



STATE OF ARKANSAS
**Department of Finance
and Administration**

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November 16, 2020

Sen. Bob Ballinger, Co-Chair
Rep. Lanny Fite, Co-Chair
Arkansas Legislative Counsel
Litigation Reports Oversight Subcommittee
1 Capitol Mall – Fifth Floor
Little Rock, Arkansas 72201

RE: Request for Review of Proposed Litigation Settlement
*Industrial Iron Works, Inc. v. Larry Walther, Secretary, Arkansas Department of
Finance & Administration*; Arkansas County Circuit Court No. CV-2017-60SD

Chairman Ballinger and Chairman Fite:

The Arkansas Department of Finance and Administration (“DFA”) requests that the Litigation Reports Oversight Subcommittee place the enclosed proposed settlement agreement in the above-referenced matter on the agenda for its next scheduled meeting for review for and consideration. Below is a summary of this matter pending before the Arkansas County Circuit Court.

Industrial Iron Works, Inc. (“Taxpayer”) is a corporation located in DeWitt, Arkansas. The Taxpayer manufactures products to transport and distribute commercial fertilizer, liquid, and seed used in agriculture. It also manufactures a line of poultry litter, turf, golf course, and wildlife distribution products. DFA performed a sales and use tax audit of the Taxpayer’s books and records for the November 2008 through August 2014 period. DFA issued to the Taxpayer a Notice of Proposed Assessment comprised of \$67,082.55 in tax, \$6,708.43 in penalty, and \$21,661.66 in interest. DFA later adjusted the assessment and applied a refund from an unrelated period. The Taxpayer paid the tax assessed in the audit and the current balance due of the assessment is \$22,239.28 in interest.

The Taxpayer protested the assessment and argued the taxability of the assessed purchases at an administrative hearing held on February 11, 2016. An administrative decision was issued on May 25, 2016 that sustained the assessment. The Taxpayer requested the Commissioner of Revenue revise the administrative decision, which the Commissioner denied on April 10, 2017.

On May 4, 2017, the Taxpayer filed a complaint for judicial review of the assessment in Arkansas County Circuit Court. The Taxpayer’s complaint alleges the assessed purchases were exempt from sales and use tax under the manufacturing exemption of Ark. Code Ann. §§ 26-51-402 and 26-53-114 and Arkansas Gross Receipts Tax Rule GR-55.

At the time of DFA’s audit and the issuance of the proposed assessment, Billy Claude Adams, Billy Wesley Adams, and Consolidated Industries of DeWitt, Inc. (collectively, “Owner 1”) owned

and operated the Taxpayer. On or about August 31, 2020, Owner 1 entered into a Stock Purchase Agreement with PGR Holdings, Inc. and PGRR, LLC (collectively, "Owner 2") for the purchase and sale of one hundred percent (100%) of the Taxpayer's stock and assets including all cash, real estate, equipment, and all other tangible and intangible assets. Owner 2 fully assumed DFA's assessment of the sales and use tax and interest at issue in the above-captioned litigation.

Following its acquisition of the Taxpayer's assets, Owner 2 presented a settlement offer to DFA, and the parties have since reached a proposed settlement of the litigation. A copy of the Settlement Agreement is attached. Pursuant to the terms of the agreement, the Taxpayer has proposed to pay the assessed tax balance in the amount of \$49,361.02, and DFA would agree to waive all remaining interest. If the settlement is approved, the underlying litigation would be dismissed by Owner 2.

The parties respectfully request that the Subcommittee place this matter be placed on the agenda for review and consideration for the earliest possible date. Your consideration of this request is greatly appreciated. Please do not hesitate to contact me should the Subcommittee have any questions.

