

Moffat County Board of County Commissioners
221 W Victory Way Suite 130 Craig, CO 81625

August 10, 2020

County Board of Equalization Hearing

In attendance: Ray Beck, Chairman; Donald Broom, Vice Chair; Don Cook, Board Member; Erin Miller, Moffat County (Deputy) Clerk & Recorder; Chuck Cobb, Moffat County Assessor; Rebecca Tyree, Moffat County Attorney

Call to Order

County Attorney, Rebecca Tyree, presented a settlement agreement (see attached) to the CBOE from Walmart for their 2019 Business Personal Property Taxes. Tyree contacted Walmart's attorney about settling this prior to the November 3rd district court date. Tyree consulted with County Assessor, Chuck Cobb, to see what numbers would work in the County's favor. A refund of \$1018.00 will be issued to Walmart for Tax Year 2019.

Cobb came before the BOE to remind them of the background of this case and supply the figures associated with it.

Cook moved to approve the settlement agreement with Walmart for 2019 Business Personal Property Taxes. Broom seconded the motion. Motion carried 3-0.

Meeting Adjourned 9:26 am

Submitted by: Erin Miller, (Deputy) Clerk & Recorder

Approved by: Ray Beck
Donald Broom
Don Cook

Approved on: August 18, 2020

Attest by: Erin Miller



SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the 10th day of August, 2020, between WALMART, INC., a Delaware Corporation, f/k/a WAL-MART STORES, Inc., an Arkansas Corporation, (hereafter referred to as "Walmart") and Moffat County Board of Equalization of the State of Colorado, (hereafter may also be referred to as "County").

RECITALS

A. Walmart owns and operates a retail store located at 2000 West Victory Way, Craig, CO 81625 (Store No. 04377).

B. Walmart has personal property in said retail store which includes retail store machinery and equipment, (hereafter referred to as "Business Personal Property").

C. Through their agent, Robert Hill, Esq., Walmart filed a protest with the Moffat County Board of Equalization regarding the Business Personal Property value for their store in Craig for the year 2019. The Assessor recommended to the Moffat County Board of Equalization that the 2019 value should stand.

D. The Moffat County Board of Equalization held a hearing on the Moffat County Assessor's valuation assessment on July 30, 2019. An administrative denial was requested by the Agent (Mr. Hill), and the MCCBOE granted that request and made no changes to Walmart's 2019 personal property value. The Moffat County Board of Equalization mailed their Notice of Decision to legal counsel for Walmart on August 5, 2019.

E. On or about September 4, 2019, Walmart, through their legal counsel, Brian Huebsch, Esq., filed a Complaint - Appeal of Business Personal Property Valuation Under C.R.S. § 39-8-108(1) in the District Court of Moffat County, Colorado, in Moffat County Case No. 2019CV30034. This matter is scheduled to go to trial for three (3) days beginning November 3, 2020.

F. The parties desire to resolve all matters in dispute between them arising out of or relating to the above-mentioned Civil Action, and any incidents arising out of or relating to the facts underlying the Civil Action, and to provide for the dismissal with prejudice of all claims brought in the Civil Action.

AGREEMENT

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. The Parties have met via telephone several times in preparation for this scheduled court case. Both Parties have expressed an interest in resolving this matter prior to trial. The terms agreed to by the Parties are set forth below.

2. The Parties hereby agree to the following table stating the corrected value of Walmart's Business Personal Property for 2019:

| Value | Actual Value | Assessed Value | Tax |
|-----------------------------|--------------|----------------|-------------|
| Original | \$766,261.00 | \$222,216.00 | \$17,997.72 |
| Corrected | \$722,916.00 | \$209,646.00 | \$16,979.62 |
| Difference after Correction | \$43,345.00 | \$12,570.00 | \$1,018.00 |

The Parties agree that County shall take all steps necessary to adjust the assigned value of the Business Personal Property as specified in the above chart, and shall issue a refund payable to Walmart in the amount of \$1,018.00 for Tax Year 2019, as a full and final settlement and resolution of the claims brought or which could have brought in Moffat County Case 2019CV30034, (hereafter referred to as the "Case"). In order to avoid the expense and uncertainty and delay of litigation associated with the Case, the County is paying the above-stated refund amount as a full and final refund for business personal property taxes paid by Walmart based on the personal property tax assessment of the Property for Tax Year 2019.

3. Walmart agrees not to seek further protest and appeal rights or to seek an abatement regarding personal property valuations for 2019 for this subject property located at 2000 W. Victory Way, Craig, CO 81625.

4. Walmart agrees not to seek protest and appeal rights or to seek an abatement regarding personal property valuations for 2018 for this subject property located at 2000 W. Victory Way, Craig, CO 81625.

