



State of Arkansas
Bureau of
Legislative Research

E.02b
Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Estella Smith, Assistant Director
for Research Services

State Agency Litigation Notification Form

Dear Agency Director:

Arkansas Code § 10-3-312 requires that any agency or institution that is not represented by the Attorney General shall notify the Director of the Bureau of Legislative Research of pending litigation so that the appropriate legislative committee may "determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter."

In order to submit a report regarding pending litigation pursuant to Arkansas Code § 10-3-312, please complete the following form for each pending lawsuit, along with a cover letter to the Director of the Bureau of Legislative Research, and submit to desikans@blr.arkansas.gov.

DATE REPORTING:	
Agency:	Phone:
E-mail:	Contact:
1. STYLE OF THE CASE BEING LITIGATED	
2. IDENTITY OF THE TRIBUNAL BEFORE WHICH THE MATTER HAS BEEN FILED (COURT)	
3. BRIEF DESCRIPTION OF THE ISSUES INVOLVED	
3A. OTHER DESCRIPTION INFORMATION	
Docket Number	
Date Filed	
Defendant	
Defendant Attorney	
Plaintiff	
Plaintiff Attorney	
4. ANY OTHER RELEVANT INFORMATION	
4A. OTHER RELEVANT INFORMATION	
Case History	
Relief Sought	
Current Status	

MEMORANDUM

TO: Arkansas Legislative Council
Litigation Reports Oversight Subcommittee
Sen. Jim Dotson, Co-Chair
Rep. DeAnn Vaught, Co-Chair

FROM: Brad Young, Managing Attorney
Arkansas Department of Finance & Administration

DATE: May 12, 2023

RE: River Valley Landscaping & Design LLC v. Larry Walther, Secretary, DFA
Pulaski County Circuit Court No. 60CV-22-3530

REQUEST FOR REVIEW AND APPROVAL OF SETTLEMENT BY
THE LEGISLATIVE COUNCIL OF THE ARKANSAS GENERAL ASSEMBLY
Ark. Code Ann. § 10-3-312(d)

SETTLEMENT AGREEMENT

River Valley Landscaping LLC (“River Valley”) sued the Department opposing a sales tax assessment. The Department filed an answer denying all of River Valley’s claims and denying River Valley’s entitlement to any judicial relief.

As of the date of this memo, River Valley owes \$196,753.72 in taxes, \$67,561.25 in penalties, and \$99,051.56 in interest for the tax period November 1, 2016 through November 30, 2020.

The parties have reached a settlement agreement. A copy of the Settlement Agreement is attached. River Valley has agreed to pay the entire tax due (\$196,753.72) in exchange for the Department’s waiver of all penalties and interest (approximately \$166,612.81). If settlement is approved, the litigation will be dismissed per the terms of the settlement agreement.

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

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of May 12, 2023 by and between Larry Walther, in his official capacity as Secretary of the Department of Finance and Administration of the State of Arkansas (the “Department”) and River Valley Landscaping & Design LLC (“River Valley”). River Valley is the plaintiff, and the Department is the defendant, in Case No. 60CV-22-3530, *River Valley Landscaping & Design, LLC v. Larry Walther, in his Official Capacity as Secretary, Arkansas Department of Finance and Administration*, in the Circuit Court of Pulaski County, Arkansas (the “lawsuit”). The terms of this Agreement are authorized by law, including Ark. Code § 26-18-705(b)(1) of the Arkansas Tax Procedure Act.

1. River Valley will dismiss the lawsuit with prejudice, with each party bearing that party’s own attorneys’ fees and costs.

2. River Valley will pay the full principal amount of the outstanding assessments from sales tax for period ending November 30, 2020 in the amount of \$196,753.72, and the Department will accept this payment as full and final settlement of all of River Valley’s sales tax liability for this period.

3. Upon receipt of payment, the Department will waive and release all claims against River Valley for interest and penalties related to the assessment for the period ending November 30, 2020.

4. The Agreement will be submitted for approval to the Legislative Council. The Department and River Valley agree to work cooperatively and to use their best efforts to secure approval from the Legislative Council. The parties understand and agree that such legislative approval is a condition precedent to the enforceability of this Agreement.

