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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](mailto: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: Keith Linder, Managing Attorney  
Arkansas Department of Finance & Administration

DATE: May 11, 2023

RE: Raytheon Company et al. v. Larry Walther, Secretary, DFA  
Ouachita County Circuit Court No. 52CV-18-228  
United States District Court for the Western District of Arkansas 1:18-cv-01030-SOH

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

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Raytheon Company and its subsidiaries (collectively “Raytheon”) sued the Department in both state and federal court requesting various refunds of corporate income tax and opposing various corporate income tax assessments. Raytheon claimed that it was entitled to elect a three-factor equally weighted apportionment formula not expressly provided by state law and that the state laws imposing double weighted sales factor and the throwback rule were unconstitutional.

The Department filed an answer denying all of Raytheon’s claims and denying Raytheon’s entitlement to any judicial relief. Both parties have pending motions for partial summary judgment in the Ouachita County Circuit Court. The federal lawsuit is stayed pending resolution of the state court litigation. Based on a Statement of Account dated January 6, 2023, Raytheon owes \$8,554,432.00 in taxes, \$1,652,533.01 in penalties, and \$1,978,769.17 in interest for the tax years 2011 through the first quarter of 2020, with a credit of \$5,373,222.47 for payments made by Raytheon.

Raytheon filed its Fourth Amended Complaint on February 20, 2023. Prior to the Department’s answering the Fourth Amended Complaint, the parties reached a settlement agreement. A copy of the Settlement Agreement is attached. Raytheon has agreed to pay the entire tax due (\$3,181,209.53) and withdraw its refund claims (\$3,663,242 plus interest) in exchange for the Department’s waiver of all penalties and interest (approximately \$3,631,302.24). The state court has tolled all deadlines in the case pending review of the settlement agreement by the Legislative Council. If settlement is approved, both the state and federal 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 BY AND BETWEEN  
THE ARKANSAS DEPARTMENT OF FINANCE AND  
ADMINISTRATION AND RAYTHEON COMPANY**

This Settlement Agreement ("Agreement") is entered into as of ~~April~~ <sup>MAY</sup> 11, 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 Raytheon Company, and its subsidiaries, JPS Communications Inc., Raytheon Exchange Holdings, Inc., Raytheon Exchange Holdings II, Inc., Raytheon Exchange Holdings III, Inc., Raytheon Exchange Holdings IV, Inc., Raytheon Exchange Holdings V, Inc., Raytheon Oakley Systems, LLC f/k/a Raytheon Oakley Systems, Inc., and all other subsidiaries of Raytheon Company included on its consolidated Arkansas tax returns for the subject tax years (collectively, "Raytheon") pursuant to Ark. Code Ann. § 26-18-705.

**WHEREAS**, on May 30, 2018, Raytheon filed their original Complaint in the Circuit Court of Ouachita County, Arkansas, No. 52CV-18-228 (the "State Lawsuit"), and in the U.S. District Court, Western District of Arkansas, No. 1:18-cv-01030 (the "Federal Lawsuit") (collectively referred to herein as the "Lawsuits"), requesting a refund for tax years 2008-2011 and 2014 and abatement of wrongfully assessed additional taxes for tax years 2012-2015 based on the Department's rejection of Raytheon's election to use the three-factor, equally weighted apportionment formula allegedly available under the Multistate Tax Compact (the "Compact"), abatement of taxes for tax years 2012-2014 based on the Department's failure to provide a Notice of Proposed Assessment, and abatement of taxes and all refunds requested based on the unconstitutionality of the state's throw-back rule, both facially and as-applied to Raytheon, and the Department's application of the double-weighted sales factor;

**WHEREAS**, the Department filed an answer in which it denied all of Raytheon's claims and alleged causes of action and denied that Raytheon was entitled to any of the relief requested;

**WHEREAS**, Raytheon filed their Fourth Amended Complaint in the State Lawsuit on February 20, 2023 to include similar claims for subsequent tax years since the filing of their original Complaint;

**WHEREAS**, on July 22, 2019, Raytheon filed their Motion for Partial Summary Judgment in the State Lawsuit requesting relief on Raytheon's claim relating to the Department's treatment of the Compact, specifically that Arkansas taxpayers have the legal right to elect single sales factor apportionment under the terms of the Compact in the tax years at issue;

**WHEREAS**, on January 26, 2023, the Department filed its Cross-Motion for Partial Summary Judgment in the State Lawsuit admitting that no genuine issue of any material facts exists relating to the legal issues raised in Raytheon's Motion for Partial Summary Judgment and requesting a determination that Arkansas taxpayers were not entitled to elect single sales factor apportionment under the terms of the Compact in the tax years at issue;

**WHEREAS**, based on a Statement of Account dated January 6, 2023, the Department asserts that Raytheon owes \$8,554,432.00 in taxes, \$1,652,533.01 in penalties, and \$1,978,769.17 in interest for the tax years 2011 through the first quarter of 2020, with a credit of \$5,373,222.47 for payments made by Raytheon;

**WHEREAS**, on February 25, 2023, while not conceding the Department's position on any issue or any subject tax year and solely for the purposes of resolving the matter, Raytheon proposed a settlement to the Department in which Raytheon would dismiss their Lawsuits with prejudice and would pay the full principal amount of all proposed assessments from tax years 2011 through the first quarter of 2020, and that the State would accept as full and final settlement of these tax years for Raytheon and all proposed penalties and interest would be waived and released upon the timely payment of taxes owed;

**WHEREAS**, the Department, while not conceding Raytheon's position on any issue or subject tax year and solely for purposes of resolving this matter, has agreed to the terms proposed by Raytheon;

**WHEREAS**, the Department and Raytheon desire to settle the claims made in the Lawsuits;

**WHEREAS**, the Department and Raytheon agree that the expeditious resolution of this matter is in the best interest of all the parties;

**WHEREAS**, as a result of both parties conditionally accepting Raytheon's settlement offer, the Parties jointly moved for a stay and continuance of all court proceedings, including the hearing on the pending motions for summary judgment scheduled for March 9, 2023 and the deadline for the Department to file an answer to Raytheon's Fourth Amended Complaint. The court issued an Order on March 7, 2023 staying all proceedings in this matter pending further order of the court; and

**WHEREAS**, the terms of this Agreement are authorized by law, including Ark. Code § 26-18-705(b)(1) of the Arkansas Tax Procedure Act.

