

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: October 2, 2023

RE: *Spring Valley Rod and Gun Club LLC and Spring Valley Anglers LLC, vs. Larry W. Walther, in his official capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration*, in the Benton County Circuit Court, Case No. 04CV-22-1750

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

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

As of the date of this memo, Spring Valley owes \$429,572.89 in taxes, \$144,525.16 in penalties, and \$212,385.93 in interest for the tax period May 1, 2014 through December 31, 2019.

The parties have reached a settlement agreement. A copy of the Settlement Agreement is attached. Spring Valley has agreed to pay the entire tax due (\$429,572.89) over a four-year period in exchange for the Department’s waiver of all penalties and interest (approximately \$356,911.09). 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.



State of Arkansas
Bureau of
Legislative Research

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: October 2, 2023			
Agency:	Arkansas Department of Finance and Administration	Phone:	501-682-7030
E-mail:	alicia.austin.smith@dfa.arkansas.gov / brad.young@dfa.arkansas.gov	Contact:	Alicia Austin Smith / Brad Young
1. STYLE OF THE CASE BEING LITIGATED			
Spring Valley Rod and Gun Club LLC and Spring Valley Anglers LLC v. Larry Walther, in his Official Capacity as Secretary of DFA			
2. IDENTITY OF THE TRIBUNAL BEFORE WHICH THE MATTER HAS BEEN FILED (COURT)			
Benton County Circuit Court			
3. BRIEF DESCRIPTION OF THE ISSUES INVOLVED			
Appeal of sales tax assessment.			
3A. OTHER DESCRIPTION INFORMATION			
Docket Number	04CV-22-1750		
Date Filed	July 14, 2022		
Defendant	Larry Walther, in his Official Capacity as Secretary of the Arkansas Department of Finance and Administration		
Defendant Attorney	Brad Young		
Plaintiff	Spring Valley Rod and Gun Club LLC and Spring Valley Anglers LLC		
Plaintiff Attorney	J.R. Carroll		
4. ANY OTHER RELEVANT INFORMATION			
4A. OTHER RELEVANT INFORMATION			
Case History	Appeal under the Arkansas Tax Procedure Act		
Relief Sought	Reversal of Sales Tax Assessment		
Current Status	Conditional settlement reached pending subcommittee approval		

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

SPRING VALLEY ROD AND GUN
CLUB LLC and SPRING VALLEY
ANGLERS LLC,

PLAINTIFFS

v.

Case No. 04CV-22-1750

LARRY W. WALTHER, in his official
capacity as cabinet secretary of the
ARKANSAS DEPARTMENT OF FINANCE
AND ADMINISTRATION,

DEFENDANT

AMENDED COMPLAINT

Plaintiffs Spring Valley Rod and Gun Club LLC ("Spring Valley Rod and Gun Club") and Spring Valley Anglers, LLC ("Spring Valley Anglers") (together "Plaintiffs" and "Spring Valley") for their Complaint against Defendant Larry W. Walther, in his official capacity as cabinet secretary of the Arkansas Department of Finance and Administration ("Defendant"), an appeal of a notice of final assessment under the Arkansas Tax Procedure Act, Ark. Code Ann. §§ 25-15-101, *et seq.* and request for declaratory relief.

Parties, Jurisdiction, and Venue

1. Spring Valley Rod and Gun Club is an Arkansas Limited Liability Company with its principal place of business at 4044 Caerleon Cir., Bentonville, Benton County, Arkansas 72713.
2. Spring Valley Anglers is an Oklahoma Limited Liability Company registered to do business in Arkansas and with a registered agent located at 23525 W Hwy 102, Maysville, AR 72747.

3. Spring Valley operates a private hunting and fishing club in Benton County, Arkansas.

4. Defendant Larry W. Walther is the Cabinet Secretary of the Arkansas Department of Finance and Administration, with offices at DFA Building 1509 W 7th St, Rm 401, Little Rock, AR 72201, and mailing address of PO Box 3278, Little Rock, AR 72203

5. This action is a review and appeal of the Defendant's June 14, 2022, final assessment issued to Spring Valley (Docket Numbers 22-342, 22-343, and 22-344) pursuant to Ark. Code Ann. § 25-15-405, and request for declaratory relief.

