

Summary of New Litigation Received
Revenue Legal Counsel, Department of Finance and Administration

Plaintiff: American Society of Civil Engineers Attorney: Chris P. Corbitt

Defendant: Richard Weiss, Director of DFA Attorney: Todd Cockrill

Court: Pulaski County Circuit Docket #: 60CV-13-4554

Relief Sought: Reinstatement of bingo permit (revocation currently stayed pending outcome of litigation)

Issue: Whether a bingo permit held by the American Society of Civil Engineers was properly revoked for failure to comply with the standards required of a bingo permit holder

Case History: Complaint filed in November 2013. Answer filed.

Current Status: No trial date currently set.

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Plaintiff: DM Apparel, Inc. Attorney: William R. Stringfellow

Defendant: Richard Weiss, Director of DFA Attorney: Susan Nichols

Court: Calhoun County Circuit Docket #: CV 2013-27-6

Relief Sought: Relief from assessment of sales and use tax

Issue: Whether the court has jurisdiction over a lawsuit to challenge an assessment of tax that was made in 2010, protested by the taxpayer, the taxpayer withdrew the protest, and then filed suit in 2013 to challenge the assessment

Case History: Complaint filed in September 2013; DFA answered alleging failure to comply with Arkansas Tax Procedure Act and statute of limitations

Current Status: No trial date currently set.

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Plaintiff: Flis Enterprises, Inc. Attorney: Baxter D. Drennon
dba Burger King

Defendant: Richard Weiss, Director of DFA Attorney: Susan Nichols

Court: Pulaski County Circuit Docket #: 60CV-14-1628

Relief Sought: Refund of taxes in the amount of \$33,008.80 paid as the result of an audit, plus interest

Issue: Whether the tax on meals provided by a restaurant to its managers free of charge should be calculated based on the purchase price of the ingredients used to prepare the meals or on the retail price of the meals had they been sold to a customer.

Case History: Complaint filed in April 2014. Answer filed.

Current Status: No trial date currently set.

Plaintiff: Lien Technologies, Inc. Attorney: Mark C. Burgess

Defendant: Richard Weiss, Director of DFA Attorney: Todd Cockrill

Court: Arkansas Claims Commission Docket #: 14-0631-CC

Relief Sought: Payment of damages in an amount unspecified but alleged to be in excess of \$750,000

Issue: Whether DFA's total replacement of an outdated computer system for the state's motor vehicle records with a computer system that utilizes current technology that is more secure and efficient constitutes a breach of an agreement to allow Lien Technologies, Inc. ("LT") access to the motor vehicle records. LT alleges that the replacement rendered LT unable to access DFA's motor vehicle records, resulting in a loss of income to LT. LT was able to access the records in the previous system to verify and file direct liens on motor vehicles for its customers.

Case History: Complaint filed in March 2014. Answer filed and discovery requests sent to Lien Technologies

Current Status: Trial date set for August 14, 2014.

Plaintiff: McLane Southern, Inc. et al. Attorney: Peter Kumpe
Defendant: Richard Weiss, Director of DFA Attorney: Gina Dougherty
Court: Pulaski County Circuit Docket #: 60CV-13-3719
Relief Sought: Injunctive and declaratory relief regarding Act 631 of 2013 concerning taxation of tobacco products other than cigarettes
Issue: Whether the current levy of tax on the sale of tobacco products other than cigarettes is a tax on the property itself rather than a tax on the sale of the tobacco products
Case History: Complaint filed in September 2013; answer filed
Current Status: Court entered an Order to Stay in January 2014 to allow the parties to pursue resolution of the case

Plaintiff: New Cingular Wireless PSC Attorney: Michael Parker
LLC, et al.
Defendant: Richard Weiss, Director Attorney: Joel DiPippa
Will Keadle
Court: Pulaski County Circuit Docket #: 60CV-14-1722
Relief Sought: Payment of refund of tax in the amount of \$16,511,235.40 plus interest
Issue: Whether a refund by DFA to New Cingular and other AT&T entities (collectively "AT&T") of tax that AT&T collected from its customers on charges for internet access can be made in accordance with the Arkansas Tax Procedure Act's requirements that a seller who erroneously collected tax meet specific statutory requirements in order to receive the refund (i.e, refund the tax to the customer or obtain the consent of the customer before seeking a refund from DFA)
Whether a refund of tax collected and remitted by AT&T more than three years prior to the refund claim is barred by the statute of limitations
Case History: Complaint filed on May 2, 2014
Current Status: DFA filed Motion to Dismiss

Status of Previously Reported Litigation
Revenue Legal Counsel, Department of Finance and Administration

Plaintiff:	Theresa Holbrook	Attorney: James A. Streett
Defendant:	Healthport, Inc. Richard Weiss, Director	Attorney: B. J. Walker Attorney: Joel DiPippa
Court:	Arkansas Supreme Court	Docket #: CV 20-10-588
Relief Sought:	Declaratory judgment regarding whether sales tax is due on the charge to a patient for copying and providing paper copies of medical records in preparation for, or in connection with, litigation	
Issue:	Whether the charge for medical records is subject to sales tax as the sale of tangible personal property	
Case History:	<p>Complaint originally filed by Holbrook against Healthport alleging that Healthport illegally collected sales tax on the sales of medical records. Healthport filed a third party complaint against DFA for a declaratory judgment on the issue of the taxability of the sales of the records. Holbrook then amended her complaint to plead a claim for illegal exaction against DFA. DFA filed a motion to dismiss. Holbrook dismissed the claim for illegal exaction, leaving only the declaratory judgment pending against DFA. The circuit ruled held that the charge for the medical records is subject to sales tax. The plaintiff appealed.</p> <p>The Arkansas Supreme Court issued a decision on February 12, 2013 holding that the trial court's Rule 54(b) certificate did not comply with the requirements of the rule in order to appeal the legal issue. The trial court signed a subsequent order and the plaintiff appealed from that order.</p>	
Current Status:	<p>The Arkansas Supreme Court issued its decision on April 3, 2014 affirming the circuit court's decision that sales tax does apply to the sale of paper copies of medical records by a medical records provider to a patient and that a provision of the law that addresses medical records but does not specifically authorize the collection of sales tax, Ark. Code Ann. § 16-46-106, does not exempt the sales of the records from tax under those conditions.</p>	

Status of Previously Reported Litigation
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Plaintiff:	Weatherford Artificial Lift Systems, Inc.	Attorney: Michael G. Smith Michael O. Parker
Defendant:	Richard Weiss, Director	Attorney: Susan Nichols Nina Orsini
Court:	Pulaski County Circuit Court	Docket #: 60CV-2011-3290
Relief Sought:	Refund in the amount of \$1,356,440.60 plus interest, the amount of tax the Plaintiff paid as the result of an assessment of sales and use tax on purchases of proppants	
Issue:	Whether proppants used in the natural gas extraction process are exempt from sales and use tax as equipment used in the manufacturing process (extraction of natural gas using the fracturing process)	
Case History:	This case was tried in February 2014. The Sixth Division Circuit Court issued its decision on March 4, 2014 holding that the proppants are exempt under Ark. Code Ann. § 26-52-401(a)(1)(A) because they constitute equipment under the statute, Rule GR-55.F.2 and in the context of the facts and circumstances of the case	
Current Status:	DFA timely filed a notice of appeal. The record is due to be lodged in June 2014 and briefing will follow.	