**NOW, THEREFORE**, in consideration of the promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Department and Raytheon agree as follows:

- (1) Raytheon will dismiss the Lawsuits with prejudice, with each party bearing that party's own attorneys' fees and costs.
- (2) Raytheon will waive and release all claims for refund (including interest on those claims) for tax years 2008-2011, 2014, 2016, and 2018.
- (3) Raytheon will pay the full principal amount of all outstanding assessments from tax years 2011 through the first quarter of 2020, in the amount of



\$3,181,209.53, and the Department will accept this payment as full and final settlement of all of Raytheon's tax liabilities for these tax years.


- (4) The Department will waive and release all claims against Raytheon for interest and penalties related to tax years 2011 through the first quarter of 2020.
- (5) The Agreement will be submitted for approval to the Legislative Council. The Department and Raytheon 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.
- (6) After both parties approve of and execute the Agreement and upon receiving legislative approval, Raytheon will file a motion to dismiss with prejudice in case style No. 52CV-18-228 in the Circuit Court of Ouachita County, Arkansas and case style No. 1:18-cv-01030 in the United States District Court, Western District of Arkansas.
- (7) It is understood and agreed that this is a compromise settlement of doubtful and disputed claims; that the consideration provided pursuant to the Agreement shall never be construed as an admission or concession by either party to the opposing party's position relating to the subject tax years; that both parties are agreeing to the terms of the Agreement solely for the purpose of resolving the matter; that this Agreement shall be binding upon and inure to the benefit of all successors and assigns, and all parent, subsidiary, and affiliated corporations and limited liability companies of any and all named parties to this Agreement; that this Agreement contains the

entire agreement between the parties; that this Agreement may not be altered, superseded, or otherwise modified except in writing signed by both parties; and that the terms of this Agreement are contractual and are not a mere recital.


- (8) If any provision of the Agreement is held illegal, invalid, or unenforceable in a legal action to enforce its terms or in any other action, all other provisions shall remain in full force and effect. The illegal, invalid, or unenforceable provision shall be modified to the extent necessary to render the remaining provisions enforceable.
- (9) The Agreement may be executed in multiple counterparts (including execution by facsimile), each of which shall be deemed an original, and all of which together shall constitute one agreement.
- (10) The Agreement has been executed in the State of Arkansas and shall be deemed to have been drafted in accordance with the statutes and laws of the State of Arkansas. In the event of any disagreement or litigation arising under the Agreement, such disagreement or litigation shall be decided in accordance with the statutes and laws of the State of Arkansas, without regard to conflicts of law principles. Exclusive venue of any such litigation shall be in a court having jurisdiction in Arkansas.
- (11) Through their designated and authorized representatives, Raytheon and the Department have read this Agreement; it has been explained to them by counsel; and they fully understand the terms and effect of this Agreement.

READ AND EXECUTED this 11 day of ~~April~~ <sup>May</sup> 2023.

Raytheon Company

  
By: Ross Kearney  
Title: Corporate VP, Tax

Larry Walther  
Secretary, Department of Finance &  
Administration

  
By: Larry W. Walther  
Title: Secretary  
Arkansas Department of Finance and  
Administration



**IN THE CIRCUIT COURT OF OUACHITA COUNTY, ARKANSAS**

**FOURTH DIVISION**

**RAYTHEON COMPANY, and its  
Subsidiaries, JPS Communications Inc.,  
Raytheon Exchange Holdings, Inc.  
Raytheon Exchange Holdings II, Inc.,  
Raytheon Exchange Holdings III, Inc.,  
Raytheon Exchange Holdings IV, Inc., and  
Raytheon Exchange Holdings V, Inc.**

**PLAINTIFFS**

**VS.**

**NO. 52CV-18-228**

**LARRY WALTHER, in his official capacity  
as DIRECTOR, DEPARTMENT  
OF FINANCE AND ADMINISTRATION  
OF THE STATE OF ARKANSAS**

**DEFENDANT**

**THIRD AMENDED COMPLAINT**

Plaintiffs Raytheon Company, and its subsidiaries, JPS Communications Inc., Raytheon Exchange Holdings, Inc., Raytheon Exchange Holdings II, Inc., Raytheon Exchange Holdings III, Inc., Raytheon Exchange Holdings IV, Inc., and Raytheon Exchange Holdings V, Inc. by and through their counsel, Wright, Lindsey & Jennings LLP, and for their third amended complaint against defendant Larry Walther, in his official capacity as Director, Department of Finance and Administration of the State of Arkansas, state the following:

1. This action is brought pursuant to the provisions of the Arkansas Tax Procedure Act, Ark. Code Ann. §§ 26-18-101 *et seq.* and particularly § 26-18-405(e)

and § 26-18-406; the Arkansas Constitution, Ark. Const. Art. 16 § 13; and the Supremacy Clause (Art. 4, Cl. 2), Commerce Clause (Art. 1, § 8, Cl. 3), and Due Process Clause (Amend. XIV, § 1), of the United States Constitution.

2. Raytheon Company is, and at all times mentioned herein was, a corporation formed under the laws of the State of Delaware.

3. JPS Communications Inc. is, and at all times mentioned herein was, a corporation formed under the laws of the State of North Carolina. JPS Communications Inc. is a subsidiary of Raytheon Company, and its income was included on one or more of the consolidated Arkansas income tax returns that Raytheon Company filed in the years at issue in this complaint.

4. Raytheon Exchange Holdings, Inc. is, and at all times mentioned herein was, a corporation formed under the laws of the State of Delaware. Raytheon Exchange Holdings, Inc. is a subsidiary of Raytheon Company, and its income was included on one or more of the consolidated Arkansas income tax returns that Raytheon Company filed in the years at issue in this complaint.

5. Raytheon Exchange Holdings II, Inc. is, and at all times mentioned herein was, a corporation formed under the laws of the State of Delaware. Raytheon Exchange Holdings II, Inc. is a subsidiary of Raytheon Company, and its income was included on one or more of the consolidated Arkansas income tax returns that Raytheon Company filed in the years at issue in this complaint.

