

ARKANSAS RULES

- GROSS RECEIPTS TAX RULES
- COMPENSATING USE TAX RULES



ARKANSAS DEPARTMENT OF FINANCE
AND ADMINISTRATION

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INDEX

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GROSS RECEIPTS TAX RULES

Pursuant to the authority granted by Ark. Code Ann. §§ 26-18-301 and 26-52-105, the Director of the Arkansas Department of Finance and Administration promulgates the following rules for the purpose of facilitating compliance with the Arkansas Gross Receipts Act of 1941, as amended, and to facilitate the administration, enforcement, and collection of the tax.

GR-1. EFFECTIVE DATE: All regulations previously promulgated by the Director of the Department of Finance and Administration for purposes of enforcing or implementing the Arkansas Gross Receipts Act of 1941 (as amended) are hereby specifically repealed as of the effective date of these rules. These rules shall be effective from and after December 1, 2006.

GR-2. PURPOSE OF THE RULES: The following rules are promulgated to implement and clarify Title 26, Chapter 52 of the Arkansas Code. All persons affected by or relying upon these rules are advised to read them in their entirety because the meaning of the provisions of one rule may depend upon the provisions contained in another rule.

GR-3. DEFINITIONS: For purposes of these rules, unless otherwise required by their context, the following definitions apply:

- A. Commissioner: The term "Commissioner" means and refers to the Commissioner of Revenues of the State of Arkansas, or any of his duly authorized agents. For purposes of these rules, the terms "Commissioner" and "Director" may be used interchangeably.
- B. Sale: The term "Sale" means any transaction resulting in the transfer of either the title or possession, for a valuable consideration, of tangible personal property or services regardless of the manner, method, instrumentality or device by which such transfer is accomplished. The term "Sale" includes the exchange, barter, lease or rental of tangible personal property or services. In the case of leases or rentals of tangible personal property, the tax shall be paid on the basis of rental or lease payments made to the lessor of such tangible personal property during the term of the lease or rental; however, except for short term rentals and rentals of motor vehicles for less than thirty (30) days, the tax shall not apply to gross receipts or gross proceeds derived from leases or rentals of tangible personal property upon which either the Arkansas gross receipts tax or compensating tax was paid at the time of purchase of the tangible personal property. (See GR-20.)

A financing arrangement which only gives a lender a security interest in tangible personal property will not subject such lender to the tax, if, prior to such financing arrangement, either the Arkansas Gross Receipts or Compensating Tax has been paid on the purchase price of the tangible personal property by one of the parties to the financing arrangement.

- C. Gross Receipts - Gross Proceeds:
 - 1. The term "Gross Receipts" or "Gross Proceeds" means the total amount of consideration for the sale of tangible personal property and such services as are herein provided for, whether the consideration is in money or otherwise, without any deduction on account of the cost of the property sold, labor service performed, interest paid by the retailer, losses or any expenses whatsoever, including vehicle manufacturer or dealer rebates. Federal manufacturer's excise taxes are not a part of the "Gross Receipts" or "Gross Proceeds" if the excise taxes are separately stated or

- separately billed to the consumer.
2. The term "Gross Proceeds" or "Gross Receipts" includes the value of any goods, wares, merchandise, or property withdrawn or used from the established business or from the stock in trade of the established reserves for consumption by or use in such business, or for consumption or use by any other person. (See also GR-18.)
 3. The term "Gross Receipts" or "Gross Proceeds" includes the value of any property taken in lieu of or in addition to money as consideration for a sale.
 - a. Manufacturers' buydowns shall not be considered a part of the gross proceeds or gross receipts paid by consumers for products on which buydowns have been paid. The provisions of this rule do not affect sales of property involving the use of manufacturer's or retailer's coupons. Sales involving the use of such coupons shall be governed by Gross Receipts Tax Rule GR-18.
 - b. For purposes of this rule, a "buydown" is a cash payment made to a retailer by a manufacturer as an incentive to the retailer to reduce the retail price of the manufacturer's products for the purpose of increasing sales of such products. A buydown is a transaction between the manufacturer and the retailer, to which the consumer is not a party.
- D. Taxpayer: The term "Taxpayer" means any person making a sale subject to or liable to remit the gross receipts tax or to make a report for the purpose of claiming any exemption from payment of gross receipts taxes.
- E. Established Business: The term "Established Business" means any business operated or conducted by any person in a continuous manner for any length of time from an established place or in an established manner.
- F. Seller: The term "Seller" is synonymous with "vendor" and means every person making sales in an established business or in an established manner as herein defined.
- G. Consumer: The term "Consumer" is synonymous with "user" or "customer" or "purchaser" and means the person to whom a taxable sale is made, or to whom taxable services are furnished or a person who consumes tangible personal property or services. Contractors are deemed to be the consumers of all tangible personal property or taxable services purchased by them in the performance of a contract. [See GR-3(L).] Also, see GR 9.17 regarding purchase of materials by contractors performing taxable services.
- H. The term "Doing Business" is synonymous with "Engaging in Business" and means any and all local activity regularly and persistently pursued by a seller or seller's agents, employees, or representatives, with the object of gain, profit, or advantage, and which results in a sale, delivery, and/or the transfer of the possession of any tangible personal property by the seller to the consumer, at or from any point in Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the control of seller effecting such local delivery, without regard to the terms of sale with respect to point of acceptance of the order, point of payment, or any other condition. "Doing Business" or "Engaging in Business", as set out herein, is equally applicable to sellers of services which are subject to the gross receipts tax.
- I. The term "Tangible Personal Property" means personal property which may be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses.
- J. The term "Machine" means any device consisting of two or more resistant, relatively constrained parts, which, by a certain predetermined intermotion, may serve to transmit and modify force and motion so as to produce some given effect or to do some desired kind of work. The term "Machinery" shall mean mechanical devices or combinations of

mechanical powers and devices purchased and used to perform some function and produce a certain effect or result. Hand tools are not machinery. [See GR-55 F(5).]

- K. The term "Person" means and includes individuals, fiduciaries, corporations, limited liability companies, partnerships, joint ventures, associations mutual or otherwise, estates, trusts, receivers, trustees appointed by any State or Federal Court, this State, any county, city, municipality, school district, or any other political subdivision or combination acting as a unit, in the plural or singular number.
- L. The term "Contractor" shall mean any person who contracts or undertakes to construct, manage or supervise the construction, erection or substantial modification of any building or other improvement or structure affixed to real property. Persons who construct items of tangible personal property are not contractors. (See GR-21.)
- M. Retailers Permit: "Retailers Permit" means and refers to the sales tax permit as required by Ark. Code Ann. § 26-52-201.
- N. As used in these rules, the terms "sales tax" and "gross receipts tax" are synonymous and mean the tax imposed by Ark. Code Ann. § 26-52-301 and 302.

Source: Ark. Code Ann. §§ 26-52-103

GR-4. AMOUNT AND NATURE OF TAX:

- A. On and after March 1, 2004, the gross receipts tax rate is six percent (6%) of the gross receipts or gross proceeds derived from all sales within Arkansas of tangible personal property and certain services and admission fees upon which tax is imposed.
- B. The tax levied by Ark. Code Ann. § 26-52-310 (short-term rental tax) is one percent (1%) of the gross receipts or gross proceeds derived from short term rentals of tangible personal property except for certain vehicles and equipment and items subject to tourism tax. (See GR-20.)
- C. On and after July 1, 2001, the tax levied by Ark. Code Ann. § 26-52-311 (rental vehicle tax) is ten percent (10%) of the gross receipts or gross proceeds derived from short-term rentals of licensed motor vehicles. (See GR-20.)
- D. The tax levied by Ark. Code Ann. § 26-52-313 (long-term rental vehicle tax) is 1½% of the gross receipts or gross proceeds derived from rentals of licensed motor vehicles leased for a period of 30 days or more. The tax is applicable only if sales or use tax was not paid on the vehicle at the time of registration. The tax does not apply to trucks rented or leased for residential moving or shipping or to diesel trucks rented or leased for commercial shipping or to farm equipment or machinery rented or leased for a commercial purpose. See GR-12 and GR-20.
- E. The tax levied by Ark. Code Ann. § 26-52-312 (commercial/residential moving tax) is four and one-half percent (4½%) of the gross receipts or gross proceeds derived from the short-term rental of gasoline or diesel powered trucks rented or leased for residential moving or shipping. The tax also applies to the sale of any tangible personal property sold in conjunction with the rental or lease of a gasoline or diesel powered truck used for residential moving or shipping. The tax is in addition to any state or local sales or use taxes due on the rental.
- F.
 1. The tax levied by Ark. Code Ann. § 26-52-1001 *et. seq.* (tourism tax) is two percent (2%) of the gross receipts or gross proceeds derived from certain sales and services, including: furnishing various lodgings to transient guests; camping fees at campgrounds; rentals of various watercraft and related equipment; and admission prices to tourist attractions.
 2. "Tourist attraction" means theme parks, water parks, water slides, river boat and lake boat cruises and excursions, local sightseeing and excursion tours, helicopter

tours, excursion railroads, carriage rides, horse racing, dog racing, car racing, indoor and outdoor plays or music shows, folks centers, observations towers, privately owned or operated museums, privately owned historic sites or buildings, and natural formations such as springs, bridges, rock formations, caves, and caverns.

Source: Ark. Code Ann. §§ 26-52-301, 302, 303; 26-52-310, 311, 312, 313; 26-52-1001 *et. seq.*

GR-5. TAX IMPOSED UPON SALE AND NOT PROPERTY – INTERSTATE AND INTRASTATE SALES:

A. The Arkansas gross receipts tax is a tax imposed on the sale of tangible personal property and not the property itself. Thus, when a sale of tangible personal property occurs in Arkansas, a taxable event has occurred and the tax should be collected and remitted.

B. INTRASTATE (ARKANSAS) SALE

1. When tangible personal property is sold to a consumer and the seller of the property is engaged in an established business, or sells in an established manner, within Arkansas, and delivery is made within Arkansas transferring either title or possession of the property, the sale is intrastate and subject to the gross receipts tax irrespective of the fact that the seller may not have in stock certain goods, wares and merchandise for immediate delivery, which requires the seller to order the goods for direct shipment at or from a source outside Arkansas. If an out-of-state consumer orders goods from an Arkansas seller and picks up the property in Arkansas in the purchaser's own conveyance, then the sale is intrastate and tax must be collected and remitted.
2. For purposes of this rule, a person shall be considered to be engaged in an established business within Arkansas if the person either directly, or through a subsidiary, has a store, salesroom, sample room, showroom, distribution center, warehouse, service center, factory, credit and collection office, administrative office, or research facility in Arkansas.

C. INTERSTATE VS. INTRASTATE SALES

When tangible personal property is sold by a seller who is engaged in an established business, or sells in an established manner, within Arkansas, and the contract of sale or order require the seller to deliver the property by common carrier, U.S. Postal Service, or in the seller's own conveyance to a point outside Arkansas for consumption or use, the transaction is an interstate transaction and is not subject to Arkansas gross receipts tax. The seller should maintain proper records to establish that the property was shipped, including mail orders, shipping orders, and all data pertinent to the purchase and delivery in order to deduct the transaction amount from gross receipts.

D. **DROP SHIPMENTS.** A drop shipment is a sales transaction involving three parties – two sellers and one consumer. The first seller sells property to the second seller, who sells to the consumer; however, the first seller delivers the property directly to the consumer. Drop shipments are taxable depending on the location of the second seller and the consumer. The location of the first seller is irrelevant because the sale from the first seller to the second seller is an exempt sale for resale.

Example: An out-of-state company, Company A, sells tangible personal property to another out-of-state company, Company B, but drop ships the property directly to Company B's customer located in Arkansas. The sale by Company A to Company B is an out-of-state transaction and is not taxed in Arkansas. The sale of the property is also a sale for resale and would be exempt if it occurred in Arkansas. The sale from Company B to its customer is taxable; however, if Company B does not have nexus with Arkansas, it is not required to collect use tax. The customer is responsi-

ble for reporting and remitting Arkansas use tax.

- E. SERVICES. When a taxable service is performed in Arkansas, a taxable event has occurred and the tax must be collected and remitted even though the consumer of the service resides or is located in another state, or the property upon which the service is performed is shipped to another state.

Source: Ark. Code Ann. §§ 26-52-103; 26-52-301, 302, 303

GR-6. SERVICES SUBJECT TO TAX-UTILITIES-PUBLIC SERVICES:

- A. All sales of natural or artificial gas, electricity, water, ice, steam, or any other utility or public service, are subject to gross receipts tax except for transportation services, and sewer services. The tax should be collected and remitted by the seller of such services. (See also GR-32.)

- B. Low-Income Residential Utility Customer Tax Exemption

1. DEFINITIONS

- a. The term "income" means gross income less deductions allowed by law for expenses. It shall also include alimony, support money, cash public assistance and relief, the gross amount of any pension or annuity (including all monetary retirement benefits from whatever source derived, including but not limited to railroad retirement benefits, all payments received under the Federal Social Security Act, and veterans' disability pensions), all dividends and interest from whatever source derived not included in gross income, worker's compensation, and the gross amount of "loss of time insurance." Provided, however, the term "income" shall not include gifts from nongovernmental sources, or surplus food or other relief in kind supplied by a governmental agency. In the case of a claimant who is a World War I veteran or the widow of such veteran, the term "income" shall not include federal and/or state retirement, pension, disability, railroad retirement or social security benefits.
 - b. The term "household income" means the combined income received by members of a household during a calendar year.
 - c. The term "household" means an individual and, if applicable, his or her spouse.
 - d. The term "electric utility" means any electric utility, cooperative corporation created or existing under the authority of Ark. Code Ann. § 23-18-301 *et. seq.* or a municipally-owned electric utility.
- 2. a. The sale of the first 500 kilowatt hours of electricity per month to each residential customer whose household income does not exceed Twelve Thousand Dollars (\$12,000) per year shall be exempt from the Arkansas Gross Receipts Tax and all other State excise taxes which would otherwise be levied thereon.
 - b. The total franchise taxes billed to each residential customer whose household income does not exceed Twelve Thousand Dollars (\$12,000) per year shall be exempt from the Arkansas Gross Receipts Tax and all other State excise taxes which would otherwise be levied thereon.
- 3. The exemption provided herein shall apply to sales by all electric utilities operating in the State of Arkansas.
 - 4. Customers qualifying for the exemption provided herein shall notify the electric utility providing service to them of their intent to claim the exemption on forms provided by the Commissioner of Revenues for the State of Arkansas. The exemption must be claimed by March 1 of the year following the year in which the customer's income did not exceed Twelve Thousand Dollars (\$12,000). Once the exemption is claimed, no further application is required. The exemption contin-

- ues from year to year until the customer becomes disqualified.
5. A customer becomes disqualified for the exemption when the customer's household income for a calendar year exceeds **Twelve Thousand Dollars (\$12,000)**. The customer must notify the electric utility of their ineligibility on or before March 1 of the year following the year during which the household income exceeded **Twelve Thousand Dollars (\$12,000)**. This notification must be made on forms provided by the Commissioner.
 6. Any customer who fails to notify the electric utility of their ineligibility and continues to benefit from the tax exemption shall be liable for the amount of the tax exemption received after March 1 of the year during which notice of ineligibility should have been given.
 7. Customers who change electric utilities must notify the new electric utility of their intent to claim the exemption provided herein by submitting to the new utility another claim form provided by the Commissioner of Revenues.
 8. When submitting the claim form for the purpose of claiming this exemption, the income listed shall be that which was received by the customer's household during the preceding calendar year.
 9. The claim forms may be obtained by the Claimant directly from the Commissioner of Revenues upon request, and supplies of the forms will also be furnished to the electric utility companies. The electric utility companies are authorized to make copies of the forms to furnish to their customers.
 10. Every electric utility shall, on each Sales Tax Report which it submits to the Arkansas Department of Finance and Administration, indicate the amount of exemptions provided its customers hereunder in the space designated "Other Legal Deductions" on such Sales Tax Report.
 11. Every electric utility shall keep and maintain all claim forms submitted by customers claiming the exemption provided herein and shall make the same available for examination by the Commissioner of Revenues. Such records shall be preserved for a period of three (3) years and shall be open to examination by the Commissioner at any reasonable time.

Source: Ark. Code Ann. §§ 26-52-301(2); 26-52-416

GR-7. SERVICES SUBJECT TO TAX-TELEPHONE TELECOMMUNICATIONS AND TELEGRAPH COMPANIES:

- A. DEFINITIONS.
 1. "Telecommunications company" shall mean any provider of telecommunications services.
 2. "Telecommunications services" shall mean the one way or two-way transmission of messages, voice messages, images, or other real-time or essentially real-time communications whether accomplished by any means including wire, cable, fiber optics, laser, microwave, radio, satellite, voice-over Internet protocol, or similar facilities.
- B. Certain services provided by telephone, telecommunications and telegraph companies are subject to gross receipts tax. Those services are:
 1. basic local service and rental charges including:
 - a. installation and construction charges, and
 - b. all service and rental charges having any connection with the transmission of a message or image;
 2. long distance service, including:

- a. long distance messages which originate and terminate within Arkansas;
 - b. interstate long distance messages which originate within Arkansas, and terminate outside Arkansas and are billed to an Arkansas telephone number or address;
 - c. interstate long distance messages which originate outside Arkansas, terminate inside Arkansas and are billed to an Arkansas telephone number or address;
 - d. long distance messages made by mobile telecommunications service which are charged to a customer who maintains a place of primary use in Arkansas;
3. customer access line charges billed to an Arkansas telephone number. Only access line charges associated with obtaining access to a long distance network for a customer or end user are taxable. Charges for long distance network access or other services provided to telephone, telegraph or telecommunications companies which enable the company to provide telecommunications service to customers or end users are not taxable; and
 4. cellular service charges including basic service, air time charges, activation/deactivation charges, connection, access, and enhanced services. Effective August 1, 2002, all charges for mobile telecommunications services are deemed to be provided by the customer's home service provider and sourced to the customer's place of primary use. The applicable tax is that of the state, county and city where the customer's place of primary use is located, as determined by the Mobile Telecommunications Sourcing Act, Pub. L. 106-252.
 5. Voice over Internet Protocol (VoIP) services or similar Internet-based services, including basic service, flat rate or use based charges, activation, deactivation charges, connection, access, and enhanced services. Voice over Internet Protocol services are sourced to the place of primary use as defined at Ark. Code Ann. § 26-52-301(3)(A) until the effective date of the Streamlined Sales Tax Agreement in Arkansas and Ark. Code Ann. § 26-52-315 after the effective date of the Streamlined Sales Tax Agreement in Arkansas. When service is paid by credit card, debit card, bank draft, or similar method, the "location where bills are sent" shall be the billing address associated with the card or the residential or business address on the account.
- C. The following services are exempt from tax:
1. Any interstate private communications service which is not accessible by the public;
 2. Any interstate service which allows access to private telephone lines and which is not accessible by the public; or
 3. Any interstate-wide area telecommunications service (WATS) or other similar service, such as 800, 888, or other toll-free numbers, which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telecommunications service in a specified area which is outside the state in which the station provided with this service is located.
 4. Any telephone or telecommunication services paid by utilizing a prepaid telephone calling card or prepaid authorization number as provided in subsection D of this section.
 5. A seller who does not separately state its billing for nontaxable services, such as Internet access fees, must be able to reasonably identify the nontaxable charges from the seller's books and records. If the nontaxable charges cannot reasonably be identified, the entire amount of the bill will be subject to tax.
- D. Prepaid Telephone Calling Cards or Prepaid Authorization:

1. Sales of prepaid telephone calling cards or prepaid authorization (by number or other method) and the recharge of such cards or numbers shall be subject to gross receipts tax.
2. Tax shall be collected at the point of sale by the retail vendor. If the sale or recharge does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address. If there is no item shipped, then the place of sale shall be the customer's billing address or the location associated with the customer's mobile telephone number.
3. Prepaid telephone calling cards sold in vending devices shall be taxed as goods sold through a vending device.
4. Definitions:
 - a. The terms "prepaid telephone calling card" and "prepaid authorization number" mean the exclusive purchase of telephone or telecommunications services, paid for in advance, which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed.
 - b. The term "recharge" means the purchase of additional telephone or telecommunications service without having to acquire a different prepaid telephone number.

Source: Ark. Code Ann. §§ 26-52-301(3)(A); 26-52-314; 26-52-315

GR-7.1 FACSIMILE (FAX) TRANSMISSIONS:

- A. The gross receipts or gross proceeds derived from charges for the receipt and delivery of incoming facsimiles are not subject to gross receipts tax.
- B. The paper on which the FAX is received is an item of tangible personal property which is deemed incidental to the telephone transmission of the message. Gross receipts tax is to be paid by the seller on any paper or other items purchased for use to deliver the FAX transmission to the ultimate consumer.

Source: Ark. Code Ann. §§ 26-52-301(3)(A)

GR-8. SERVICES SUBJECT TO TAX-LODGING:

- A. The service of furnishing rooms, suites, condominiums, townhouses, rental houses or other accommodations to transient guests by hotels, motels, apartment hotels, lodging houses, tourist camps, hunting lodges, tourist courts, bed and breakfast properties, property management companies or any other provider of accommodations to transient guests is subject to gross receipts tax.
- B. The term "transient guests" is defined as those who rent accommodations other than their regular place of abode on less than a month-to-month basis.
- C. Any complimentary items provided with the accommodations that are used or consumed by the transient guests are subject to tax when purchased by the provider of the accommodations. Examples include, but are not limited to, complimentary food, drinks, soap, shampoo, lotion, etc.
- D. The rental of meeting rooms is not subject to the gross receipts tax.

Source: Ark. Code Ann. § 26-52-301(3)(B)

GR-9. SERVICES SUBJECT TO TAX-TAXABLE SERVICES:

- A. The service of initial installation, alteration, addition, cleaning, refinishing, replacement and repair of the following items of tangible personal property are subject to the tax: motor vehicles, aircraft, farm machinery and farm implements, motors of all kinds, tires, batteries, boats, electrical appliances, and electrical devices, furniture,

rugs including carpets, flooring, upholstery, household appliances, television and radio, jewelry, watches, clocks, engineering instruments, medical instruments and surgical instruments, machinery of all kinds, bicycles, office machines, office equipment, shoes, tin and sheet metal, mechanical tools and shop equipment. (See also GR-9.17, GR-30, GR-38.2, and GR-57.)

- B. The tax applies to the enumerated services performed on the items listed in section A. whether or not the items are affixed to real property.
- C. Additional services subject to gross receipts tax include: service of providing transportation or delivery of money, property or valuables by armored car; service of pool cleaning and servicing; pager services; telephone answering services; service of parking a motor vehicle or allowing a motor vehicle to be parked; service of storing a motor vehicle; service of storing furs; service of providing indoor tanning at a tanning salon; lawn care and landscaping services (see GR-9.2); service of providing cleaning or janitorial work (see GR-9.4); wrecker and towing services (see GR-9.5); collection and disposal of solid wastes (see GR-9.6); cleaning of parking lots and gutters (see GR-9.7); dry cleaning and laundry services and industrial laundry services (see GR-9.8); mini warehouse and self-storage rental services (see GR-9.9); body piercing, tattooing, and electrolysis services (see GR-9.10); pest control services (see GR-9.11); security and alarm monitoring services (see GR-9.12); boat storage and docking fees (see GR-9.13); furnishing of camping spaces or trailer spaces at public or private campgrounds (see GR-9.14); locksmith services (see GR-9.15); and pet grooming and kennel services (see GR-9.16).
- D. Dues and fees paid to health spas, health clubs, and fitness clubs are subject to gross receipts tax.
- E. Service Contracts, Maintenance Agreements, & Extended Warranties
 1. Sales tax shall apply to the gross receipts derived from the sale of contracts, including service contracts, maintenance agreements and extended warranties, which in whole or in part provide for the future performance of or payment for services which are subject to gross receipts tax, including home warranty contracts that provide for repair or replacement of appliances, devices, machinery or any other items included in the contract. The seller of the contract must collect and remit the tax due on the sale of the contract except when the contract is sold simultaneously with a motor vehicle in which case the purchaser of the vehicle shall pay sales tax on the purchase of the contract at the time of vehicle registration.
 2. Sales tax shall not be collected from the consumer on labor or parts used in the performance of services covered by a taxable service contract, maintenance agreement or extended warranty or home warranty contract.
 3. Examples:
 - a. Consumer purchases a new vehicle and an extended warranty at the same time. When customer registers the vehicle, he will pay sales tax on the purchase price of the vehicle and the purchase price of the extended warranty. Service and parts provided under the warranty will not be subject to sales tax.
 - b. Consumer purchases a new computer and a service contract. The seller of the computer collects sales tax on the purchase price of the computer and the service contract. Service and parts provided under the warranty will not be subject to sales tax.
 - c. Consumer purchases a home warranty contract in connection with the purchase of a residence. The purchase price of the home warranty contract may be collected with the closing costs of the real estate transaction or may be paid directly by the real es-

tate purchaser to the person or entity designated by the seller of the contract. The seller of the contract, or the seller's designated agent, collects sales tax on the purchase price of the home warranty contract. Labor and tangible personal property provided under the warranty will not be subject to sales tax.

4. If the seller of a taxable contract allows the purchaser to pay for the contract in monthly or other periodic installments, then the seller may report and remit sales tax on the periodic payments.

Source: Ark. Code Ann. §§ 26-52-301(3); 26-52-301(6); 26-52-301(7); 26-52-316;

GR-9.1. SERVICES SUBJECT TO TAX-TELEVISION, RADIO, AND VIDEO:

- A. Gross receipts tax applies to the service of cable television, community antenna television, and any and all other distribution of television, video, or radio services with or without the use of wires provided to subscribers or paying customers or users, including all service charges and rental charges, whether for basic service, premium channels, or other special service, and including installation and repair service charges and any other charges having any connection with the providing of the services. Gross receipts derived from charges for television or radio services received through the use of a satellite dish or other satellite receiver are subject to tax.
- B. Gross receipts tax does not apply to services purchased by radio or television companies for use in providing their services.
- C. A provider of direct-to-home satellite services is not required to collect local (county, city, or town) tax on direct-to-home satellite service. The federal preemption of the collection of local tax on this service does not apply to state tax. A provider of direct-to-home satellite service is required to collect and remit state sales tax on the service.
- D. Definitions.

Video services includes the receipt of, or access to, video images on a television, monitor, or other video display device through a modem, satellite transmission or other delivery mechanism, provided that the video images are available to all subscribers to the service and are not customized for each subscriber. Receipt or access to video images solely through the use of an Internet service provider is not a taxable service.