5. Within thirty (30) calendar days from the date that this agreement receives legislative approval, River Valley will remit the funds described by paragraph (2) above and file a motion to dismiss the lawsuit with prejudice in the Circuit Court of Pulaski County, Arkansas.

SIGNED this 12th day of May 2023.

**River Valley Landscaping &
Design LLC**

**Department of Finance &
Administration**

By: _____
Title:



By: _____
Title:
Arkansas Department of Finance and
Administration

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

RIVER VALLEY LANDSCAPING & DESIGN, LLC

PLAINTIFF

v.

CASE NO.: 60CV-22-3530

**LARRY WALTHER, in his Official Capacity
as SECRETARY, ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION**

DEFENDANT

FIRST AMENDED COMPLAINT

Comes now River Valley Landscaping and Design, LLC (“River Valley”), and for its First Amended Complaint to contest the Gross Receipts Tax (“sales tax”) as a part of the sales and use tax erroneously assessed by Larry Walther, in his official capacity as Secretary (“Secretary”) of the Arkansas Department of Finance and Administration (the “Department”), states as follows:

NATURE OF THE PROCEEDINGS

1. This action is for judicial relief pursuant to Ark. Code. Ann. §§ 26-18-406 in appealing a final determination of the Department’s administrative decision and protesting a final sales tax assessment established by the Department.

2. The final assessment of the Secretary assessed a sales tax in the amount of \$196,703.72 plus interest and penalties thereon.

3. River Valley now seeks judicial relief from the assessment of sales tax and other appropriate relief, on the basis that many of the transactions on which the taxes were assessed qualified for one of several sales and use tax benefits for River Valley: the sale-for-resale

exemption, as well as other provisions of law as set out in this Complaint and as otherwise applicable.

4. The allegations contained in the original Complaint are hereby incorporated by reference in the First Amended Complaint.

PARTIES

5. Plaintiff, River Valley, is a limited liability company organized and existing under the laws of Arkansas.

6. Defendant, Larry Walther, is the Secretary of the Department and is named as a Defendant in his representative capacity on behalf of the Department in accordance with his general plenary authority as executive head of the Department under Ark. Code. Ann. § 25-8-101, and his specific duties with respect to suits and other proceedings necessary for the collection of taxes set out in Ark. Code Ann. § 26-17-304.

PROCEDURAL HISTORY

7. The Department audited River Valley for the period November 1, 2016, to November 30, 2020.

8. On May 11, 2021, the Department issued a Notice of Proposed Assessment (the “NOPA”) to River Valley for \$196,703.72 of sales tax, \$67,561.25 of penalties, and \$44,541.98 of interest. A copy of the NOPA is attached to the Complaint as Exhibit A.

9. River Valley sought administrative relief from the proposed assessment by protesting the assessment pursuant to Ark. Code Ann. 26-18-404.

10. On December 7, 2021, the Department issued an Administrative Decision holding that River Valley owed \$169,703.72 in sales tax, \$67,561.25 in penalties, and \$44,541.98 in interest. The Department’s Administrative Decision is attached to the Complaint as Exhibit B.

11. River Valley now brings this action to appeal the taxes, penalties, and interest erroneously assessed pursuant to Ark. Code. Ann. § 26-18-406(a)(1)(A).

JURISDICTION AND VENUE

12. Ark. Code Ann. § 26-18-406(a)(1) provides that “a taxpayer may seek judicial relief from final assessment or determination by . . . filing suit within one hundred eighty (180) days of the final assessment or determination.” As set forth paragraphs 7-11 above, the preconditions for filing suit under Ark. Code Ann. § 26-18-406(a)(1)(A) are satisfied.

13. Jurisdiction is in the Pulaski County Circuit Court: “Jurisdiction for a suit to contest a final assessment or determination of the secretary under this section shall be in the Pulaski County Circuit Court . . . where the matter shall be tried de novo.” Ark. Code Ann. § 26-18-406(c).