Additional Allegations

6. Spring Valley is a hunting and fishing club.

7. Members are exclusive members of Spring Valley and may utilize its property for hunting and fishing.

8. Each member is required to enter into a separate membership agreement ("Membership Agreement") and pays initiation and membership fees, which are paid on a regular basis and solely for the privilege of membership ("Membership Dues").

9. Each member agrees to pay the Membership Dues to Spring Valley at the time a Membership Agreement is executed and if the member and Spring Valley elect to continue membership annually.

10. On June 15, 2020, the Defendant issued a notice of proposed assessment to Spring Valley Anglers, finding the Membership Dues were subject to gross receipts tax and seeking taxes, penalties, and interest.

11. On July 10, 2020, Spring Valley Rod and Gun Club submitted a protest of assessment to the Defendant pursuant to Ark. Code Ann. § 26-18-405 ("Protest").

12. A hearing on the Protest was held on May 10, 2022, and on May 17, 2022, an administrative law judge issued a decision (Docket Numbers 22-342, 22-343, and 22-344) (“Decision”) (available at ark.org/dfa-act896/index.php/search/decision).

13. On June 14, 2022, the Defendant issued a notice of final assessment to Spring Valley Rod and Gun Club, setting forth a final assessment of tax, penalty, and interest (“Final Assessment”).

14. The Final Assessment is erroneous and taxes Membership Dues in contravention of Arkansas law and without legal basis.

15. There is no authority for Defendant to levy excise, or any other, taxes on the Membership Dues. *Jefferson Coop Gin v. Milam*, 255 Ark. 479, 500 S.W.2d 932 (1973) (“It is the general rule that a tax cannot be imposed except by express words indicating that purpose. The intention of the legislature is to be gathered from a consideration of the entire act, and where there is ambiguity or doubt it must be resolved in favor of the taxpayer, and against the taxing power.”); *Pledger v. Grapevine, Inc.*, 302 Ark. 18, 20 21, 786 S.W.2d 825, 826 (1990). Defendant has the burden of proving the propriety of the tax, and all doubts and ambiguities must be resolved in favor of the taxpayer. Ark. Code Ann. § 26-18-313; *see also Pledger v. Troll Book Clubs, Inc.*, 316 Ark. 195, 197, 871 S.W.2d 389, 390 (1994) (citing *Leathers v. A & B Dirt Movers, Inc.*, 311 Ark. 320, 325, 844 S.W.2d 314, 316 (1992)).

16. Defendant and the Final Assessment rely on Ark. Code Ann. § 26-52-301(5) and Arkansas Gross Receipts Tax Rule GR-11(A). Decision, at pp. 17-20.

17. Ark. Code Ann. § 26-52-301 states, in part:

(5) Tickets or admissions to places of amusement or to athletic, entertainment, or recreational events, or fees for access to or the use of amusement, entertainment, athletic, or recreational facilities;

Ark. Code Ann. § 26-52-301.

18. Ark. Code Ann. § 26-52-301 does not permit Defendant to tax the Membership Dues.

19. Further, Arkansas Gross Receipts Tax Rule GR-11¹ states, in part:

GR-11. SALES OF TICKETS, DUES, OR FEES:

A. The gross receipts or gross proceeds derived from all sales of tickets or admissions to places of amusement, or to athletic, entertainment or recreational events are subject to the tax. Fees for the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes, tickets, dues, fees or admissions are subject to the tax; except such sales by municipalities are exempt. All admissions or fees paid for the privilege of having access to places of amusement, or to athletic, entertainment or recreational events are subject to tax, regardless of whether the fee charged is called a "membership" and allows access for one or more times, or for a fixed period of time. Tickets or admissions purchased by members for the purpose of having access to special entertainment events, even though these events may be held on a regular basis, are also subject to the tax regardless of who collects the fees for the ticket or admission.

Arkansas Gross Receipts Tax Rule GR-11.

20. GR-11 cannot expand the Defendant's taxing authority.

21. GR-11 does not permit taxation of the Membership Dues. *See also* Arkansas Revenue Legal Opinions 20160204, 20180218, and 20190116.

22. Upon information and belief, the Defendant has not taxed the membership dues of other similarly situated entities, other hunting and fishing clubs in the State of Arkansas.

23. Upon information and belief, Defendant has unlawfully selected Plaintiffs for discriminatory treatment by subjecting them to taxes not imposed on others of the same class.