1. Examples of taxable video services include:
 - a. receipt of business, financial or sports news through a satellite or modem;
 - b. receipt of video programming through Direct TV or other similar satellite network.
2. Examples of nontaxable services include:
 - a. retrieving information from a database through a satellite network for a fee;
 - b. Radio services include the transmission of AM, FM, or other frequency audio broadcasts by radio waves. "Radio services" do not include the transmission of messages by radio waves over frequencies not available to the public. For example, the service of delivering private radio messages between a trucking company headquarters and its truck drivers through a satellite-based mobile communications system is not a taxable radio service.

Source: Ark. Code Ann. §§ 26-52-301(3)(D)

GR-9.2. SERVICES SUBJECT TO TAX – LAWN CARE AND LANDSCAPING:

- A. Any person engaged in the business of providing lawn care of nonresidential property or landscaping services of both residential and nonresidential property is required to collect and remit sales tax on the gross receipts derived from these services. The business is required to obtain a sales tax permit. All materials that remain in or on the customer's

property should be purchased tax exempt as a sale for resale. Examples are fertilizer, weed killer, grass seed, sod, plants, trees, or shrubs. Materials used or consumed by the business may not be purchased exempt. Examples are gasoline, oil, cleaning materials, uniforms, tools, mowers or other equipment used or consumed by the business.

- B. The business will collect state and local sales tax on the total consideration for landscaping services or nonresidential lawn care, whether provided as part of a general contract for building construction or as a separate agreement with the landowner. The business will collect the tax from the party with whom it contracts for the service, including general contractors, on the total contract cost including the cost of plant materials. A business which has its own nursery is not required to report tax on plant material withdrawn from stock, but will collect tax on the sale of the material to its customers.
- C. For purposes of this rule, the following definitions are applicable:
 - 1. "Landscaping" means the installation, preservation or enhancement of ground covering by planting trees, bushes, shrubbery, grass, flowers and other types of decorative plants. "Landscaping" does not include site preparation, cutting and filling, leveling, tree trimming or tree removal, or clearing a site of bushes and trees. "Landscaping" does include sodding, seeding and planting, as well as installing items such as landscape timbers, edging, planters, or similar items. Landscaping performed on highway easements and right-of-ways is taxable. Landscaping is taxable whether it is done for decorative purposes or non-decorative purposes such as erosion or sediment control.
 - 2. "Lawn care" means the maintenance, preservation or enhancement of ground covering of nonresidential property and does not include planting trees, bushes, shrubbery, grass, flowers and other types of decorative plants. Lawn care includes the following: mowing or raking the yard, chemical spraying, fertilizing, weed control or weed-eating, maintaining the ground cover in beds by adding additional rock, gravel, tree bark or other material used to provide ground cover in beds or in other places in the area to be maintained, and general lawn maintenance. Tree trimming or tree removal is not lawn care.
 - 3. "Residential" means a single-family residence used solely as the principal place of residence of the owner or occupant. Apartment buildings, condominiums, and duplexes are nonresidential property for purposes of this exemption. A single-family dwelling leased to the occupant is residential property for purposes of this exemption.

Source: Ark. Code Ann. §§ 26-52-301(3)(E)

GR-9.3. SERVICES BY TEMPORARY OR LEASED EMPLOYEES:

- A. Services performed by a leased or temporary employee or other contract laborer to items owned or leased by the employer are not subject to gross receipts tax.
- B. The following criteria must be met for a person to be a temporary or leased employee:
 - 1. There must be a written contract with the temporary employment agency, employee leasing company, or other contractor providing the services;
 - 2. The employee, temporary employment agency, employee leasing company or other contractor must not bear the risk of loss for damages caused during the performance of the contract. The person for whom the services are performed must bear the risk of loss; and
 - 3. The employer controls the temporary or leased employee or contract laborer as if he were a full-time permanent employee. The term "control" includes, but is not lim-

ited to, scheduling work hours, designating work duties, and directing work performance.

Source: Ark. Code Ann. §§ 26-52-301(3)(C)(vii)

GR-9.4. SERVICES SUBJECT TO TAX-CLEANING:

- A. Gross receipts tax applies to the service of providing cleaning or janitorial work. Ark. Code Ann. § 26-52-301(3)(E)(i). For purposes of this rule, cleaning services are defined as services to rid the interior or exterior of any building, dwelling, or other structure of dirt, impurities, or extraneous matter. Generally, the service of cleaning streets, sidewalks, driveways, or other areas that are not part of the interior or exterior of a building is not taxable. However, see GR-9.7 regarding the taxable service of cleaning parking lots and gutters.
- B. The service of cleaning motor vehicles, aircraft, farm machinery and implements, motors of all kinds, tires and batteries, boats, electrical appliances and devices, furniture, rugs, flooring, upholstery, household appliances, televisions and radio, jewelry, watches and clocks, engineering instruments, medical and surgical instruments, machinery of all kinds, bicycles, office machines and equipment, shoes, tin and sheetmetal, mechanical tools, and shop equipment is subject to tax. Ark. Code Ann. § 26-52-301(3)(C)(i).
- C. The service of pool cleaning and servicing is subject to tax. Ark. Code Ann. § 26-52-301(3)(E)(i).
- D. The cleaning of nonmechanical, passive, or manually operated components of buildings or other improvements or structures affixed to real estate is not taxable, except when the cleaning is considered cleaning or janitorial work.

Example 1: If a painter must clean a wall in preparation to paint, the cleaning of the wall is not taxable. However, if the wall is cleaned but not painted, or if the painter hires a third party to clean the wall prior to painting, the service of cleaning the wall is a taxable cleaning or janitorial service.

Example 2: Cleaning performed by a contractor during construction or upon completion of a construction contract is not taxable if performed by the contractor. However, if the contractor hires a third party to perform the cleaning, the service of cleaning is a taxable cleaning or janitorial service.

- E. Services that are performed to clean and sanitize the production and packaging areas of food processing facilities to meet specific standards prescribed and required by the United States Department of Agriculture (USDA) exceed the scope of ordinary cleaning work provided in what is normally considered to be cleaning or janitorial services and are not taxable as cleaning or janitorial services.
- F. Items that are used or consumed in performing cleaning or janitorial services may not be purchased tax exempt. This includes, but is not limited to, uniforms, machines, equipment, cleansers, disinfectants, wax, rags, mops, brooms, and sponges. Such items are subject to state and local gross receipts or use tax when purchased for use by the service provider. Items such as bathroom tissue, paper towels, and hand soap that are transferred to the customer for subsequent use as part of the transaction between the service provider and the customer may be purchased exempt from tax as a sale-for-resale by the service provider.

Source: Ark. Code Ann. §§ 26-52-301(3)(C); 26-52-301(3)(E)(i)

GR-9.5. SERVICES SUBJECT TO TAX - WRECKER AND TOWING SERVICES:

- A. The gross proceeds or gross receipts derived from wrecker and towing services are subject to state and local gross receipts taxes. The gross proceeds or gross receipts derived from wrecker and towing services include mileage fees and towing charges.
- B. DEFINITIONS:
1. "Department" means the Department of Finance and Administration and its agents.
 2. "Wrecker and towing services" means pushing, pulling, carrying or hoisting any motor vehicle, vehicle, trailer or semitrailer from an initial point of service to some other destination and includes the rendering, furnishing or performing of any service on a damaged, disabled, immovable, or non-operable motor vehicle, vehicle, trailer, or semitrailer. Wrecker and towing services include hook-up fees charged for recovering a motor vehicle, vehicle, trailer or semitrailer from locations such as a ditch, pond, hole, or median, prior to towing. "Wrecker and towing services" does not include the transportation of motor vehicles to or from a new or used car dealership for the purpose of placing the vehicles into inventory for sale or returning the vehicles to an automobile auction for sale.
 3. "Motor vehicle" means every vehicle subject to registration for use on the public roads and highways.
 4. "Vehicle" means every device in, upon, or by which any person or property is, or may be, transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.
 5. "Trailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.
 6. "Semitrailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.
- C. LOCAL TAXES: For the purpose of determining the correct local gross receipts taxes to collect, the following guidelines shall apply:
1. If the motor vehicle, vehicle, trailer, or semitrailer is towed from the location where the vehicle is picked up and delivered to a destination in Arkansas, the local taxes at the point of delivery or destination should be applied.
 2. If the motor vehicle, vehicle, trailer, or semitrailer is towed from the location where the vehicle is picked up and delivered to a destination outside of Arkansas, the local taxes at the initial point of service should be applied.
 3. If only wrecker services are provided and the motor vehicle, vehicle, trailer, or semitrailer is not towed from its location to another destination, the local taxes at the place where the motor vehicle, vehicle, trailer, or semitrailer is located should be applied.
 4. Examples:
 - a. J.T.'s car breaks down in Cabot, Arkansas. J.T. hires a towing service to tow the car into Little Rock, Pulaski County, Arkansas for repairs. The City of Little Rock and Pulaski County have a sales tax. The place of destination determines what tax is due. The Arkansas state sales tax, the Little Rock city sales tax and the Pulaski County sales tax apply.
 - b. J.T.'s car breaks down in Ft. Smith, Arkansas. J.T. hires a towing service to tow the car into Oklahoma for repairs. The towing service performed in Arkansas is

a taxable towing service. Towing services performed outside of Arkansas are not subject to Arkansas state sales tax or Arkansas local sales tax. If the towing charges for the Arkansas and Oklahoma towing are included on one invoice, the entire invoice amount will be subject to tax, unless the towing company separately states the Arkansas towing charge and the Oklahoma towing charge. If the charges are separately stated, only the Arkansas towing charges are taxable. Since J.T.'s car was delivered to a destination outside of Arkansas, and the initial point of service was Ft. Smith, the Fort Smith city sales tax and the Sebastian County sales tax should apply.

- c. J.T.'s car breaks down in Oklahoma, and J.T. hires a towing service to tow the car into Ft. Smith, Arkansas for repairs. If the Arkansas towing charges are separately stated from the Oklahoma towing charges, only the Arkansas towing charges are taxable. If the charges are not separately stated, the entire charge is subject to tax. Since J.T.'s car was delivered to a destination in Arkansas, the Fort Smith city sales tax and the Sebastian County sales tax should apply.
- d. J.T. is traveling to his home in Texarkana, Texas and drives his car into a ditch in Little Rock, Arkansas where it becomes stuck in the mud. J.T. hires a wrecker service to pull his car from the ditch. J.T.'s car is not damaged, so it is not necessary to tow the car to a destination for repairs. The City of Little Rock and Pulaski County have a sales tax. The point of service determines what tax is due. The Arkansas state sales tax, the Little Rock city sales tax and the Pulaski County sales tax apply.

D. PERSONS RESPONSIBLE FOR COLLECTING AND REMITTING THE TAX: The tax shall be collected and remitted by the seller of the wrecker or towing services. Wrecker and towing services may be purchased exempt as sales for resale by a person holding a retail permit and performing taxable repairs on a towed motor vehicle, vehicle, trailer, or semitrailer, if the charge for the wrecker and towing services and the applicable taxes are collected from the ultimate consumer by the person performing the repairs.

Example: ABC Towing Company has a contract to tow motor vehicles to XYZ Repair Shop for repairs. XYZ Repair Shop holds a retail permit and charges its customer for repairs, the wrecker and towing services, and the applicable taxes. XYZ Repair Shop is entitled to claim the sale for resale exemption on the wrecker and towing services it purchased from ABC Towing Company since it is collecting the sales tax for the wrecker and towing services from its customer.

E. AUTOMOBILE CLUBS OR INSURANCE COVERAGE: If wrecker and towing services are provided through an automobile club or association, motor club or similar organization, or an insurance company, the taxable charge is the amount invoiced to the club, association, or insurance company for the services plus the amount of any applicable deductible. The charge for an automobile club contract or insurance policy that provides for towing is not subject to tax.

Example: XYZ Insurance Company pays JT's Wrecker Service \$30.00 toward the tow of a motor vehicle on behalf of John Doe. John Doe pays JT's Wrecker Service an additional amount of \$20.00 as a deductible. JT's Wrecker Service should remit tax on the entire \$50.00. XYZ Insurance Company does not collect tax on the premium paid by John Doe for insurance that provides for towing.

Source: Ark. Code Ann. § 26-52-316

GR-9.6. SERVICES SUBJECT TO TAX – COLLECTION AND DISPOSAL OF SOLID WASTE:

- A. The gross proceeds or gross receipts derived from the collection and disposal of solid waste are subject to state and local gross receipts taxes. Tax should be collected on the entire gross receipts derived from the fee charged for collection and disposal of solid waste, without any deduction for costs, fees, labor services performed, interest, losses, or any expenses whatsoever. Fees paid by a service provider to the state, a city, county, or other governmental subdivision, which are passed on to the customer are part of the gross receipts for the collection and disposal of solid waste.
- B. DEFINITIONS:
1. "Department" means the Department of Finance and Administration and its agents.
 2. "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from residential, industrial, commercial, mining, medical, agricultural, and restaurant operations, and community activities. Solid waste includes yard waste. "Solid waste" does not include solid or dissolved materials in domestic sewage, or low-level radioactive waste as defined by the Interstate Low-Level Radioactive Waste Compact codified at Ark. Code Ann. § 8-8-201 *et. seq.* "Solid waste" does not include recyclable material as defined in Ark. Code Ann. §§ 8-9-104 and 8-6-702 that has been separated from the solid waste stream for subsequent use in its present or reprocessed form. Recyclable materials are removed from the solid waste stream at the point where the materials are separated, identified, collected, or sorted for reuse or reprocessing. "Solid waste" shall not include waste tires.
 3. "Domestic sewage" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the excrementitious or other discharge from the bodies of humans or animals, together with such groundwater infiltration and surface water as may be present.
 4. "Disposal" means the final disposition of solid waste by means of landfilling, incinerating, composting, dumping, abandoning, or other similar method. For purposes of this rule, solid waste disposal does not include the management of hazardous waste in accordance with the provisions of Ark. Code Ann. § 8-7-201 *et. seq.* Hazardous waste management includes the incineration of solid waste which has become commingled with hazardous waste as part of the treatment of hazardous waste.
- C. EXEMPTIONS FROM TAX: Sewer services are not subject to the tax. Septic tank cleaning is not subject to the tax.
- D. PERSONS RESPONSIBLE FOR COLLECTING AND REMITTING THE TAX:
1. The tax shall be collected and remitted by the seller of the collection or disposal services. Disposal services ("tipping fees") may be purchased exempt as sales for resale by a person holding a retail permit and performing taxable collection of waste services, if the taxes are included in the charges billed by the person or entity collecting the waste.
 2. A fee collected by a city, county, or town from its residents for the collection and disposal of solid waste is subject to tax. The disposal fees paid by the city or county to the landfill or other disposal site are exempt as a sale for resale, pro-

vided the city, town, or county collects and remits the applicable tax to the state. A city, town, or county that collects the tax from its residents and contracts with a person or entity for the collection and disposal of solid waste does not pay tax on either the contract amount paid to the contractor or the disposal fee at the landfill or other disposal site.

EXAMPLE 1: City X collects a fee of Fifteen Dollars (\$15) per month from its residents for collection and disposal of solid waste. City X should collect tax from its residents on the Fifteen Dollar (\$15) fee. City X is not required to pay sales tax on any fee charged to City X when it delivers the waste to the landfill. City X is entitled to claim the sale-for-resale exemption for these landfill charges.

EXAMPLE 2: City X collects a fee of Fifteen Dollar (\$15) per month from its residents for collection and disposal of solid waste. City X contracts with Contractor to pick up the solid waste and deliver it to the landfill. City X pays Contractor a fee of Twelve Dollars and Fifty Cents (\$12.50) per month per resident. City X should collect tax from its residents on the Fifteen Dollar (\$15) fee. City X should not pay tax on the Twelve Dollars and Fifty Cents (\$12.50) fee paid to Contractor. Contractor should not pay tax on the disposal fee paid to the landfill.

3. A city, county, or town that provides waste collection and disposal services with funds from tax revenues does not collect tax from its residents for the collection or disposal of solid waste. However, the city, county, or town must pay tax on the tipping (disposal) fees (if the city, county, or town disposes of the waste) or on the amount paid to a contractor who collects and disposes of the waste.

EXAMPLE 1: County Y levied a tax that is dedicated to provide funds for collection and disposal of solid waste of its residents. County Y collects the solid waste from its residents and delivers it to the landfill. County Y should pay tax on the disposal fees to the landfill.

EXAMPLE 2: County Z levied a tax that is dedicated to provide funds for collection and disposal of solid waste of its residents. County Z contracts with Contractor to pick up the solid waste and deliver it to the landfill. County Z pays Contractor a fee of Twelve Dollars and Fifty Cents (\$12.50) per month per resident. Contractor should collect tax from County Z on the Twelve Dollars and Fifty Cents (\$12.50) fee paid to the Contractor. The disposal fees at the landfill are exempt as a sale for resale.

- E. LOCAL TAXES: For the purpose of determining the correct local gross receipts taxes to collect, the following guidelines shall apply:
 1. The local taxes at the point of collection should be applied unless the only service rendered is the taxable service of disposal of solid waste.
 2. Examples:
 - a. XYZ Company collects garbage from residents and businesses in Little Rock, Pulaski County, Arkansas. XYZ Company dumps the garbage in the Pulaski County Landfill, which is located outside of the city limits of Little Rock, Arkansas. XYZ Company charges its customers in Little Rock, Pulaski County, Arkansas for the collection and disposal services. The City of Little Rock and Pulaski County have a sales tax. The place of collection determines what tax is due. Accordingly, the Arkansas state sales tax, the Little Rock sales tax, and the Pulaski County sales tax apply. XYZ Company holds a retail permit and purchases the disposal services from the Pulaski County Landfill exempt from tax as a sale for resale.

- b. J.T. lives in Little Rock, Pulaski County, Arkansas. The City of Little Rock and Pulaski County have a sales tax. J.T. delivers and dumps some garbage in the Pulaski County Landfill, which is located outside of the city limits of Little Rock, Arkansas. J.T. must pay sales tax on the landfill disposal charges. The place of disposal determines what tax is due. Accordingly, the Arkansas state sales tax and the Pulaski County sales tax apply (no Little Rock tax is due).

Source: Ark. Code Ann. § 26-52-316

GR-9.7. SERVICES SUBJECT TO TAX—CLEANING PARKING LOTS AND GUTTERS:

- A. The services of cleaning parking lots and gutters are subject to the gross receipts tax.
- B. The tax applies to the service of cleaning, sweeping, or pressure washing parking lots. Cleaning up trash from a parking lot is taxable. Snow removal is taxable. The tax applies to the service of cleaning gutters that are located at the edge of a roof or at the edge of a street or road.
- C. Pavement patching, asphalt repair, sealing, grading, installing wheelstops, and sand-blasting to prepare for resurfacing are not taxable services.
- D. A “parking lot” means an area used for the parking of motor vehicles and includes parking garages and parking decks. This term includes areas that may not generally be used for the parking of motor vehicles when they are used as parking lots during special events.

Source: Ark. Code Ann. § 26-52-316

GR-9.8. SERVICES SUBJECT TO TAX – DRY CLEANING AND LAUNDRY SERVICES; INDUSTRIAL LAUNDRY SERVICES:

- A. The gross proceeds or gross receipts derived from the sale of the following services are subject to sales tax: dry cleaning services, laundry services, and industrial laundry services. These services shall be defined as follows:
 - 1. “Dry cleaning services” shall mean the cleaning of leather, cloth or fabric with any and all dry cleaning solvents, including the ironing, pressing, folding, or starching of dry cleaned leather, cloth or fabric.
 - 2. “Laundry services” shall mean the washing of cloth or fabric with water, including the ironing, pressing, folding or starching of washed cloth or fabric.
 - 3. “Industrial laundry services” shall mean the washing of cloth or fabric with water, including the ironing, pressing, folding or starching of washed cloth or fabric, by laundry businesses that service commercial accounts.
 - 4. “Cloth or fabric” shall include, but not be limited to, items such as clothing, garments, uniforms, wedding dresses, linens, draperies, tablecloths, rugs, towels and products that consist at least partially of cloth or fabric, such as door mats with a rubber base.
- B. The gross proceeds or gross receipts attributable to the following services are not subject to sales tax provided they are itemized and separately stated on the invoice provided to the customer: repairs, alterations, and the treatment of cloth or fabric with chemicals that provide waterproofing or protection from staining or soiling. However, if these services are provided along with taxable dry cleaning or laundry services and are not itemized and separately stated on the invoice to the customer, the total gross proceeds or gross receipts charged to the customer will be subject to sales tax.

- C. The gross proceeds or gross receipts derived from self-service, coin operated clothing washing and drying machines or self-service, coin operated dry cleaning machines are not subject to sales tax.
- D. Any hotel; motel; nursing, retirement, or convalescence facility; or other provider of accommodations that bills its guests or residents a specific charge for dry cleaning or laundry services must collect tax on the gross proceeds or gross receipts for the dry cleaning or laundry services. However, the gross proceeds or gross receipts derived by a charitable, non-profit nursing, retirement or convalescence facility from dry cleaning or laundry services provided by such facility to its residents are not subject to tax.
- E. Long-term rentals of uniforms, linens, towels, mats and similar items are not subject to the tax on the service of industrial laundry. The purchaser of the items for long-term rental must elect to pay the tax at the time of the purchase of the items or collect tax on subsequent long-term rentals of the property. (See GR-20.)
- F. Items that are used or consumed in performing dry cleaning and laundry services may not be purchased tax exempt. This includes, but is not limited to, uniforms, machines, equipment, detergent, dry cleaning solvents, bleach, powder, and starch. Such items are subject to state and local gross receipts or use tax when purchased for use by the service provider.

Source: Ark. Code Ann. § 26-52-316

GR-9.9. SERVICES SUBJECT TO TAX - MINI WAREHOUSE AND SELF-STORAGE RENTAL SERVICES:

A. DEFINITIONS:

- 1. "Department" means the Department of Finance and Administration and its agents.
- 2. "Mini warehouse and self-storage" rental service means providing a secured area such as a building, a room in a building, locker, compartment, container, or a secured area within a building for the purpose of storing tangible personal property in which the consumer customarily stores and removes the consumer's tangible personal property on a self-service basis. This term includes, but is not limited to, storage lockers or storage units in apartment complexes (if the locker or unit is utilized at the option of a tenant upon payment of a fee in addition to the apartment rental), amusement parks, water parks, recreational facilities, and other public locations where lockers are rented for self-storage.
- 3. For the purpose of this rule, mini warehouse and self-storage rental services shall not include:
 - a. General warehousing and storage, where the warehouse is engaged in the operation of receiving, handling, and storing property for others using the warehouse's staff and equipment, and does not allow the consumer of the service separate access to the storage area used to hold the property; and
 - b. Storage incidental to the lease of real property used for purposes other than the storage of tangible personal property.
 - 1. Example: A taxpayer is doing business at a location that provides significant storage space for excess inventory or supplies. The taxpayer is not purchasing mini warehouse and self-storage rental services.
 - 2. Example: Tenant B leases an apartment. The apartment complex offers storage facilities, separate and distinct from the residential living space, to its residents as an amenity (i.e., Tenant B is not required to pay an additional

fee beyond his regular rental amount for the use of the facility). Sales tax is not due on any portion of the amount paid by Tenant B for the lease.

B. ADMINISTRATION:

1. The gross proceeds or gross receipts derived from mini warehouse and self-storage services are subject to state and local gross receipts taxes.
2. The total amount charged for providing mini warehouse and self-storage services is subject to tax. Charges associated with the cost of self-storage such as locks or keys are part of the taxable purchase price. Charges that the facility incurs as a result of a tenant who fails to pay including, but not limited to, auction fees and cut-lock fees are not part of the taxable purchase price. A security deposit is not part of the taxable purchase price unless it is converted into a rental payment.

Source: Ark. Code Ann. § 26-52-316

GR-9.10. SERVICES SUBJECT TO TAX - BODY PIERCING, TATTOOING, AND ELECTROLYSIS:

A. GENERAL INFORMATION

The gross receipts or gross proceeds derived from sales of the services of body piercing, tattooing and electrolysis are subject to the Arkansas Gross Receipts Tax.

B. DEFINITIONS:

1. "Body piercing" means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration.
2. "Tattooing" means any method of placing designs, letters, scrolls, figures, symbols, or any other marks upon or under the skin by introducing pigments or by the production of scars to form indelible marks with the aid of needles or other instruments, including permanent cosmetics.
3. "Electrolysis" means the destruction or permanent removal of hair from the human body by the use of an electric needle, or by the use of any other kinds of devices or appliances, from the human body.

C. EXEMPTIONS; ITEMS NOT EXEMPT

1. The service of removing hair as part of a medical procedure by or under the direction of a licensed physician, including the removal of hair with the use of a laser, shall be exempt from the gross receipts tax.
2. Studs, rings, or other jewelry used in body piercing, and ink used in tattoos, may be purchased by the seller of body piercing and tattooing services exempt from the gross receipts tax or use tax for resale.
3. Needles and other equipment used to create tattoos, perform piercings, or perform electrolysis services are consumable goods and are subject to state and local gross receipts tax or use tax when purchased for use by the service provider.

Source: Ark. Code Ann. § 26-52-316

GR-9.11. SERVICES SUBJECT TO TAX-PEST CONTROL SERVICES:

- A. SERVICES SUBJECT TO THE TAX.** Arkansas state and local gross receipts (sales) tax shall apply to the gross proceeds derived from the performance of pest control services. Tax should be collected on the entire gross receipts derived from the fee charged for the performance of pest control services, without any deduction for costs, fees, labor services performed, interest, losses, or any expenses whatsoever. Fees paid by a service provider to the state, a city, county, or other governmental subdivision, which are passed on to the customer are part of the gross receipts for providing pest control services.

B. DEFINITIONS:

1. "Pest" means:

- a. Any insect, rodent, nematode, or fungus; or
- b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which is injurious to health or the environment.

2. "Pest control service" means any person who for compensation gives advice or engages in work, including inspection, to prevent, control, or repel pests as defined herein. Such services shall include, but shall not be limited to, the prevention, control or repelling of arthropods, mammals, birds, reptiles, wood-damaging or wood-destroying insects, wood-damaging or wood-destroying fungi, any organisms that may invade or infest homes, other buildings, or similar structures and their adjacent grounds as well as arthropods, mammals, birds, reptiles and plant diseases that may invade, infest, or infect shade trees, shrubs, lawns and turf;

C. PERSONS RESPONSIBLE FOR COLLECTING AND REMITTING THE TAX. The tax shall be collected and remitted by the seller of the pest control services on the total gross receipts received by a pest control service provider, including any amounts received for service contracts, termite contracts, pest control contracts, or any other contract that provides for inspection, prevention, control, or repelling of pests.