5. Release and Waiver of Claims. Walmart agrees, on behalf of its principals, agents, successors and assigns, by this Agreement and in exchange for the refund payment described in Section 2, that all disputes giving rise to the Case have been resolved and hereby releases and waives any right, in law or equity, to initiate a subsequent valuation protest or abatement petition or any other action, claim or proceeding concerning or relating to the personal property value or classification for assessment purposes for the tax years of 2018 and 2019. Except as required to enforce any terms of this Agreement, each Party shall be deemed to have released, discharged and acquitted the other Party and any of their respective present, former or future representatives, predecessors, successors, heirs, assigns, officers, directors, employees and agents, from any and all claims, actions, causes of action, judgments or other liabilities of any nature whatsoever, in law or in equity, for damages or costs or otherwise, known or unknown, now existing or arising in the future, based upon, arising from or in any way connected with the value of the personal property for tax years 2018 and 2019 or the claims asserted in the Case.

6. Breach of this Agreement. Any breach of this Agreement, including but not limited to, failure to issue the refund amounts described under Section 2, above, shall give rise to a cause of action for breach of contract.

7. No Admissions of Liability Concerning Assessments or Actual Value. This Agreement is the settlement of disputed claims. By entering into this Agreement, the County does not admit any liability to Walmart for any of the claims asserted in the Case or Walmart's objection to the 2019 assessment of

the Property, and the payment made under this Agreement shall not be construed as an admission of any such liability. Neither Party makes an admission about the actual assessed or fair market value of the Property as of January 1, 2019, or any other admission concerning the assessment of the Property. Further, values, the tax amount and refund amount shall apply to the Property for Tax Year 2019 only, and the Parties expressly stipulate and agree that this Agreement and the compromised values stated herein shall have no relevance to or effect on the County's valuation of, or any dispute related to, the valuation of the Property for future or prior tax years. This Agreement does not constitute any factual or legal precedent or admission whatsoever, but rather reflects the Parties' desire to resolve this matter amicably without additional expense or litigation. The terms of this Agreement may not be used by either Party, or either Party's principals, agents, attorneys, successors or assigns as evidence or otherwise in any proceeding of any kind, including but not limited to any lawsuit, administrative tax appeal or protest, request for abatement of taxes or otherwise, except in an action seeking an interpretation or alleging a breach of this Agreement.

8. Dismissal of Civil Action. In consideration of the terms and conditions set forth herein, Walmart agrees to execute and file a dismissal with prejudice of the Civil Action filed in the District Court of Moffat County, designated as Case Number 2019CV30034 and titled "Wal-Mart Stores, Inc., an Arkansas Corporation v. Moffat County Board of Equalization".

9. Attorneys' Fees, Payment of Experts, and Payment of Costs. The Parties shall each bear their respective attorneys' fees and costs incurred in the Civil Action.

10. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado.

11. Severability of Invalid Provisions. The provisions of this Agreement are declared to be severable. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or application.

12. Authority. The Parties all represent that they have full and complete legal capacity to enter into this Agreement, that the individuals signing this Agreement on behalf of the corporate parties have been duly authorized to execute the Agreement, that the Civil Action, causes of action, claims, demands, damages and controversies described in the Agreement are free and clear of any pledges, charges, equities, claims, covenants, liens or encumbrances, that they are the only persons or entities who have any interest in the claims, demands, obligations or causes of action referred to in this Agreement, and that they have the sole right and exclusive authority to execute this Agreement.

13. Binding on Successors. This Agreement and the agreements, promises, rights and obligations in this Agreement shall run with the Property and are binding upon and inure to the benefit of each of the Parties and their respective transferees, purchasers of property, grantees, heirs, successors, and assigns.

14. No Assignment or Transfer. Walmart represents and warrants that it has not assigned or transferred to anyone or any entity any of the claims or rights it has or may have with respect to the 2019 assessment of the Property.

15. Further Assurances. The Parties agree to cooperate fully and execute any and all documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

16. Interpretation of Agreement. The Parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement: (a) neither Party shall be deemed the drafter of this Agreement for purposes of its interpretation; and (b) the Parties shall attempt in good faith to resolve the dispute prior to initiating any court action.

17. Legal Counsel. Each Party to this Agreement has received independent legal, tax, or other advice the respective party deems appropriate, at his, her or its own expense, with respect to the consequences of making the settlement provided for herein and with respect to the execution of this Agreement, including any and all known and unknown, foreseen or unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims and the consequences thereof, of whatsoever kind and nature, whether suspected or unsuspected. No promise or inducement has been offered to any party hereto except as set forth in this Agreement. The Parties acknowledge that they have read this Agreement and understand all of its terms, and that this Agreement is executed voluntarily, without duress, and with full knowledge of its legal significance.