Respectfully,



Paul Gehring
Assistant Commissioner

Encl.: (1) Copy of Agreement between DFA and Industrial Iron Works, Inc.
(2) Copy of Complaint filed by Industrial Iron Works, Inc. in CV-2017-60SD
(3) Copy of Answer filed by DFA in CV-2017-60SD

cc w/encl: Charles Davidson, Attorney for Taxpayer
Charles S. Collins, Commissioner of Revenue

AGREEMENT

This agreement, hereafter referred to as "Agreement," is entered into by and between Industrial Iron Works, Inc., hereafter referred to as "Taxpayer", and the Arkansas Department of Finance and Administration, hereafter referred to as "DFA";

WHEREAS, DFA issued a proposed assessment to the Taxpayer with respect to gross receipts (sales) tax, compensating (use) tax, penalties and interest in Audit No. A927655936 for the period beginning November 1, 2008 through August 31, 2014. The proposed assessment was made with regard to the Taxpayer's operation of the Industrial Iron Works, Inc. -- Sales Tax Account No. 00006656-SLS. The proposed assessment totaled \$95,452.64 (comprised of \$67,082.55 tax, \$6708.43 penalty, and \$21,661.66 interest); and

WHEREAS, at the time of DFA's audit of Taxpayer (Audit No. A927655936) and the issuance of the proposed assessment with respect to gross receipts (sales) tax, compensating (use) tax, penalties and interest, Taxpayer was owned and operated by Billy Claude Adams, Billy Wesley Adams and Consolidated Industries of DeWitt, Inc. (collectively, "Owner 1").

WHEREAS, during the course of the administrative review of the proposed assessment requested by the Taxpayer, adjustments were made to the audit by DFA. The adjustments resulted in a reduced total balance due of \$75,454.22 (\$56,854.02 tax and \$18,600.20 interest). The total balance owed was further reduced by \$7,493.00 after DFA applied an intercepted sales tax refund due Taxpayer unrelated to Audit No. A927655936. The current balance total balance due is \$ 71,600.30 (\$49,361.02 tax and \$22,239.28 interest); and

WHEREAS, on May 4, 2017, the Taxpayer, by and through Owner 1, filed its Complaint in the Circuit Court of Arkansas County, Arkansas -- *Industrial Iron Works, Inc. v. Larry Walther in his Official Capacity, Director of the Arkansas Department of Finance and Administration*, No. CV-17-60SD (hereafter referred to as the "lawsuit") challenging the assessment of gross receipts (sales) tax, compensating use tax and interest; and

WHEREAS, on or about August 31, 2020, Owner 1 entered into a Stock Purchase Agreement with PGR Holdings, Inc. and PGRR, LLC (collectively, "Owner 2") for the purchase and sale of 100% of Taxpayer's stock and assets including all cash, real estate, equipment, and all other tangible and intangible assets.

WHEREAS, Owner 2 agrees that it shall fully assume Taxpayer's debt to DFA with respect to the assessment of gross receipts (sales) tax, compensating use tax and interest as set out herein, and which is the subject of the litigation filed by Taxpayer against DFA in the Circuit Court of Arkansas County, Arkansas, Case No. CV-17-60SD; and, have taken title to Taxpayer's stock and all of its assets subject to said debt; and

WHEREAS, Owner 2, and the individuals signing this agreement, represent and warrant that they are empowered and duly authorized to bind Taxpayer to this Agreement according to its

terms; and

WHEREAS, the parties wish to resolve and settle the issues between them without the need for further proceedings or litigation; and

WHEREAS, this Agreement must be approved by the Legislative Council of the Arkansas General Assembly.