D. SERVICES EXEMPT FROM THE TAX. The tax shall not apply to sales of pest control services performed in the agricultural production of food or fiber as a business (including the pest control treatment of livestock and poultry) or the agricultural production of grass sod or nursery products as a business.

1. "Agricultural Purposes" means any purpose directly connected with the operation of any farm, including poultry and fish farms, ranches, orchards or any other operation by which products are grown on the land in sufficient quantity to constitute a commercial operation. In addition, the term "agricultural purposes" also means the production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location.

2. The exemption is not intended to cover the sale of pesticides for use in private family vegetable gardens or in protecting ornamental plants used for landscape purposes.

3. The tax on pest control services is not intended to apply to the performance of either commercial or residential weed control services. However, weed control services may be taxable as a lawn care service.

E. CHEMICALS AND BUILDING MATERIALS. Chemicals applied to the customer's premises and used for the treatment, control, or repelling of pests may be purchased tax free as a sale-for-resale by the pest control service provider. Building materials that are incorporated into the customer's premises in the course of repairing damage caused by termites may be purchased tax free as a sale-for-resale by the pest control service provider. All items purchased for use or consumption in providing pest control services are subject to tax.

Source: Ark. Code Ann. § 26-52-316

GR-9.12. SERVICES SUBJECT TO TAX – SECURITY AND ALARM MONITORING SERVICES:

- A. The gross proceeds or gross receipts derived from security and alarm monitoring services are subject to state and local gross receipts taxes.
- B. DEFINITIONS:
 - 1. "Security services" means video monitoring and security guard services utilized for the purpose of providing safety or security for property or persons without regard to the identity of the person or persons providing the services.
 - 2. "Alarm monitoring services" means services that use devices located at a residence, place of business, or other fixed premises to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency. Alarm monitoring services do not include a service that uses a medical monitoring device attached to an individual for the automatic monitoring of an ongoing medical condition.
- C. EXEMPTIONS FROM TAX: Security services provided by an employee, or a temporary or leased employee as defined by Ark. Code Ann. § 26-52-301(3)(C)(vii), of the business utilizing the services are not subject to the tax. OnStar, Lojack, and similar services that provide security as a part of a more extensive package of services are not taxable, unless the services provided in addition to security services are also taxable services.
- D. PERSONS RESPONSIBLE FOR COLLECTING AND REMITTING THE TAX: The tax shall be collected and remitted by the seller (the person or entity billing the consumer) of the security or alarm monitoring services. The installation of a security alarm is not a taxable service; however, if a fee for monitoring is charged and the installation fee is not separately stated on the invoice, the entire amount of the invoice is subject to tax.
- E. LOCAL TAXES: For the purpose of determining the correct local gross receipts taxes to collect, the local taxes at the location of the residence, place of business, or other fixed premises where the services are rendered shall be applied.

Source: Ark. Code Ann. § 26-52-316

GR-9.13. SERVICES SUBJECT TO TAX – BOAT STORAGE AND DOCKING:

- A. Boat storage and docking fees are subject to gross receipts tax. The tax applies to the storage or dockage of all boats of all types and size, regardless of whether the storage or dockage is in-water or off-water.
- B. All fees and charges associated with boat storage or dockage are included in the amount subject to tax. This includes, but is not limited to: space or slip rental fees; fees for putting the boat in or out of the water; and winterization fees, including charges for shrink wrapping or installing a cover.

Source: Ark. Code Ann. § 26-52-316

GR-9.14. SERVICES SUBJECT TO TAX – FURNISHING CAMPING OR TRAILER SPACES:

- A. The service of furnishing camping or trailer spaces at public or privately-owned campgrounds on less than a month-to-month basis is subject to gross receipts tax. This tax is levied in addition to the tourism gross receipts tax levied in Ark. Code Ann. § 26-52-1001 *et. seq.*
- B. Camping or trailer spaces rented for thirty (30) days or more are not subject to the tax. This exception applies only if the operator of the campground maintains a lease or other

documentation evidencing the period of the space rental. A guest registration card verifiable by a billing document is acceptable documentation if it reflects that the space was rented for a minimum of thirty (30) days. A customer is required to pay tax for the space rental even if the customer rents the space for a period that extends beyond thirty days if the customer is billed on less than a monthly basis.

- C. The tax levied by this section applies to the furnishing of spaces in campgrounds owned or operated by:
 - 1. The State of Arkansas, its agencies or political subdivisions; and
 - 2. Cities, counties, or their political subdivisions.
- D. The tax levied by this section does not apply to spaces furnished by federal campgrounds. In the event property owned by the federal government is leased to a non-federal entity and the non-federal entity uses such property for the furnishing of camping or trailer spaces, (e.g., the U.S. Army Corps of Engineers leases property to the Arkansas Game and Fish Commission (AGFC) and the AGFC furnishes camping or trailer spaces), then tax must be collected by the non-federal entity on the gross receipts received by the non-federal entity for furnishing camping or trailer spaces.
- E. Any charges for water, electrical or sewer hookups are an integral part of the charge for the use of the space and are included in the amount subject to tax.

Source: Ark. Code Ann. § 26-52-316

GR-9.15. SERVICES SUBJECT TO TAX - LOCKSMITH SERVICES:

- A. The gross receipts or gross proceeds derived from charges for locksmith services are subject to gross receipts tax.
- B. For purposes of this rule, "locksmith services" means repairing, replacing, servicing, or installing locks and locking devices, whether the locks and locking devices are:
 - 1. Incorporated into real property;
 - 2. Incorporated into tangible personal property; or
 - 3. Locks separate and apart from other property.
- C. "Locksmith services" also includes unlocking locks or locking devices for another person.
- D. "Locksmith services" shall not include the initial installation of locks in new construction.
- E. **EXAMPLES.** The following examples are intended to illustrate how the tax is applied to certain charges for locksmith services. All examples provided herein are based upon the specific statement of facts set forth in the example. Any change in the facts could result in a different conclusion. In no case are these examples intended to limit the application of tax to other transactions.
 - 1. **Example 1:** A contractor or locksmith installs the initial locks in a newly constructed commercial or residential building. The contractor or locksmith should pay tax on the cost of the locks. The charge for the service of installing the locks is not subject to tax.
 - 2. **Example 2:** A motorist locks his keys inside his automobile. The charge for unlocking the door to the automobile is subject to tax.
 - 3. **Example 3:** Charges for the unlocking of, repair to, or service to padlocks or combination locks that are not incorporated into real property are subject to tax.
 - 4. **Example 4:** Repairing or replacing a lock or locks in an existing home or building is subject to tax.

Source: Ark. Code Ann. § 26-52-316

GR-9.16. SERVICES SUBJECT TO TAX - PET GROOMING AND KENNEL SERVICES:

A. DEFINITIONS:

1. "Kennel Service" means an establishment, other than a pound or animal shelter, where pets, not owned by the proprietor, are kept, sheltered, fed, and watered in return for consideration, profit, or compensation. This term shall include all boarding activities for varying periods of time and does not require an overnight stay. This term shall not include:
 - a. Individuals who temporarily, and not in the normal course of business, board or care for animals owned by other individuals;
 - b. Breeding services;
 - c. Boarding as part of medical or veterinary treatment, observation or care of an animal; or
 - d. Horse stables.
2. "Grooming" consists of any act performed to maintain or improve the appearance of a pet and includes, but is not limited to, washing, combing, hair cutting, and nail clipping. This term shall not include services such as teeth cleaning and dental work, flea dipping, treatments for skin disease, or similar procedures.
3. A "pet" is any animal that has been tamed or gentled. The term "pet" does not include:
 - a. Dogs trained to aid the handicapped or elderly;
 - b. Dogs used in law enforcement;
 - c. Greyhounds that are used in greyhound racing meets pursuant to Ark. Code Ann. § 23-111-101, *et. seq.*; or
 - d. Livestock such as cattle, horses, mules, sheep, or hogs.

B. ADMINISTRATION:

1. The gross proceeds or gross receipts derived from pet grooming and kennel services are subject to state and local gross receipts taxes. Gross receipts paid to any person who is not a veterinarian for the grooming of any dog or cat will be presumed to be gross receipts from the service of pet grooming and subject to tax.
2. Grooming performed for veterinary purposes shall not be taxable if it is an integral part of the nontaxable service of veterinary care. If grooming is done for both veterinary and cosmetic reasons, the primary purpose for the treatment will determine if tax should be collected. It will be presumed that grooming activities such as washing, trimming, and cutting are for cosmetic purposes unless it can be shown that the treatment was primarily done for veterinary purposes. In situations where the charge for the cosmetic treatment and the veterinary-related treatment can be invoiced separately, tax should be collected only on the cosmetic portion of the billing. Taxable grooming services (those performed for cosmetic rather than medical reasons) are taxable even if they are billed by a veterinarian or veterinary clinic.
3. Persons or firms providing taxable grooming services are the consumers of supplies and equipment that is used or consumed by them in rendering their services and should pay tax on the purchase of these items.
4. Persons or firms providing pet grooming services, which the purchaser claims as an exempt transaction, should have the purchaser certify in writing: (a) that the animal fits within one of the categories enumerated in subsection (A)(3)(a) – (d) of this rule

and is not a pet, or (b) that the transaction is exempt for other reasons as provided by Arkansas law. If the seller of pet grooming services accepts a certification in good faith, then the seller shall not be liable for tax on the gross receipts from the sale of such services. A seller accepts a certification in good faith if he has no actual knowledge at the time of the sale that the animal in question is a pet. Actual knowledge may be implied from a previous course of dealing, knowledge of the purchaser's business, knowledge of the purchaser's use of the animal, or other facts and circumstances that should cause a reasonable person to refuse to accept the certification.

Source: Ark. Code Ann. § 26-52-316

GR-9.17. SERVICES SUBJECT TO TAX - INITIAL INSTALLATION:

- A. The initial installation of any of the following is taxable, unless one of the exemptions listed below, applies:
1. Motor vehicles
 2. Aircraft
 3. Farm machinery and implements
 4. Motors of all kinds
 5. Tires and batteries
 6. Boats
 7. Electrical appliances and devices
 8. Furniture
 9. Rugs
 10. Flooring
 11. Upholstery
 12. Household appliances
 13. Televisions and radios
 14. Jewelry
 15. Watches and clocks
 16. Engineering instruments
 17. Medical and surgical instruments
 18. Machinery of all kinds
 19. Bicycles
 20. Offices machines and equipment
 21. Shoes
 22. Tin and sheetmetal
 23. Mechanical tools
 24. Shop equipment
- B. DEFINITIONS.
1. "Initial installation" shall mean the first time setting up for use or service of the tangible property by connecting, fastening, attaching, joining, securing, building in, mounting, or otherwise affixing the property in the required location, except when the installation is provided in connection with the construction or substantial modification of a building or other improvement or structure affixed to real estate. "Initial installation" does not include delivery of an electrical appliance or household appliance, even if the delivery person plugs in the appliance for the owner.
 2. "Electrical appliances and devices" include items commonly understood to be appliances that have electrical components and items such as electrical signs, trans-

formers or other items installed on electrical utility power lines, cell phone towers, and computer hardware.

3. "Flooring" shall mean tile, hardwood, vinyl, carpet, a finished surface applied to concrete or other subfloor, or any other floor covering that overlays the subfloor of a structure to provide a finished surface for the floor, including decorative finishes.
4. "Household appliances" shall mean, for purposes of this rule, any household appliance that requires installation, including dishwashers, disposals, and any other household appliance that is not an electrical appliance or device such as a hot water heater. For purposes of this rule, "household appliances" does not include items that are not required to be installed, such as toasters, mixers, blenders, can openers, food processors, and other items that are considered to be small household appliances that do not require installation.

C. EXEMPTIONS.

1. INITIAL INSTALLATION OF EXEMPT PROPERTY. The service of initial installation of any property that may be purchased exempt from tax is not taxable.

EXAMPLE: Machinery and equipment that meets the requirements for exemption as machinery and equipment used directly in manufacturing may be purchased exempt from tax. The labor to install machinery that qualifies for exemption as manufacturing machinery is not taxable.

2. INITIAL INSTALLATION IN NEW CONSTRUCTION. The service of initial installation of flooring, motors, electrical appliances or devices, household appliances, or machinery in a newly constructed or substantially modified building or other improvement or structure affixed to real estate is not taxable. Individuals or businesses that provide labor to install flooring, motors, electrical appliances or devices, household appliances, or machinery in new construction are acting as contractors and are not providing taxable services. The contractor should either pay tax to the supplier on the materials and equipment used in the installation, or self-assess tax as a withdrawal from inventory (stock) on the purchase price of all materials.
3. INITIAL INSTALLATION OF NONMECHANICAL, PASSIVE, OR MANUALLY OPERATED COMPONENTS. The law in effect prior to July 1, 2004 regarding the initial installation of nonmechanical, passive, or manually operated components that become part of real estate after installation has not changed. The initial installation of such nonmechanical components is not taxable. However, flooring was removed from the list of components that are considered nonmechanical, passive, or manually operated components whose installation is exempt from tax.

- D. INITIAL INSTALLATION IN EXISTING BUILDING TAXABLE. Heating and air contractors, electricians, plumbers, or others who install flooring, motors, electrical appliances or devices, household appliances, or machinery for the first time (initial installation) in an existing building should collect tax on the labor charged to install the mechanical or electrical components. Any materials or parts installed are taxable to the customer. The labor to install ductwork and other nonmechanical, passive, or manually operated components that become part of the real estate is not taxable. If both taxable and nontaxable services are provided, the nontaxable charges must be separately stated on the invoice. Otherwise, the entire charge will be taxable.

- E. REPAIRS AND REPLACEMENTS. The repair or replacement of flooring is taxable. The law in effect prior to July 1, 2004 regarding repair and replacement of motors, electrical appliances or devices, household appliances, or machinery has not

changed. Any business or individual should continue to collect and remit tax on taxable repair and replacement services. [See Arkansas Gross Receipts Rule GR-21(E)(1)(b) – (d).]

- F. **PURCHASE OF MATERIALS.** A business holding a sales tax permit should purchase all materials used in its construction, repair, and retail business exempt from sales tax as sales for resale. Any materials used in the performance of non-taxable services, including initial installation in new construction, are not taxed to the customer; however, the business must self-assess, report, and pay sales tax as a withdrawal from inventory (stock) on the purchase price of the materials. The business must collect sales tax from its customers on retail sales of materials. Sales tax on materials used in performing taxable services is to be collected from the customer along with the labor charges. A business that is not required to hold a sales tax permit must pay tax on all purchases of materials.

Source: Ark. Code Ann. § 26-52-316

GR-9.18. LABOR ASSOCIATED WITH THE INITIAL INSTALLATION, ALTERATION, ADDITION, OR REPLACEMENT OF MACHINERY AND EQUIPMENT THAT QUALIFIES FOR AN EXEMPTION FROM TAX AS MACHINERY AND EQUIPMENT USED IN MANUFACTURING:

- A. The service of initial installation, alteration, addition, or replacement of machinery and equipment that qualifies for the exemption from the gross receipts or compensating use tax provided by Ark. Code Ann. §§ 26-52-402 and 26-53-114 (machinery and equipment used directly in manufacturing) is not subject to gross receipts or use tax.
- B. Labor services that are exempt from tax as provided in this rule are exempt without regard to who performs and bills for the labor services.
- C. Labor performed in connection with the replacement of exempt manufacturing machinery is exempt from tax only if the machinery being replaced meets all of the requirements for exemption required by Ark. Code Ann. §§ 26-52-402 and 26-53-114, including the requirement that substantially all of the machinery required to perform an essential function is replaced.
- D. The service of repair of exempt machinery is taxable.

Source: Ark. Code Ann. § 26-52-402

GR-10. SERVICES SUBJECT TO TAX-PRINTING AND PHOTOGRAPHY, JOB PRINTERS, PRINTERS AS MANUFACTURERS:

- A. The tax must be collected and remitted on the service of printing of all kinds, types and characters, including the service of overprinting. All businesses engaged in providing such services, including job printers and others, must collect and remit the applicable tax upon the gross receipts or gross proceeds derived from providing such services.
- B. Job printers must collect and remit tax upon the gross proceeds derived from the furnishing of such a service to a consumer without any deduction for any costs or expenses incurred in the furnishing of such services.

Example: Customer provides information to job printer to print catalogs for customer. Job printer should collect and remit tax on the amount invoiced to customer. The job printer should pay tax on all materials used and consumed in performing the taxable service, such as the ink, paper, and all other materials used in printing the catalogs.

C. Printers who print articles of commerce for sale to consumers are considered to be manufacturers. Items used by a printer who is a manufacturer that become a recognizable (capable of being recognized), integral part of the printed product may be purchased by the printer exempt as a sale-for resale. (See GR-53.) Printers must pay tax on items used in the printing process that do not become a recognizable, integral part of the printed product.

D. The tax applies to the service of photography of all kinds.

Source: Ark. Code Ann. §§ 26-52-301(4); 26-52-402

GR-10.1. MAILING, WORD PROCESSING AND DATA PROCESSING SERVICES:

A. The gross receipts or gross proceeds derived from sales of the following services are not subject to the tax:

1. The addressing, through the use of a computer or otherwise, of material to be mailed, with names and addresses furnished by the customer or provided by the seller for the customer.
2. The production, through the use of a computer or otherwise, of labels to be affixed to material to be mailed, where the names and addresses are furnished by the customer or provided by the seller for the customer. The tax will not apply regardless of whether the seller affixes the labels to the material to be mailed.
3. The production of multiple copies of letters, manuscripts, or other documents using word processing or data processing equipment.
 - a. The term "multiple copies" includes form letters produced with a slight variation that personalizes essentially the same letter.
 - b. The term "word processing equipment or data processing equipment" means computer hardware and software used to produce, create, edit and print original documents. The term "word processing equipment or data processing equipment" does not include photocopying or duplication equipment.

B. A seller providing non-taxable services under this rule must pay tax on any tangible personal property used in providing these services at the time the items are purchased. This includes items such as mailing labels, paper, envelopes, and any other property used by the seller or provided to the customers as part of these mailing, word processing and data processing services.

Source: Ark. Code Ann. § 26-52-301

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.

B. Membership dues which are paid on a regular basis by members of a club solely for the privilege of membership are not subject to the tax, unless the dues are taxable

as provided by paragraphs A or C of this rule.

- C. Dues and membership fees to health spas, health clubs, and fitness clubs and dues and membership fees to a private club, within the meaning of Ark. Code Ann. § 3-9-202(10), which holds any permit from the Alcoholic Beverage Control Board are subject to the tax.
 - 1. If a club is a non-profit charitable organization, dues and membership fees are not subject to tax. (See GR-26.)
 - 2. The gross receipts derived from any service provided by or through a health spa, health club, fitness club, or private club are not taxable unless the service is a specifically enumerated taxable service.
 - 3. As specifically provided in Ark. Code Ann. § 26-52-301(6)(B)(ii), the gross proceeds derived by a private club from the charges to members for the preparation and serving of mixed drinks or for the cooling and serving of beer and wine are subject to sales tax and any supplemental taxes.

Source: Ark. Code Ann. § 26-52-301(5) and (6)

GR-11.1. SALE OF POSTAGE STAMPS:

- A. Postage stamps sold at face value in the same manner as the United States Postal Service are not subject to gross receipts tax.
- B. Postage stamps sold at more than face value are subject to gross receipts tax. Gross receipts tax shall be collected on the entire gross receipts for the sale of postage stamps sold at more than face value.

Source: Ark. Code Ann. § 26-52-301(1)

GR-12. SALE OF MOTOR VEHICLES, TRAILERS AND SEMITRAILERS:

A. GENERAL INFORMATION

All sales of new and used motor vehicles, trailers and semi-trailers are subject to sales or use tax unless a specific exemption applies. The tax is to be collected as follows:

- 1. Tax due on vehicles and trailers which are required by Arkansas law to be registered and licensed for use on public streets and highways shall be paid by the purchaser at the time of registration and application for certification of title. Sellers of trailers are not required to collect tax.
- 2. For purposes of this rule, motor vehicles which are not required by Arkansas law to be registered and licensed for use on public streets and highways are: (1) mopeds, motorcycles, and motor-driven cycles which are designed or manufactured exclusively for competition or off-road use, and (2) three and four-wheel, all-terrain cycles and motorized bicycles.
- 3. Tax due on the sale of mopeds, motorcycles, and motor-driven cycles which are designed or manufactured exclusively for competition or off-road use is to be collected by the seller on the full purchase price without regard to trade-in.
- 4. Tax due on the sale of three and four-wheel, all-terrain cycles and motorized bicycles shall be collected by the seller on the full purchase price without regard to trade-in unless the provisions of GR-50 apply.
- 5. Tax due on the sale of motorcycles and motor-driven cycles registered for street use is to be paid by the purchaser at the time of registration and application for certificate of title. However, when the motorcycle or motor-driven cycle was sold in such a condition that it could not be licensed for street use and sales tax was collected and remitted by the seller, upon the purchaser's subsequent application for a license to operate the cycle upon the street, the purchaser shall be entitled to a credit for

the sales tax paid by the seller. The purchaser shall present proper proof of such payment of sales tax at the time of registration.

B. CALCULATION OF TAX DUE

1. Motorized Vehicles Required by Law to be Licensed and Registered

- a. If the total gross receipts or gross proceeds for the sale of a new or used motor vehicle or trailer is less than \$2,500.00, then the sales or use tax is not due on the vehicle or trailer.
- b. If the total gross receipts or gross proceeds for the sale of a motor vehicle or trailer is \$2,500.00 or more, then sales or use tax will be due on the difference between the total gross receipts or gross proceeds for the motor vehicle and any credit resulting from the trade-in of any used motor vehicle or trailer. (See also GR-12.1 and GR-13.)
- c. The term "Gross Receipts" or "Gross Proceeds" means the total amount of consideration for the sale of the motor vehicle or trailer, whether the consideration is in money or otherwise and including any manufacturer's or dealer's rebates and federal luxury excise tax, without any deduction on account of the cost of property sold, labor service, interest paid by the retailer, losses or any expenses whatsoever. Federal manufacturer's excise taxes are not a part of the "Gross Receipts" or "Gross Proceeds" if the excise taxes are separately stated or separately billed to the consumer. The term "Gross Receipts" or "Gross Proceeds" includes the value of any property taken in lieu of or in addition to money as consideration for a sale.
- d. Local Tax: The local sales or use tax levied by the city and county of the purchaser's residence shall be due on the sale of the motor vehicle. A corporation or partnership is a resident of any city and county in which it maintains an office or place of business.
- e. For all motor vehicles and trailers purchased after November 3, 1989, no credit will be allowed for sales or use taxes paid to another state on purchases of motor vehicles, trailers or semi-trailers which were first registered by the purchaser in Arkansas.
- f. Warranties: Sales or use tax is due on the gross receipts or proceeds received for an extended warranty or service contract on a new or used vehicle offered either by the manufacturer or the dealer. When the extended warranty or service contract is purchased at the time the new or used vehicle is sold, the price of the warranty is to be included in the total gross receipts or proceeds on which tax is collected at the time of registration. If the new or used car dealer or manufacturer sells a warranty on a new or used car after the car has been registered, the dealer or manufacturer must collect sales tax on the warranty and local tax on these sales is calculated at the rate of the city and county in which the sale occurred. If a vehicle of greater value is traded in for a vehicle of lesser value, the trade-in credit for the vehicle does not apply to reduce the sales price of the warranty. Tax is due on the total amount of the gross receipts for the sale of the warranty or service contract.
- g. Trade-in credit shall be allowed only if the item taken in trade for the sale of a motor vehicle, trailer or semi-trailer is a motor vehicle, trailer or semi-trailer.

2. Motor Vehicles Not Required to be Licensed and Registered

- a. The trade-in deduction does not apply to vehicles not required by Arkansas law to be licensed and registered for use on public streets and highways, as defined

in paragraph A(2) of this rule.

- b. Local tax shall be calculated on sales of vehicles not registered and licensed for use on public streets and highways at the rate levied, if any, by the city and county in which the sale occurred.

C. TAXABLE TRANSACTIONS

1. A transaction is a "sale" for purposes of imposing tax when possession or title to a motor vehicle or trailer is transferred from the seller to the buyer for valuable consideration.
2. Examples of taxable "sales" include:
 - a. Sale by a bankruptcy trustee of the debtor's vehicle or trailer;
 - b. Sale by the holder of a repairman's lien arising under Ark. Code. Ann. § 18-45-201 *et. seq.* to either a third party or to himself;
 - c. Sale by the executor or administrator of an estate;
 - d. Sale by the owner for consideration where the seller is unable to transfer title and the purchaser must obtain an order quieting title to the vehicle and ordering the Department to issue title to the purchaser.
3. Examples of non-taxable transfers include transfer by:
 - a. Gift, where the donor and recipient of the vehicle or trailer sign an affidavit attesting to the gift and the donor paid sales or use tax at the time of purchase and registered the vehicle in his own name;
 - b. Inheritance or intestate succession, where the beneficiary provides the Commissioner with a certified copy of a Probate Court order or other proof of testamentary transfer;
 - c. Court order, other than quiet title actions, where the prevailing party provides the Commissioner with a certified copy of the order or decree ordering the Commissioner to issue title;
 - d. Repossession pursuant to Ark. Code Ann. § 4-9-501 *et. seq.*;
 - e. Transfer of title to a damaged or stolen vehicle or trailer by the vehicle owner to an insurance company as a result of the settlement of a claim for damages. A cash settlement includes payment to a lienholder. For the replacement of the motor vehicle by the owner, see GR-12.1.
 - f. Transfer of title to a newly-formed partnership or corporation by the vehicle owner if the newly-formed partnership, corporation or limited liability company is merely a change of form of an ongoing business operated by the vehicle owner. Example: John Smith operates a store in the name John Smith d/b/a Smith's Store. Mr. Smith owns a car which is titled in the name "John Smith." Mr. Smith decides to incorporate his business and transfers all assets to the corporation including the car. The transfer of the vehicle to the corporation is not taxable.
 - g. Transfer of title by a dissolving partnership, corporation or limited liability company to a partner, shareholder or member as a distribution to the partner, shareholder or member.

D. EXEMPTION FOR RENTAL MOTOR VEHICLES

1. The gross receipts or gross proceeds derived from the sale of a motor vehicle to a person engaged in the business of renting licensed motor vehicles shall be exempt from sales and use tax if:
 - a. The person has a rental exemption certificate and retail sales tax permit issued by the Commissioner; and,
 - b. The motor vehicle is titled and registered in the name of the person holding the

rental certificate.