14. The Circuit Court of Pulaski County is the proper venue for this action. Ark. Code Ann. § 26-18-406(c).

SPECIFIC ALLEGATIONS OF FACT

15. River Valley provides professional landscaping and lawn care services to residential and commercial properties.

16. During the audit period, River Valley regularly engaged in providing landscaping services to Southern Federal and Mortenson Contractors. During this time, Southern Federal and Mortenson Contractors did not intend to keep the services for themselves, but instead, resale River Valley’s services to Army Corp. of Engineers and Florida Power & Light in their ordinary course of business. Stated differently, Southern Federal and Mortenson Contractors purchased the landscaping services under the sale-for-resale exemption, and Southern Federal and Mortenson Contractors’ initial purchase of the services were for resale purposes. Southern Federal and

Mortenson Contractors did not self-assess or remit sales tax on the services that it purchased as exempt for resale.

17. Southern Federal and Mortenson Contractors have a sales tax exemption attributable to its Arkansas purchases from River Valley. As such, River Valley was not required to collect sales tax for the services provided to Southern Federal or Mortenson Contractors. The Southern Federal and Mortenson Contractors exempt permits are attached to the Complaint as Exhibit C.

18. Those transactions on which DFA assessed sales tax are listed in the Summary of Findings. A summary of the DFA's adjustment is also contained in those findings. *See* Exhibit A.

19. In particular, the Department found that River Valley did not remit sales tax for their services rendered to Mortenson Contractors and Southern Federal during the audit period. However, River Valley was not required to remit sales taxes due to the sale-for-resale exemption.

20. Mortenson Contractors and Southern Federal were regularly engaged in the business of reselling the purchased services from River Valley.

APPLICABLE LAW

21. The sales tax (Ark. Code Ann. § 26-52-101 et seq.) is generally imposed on sales of tangible personal property and certain specifically enumerated services in the state. The use tax (Ark. Code Ann. § 26-53-101 et seq.) is imposed on that same tax base with respect to sales outside of the state where the property or services are used in the state. Functionally they operate as a single tax.

22. The general state tax rate for purchases that are not exempt or eligible for a reduced rate is 6.5 %. *See* Ark. Code Ann. § 26-52-301; § 26-52-302.

23. There are also city and county sales and use taxes administered by DFA that function as additional local rates in addition to the statewide 6.5 % rate. *See* Ark. Code Ann. tit. 26, chs. 74 and 75.

24. Furthermore, the sale-for-resale exemption applies to transactions otherwise subject to the sales and use tax. Ark. Code. Ann. §§ 26-53-106(d)(1)(A); 26-53-112; Rule UT-9. Accordingly, purchases of tangible personal property and certain enumerated services, which include landscaping and lawncare services, for resale by persons with gross receipts (sales) tax permits who are regularly engaged in the business of reselling the purchased property are exempt from the sales and use tax. *See* Ark. Code Ann. § 26-52-401(12)(A).

CLAIM FOR RELIEF

25. The Department wrongly imposed the sales tax on River Valley for the purchases of lawncare and landscaping services of Mortenson Contractors and Southern Federal.

26. Because Mortenson Contractors and Southern Federal are in the business of reselling landscaping and lawncare services to its customers, these services were exempt, and the sales tax is inapplicable.

27. Thus, DFA improperly assessed sales tax on nontaxable transactions that were not subject to sales tax as sales of tangible and personal property or taxable services.

28. As a result of DFA's improper assessment and denial of exemptions, all which are described above, River Valley is entitled to the following relief:

- a. a declaratory judgment that River Valley is entitled to the sale-for-resale exemption as set forth in this Complaint; and
- b. for all other relief to which Plaintiff may be justly entitled.

WHEREFORE, Plaintiff prays for judgement against Defendant for the sums set forth above; and for all other just and proper relief to which it may be entitled.

QUATTLEBAUM, GROOMS & TULL PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201
(501) 379-1700
(501) 379-1701 fax
jprice@qgtlaw.com
bkeaton@qgtlaw.com

By: /s/ Byron T. Keaton

Joseph W. Price, II (Ark. Bar No. 2007168)

Byron T. Keaton (Ark. Bar No. 2021208)

Attorneys for River Valley Landscaping & Design, LLC

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

RIVER VALLEY LANDSCAPING & DESIGN, LLC

PLAINTIFF

v.