24. There is no rational basis for the Defendant's disparate treatment of Plaintiffs.

25. Upon information and belief, the Defendant's disparate treatment of Plaintiffs is a violation of Plaintiffs' Equal Protection under the Fourteenth Amendment of the United States

¹ The authority for this rule is Ark. Code Ann. § 26-52-301(5)-(6).

Constitution and under Article II of the Arkansas Constitution, including §§ 2, 3, 18, 21, and 29 thereof.

Judicial Review of Final Assessment under the Arkansas Tax Procedure Act

26. Plaintiffs incorporate by reference all allegations set forth in this Complaint.

27. Pursuant to Ark. Code Ann. § 28-18-406, Plaintiffs appeal the Final Assessment.

28. Defendant should submit all records and proceedings relating to its action, up to and including the Final Assessment, to the Court.

29. The Court should reverse the Final Assessment and hold that Spring Valley Rod and Gun Club and Spring Valley Anglers owe nothing.

30. The Court should award Spring Valley Rod and Gun Club and Spring Valley Anglers their costs and attorney's fees. Ark. Code Ann. § 26-18-406(e).

Declaratory Judgment

31. Plaintiffs incorporate by reference all allegations set forth in this Complaint.

32. In light of the Final Assessment, there is a genuine dispute concerning whether Ark. Code Ann. § 26-52-301 permits the taxation of Membership Dues.

33. There is a genuine dispute about whether the Final Assessment properly interprets and applies Arkansas law.

34. The Court should declare that Ark. Code Ann. § 26-52-301 does not permit taxation of the Membership Dues.

35. Further, there is a genuine dispute about whether the Defendant unlawfully targeted Plaintiffs for taxation of their membership dues, while not taxing membership dues of similarly situated entities.

36. Accordingly, pursuant to Ark. Code Ann. § 16-111-101 to 111 and Ark. R. Civ. P. 57, Spring Valley Rod and Gun Club and Spring Valley Anglers seek a declaration of rights, status,

and other legal relations related to Ark. Code Ann. § 26-52-301, and any other statute or rule and regulation thereunder (including GR-11), 'including but not limited to whether or not the Membership Dues are taxable and whether the Defendant has properly interpreted and applied Arkansas law.

37. Further, Spring Valley Rod and Gun Club and Spring Valley Anglers pray this Court declare that Defendant's decision to tax Plaintiffs' membership dues violated Plaintiffs' Equal Protection under the Fourteenth Amendment of the United States Constitution and under Article II of the Arkansas Constitution, including §§ 2, 3, 8, 18, 21, and 29 thereof.

WHEREFORE, Spring Valley Rod and Gun Club and Spring Valley Anglers respectfully request that the Court rule that the Final Assessment was erroneous and that Spring Valley Rod and Gun Club and Spring Valley Anglers owe nothing in relation to the Final Assessment; grant judgment to Spring Valley Rod and Gun Club and Spring Valley Anglers against the Defendant, reversing, modifying, or setting aside, in whole or in part the Final Assessment; rule that Defendant violated Plaintiffs' right to equal protection under the law; and grant Spring Valley Rod and Gun Club and Spring Valley Anglers their costs, attorney's fees, and all other just and proper relief.

Respectfully submitted,

KUTAK ROCK LLP

By: J.R. Carroll

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*Attorneys for Spring Valley Rod and
Gun Club LLC and Spring Valley Anglers LLC*

CERTIFICATE OF SERVICE

I hereby certify that I filed a copy of the foregoing document on February 24, 2023, via the Court's Electronic Filing System which will effectuate service of the same upon all counsel of record as follows:

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Andrew Ivey
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/s/ J.R. Carroll
J.R. Carroll

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

**SPRING VALLEY ROD AND GUN
CLUB LLC AND SPRING VALLEY
ANGLERS LLC**

PLAINTIFFS

vs.

CASE NO.: 04CV-22-1750

**LARRY WALTHER, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY OF THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION**

DEFENDANT

AMENDED ANSWER

Now comes Larry Walther, Secretary of the Arkansas Department of Finance and Administration ("Department"), and files this, his Answer to Plaintiffs' Amended Complaint:

Parties, Jurisdiction, and Venue

1. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.
2. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.
3. The Department admits the allegations in paragraph 3.
4. The Department admits the allegations in paragraph 4.
5. Paragraph 5 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 5.