NOW THEREFORE, in consideration of the terms set forth herein, it is agreed that upon approval by the Legislative Council of the Arkansas General Assembly:

1. Taxpayer will pay DFA in certified funds the amount of \$49,361.02, which reflects the remaining gross receipts (sales) tax and compensating (use) tax owed as a result of Audit No. A927655936.
2. Upon receipt of Taxpayer's payment of \$49,361.02 in certified funds, DFA will waive all interest that may be owed by Taxpayer due to the assessment of gross receipts (sales) tax and compensating (use) tax as a result of Audit No. A927655936.
3. Each party is responsible for its own costs, fees and expenses incurred during the course of this litigation.
4. Taxpayer expressly acknowledge that it has had a sufficient opportunity to consult with and receive the advice of an attorney concerning all portions of this Agreement.
5. Taxpayer hereby acknowledges that this Agreement shall serve as a full settlement and satisfaction of all issues raised in its lawsuit, provided that the Legislative Council of the Arkansas General Assembly approves the terms of this Agreement. Upon approval of this Agreement by the Legislative Council of the Arkansas General Assembly, the Taxpayer shall submit to the Court for consideration an agreed-upon order of dismissal of the lawsuit, with prejudice, within ten days of legislative approval.

Signature Page Follows

APPROVED By:

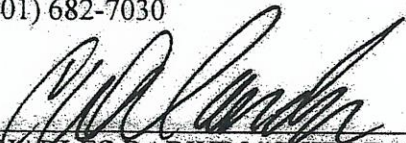


PAUL GEHRING

Office of Revenue Legal Counsel
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P. O. Box 1272, Room 2380
Little Rock, AR 72203
(501) 682-7030

11-2-2020

DATE

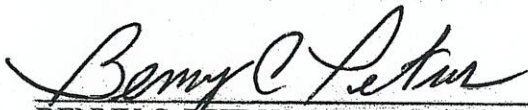


CHARLES DARWIN "SKIP" DAVIDSON

Davidson Law Firm
724 Garland
Little Rock, AR 72201
(501) 374-9977
Counsel for Taxpayer, Industrial Iron Works, Inc.

10-19-20

DATE



BENNY C. PETRUS, PRESIDENT

PGR Holdings, Inc. d/b/a
Industrial Iron Works, Inc.
1901 South Main
Stuttgart, AR 72106
(870) 946-2494

10/20/20

DATE

FILED

MAY 04 2017

TIME: 1:36 PM
SARAH MERCHANT, CIRCUIT CLERK
ARKANSAS COUNTY, ARKANSAS
SOUTHERN DISTRICT

IN THE CIRCUIT COURT OF ARKANSAS COUNTY, ARKANSAS
SOUTHERN DISTRICT
CIVIL DIVISION

INDUSTRIAL IRON WORKS, INC.

PLAINTIFF

VS.

CV-2017-100 SD

LARRY WALTHERS IN HIS OFFICIAL CAPACITY,
DIRECTOR OF THE ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION

DEFENDANT

COMPLAINT

Comes the plaintiff, Industrial Iron Works, Inc., and for its cause of action against the defendant, Larry Walthers, in his official capacity as the Director of the Arkansas Department of Finance and Administration does hereby state and allege as follows:

1. Industrial Iron Works, Inc., (IIW) is a corporation organized and existing under the laws of the State of Arkansas and its principal place of business is located at 1502 S. Whitehead Drive, DeWitt, Southern District of Arkansas County, Arkansas.
2. The defendant, Larry Walthers, is the duly appointed director of the Arkansas Department of Finance and Administration.
3. This Court has jurisdiction over the subject matter and venue is proper in this Court pursuant to A.C.A. §26-18-406.

4. IIW manufactures a variety of products to transport and distribute commercial fertilizer, liquids and seed used in agriculture. It also manufactures a line of poultry liter, turf, golf course and wildlife distribution products. The products made by IIW include:

Spreaders

- A. 2 Wheel Lime/ Fertilizer Combo
- B. Food Plot
- C. Litter
- D. Orchard
- E. Ground Driven
- F. Hydraulic
- G. Turf
- H. Compost/Sand
- I. Lime
- J. P.T.O. Driven
- K. High Clearance
- L. Ag Spreader
- M. Gin Trash/Savings