2. Definitions - The following terms for purposes of this rule and rule GR-20 shall have the following meanings:
 - a. "Licensed motor vehicle" means any automobile, truck, van, motorcycle, truck tractor or other self-propelled vehicle required to be licensed for highway use under the law of Arkansas. A vehicle which is titled and registered in a state other than Arkansas but which is the type of vehicle that would be required to be registered for highway use in Arkansas is a licensed motor vehicle. Trailers and semi-trailers are not motor vehicles. The term "motor vehicle" does not include special mobile equipment as defined in Ark. Code Ann. 27-14-211 or implements of husbandry as defined in Ark. Code Ann. § 27-14-212.
 - b. "Engaged in the business of renting licensed motor vehicles" means that the person regularly and persistently rents licensed motor vehicles for gain or profit.
 - c. "Rental exemption certificate" means a certificate issued by the Commissioner through the Sales and Use Tax Section which provides that the person is registered to engage in the rental of licensed motor vehicles for either short-term or long-term use.
 - d. "Short-term rental" means rental for less than thirty (30) days.
 - e. "Long-term rental" means rental for thirty (30) days or more. Whether a rental of a motor vehicle is considered long-term or short-term is dependent on the written contract and period for which payment is initially due.

Example: If a vehicle is rented initially for fourteen (14) days with the rental contract reflecting a term of rental for fourteen (14) days and the customer subsequently decides to continue renting the vehicle for twenty-one (21) more days, the transaction is treated as two (2) short-term rentals.
3. In order to claim the exemption from sales and use tax, the motor vehicle purchaser must provide a copy of the rental exemption certificate to the Revenue Division Office at the time of registration and titling of each vehicle along with the other documents required by law for registration and titling. The certificate will become a part of the permanent record of the Office of Motor Vehicles and all information must be provided as requested on the certificate. A short-term rental exemption certificate issued previously may not be used to register a vehicle intended for long-term rental. The long-term lessor must register with the Sales and Use Tax Section and obtain a new rental exemption certificate. A separate copy of the certificate must be presented for each vehicle registered and titled.
4.
 - a. The exemption is valid only if the motor vehicle is used exclusively for short-term or long-term rentals. If the motor vehicle is used for any other purpose, then the exemption granted at the time of registration is revoked and the purchaser is obligated to pay the applicable sales or use tax, plus penalty and interest as provided by the Arkansas Tax Procedure Act.
 - b. Use of the motor vehicle by anyone other than a short-term or long-term lessee for business or personal purposes will cause the exemption to be revoked. For example, use of a vehicle registered as a leased vehicle as an airport shuttle or free customer "loaner" car will cause the exemption to be revoked. Driving the vehicle to the nearest repair facility for purposes of repairs will not cause the exemption to be revoked.
5. See GR-20 for application of the rental vehicle tax, long-term rental tax and record keeping requirements.

E. PROOF OF VALUE

1. When a motor vehicle or trailer is sold or taken in trade, the taxpayer shall provide to the Commissioner documented proof of the gross receipts or gross proceeds or the value assigned to the traded-in item. Examples of sufficient documents include:
 - a. Bill of sale or financing contract signed by the seller and buyer separately stating the total gross receipts or gross proceeds for the sale, value assigned to the traded-in vehicle or trailer, description and vehicle identification number (VIN) of the vehicle or trailer sold and vehicle or trailer traded-in.
 - b. Affidavit signed by the seller and the buyer stating the total gross receipts or gross proceeds for the sale, value assigned to the traded-in vehicle or trailer, and description and vehicle identification number (VIN) of the vehicle or trailer sold and vehicle or trailer traded-in.
2. If the taxpayer is unable to provide sufficient documentation for either the total gross receipts or gross proceeds for the sale of the vehicle or trailer or the value of the traded-in vehicle or trailer, or if the buyer and the seller disagree on the consideration (gross receipts) for the sale of the used vehicle, then the total gross proceeds shall be presumed to be the greater of the actual sales price as provided on the bill of sale, invoice or financing agreement, or the average loan value of the vehicle as listed in the most current edition of the National Automotive Dealers' Association Official Used Car Guide or any pricing guide that may be approved by the Director for use in determining vehicle values.

F. USED MOTOR VEHICLES REGISTERED BY VEHICLE DEALERS

1. Used motor vehicle dealers are prohibited from assigning a motor vehicle using the Manufacturer's Statement of Origin (MSO). Used vehicle dealers are required to apply for title and registration to the vehicle before it may be transferred.
2. a. Ark. Code Ann. § 26-52-510(f) permits any motor vehicle dealer who has purchased a used motor vehicle for resale to register the vehicle for the sole purpose of obtaining a certificate of title to the vehicle without payment of gross receipts tax except as provided in paragraph 2(b) below. No license plate is issued with this registration and the vehicle may not be operated upon the highway without a dealer's plate.
 - b. The sale of a motor vehicle from the original franchise dealer to any other dealer, person, corporation, or other entity other than a franchise dealer of the same make of vehicle, which sale is reflected on the statement of origin, shall be subject to gross receipts tax.
3. "Used motor vehicle" is defined as any motor vehicle which has previously been sold, bargained, exchanged, given away or the title thereto transferred from the person or corporation who first took title from the manufacturer, importer, dealer, or agent of the manufacturer or importer, or that is so used as to have become which is commonly known as a secondhand or previously owned motor vehicle. In the event of a transfer reflected on the statement of origin (MSO) from the original franchise dealer to any other dealer, individual, or corporation other than a franchise dealer of the same make of vehicle, the vehicle shall be considered a used motor vehicle.

G. Service Vehicles
1. a. When a motor vehicle dealer removes a vehicle from its inventory and the vehicle is used by the dealership as a service vehicle, the dealer shall register the vehicle, obtain a certificate of title, and pay sales tax on the listed retail price of the new vehicle.

- b. When the motor vehicle dealer returns the service vehicle to inventory as a used vehicle and replaces it with a new vehicle for dealership use as a service vehicle, the dealer shall pay sales tax on the difference between the listed retail price of the new service vehicle to be used by the dealership and the value of the used service vehicle being returned to inventory. The value of the used service vehicle shall be the vehicle's highest wholesale value as listed in the most current edition of the National Automotive Dealers' Association's Official Used Car Guide or any pricing guide that may be approved by the Commissioner for use in determining vehicle values.
 - 2. a. For purposes of this subsection, the term "service vehicle" means a motor vehicle driven exclusively by an employee of the dealership and used either to transport dealership customers or dealership parts and equipment.
 - b. "Service vehicle" does not include motor vehicles which are rented by the dealership, used as demonstration vehicles, used by dealership employees for personal use, or used to haul or pull other vehicles.
- H. Only the first Nine Thousand, One Hundred Fifty Dollars (\$9,150) of the sales price of a new or used Class Five, Six, Seven, or Eight truck tractor that is sold in this state or sold in another state for use in this state is subject to state tax. The gross proceeds in excess of Nine Thousand, One Hundred Fifty Dollars (\$9,150) are exempt from tax. This exemption does not apply to local (city, town or county) tax.
- I. Only the first One Thousand Dollars (\$1,000) of the sales price of a new or used semitrailer sold in this state or sold in another state for use in this state is subject to state tax. The gross proceeds in excess of One Thousand Dollars (\$1,000) are exempt from tax. This exemption does not apply to local (city, town or county) tax.

Source: Ark. Code Ann. §§ 26-52-436; 26-52-510

GR-12.1. SALES TAX CREDIT FOR PRIVATE SALE OF A USED VEHICLE:

- A. PURPOSE. This rule is promulgated to implement and clarify the allowance of a sales tax credit for the sale of a used vehicle when the proceeds from such a sale are applied toward the purchase price of another vehicle.
- B. DEFINITIONS
 - 1. "Consumer" shall mean any private individual, business, organization or association.
 - 2. "Vehicle" shall mean an automobile, truck, motorcycle (registered for highway use), trailer and semitrailer.
 - 3. "Sale" shall mean the transfer of title to a used vehicle by a consumer (the seller) to another individual or business enterprise (the buyer) in exchange for cash or the equivalent of cash, such as a check or money order. A sale does not occur, and therefore no credit will be allowed, when the title to a damaged vehicle is transferred by a consumer to an insurance company in exchange for a cash settlement paid by the insurance company.
 - 4. "Trade-in" shall mean a vehicle is taken by a seller as a credit or partial payment on the sale of another vehicle.
- C. GENERAL INFORMATION
 - 1. If a consumer purchases a vehicle and within forty-five (45) days of the date of purchase, either prior to or after such purchase, sells a different vehicle in lieu of a trade-in, the consumer will be entitled to a credit against the sales or use tax due on his or her newly purchased vehicle.

2. If the consideration for the vehicle purchased by the consumer is greater than the proceeds from the sale of the used vehicle, the consumer shall pay sales or use tax on only the net difference between these amounts.
3. If the vehicle purchased by the consumer costs less than the proceeds received from the vehicle sold by the consumer in lieu of a trade-in, the consumer shall pay no sales tax on his or her newly purchased vehicle. However, the credit shall not exceed the price paid by the consumer for the newly purchased vehicle.

D. CERTIFICATION

1. In order to obtain the sales tax credit as set forth in this rule, the consumer must provide a properly completed bill of sale to the Department.
 - a. If the vehicle sold by the consumer in lieu of a trade-in is sold prior to the time the consumer registers and pays sales tax on his or her newly purchased vehicle, a bill of sale for the vehicle sold must be submitted to the Revenue Office at the time the newly purchased vehicle is registered. The bill of sale must be signed by both the consumer and the purchaser. The bill of sale must include name and address of purchaser and seller, vehicle description and VIN, sales price, and date of sale. (A Bill of Sale form and instructions can be found on the DFA website in the Motor Vehicle section.) Failure to provide a bill of sale will result in the disallowance of the deduction.
 - b. If the vehicle sold by the consumer in lieu of a trade-in is sold after the consumer has already registered and paid sales tax on his or her newly purchased vehicle, a Refund Claim form, a copy of the newly purchased vehicle's registration certificate, and a copy of the bill of sale for the vehicle sold must be submitted by the consumer to the Department's Tax Credits and Special Refunds Section at the following address:

Arkansas Department of Finance and Administration
Revenue Division
Tax Credits and Special Refunds Section
P. O. Box 8054
Little Rock, AR 72203-8054

2. The bill of sale and refund forms will be provided by the Department. The consumer shall be responsible for properly completing the form. Arkansas law provides that it is a felony to knowingly submit a form containing false information.

E. MULTIPLE SALES. If the consumer sells more than one vehicle within the 45 day periods prior to or after purchasing a vehicle, the consumer shall be entitled to claim all of the sales as sales "in lieu of a trade-in" for sales tax credit. However, the cumulative credit shall not exceed the price paid by the consumer for his or her newly purchased vehicle and shall not be carried forward and applied to the purchase of additional vehicles.

F. TRADE-IN. Consumers who make a trade-in on the purchase of a vehicle may also take a sales tax credit against the purchase price for any used vehicles sold by the consumer within forty-five (45) days either prior to or after the purchase. Any such credit shall be limited to the cash proceeds received by the consumer and shall in no event exceed the balance paid by the consumer for his or her newly purchased vehicle after receiving credit for the vehicle traded in.

G. SPECIAL ORDER VEHICLES. Additional rules apply when the time between the transfer of the old vehicle and the transfer of the new vehicle exceeds forty-five (45) days because of a delay in delivery of the new vehicle.

1. Sale of used vehicle prior to new vehicle order: If a special order for a new vehicle is placed with a dealer after the used vehicle is sold and the customer is contractually bound to purchase the new vehicle when it is delivered, then the forty-five (45) day period is calculated using the date of sale of the old vehicle and the date when the purchaser was contractually obligated to purchase the new vehicle.
2. Sale of used vehicle after new vehicle order: If a used vehicle is sold after placing a special order for a new vehicle and the new vehicle is not delivered until after forty-five (45) days from the sale of the used vehicle, then the forty-five (45) day deadline is met if the sale of the used vehicle occurs within forty-five (45) days of placing a binding order for a new vehicle.

Source: Ark. Code Ann. § 26-52-510

GR-13. SPECIAL RULES FOR USED MOTOR VEHICLE, TRAILER AND SEMI-TRAILER DEALERS: New and used car dealers shall be entitled to purchase parts and accessories exempt as sales for resale if the dealer is in the business of using the parts for reconditioning or rebuilding dealer-owned motor vehicles for subsequent sale. The dealer must hold a retail sales tax permit. The separate sale of parts or accessories by the dealer to consumers is subject to tax and shall be collected and reported by the dealer.

New and used car dealers shall be entitled to purchase services performed on dealer-owned vehicles exempt as a sale for resale if the dealer is purchasing the services solely and exclusively to prepare the vehicle for sale and the service enhances the value of the vehicle. For example, the repairing of windshields, dents, scratches, radiators, engines and car detailing would be exempt as a sale for resale if the service enhanced the value of the vehicle. The sale for resale exemption is available only for services performed on vehicles held for resale. All other services performed for the dealership will remain taxable.

Car dealers that are purchasing parts, accessories or services as a sale for resale must satisfy the requirements found in Rule GR-53.

Source: Ark. Code Ann. § 26-52-510

GR-13.1. CREDIT FOR VEHICLE DESTROYED BY CATASTROPHIC EVENT:

- A. If a motor vehicle is damaged or destroyed, a consumer shall be entitled to a sales tax credit equal to the amount of state and local sales or use tax paid at registration if:
 1. The vehicle is damaged or destroyed within one hundred eighty (180) days of registering the vehicle in Arkansas and paying Arkansas sales or use tax;
 2. The damage is caused by a catastrophic event resulting from a natural cause; and
 3. As a result of the catastrophic event, the value of the motor vehicle is reduced to less than thirty percent (30%) of its retail value based upon the NADA Official Price Guide or other approved publication
- B. The vehicle owner must file a written request for credit with the Tax Credit Section of the Revenue Division and establish his entitlement to the credit. The claim must be filed within one (1) year of registration of the damaged vehicle.
- C. If the vehicle owner traded in a vehicle on the purchase of the vehicle that is subsequently damaged or destroyed, the vehicle owner is also entitled to an additional credit for the traded in vehicle equal to the value of the traded in vehicle and shall be treated as a trade in for purposes of computing tax due on another vehicle.

- D. The credits are valid for six (6) months from the date of issuance and shall be applicable only on the purchase of another motor vehicle by the consumer to whom the credits were issued.
- E. "Natural cause" means an act occasioned exclusively by the violence of nature where all human agency is excluded from creating or entering into the cause of the damage or injury. Examples include tornadoes, earthquakes, floods, tsunamis, volcanic eruptions and hurricanes.

Source: Ark. Code Ann. § 26-52-519

GR-14. SALE OF AIRCRAFT:

A. GENERAL INFORMATION

- 1. Sales of new and used airplanes are subject to sales or use tax. If gross receipts, sales, compensating (use) or other similar tax has been legally paid by the taxpayer to another state, then the taxpayer is entitled to credit for that tax. The taxpayer shall provide sufficient proof of such tax payment before credit is allowed.
- 2. If the total gross receipts or gross proceeds for the sale of new or used aircraft is less than Two Thousand Dollars (\$2,000), then sales or use tax is not due.

B. DEFINITIONS

The term "gross receipts" or "gross proceeds" means the total amount of consideration for the sale of the airplane whether the consideration is in money or otherwise, without any deduction on account of the cost of the property sold, labor service performed, interest paid by the retailer, losses or any expenses whatsoever. The term "gross receipts" or "gross proceeds" includes the value of any property taken in lieu of or in addition to money as consideration for a sale.

C. CALCULATION OF TAX DUE

If the seller takes used aircraft in trade as credit or part payment of a sale of a new or used aircraft, tax shall be paid on the difference between the total gross receipts or gross proceeds for the aircraft sold and credit given for the traded-in aircraft. No trade-in credit will be allowed if an item other than a used aircraft is taken in trade.

D. SALES TAX REPORTS

Every seller of an airplane is required to collect tax from the purchaser. The seller is to report the sale as any other taxpayer subject to the Arkansas Gross Receipts Tax Act. The seller is to provide the Director with the following information along with the seller's regular sales tax report:

- 1. Purchaser's name and address.
- 2. Make, model, serial number and gross sales price of each aircraft sold.
- 3. Make, model, serial number and value assigned to any aircraft taken in trade as part payment on the sale of a new or used aircraft.
- 4. Amount of state and local tax collected from the purchaser.
- 5. Copies of invoices, sales tickets or bills of sale concerning each aircraft sold and taken in trade. (If the invoice, sales ticket or bill of sale contains the information required by this section, then only the invoices, sales tickets, or bills of sale must accompany the sales tax report.)

E. RECORDS

The seller shall retain records reflecting the total gross receipts or gross proceeds and description of each aircraft sold along with the value and description of each aircraft taken in trade. If the seller's records are inadequate or incomplete, the Commissioner may utilize any of the following for purposes of determining sales tax liability:

- 1. Affidavit signed by the seller and purchaser attesting to the sales price or trade-in

value of the aircraft.

2. Aircraft valuation schedules prepared by the Assessment Coordination Division of the Arkansas Public Service Commission.
3. Any national trade publication generally accepted by aircraft dealers as accurately reflecting current aircraft market value.
4. The higher of two appraisals prepared by other aircraft dealers.

F. AIRCRAFT RENTAL

1. Any person engaged in the business of selling aircraft in Arkansas who holds aircraft for resale in stock, may rent or use the aircraft in a charter service operated by that person for a period of one year from the date of purchase of the aircraft without remitting the tax on the aircraft so used. If the aircraft purchased for resale requires substantial modification or substantial refurbishing prior to resale, the purchaser may use the aircraft in a rental or charter business for two years before tax is due. The purchaser must collect gross receipts and short term rental tax on all non-charter rentals. When the aircraft is eventually sold, however, the tax must be remitted at the time of sale. If the aircraft is sold within the applicable one-year or two-year holding period, the tax shall be computed on the actual sale price of such aircraft or the price paid for the aircraft by the seller, whichever is greater. If the rented or chartered aircraft is not sold during the applicable one-year or two-year holding period, then the tax must be remitted by the person engaged in the business of selling aircraft in Arkansas on his purchase price.
 - a. "Modification" or "refurbishing" means the repair, replacement or restoration of components, parts or equipment affixed to or which are part of the aircraft.
 - b. "Substantial" means any repair, replacement or restoration that costs fifty percent or more of the fair market value of the aircraft prior to the modification or refurbishing.
2. If an aircraft is rented by an aircraft charter service with a pilot's service included, the rental of aircraft and pilot service is a non-taxable service. If the aircraft alone is rented for a period of less than thirty (30) days, then the sales tax and the 1% short term rental tax must be collected on the rental charge. If the aircraft alone is rented for thirty (30) days or more, then the tax must be collected and remitted upon the rental charges unless the Arkansas tax was paid on the purchase price of the aircraft.

G. NEWLY MANUFACTURED AIRCRAFT

The gross receipts or gross proceeds derived from the sale of new aircraft manufactured or substantially completed within the State of Arkansas shall not be subject to the gross receipts tax when sold by the manufacturer or substantial completer to a purchaser for use exclusively outside this state notwithstanding the fact that possession may be taken in this state for the sole purpose of removing the aircraft from this state under its own power.

Source: Ark. Code Ann. §§ 26-52-409; 26-52-505

GR-15. SALE OF MANUFACTURED HOMES, MODULAR HOMES, AND MOBILE HOMES:

A. DEFINITIONS.

1. A "manufactured home" means a factory-built structure produced in accordance with the federal Manufactured Home Construction and Safety Standards Act and designed to be used as a dwelling unit.
2. A "mobile home" means a structure built in a factory prior to the enactment of the

federal Manufactured Home Construction and Safety Standards Act and designed to be used as a dwelling unit.

3. A "modular home" means a factory-built structure produced in accordance to state or local construction codes and standards and designed to be used as a dwelling unit.
4. "Sales price" means the purchase price of the new manufactured home or modular home to be paid by the purchaser as set forth on the actual invoice or bill of sale, excluding transportation and delivery fees, installation fees, and other items or services that are to be included as part of the final sale of the manufactured home by the retailer before the consideration of a trade-in allowance or down payment in cash or otherwise.

B. RESPONSIBILITY TO COLLECT AND REMIT TAX ON SALES OF MANUFACTURED HOMES OR MODULAR HOMES. Every seller of new manufactured homes or modular homes in Arkansas is required to obtain a sales tax permit and to collect tax from the purchaser. The seller is to report the sale and remit the tax at the same time and in the same manner as any other taxpayer subject to the Arkansas Gross Receipts Tax laws. The invoice should clearly distinguish the sales price of the home from any other nontaxable items that are invoiced to the customer.

C. CALCULATION OF TAX DUE.

1. Sales tax shall be calculated on sixty-two percent (62%) of the sales price of a new manufactured home or modular home. No tax is due on the sale of mobile homes or on the sale of used manufactured homes or modular homes.
2. The following are not included in the sales price for purposes of calculating the sales tax on the sale of new manufactured homes or modular homes: fees for transporting or delivering the manufactured home or modular home; installation fees, fees for services performed by or on behalf of the seller and billed by the seller to the purchaser, provided such services are not taxable services under Arkansas law.
3. Items of tangible personal property that are purchased for use in installing a manufactured or modular home are taxable, whether the property is purchased by the seller of the manufactured or modular home, a contractor who installs the home at the consumer's location, or a different contractor or subcontractor who installs specific property such as heating and cooling units. Sellers, contractors, or subcontractors who purchase property used in installation should pay tax to the seller of the property or self-assess tax as a withdrawal from stock on the purchase price of the property.

D. RECORDS.

The seller shall retain copies of the sales documents (invoices, tickets, and bills of sale) for all sales of new manufactured and modular homes that contain the following information:

1. the date of the sale;
2. the purchaser's name and address;
3. the make, year, model, serial number, and sales price; and
4. the amount of state and local tax collected from the purchaser.

Source: Ark. Code Ann. § 26-52-801 *et. seq.*

GR-15.1. NEW AND USED BOATS:

A. The gross receipts tax applies to the sale of all new boats. No deduction for a traded-in boat is allowed from the total consideration for the sale of a new boat when calculating

sales tax.

- B. The gross receipts tax applies to the sale of all used boats unless: (1) The used property exemption of Ark. Code Ann. § 26-52-401(22) applies (See GR-50); or (2) The isolated sale exemption of Ark. Code Ann. § 26-52-401(17) applies. No deduction for a traded-in boat is allowed from the total consideration for the sale of a used boat when calculating sales tax.
- C. All persons in the business of selling new or used boats shall collect the tax and remit it to the Commissioner.
- D. Boat sellers are not required to collect the tax on sales of boat trailers. The tax is collected at the revenue office when the owner registers and licenses the boat trailer. If the seller sells a boat and trailer to his customer, he should separately state the sales price of the trailer on the sales invoice. If the seller does not separately state the sales price of the boat and trailer, then he must collect and report tax on the total amount and clearly document on the invoice or bill of sale that the tax has been collected.

Source: Ark. Code Ann. § 26-52-301

GR-15.2. SALES OF HEAVY EQUIPMENT:

A. DEFINITIONS:

- 1. "Heavy equipment" includes rough terrain fork lifts, scissor lifts, extendable boom lifts, cranes, trenchers, loader backhoes, excavators, bulldozers, motor graders, crawler tractors and loaders, skid-steer loaders, scrapers, earth movers, compaction equipment, asphalt pavers, demolition equipment, concrete pavers, wheel loaders, rock drills, portable air compressors that are 100 CFM or greater, cable plows, boring machines or any other equipment determined by the Director to be heavy equipment following the adoption of a regulation in accordance with state law.
 - a. Demolition equipment is limited to equipment that is used to demolish structures or highway.
 - b. Rock drills are limited to equipment used to drill holes in rock or concrete.
- 2. With the exception of portable air compressors, the items listed in paragraph 3(A) of this rule shall be considered to be heavy equipment only if:
 - a. the item is propelled by its own internal engine or internal power source; and
 - b. the item is intended for outside use.
- 3. Heavy equipment does not include:
 - a. Hand held tools;
 - b. Portable tools and attachments, with the exception of portable air compressors 100 CFM or greater;
 - c. Farm tractors or small tractors used for mowing, gardening, etc;
 - d. Items used in conjunction with the operation of a manufacturing or processing facility;
 - e. Motor vehicles;
 - f. Locomotives;
 - g. Aircraft or watercraft.

B. GENERAL INFORMATION:

- 1. All sales of new and used heavy equipment are subject to sales or use tax unless otherwise exempted. The tax shall be collected, reported and remitted by the heavy equipment dealer at the time of sale.
- 2. At the time of sale, every dealer who sells heavy equipment shall affix a decal to each piece of heavy equipment sold as proof that either: 1) sales tax has been paid on the heavy equipment; or 2) either the heavy equipment or the purchaser

- of the equipment is exempt from tax. The dealer shall record the decal number on the sales invoice or other document evidencing the sale.
3. The dealer shall affix the decal in a prominent and clearly visible place on the heavy equipment.
 4. A red decal shall be affixed to heavy equipment that is taxable and for which the dealer collected the tax. If the equipment is exempt from tax under the farming exemption, a blue decal shall be affixed. If the equipment is exempt from tax under any other tax exemption (i.e., manufacturing, timber harvesting, etc.), a green decal shall be affixed. No decal is required for heavy equipment that is sold exempt from tax as a sale for resale, because the dealer will affix the decal at the time the heavy equipment is sold to the ultimate consumer.
 5. A dealer who sells used heavy equipment shall remove the old decal from the used equipment before it is resold and a new decal shall be affixed when the item is resold. If the dealer fails to remove the old decal, the Director shall assess the following penalties:
 - a. One Hundred Dollars (\$100) for the first offense;
 - b. Two Hundred Dollars (\$200) for the second offense; and
 - c. Five Hundred Dollars (\$500) for the third and subsequent offenses.
 6. Decals may be obtained from the Department of Finance and Administration, Sales and Use Tax Section, P.O. Box 1272, Little Rock, Arkansas 72203.
 7. In the event a decal on heavy equipment is lost or damaged, the purchaser of the equipment may obtain a replacement decal from the Department of Finance and Administration. Before a replacement decal will be issued, the purchaser must provide the original sales invoice or other document evidencing the sale that shows the original decal number recorded by the dealer at the time of sale.
 8. Any person who purchases heavy equipment for storage or use within Arkansas from a dealer located outside of Arkansas, and who does not pay tax to the out of state dealer, shall be liable for Arkansas use tax.
 - a. A purchaser of heavy equipment who does not pay tax to the out of state dealer is required to pay Arkansas use tax to the Arkansas Department of Finance and Administration. The tax shall be reported and paid to the Sales and Use Tax Section. Upon payment of the tax, the purchaser shall receive a decal to affix to each piece of heavy equipment purchased.
 - b. If the purchaser has paid sales or use tax to an out of state dealer, the purchaser shall present proof to the Sales and Use Tax Section that the tax has been paid, and the purchaser shall receive a decal to affix to each piece of heavy equipment.
 9. SALES BY AUCTIONEERS: Auctioneers who simply auction items for third parties, and who do not maintain an inventory of their own, are not heavy equipment dealers and are not required to affix a decal on heavy equipment they sell. However, if an auctioneer maintains an inventory of items for sale which includes heavy equipment, then the auctioneer must affix a decal on heavy equipment sold from the inventory. In the event an auctioneer sells the inventory of a heavy equipment dealer that is liquidating, the heavy equipment dealer is responsible for affixing a decal to equipment sold.
 10. DIRECT PAY PERMIT HOLDERS: If heavy equipment is sold to the holder of a direct pay permit, the heavy equipment dealer is not required to affix a decal. Instead, the holder of the direct pay permit shall be required to contact DFA to ob-

tain the proper decal for the equipment.