6. Raytheon Exchange Holdings III, Inc. is, and at all times mentioned herein was, a corporation formed under the laws of the State of Delaware.

Raytheon Exchange Holdings III, Inc. is a subsidiary of Raytheon Company, and its income was included on one or more of the consolidated Arkansas income tax returns that Raytheon Company filed in the years at issue in this complaint.

7. Raytheon Exchange Holdings IV, Inc. is, and at all times mentioned herein was, a corporation formed under the laws of the State of Delaware.

Raytheon Exchange Holdings IV, Inc. is a subsidiary of Raytheon Company, and its income was included on one or more of the consolidated Arkansas income tax returns that Raytheon Company filed in the years at issue in this complaint.

8. Raytheon Exchange Holdings V, Inc. is, and at all times mentioned herein was, a corporation formed under the laws of the State of Delaware.

Raytheon Exchange Holdings V, Inc. is a subsidiary of Raytheon Company, and its income was included on one or more of the consolidated Arkansas income tax returns that Raytheon Company filed in the years at issue in this complaint.

9. Raytheon Oakley Systems, LLC f/k/a Raytheon Oakley Systems Inc. was a former subsidiary of Raytheon Company that was sold on January 8, 2021. Raytheon Oakley Systems, LLC f/k/a Raytheon Oakley Systems, Inc. was, at all times mentioned herein, a business entity formed under the laws of the State of Delaware. The income of Raytheon Oakley Systems, LLC f/k/a Raytheon Oakley Systems, Inc. was included on one or more of the consolidated Arkansas income tax returns that Raytheon Company filed in the years at issue in this complaint. Raytheon Company retained ownership of the claim asserted in this complaint

following the sale of Raytheon Oakley Systems, LLC f/k/a Raytheon Oakley Systems, Inc.

10. The plaintiffs are collectively referred to as “Raytheon” in this complaint.

11. Raytheon operates a manufacturing facility in East Camden, Ouachita County, Arkansas. This is Raytheon’s only manufacturing facility in the State of Arkansas.

12. Larry Walther is the Director of the Department of Finance and Administration of the State of Arkansas, sued in his official capacity. The defendant is referred to as “Arkansas” in this complaint.

13. This is an action based on the following grounds: (1) for refund of income taxes paid by Raytheon to Arkansas for tax years 2008 through 2011, 2014, and 2016, plus interest on those payments from the time that they were remitted to the Department, and for abatement of income tax, interest, and penalties assessed against Raytheon for tax years 2012 through 2015 and 2017 through 2019; (2) for failure to provide the required statutory notice in connection with assessments for tax years 2012 and 2014; (3) for refusal to allow Raytheon to employ an alternative apportionment method under Ark. Code Ann. § 26-51-718; (4) for violations of the Supremacy Clause of the United States Constitution as to Arkansas’s throw-back provision for sales to the federal government; (5) for violations of the dormant Commerce Clause and Due Process Clause of the United States Constitution as to Arkansas’s throw-back provision; (6) for violations of the dormant Commerce Clause

and Due Process Clause of the United States Constitution as to Arkansas's double-weighted sales provision, when coupled with the throw-back provision; and (7) for illegal exaction under Ark. Const. 16 § 13.

14. Jurisdiction and venue for this action are vested in this Court pursuant to Ark. Code Ann. § 26-18-406(c), Ark. Code Ann. § 16-60-101(a)(3)(B), and Ark. Code Ann. § 16-60-104(3)(B). Raytheon has timely filed this complaint pursuant to Ark. Code Ann. § 26-18-406(a)(1)(A) and Ark. Code Ann. § 26-18-406(b), and has exhausted all available administrative remedies.

15. On the date of the filing of its original complaint, Raytheon also filed a substantively similar complaint in the United States District Court for the Western District of Arkansas, Texarkana Division.

16. In the event that sovereign immunity bars this action, no adequate remedy for Raytheon exists in Arkansas state courts, so the filing of the concurrent federal court complaint was appropriate.

### **I. The Multistate Tax Compact**

17. Arkansas has enacted the Multistate Tax Compact (the "Compact").

18. The Compact was initially conceived at a special meeting of the National Association of Tax Administrators in 1966. In November 1966, a committee of attorneys general and tax administrators, under the auspices of the Council of State Governments, held a final drafting session for the Compact in November 1966. In 1967, states began to enact the Compact. In August of 1967, the seventh state enacted the Compact, at which time the Multistate Tax

Commission was created. *See* [www.mtc.gov/The-Commission/MTC-History](http://www.mtc.gov/The-Commission/MTC-History). The aim of the commission, and of the Compact, was uniformity and fairness in state taxation of corporations that conducted businesses in more than one state.

19. In Act 410 of the Acts of 1967, the Arkansas General Assembly authorized Arkansas to participate in the Compact.

20. Section 1 of Act 410 states that the “Multistate Tax Compact’ is hereby enacted into law and entered into with all jurisdiction legally joining therein, in the form substantially as follows:”.

21. What follows the enactment of the Compact is a description of its form. That description is the model Compact itself, and appears in quotes, beginning with the title “Multistate Tax Compact” and ending at the end of Article XII of the Compact, which completes Section 1 of the Act.

22. The Compact sets out the terms for a state to withdraw from the Compact: enacting a statute repealing it. Art. X, § 2.

23. After the enactment of the Compact in Section 1, Act 410 then moves to separate, Arkansas-specific provisions in Sections 2–9. Section 7 sets forth the Act’s intent: “that by the enactment of the Multistate Tax Compact the General Assembly has established an option, as authorized in such Compact, whereby a multistate taxpayer may elect to report and pay taxes in accordance with the existing tax laws of this State, or in accordance with the terms of the Multistate Tax Compact, as the taxpayer may elect.”



24. That option is the central component of the Compact. Without it, the Compact would be essentially meaningless to the multistate taxpayer.

25. The functionality of the option is described in Article III of the Compact. It provides that any “taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party State . . . may elect to apportion and allocate his income in the manner provided by the laws of such State . . . or may elect to apportion and allocate in accordance with Article IV.”