Additional Allegations

6. The Department admits the allegations in paragraph 6.
7. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.
8. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8. The Department denies that the members pay initiation and membership fees “solely for the privilege of membership.”
9. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.
10. With respect to the allegations in paragraph 10, the Notice of Proposed Assessment speaks for itself.
11. The Department admits the allegations in paragraph 11.
12. The Department admits the allegations in paragraph 12.
13. The Department admits the allegations in paragraph 13.
14. The Department denies the allegations in paragraph 14.
15. The Department denies the allegations in paragraph 15. The authorities cited in that paragraph speak for themselves.
16. With respect to the allegations in paragraph 16, Ark. Code Ann. § 26-52-301(5), Arkansas Gross Receipts Tax Rule GR-11(A), and the administrative hearing decision speak for themselves.
17. With respect to the allegations in paragraph 17, Ark. Code Ann. § 26-52-301 speaks for itself.
18. The Department denies the allegations in paragraph 18.

19. With respect to the allegations in paragraph 19, Ark. Code Ann. § 26-52-301(5)-(6) and Arkansas Gross Receipts Tax Rule GR-11 speak for themselves.

20. Paragraph 20 contains a conclusion of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 20. The text of Arkansas Gross Receipts Tax Rule GR-11 speaks for itself.

21. Paragraph 21 contains a conclusion of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 21. The legal authorities cited in that paragraph speak for themselves.

22. The Department denies the allegations in paragraph 22.

23. The Department denies the allegations in paragraph 23.

24. The Department denies the allegations in paragraph 24.

25. The Department denies the allegations in paragraph 25.

Judicial Review of Final Assessment under the Arkansas Tax Procedure Act

26. The Department incorporates by reference all responses set forth in this answer.

27. Paragraph 27 contains a conclusion of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 27.

28. The Department denies the allegations in paragraph 28.

29. Paragraph 29 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 29 and denies that plaintiffs are entitled to the requested relief.

30. Paragraph 30 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 30 and denies that plaintiffs are entitled to the requested relief.

Declaratory Judgment

31. The Department incorporates by reference all responses set forth in this answer.

32. Paragraph 32 contains a conclusion of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 32.

33. Paragraph 33 contains a conclusion of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 33.

34. Paragraph 34 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 34 and denies that plaintiffs are entitled to the requested relief.

35. The Department denies the allegations in paragraph 35.

36. Paragraph 36 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 36 and denies that plaintiffs are entitled to the requested relief.

37. Paragraph 37 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 37 and denies that plaintiffs are entitled to the requested relief.

38. The paragraph that begins with the word "WHEREFORE" contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in that paragraph and denies that plaintiffs are entitled to the requested relief.

39. The Department denies each and every material allegation contained in the plaintiffs' complaint that the Department has not specifically admitted.

40. To the extent any of the headings in the complaint contain allegations that require response, the Department denies the allegations contained in those headings.

Affirmative Defenses

41. The Court should dismiss the plaintiffs' claim for attorney's fees because the complaint fails to allege facts entitling the plaintiffs to attorney's fees under Ark. Code Ann. § 26-18-406(e) or any other statute.

42. The Court should dismiss the plaintiffs' claim for declaratory judgment because Ark. Code Ann. § 26-18-406 provides the sole alternative methods for seeking relief from a written decision of the Department establishing a deficiency in tax. Ark. Code Ann. § 26-18-406(d)(1).

43. The assessment of interest on tax deficiencies is statutorily mandated. Ark. Code Ann. § 26-18-508.

44. The assessment of penalty for failure to file a tax return is statutorily mandated. Ark. Code Ann. § 26-18-208.

45. For purposes of an equal protection analysis, the class of taxpayers to which plaintiffs belong – *i.e.*, taxpayers who: (1) conducted business in Arkansas without obtaining a sales and use tax permit; (2) collected sales tax from their customers without remitting it to the state; (3) collected dues for membership in their private club that sells alcohol and that is required to obtain a permit from the Alcoholic Beverage Control Board; (4) appeared to have altered invoices before providing them to the auditor; and (5) charged a fee for access to recreational activities and facilities without collecting and remitting sales tax – is not a suspect class.