11. RENTALS. Dealers who sell heavy equipment to purchasers:

- a. who elect to collect tax on the rental payments and claim the sale for resale exemption at the time the equipment is purchased are not required to affix a decal to the heavy equipment. The purchaser must obtain the applicable decal from the Department of Finance and Administration prior to renting the equipment. For example, if the lessor rents to an exempt entity, the appropriate decal would be an "exempt" decal. However, if the lessor is required to collect tax on the stream of rental payments, the appropriate decal would be a red decal;
- b. who elect to pay tax on the heavy equipment at the time of sale must affix a red decal indicating that the dealer has collected tax on the sale of the heavy equipment. The purchaser is not required to affix any additional decal at the time of rental.

Source: Ark. Code Ann. § 26-52-318

GR-16. RECEIPTS FROM CERTAIN COIN-OPERATED AMUSEMENT MACHINES SUBJECT TO TAX:

- A. The gross receipts or gross proceeds derived from the operation of coin-operated pinball machines, coin-operated music machines, coin-operated mechanical or electronic games, coin-operated machines that distribute winnings as tangible personal property or as coupons that are redeemable for merchandise, and all other similar devices are subject to the tax. Every person holding an Amusement Machine Operator's License pursuant to Ark. Code Ann. § 26-57-401 *et. seq.* must obtain a retail permit, and report and remit gross receipts tax.
- B. The tax shall be deemed to be included in the charge for the use of the machine. Total gross receipts shall be calculated by dividing the collected charges by the sum of one (1) plus the state tax rate plus any local tax rates.

Source: Ark. Code Ann. §§ 26-52-308

GR-17. FLORAL ARRANGEMENTS SUBJECT TO TAX--SPECIAL RULES: The gross receipts tax applies to the transmittal of any order for flowers, floral arrangements, potted plants or any other article common to the floral business. The term "transmittal" means any communication by telegraph, telephone, or any other means of communication for delivery of articles common to the floral business to a point either in or out of Arkansas.

Source: Ark. Code Ann. §§ 26-52-507

GR-18. WHAT CONSTITUTES GROSS RECEIPTS--EXAMPLES:

- A. Freight or Transportation Charges: All freight or transportation charges are part of the gross receipts or gross proceeds on which the tax must be collected and remitted unless the freight charges are billed directly to the purchaser by a carrier other than the seller. If the tangible personal property being shipped is exempt from sales and use tax, the freight or transportation charges are also exempt from tax.
- B. Used Merchandise: The gross receipts derived from the sale of used tangible personal property are subject to the tax except as noted below. (See also GR-50, GR-51, GR-13, GR-14, and GR-15.)
 1. Taxpayers may deduct the value of any returned merchandise from gross receipts on the monthly report if the full purchase price and tax have been refunded to the

customer. Sufficient records must be kept to establish that this requirement has been met.

2. Property which has been repossessed or voluntarily returned without a full refund of the purchase price cannot be classified as returned merchandise and upon its resale, the taxpayer should collect and remit the tax on the gross proceeds derived from the resale. Where the records of any business are kept so as to distinguish sales of repossessed merchandise from other sales then upon the resale of repossessed merchandise, the amount of tax to be remitted is the difference between the amount of tax previously remitted on the original sale and the amount of tax computed on the total price realized from both the original sales and resale of such merchandise.

EXAMPLE 1: Seller sells merchandise for \$10,000 on credit. Purchaser pays \$3,000, then defaults on the payment agreement. Seller repossesses merchandise and resells for \$8,000. (Assume 5% tax.) Tax on original sale was \$500 ($\$10,000 \times 5\% = \500). Proceeds received from both original sale and resale = \$11,000 ($\$3,000 + \$8,000$). Tax computed on total proceeds = \$550 ($\$11,000 \times 5\%$). Difference = \$50 ($\$550 - \500). Tax to be remitted to the Director on resale is \$50.

EXAMPLE 2: Same facts except merchandise resells for \$6,000. Now total proceeds = \$9,000. Tax computed on total proceeds = \$450. Seller entitled to refund of \$50 on resale.

- C. Installation charges: If a seller is engaged in the established business of selling and installing tangible personal property in Arkansas, and the sales price of the property includes the installation charges as a part of the total sale price, the gross receipts tax should be collected on the total sale price. If the installation charges are separately stated on the invoice or bill of sale, tax is not due on the separate installation charge. Charges for installation services which are taxable under GR-9 or GR-7 of these rules are taxable even if they are separately stated.
- D. Withdrawal from stock:
 1. a. Withdrawal of purchased goods. If seller has a retail permit and purchases goods from his suppliers without paying tax to those suppliers claiming the "sale for resale" exemption and seller withdraws merchandise from his stock and gives the merchandise to his customers or other third parties, or uses the merchandise himself, the value of this merchandise is a part of seller's gross receipts or gross proceeds and seller must remit the tax on the purchase price of the goods paid by the seller.
 - b. Withdrawal of manufactured or processed goods.
 - (1) A business that manufactures or produces products and sells the products to third parties or at retail may at times transfer title to certain of those products to itself or give the products to another person or entity. The business should report and remit tax on the sales price of the products rather than the value of the raw materials used to manufacture or produce the products.
 - (2) A business that manufactures or produces products and transfers title to certain of those products to itself in a capacity other than as the manufacturer should determine the tax treatment of the transfer as follows. If the business sells the products to third parties, then the business should report and remit tax on the sales price of the product rather than the value of the raw materials. If the business does not sell the product to third

parties, the business is acting as a contractor and should report and remit tax on the cost of the raw materials withdrawn to produce the product.

Example 1: Business produces and installs windows. Business also sells windows to third parties without installation. When business sells windows as a manufacturer to itself as a contractor, business should remit tax on the sales price of the windows.

Example 2: Business produces and installs windows but does not sell any windows to third parties. When business produces and installs the windows, it is acting only as a contractor and should remit tax on the value of the raw materials used to produce the windows.

2. The value of goods that are withdrawn from stock by sellers and donated to National Guard members, emergency service workers, or volunteers providing services in an area declared a disaster area by the Governor are exempt from tax and are not required to be reported as part of the seller's gross receipts.
3. Restaurants and other food sellers that allow employees to consume food free of charge must treat the food as a withdrawal from stock, unless all of the following apply:
 - a. The food is surplus that would otherwise be discarded;
 - b. The restaurant does not prepare food in excess of that expected to be consumed to create the surplus food; and
 - c. The food is provided to the employees on an irregular and incidental basis, i.e. when such surplus exists.
- E. Warranty sales: Automobiles. See GR-9(E) and GR-12.
- F. Warranty sales: Appliances. If a seller is engaged in the business of selling and installing refrigerators or other appliances to consumers, and the manufacturer of the appliance offers purchasers an extended warranty for a consideration which may be purchased at the time the appliance is purchased or at a later date, the seller must collect sales tax on the price of the warranty whenever it is sold. (See GR-9(E).)
- G. Membership Fees: A bookstore which sells books from an established business in Arkansas has also organized a book club. In order to become a member of the club, the bookstore's customers pay a yearly membership fee. In return for this fee, the club members may purchase books for ten percent (10%) off the listed store price. Neither the membership fee nor the value of the discount should be considered gross receipts or gross proceeds. See GR-11 regarding taxable membership fees.
- H. Manufacturer's Coupons: All amounts received by a retailer from a manufacturer or other third party as reimbursement for a coupon issued by the manufacturer or third party are part of the gross receipts or gross proceeds for the sale of the product and are taxable.

Example: A manufacturer or other third party issues a coupon entitling customers to 25 cents off the retail price of a product. The manufacturer will reimburse retailers who honor the coupons. The 25 cents received by the retailer from the manufacturer is part of gross receipts or gross proceeds. The retailer must collect and remit the tax on the total amount received from the customer and the manufacturer.

- I. Retailer Coupons: The amount of any coupon that is issued by the retailer and is not reimbursed by any third party is not part of the gross receipts or gross proceeds received in connection with the sale of the product and is not taxable.

Example: Retailer issues a coupon entitling customers to 25 cents off the price of a product. Retailer will not be reimbursed by any third party. The 25 cents is not part of

gross receipts or gross proceeds and the tax is due only on the amount paid by the customer for the product not including the coupon.

J. Bad Debts:

1. Taxpayers may deduct bad debts from the total amount upon which the tax is calculated. For purposes of the bad debt deduction, the "taxpayer" is the person required by law to remit to the Director the tax attributable to the transaction for which the bad debt deduction is claimed.
2. A "bad debt" means any portion of a debt for an amount which a taxpayer has reported as taxable, which the taxpayer legally claims as a bad debt deduction for federal income tax purposes
3. Bad debts include, but are not limited to, worthless checks, worthless credit card payments and uncollectible credit accounts, unless otherwise excluded. Bad debts do not include financing charges and interest, uncollectible amounts on property that remain in the possession of the taxpayer or vendor until the full purchase price is paid, and expenses incurred in attempting to collect any debt.
4. Debts that are sold or assigned by the taxpayer to third parties for collection do not qualify for the bad debt deduction following such sales or assignment, without regard to whether the transfer is made with or without recourse.
5. Debts that are secured by tangible personal property that has been repossessed upon default do not qualify for the bad debt deduction.
6. Bad debts must be deducted within three (3) years of the date of the sale for which the debt was incurred. A taxpayer may not deduct bad debts on its sales tax report until the taxpayer has filed its federal income tax return on which the deduction has been claimed.
7. If a deduction is taken for a bad debt and the taxpayer subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return date after the collection. Any deduction taken or refund paid, which is attributed to bad debts, shall not include interest.

K. None of the above examples should be construed to limit the definition of "gross receipts" or "gross proceeds".

Source: Ark. Code Ann. §§ 26-52-103(a)(4) and (4)(B); 26-52-301(1), (3)(C), (6), and (7); 26-52-309; 26-52-517(b)(2)

GR-19. PERSONS REQUIRED TO COLLECT AND REMIT TAX--PAWNBROKERS AND SELLERS OF USED TANGIBLE PERSONAL PROPERTY: Pawnbrokers and sellers of used tangible personal property are sellers of taxable goods and must obtain a permit. All sales made by pawnbrokers or other sellers of used property are taxable sales. (See GR-50 for exemption relative to trade-in property.)

Source: Ark. Code Ann. §§ 26-52-103(a)(7); 26-52-301(1)

GR-20. LEASES AND RENTALS:

- A. 1. GENERAL: Persons in the established business of leasing or renting articles of tangible personal property to consumers are sellers and must collect and remit tax upon the gross receipts or gross proceeds derived from the lease or rental of the property.
2. Definitions:
- a. The term "commercial shipping" means either:
 - (1) the service of transporting the personal property of another for gain or profit,
or
 - (2) transporting one's goods from place to place if the expense of renting the

vehicle is an ordinary and necessary expense of the lessee's business operation for federal and Arkansas income tax purposes.

- b. The term "motor vehicle" means a vehicle which is self-propelled and is required to be registered for use on the highway, and does not include trailers or semi-trailers.
 - c. The term "vehicle" means every device in, upon, or by which any person or property is, or may be transported upon a highway and which is required to be registered for use on the highway, and includes trailers and semi-trailers.
 - d. A "long-term lease" means a contract to lease property for a term of thirty (30) days or longer to a single consumer.
 - e. A "short-term rental" means a contract to lease property for a term of less than thirty (30) days to a single consumer.
- B. LONG-TERM LEASES OF TANGIBLE PERSONAL PROPERTY (Except for Motor Vehicles):
1. For long-term leases of tangible personal property, except for motor vehicles, the lessor may either purchase the property tax-free as a sale for resale or pay Arkansas sales and use tax on the purchase. If the lessor purchases property intended for subsequent lease without paying Arkansas gross receipts or use tax, he must establish the requirements necessary for a sale-for-resale exemption. See GR-53. At the time of purchase, the lessor must elect to pay the tax on property intended for long term lease or purchase the property tax free as a sale for resale. This election may not be changed after the purchase.
 2. If the lessor of property paid Arkansas gross receipts or use tax on the purchase of the item, the lessor is not required to collect gross receipts tax on subsequent long-term leases of the property.
 3. Repair parts purchased by the lessor to keep the leased property in working order are taxable, unless the property was initially purchased exempt from tax as a sale for resale.
 4. See GR-38.2 for exemption for leases of adaptive medical equipment.
- C. LONG-TERM LEASES OF MOTOR VEHICLES.
1. With respect to motor vehicles leased on a long-term basis on or after August 1, 1997, the lessor has the option of:
 - a. Remitting sales or use tax on the purchase price of the motor vehicle at the time of registration (Option 1); or
 - b. registering the motor vehicle exempt from tax (Option 2).
 2. Option 1
 - a. If the lessor chooses Option 1, then the lessor will not collect sales tax or long-term rental tax on the consideration for the lease of the motor vehicle paid by the lessee. No tax shall be collected by the lessor on the lease of motor vehicles that have been previously titled and registered in another state by the lessor if sales or use tax was paid to the other state on the purchase price of the vehicle and the total tax paid to the other state equals or exceeds the combined Arkansas state and local use tax as applied to the purchase price of the motor vehicle.
 - b. If the lessee makes an initial payment on the lease in the form of a payment of money or by transferring ownership of another motor vehicle, no deduction shall be permitted from the value of the leased motor vehicle for purposes of computing the sales or use tax due on the leased motor vehicle at the time of registration. The trade-in deduction available to purchasers of motor vehicles and described in GR-12 shall not apply to leased motor vehicles. The deduction avail-

able to purchasers on account of the sale of a used motor vehicle and described in GR-12.1 shall not apply to leased motor vehicles.

Example: Lessee owns a used motor vehicle valued at Five Thousand Dollars (\$5,000). Lessee enters into a long term lease arrangement with Lessor and agrees to transfer the used motor vehicle to Lessor as an initial payment on the lease. When the motor vehicle is registered, there is no deduction for the \$5,000 value of the used motor vehicle.

Example: Lessee owns a used motor vehicle which he sells for Five Thousand Dollars (\$5,000). Lessee enters into a long term lease arrangement with Lessor and agrees to pay Five Thousand Dollars (\$5,000) as an initial payment on the lease. When the motor vehicle is registered, there is no deduction for the Five Thousand Dollars (\$5,000), which resulted from the sale of the used motor vehicle.

3. Option 2

- a. If the lessor chooses Option 2, then the lessor must collect sales tax and long-term rental tax on all gross receipts paid or transferred by the lessee as consideration for the lease of the motor vehicle, including down payments and periodic payments. The lessor must report and remit sales tax and long-term rental tax regardless of whether the lessee timely makes the lease payments required in the lease agreement. Assignment of a lease agreement does not relieve the lessor from the obligations to remit sales or use tax and long-term rental tax. The lessor's obligation to remit tax ends at the earlier of the expiration of the lease term, or the valid termination of the lease as provided by the terms of the written lease agreement.
- b. If the lessee makes an initial payment on the lease in the form of a payment of money or by transferring ownership of another motor vehicle, the value of the payment or motor vehicle is considered taxable gross receipts upon which gross receipts tax and long-term rental tax are due.

Example: Lessee owns a used motor vehicle valued at Five Thousand Dollars (\$5,000). Lessee enters into a long term lease arrangement with Lessor and agrees to transfer the used motor vehicle to Lessor as an initial payment on the lease. Lessor must collect gross receipts and long term rental tax on Five Thousand Dollars (\$5,000) as consideration for the lease of the motor vehicle.

Example: Lessee owns a used motor vehicle which he sells for Five Thousand Dollars (\$5,000). Lessee enters into a long term lease arrangement with Lessor and agrees to pay Five Thousand Dollars (\$5,000) to Lessor as an initial payment on the lease. Lessor must collect gross receipts and long term rental tax on Five Thousand Dollars (\$5,000) as consideration for the lease of the motor vehicle.

- c. Trailers and semi-trailers are not "motor vehicles" and may not be registered exempt from gross receipts tax. The long-term lease of a trailer or semi-trailer which has been registered and titled in Arkansas is not subject to gross receipts or long-term rental tax.
- d. A motor vehicle used for long-term or short term rental that was registered in Arkansas and Arkansas sales or use tax was paid or credited prior to August 1, 1997, may be leased on a long-term basis without the collection of sales tax and long-term rental tax. This presumes that the lessor remains the same. If the original lessor sells the motor vehicle on or after August 1, 1997, then the new

- lessor has the options described in paragraph (C)1 above.
- e. A motor vehicle that was registered exempt from sales tax or use tax prior to August 1, 1997, as a short-term rental vehicle may be subsequently leased on a long-term basis. The lessor must choose Option 1 or Option 2 as described in paragraph (C)1 above.
 - i. If the lessor chooses Option 1, then the lessor must only re-title the vehicle in the lessor's name and pay sales tax at the time of registration. The sales tax will be based on the lessor's purchase price of the vehicle.
 - ii. If the lessor chooses Option 2, then the lessor must register with the Sales and Use Tax Section as a long-term rental business, obtain a new rental exemption certificate from the Sales and Use Tax Section, and re-title the vehicle in the lessor's name. No sales tax will be paid at the time of registration; however, the lessor must collect and remit sales tax and long-term rental tax on the monthly (or other periodic) lease payments.
4. DEFINITIONS FOR MOTOR VEHICLE LEASING:
- a. A motor vehicle is "leased on a long-term basis on or after August 1, 1997," when the written lease agreement covering the motor vehicle is signed by the lessee on or after August 1, 1997, and the motor vehicle was not registered and titled in Arkansas by the lessor before August 1, 1997.
 - b. "Periodic payment" includes all charges, fees, taxes, interest, penalties, late payments or other amounts included in the lease agreement as due and payable by the lessee to the lessor on a monthly or other periodic basis as consideration for the lease of the motor vehicle. With respect to leases containing a terminal rental adjustment clause (TRAC), the upward adjustment of a lease payment is considered part of the entire monthly payment subject to tax. In the event that a lease payment is adjusted downward under a TRAC, the lessor is entitled to take a deduction from gross receipts for such downward adjustment if the lessor refunds to the lessee taxes previously collected from the lessee.
 - c. "Long-term rental tax" means the 1.5% tax levied by Act 1076 of 1997 on the entire monthly (or other periodic) payment for the long-term lease of a motor vehicle required to be licensed for use on the highway. The tax is to be collected by the lessor from the lessee and remitted to the Department of Finance and Administration. The long-term rental tax does not apply to gross receipts from the long-term lease of:
 - (1) diesel trucks leased for commercial shipping,
 - (2) farm machinery or farm equipment leased for a commercial purpose,
 - (3) trucks leased for residential moving or shipping,
 - (4) special mobile equipment or other motor vehicles not required to be licensed, and trailers and semi-trailers. If, however, a motor vehicle is leased on a long-term basis with a trailer or semi-trailer, then the long-term rental tax applies to the total consideration for the lease of the motor vehicle and trailer or semi-trailer unless the consideration for the lease of the motor vehicle is separately stated from the consideration for the lease of the trailer or semi-trailer.
 - d. "Long-term rental" means rental or lease of a motor vehicle for thirty (30) days or more. Whether a rental of a motor vehicle is considered long-term or short-term is dependent on the written contract and period for which payment is initially due. If a vehicle is rented initially for 14 days with the rental contract re-

flecting a term of rental for 14 days and the customer subsequently decides to continue renting the vehicle for 21 more days, the transaction is treated as two short-term rentals, not one long-term rental.

- e. "Lessor" means the person who owns the motor vehicle at the time that the lessee signs the lease agreement. The lessor is presumed to be the vehicle owner if the vehicle is titled in the name of the lessor or if the lessor is the last person to whom the vehicle title has been assigned at the time of the lease agreement. "Lessor" does not include an assignee of the lease agreement or of the vehicle when the assignment occurs after the lessee signs the lease.
- 5. a. Sales or use tax to be collected and remitted by the lessor means Arkansas gross receipts or compensating use tax (the current rate is 6%) plus local city and county sales or use tax. The applicable local tax is the sales or use tax imposed by the city and county in which the lessor resides.
 - b. A lessor with a business location in Arkansas and motor vehicles leased to an Arkansas resident collects and remits local sales tax based on the city and county of the lessor's business location. A lessor with no business location in Arkansas and with motor vehicles leased to an Arkansas resident collects local sales tax based on the city and county in which the lessee resides. A lessee is presumed to reside in the county in which the vehicle is garaged or assessed for property tax purposes.
 - 6. a. If a motor vehicle is initially leased to an Arkansas resident under Option 2 and the lessee later becomes a resident of another state during the term of the lease, then the lessor is no longer required to collect and remit Arkansas sales tax and long-term rental tax on the remainder of the monthly lease payments. The lessor must maintain records which accurately reflect that the motor vehicle is no longer leased to an Arkansas resident.
 - b. If a motor vehicle is initially leased to a resident of another state and the lessee later becomes a resident of Arkansas during the term of the lease, then the lessor must begin collecting and reporting Arkansas sales tax and long-term rental tax only if no tax was paid to another state when the motor vehicle was registered and the lessor chooses Option 2. If no tax was paid to another state and the lessor chooses Option 1, then the lessor must pay state and local use tax on the stated invoice price of the motor vehicle and not collect sales or long-term rental tax from the lessee. If tax was paid to another state and the motor vehicle was first registered in another state, then the lessor is entitled to credit against the Arkansas use tax for taxes paid to the other state, and pay the balance due, if any.

Example 1: Lessee is a Georgia resident at the inception of the 24 month motor vehicle lease which notes the invoice price of the motor vehicle as \$30,000. The motor vehicle was registered in Georgia; however, no Georgia sales tax was paid. The lessor collected applicable Georgia sales taxes on the monthly rental payments. One year later, Lessee becomes an Arkansas resident and brings his leased car to Arkansas. Lessor chooses Option 1. When Lessee (or Lessor) registers the motor vehicle in Arkansas, Arkansas use tax is due based on the invoice price of \$30,000. Lessor will not be obligated to collect and remit tax on the monthly lease payments. No credit is given for taxes paid on the monthly lease payments.

Example 2: Lessee is a Georgia resident at the inception of the 24 month motor vehicle lease which notes the invoice price of the motor vehicle as \$30,000. The motor vehicle was registered in Georgia; however, no Georgia sales tax was paid. The lessor collected applicable Georgia sales taxes on the monthly rental payments. One year later, Lessee becomes an Arkansas resident and brings his leased car to Arkansas. Lessor chooses Option 2. Lessor must obtain an Arkansas sales tax permit and rental exemption certificate before the motor vehicle may be registered tax free. Lessor must collect and remit tax on the monthly lease payments.

Example 3: Lessee is a Georgia resident at the inception of the 24 month motor vehicle lease which notes the invoice price of the motor vehicle as \$30,000. The motor vehicle was registered in Georgia and Georgia sales tax paid on the invoice price. The Georgia sales tax rate exceeds the Arkansas sales tax rate. One year later, Lessee becomes an Arkansas resident and brings his leased car to Arkansas. Lessor is not required to collect and remit tax on the monthly lease payments because tax was paid to Georgia when the vehicle was registered.

Example 4: Lessee is a Georgia resident at the inception of the 24 month motor vehicle lease which notes the invoice price of the motor vehicle as \$30,000. The motor vehicle was registered in Georgia and Georgia sales tax paid on the invoice price. The Georgia sales tax rate is less than the Arkansas sales tax rate. One year later, Lessee becomes an Arkansas resident and brings his leased car to Arkansas. If Lessor chooses Option 1, Lessor is to pay the difference between the Georgia tax and Arkansas tax at registration. If Lessor chooses Option 2, Lessor must obtain an Arkansas sales tax permit and rental certificate. Lessor must collect and remit tax on the monthly rental payments.

7. DIRECT PAY PERMIT

Option 1: Sales or use tax must be paid at the time of registration of the motor vehicle. A lessee holding a direct pay permit may not accrue and remit sales or use tax on the motor vehicle.

Option 2: If a lessee holds a direct pay tax permit, then the lessor is not obligated to collect state and local sales tax or long-term rental tax from the lessee. The lessor must maintain records reflecting that the lessee intends to report and remit the tax on its monthly tax report under its direct pay permit number. No Manufacturer's Investment Credit or InvestArk may be taken to offset liability of a direct pay permit holder for long-term rental tax or short-term rental tax.