Tender

- A. Gooseneck Tender
- B. Truck Mounted
- C. Truck Mount
- D. Side Discharge
- E. Skid Tender
- F. Belt Discharge
- G. Rear Discharge Truck Mount
- H. Semi Truck Trailer
- I. Pull Tender
- J. Poly Cupped Augers

Blenders

- A. Low Profile Vertical Blender
- B. "Agrotain" Mixer
- C. Vertical Blenders
- D. Rotary Blenders
- E. Paddle Mixers
- F. Fertilizer Conditioner

Handling

- A. Adams Mixer

- B. Portable Conveyor
- C. Custom
- D. Pit Drag Conveyors
- E. Screw Conveyors
- F. Field Loader
- G. Chain Conveyor
- H. Trippers
- I. Belt Conveyors
- J. Bucket Elevator
- K. Under Car
- L. Lime Belt
- M. Distributors
- N. Drag Conveyor

Liquid

- (A) Tanks
- (B) Nurse Trailers
- (C) Nurse Trucks
- (D) Applicators
- (E) Broadcast Spreaders
- (F) Tilt Trailers

Lime

- (A) Chain Conveyors
- (B) Lime Spreaders
- (C) Belt Conveyors

Turf

- (A) Dump Trailer
- (B) Estate Spreader
- (C) 4 Ton Ground Drive
- (D) Broadcast Sprayers
- (E) Sand Conveyors
- (F) 2 Ton Ground Drive
- (G) Pull Tenders
- (H) Field Loader

Seed

- A. Adams Mixer
- B. Pull Tenders
- C. Field Loader
- D. Seed Conveyor
- E. Poly Cupped Augers
- F. Gooseneck Tenders
- G. Belt Discharge
- H. Under Car

- I. Portable Conveyor
- J. Skid Tenders
- K. Seed Tenders/Trailers
- L. Seed Hopper
- M. Unloading Belts

Poultry

- A. Litter Spreaders
- B. Poultry Conveyors

Wildlife

- A. Food Plot Spreader
- B. Gooseneck Tender
- C. Skid Tender
- D. Field Loader
- E. Road/Trial Broadcast Sprayer
- F. Estate Spreader
- G. Pull Tender
- H. Scissor Lift Trailer
- I. Nurse Trailer

5. Regardless of the model or function, all of these products require the movement of granular material, seed, or liquid from a storage bin or tank for the product to its point of transfer or distribution in the field. This transfer of the fertilizer, liquid and seed requires a source of power, much of which comes from a hydraulic power source which likewise involves hoses, valves and connections, as well as gears, chains, bolts, and sprockets to transfer the power to the product.

6. A great deal of the products must be mobile which means the manufactured product has to be attached to either a trailer or a vehicle. When the product is attached to the vehicle it requires that the vehicle be re-manufactured to accommodate the equipment and to provide a power source to operate the product. IIW makes use of used tractor-trailers for this purpose which in turn requires extensive re-manufacture to accommodate the equipment which is sold as a unit, including normal parts to place the

unit in useable condition when connected to the equipment involving seals, filters, gauges connectors, hoses and valves. All of which are necessary for a power source. The same applies to trailers to which equipment is attached.

7. IIW does not manufacture all of its different products simultaneously. In fact, many of its products have unique features so that it must change its production lines as orders come in for different products. These changes in the production lines also changes the machines and equipment required for production so that IIW is constantly required to add new machines and equipment to address the change in production.

8. Purchases of the tangible personal property used in the manufacturing process are subject to Sales and Use Tax unless the purchasers are exempt pursuant the exemptions provided in A.C.A. §§26-52-402 and 26-53-114, the later adopting the exemption of §26-52-402 by reference, so that the applicable manufacturing exemptions for both Sales Tax and Use Tax are identified in A.C.A. §26-52-402.