26. Article IV of the Compact provided that all business income should be apportioned using a three-factor, equally weighted method.

27. For a multistate taxpayer in Arkansas, the three factors were described under the Compact as follows:

- The property factor—the average value of the taxpayer’s property owned, rented, or used in Arkansas divided by the total average value of all of the property it owned, rented or used everywhere;
- The payroll factor—the total amount of compensation paid by the taxpayer in Arkansas divided by the total amount of compensation paid everywhere; and
- The sales factor—the taxpayer’s total sales in Arkansas divided by its total sales everywhere.

These factors were calculated separately, then added together and divided by three, giving each factor equal weight. The resulting calculation was the apportionment

factor, or the percentage of the taxpayer's overall gross income that would be apportioned to that state, Arkansas in this case.

28. In 1995, the Arkansas General Assembly passed a law to amend Arkansas's apportionment calculation. Instead of all three factors (property, payroll, and sales) being equally weighted, the sales factor was double-weighted. See Act 682 of 1995.

29. Act 682 did not repeal Act 410 or Arkansas's enactment of the Compact. Moreover, Act 682 did not repeal, amend, alter, or even reference the taxpayers' right to elect apportionment under the terms of the Compact.

30. Act 682 did not alter the taxpayer's option to calculate its income tax using the three-factor, equally weighted apportionment formula set out in Article IV of the Compact.

## **II. The Throw-back Provision**

31. Arkansas employs a "throw-back" provision when determining what sales should be sourced as in-state sales for use in calculating the sales factor. The throw-back provision is found in the Compact at Article IV, § 16(b). The same provision is found in Ark. Code Ann. § 26-51-716, which was adopted in Arkansas in 1961 as part of the Uniform Division for Income Tax Purposes Act ("UDITPA").

32. For income tax purposes, sales are typically sourced to the state in which the product or service is delivered because the sale represents an exploitation of that state's market.

33. However, Arkansas imposes a different sourcing rule upon sales where the purchaser is the United States Government. Specifically, Arkansas mandates that all sales to the United States Government be sourced to Arkansas for income tax purposes if the property is shipped from an office, store, warehouse, factory, or other place of storage in Arkansas. This is known as a “throw-back” provision.

34. As discussed in detail below, Raytheon’s sales from Arkansas are almost exclusively to the federal government. Consequently, Arkansas, through the application of its throw-back rule, classifies these sales as occurring in Arkansas for purpose of income tax apportionment.

### **III. Raytheon’s Business in Arkansas**

35. Raytheon is predominantly a military contractor. Roughly 97 percent of its sales from Arkansas are to (1) U.S. Defense agencies or (2) foreign militaries, either by foreign military sales through the Department of Defense or direct commercial sales under export controls.

36. Raytheon operates a single manufacturing facility in Arkansas at Highland Industrial Park in East Camden. At this facility, Raytheon performs final assembly, packaging, and shipment of five separate missile types, including Tomahawk Cruise Missiles.

37. A significant portion of the work required to manufacture these missiles, including the acquisition, manufacture, and assembly of component parts, is performed in states other than Arkansas.

38. None of the products assembled in East Camden are for use in Arkansas. All are for use in naval warfare, and nearly all are sold to the federal government.

#### **IV. Raytheon's Tax**

39. Beginning with tax year 2012, Raytheon exercised its right to elect to calculate its income tax due to Arkansas using the three-factor, equally weighted apportionment formula allowed by the Compact, as authorized by Act 410. Raytheon continued to use this method on its as-filed returns for tax years 2013 through 2017.

40. On or about November 12, 2012, Raytheon requested a refund for tax years 2008 through 2010 based on Raytheon's election to calculate its income tax for those years using the Compact's three-factor, equally weighted apportionment method. Through verified claims, Raytheon used the Compact's three-factor, equally weighted apportionment method for its as-filed 2011 tax return.

41. Raytheon's use of the three-factor, equally weighted apportionment formula for tax year 2011 was rejected by Arkansas on August 12, 2013.

42. On October 11, 2013, Raytheon filed a protest of claim denial for tax year 2011 and requested an administrative hearing. In correspondence with Raytheon, the Department confirmed that the refund claims for the periods 2008 through 2011 would be handled as a single case with the Office of Hearings and Appeals.

43. In addition to denying Raytheon's requests for refunds, Arkansas has assessed additional taxes, penalties, and interest against Raytheon for tax years 2012 through 2015 and 2017 through 2019 because Raytheon opted to calculate its tax as allowed by the Compact. Raytheon filed protests and requested administrative hearings for the years prior to filing the original Complaint. Raytheon never received statutory notice of the assessments for tax years 2012 and 2014. Raytheon received the Notice of Proposed Assessment for 2017 (dated December 3, 2018) and the Notice of Final Assessment for 2017 (dated February 11, 2019) only after an email dated March 12, 2019 to the Corporation Income Tax Section on March 12, 2019.

44. On December 1, 2017, the administrative law judge presiding over all of Raytheon's related protests issued two separate orders denying Raytheon's protests for tax years 2011 through 2015.

45. On March 7, 2019, the administrative law judge presiding over Raytheon's protest issued an order denying Raytheon's protest for tax year 2016.

46. Raytheon has not received back the \$3,663,242.00 it is owed in refunds from income tax overpayment from the years 2008 through 2011, 2014, and 2016.

47. Moreover, Raytheon has been assessed \$2,594,245.00 in claimed income taxes owed, \$911,568.00 in total penalties, and interest on these amounts continues to accrue. In addition, Raytheon has been assessed \$399,576.82 for tax liability for 2017 which amount includes tax, penalty and interest, and interest continues to accrue on that amount.

48. By letter dated January 15, 2020, the State of Arkansas issued its Notice of Proposed Assessment to Raytheon for the tax year ended December 31, 2018, and the Proposed Assessment includes \$2,178,868.00 in tax, \$308,697.76 in penalties, \$55,366.74 in interest, less payments of \$1,444,000.00, leaving a balance of the assessment of \$1,098,932.50.