8. INTERNATIONAL REGISTRATION PLAN - EXEMPTION

- a. The gross receipts derived from the long-term lease of a commercial truck or trailer in Arkansas is exempt from the long-term rental tax if:
 - (1) The vehicle will be used solely and exclusively for the transportation of goods in interstate commerce; and
 - (2) The vehicle has been registered under the international registration plan in another state.
- b. "International registration plan" means the International Registration Plan, Inc. ("IRP"), the Uniform Vehicle Registration Proration and Reciprocity Agreement, or any other registration plan that provides for the apportionment of a commercial vehicle's registration fee in a manner consistent with Ark. Code Ann. § 27-14-501, *et. seq.*

- c. The taxability of gross receipts derived from a truck or trailer registered under the Arkansas IRP is determined by paragraph (C) of this rule.
- D. SHORT-TERM RENTALS OF TANGIBLE PERSONAL PROPERTY (Except for Motor Vehicles):
- 1. a. In addition to the state and local sales tax, a one percent (1%) short-term rental tax is to be collected by the lessor on short-term rentals of tangible personal property regardless of whether Arkansas gross receipts or use tax was paid by the lessor at the time of purchase.
 - b. The tax does not apply to:
 - (i) farm machinery and equipment,
 - (ii) vehicles, including diesel trucks, trailers and semi-trailers, required to be licensed for highway use. Vehicles not otherwise exempt and which are not registered for highway use are subject to the tax,
 - (iii) short-term rentals of tangible personal property which are subject to the two percent (2%) tourism tax. See Ark. Code Ann. § 26-52-1001 *et. seq.*
 - 2. A lessor may purchase property intended for subsequent lease without paying Arkansas gross receipts or use tax if the seller establishes the requirements necessary for a sale-for-resale exemption. (See GR-53.)
 - 3. Repair parts purchased to keep the rental property in working order are exempt from gross receipts tax as sales for resale. (See GR-53.)
 - 4. Lessors must maintain sufficient records to establish the intended term of the rental. In the absence of adequate documentation, payment by the lessee for rental charges for periods of less than thirty (30) days shall be evidence that the term of the rental was for less than thirty (30) days.
- E. SHORT-TERM RENTALS OF MOTOR VEHICLES:
- 1. a. All short-term rentals of motor vehicles, including diesel trucks, are subject to state and local gross receipts tax regardless of whether tax was paid on the vehicle at registration. In addition to the state and local gross receipts (sales) tax, every person in the business of renting licensed motor vehicles in Arkansas must collect rental vehicle tax on short-term rentals of licensed motor vehicles. See GR-12(D)(2) for definition of "licensed motor vehicle". The rate of the rental vehicle tax is equal to ten percent (10%) plus a local rental vehicle tax equal to the sales tax rate of the city and county in which the lessor's business is located. A lessor with no physical business location should collect the city and county portion of the rental vehicle tax based on the city and county in which the lessee resides.
 - b. The rental vehicle tax does not apply to:
 - i. rentals of diesel trucks for commercial shipping;
 - ii. semi-trailers, trailers or other non-motor vehicles;
 - iii. farm machinery or equipment.
 - 2. This tax applies whether or not Arkansas gross receipts or use tax was paid when the vehicle was registered.
 - 3. The lessor must retain records for at least six (6) years that establish the rental history of each vehicle including copies of written contracts with the lessee and mileage incurred on the vehicle by each lessee. Failure to adequately document the exclusive use of the vehicle for rentals will constitute a presumption that the vehicle was not exclusively used for rentals resulting in the revocation of the sales tax exemption claimed at the time of registration of the vehicle. (See GR-12.)

- F. RENTAL OF TANGIBLE PERSONAL PROPERTY WITH OPERATOR: If tangible personal property is rented with an operator's services included, the rental of the property and operator service is a non-taxable service, provided that the service alone would have been exempt from tax. If, however, the property alone is rented, then the sales and rental tax shall apply as set out in paragraphs A through E above.
- G. The chart below sets forth the various taxes that must be collected on the described short term rentals.

SHORT TERM RENTALS Less than 30 days	State Sales Tax 6% + local	Residential Moving Tax 4.5%	Rental Vehicle Tax 10% + local	Short Term Rental Tax 1%	Total State Tax Rate
TRUCKS - Diesel For commercial shipping	Y	N	N	N	6%
TRUCKS - Diesel For residential moving	Y	Y	N	N	10.5%
TRUCKS - Diesel For purpose other than residential moving or commercial shipping	Y	N	Y	N	16%
TRUCKS - Gasoline For residential moving	Y	Y	N	N	10.5%
TRUCKS - Gasoline For any other purpose	Y	N	Y	N	16%
CARS, MOTORCYCLES	Y	N	Y	N	16%
TRAILERS WITH VEHICLE For residential moving	Y	Y	N	N	16%
TRAILERS WITH VEHICLE For commercial shipping with diesel truck	Y	N	N	N	6%
TRAILERS WITH VEHICLE (see note 1) For other purpose	Y	N	Y	N	16% See note 1 below.
TRAILERS W/O VEHICLE For residential moving	Y	N	N	N	6%

SHORT TERM RENTALS Less than 30 days	State Sales Tax 6% + local	Residential Moving Tax 4.5%	Rental Vehicle Tax 10% + local	Short Term Rental Tax 1%	Total State Tax Rate
TRAILERS W/O VEHICLE For commercial shipping	Y	N	N	N	6%
TRAILERS W/O VEHICLE For other purpose	Y	N	N	N	6%
MOVING MATERIALS Sale or lease with truck for residential moving - same invoice	Y	Y	N	N	10.5%
MOVING MATERIALS Sale for non-residential move or w/o truck	Y	N	N	N	6%
MOVING MATERIALS Lease for non-residential move or w/o truck	Y	N	N	Y	7%

1. If the consideration for the lease of the motor vehicle is not separately stated from the consideration for the lease of the trailer, the rental vehicle tax will apply to the total consideration for the rental of both vehicles.

Source: Ark. Code Ann. §§ 26-52-103(a)(3)(A); 26-52-310; 26-52-311; 26-52-312; 26-52-313

GR-21. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESSES—CONTRACTORS:

A. DEFINITIONS

1. "Consumer" or "user" means the person to whom the taxable sale is made or to whom the taxable services are furnished. All contractors are deemed to be consumers or users of all tangible personal property including materials, supplies, and equipment used or consumed by them in performing any contract, and the sales of all such property to contractors are taxable sales. The contractor must pay tax at the time of purchase or pay tax at the time the materials are withdrawn from stock for use in the performance of the contract. A contractor cannot rely on the direct pay permit of the other party to the contract for payment of the tax on the construction materials.
2. "Contract" means any agreement or undertaking to construct, manage or supervise the construction, erection, alteration or repair of any building or other improvement or structure affixed to real estate, including any of their component parts. The term "contract" shall not include a contract to produce tangible personal property.
3. "Contractor" means any person who contracts or undertakes to construct, manage or supervise the construction, erection, alteration or repair of any building or other improvement or structure affixed to real estate, including any of their component parts.

- B. NON-TAXABLE SERVICES AND SALES. The following represents services which are not subject to sales tax:
1. The initial installation, alteration, addition, cleaning [with exceptions noted in paragraph C(1)], refinishing, replacement, or repair of nonmechanical, passive or manually operated components of buildings or other improvements or structures affixed to real estate, including but not limited to the following: walls, ceilings, doors, locks, windows, glass, heat and air ducts, roofs, wiring, breakers, breaker boxes, electrical switches and receptacles, light fixtures, pipes, plumbing fixtures, fire and security alarms, intercoms, sprinkler systems, parking lots, fences, gates, fireplaces, and similar components which become a part of real estate after installation, are not taxable services. This means, generally, that services performed on non-mechanical components or fixtures within or on a building or other improvement to real estate are not taxable.
 2. First-time installation of mechanical or electrical equipment into a newly constructed or substantially modified building or other improvement to real estate is not a taxable service. For example, labor charges for the first-time installation of heating and air conditioning machinery and heating and air ducts into a newly constructed or substantially modified building are not taxable. The initial installation of mechanical or electrical equipment into an existing building is taxable. See paragraph D for tax liability on materials.
 3. First-time installation of carpeting or other flooring into a newly constructed or substantially modified building or other improvement to real estate is not a taxable service. The initial installation of carpet or other flooring in an existing building is taxable. See paragraph D for tax liability on materials.
- C. TAXABLE SERVICES (See GR-9 through GR-9.17 for additional taxable services.)
1. The services enumerated in Ark. Code Ann. § 26-52-301(3)(E) including the service of providing cleaning or janitorial work are taxable. The cleaning of the interior or exterior of any building or structure, including vents, ducts, windows, walls, ceilings, or floors, is a taxable service.
 2. The initial installation, alteration, addition, cleaning, refinishing, replacement and repair of motors, electrical appliances, machines, and other mechanical items are taxable. For example, initial installation in existing structures and the repair or replacement of dishwashers, stoves, ovens, refrigerators, heating and air conditioning units, garbage disposals, water heaters, ceiling fans, garage door motors, electric signs, washing machines, and dryers is taxable.
 3. The initial installation in existing buildings and the alteration, addition, cleaning, refinishing, replacement and repair of carpet and rugs remain taxable.
 4. The replacement or repair of elevators is a taxable service.
- D. TAXATION OF MATERIALS
1. Permitted Business. A business holding a sales tax permit should purchase all materials used in its construction, repair, and retail business exempt from sales tax as sales for resale. Any materials used in the performance of non-taxable services are not taxed to the customer; however, the business must self-assess, report, and pay sales tax as a withdrawal from inventory (stock) on the purchase price of the materials. The business must collect sales tax from its customers on retail sales of materials. Sales tax on materials used in performing taxable services is to be collected from the customer along with the labor charges.
 2. Non-permitted Business. A business which is not required to hold a sales tax permit

must pay tax on all purchases of materials. Use tax is required to be reported and paid on the purchase of materials from out-of-state sellers.

E. SPECIFIC BUSINESSES

1. Heating and Air Contractors.

- a. The original installation of heat and air ductwork in new or existing construction is not a taxable service. The initial installation of the mechanical or electrical components of heating and cooling units in new construction or substantially modified buildings is not a taxable service. The initial installation of mechanical or electrical components of heating and cooling units in existing construction is a taxable service. The contractor must either pay tax to the supplier on the materials and equipment used in the installation, or self-assess tax as a withdrawal from inventory (stock) on the purchase price of all materials including the heating and air units.
- b. Subsequent repairs to or the replacement of the mechanical or electrical components of the system, e.g. the heating and air units or components, are taxable services. Any materials or parts used in the repairs or replacement are also taxable to the consumer.
- c. Replacement or repair of heating and air ductwork is not a taxable service. The contractor must either pay tax to the supplier on the materials used in the work, or self-assess tax as a withdrawal from inventory (stock) on the purchase price of the materials used.
- d. If the contractor repairs or replaces ductwork and repairs or replaces heating or air units, then unless the ductwork labor and material charges are separated from the heating or air unit labor and material charges, the entire charge for the work plus the cost of all materials will be taxable.

2. Plumbing. The installation, replacement or repair of pipes and non-mechanical plumbing fixtures are not taxable services. The plumbing contractor is to pay tax to the vendor on plumbing materials used in these services, or self-assess tax as a withdrawal from inventory (stock) on the purchase price of the materials used. No tax will be collected from the customer. The initial installation of mechanical or electrical items or appliances in new construction is not taxable. The initial installation of mechanical or electrical items or appliances in an existing building is taxable. Tax must be collected from the customer for both the taxable labor and the sale of any tangible personal property.

3. Electrical Contractors.

- a. The installation, repair or replacement of non-mechanical materials which become a part of a structure, such as wiring, breakers, and light fixtures, is not a taxable service. The contractor must either pay tax to the supplier on the materials used in the work, or self-assess tax as a withdrawal from inventory (stock) on the purchase price of the materials used.
- b. The initial installation in new or substantially modified construction, and the repair or replacement of mechanical or electrical components, such as a ceiling fan, is a taxable service. Any parts used in the service are also taxable to the customer.

4. Carpeting Installation.

- a. Carpeting and flooring do not become components of a building or other improvement to real estate. The first-time installation of carpet or flooring into a

newly constructed or substantially modified building is not a taxable service. The retail charges for the carpet and other associated materials are taxable. If the installation charges are not separately stated from the material charges, the entire cost of installing the carpeting will be taxable.

- b. The initial installation in an existing building and the replacement or repair of carpet or flooring is a taxable service. Sales tax is to be collected from the customer on all charges for labor and materials.
 - c. Carpet and flooring installers may purchase carpet, flooring, and associated materials exempt from tax as a sale for resale and must collect tax from the customer on all materials used in all taxable installations. This applies to new commercial construction as well as new residential construction. If the carpet or flooring installer has contracted with a general contractor and not the owner, the installer must collect tax from the general contractor or otherwise include tax in the bid or contract.
5. Carpenters.
- a. The installation, repair or replacement of custom or standard sized cabinets, shelves or other built in furnishings which become affixed to real property, are not taxable services. A person who builds cabinets, shelves or other built in furnishings either on-site or off-site and installs these items for the customer is a contractor. Contractors are required to either pay tax to their suppliers on their purchases of materials or self-assess tax on the purchase price of property withdrawn from their stock or inventory for use.
 - b. If the contractor installs prefabricated cabinets, shelves or other built in furnishings or a partially fabricated cabinet or other item from an inventory of prefabricated items he maintains, the contractor should self-assess tax as a withdrawal from inventory (stock) on the retail price of the cabinets, shelves or furnishings installed.
 - c. A cabinet maker who builds and sells either prefabricated or custom made cabinets, shelves or other furnishings and does not install these items is a retail seller and must collect and remit sales tax on the retail value of the item.
6. Garage Door Contractors.
- a. The initial installation of a garage door in new construction, whether electronically controlled or not, is not a taxable service. The contractor must either pay tax to the supplier on the materials and equipment used in the installation, or self-assess tax as a withdrawal from inventory (stock) on the purchase price of all materials, including the garage door and its components.
 - b. The initial installation of the electrical or mechanical components of a garage door in an existing building and subsequent repairs to, or the replacement of, the mechanical or electrical components of the garage door system, e.g. the electronic or mechanical control, are taxable services. Any materials or parts used in the repairs or replacement are also taxable to the consumer.
 - c. Repair or replacement of non-mechanical or non-electric components of the garage door system is not a taxable service. For example, if the contractor replaces the door only, the replacement labor is not taxable. The contractor must either pay tax to the supplier on all materials used in the work, or self-assess tax as a withdrawal from inventory (stock) on the purchase price of the materials used.

F. REQUIREMENT OF SALES TAX PERMIT

If a business performs both taxable and non-taxable services, or if a business sells tangible personal property at retail, then the business is required to obtain a sales tax permit. If no taxable services are performed and no retail sales are made by the business, then a sales tax permit is not required.

Source: Ark. Code Ann. §§ 26-52-103(9); 26-52-201; 26-52-301; 26-52-307

GR-21.1 PURCHASES BY CONTRACTORS - INCREASE IN SALES AND USE TAX RATES:

- A. Materials purchased for use in construction contracts that become recognizable components of the completed project are subject to state and local sales and use tax. In accordance with Act 387 of 1995, these materials are exempt from certain increases in state or local sales and use taxes if the following conditions are satisfied:
1. The materials must be used in a construction contract entered into before the effective date of the tax increase.
 2. The materials must be purchased prior to the expiration of five (5) years from the effective date of the tax increase.
 3. The construction contractor shall complete and sign the "Certificate of Proof for Contractor's Entitlement to Exemption from Sales and Use Tax Increase", a copy of which follows this rule and which is available from the Sales and Use Tax Section, Revenue Division of the Department of Finance and Administration. The construction contractor shall furnish a completed copy of the form to each seller of exempt property for each contract and shall retain a copy of the Certificate with his purchase records.
 4. The seller must keep adequate records to identify all exempt materials sold. The seller must retain the completed Certificate described in paragraph (3) above. The seller's invoices or other sales documents must contain a statement that the seller has received the Certificate which is retained in his records.
EXAMPLE A: Pulaski County local sales and use tax is increased by 1 % effective October 1, 1995. Purchases of materials used in completing construction contracts entered into prior to October 1, 1995, will be exempt from the additional 1% tax until September 30, 2000.
EXAMPLE B: On November 1, 1995, a construction contractor purchases a hammer and 50 pounds of nails for use in framing an apartment building. The construction contractor furnishes all necessary information required by this rule to the seller. The construction contract was signed prior to the October 1, 1995, tax increase. The additional tax increase is due on the sale of the hammer because the hammer will not become a recognizable part of the building. The nails are exempt from the tax increase because the nails, although they cannot be seen, are a recognizable part of the building.
 5. This rule is not applicable to a contract for which the contractor has the right to pass any additional tax on to the principal as a part of the contractor's cost.
- B. Consumer use tax reports: Some construction contractors report the use tax due on materials purchased from out of state sellers directly to the Revenue Division of the Department of Finance and Administration. When such a construction contractor claims the exemption granted by Act 387 of 1995, the construction contractor shall keep all records required by this rule including maintaining copies of purchase invoices and the contracts for which the exemption is claimed.
- C. Burden of Proof: The burden of proving entitlement to an exemption is on the taxpayer. In the case of an audit of a seller's business, the burden is on the seller to keep records

adequate to prove the validity of the claimed exemptions. In the case of an audit of a construction contractor's business, the burden is on the construction contractor to keep records adequate to prove the validity of the claimed exemptions. Failure to do so will result in the exemptions being disallowed and applicable tax, penalty and interest being assessed to the taxpayer.

Source: Ark. Code Ann. § 26-52-427

GR-22. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESS--FUNERAL HOMES AND FUNERAL DIRECTORS:

- A. Funeral homes or funeral directors must collect and pay the tax upon the gross receipts or gross proceeds of all sales of tangible personal property sold by them in connection with the services they offer.
- B. Where the funeral home or funeral director separately states the charges for items of tangible personal property on his bill or invoice, then the tax should be collected and remitted on the gross receipts or gross proceeds derived from the sale of the items of tangible personal property.
- C. Where a corpse is shipped by one funeral home located in Arkansas to another funeral home located in Arkansas, the tax must be collected and remitted on the gross receipts or gross proceeds derived from the sale of the casket, shipping case, shipping box and freight, by the selling funeral home. If, however, the body is shipped outside the State of Arkansas, then see GR-5 for applicable rules.
- D. Funeral homes and funeral directors are considered the consumers of preparation room supplies and equipment, display room equipment, chapel furnishings and equipment, and cemetery equipment, and must pay the tax to the suppliers of these goods at the time of purchase.
- E. Prepaid Funeral Contracts.
 1. When tangible personal property is sold through a pre-paid funeral plan, the funeral home or funeral director has the option of:
 - a. remitting gross receipts tax when the property is provided to the customer. The tax shall be calculated at the rate in effect when the property is provided, or
 - b. remitting gross receipts tax on the date the contract is purchased. The tax shall be calculated at the rate in effect when the contract is purchased.
 2. If the funeral home elects to pay gross receipts tax on the date the contract is purchased, the gross receipts tax must be reported on the sales tax report for the month in which the contract is purchased. Those funeral homes who have received approval from the Director of Revenue to pay tax on a cash basis should remit the gross receipts tax as outlined in Gross Receipts Rule 78.

Source: Ark. Code Ann. § 26-52-301(1); 26-52-511

GR-23. RADIO, VIDEO AND TELEVISION TAPES AND FILMS: Retail sales of radio, video and television tapes and films containing commercial or other messages, including CDs, DVDs, and any digital image media, are subject to the tax. Producers must collect and remit the tax from their clients or customers on the total receipts from the production of tapes, films, and other such media without deducting any production costs attributable to the tapes, films, or media. The sale of a tape, film, or media is complete when the client is billed, even though the seller may retain possession of the tape, film, or media, or may deliver it directly to a radio or television station for the convenience of the client. The tax does not apply to the sale of broadcasting time, or to any other service which does not contribute to the production of an article of tangible personal property by the seller, nor does it apply to a tape, film, or media prepared by an advertising agency for its

client as part of an advertising campaign. (See GR-46.)

EXAMPLE 1: Producer is directed to videotape one or more events, sites, persons, or other occurrence. Producer delivers the videotape to its customer. Producer must collect tax on the total amount of the consideration that it receives from the customer for the videotape.

EXAMPLE 2: Producer is directed to videotape a commercial and deliver the tape to a television station for broadcast. Producer does not otherwise assist the customer in planning and implementing the advertising program of which the videotaped commercial is a part. Producer must collect tax on the total consideration it receives for the videotape.

Source: Ark. Code Ann. § 26-52-301

GR-24. SPECIAL RULES FOR FUNDRAISING AND OTHER INFREQUENT SALES:

- A. PTA/PTOs or OTHER SCHOOL ORGANIZATIONS: A PTA/PTO or other school organization that conducts fundraising activities must pay tax on purchases for resale but does not have to collect tax on the sales of the items. However, if the vendor provides order forms that are distributed to the students and the students take orders for the vendor, the vendor is responsible for sales tax on the sales made by the students. The students are permitted to collect tax on the vendor's behalf. However, if the students do not collect the tax for the vendor, the vendor must remit the total tax due to the state. Tax is due on the gross receipts received by the students from the purchaser.
- B. EXEMPT ORGANIZATIONS: Exempt organizations may purchase items exempt from tax. For a list of organizations that are statutorily exempt from tax on their purchases, see GR-31. Exempt organizations are not specifically exempt from tax on sales made by the organizations. An exempt organization that operates as an established business is required to collect tax on its sales.
- C. CHARITABLE NONPROFIT ORGANIZATIONS: Charitable organizations that are not engaged in business for profit are not generally required to collect tax on sales made by the charitable organization. However, if a charitable organization makes sales of new tangible personal property and competes with sales by for-profit businesses, then the sales by the charitable organization are taxable. See GR-39(C) for information regarding whether sales are considered to compete with those of for-profit businesses.

Source: Ark. Code Ann. §§ 26-52-402, 26-52-1003

GR-25. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESS--SELLERS OF COMPUTER HARDWARE AND COMPUTER SOFTWARE:

- A. A seller of computer hardware and computer software is engaged in the business of selling tangible personal property and must collect and remit tax upon the gross receipts or gross proceeds derived from the sales and/or rental of the hardware and software without any deduction on account of any costs or expenses incurred in producing, selling or renting the hardware or software.
- B. Examples of hardware referred to above are the computer itself, memory banks, sending and receiving terminals. Examples of software referred to above are tapes, disks, cards or other devices or materials which contain instructions for a computer and dictate different operations or functions to be performed by the computer.
- C. Computers are machinery or electrical devices and any services performed on computers, including initial installation of the computer or any of its hardware, are taxable services. Exceptions are the parts and labor provided under a warranty contract if the warranty is included in the purchase price of the computer and no additional charge is made for warranty parts or labor. Rentals and leases of computer hardware and software are considered as a sale for tax purposes.

- D. The sale of a service contract covering taxable repair services to computers is taxable.
- E. Gross receipts derived from the sale or licensing of both pre-written and custom software in Arkansas are subject to tax whether the software sale or license is for a single use or for multiple use, provided that the software is delivered through a tangible medium. The licensing of software downloaded through a modem or by other electronic means is not subject to tax if charges for the licensing are separately stated from charges for any manuals, disks, CD's, or other tangible property. Separately stated charges for technical support for software are not subject to tax. Software programming services and the development of custom software for a particular customer are not taxable services. The software programming services or custom software development services remain nontaxable even though the customer may receive some tangible medium containing the results of programming, provided the true essence of the transaction was the providing of programming services and not the purchase or license of software on a tangible medium.

Source: Ark. Code Ann. §§ 26-52-301, 26-52-304

GR-26. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESSES--SELLERS OF BEER, WINE, LIQUOR AND OTHER INTOXICATING BEVERAGES:

- A. All sellers of beer, wine, liquor and other intoxicating beverages must collect and remit the tax upon the gross receipts or gross proceeds derived from the sale of those items to the consumer whether the sale is by the bottle or by the drink for off-premises or on-premises consumption. All state and local sales taxes must be paid in full prior to the renewal of a liquor permit or license.
- B. An establishment which charges an entrance fee or "cover charge" must collect and remit the tax on the gross receipts or gross proceeds received by it or any other person as a result of the entrance fee or "cover charge" in addition to the collection and remittance of tax upon the gross receipts or gross proceeds derived from all sales of tangible personal property. Dues or fees paid to private clubs that hold a permit allowing for the sale, dispensing, or serving of alcoholic beverages of any kind on the premises are subject to tax, unless the private club is a charitable organization. (See GR-39 and GR-11.)
- C. Ten Percent (10%) Supplemental Tax:
 - 1. In addition to the gross receipts tax, holders of mixed drink permits (except private club permits) issued by the Alcoholic Beverage Control Division must collect and remit the ten percent (10%) supplemental gross receipts tax on all sales of alcoholic beverages except beer and wine
 - 2. In addition to the gross receipts tax, holders of private club permits issued by the Alcoholic Beverage Control Division must collect and remit the 10% supplemental gross receipts tax upon all charges to members for the preparation and serving of mixed drinks or for the cooling and serving of beer and wine. A private club which also has a beer permit should collect the state and local sales tax but not the ten percent (10%) supplemental tax on its sales of beer.
- D. Four Percent (4%) Supplemental Tax:
 - 1. In addition to the gross receipts tax and ten percent (10%) supplemental tax, holders of mixed drink permits must collect and remit the four percent (4%) supplemental gross receipts tax on all sales of alcoholic beverages except beer and wine.
 - 2. In addition to the gross receipts tax and ten percent (10%) supplemental tax, holders of private club permits must collect and remit the four percent (4%) supplemental gross receipts tax upon all charges to members for the preparation and serving of mixed drinks only.

- E. In addition to the gross receipts tax, sellers of alcoholic beverages to consumers for off-premises consumption must collect and remit the three percent (3%) alcoholic beverage excise tax on sales of all beer, wine and liquor. The three percent (3%) excise tax on beer does not extend past June 30, 2007.
- F. The ten percent (10%) supplemental tax, four percent (4%) supplemental tax and three percent (3%) liquor, wine, and beer excise tax must be reported and remitted to the Department at the same time as the state gross receipts tax, on forms provided by the Department.
- G. All wines sold in the State of Arkansas for use as sacramental wine shall be exempt from all taxes levied on wine by the State of Arkansas. Each container of sacramental wine sold in the state shall have attached to it a decal containing the words "Sacramental Wine." This decal shall be provided by and attached to the containers by wineries selling sacramental wine in this state.

Source: Ark. Code Ann. §§ 26-52-306, 3-9-213, 3-7-201, 26-52-301(6), 3-7-115

GR-27. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESS--WHOLESALE AND JOBBERS: Wholesalers and jobbers must collect and remit the tax on the gross receipts or gross proceeds derived from all sales to consumers or sales to retailers who do not have valid permits even though the sales are in wholesale quantities, or sales to retailers who are not regularly in the business of reselling the articles purchased.

Source: Ark. Code Ann. §§ 26-52-517, 26-52-401(12)(A)

GR-28. EXEMPTIONS FROM TAX--SALES OF ITEMS PURCHASED WITH FOOD STAMPS:

- A. Gross receipts and gross proceeds derived from the sale of tangible personal property lawfully purchased with food stamps or food coupons issued in accordance with the Food Stamp Act of 1964, and the gross receipts or gross proceeds derived from the sale of tangible personal property lawfully purchased with food instruments or vouchers issued under the Special Supplemental Food Program for Women, Infants and Children (WIC) in accordance with Section 17 of the Child Nutrition Act of 1966, as amended, are exempt from the Gross Receipts Tax. If consideration other than food stamps, food coupons, food instrument, or vouchers is used in any sale, that portion of the sale shall be fully taxable.
- B. Gross receipts and gross proceeds derived from the sale of food purchased through bids under the WIC program are exempt from the Gross Receipts Tax.
- C. The tax exemption provided by this Rule shall expire if the exemption is no longer required for full participation in the food stamp or WIC program.