9. The exemption for both Sales Tax and Use Tax provide as follows:

(a) There is specifically exempted from the tax imposed by this chapter the following:

(1) (A) Gross receipts or gross proceeds derived from the sale of tangible personal property consisting of machinery and equipment used directly in 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 of feed, processing of poultry or eggs, or both, and livestock, and the hatching of poultry, but only to the extent that the machinery and equipment is purchased and used for the purposes set forth in this subdivision (a)(1).

A.C.A. §26-52-402(a)(2) goes on to provide:

(2) (A) Machinery purchased to replace existing machinery and used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or

processing plants or facilities in this state will be exempt under this subdivision (a)(2).

(B) (i) As used in subdivision (a)(2)(A) of this section, "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.

(ii) As used in subdivision (a)(2)(B)(i) of this section, "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.

A.C.A. §26-52-402(a)(3)(B)(c) provides:

(c) (1) (A) It is the intent of this section to exempt only the machinery and equipment as shall be used directly in the actual manufacturing or processing operation at any time from the initial stage when actual manufacturing or processing begins through the completion of the finished article of commerce and the packaging of the finished end product.

(B) As used in this subsection, "directly" is used to limit the exemption to only the machinery and equipment used in actual production during processing, fabricating, or assembling raw materials or semifinished materials into the form in which the personal property is to be sold in the commercial market.

(2) For purposes of this subsection, the following definitions, specific inclusions, and specific exclusions shall apply and represent the intent of the General Assembly as to its interpretation of the term "used directly":

(A) (i) Machinery and equipment used in actual production includes machinery and equipment that meet all other applicable requirements and which cause 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....

(B) Machinery and equipment "used directly" in the manufacturing process includes without limitation the following: ...

(ii) Dies, tools, and devices attached to or a part of a unit of machinery that determine the physical characteristics of the finished product or its packaging material at any stage of the manufacturing process;

10. These manufacturing exemptions have been interpreted and applied by the Court's as follows in the recent case of Walther v. Weatherford Artificial Lift Systems, Inc., 2015 Ark. 255 (June 4, 2015) in which the Arkansas Supreme Court summarized the exemption as follows:

Under our statutes, exempt from taxation are "[g]ross receipts or gross proceeds derived from the sale of tangible personal property consisting of machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas[.]" Ark. Code Ann. § 26-52-402(a)(1)(A). ... The statute exempts "only the machinery and equipment as shall be used directly in the actual manufacturing or processing operation at any time from the initial stage when actual manufacturing or processing begins through the completion of the finished article of commerce and the packaging of the finished end product." Ark. Code Ann. § 26-52-402(c)(1)(A). Further, the word "directly" is "used to limit the exemption to only the machinery and equipment used in actual production during processing, fabricating, or assembling raw materials or semifinished materials into the form in which such personal property is to be sold in the commercial market." Ark. Code Ann. § 26-52-402(c)(1)(B). The statute further defines the phrase "used directly," as "[m]achinery and equipment used in actual production," including "machinery and equipment that meet all other applicable requirements and which cause 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." Ark. Code Ann. § 26-52-402(c)(2)(A)(i). This court has noted that the word "equipment" has been referred to as an exceedingly elastic term, the meaning of which depends on context, and has stated, "In sum, we believe it is clear that the General Assembly,

by the use of the terms machinery and equipment, intended implements, tools or devices of some degree of complexity and continuing utility." Ragland v. Dumas, 292 Ark. 515, 520, 732 S.W.2d 118, 120 (1987); see also Weiss v. Chem-Fab Corp., 336 Ark. 21, 26, 984 S.W.2d 395, 397-98 (1999) (same).¹

And, the Court went on to state:

An administrative regulation cannot be contrary to a statute. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 30, 871 S.W.2d 333, 337 (1994). Therefore, we affirm the trial court's finding that Rule GR-57(E)(5) is invalid and unenforceable as applied in this case because it is contrary to the applicable statutory provisions. Thus, we need not address the circuit court's remaining reasons for finding the rule invalid and unenforceable.