49. On January 16, 2020, the State of Arkansas sent to Raytheon Company a Notice of Claim Denial for the tax year ended December 31, 2018, denying a claim for refund in the amount of \$451,736.00. On its 2018 income tax return for the State of Arkansas, Raytheon claimed an overpayment of tax in the amount of \$712,146.00. Thus, Raytheon is entitled to an additional refund of corporate income taxes for the tax year ended December 31, 2018 of \$712,146.00.

50. By letter dated December 1, 2020, the State of Arkansas issued its Notice of Proposed Assessment to Raytheon for the tax year ended December 31, 2019, and the Proposed Assessment includes \$2,087,206.00 in tax, \$364,192.04 in penalties, \$53,196.55 in interest, less payments of \$1,243,000.00, leaving a balance of the assessment of \$1,261,594.59. The State of Arkansas issued a revised Explanation of Tax Adjustment on January 28, 2021 that reduced the tax amount by \$121,237.00 from \$2,087,206.00 to \$1,965,969.00, which brings the balance of the assessment to \$1,140,357.59.

### Count 1

51. Raytheon repeats and incorporates the allegations set forth in paragraphs 1 through 50 above as if fully set forth herein.



52. Arkansas's rejection of Raytheon's election to apportion its income tax under the terms of the Compact violates Act 410.

53. Arkansas has wrongfully denied Raytheon's request for refunds for tax years 2008 through 2011, 2014, and 2016. Raytheon is owed a total of \$3,663,242.00 in refunds for those years, plus interest on those payments from the time that they were remitted.

54. Moreover, Raytheon has been wrongfully assessed additional taxes, penalties, and interest for tax years 2012 through 2015 and 2017 through 2019.

55. All such assessments, penalties, and interest should be abated.

56. Raytheon appeals the December 1, 2017 and March 7, 2019 decisions of the administrative law judge denying Raytheon's request for refunds and upholding all assessment, penalties, and interest against it.

### Count 2

57. Raytheon repeats and incorporates the allegations set forth in paragraphs 1 through 56 above as if fully set forth herein.

58. If Arkansas determines that it will propose the assessment of additional tax plus penalties, Arkansas law requires Arkansas to "give notice of the proposed assessment to the taxpayer." Ark. Code Ann. § 26-18-403(a)(2).

59. Raytheon was never provided a Notice of Proposed Assessment with respect to tax years 2012 and 2014. Raytheon was provided a Notice of Proposed Assessment and a Notice of Final Assessment for tax year 2017 on March 13, 2019,

but only following Raytheon's request to the Corporation Income Tax Section by email on March 12, 2019.

60. Nevertheless, Arkansas has assessed tax and penalties or reduced refund payments to Raytheon for the years 2012 and 2014 in the total amount of \$1,482,277.00. For tax year 2017, Arkansas has assessed tax, penalties, and interest to Raytheon in the amount of \$399,576.82, and interest continues to accrue on that amount.

61. Because Arkansas failed to provide the statutorily required notice, all proposed and assessed tax, penalties, and interest for those years should be abated.

### Count 3

62. Raytheon repeats and incorporates the allegations set forth in paragraphs 1 through 61 above as if fully set forth herein.

63. Separate and apart from the Compact, Arkansas law allows a taxpayer to utilize an alternative apportionment method when UDITPA provisions for apportionment do not fairly represent a taxpayer's business activities in Arkansas. Ark. Code Ann. § 26-51-718.

64. The alternative apportionment formula may include (a) separate accounting; (b) the exclusion of any one or more of the factors; (c) the inclusion of one or more additional factors; or (d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

65. In addition to being specifically allowed by the Compact and the Arkansas General Assembly's enactment of it, Raytheon's use of the Compact's

three-factor, equally weighted apportionment formula is allowed under Ark. Code Ann. § 26-51-718.

66. As a result of Arkansas's refusal to allow the use of the three-factor, equally weighted apportionment formula, Raytheon has been wrongfully assessed additional taxes, penalties, and interest for tax years 2012 through 2015 and 2017 through 2019 and wrongfully denied refunds for tax years 2008 through 2011, 2014, 2016, 2018 and 2019.

67. All such assessments, penalties, and interest should be abated, and all such refunds, together with interest, should be paid.

#### Count 4

68. Raytheon repeats and incorporates the allegations set forth in paragraphs 1 through 67 above as if fully set forth herein.

69. Arkansas's throw-back rule singles out sales to the federal government for different treatment than other sales.

70. State taxes that discriminate against the federal government or those who contract with it, or substantially interfere with the federal government's activities, are constitutionally invalid. *United States v. New Mexico*, 455 U.S. 720, 736 fn. 11 (1982).

71. Arkansas treats a contractor's sales to the federal government differently than sales to other buyers. As a result, all taxes assessed under those rules should be abated and all refunds requested should be paid.

### Count 5

72. Raytheon repeats and incorporates the allegations set forth in paragraphs 1 through 71 above as if fully set forth herein.

73. Raytheon's activities at its East Camden manufacturing facility include final assembly, packaging, and shipment of its missiles. None of the missiles are delivered to buyers in Arkansas.

74. Nevertheless, Arkansas seeks to impose and imposes income tax on Raytheon as though the entirety of its weapons that are shipped from Raytheon's East Camden facility were manufactured and assembled in Arkansas and, through application of the throw-back rule, treats every sale as though it occurred within the Arkansas market.

75. Because the Arkansas throw-back rule does not include any analysis of market-exploitation, consideration of the specific activity occurring in Arkansas, or any meaningful consideration of the nexus between Arkansas and the sales in question, it violates the dormant Commerce Clause and the Due Process Clause of the United States Constitution.

76. Arkansas's imposed tax burden on Raytheon is (1) not fairly apportioned among the states in which Raytheon conducts business; (2) discriminatory toward interstate commerce; and (3) not fairly related to the market benefit Arkansas provides to Raytheon.

77. Because Arkansas's throw-back rule is unconstitutional as applied to Raytheon, all taxes assessed under those rules should be abated and all refunds requested should be paid.

#### Count 6

78. Raytheon repeats and incorporates the allegations set forth in paragraphs 1 through 77 above as if fully set forth herein.