CASE NO. 60CV-22-3530

**LARRY WALTHER, in his Official Capacity
as SECRETARY, ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION**

DEFENDANT

ANSWER

COMES NOW Larry Walther, in his official capacity as Secretary of the Arkansas Department of Finance and Administration (the “Department”), and for the Department’s Answer to the “FIRST AMENDED COMPLAINT” filed by River Valley Landscaping & Design, LLC on June 6, 2022 states as follows:

1. Paragraph 1 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 1.

2. The Department admits the allegations in paragraph 2. The Notice of Final Assessment speaks for itself.

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

4. The Department denies all allegations and averments contained within the Original Complaint that are not specifically admitted by the Department in this answer.

5. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.

6. The Department admits that Larry Walther is the Secretary of the Department. The text of Ark. Code Ann. §§ 25-8-101 and 26-17-304 speaks for itself.

7. The Department admits the allegations in paragraph 7.

8. The Notice of Proposed Assessment speaks for itself.

9. The Department admits the allegations in paragraph 9.

10. The Administrative Decision, which was issued by the Office of Hearings and Appeals, speaks for itself.

11. The Department denies the allegations contained in Paragraph 11. The Department affirmatively states the assessment was correct.

12. Paragraph 12 contains statements of law to which no response is required. The text of Ark. Code Ann. § 26-18-406 speaks for itself.

13. The text of Ark. Code Ann. § 26-18-406 speaks for itself.

14. The Department admits that venue is proper in this Court. The text of Ark. Code Ann. § 26-18-406 speaks for itself.

15. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16.

17. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17. The documents attached as Exhibit C to the First Amended Complaint speak for themselves.

18. The Department denies that the Department's Summary of Findings is contained in Exhibit A to the First Amended Complaint. The Summary of Findings speaks for itself.

19. The Department admits that the Plaintiff did not remit sales tax as required by law for sales to Mortenson Contractors and Southern Federal during the audit period. The Department denies the remainder of the allegations in paragraph 19.

20. The Department denies the allegations in paragraph 20.

21. The text of Ark. Code Ann. § 26-52-101 *et seq.* and Ark. Code Ann. §§ 26-53-101 *et seq.* speaks for itself.

22. The text of Ark. Code Ann. §§ 26-52-301 and 26-52-302 speaks for itself.

23. The text of Ark. Code Ann. Title 26, chs. 74 and 75 speaks for itself.

24. The text of Ark. Code Ann. §§ 26-52-401, 26-53-106, 26-53-112, and Arkansas Compensating Use Tax Rule UT-9 speaks for itself

25. The Department denies the allegations in paragraph 25.

26. The Department denies the allegations in paragraph 26.

27. The Department denies the allegations in paragraph 27.

28. Paragraph 28 consists of a claim for relief to which no response is necessary. However, to the extent the Court determines a response is necessary, the Department denies the allegations in paragraph 28.

29. The Department denies the allegations contained in the WHEREFORE clause of the First Amended Complaint.

30. The Department denies each and every allegation of the First Amended Complaint not expressly admitted herein and reserves the right to amend this Answer and plead further pending the completion of discovery in this case.

31. The Department asserts the affirmative defenses of waiver, estoppel, and failure to mitigate.

PRAYER FOR RELIEF

FOR THESE REASONS, the Department prays that the Court deny the relief requested in Plaintiff's First Amended Complaint; that the Court sustain the Department's adjustments; and for all other just and proper relief to which the Department is now or may become entitled.

Respectfully submitted,

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

By: _____

Parker F. Cope
Arkansas Bar No. 2017140
parker.cope@dfa.arkansas.gov

Evelyn D. Gomez
Arkansas Bar No. 2014142
evelyn.gomez@dfa.arkansas.gov

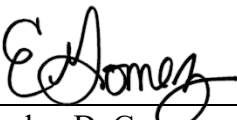
Bradley B. Young
Arkansas Bar No. 2015028
brad.young@dfa.arkansas.gov

CERTIFICATE OF SERVICE

On July 6, 2022, I served a copy of this document on the person(s) listed below through the Court's electronic filings system, electronic mail, or both:

Byron T. Keaton
Joseph W. Price
111 Center Street
Suite 1900
Little Rock, AR 72201
bkeaton@qgtlaw.com
jprice@qgtlaw.com

Attorneys for plaintiff



Evelyn D. Gomez