11. Anita Collins, Tax Auditor – Southeast Audit District of the Office of Field Audit for DFA conducted an audit of IIW's records for the period of November 1, 2008 to August 31, 2014. By letter dated July 23, 2015, DFA through Ms. Collins notified IIW it would be assessed Gross Receipts (Sales) Tax, Compensating Use Tax, penalties and interest of \$95,452.64. See exhibit 1 hereto.
12. IIW protested the assessment of the Sale Tax and Use Tax and a hearing was conducted on February 11, 2016. At the conclusion of such hearing, the Administrative Law Judge directed the parties to submit written briefs in support of their position. Copies of the briefs for IIW and DFA are attached hereto as exhibits 2, 3 and 5; along with exhibit 4 which was a request from the Administrative Law Judge.
13. On May 25, 2016, the Administrative Law Judge issued his decision, a copy of which is attached as exhibit 6 hereto. The findings of the Administrative Law Judge reflects the total lack of knowledge in the auditor's part with respect to IIW's manufacturing process and its related purchases of tangible personal property.
14. On June 13, 2016, IIW requested that the Commissioner of Revenue, Deputy Director, revise the decision of the Administrative Law Judge, set forth as exhibit 7 hereto and by determination made April 10, 2017, the request was denied as the final action of DFA. This decision is set forth in exhibit 8 hereto.
15. Pursuant to A.C.A. §26-18-406, IIW has posted bond with the defendant, Director, a copy of which is attached hereto as exhibit 9.

16. IIW has demonstrated that the items of tangible personal property which it purchased and are reflected on the schedule attached to the initial assessment are exempt under A.C.A. §26-52-402 and therefore also exempt under A.C.A. §26-53-114 (Use Tax adopts Sales Tax exemptions) so that imposition of Sales Tax and Use Tax on the purchaser of IIW is contrary to law and without any basis in fact or law.

17. IIW is entitled to any order which stays and abates all of the unpaid Sales Tax and Use Tax set out in the final assessment, not previously abated by the Administrative Law Judge, because its purchaser of tangible personal property to incorporate into and manufacture its products are exempt under the manufacturer's exemptions.

WHEREFORE, the plaintiff prays the Court grant the plaintiff's relief to stay and abate the collection of the unpaid tax, and for all other proper relief.

BERRY LAW FIRM, P.A.
Attorney for Plaintiff
721 S. Main Street
Stuttgart, AR 72160
870-673-0083

BY: 
RUSSELL D. BERRY #79015

IIW/Audit/2017/Complaint

IN THE CIRCUIT COURT OF ARKANSAS COUNTY, ARKANSAS
SOUTHERN DISTRICT
CIVIL DIVISION

INDUSTRIAL IRON WORKS, INC.

v.

CASE NO. CV-2017-60SD

LARRY WALTHER IN HIS OFFICIAL CAPACITY,
DIRECTOR OF THE ARKANSAS DEPARTMENT
OF FINANCE & ADMINISTRATION

DEFENDANT

PLAINTIFF

FILED K-J

JUL 28 2017

TIME: 1:47

SARAH MERCHANT, CIRCUIT CLERK
ARKANSAS COUNTY, ARKANSAS
SOUTHERN DISTRICT

ANSWER

Comes now the Defendant, Larry Walther in his official capacity, Director of the Arkansas Department of Finance and Administration (Defendant), by and through his attorneys, Greg Ivester and Michelle Baker, and for his Answer to Plaintiff's Complaint, states:

1. Defendant admits the allegations of Paragraph 1 of the Complaint.
2. Defendant denies the allegations of Paragraph 2 of the Complaint. Pleading affirmatively, Larry Walther¹ is the Director of the Arkansas Department of Finance and Administration.
3. Defendant admits the allegations of Paragraph 3 of the Complaint.
4. Defendant admits the allegations of Paragraph 4 of the Complaint insofar as they allege that Plaintiff sells the products identified therein. The allegations of Paragraph 4 of the Complaint regarding Plaintiff being a "manufacturer" of the products identified in Paragraph 4 consist of a legal conclusion, as opposed to a statement of fact, and do not require a response from the Defendant; however, to the extent a response is required, those allegations are denied.