18. Entire Agreement. This Agreement states and constitutes the entire agreement of the Parties concerning its subject matter and supersedes all prior or contemporaneous agreements, representations and negotiations (written or oral), or discussions concerning its subject matter, including but not limited to, all agreements, representations, negotiations, and discussions (written or oral) made in the course of settlement discussions or mediation regarding the Case.

19. Modifications. This Agreement may not be modified in any manner, nor may any rights provided for herein be waived except by an instrument in writing signed by the party to be charged in such modification or waiver.

20. No Waiver of Breach. No waiver of any breach of any term or provision of this Agreement shall be binding unless in writing and signed by the party waiving the breach. No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Agreement.

21. Governmental Immunity and Non-Appropriations. Nothing in this Agreement is intended, or shall be construed as a waiver by the County or any of its officers, employees or agents, of any of the protections afforded by the Colorado Governmental Immunity Act. Nothing in this Agreement shall constitute a multiple year fiscal obligation, and except for the payment of the amounts to be refunded in Section 2, any payments required to be made by the County shall be subject to appropriation by the Board of County of Commissioners of Moffat County pursuant to law.

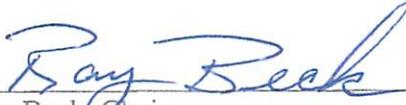
22. Public Record. The Parties recognize that this Agreement may constitute a public record subject to disclosure under the provisions of the Colorado Open Records Act and that the terms and dollar amounts contained herein may be revealed on the County's web site and in other formats.

23. Counterparts. This Agreement may be signed in counterparts and, when each party has signed one counterpart hereof, it shall be a binding and enforceable Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date set forth in the first paragraph of this Agreement.

MOFFAT COUNTY BOARD OF EQUALIZATION

Date: 8/10/2020



Ray Beck, Chair

WALMART, Inc., a Delaware Corporation

Date: 08/06/2020



Dawn Griggs (Aug 6, 2020 08:42 CDT)
Dawn Griggs
Authorized Representative of Walmart

APPROVED AS TO FORM AND CONTENT:

MOFFAT COUNTY ATTORNEY'S OFFICE



Rebecca Tyree, Esq. (Atty. Reg. #26888)
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Phone: (970) 826-3404
Email: Rtyree@moffatcounty.net
*Legal Counsel for the Moffat County
Board of County Commissioners*

ANDERSON & JAHDE, P.C.



Brian Huebsch, Esq. (Atty. Reg. #34192)
5800 South Nevada Street, Littleton, CO 80120
Phone: (303) 782-0002
Email: brian@andersonjadhe.com
*Legal Counsel for Wal-Mart Stores, Inc., a
Delaware corporation*

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Signature:

Email: dawn.griggs@walmart.com



Tax Department

Wayne Hamilton
Vice President, Specialty Tax

2608 SE J Street, Suite 2
Bentonville, AR 72716
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Wayne.Hamilton@walmart.com

To whom it may concern:

I hereby authorize the following associates to represent Walmart, Inc. and Sam's Club, Inc. in all matters relating to real estate and business personal property tax and assessment. These employees are granted the authority to make any changes necessary with the taxing jurisdictions, including mailing addresses for tax bills and notices.

Authorized Walmart Employees include:

Rick Allen, Aaron Smith, Andrew Anderson, Brandon Caplena, Briann Waller, Dawn Griggs, Donna Sanders, Fred Combs, Jerry Aucoin, Kyle Kennett, Michael Fenton, Ryan Ball, Sean Krohn, Sheena Lambert, Sheryl Williams, Stanley Johnson, Tami King, Tatiana Polydore, Tyler Wade, and Harley Jarvis.

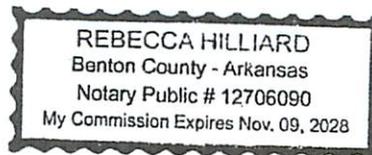
Signed by:  Date: 10/2/19
Wayne Hamilton,
Vice President

On this the 2nd day of October, 2019, before me, Rebecca Hilliard the undersigned notary public within and for the County of Benton and the State of Arkansas, personally appeared ~~Wayne Hamilton~~ Wayne Hamilton who acknowledged to me that this certificate of authority was executed for the purpose herein expressed.

In witness where of I hereunto set my hand and official seal.


Notary Public

My commission expires Nov 9, 2028



Walmart, Inc. Property Tax Department
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