Source: Ark. Code Ann. §§ 26-52-401(27)(A)

GR-29. EXEMPTIONS FROM TAX--FUEL OIL, MOTOR FUEL, MOTOR OIL, LUBRICANTS, CRUDE OIL, AND AUTOMOBILE PARTS:

- A. The gross receipts or gross proceeds derived from sales of motor fuel or special motor fuel are exempt from the tax if the motor fuel tax or special motor fuel tax has been paid to the State of Arkansas. The gross receipts or gross proceeds derived from sales of fuel oil, motor oil and lubricants are subject to tax.
- B. The gross receipts or gross proceeds derived from sales of unprocessed crude oil are exempt from the tax.
- C. The gross receipts or gross proceeds derived from the sale of motor fuel or special motor fuel to the owners or operators of motor buses operated on designated streets

according to regular schedule, under municipal franchise and which are used for municipal transportation purposes are exempt from the tax.

- D. The gross receipts or gross proceeds derived from sales of special fuel or petroleum products for consumption by vessels, barges, other commercial watercraft and railroads are exempt from the tax. For purposes of this subsection the term "vessel" shall mean and describe any motor driven watercraft used for commercial purposes for the transportation of tangible property or persons on the rivers, lakes and navigable streams of Arkansas.
- E. That portion of the gross receipts or gross proceeds derived from the sale of automobile parts which constitute "core charges" which are received for the purpose of securing a trade-in for the article purchased is exempt from the tax except that when the article is not traded in, then the tax is due on the "core charge".

Example 1: If a customer purchases a new battery for \$40.00 plus a core charge of \$8.00 and returns a used core for \$8.00, tax would be due only on the \$40.00 purchase price because the core was traded in or returned.

Example 2: If a customer purchases a new battery for \$40.00 plus a core charge of \$8.00 with no core traded in, tax would be due on the total consideration of \$48.00.

Source: Ark. Code Ann. §§ 26-52-401(11), (23) and (26), 26-52-417

GR-30. EXEMPTIONS FROM TAX--CERTAIN LABOR SERVICES EXEMPT FROM

TAX:

- A. Any person who performs taxable labor for any other person who holds a retail permit need not collect and remit tax upon labor services performed for that person holding the retail permit if, and only if, the labor is to be charged to, and the tax collected from, the ultimate consumer by the person purchasing the taxable labor.

Example: Seller operates an automobile paint and body shop. Retailer, an automobile dealer, contracts with Seller to repair and paint automobiles for those consumers to whom Retailer has sold automobiles. Retailer performs the necessary engine repairs to the damaged automobiles but contracts with Seller to perform the body and paint work. If Retailer bills the consumer for all work performed by both Seller and Retailer, and collects the applicable tax on the work, then Seller need not collect tax from Retailer.
- B. The tax does not apply to the sale of service provided by coin-operated car washes where the car-washing equipment is activated by the insertion of a coin or coins into a slot or receptacle and where the labor of washing the exterior of the car or motor vehicle is performed solely by the customer or by mechanical equipment.
- C. The tax does not apply to the sale of services performed on watches and clocks which are received by mail or common carrier from outside this State and which, after the service is performed, are returned by mail or common carrier, or in the repairman's own conveyance, to points outside this State.
- D. Prior to December 1, 2004, the tax does not apply to the sale of repair or maintenance services of railroad parts, railroad cars and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this State. The tax does apply to any parts, materials, or supplies purchased in the repair, refurbishing, conversion or modification of railroad parts, railroad cars, and equipment. After December 1, 2004, the tax does not apply to the parts or labor used in the repair and maintenance of railroad parts, railroad cars and equipment owned by railroad companies or carriers.
- E. The gross proceeds or gross receipts derived from the repair or refurbishing of tele-

phone instruments are exempt if the instruments are sent into Arkansas for repair and then shipped out of Arkansas to the state of origin.

- F. The gross receipts or gross proceeds derived from the repair or remanufacture of industrial metal rollers is exempt from tax if:
 - 1. The rollers have a remanufactured, nonmetallic material covering on all or part of the roller surface, and,
 - 2. The rollers are brought into Arkansas solely and exclusively for the purpose of repair or manufacture, and,
 - 3. The rollers are shipped back to their state of origin after repair or remanufacture.
- G. Automobile detailing services, such as interior and exterior car washing, or waxing, and engine cleaning and degreasing, are exempt from tax pursuant to Arkansas Gross Receipts Rule GR-53 as a sale for resale if, and only if all requirements of GR-53 are met, and:
 - 1. the business for which the detailing is performed is in the business of reselling the detailing service, or
 - 2. the detailing becomes a recognizable and integral part of an automobile which is to be sold by a person or company regularly engaged in the business of reselling automobiles.

Source: Ark. Code Ann. §§ 26-52-506; 26-52-301(3)(C); 26-52-418

GR-30.1. EXEMPTIONS FROM TAX--REPAIR OF COMMERCIAL JET AIRCRAFT:

- A. The gross receipts or gross proceeds derived from the alteration, addition, cleaning, re-finishing, replacement or repair of commercial jet aircraft, commercial jet aircraft components or commercial jet aircraft subcomponents are exempt from sales tax.
- B. The gross receipts or gross proceeds derived from the sale of parts or other tangible personal property which is incorporated into or becomes a part of commercial jet aircraft, commercial jet aircraft components or commercial jet aircraft subcomponents are exempt from sales or use tax.
- C. "Commercial jet aircraft" means any commercial, military, private or other turbine or turbojet aircraft having a certified maximum take-off weight of more than 12,500 pounds.

Source: Ark. Code Ann. §§ 26-52-401(28)

GR-31. EXEMPTIONS FROM TAX--SPECIFIC ORGANIZATIONS EXEMPT WHEN THEY PURCHASE TAXABLE GOODS OR SERVICES: Certain specified organizations or groups have been exempted from the tax when they purchase tangible personal property or taxable services from sellers. Sellers of tangible personal property or taxable services need not collect the tax upon the gross receipts or gross proceeds derived from the sales of tangible personal property or services to the following:

- A. The Boy's Clubs of America or any local council or organization thereof;
- B. The Girl's Clubs of America or any local council or organization thereof;
- C. The Poets' Roundtable of Arkansas;
- D. The Boy Scouts of America or any of the Scout Councils located in Arkansas;
- E. The Girl Scouts of the United States of America or any of the Scout Councils located in Arkansas;
- F. U. S. Governmental agencies;
- G. 4-H Clubs and FFA Clubs located in Arkansas;
- H. The Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation and the Arkansas Future Farmers of America Association;

- I. Orphans' homes or children' homes located in Arkansas which are not operated for profit and which are operated by a church, religious organization or other benevolent, charitable association;
- J. Public Housing Authorities organized pursuant to Ark. Code Ann. § 14-169-201 *et. seq.*;
- K. Regional Water Distribution Districts organized pursuant to Ark. Code Ann. § 14-116-101 *et. seq.*;
- L. The Arkansas Country Music Hall of Fame Board;
- M. The American Red Cross;
- N. Humane Societies not operated for a profit and organized under Ark. Code Ann. § 20-19-101 *et. seq.* for the prevention of cruelty to animals.
- O. The rental or lease of specialized equipment used in the filming of a motion picture which qualifies for the tax incentives provided by Ark. Code Ann. § 26-4-201 *et. seq.*
- P. Fort Smith Clearing House, Ark. Code Ann. § 26-52-424;
- Q. Habitat for Humanity, Ark. Code Ann. § 26-52-401(32);
- R. Heifer Project International, Inc., Ark. Code Ann. § 26-52-401(35);
- S. The Salvation Army, Ark. Code Ann. § 26-52-401(34);
- T. The value of goods withdrawn from inventory and donated to the National Guard, emergency services workers, or volunteers providing disaster relief services in a county which is declared a disaster area by the Governor § 26-52-103(a)(7)(B)(ii);
- U. Sales made by the canteen at Camp Robinson to active and retired members of the armed forces and full-time employees of the Arkansas Military Department are exempt under Ark. Code Ann. § 12-63-406. If sales are made to other purchasers, they are subject to gross receipts tax.
- V. The Arkansas Symphony Orchestra, Inc. § 26-52-401(38);
- W. Regional Airport Authorities organized pursuant to Ark. Code Ann. § 14-362-121.

Source: Ark. Code Ann. §§ 26-52-401, or as cited

Sellers of tangible personal property or taxable services should refer to Rule GR-74 in order to determine the necessary documentation for the purpose of claiming the exemption.

GR-31.1 EXEMPTION FROM TAX-- VOLUNTEER FIRE DEPARTMENTS;

- A. The gross receipts or gross proceeds derived from the sales of fire protection equipment and emergency equipment to be owned and exclusively used by volunteer fire departments are exempt from all state, local and county sales and use taxes.
- B. The gross receipts or gross proceeds derived from the sales of supplies and materials used in the construction and maintenance of buildings owned by volunteer fire departments, including improvements and fixtures, are exempt from all state, local and county sales and use taxes.
- C. DEFINITIONS:
 - 1. The term "fire protection equipment" shall mean any tangible personal property used directly in the performance of fire fighting services.
 - 2. The term "emergency equipment" shall mean any tangible personal property used directly in the performance of emergency services by a volunteer fire department such as hazardous or toxic waste materials response and recovery, search and rescue, and other services which prevent, minimize or repair injury and damage resulting from major emergencies or from disasters.
 - 3. The terms "fire protection equipment" and "emergency equipment" include, but are not limited to, the following:
 - a. Axes;

- b. Cascade systems;
 - c. Communication equipment, including radios, pagers, etc. and batteries for communication equipment;
 - d. Compressed air, as used in SCBA's;
 - e. Dry fire hydrants;
 - f. Fire extinguishers;
 - g. Fire retardant agents, such as foam;
 - h. First aid equipment;
 - i. Generators, as used to power fire protection and emergency equipment;
 - j. Hazardous/toxic material disposal equipment;
 - k. Hoses;
 - l. Individual firefighter's turn out gear, i.e., helmets, visors, boots, gloves, pants, hoods, etc.;
 - m. Jaws of life;
 - n. Ladders;
 - o. Lights;
 - p. Motion detectors;
 - q. Motor vehicles for use in fighting fires, or in the furtherance of other emergency activities, including but not limited to, life saving, first aid, or hazardous substance disposal, and other rescue activities, if the following conditions are satisfied:
 - i. The Volunteer Fire Department desiring to claim exemption shall obtain an application for registration from the Office of Motor Vehicle Registration, Division of Revenue, Arkansas Department of Finance and Administration. The application must be completed and submitted to that office along with a filing fee; and
 - ii. The vehicle must be painted a distinguishing color and must have conspicuously displayed thereon in letters and figures not less than three inches tall the identity of volunteer fire department owning such vehicle.
 - r. Nozzles;
 - s. Oxygen;
 - t. SCBA's, Self-contained breathing apparatuses;
 - u. Sirens;
 - v. Training aids, such as VCR's, overhead projectors, etc.
 - w. Water rescue equipment;
 - x. Winches.
 - y. Motor oil, grease, antifreeze, and other items used to maintain fire protection and emergency equipment.
4. The term volunteer fire department shall mean only those fire departments:
- a. which are rural volunteer fire departments formed as a subordinate service district of the county, or as an improvement district, or a subscription fire service department formed as a nonprofit organization for fire protection under the laws of this state; and
 - b. in which seventy-five percent (75%) or more of the fire fighters they employ are volunteer fire fighters, who receive no regular compensation for their services (The receipt of appearance fees of less than Twenty Dollars (\$20) per call by a volunteer is not deemed compensation but as reimbursement for expenses associated with responding to a fire. The waiver of fire protection fees owed by a

- volunteer firefighter does not constitute compensation.); and
 - c. which have had service areas established by the appropriate quorum courts pursuant to Ark. Code Ann. Section § 14-284-207; and
 - d. are registered with the Administrator of the Office of Fire Services.
 - 5. A "rural volunteer fire department" would include a fire department organized by a city which provides fire protection to areas both within and without the city limits.
 - 6. The terms "supplies" and "materials" shall include, but not be limited to, the following:
 - a. Lumber;
 - b. Roofing materials;
 - c. Concrete, bricks, mortar and cinder blocks;
 - d. Plumbing parts and related fixtures, such as sinks, tubs and showers;
 - e. Electrical wire, switches, outlets, circuit breakers and related fixtures, such as vent fans and lights;
 - f. Heat and air conditioning parts, thermostats, wire, ductwork and related fixtures, such as furnaces, condensing units and window units;
 - g. Carpeting; and
 - h. Windows and doors.
 - 7. The terms "supplies" and "material" shall not include items which are not "fixtures", such as:
 - a. Household appliances of any type, furniture, rugs, lamps, telephones, etc.;
 - b. Office equipment, computers, filing cabinets, copiers, fax machines, etc.;
 - c. Consumable cleaning and maintenance supplies, light bulbs, air filters, floor wax, carpet shampoo, etc.;
 - d. Landscaping products;
 - e. Decorative items; and
 - f. Recreational items.
- D. 1. SELLER'S DOCUMENTATION: The Department of Finance and Administration, Revenue Division, does not issue exemption certificates. Even though the seller accepts the consumer's representation that the transaction is exempt from tax, seller shall be liable for the tax if the transaction does not, in fact, qualify for an exemption. Sellers should obtain a written certification from the consumer that the purchase is by a volunteer fire department for use exclusively in fire fighting or emergency services. Sellers may verify the consumer's registration as a volunteer fire department by calling Fire Services at Arkansas Department of Emergency Management at (501) 730-9750. Seller's are encouraged to obtain indemnification agreements from customers and should maintain adequate records to establish entitlement to this exemption.
- 2. CONTRACTOR PURCHASES: A contractor may claim the exemption from tax on sales of supplies and materials used in the construction and maintenance of buildings owned by volunteer fire departments, including improvements and fixtures, if:
 - (i) the exempt supplies and materials are separately stated on the purchase invoice; and
 - (ii) the contractor provides documentation that the supplies and materials will be used in an exempt volunteer fire department project.

Source: Ark. Code Ann. §§ 26-52-434

GR-32. EXEMPTIONS FROM TAX – FUEL FOR MANUFACTURING:

- A. STEEL MILLS. The gross receipts or gross proceeds derived from the sale of electricity and natural gas to qualified manufacturers of steel for use in connection with the steel

mill are exempt. "Qualified manufacturer of steel" means a natural person, company or corporation engaged in the manufacture, refinement or processing of steel and more than fifty percent (50%) of the electricity or natural gas consumed by the manufacturer is used either:

1. to power an electric arc furnace or furnaces, continuous casting equipment, or rolling mill equipment in connection with melting, continuous casting, or rolling of steel; or,
 2. in the preheating of steel for processing through a rolling mill.
- B. ALUMINUM METAL. The gross receipts or gross proceeds derived from the sale of electricity used in the manufacture of aluminum metal by the electrolytic reduction process are exempt from the tax.
- C. GLASS. The gross receipts or gross proceeds derived from the sale of natural gas used as fuel in the manufacture of glass are exempt from the tax.
- D. SUBSTITUTE FUEL. The gross receipts or gross proceeds derived from the sale of substitute fuel used in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging articles of commerce at manufacturing or processing plants or facilities in Arkansas are exempt from the tax. "Substitute fuel" means products or materials derived from tires, from municipal solid waste or other solid waste (except for wood chips or other wood by-products), from used motor oil, from used railroad ties, or from petroleum-based waste, for use in producing heat or power by burning.
- E. TILE. Effective July 1, 2003, the gross receipts or gross proceeds derived from sales of electricity and natural gas used in the process of manufacturing wall and floor tile, by manufacturers of tile classified in Standard Industrial Classification (SIC) 3253, are exempt from the tax. In order to claim this exemption the manufacturer in SIC 3253 must have begun construction of a manufacturing facility in Arkansas prior to January 1, 2003.
- F. BIOMASS. The gross receipts or gross proceeds derived from the sale of gas produced from biomass in a facility meeting all of the eligibility requirements for the credit allowed under Internal Revenue Code § 29, as in effect on December 31, 1996, and sold to an entity for the purpose of generating steam, hot air or electricity to be sold to the gas producer are exempt from the tax. The gross receipts or gross proceeds derived from the sale of steam, hot air or electricity from the entity purchasing the gas produced from biomass in a facility meeting all of the eligibility requirements for the credit allowed under Internal Revenue Code § 29, as in effect on December 31, 1996, to the gas producer are exempt from the tax.
- G. CHLOR-ALKALI MANUFACTURING PROCESS. The gross receipts or gross proceeds derived from the sale of electricity used for the production of chlorine and related chemicals using a chlor-alkali manufacturing process are exempt from the tax.
1. This exemption applies only to electricity used in a chlor-alkali manufacturing process performed at a manufacturing plant or facility located within the State of Arkansas.
 2. The term "chlor-alkali manufacturing process" means an electrolytic process that uses either a diaphragm cell, mercury cell, or membrane cell to simultaneously produce chlorine and an alkali by the electrolysis of a salt solution.

Source: Ark. Code Ann. §§ 26-52-903; 26-52-914; 26-52-401(24); 26-52-429; 26-53-134; 26-52-425; 26-53-143; 26-52-423; 26-52-435; 26-52-438

GR-33. EXEMPTIONS FROM TAX--FOODSTUFFS SOLD TO GOVERNMENTAL

AGENCIES AND NONPROFIT FOOD DISTRIBUTION AGENCIES: The gross receipts or gross proceeds derived from the sale of food to governmental agencies for free distribution to any public, penal or eleemosynary institution or for free distribution to poor and needy individuals are exempt from the tax. The gross receipts or gross proceeds derived from the sale of foodstuffs to nonprofit agencies organized under the Arkansas Nonprofit Corporation Act, § 4-28-201, *et. seq.*, for free distribution to the poor and needy are exempt from gross receipts tax.

For purposes of this rule the following definitions shall apply:

- A. The term "governmental agencies" shall mean any agency or department of the United States, the State of Arkansas, counties, cities or towns or school districts. "Governmental agencies" does not include a private non-profit organization funded wholly or in part by public monies.
- B. The term "public institution" shall mean any institution operated, or managed by a governmental agency, or supported in whole or substantial part by public funds, for the benefit of the economically disadvantaged.
- C. The term "eleemosynary institution" shall mean any charitable and non-profit organization which is operated primarily for the benefit of the economically disadvantaged.
- D. The term "free distribution" shall mean that no consideration is required prior to, subsequent to, or at the time of, distribution of the food.
- E. The term "poor and needy" shall mean individuals who are economically disadvantaged (e.g., individuals who receive little or no income in any form or fashion).

Source: Ark. Code Ann. §§ 26-52-401(19); 26-52-421

GR-34. EXEMPTIONS FROM TAX--MOTOR VEHICLES PURCHASED BY SPECIFIC INDIVIDUALS AND ORGANIZATIONS:

- A. The gross receipts or gross proceeds derived from sales of motor vehicles licensed for use on the highway and motor vehicle adaptive equipment to disabled veterans who have purchased the vehicles or the equipment with the financial aid of the United States Veterans Administration pursuant to the provisions of Title 38, Section 1901 through 1905 of the United States Code are exempt from the tax. An official letter from the Veterans Administration verifying this fact will be accepted as proof of entitlement to this exemption.
- B. Gross receipts and gross proceeds derived from the sale of new automobiles to a veteran of the United States Armed Services who is blind as the result of a service connected injury shall be exempt from the Arkansas Gross Receipts Tax. This exemption shall apply only to those persons who furnish the Department of Finance and Administration with a statement from the Veterans Administration certifying that such individual is a veteran of the United States Armed Services and has been blinded as the result of a service connected injury. This statement shall be supplied to the Department upon application for a vehicle license. This exemption shall be available only on the gross receipts or gross proceeds derived from the sale of one (1) new or used automobile every two (2) years to a veteran who complies with the requirements of this Section. As used herein, "automobile" means a passenger automobile or pickup truck but does not include trucks with a maximum gross load in excess of three-quarters of a ton and does not include any trailer. MOVED FROM GR-32
- C. The gross receipts or gross proceeds derived from the sale of school buses to school districts in Arkansas are exempt from the tax. Similarly, the gross receipts or gross proceeds derived from the sale of school buses to private school bus operators are exempt from the tax if all of the following criteria are satisfied:

1. At the time of the bus purchase, the private school bus operator has already contracted with an Arkansas school district to provide school bus services to students within the district;
 2. The school buses purchased by the private school bus operator will be used solely and exclusively to transport the school district's students as required under the contract;
 3. The school district is obligated under the terms of the contract to pay any taxes related to the school buses; and
 4. The buses must be equipped with flashing white strobe lights and bus mounted "crossing gates" as required under Ark. Code Ann. § 6-19-117.
- D. The gross receipts or gross proceeds derived from the sale of motor vehicles licensed for use on the highways for use exclusively by volunteer crews or squads for life saving, first aid or other rescue activities, including volunteer fire departments, are exempt from tax if the following conditions are satisfied:
1. The person, firm or corporation desiring to claim this exemption shall obtain an application for registration and license from the Office of Motor Vehicle Registration, Division of Revenue, Arkansas Department of Finance and Administration. The application must be completed and submitted to that office along with the filing fee.
 2. The vehicle must be painted a distinguishing color and must have conspicuously displayed thereon in letters and figures not less than three inches tall the identity of the volunteer life saving or first aid crew or rescue squad using such vehicle.
- E. The gross receipts or gross proceeds derived from the sale of motor vehicles to municipalities, public school districts and State supported colleges and universities within Arkansas are exempt from the tax, whether the vehicles are required to be licensed for highway use or not. The gross receipts or gross proceeds derived from the sale of a motor vehicle to a State supported vocational-technical school, technical college or community college located within Arkansas shall be exempt from the tax if such motor vehicle is to be used solely and exclusively for "training purposes" by the school or college. The term "training purposes" means that the motor vehicle must be used as an instructional or educational tool rather than for the school or college's transportation needs. For example, a motor vehicle purchased by a vocational-technical school exclusively for use in its automobile repair courses would qualify for the exemption. However, if the motor vehicle is used by the same school to transport students, staff, faculty or administrators, the tax exemption would not apply.
- F. The gross receipts or gross proceeds derived from the sale of new motor vehicles which are: (1) purchased by non-profit organizations and used for the performance of contracts with the Department of Human Services (DHS), or (2) purchased with Urban Mass Transit Funds, are exempt from gross receipts tax if the following conditions are met:
1. Ten (10) or more vehicles are purchased at the same time for a fleet price;
 2. The vehicles meet or exceed applicable state purchasing law specifications; and
 3. The vehicles are used for transportation under DHS programs for the aging, disabled, mentally ill, or children and family services.
- G. 1. Vehicles that must be licensed for use on the highway include: passenger cars, trucks, semi-trucks, buses, motorcycles as defined in Ark. Code Ann. § 27-20-101, school buses, ambulances, hearses and motor homes.
2. Vehicles that do not have to be licensed include: special mobile equipment as defined in Ark. Code Ann. Ann. § 27-14-211 (farm tractors, road construction and maintenance equipment, ditch-digging and well-boring equipment, etc.), implements

of husbandry as defined in Ark. Code Ann. § 27-14-212 (farm tractors, combines, etc.), motorized bicycles, golf carts, riding lawn mowers and all-terrain vehicles as defined in Ark. Code Ann. § 27-21-102.

Source: Ark. Code Ann. §§ 26-52-401(6); 26-52-415; 26-52-410; 26-52-420; 26-52-510

GR-35. EXEMPTIONS FROM TAX- - SCHOOLS:

A. GENERALLY

There is no general exemption that applies to all sales to school districts or public schools. There is no general exemption that applies to sales by school districts or public schools. However, there are certain specific exemptions that apply to schools and school districts that are addressed or referenced in this rule.

B. TEXTBOOKS and INSTRUCTIONAL MATERIALS - See GR-69.

C. SALES OF FOOD

Sales of food in public, common, high school, or college cafeterias and lunchrooms that are operated primarily for teachers and pupils and not operated for profit or for the general public are exempt from sales tax. Any kindergarten, middle school, junior high school, high school or college that operates a cafeteria or lunchroom primarily for teachers and pupils and not for the general public and that is not operated for profit is not required to collect tax on its sales of food.

D. PTA/PTO FUNDRAISING - See GR-24.

E. MOTOR VEHICLES - See GR-34.

Source: Ark. Code Ann. §§ 26-52-401(3)

GR-36. EXEMPTIONS FROM TAX--PERSONS ELIGIBLE FOR MEDICARE AND MEDICAID:

The gross receipts or gross proceeds derived from the sale or rental of medical equipment by medical equipment suppliers doing business in Arkansas to persons enrolled in and eligible for either Medicare or Medicaid programs as described in 42 USC '1395 and '1396, *et. seq.* of the Federal Social Security Act or successor program having the same purpose, or of any other present or future United States government subsidized health care program, are exempt from tax. This exemption applies only to the gross receipts or gross proceeds received directly or indirectly through an organization administering such program in Arkansas pursuant to a contract with the United States government in accordance with the terms thereof.

Example: Seller is a medical equipment supply store and purchaser is receiving Medicare benefits. Seller charges One Hundred Fifty Dollars (\$150) for the sale of a wheelchair to buyer. Seller is reimbursed One Hundred Dollars (\$100) of the purchase price from the program administrator who is under contract with the United States government to administer the Medicare program. Seller will charge and collect tax only on Fifty Dollars (\$50) of the sale price for the wheelchair. (See also GR-38.2.)

Source: Ark. Code Ann. §§ 26-52-401(20)

GR-37. EXEMPTIONS FROM TAX--HOSPITALS AND SANITARIUMS:

A. The gross receipts or gross proceeds derived from the sale of tangible personal property or services to any state owned and tax supported hospital or sanitarium operated for charitable and non-profit purposes are exempt from the tax.