¹ The Defendant was incorrectly identified as Larry Walthers in Plaintiff's complaint.

5. Defendant lacks sufficient information to admit or deny the allegations of Paragraph 5 of the Complaint, and therefore denies those allegations.

6. Defendant lacks sufficient information to admit or deny the allegations of Paragraph 6 of the Complaint, and therefore denies those allegations.

7. Defendant lacks sufficient information to admit or deny the allegations of Paragraph 7 of the Complaint, and therefore denies those allegations.

8. The allegations of Paragraph 8 of the Complaint consist of statements of law, as opposed to statements of fact, and thus do not require a response from the Defendant; however, to the extent a response is required, the Defendant admits that, generally, Arkansas sales and use taxes are required to be remitted in relation to sales of tangible personal property unless an exemption, such as the manufacturing machinery and equipment exemption found in Ark. Code Ann. §§ 26-52-402 (Repl. 2014 and Supp. 2015) and 26-53-114 (Repl. 2014), apply. Defendant also denies that the provisions of Ark. Code Ann. § 26-53-114 (Repl. 2014) adopt the provisions of Ark. Code Ann. § 26-52-402 (Repl. 2014 and Supp. 2015) by reference.

9. The allegations of Paragraph 9 of the Complaint consist of quotations of portions of a statute, as opposed to statements of fact, and thus do not require a response from the Defendant; however, to the extent a response is required, the Defendant admits that the Plaintiff has correctly set forth the following subdivisions of Ark. Code Ann. § 26-52-402 (Repl. 2014 and Supp. 2015): (a)(1)(A), (a)(2)(A), (a)(2)(B)(i)-(ii), (c)(1)(A)-(B), (c)(2)(A), and (c)(2)(B)(ii). The Plaintiff has incorrectly identified the provisions of Ark. Code Ann. § 26-52-402(c) (Repl. 2014 and Supp. 2015) as "A.C.A. §26-52-402(a)(3)(B)(c)"; further, the Plaintiff has omitted certain subsections of Ark. Code Ann. § 26-52-402 (Repl. 2014 and Supp. 2015) that are

pertinent to any determination of whether an item of property would qualify for exemption under the statute.

10. The allegations of Paragraph 10 of the Complaint consist of quotations of portions of an Arkansas Supreme Court decision, as opposed to statements of fact, and thus do not require a response from the Defendant; however, to the extent a response is required, the Defendant admits that the Plaintiff has correctly quoted portions of the Court's decision in the case of *Walther v. Weatherford Artificial Lift Systems, Inc.*, 2015 Ark. 255, 465 S.W.3d 410. Defendant denies that the quoted portions of the Court's decision in the *Weatherford* case summarizes all of the requirements necessary to obtain the benefit of the exemptions found in Ark. Code Ann. § 26-52-402 (Repl. 2014 and Supp. 2015).

11. Defendant admits the allegations contained in Paragraph 11 of the Complaint.

12. Defendant admits the allegations contained in Paragraph 12 of the Complaint.

13. Defendant admits the allegations of Paragraph 13 of the Complaint insofar as they allege that an Administrative Law Judge issued a decision on May 25, 2016 in relation to the Plaintiff's administrative protest. The remaining allegations of Paragraph 13, related to the competency of the Defendant's auditor, represent opinions or conclusions, as opposed to statements of fact, and do not require a response by the Defendant; however, to the extent a response is required, the allegations are denied.

