) speaks for itself.

94. The allegations contained in Paragraph 94 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

95. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 95 of Plaintiff's Complaint.

96. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96 of Plaintiff's Complaint.

97. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 97 of Plaintiff's Complaint.

98. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of Plaintiff's Complaint.

99. The allegations contained in Paragraph 99 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

100. The Defendant affirmatively states that Paragraph 100 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. To the extent the allegations contained in Paragraph 100 require a response, the Defendant denies the allegations contained therein.

101. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of Plaintiff's Complaint, and states affirmatively that Ark. Admin. Code § 006.05.212-GR-55(B)(2) speaks for itself.

102. The allegations contained in Paragraph 102 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

103. The allegations contained in Paragraph 103 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

104. The allegations contained in Paragraph 104 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

105. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 of Plaintiff's Complaint.

106. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of Plaintiff's Complaint.

107. The allegations contained in Paragraph 107 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

108. The allegations contained in Paragraph 108 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. Defendant affirmatively states that Ark. Admin. Code § 006.05.212-GR-55(B)(1) and Ark. Admin. Code § 006.05.212-GR-55(C)(1) speak for themselves.

109. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 109 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, Defendant denies the allegations therein. The Defendant states affirmatively that Ark. Admin. Code § 006.05.212-GR-55(C)(2)(a) speaks for itself.

110. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 110 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

111. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 111 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

112. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 of Plaintiff's Complaint.

113. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 113 of Plaintiff's Complaint.

114. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 114 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 114 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, Defendant denies the allegations therein. The Defendant states affirmatively that Ark. Admin. Code § 006.05.212-GR-55(C)(2)(c) speaks for itself.

115. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 115 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 115 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

116. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 116 of Plaintiff's Complaint. To the extent the

allegations contained in Paragraph 116 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

117. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 117 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 117 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

118. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of Plaintiff's Complaint.

119. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 119 of Plaintiff's Complaint.

120. The Defendant denies the allegations contained in Paragraph 120 of Plaintiff's Complaint, and states affirmatively that Paragraph 120 of Plaintiff's Complaint consists of restatements or conclusions of law to which no response is required.

121. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 121 of Plaintiff's Complaint.

122. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 122 of Plaintiff's Complaint. To the extent the allegations contained in Paragraph 122 of Plaintiff's Complaint allege that the Plaintiff is entitled to an exemption from the tax, the Defendant denies the allegations therein.

123. The Defendant denies the allegations contained in Paragraph 123 of Plaintiff's Complaint.

124. The Defendant denies the allegations contained in Paragraph 124 of Plaintiff's Complaint.

125. The Defendant denies the allegations contained in Paragraph 125 of Plaintiff's Complaint, and states affirmatively that the allegations contained in Paragraph 125 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

126. The Defendant denies the allegations contained in Paragraph 126 of Plaintiff's Complaint.

127. The Defendant denies the allegations contained in Paragraph 127 of Plaintiff's Complaint. The Defendant states affirmatively that Paragraph 127 of Plaintiff Complaint consists of restatements or conclusions of law to which no response is required, and further states affirmatively that Ark. Code Ann. § 26-18-313(f)(2) speaks for itself.

128. The Defendant denies the allegations contained in Paragraph 128 of Plaintiff's Complaint.

129. The allegations contained in Paragraph 129 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations of Paragraph 129 call for a response, the Defendant denies all allegations contained therein.

130. The Defendant denies the allegations contained in Paragraph 130 of Plaintiff's Complaint, and affirmatively states that Paragraph 130 of Plaintiff's Complaint consists of restatements or conclusions of law to which no response is required.

131. The Defendant denies the allegations contained in Paragraph 131 of Plaintiff's Complaint. The Defendant affirmatively states that Paragraph 131 of Plaintiff's Complaint consists of restatements or conclusions of law to which no response is required, and further states affirmatively that Ark. Code Ann. § 26-52-402 speaks for itself.

132. Paragraph 132 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations of Paragraph 132 call for a response, the Defendant denies all allegations contained therein.

133. The allegations contained in Paragraph 133 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. Defendant affirmatively states that Ark. Code Ann. § 26-53-106(a) speaks for itself.

134. The allegations contained in Paragraph 134 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. Defendant affirmatively states that Ark. Code Ann. § 26-53-101 *et seq.* speaks for itself.

135. The allegations contained in Paragraph 135 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. Defendant affirmatively states that Ark. Code Ann. § 26-53-101 *et seq.* speaks for itself.

136. The allegations contained in Paragraph 136 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. Defendant affirmatively states that Ark. Code Ann. § 26-53-114 speaks for itself.

137. The allegations contained in Paragraph 137 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. Defendant affirmatively states that Ark. Code Ann. §§ 26-18-301(a), 26-18-401(b) and 26-53-114(a) speak for themselves.

138. The allegations contained in Paragraph 138 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. To the extent the allegations contained in Paragraph 138 of Plaintiff's Complaint require a response, the Defendant denies the allegations therein.

139. The allegations contained in Paragraph 139 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required. Defendant affirmatively states that Ark. Code Ann. § 26-53-114(a) speaks for itself.

140. The allegations contained in Paragraph 140 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

141. The allegations contained in Paragraph 141 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

142. The allegations contained in Paragraph 142 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

143. The allegations contained in Paragraph 143 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

144. The allegations contained in Paragraph 144 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required

145. The allegations contained in Paragraph 145 of Plaintiff's Complaint consist of restatements or conclusions of law to which no response is required.

146. The Defendant denies each and every material allegation set forth in Plaintiff's Complaint not specifically admitted in this Answer.

147. The Defendant pleads affirmatively the doctrine of sovereign immunity, and states that under Ark. Code Ann. § 26-18-406(e)(1)(B)(i), the Plaintiff is not entitled to an award of attorney's fees since the hearing officer's administrative decision was in favor of the Defendant.

148. The Defendant pleads the following additional affirmative defenses herein, and reserves the right to rely upon all other defenses lawfully available including, but not limited, to the following:

- a. failure to state a claim upon which relief can be granted; and
- b. statute of limitations;

WHEREFORE, The Defendant prays that the Plaintiff's Complaint be dismissed; that Plaintiff's claim for attorney's fees and costs be denied; and for any and all other relief to which Defendant is or may become entitled.

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

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2018, I electronically filed the foregoing Answer with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to Michael K. Goswami, Attorney for the Plaintiff.

/s/ Michael J. Wehrle