79. After applying the unconstitutional throw-back rule to Raytheon, Arkansas then amplifies the tax burden it places on Raytheon by proposing to double the sales factor in apportioning the tax due from Raytheon.

80. By overstating Raytheon's activity in Arkansas and doubling the sales factor, Arkansas violates the dormant Commerce Clause and the Due Process Clause of the United States Constitution.

81. Arkansas's imposed tax burden on Raytheon is (1) not fairly apportioned among the states in which Raytheon conducts business; (2) discriminatory toward interstate commerce; and (3) not fairly related to the market benefit Arkansas provides to Raytheon.

82. Because Arkansas's double-weighted sales factor, combined with the throw-back rule, is unconstitutional as applied to Raytheon, all taxes assessed under those rules should be abated and all refunds requested should be paid.

#### Count 7

83. Raytheon repeats and incorporates the allegations set forth in paragraphs 1 through 82 above as if fully set forth herein.

84. Raytheon's payment of income taxes into the general revenues of the State of Arkansas affords it standing to sue on its own behalf and on behalf of all other interested citizens under Ark. Const. Art. 16 § 13.

85. Arkansas's attempt to eliminate the taxpayer option allowed under the Compact constitutes an illegal exaction from Raytheon and all taxpayers similarly situated.

86. Arkansas's throw-back rule singles out sales to the federal government for different treatment than other sales, is discriminatory, and is, therefore, constitutionally invalid.

87. Arkansas's utilization of the throw-back rule violates the dormant Commerce Clause and the Due Process Clause of the United States Constitution and as a result constitutes an illegal exaction from Raytheon and all taxpayers similarly situated.

88. Arkansas's utilization of a double-weight, three-factor test for apportionment of income taxes, in conjunction with the throw-back rule, violates the dormant Commerce Clause and the Due Process Clause of the United States Constitution and as a result constitutes an illegal exaction from Raytheon and all taxpayers similarly situated.

89. All funds exacted from Raytheon, and all taxpayers similarly situated, under these provisions constitute the proceeds of an illegal exaction scheme and must be refunded.



## Relief Demanded

90. For the reasons stated above, Raytheon demands the following relief:
- (a) a declaration that Act 410 vests taxpayers with the legal right to elect to apportion income under the terms of the Compact;
  - (b) a refund of income taxes to Raytheon in the sum of \$4,842,817.00;
  - (c) interest on such refund of taxes from the date that Raytheon paid such taxes, as provided by law;
  - (d) an abatement of all taxes and penalties, and associated interest, assessed against Raytheon for tax years 2012 through 2015 and 2017 through 2019;
  - (e) a reversal of the December 1, 2017 decisions of the administrative law judge;
  - (f) a reversal of the March 7, 2019 decision of the administrative law judge;
  - (g) a declaration that Arkansas's apportionment taxation scheme, as applied to Raytheon and all taxpayers similarly situated, is unconstitutional;
  - (h) an accounting of all public funds received by Arkansas under its income tax apportionment scheme for the past three years;
  - (i) a common fund to be established to repay taxpayers the unlawful charges;
  - (j) an award of attorneys' fees and costs; and


(k) such other further relief as the Court deems appropriate.

**PRAYER**

WHEREFORE, Raytheon Company requests the Court enter a final decree, granting the relief demanded in this Third Amended Complaint, award Raytheon its costs, and such other and further relief, the Court may find, Raytheon entitled to receive.

Dated this 1st day of April, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2021, I served the foregoing via email to the following:

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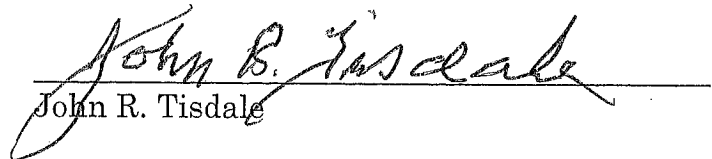
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FILED

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S. D. B. N. W.OUACHITA COUNTY, ARK  
GLADYS F. NETTLES  
CIRCUIT CLERKIN THE CIRCUIT COURT OF OUACHITA COUNTY, ARKANSAS  
FOURTH DIVISION

RAYTHEON COMPANY, and its  
Subsidiaries, JPS Communications Inc.,  
Raytheon Exchange Holdings, Inc.  
Raytheon Exchange Holdings II, Inc.,  
Raytheon Exchange Holdings III, Inc.,  
Raytheon Exchange Holdings IV, Inc.,  
Raytheon Exchange Holdings V, Inc., and  
Raytheon Oakley Systems, LLC  
f/k/a Raytheon Oakley Systems Inc.

PLAINTIFFS

V.

NO. 52CV-18-228

LARRY WALTHER, in his official capacity  
as SECRETARY, DEPARTMENT  
OF FINANCE AND ADMINISTRATION  
OF THE STATE OF ARKANSAS

DEFENDANT

ANSWER TO THIRD AMENDED COMPLAINT

Defendant Larry Walther, in his official capacity as Secretary of the Department of Finance and Administration of the State of Arkansas, submits this Answer and states:

1. Paragraph 1 contains legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 1.
2. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2.
3. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3.
4. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.

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

6. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.

7. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7.

8. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8.

9. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9.

10. The Department admits the allegations of Paragraph 10.

11. The Department admits the allegations of Paragraph 11.

12. The Department admits that Larry Walther is being sued in his official capacity and that the defendant is referred to as "Arkansas" in the Complaint but denies the remaining allegations of Paragraph 12. Mr. Walther's title is now "Secretary" instead of "Director."

13. Paragraph 13 of the Complaint contains legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 13.

14. The Department admits that jurisdiction for a suit to contest an assessment or determination of the Department brought under the Tax Procedure Act, codified at Ark. Code Ann. § 26-18-101 *et seq.*, rests with the circuit court of the county in which the taxpayer resides or has its principal place of business. The remaining allegations in Paragraph 14 of the Complaint contain

legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 14 of the Complaint.

15. The Department admits the allegations of Paragraph 15.

16. The Department denies that Raytheon's complaint against the Department in federal court is appropriate. The remaining allegations of Paragraph 16 contain legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 16.

