



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

OFFICE OF THE SECRETARY

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January 10, 2025

Sen. Terry Rice, Co-Chair
Rep. Jeff Wardlaw, Co-Chair
Arkansas Legislative Council

Sen. Jonathan Dismang, Co-Chair
Rep. Lane Jean, Co-Chair
Joint Budget Committee

Re: Act 557 of 2023 Report: Litigation Resolved in 2024
Department of Finance and Administration --- Office of Revenue Legal Counsel

Dear Sens. Dismang and Rice and Reps. Jean and Wardlaw:

Act 557 of 2023 requires the Secretary of the Department of Finance and Administration to give notice of certain state tax litigation resolved during the prior calendar year. This report includes state tax litigation that meets the following requirements:

- (a) Originated in state circuit court;
- (b) Pertained to a tax administered by the division;
- (c) Made the secretary a defendant;
- (d) Reached a final resolution in the previous calendar year with no further right of appeal for either party; and
- (e) The amount in controversy exceeded twenty-five thousand dollars (\$25,000).

**1. *Trotter Ford, Inc. et al v. Arkansas Dept. of Fin. and Admin.*
Jefferson County Circuit Court, Case Nos. 35CV-22-238; 35CV-22-240**

The plaintiffs, two vehicle dealerships, filed suit against the Department to oppose sales tax assessments resulting from the use of vehicles held in the plaintiffs' inventory. The plaintiffs argued that the Department could not collect tax because the vehicles were later resold and that, because the plaintiffs violated unrelated laws governing dealer tags, the Department could only fine the plaintiffs instead of assessing tax. The Supreme Court sustained the Department's assessments (\$25,714.71 of tax), finding the use of the vehicles constituted a taxable withdrawal from stock.

2. ***DK Trading & Supply, LLC v. Hudson***
Pulaski County Circuit Court, Case No. 60CV-22-8607

The plaintiff sued the Department for a refund of motor fuel tax. The plaintiff purchases and stores denatured ethanol in a Little Rock facility until it can sell the denatured ethanol for blending with gasoline. Over a two-year period, the plaintiff remitted motor fuel tax on its denatured ethanol purchases. Plaintiff's lawsuit alleged that the denatured ethanol was not a "motor fuel" within the meaning of the applicable tax statutes and, therefore, the purchases were not subject to the motor fuel tax. The Department defended the lawsuit on procedural grounds, arguing the plaintiff had not filed the refund request as required by law and had therefore allowed the statutes of limitation to expire. The circuit court granted summary judgment for the plaintiff and ordered the Department to refund \$13,729,513.89 in motor fuel tax plus interest.

3. ***Entergy Corporation, and its Subsidiaries, System Energy Resources, Inc.; Entergy Global, LLC; and Entergy Power Marketing Holding I, Inc. v. Walther***
Pulaski County Circuit Court, Case No. 60CV-22-8440

This was a corporation income tax matter. Following an audit, the plaintiffs challenged assessments of corporation income tax. The parties reached a settlement agreement in which they each agreed to concede disputed audit items. Plaintiffs agreed to pay tax due in the amount of \$7,864,531.00 on the audit items that it conceded. The Department agreed to adjust the audit based on the audit items that it conceded and to waive the remaining penalty and interest. After audit adjustments, the remaining amount of penalty and interest to be waived was approximately \$6,300,989.64. The settlement was approved by ALC, and the plaintiffs dismissed the case.

4. ***ECS House Industries, Inc. v. Hudson***
Cross County Circuit Court, Case No. 19CV-23-84

Plaintiff, ECS House Industries, Inc., sued the Department contesting the assessment of sales tax on its sales of wastewater treatment equipment. ECS contended that the otherwise taxable equipment sales were exempt under Arkansas Code § 26-52-402(a)(3). The parties reached a settlement that was approved by ALC. Plaintiffs agreed to pay the remaining tax due (\$38,168.07) in exchange for the Department's waiver of all remaining interest (approximately \$16,525.17).

5. ***Asplundh Tree Expert LLC v. Hudson***
Pulaski County Circuit Court, Case No. 60CV-23-4090

Plaintiff filed suit against the Department opposing a sales and use tax assessment. Plaintiff argued that its invoices only included non-taxable services such as tree-trimming, but the auditor determined that plaintiff's invoices also included taxable services such as lawn maintenance. The parties reached a settlement that was approved by ALC. Plaintiffs agreed to pay \$382,500.00 in exchange for the Department's waiver of all remaining interest.

6. *Murphy Oil USA, Inc. v. Hudson*
Union County Circuit Court, Case No. 70CV-20-84

This was a corporation income tax case. The plaintiff's parent company, Murphy Oil, Inc., created the plaintiff through a corporate restructuring that spun off the parent company's chain of gas stations into an independent business entity. As part of the restructuring, the plaintiff took a \$650,000,000 loan in order to pay a \$650,000,000 dividend to Murphy Oil, Inc. The plaintiff claimed interest expenses that it incurred on the loan as business expenses and apportioned the corresponding corporate income tax deduction among the states where the plaintiff conducted business. Later, the plaintiff filed an amended Arkansas corporation income tax return that purported to treat the interest expenses as non-business expenses entirely attributable to Arkansas, which would have resulted in a corporate income tax refund of \$4,005,398 plus interest. By treating the interest expenses inconsistently among the states, plaintiff sought to deduct almost 200% of the interest expenses. The plaintiff classified the interest expenses as business expenses in every other state where it conducted business and did not file amended returns in those other states. The Department denied the refund request, and the plaintiff filed the lawsuit. The parties filed motions for summary judgment. The circuit court granted summary judgment in Murphy's favor. The Department appealed the circuit court's decision to the Arkansas Supreme Court. On December 12, 2024, the Supreme Court ruled in Murphy's favor finding the interest expenses were non-business expenses. The Department then refunded to Murphy \$4,005,398 in corporate income tax plus interest.

Please do not hesitate to contact me if I can provide additional information.

Sincerely,

A handwritten signature in blue ink, appearing to be "J. Hudson", written in a cursive style.

Jim Hudson, Secretary
Arkansas Department of Finance and
Administration