

IN THE CIRCUIT COURT OF MISSISSIPPI COUNTY, ARKANSAS
CHICKASAWBA DISTRICT
SIXTH DIVISION

FILED
SEP 29 2009
DONNA BRAY
CLERK

NUCOR CORPORATION

PLAINTIFF

VS.

NO. CV-2009-353

**RICHARD WEISS, DIRECTOR,
DEPARTMENT OF FINANCE AND
ADMINISTRATION**

DEFENDANT

ANSWER

The Defendant, Richard Weiss, Director of the Department of Finance and Administration (hereinafter referred to as "the Director" or "Defendant"), for his answer to the Plaintiff's Complaint, does hereby respond as follows:

1. The Defendant admits Paragraph 1 of the Plaintiff's Complaint to the extent that a final determination of the proceedings at issue in Plaintiff's Complaint was entered on July 7, 2009, and that the final determination upheld the assessment of sales and use tax on the cost of seventeen (17) capital projects undertaken by the Plaintiff to expand the production of its Mississippi County, Arkansas, steel mill (the "Project") between January 1, 2005, and December 31, 2006. However, the Defendant denies the remaining allegations contained in Paragraph 1 of the Plaintiff's Complaint, as the Plaintiff does not allege as a factual matter that the requests for refund were denied, which is a requirement of Ark. Code Ann. §.26-18-507. As no denial has been pled or factually asserted, there can be no protest thereof; thus the remainder of Paragraph 1 is denied. Defendant affirmatively denies that the tax assessment as referenced in Paragraph 1 was erroneous.

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2. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 2 of the Plaintiff's Complaint, as such, the averments contained in Paragraph 2 are denied.

3. The Defendant admits that he is the Director of the Department of Finance and Administration. The Defendant admits that in suits of this nature he is sued in his official capacity. The Defendant admits that Ark. Code Ann. § 26-17-304 identifies the Director of the Department of Finance and Administration as the proper defendant in this type of action.

4. The Defendant admits the allegations contained in Paragraph 4 of the Plaintiff's Complaint.

5. The Defendant admits the allegations contained in Paragraph 5 of the Plaintiff's Complaint.

6. The Defendant admits the allegations contained in Paragraph 6 of the Plaintiff's Complaint.

7. The Defendant admits the allegations contained in Paragraph 7 of the Plaintiff's Complaint.

8. The Defendant admits the allegations contained in Paragraph 8 of the Plaintiff's Complaint.

9. The Defendant admits that an Administrative Law Judge was appointed by the Director to hear Nucor's administrative appeal, and that such Administrative Law Judge held a hearing in the Department's Northeast Audit District offices in Jonesboro, Arkansas, on November 20, 2008. With respect to the remaining allegations contained in

Paragraph 9, the Defendant denies such allegations to the extent that the allegations fail to assert that the Department presented evidence in support of the Proposed Assessment.

10. The Defendant admits the allegations contained in Paragraph 10 of the Plaintiff's Complaint.

11. The Defendant admits the allegations contained in Paragraph 11 of the Plaintiff's Complaint.

12. The Defendant admits the allegations contained in Paragraph 12 of the Plaintiff's Complaint.

13. The Defendant admits that the Deputy Director, acting on behalf of the Director, issued a letter, which constituted the final decision of the Department, on July 7, 2009 (the "Revision Letter"), and that the Plaintiff adequately cites a portion of the Revision Letter. Stating affirmatively, the Deputy Director, after reviewing the hearing decision, the case-file documentation, the documents entered into evidence at the hearing, and applicable laws and rules, states in the Revision Letter that the hearing decision should be revised based on his application of the laws and rules to the facts in the case. To the extent any further response is required, the other allegations contained in Paragraph 13 of the Plaintiff's Complaint are denied.

14. The Defendant admits the allegations contained in Paragraph 14 of the Plaintiff's Complaint.

15. The Defendant admits that the Plaintiff adequately cited Ark. Code Ann. § 26-18-406(c), but is without sufficient information to deny or affirm the allegations set forth in Paragraph 15 of the Plaintiff's Complaint; as such, the allegations contained therein are denied.

16. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 16 of the Plaintiff's Complaint; as such, the averments contained in Paragraph 16 are denied.

17. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 17 of the Plaintiff's Complaint, as such, the averments contained in Paragraph 17 are denied.

18. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 18 of the Plaintiff's Complaint, as such, the averments contained in Paragraph 18 are denied.

19. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 19 of the Plaintiff's Complaint, as such, the averments contained in Paragraph 19 are denied.

20. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 20 of the Plaintiff's Complaint, as such, the averments contained in Paragraph 20 are denied.

21. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 21 of the Plaintiff's Complaint, as such, the averments contained in Paragraph 21 are denied.

22. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 22 of the Plaintiff's Complaint, as such, the averments contained in Paragraph 22 are denied.

23. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 23 of the Plaintiff's Complaint, as such, the averments contained in Paragraph 23 are denied.

24. Paragraph 24 contains a conclusion of law rather than factual allegations upon which relief can be granted; however, to the extent that an answer is required, the Defendant denies all allegations contained in Paragraph 24.

25. The Defendant admits that the Plaintiff adequately cites, in part, Ark. Code Ann. § 26-52-402 in Paragraph 25. There are no allegations of fact; however, to the extent that a response is required, the Defendant denies any allegations contained in Paragraph 25. Defendant affirmatively denies that Plaintiff is entitled to any relief under the cited Arkansas Code section.

26. The Defendant admits that the Plaintiff adequately cites, in part, Ark. Code Ann. § 26-53-114 in Paragraph 26. There are no allegations of fact; however, to the extent that a response is required, the Defendant denies any allegations contained in Paragraph 26. Defendant affirmatively denies that Plaintiff is entitled to any relief under the cited Arkansas Code section.

27. The Defendant admits that the Plaintiff adequately cite, in part, GR-55 in Paragraph 27. There are no allegations of fact; however, to the extent that a response is required, the Defendant denies any allegations contained in Paragraph 27. Defendant affirmatively denies that Plaintiff is entitled to any relief under the cited Gross Receipts Tax Rule.

28. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 28 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 28 are denied.

29. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 29 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 29 are denied.

30. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-22 described in Paragraph 30; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

31. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 31 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 31 are denied.

32. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-23 described in Paragraph 32; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

33. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 33 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 33 are denied.

34. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-

29 described in Paragraph 34; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

35. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 35 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 35 are denied.

36. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-05 described in Paragraph 36; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

37. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 37 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 37 are denied.

38. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 38 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 38 are denied.

39. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2004-10 described in Paragraph 39; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

40. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 40 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 40 are denied.

41. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2005-24 described in Paragraph 41; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

42. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 42 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 42 are denied.

43. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-20 described in Paragraph 43; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

44. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 44 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 44 are denied.

45. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2004-11 described in Paragraph 45; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

46. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 46 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 46 are denied.

47. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2005-

22 described in Paragraph 47; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

48. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 48 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 48 are denied.

49. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2005-23 described in Paragraph 49; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

50. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 50 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 50 are denied.

51. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2005-30 described in Paragraph 51; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

52. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 52 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 52 are denied.

53. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-17 described in Paragraph 53; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

54. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 54 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 54 are denied.

55. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-02 described in Paragraph 55; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

56. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 56 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 56 are denied.

57. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-24 described in Paragraph 57; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

58. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 58 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 58 are denied.

59. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-28 described in Paragraph 59; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

60. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 60 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 60 are denied.

61. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-32 described in Paragraph 61; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

62. The Defendant is without sufficient information to deny or affirm the allegations set forth in Paragraph 62 of the Plaintiff's Complaint, as such, the allegations contained in Paragraph 62 are denied.

63. The Defendant admits that the Plaintiff was assessed state and local Sales and Use Tax on items during the Audit Period, one of which was a part of Project 2006-35 described in Paragraph 63; however, the Defendant is without sufficient information to admit or deny the remaining allegations, and they are therefore denied.

64. The Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 64; therefore, the allegations are denied.

65. The Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 65; therefore, the allegations are denied.

66. The Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 66; therefore, the allegations are denied.

67. The Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 67; therefore, the allegations are denied.

68. The Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 68; therefore, the allegations are denied.

69. As an affirmative defense, the Defendant asserts that the Complaint fails to state facts upon which relief can be granted Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

70. Any allegations not specifically admitted or responded to herein are hereby denied.

WHEREFORE, the Defendant respectfully requests that Court deny any and all relief requested by the Plaintiff, that the Plaintiff's Complaint filed herein be dismissed, and for all other equitable and proper relief to which Defendant may be entitled.

Respectfully Submitted,
RICHARD WEISS, DIRECTOR
ARKANSAS DEPARTMENT OF
FINANCE AND ADMINISTRATION

BY: *Diane Holitik*
Diane Holitik, Attorney, Ark. Bar #97150
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CERTIFICATE OF SERVICE

I, Diane Holitik, do hereby certify that I have served a true and correct copy of the above and foregoing Answer upon the Plaintiff by depositing same in the U. S. Mail, postage prepaid, addressed to their attorney of record, Mr. Michael O. Parker, Dover Dixon Horne PLLC, 425 W. Capitol Avenue, Suite 3700, Little Rock, Arkansas 72201 on this 29th day of September, 2009.

Diane Holitik
Diane Holitik
Attorney for Defendant