46. The Department had a rational basis for auditing plaintiffs and for assessing sales and use tax.

PRAYER

FOR THESE REASONS, Defendant, Larry Walther, Secretary of the Arkansas Department of Finance and Administration, prays that the Court deny the Plaintiffs' Amended Complaint in all respects as to the relief plaintiffs have requested against the Department and for all other just and proper relief to which the Department may be entitled.

Respectfully Submitted,

Arkansas Department of Finance and
Administration
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By: 
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CERTIFICATE OF SERVICE

On March 15, 2023, I served a copy of this document on the following person(s) by electronic transmission:

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(479) 973-4200

Attorneys for Plaintiffs


Bradley B. Young

SETTLEMENT AGREEMENT

September 5th

This Settlement Agreement ("Agreement") is entered into as of August 1, 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 Spring Valley Rod and Gun Club LLC and Spring Valley Anglers LLC (collectively, "Spring Valley"). Spring Valley is the plaintiff, and the Department is the defendant, in Case No. 04CV-22-1750, *Spring Valley Rod and Gun Club LLC and Spring Valley Anglers LLC, vs. Larry W. Walther, in his official capacity as Cabinet Secretary of the Arkansas Department of Finance and Administration*; in the Circuit Court of Benton County, Arkansas (the "lawsuit"). The terms of this Agreement are authorized by law, including Ark. Code Ann. § 26-18-705(b)(1) of the Arkansas Tax Procedure Act.

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

2. Spring Valley will pay the full principal amount of the outstanding assessments of sales tax, use tax, and special excise tax for the period ending April 30, 2019 in the amount of \$429,572.89, and the Department will accept this payment as full and final settlement of all of Spring Valley's sales tax liability for this period.

- a. Spring Valley will make a payment of \$99,435.70 on or before the 30th day from the effective date of this Agreement.
- b. In addition to the one-time payment described by paragraph 2(a) above, Spring Valley will satisfy the remaining tax balance of \$330,137.19 by making additional monthly payments as follows:
 - i. A monthly payment of \$6,877.86 will become due on the 15th day of each consecutive month following the effective date of this Agreement, beginning on the 15th day from the effective date of this Agreement and continuing through the 47th consecutive month following the effective date of this Agreement.
 - ii. Spring Valley's final payment of \$6,877.77 will become due on the 15th day of the 48th month following the effective date of this Agreement.

3. Upon receipt of all of the payments described by paragraph 2(a) and (b) above, the Department will waive and release all claims against Spring Valley for interest and penalties related to the assessment for the period ending April 30, 2019.

4. Spring Valley must timely collect and remit the required sales, use, and excise taxes on its taxable transactions. As of October 1, 2023, membership dues paid to a hunting or fishing club that are paid to obtain access to land for the primary purpose of hunting or fishing will be excluded from sales tax as long as they are separately stated from taxable transactions.

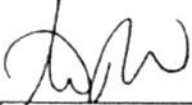
5. The Agreement will be submitted for approval to the Legislative Council. The Department and Spring Valley agree to work cooperatively and to use their best efforts to secure approval from the Legislative Council. The parties understand and agree that such legislative approval is a condition precedent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

6. Within thirty (30) calendar days from the date that this Agreement receives legislative approval, Spring Valley will remit the funds described by paragraph 2(a) above, remit the initial monthly payment described by paragraph 2(b)(i) above, and file a motion to dismiss the lawsuit with prejudice in the Circuit Court of Benton County, Arkansas. Payments submitted by Spring Valley under this agreement shall be made electronically via the Arkansas Taxpayer Access Point (ATAP) system.

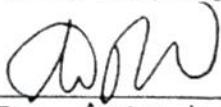
7. This Agreement will become effective immediately upon approval by the Legislative Council.

SIGNED this 5th day of September ~~August~~ 2023.

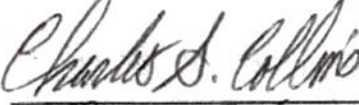
Spring Valley Spring Valley Rod
and Gun Club LLC


By: ADAM MARIS
Title: President

Spring Valley Anglers LLC


By: ADAM MARIS
Title: President

Department of Finance &
Administration


By: CHARLES S. COLVIN
Title: COMMISSIONER OF REVENUE
Arkansas Department of Finance and
Administration