17. Paragraph 17 of the Complaint contains legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 17.

18. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18.

19. Paragraph 19 of the Complaint contains legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 19 of the Complaint.

20. In response to Paragraph 20, Act 410 of the Acts of 1967 speaks for itself. The Department denies any characterizations or descriptions of the Act that go beyond its text.

21. In response to Paragraph 21, Act 410 of the Acts of 1967 speaks for itself. The Department denies any characterizations or descriptions of the Act that go beyond its text.

22. In response to Paragraph 22, Act 410 of the Acts of 1967 speaks for itself. The Department denies any characterizations or descriptions of the Act that go beyond its text.

23. In response to Paragraph 23, Act 410 of the Acts of 1967 speaks for itself. The Department denies any characterizations or descriptions of the Act that go beyond its text.



24. Paragraph 24 of the Complaint contains legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 24.

25. In response to Paragraph 25, Act 410 of the Acts of 1967 speaks for itself. The Department denies any characterizations or descriptions of the Act that go beyond its text.

26. In response to Paragraph 26, Act 410 of the Acts of 1967 speaks for itself. The Department denies any characterizations or descriptions of the Act that go beyond its text.

27. In response to Paragraph 27, Act 410 of the Acts of 1967 speaks for itself. The Department denies any characterizations or descriptions of the Act that go beyond its text.

28. In response to Paragraph 28, Act 682 of 1995 speaks for itself. The Department denies any characterizations or descriptions of the Act that go beyond its text.

29. Paragraph 29 of the Complaint contains legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 29.

30. Paragraph 30 of the Complaint contains legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 30.

31. In response to Paragraph 31, Title 26 of the Arkansas Code speaks for itself. The Department denies any characterizations or descriptions of Title 26 that go beyond its text.

32. Paragraph 32 of the Complaint contains legal conclusions to which no response is required. To the extent a response is necessary, the Department denies the allegations of Paragraph 32.

33. In response to Paragraph 33, Title 26 of the Arkansas Code speaks for itself. The Department denies any characterizations or descriptions of Title 26 that go beyond its text.

34. The Department admits that Raytheon conducts sales in Arkansas and that Raytheon is subject to Arkansas corporate income tax. The Department lacks sufficient knowledge or information to form a belief as to the truthfulness of the statement that Raytheon's sales "are almost exclusively to the federal government" and therefore denies the same. In response to Paragraph 34, Title 26 of the Arkansas Code speaks for itself. The Department denies any characterizations or descriptions of Title 26 that go beyond its text.

35. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35.

36. The Department admits that Raytheon operates a facility in East Camden, Arkansas. The Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 36.

37. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37.

38. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38.

39. The Department denies the allegations of Paragraph 39 of the Complaint.

40. The Department admits that on November 12, 2013, Raytheon filed refund claims for the 2008, 2009, and 2010 tax years. The Department admits that Raytheon used an improper method of calculation for its corporate income tax liability. The Department denies the remaining allegations of Paragraph 40.

41. The Department admits that Raytheon used an improper method of calculation for its corporate income tax liability. The Department admits that it rejected Raytheon's attempt to improperly calculate its corporate income tax liability. The Department denies the remaining allegations in Paragraph 41.

42. The Department admits that on October 11, 2013, Raytheon submitted a protest for tax year 2011. The alleged correspondence is not attached to the Complaint. To the extent such correspondence exists, it speaks for itself. The Department denies the remaining allegations of Paragraph 42. The Office of Hearings and Appeals noted in its ruling on the 2011 protest:

The Taxpayer's Representatives requested that, "the appeals for tax years 2008, 2009, and 2010 be included in the hearing officer's written decision." See Taxpayer's post-hearing brief - P. 1. The Department's Representative argued that, "[t]he taxpayer's request to include tax years 2008, 2009 and 2010 within this administrative review should be denied. The Office of Revenue Legal Counsel's hearing file does not contain protests for these three additional periods." See Department's post-hearing brief - P. 1. The Office of Hearings and Appeals does not have case files for tax years 2008, 2009, or 2010, and no docket numbers were generated for refund claims relating to those tax years, so this administrative decision will not address the refund claims relating to tax years 2008, 2009, and 2010.

Raytheon did not protest the refund claim denials for tax years 2008, 2009, or 2010. This Court does not have jurisdiction to review any claims related to the refund claims for tax years 2008, 2009, and 2010.

43. The Department admits that it denied Raytheon's requests for refunds. The Department admits that it assessed corporate income tax, penalty, and interest against Raytheon. It is unclear for what tax years Raytheon is alleging it filed protests and requested administrative hearings. The Department denies the remaining allegations of Paragraph 43.

44. The Department admits the allegations of Paragraph 44.

45. The Department admits the allegations of Paragraph 45.

46. The Department denies the allegations of Paragraph 46.

47. In Response to Paragraph 47, the Department admits that it has assessed income tax and penalties against Raytheon and that interest on those assessments continues to accrue.

48. In response to Paragraph 48, the Department admits that it issued a Notice of Proposed Assessment to Raytheon for tax year 2018, and that document speaks for itself.

49. The Department admits that it sent Raytheon a Notice of Claim Denial for tax year 2018 on January 16, 2020, which speaks for itself. The Department denies the remaining allegations of Paragraph 49.

50. In response to Paragraph 50, the Department admits that it issued a Notice of Proposed Assessment on December 2, 2020, and an Explanation of Tax Adjustment on January 28, 2021, both for tax year 2019. Those documents speak for themselves. The Department denies the remaining allegations of Paragraph 50.

51. Paragraph 51 does not contain any allegations that require a response. To the extent a response is necessary, Department denies Paragraph 51.

52. The Department denies the allegations of Paragraph 52.

53. The Department denies the allegations of Paragraph 53.

54. The Department denies the allegations of Paragraph 54.

55. The Department denies the allegations of Paragraph 55 and states that Raytheon is not entitled to the relief requested therein.

56. Paragraph 56 does not contain any allegations that require a response. To the extent a response is necessary, Department denies Paragraph 56.

57. Paragraph 57 does not contain any allegations that require a response. To the extent a response is necessary, Department denies Paragraph 57.