14. Defendant admits the allegations contained in Paragraph 14 of the Complaint.

15. Defendant denies the allegations of Paragraph 15 of the Complaint. Pleading affirmatively, the Plaintiff has not posted a formal bond, but has instead executed a pledge to pay an amount up to double of the tax deficiency due, plus accrued interest and costs, as may be

adjudged against the Plaintiff; however, the Plaintiff is not required to post a bond to pursue this matter. *See* Ark. Code Ann. § 26-18-406 (Supp. 2015).

16: The allegations of Paragraph 16 consist of legal conclusions, as opposed to statements of fact, and do not require a response from the Defendant; however, to the extent a response is required, the allegations are denied.

17. The allegations of Paragraph 17 consist of legal conclusions, as opposed to statements of fact, and do not require a response from the Defendant; however, to the extent a response is required, the allegations are denied.

18. Any allegations or averments not expressly admitted or denied herein, are hereby denied by the Defendant.

19. For purposes of this Answer, Defendant adopts and incorporates by reference pages 4 through 7 of its Brief in Support of the Motion to Dismiss Plaintiff's Complaint filed on June 5, 2017. Plaintiff seeks an order of this Court determining that purchases of machinery and equipment are exempt from tax under the provisions of Ark. Code Ann. §§ 26-52-402 (Repl. 2014 and Supp. 2015) and 26-53-114 (Repl. 2014). Pages 4 through 7 of the Defendant's Brief in Support of the Motion to Dismiss Plaintiff's Complaint identify the three exemptions from tax available under the provisions of Ark. Code Ann. § 26-52-402 (Repl. 2014 and Supp. 2015) and 26-53-114 (Repl. 2014). They further identify the threshold requirements for proving entitlement to each of those exemptions.

20. Pleading affirmatively, the Plaintiff's Complaint fails to state any facts demonstrating that the purchases at issue in this matter meet even the threshold requirements for the exemptions found in Ark. Code Ann. §§ 26-52-402 (Repl. 2014 and Supp. 2015) and 26-53-114 (Repl. 2014), and set forth in the Defendant's Brief in Support of the Motion to Dismiss Plaintiff's

Complaint. At best, the 2nd Exhibit to the Plaintiff's Complaint includes handwritten ledger sheets that provide one to five word descriptions of items purchased by the taxpayer during the audit period. However, these descriptions do not clearly identify: (1) which of the three available exemptions is being claimed for each purchase; (2) exactly what was purchased; (3) how the purchased item was used in the taxpayer's process; (4) where the purchased item was used in the taxpayer's process; or (5) any other information necessary to determine entitlement to one of the three available exemptions. Therefore, any relief requested by the Plaintiff should be denied.

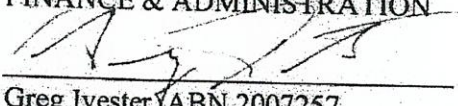
21. The Defendant reserves the right to amend this Answer based upon any new information that is received during subsequent discovery.

WHEREFORE, the Defendant prays that the Plaintiff's Complaint be dismissed, for his costs and fees herein expended, and for all other just and appropriate relief to which he is entitled.

Respectfully submitted,

LARRY WALTHER, IN HIS OFFICIAL
CAPACITY, DIRECTOR OF THE
ARKANSAS DEPARTMENT OF
FINANCE & ADMINISTRATION

BY:

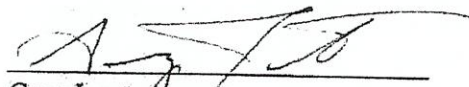


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CERTIFICATE OF SERVICE

We, Greg Ivester and Michelle L. Baker, on this 24th day of July, 2017, do hereby certify that we have served a true and correct copy of this Answer upon Plaintiff's counsel by depositing same in the U. S. Mail, postage prepaid, addressed as follows:

Russell D. Berry
Berry Law Firm, P.A.
721 S. Main Street
Stuttgart, AR 72160



Greg Ivester
Michelle L. Baker