58. In response to Paragraph 58, Title 26 of the Arkansas Code speaks for itself. The Department denies any characterizations or descriptions of Title 26 that go beyond its text.

59. The Department admits that it did not issue Notices of Proposed Assessment for tax years 2012 or 2014 because no such notices were necessary. Raytheon received all notice and process required by the Arkansas Tax Procedure Act with regard to the adjustments made for tax years 2012 and 2014. The Department denies the remaining allegations of Paragraph 59.

60. In response to Paragraph 60, the Department admits that it has assessed income tax and penalties against Raytheon and that interest on those assessments continues to accrue.

61. The Department denies the allegations of Paragraph 61 and states that Raytheon is not entitled to the relief requested therein.

62. Paragraph 62 does not contain any allegations that require a response. To the extent a response is necessary, the Department denies Paragraph 62.

63. In response to Paragraph 63, Title 26 of the Arkansas Code speaks for itself. The Department denies any characterizations or descriptions of Title 26 that go beyond its text. Arkansas Code Annotated § 26-51-718 (Repl. 2020) allows a taxpayer to *petition* for an alternative apportionment method.

64. In response to Paragraph 64, Title 26 of the Arkansas Code speaks for itself. The Department denies any characterizations or descriptions of Title 26 that go beyond its text.

65. The Department denies the allegations of Paragraph 65.

66. The Department denies the allegations of Paragraph 66.

67. The Department denies the allegations of Paragraph 67 and states that Raytheon is not entitled to the relief requested therein.

68. Paragraph 68 does not contain any allegations that require a response. To the extent a response is necessary, the Department denies Paragraph 68.

69. The Department denies the allegations of Paragraph 69.

70. In response to Paragraph 70, *United States v. New Mexico*, 455 U.S. 720 (1982) speaks for itself. The Department denies any characterization, descriptions, or conclusions that go beyond its text.

71. The Department denies the allegations of Paragraph 71 and states that Raytheon is not entitled to the relief requested therein.

72. Paragraph 72 does not contain any allegations that require a response. To the extent a response is necessary, the Department denies Paragraph 72.

73. The Department is without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 73.

74. The Department admits that the State of Arkansas has levied an income tax to which Raytheon is subject. The Department denies the remaining allegations of Paragraph 74.

75. The Department denies the allegations of Paragraph 75.

76. The Department denies the allegations of Paragraph 76.

77. The Department denies the allegations of Paragraph 77 and states that Raytheon is not entitled to the relief requested therein.

78. Paragraph 78 does not contain any allegations that require a response. To the extent a response is necessary, the Department denies Paragraph 78.

79. The Department denies the allegations of Paragraph 79.

80. The Department denies the allegations of Paragraph 80.

81. The Department denies the allegations of Paragraph 81.

82. The Department denies the allegations of Paragraph 82 and states that Raytheon is not entitled to the relief requested therein.

83. Paragraph 83 does not contain any allegations that require a response. To the extent a response is necessary, the Department denies Paragraph 83.

84. The Department denies the allegations of Paragraph 84. Ark. Const. Art. 16 § 13 speaks for itself.

85. The Department denies the allegations of Paragraph 85.

86. The Department denies the allegations of Paragraph 86.

87. The Department denies the allegations of Paragraph 87.

88. The Department denies the allegations of Paragraph 88.

89. The Department denies the allegations of Paragraph 89 and states that Raytheon is not entitled to the relief requested therein.

90. The Department denies that Raytheon is entitled to any of the relief requested in Paragraph 90 or any of its subparagraphs.

91. The Department denies that Raytheon is entitled to any of the relief requested in the paragraph beginning "WHEREFORE."

92. The Department denies all allegations not specifically admitted to herein.

93. At no time during the tax years at issue in Raytheon's Complaint did Arkansas law allow a taxpayer to elect to use a three-factor, equally weighted apportionment formula to calculate its corporate income tax.

94. The Complaint should be dismissed pursuant to Rule 8 and Rules 12(b) of the Arkansas Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

95. Raytheon has failed to state a claim for violation of the Supremacy Clause, the Dormant Commerce Clause, the Due Process Clause, or any other portion of the United States Constitution. Those claims should be dismissed pursuant to Ark. R. Civ. P. 12(b)(6).

96. Raytheon has failed to state a claim for illegal exaction and that claim should be dismissed pursuant to Ark. R. Civ. P. 12(b)(6).

97. The Department asserts the affirmative defenses of estoppel, unclean hands, laches, release, statute of limitations, and waiver.

98. The Department asserts that all or part of the Complaint is barred by the applicable limitations period and should be dismissed accordingly.

99. Based on its certificate of service, Raytheon has failed to comply with Ark. Code Ann. § 16-111-111 (Supp. 2019) by serving a copy of its Complaint on the Attorney General.

100. Raytheon has failed to comply with Ark. R. Civ. P. 10(d) in that none of the numerous documents referred to in its Complaint are attached thereto.

101. The Department denies that Raytheon is entitled to attorney's fees. Ark. Code Ann. § 26-18-507 (Repl. 2020) only provides for recovery of attorney's fees if the hearing officer rules in the taxpayer's favor. Because the Hearing Officer sustained the assessments and refund denials against Raytheon, Raytheon cannot satisfy this statutory prerequisite to the recovery of attorney's fees.

102. The Department reserves the right to make the arguments and pursue the defenses contained in its previous motions, responses, and replies filed in this matter and nothing herein is intended to waive any of those arguments or defenses.

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



Wherefore, Larry Walther, in his official capacity as Secretary of the Department of Finance and Administration of the State of Arkansas prays that the Complaint be dismissed, that Raytheon take nothing, and for all other relief to which it is or may become entitled.

Respectfully submitted,

ARKANSAS DEPARTMENT OF  
FINANCE AND ADMINISTRATION,  
LARRY WALTHER, SECRETARY

By:



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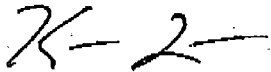
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was filed with the Clerk of Court, and duly served on the following via e-mail, this 21st day of April 2021:

John R. Tisdale  
Rodney P. Moore  
Michael A. Thompson  
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\_\_\_\_\_  
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