B. The gross receipts or gross proceeds derived from the sale of tangible personal property or services to any non-profit organization whose sole purpose is to provide temporary housing to the family members of patients in a hospital or sanitarium are exempt from the tax except for the sale of materials used in the original construction, extension or

- repair of the temporary housing.
- C. The gross receipts or gross proceeds derived from the sale of tangible personal property or services to any other hospital or sanitarium operated for charitable and non-profit purposes are exempt from the tax except the sales of materials used in the original construction, extension or repair of such a hospital or sanitarium shall not be exempt from the tax.
 - D. The gross receipts or gross proceeds derived from the sale of tangible personal property or services to a hospital or sanitarium operated for profit are taxable.
 - E. For purposes of this rule, the following definitions shall apply:
 - 1. The term "non-profit" shall mean that no part of the income received by the hospital or sanitarium from any sources inures (either directly or indirectly) to the benefit of any individual, corporation organized for profit, trust organized for profit, or partnership organized for profit.
 - 2. The term "repair" shall mean substantial modifications or substantial work upon the hospital or sanitarium building itself which are necessary because of some extraordinary occurrence such as fire, earthquake, flood, explosion, or structural failure. "Repair" does not include the replacement of items or work performed on the hospital or sanitarium building as a result of ordinary wear and tear, depreciation, maintenance, or vandalism. "Repair" does not include remodeling or refurbishing of any part of the existing hospital or sanitarium facility not necessitated by damage.
 - 3. The term "hospital" means an institution which provides medical and surgical care for the general public. Two basic factors determine whether an institution is a hospital:
 - a. The institution provides beds for the overnight stay of patients (an institution which provides "out-patient" services only is not a hospital); and
 - b. The institution provides a broad range of medical and surgical services.
 - 4. The term "sanitarium" means an institution which provides long-term in-patient medical or mental treatment for the physically or mentally ill, including a charitable, non-profit nursing home or a charitable, non-profit hospice.
 - 5. The term "State-owned, tax-supported" means owned by the State of Arkansas and supported by public funds.
 - 6. The term "charitable organization" means an organization whose purpose is benevolent, philanthropic, patriotic or eleemosynary and whose function if performed, and not performed by a private party, would have to be performed at public expense.
 - 7. The term "extension" means the exterior expansion, vertically or laterally, of the existing facility such that additional usable space is added to the total usable space of the hospital or sanitarium. The addition or expansion of parking facilities is also an "expansion".
 - F. Materials purchased by the hospital (except for State-owned hospitals) for repairs are subject to sales tax; however, if a contractor purchases repair materials for use in completing a contract with the hospital, the contractor must pay sales tax on all purchases. Materials purchased by a charitable, non-profit, non-State owned hospital for maintenance or routine replacement are exempt.
 - G. An entity that is affiliated with a hospital, but is a separate legal entity from the hospital and does not itself qualify as a "hospital" or "sanitarium," may not purchase items exempt from tax if the entity's purchases are paid by the separate entity. For example, a clinic that is a subsidiary or affiliate of a hospital, but that provides "out-patient" services only or otherwise fails to qualify as a hospital, is not exempt from tax on purchases of

items paid with the subsidiary or affiliates' own funds.

Source: Ark. Code Ann. §§ 26-52-401(21)

GR-38. EXEMPTIONS FROM TAX--PRESCRIPTION DRUGS AND OXYGEN:

- A. The gross receipts or gross proceeds derived from the sale, purchase, or use of prescription drugs by licensed pharmacists, hospitals, or physicians when the drugs are sold, purchased, or administered for human use shall be exempt from tax.
- B. "Physician" is any licensed medical practitioner authorized by law to prescribe drugs that are used for human consumption. Physicians include surgeons, dentists, podiatrists, and osteopaths. (See GR-38.2.)
- C. "Prescription Drugs" are those substances recognized in the United States Pharmacopoeia or the National Formulary as substances intended to be used for the care, mitigation, or prevention of disease or other ailments in humans, and that are dispensed only on the prescription of a practitioner authorized by law to prescribe drugs and that cannot be purchased over the counter without a prescription. Classification of a substance by the U.S. Food and Drug Administration as a drug is relevant to the determination of whether a substance qualifies for the exemption provided in Ark. Code Ann. § 26-52-406.
- D. The gross receipts tax does not apply to the sale of oxygen for human use when prescribed by a licensed physician.
- E. Ambulance services which have a physician director, with written medical protocols for the administration of oxygen or prescription drugs by employees of the service, may purchase oxygen and prescription drugs exempt from sales and use tax.
- F. All licensed pharmacists selling prescription drugs and all persons selling oxygen must maintain adequate records to substantiate tax exempt sales.
- G. The withdrawal of prescription drug samples for free distribution from a stock or inventory, whether located within or outside the state is not subject to the tax.

Source: Ark. Code Ann. §§ 26-52-406

GR-38.1. EXEMPTIONS FROM TAX--INSULIN AND TEST STRIPS: The gross receipts or gross proceeds derived from the sale of insulin and test strips for testing human blood sugar levels are exempt from tax.

Source: Ark. Code Ann. §§ 26-52-419

GR-38.2. EXEMPTIONS FROM TAX--ADAPTIVE MEDICAL EQUIPMENT:

- A. The gross receipts or gross proceeds derived from the rental, sale or repair of adaptive medical equipment prescribed for a specific patient by a physician prior to sale are exempt from tax.
- B. The gross receipts or gross proceeds derived from the sale of disposable medical supplies prescribed for a specific patient by a physician prior to sale are exempt from tax.
- C. Sales or rentals of items to physicians, hospitals, nursing homes, or long-term care facilities for use by their patients are not exempt.
- D. The terms "adaptive medical equipment" and "disposable medical supplies" include but are not limited to the following:
 - 1. Wheelchairs;
 - 2. Leg braces;
 - 3. Wheelchair lifts;
 - 4. Ostomy, urostomy, and colostomy supplies;

5. Raised toilet seats;
 6. Catheters;
 7. Wheelchair batteries, tires, cushions, and supplies;
 8. Enemas, suppositories, and laxatives used in routine bowel care;
 9. Flexor wrist splints;
 10. Trapeze bars;
 11. Grab bars and hand rails;
 12. Wheelchair adaptive devices;
 13. Hospital beds and adaptive devices;
 14. Patient lifts;
 15. Orthopedic shoes and devices such as shoe lifts and inserts;
 16. Walkers;
 17. Crutches;
 18. Automobile hand controls;
 19. Shower benches and chairs;
 20. Disposable undergarments and linen savers;
 21. Prosthetics;
 22. Braille writers, large print aids, visual and communication aids for those who are legally blind;
 23. Hearing aids;
 24. Telecommunication devices and other communication devices for the deaf, hearing impaired, and others with communicative disorders; and
 25. Speech devices for those with laryngectomies.
- E. A "physician" means a person licensed under Ark. Code Ann. § 17-95-401 *et. seq.* and includes osteopathic physicians (D.O.). The term "physician" does not include chiropractors, podiatrists, dentists, optometrists, or physical therapists.
- F. A "prescription" means a written or verbal order from the physician to the seller stating that the patient requires the medical equipment or supplies. The seller must maintain adequate records supporting the exemption from tax.
- G. "Adaptive medical equipment" means items intended to assist a patient in performing basic life tasks, such as sitting, walking, hearing, and seeing. Items not specifically listed in section D that provide assistance to a patient in performing basic life tasks, are prescribed for the patient by a physician, and are purchased by the patient as prescribed are exempt as adaptive medical equipment. Items that are intended to heal a condition or items that require surgical implantation or physician intervention are not exempt.
- H. Eyeglasses are not exempt unless the provisions of GR-38.3 apply.

Source: Ark. Code Ann. §§ 26-52-433

GR-38.3. EXEMPTIONS FROM TAX - SALES BY OPHTHALMOLOGISTS, OPTOMETRISTS, OPTICIANS, AND EYEWEAR RETAILERS:

- A. Definitions.
1. The term "doctor" shall mean an ophthalmologist or optometrist.
 2. The term "eyewear" includes, but is not limited to, the following: eyeglass lenses; eyeglass frames; complete eyeglasses; spectacles; sunglasses and contact lenses.
 3. The term "eyewear retailer" shall mean a business enterprise engaged primarily in the retail sale of eyewear and eyewear related products. Examples of an eyewear retailer include a discount store's in-house optical shop or vision center and national

chain store vision centers. An eyewear retailer may (and often does) offer the services of one or more optometrists.

4. The term "independent optician" shall mean a self-employed optician engaged in the business of selling and servicing eyewear and eyewear related products.
 5. The term "prescription eyewear" as used in this rule shall mean eyewear this is designed to improve or protect the patient's vision. Prescription eyewear normally consists of eyeglass lenses, complete eyeglasses, or contact lenses.
- B. Sales by Ophthalmologists and Optometrists. The sale of prescription eyewear by a licensed ophthalmologist or optometrist to his or her patient is exempt from sales tax as part of the rendition of nontaxable professional medical services by the doctor. The sale of tangible personal property other than prescription eyewear by doctors to their patients is subject to sales tax.
1. Doctors should purchase eyewear and other products that are sold or otherwise transferred to their patients as follows:
 - a. The doctor may purchase both nonprescription items and prescription eyewear exempt from sales or use tax as a sale for resale. (See GR-53.) At the time any item other than prescription eyewear is sold, the doctor must collect sales tax from the patient based upon the sales price of the property to the patient. As prescription eyewear is withdrawn from stock and transferred to the patient in conjunction with the doctor's professional services, the doctor should self-assess and pay the sales or use tax based upon the purchase price of the materials.
 - b. Alternatively, if the doctor makes no sales of items other than prescription eyewear, sales or use tax on the materials used in producing prescription eyewear may be paid to the vendor at the time of purchase. The doctor is responsible for remitting use tax on purchases from unregistered vendors.
 2. Sales by Doctors to Nonpatients. When a doctor merely fills another doctor's prescription for eyewear, such sales are not considered to be part of the doctor's nontaxable professional services. Rather, these sales are considered to be retail sales of tangible personal property upon which the doctor must collect sales tax from the customer.
- C. Sales by Independent Opticians. The sale of eyewear, including prescription eyewear, by an independent optician is subject to sales tax as the optician is primarily engaged in the sale of tangible personal property rather than the rendition of professional services. Opticians should purchase all eyewear and related products tax-exempt as sales for resale. (See GR-53.) Sales tax should be collected from the optician's customers at the time the eyewear is sold.
- D. Sales by Eyewear Retailers. The sale of eyewear, including prescription eyewear, by any eyewear retailer is subject to sales tax. Eyewear retailers should purchase all eyewear and related products tax-exempt as sales for resale. (See GR-53.) Sales tax should be collected from the retailer's customers at the time the eyewear is sold.
- E. Prescription glasses, sunglasses and contact lenses are not considered to be "adaptive medical equipment" and therefore may not be sold to consumers tax-exempt under GR-38.2(D)(22).

GR-39. EXEMPTIONS FROM TAX--CHARITIES AND CHURCHES:

- A. The gross receipts or gross proceeds derived from the sale of tangible personal property or services by churches or charitable organizations are exempt from the tax except where such organizations may be engaged in business for profit. Additionally, sales

made by charitable organizations that sell new tangible personal property and their sales compete with sales made by for-profit businesses are not exempt. (See Paragraph C. below.)

- B. The gross receipts or gross proceeds derived from sales of tangible personal property or services to churches or charitable organizations are not exempt from tax unless the items purchased are for resale by the church or charitable organization. In order to claim the sale-for-resale exemption, a church or charitable organization must have either a resale certificate or a letter opinion issued by DFA certifying that it is a church or charitable organization and that it intends to resell the items purchased.
- C. WHEN SALES BY CHARITABLE ORGANIZATIONS ARE NOT EXEMPT:
 - 1. The exemption for charitable organizations shall not extend to sales of new tangible personal property by the organization if the sale competes with sales by for-profit businesses.
 - 2. A sale by a charitable organization does not compete with a sale by a for-profit organization if:
 - a. The sales transaction is conducted by members of the charitable organization and not by any franchisee or licensee;
 - b. All of the proceeds derived from the transaction go to the charitable organization;
 - c. The transaction is not a continuing one and is held not more than three (3) times a year; and
 - d. The dominant motive of the majority of purchasers of the items sold is the making of a charitable contribution, with the purchase of the item being merely incidental and secondary to the dominant purpose of making a gift to the charity.
 - 3. The limitations of this section do not apply to sales made by a nonprofit hospital, a cafeteria at a nonprofit hospital, or a gift shop at a nonprofit hospital, whether operated by the hospital, a hospital auxiliary, or other nonprofit organization; or to sales by gift shops operated by charitable organizations at for-profit hospitals.
 - 4. The following activities shall not be deemed to compete with sales by for-profit organizations:
 - a. Sales of tangible personal property by charitable organizations at county fairs;
 - b. Sales at concession stands operated by a non-profit little league or soccer association or other similar athletic association;
 - 5. The sale of fireworks by a non-profit charitable organization shall be deemed to compete with for-profit organizations.
- D. For purposes of this rule, the following definitions shall apply:
 - 1. See GR-37.E.(6) for definition of charitable organization.
 - 2. The phrase "engaged in business for profit" means that the income or receipts of the church or charitable organization inures to the benefit of an individual, corporation organized for profit, trust organized for profit or partnership organized for profit. A charitable organization or church that has obtained a ruling from the United States Internal Revenue Service or Arkansas Department of Finance and Administration, Income Tax Section, which certifies the organization for income tax purposes is presumed to be a non-profit organization.

Source: Ark. Code Ann. §§ 26-52-430

**GR-40. EXEMPTIONS FROM TAX--ADMISSION FEE TO RODEOS AND FAIRS--
TICKETS FOR ADMISSION TO ATHLETIC EVENTS AND INTERSCHOLASTIC ACTIVITIES--**

-COLLEGES AND UNIVERSITIES:

- A. The gross receipts or gross proceeds derived from gate admission fees at state, district, county or township fairs are exempt from the tax. The gross receipts or gross proceeds derived from gate admission fees at any rodeo are exempt from the tax if, and only if, the gross receipts or gross proceeds derived from such fees are used exclusively for the improvement, maintenance and operation of such rodeo and if no part of the net earnings thereof inures to the benefit of any private stockholder or individual.
- B. The gross receipts or gross proceeds derived from the sale of tickets for admission to athletic events and interscholastic activities at public and private elementary and secondary schools in this State are exempt from the tax.
- C. The gross receipts or gross proceeds derived from the sale of tickets for admission to athletic events at public or private universities and colleges in Arkansas are exempt from the tax.

Source: Ark. Code Ann. §§ 26-52-411; 26-52-412

GR-41. EXEMPTIONS FROM TAX--RAW FARM PRODUCTS GROWN IN ARKANSAS:

- A. The gross receipts or gross proceeds derived from sales of raw products, including Christmas trees, produced or grown at a farm, orchard, or garden in Arkansas are exempt from tax if:
 - 1. The sale of such products is made by the producer directly to the consumer; and
 - 2. The sale is not from an established business located off the farm. Farmers' markets that operate from an established place off the farm or in an established manner off the farm are deemed to be established businesses. Products sold at farmers' markets off the farm are not eligible for the exemption.
- B. Grass sod is not a raw farm product, and the gross receipts or gross proceeds derived from sales of grass sod are taxable.
- C. Sales of flowers or non-edible trees, shrubs, or plants by florists or nurserymen are not exempt from tax.

Source: Ark. Code Ann. § 26-52-401(18)

GR-42. EXEMPTIONS FROM TAX--DAIRY, LIVESTOCK (INCLUDING DOMESTICATED FISH), POULTRY PRODUCTS:

- A. The gross receipts or gross proceeds derived from the sale of baby chickens in Arkansas are exempt from the tax.
- B. The gross receipts or gross proceeds derived from the sale of livestock including domesticated fish by producers at special livestock sales are exempt from the tax. The term "livestock" includes cattle, horses, mules, sheep, hogs, and any other animals kept for commercial use or profit.
- C. The gross receipts or gross proceeds derived from the sale of dairy products by a dairy product producer who owns less than six (6) dairy cows are exempt from the tax if the dairy products are produced in Arkansas and if the dairy products are sold by the producer directly to the consumer and the sale is not from an established business located off the farm.
- D. The gross receipts or gross proceeds derived from sale of poultry products are exempt from the tax if the poultry or poultry products are produced in Arkansas and are sold on the producer's farm and not from an established business.

Source: Ark. Code Ann. § 26-52-401(18)

GR-43. EXEMPTIONS FROM TAX--COTTON GIN BALING MATERIALS; AGRICULTURAL SEED AND TOMATO TWINE:

- A. The gross receipts or gross proceeds derived from the sale of bagging, packaging and tie materials sold to, and used by, cotton gins in Arkansas for packaging and tying, or for packaging or tying baled cotton in Arkansas are exempt from the tax. The gross receipts or gross proceeds derived from the sale of twine which is used in production of tomato crops in Arkansas are exempt from the tax.
- B. The gross receipts or gross proceeds derived from the sale of cotton, seed cotton, lint cotton, or baled cotton, whether the cotton is compressed or not, are exempt from this tax.
- C. The gross receipts or gross proceeds derived from the sale of cotton seed in its original condition are exempt from the tax.
- D. The gross receipts or gross proceeds derived from the sale of seed to be used in the commercial production of any agricultural product, or in the commercial production of any agricultural seed are exempt from the tax. Also, the gross receipts or gross proceeds derived from the sale of seedlings used in the commercial production of timber are exempt from tax. For purposes of this subsection the term "commercial production" means that the purchaser of the seed or seedling is engaged in the business of growing agricultural products, including the production of timber.
- E. The term "agricultural" means operations engaged in for the production of food, fiber or timber, sod, or nurseryman products.

Source: Ark. Code Ann. § 26-52-408

GR-44. RESERVED

GR-45. EXEMPTIONS FROM TAX--CERTAIN PRODUCTS USED FOR LIVESTOCK AND POULTRY--SPECIAL RULES FOR CLAIMING EXEMPTIONS:

- A. The gross receipts or gross proceeds derived from sales of agricultural fertilizer, agricultural limestone, and agricultural chemicals are exempt from the tax. The term "agricultural chemicals" includes, but is not limited to agricultural pesticides and agricultural herbicides; and vaccines, medications and medicinal preparations used in treating livestock and poultry. Pesticides and herbicides used in and around poultry and other animal houses and agricultural chemicals and fertilizers used in the commercial production of timber are exempt.
- B. The gross receipts or gross proceeds derived from sales of feedstuffs used in growing and producing livestock or poultry for commercial production in Arkansas are exempt from the tax.
- C. For purposes of this rule, the following definitions shall apply:
 - 1. The term "feedstuffs" shall mean processed or unprocessed grains, mixed or unmixed grains; whole or ground hay; whole or ground straw; hulls, whether mixed with other materials or not; and food supplements, including hormones, antibiotics, vitamins, minerals and medications ingested by poultry or livestock. Food supplements need not be nutritious or for medicinal purposes.
 - 2. The term "livestock" includes cattle, horses, mules, sheep, hogs, and any other animals kept for commercial use or profit.
 - 3. The term "agricultural" means operations engaged in for the production of food, fiber, timber, sod, and nurseryman products.

Source: Ark. Code Ann. § 26-52-404

GR-46. NON-TAXABLE ADVERTISING SERVICES:

- A. 1. The term "advertising agency" means a business which provides comprehensive, professional advertising services including, but not limited to, artwork, concepting, designing and any other creative services necessary to create, plan and implement an advertising scheme.
- 2. The term "advertising services" means those professional services provided by an advertising agency when designing and implementing an advertising campaign for a customer.
- B. 1. Advertising services shall not be subject to gross receipts tax.
- 2. Advertising agencies must pay the Arkansas gross receipts or use tax on all property and taxable services which they purchase or consume in providing advertising services.
- 3. The sale of caps, pencils, mugs, shirts or any other item of tangible personal property which contains the name, logo, picture or other message designed by the purchaser is subject to the gross receipts tax if the sale is made by a retail business engaged in the sale of advertising materials.

Source: Ark. Code Ann. § 26-52-401(13)

GR-47. EXEMPTIONS FROM TAX--SALES TO THE UNITED STATES GOVERNMENT: The gross receipts or gross proceeds derived from sales to the United States Government are exempt from the tax. Contractors purchasing tangible personal property or taxable services pursuant to a contract with the United States Government are the consumers of such property or services and must pay the tax when they purchase the property or services. Sales to United States Government employees who pay for the articles purchased with their own funds are not exempt.

Source: Ark. Code Ann. § 26-52-401(5)

GR-47.1 EXEMPTIONS FROM TAX - FEDERAL CREDIT CARD PURCHASES:

- A. Sales tax is not due on credit card purchases which are direct-billed to and paid for by the federal government. Sales tax is due on credit card transactions where the purchases are billed to and paid for by federal employees, who are then reimbursed by the federal government. The following information is designed to assist you in determining whether or not tax applies to transactions paid for with GSA SmartPay cards.
- B. Cards which are always direct-billed to the federal government and are therefore exempt from sales or lodgings taxes begin with digits 8699 or 5568.
- C. Prefixes 4486, 4716, and 5568 are issued on cards which are both direct-billed and individually-billed. To know the difference you must look at the sixth digit.
- D. If the sixth digit is 0, 6, 7, 8, or 9; the card is direct-billed and the transactions are tax-exempt. If the sixth digit is 1, 2, 3, or 4; the card is billed to the individual federal employee and the transactions are subject to tax. State sales and tourism taxes apply only against transactions made with federal Visa or MasterCard credit cards which begin with the prefix 4486, 4716, or 5568 and have the sixth digit as either 1, 2, 3, or 4.
- E. The following are two exceptions to the above statements:
 - 1. The Department of Interior will use an integrated MasterCard issued by Nations-Bank. The same card will be used for both direct-billed and individually-billed purchases. The bank will sort the purchases during the billing process depending on the merchant's code. Purchases for office supplies and other procurements will be direct-billed to the federal government and, therefore, tax-exempt. Pur-

charges for lodgings and restaurant food will be individually-billed to the federal employee and, therefore, taxable. These cards will have the agency's federal tax-exempt identification number (14-0001849) on the face of the card. The account numbers will begin "5568-16." Although it would appear that this number means the card is direct-billed to the federal government and all transactions would be tax-exempt; in fact, lodgings and restaurant charges will be individually billed to the federal employee and the transaction will be taxable.

2. The cards issued to the Bureau of Reclamation will be direct-billed for all purchases, including lodgings and restaurant charges. Accordingly, cashiers will have to differentiate purchases on cards issued to the Department of Interior and purchases on cards issued to the Bureau of Reclamation. Purchases for lodgings and restaurant food on cards issued to the Department of Interior are taxable. Purchases for lodgings and restaurant food on cards issued to the Bureau of Reclamation are tax-exempt. This system is expected to be in place for approximately one year beginning in 1999 at which time all purchases on this integrated card will be direct-billed and tax-exempt.

Source: Ark. Code Ann. § 26-52-401(5)

GR-48. EXEMPTIONS FROM TAX--NEWSPAPERS, PUBLICATIONS, AND BILLBOARDS:

- A. For purposes of this Section, the following definitions are applicable:
 1. The term "newspaper" means a publication in sheet form containing reports of current events and articles of general interest to the public, published regularly in short intervals such as daily, weekly, or bi-weekly, and intended for general circulation.
 2. The term "advertising space" means space located within the body of a newspaper or publication, containing advertisements which are printed concurrently with the news, articles, features, or other attractions in the newspaper or publication and the classified advertising section.
 3. The term "advertising supplement" means a publication in sheet form, other than the usual classified advertising section of a newspaper, printed in Arkansas by a newspaper publisher or job printer, containing advertising only and which is not physically attached to a newspaper, but which may be distributed with a newspaper or by other means.
 4. The term "billboard advertising services" means any and all services rendered in connection with the rental or lease of advertising space on a structure which is affixed to the land for the purpose of posting advertising messages.
 5. The term "publication" means any pamphlet, magazine, journal, or periodical, other than a newspaper, designed for the information or entertainment of the general public or any segment thereof.
 6. The term "regular subscription" means the purchase by advance payment of a specified number (two or more) of issues of a publication over a certain period of time, and delivered to the subscriber by mail or otherwise.
- B. The gross receipts or gross proceeds derived from the sale of newspapers are exempt from the tax.
- C. The gross receipts or gross proceeds derived from the sale or rental of advertising space in newspapers and publications are exempt from the tax. Advertising supplements are not exempt from the tax. The printer, whether a newspaper publisher or job printer, must collect the tax on the gross receipts or gross proceeds derived from the sale of the advertising supplements to the advertiser, even though the advertising supplement may

be distributed by insertion in a newspaper for the convenience of the advertiser.

- D. The gross receipts or gross proceeds derived from the sale of advertising space in advertising supplements or other publications distributed free of charge are exempt from tax. The printer, whether a newspaper publisher or job printer, must collect tax on the gross receipts or gross proceeds derived from the sale of the advertising supplements to the distributor. If the printer is also the distributor, the printer should pay tax on the retail price which the printer would have charged to a customer who purchased the advertising supplements or publications from the printer in an arms length transaction.
- E. The gross receipts or gross proceeds derived from the sale of billboard advertising services are exempt from the tax.
- F. The gross receipts or gross proceeds derived from the sale of any publication through regular subscription are exempt.
- G. The gross receipts or gross proceeds derived from the sale of any non-subscription magazines, or publications other than newspapers are subject to the tax.
- H. The gross receipts or gross proceeds derived from the sale of machinery and equipment to newspaper publishers are exempt from the tax if they satisfy the requirements set forth in GR-55.

Source: Ark. Code Ann. §§ 26-52-401(4) and (13); 26-52-404

GR-49. EXEMPTIONS FROM TAX--ISOLATED SALES:

- A. The gross receipts or gross proceeds derived from isolated sales not made by an established business or in an established manner are exempt from the tax.
- B. The term "isolated sale" means the one-time sale of an item, or group of items not made by an established business of any kind of character.

Example: Seller has an inventory of merchandise which buyer desires to purchase. Seller is in the established business of selling the merchandise. If seller sells all or part of the inventory to buyer, then it is not an isolated sale and seller must collect and remit tax on the gross receipts or gross proceeds derived from the sale of the merchandise unless other exemptions are applicable such as the sale for resale exemption. Sale of non-inventory assets is considered an isolated sale.

- C. This exemption does not apply to the sale of motor vehicles, trailers, semi-trailers, mobile homes, airplanes, or sales of tangible personal property at special events. See GR-49.1.

Source: Ark. Code Ann. § 26-52-401(17)

GR-49.1 SPECIAL EVENTS: EXCEPTION TO ISOLATED SALES EXEMPTION

- A. The isolated sale exemption does not apply to items sold at special events. Promoters or organizers of special events must register with the Department of Finance and Administration and obtain either a sales tax permit (if they do not already have one) or a sales tax reporting number. The Department will then provide the promoter with packets of materials which are to be handed out to each vendor at the beginning of the special event. The packets will include a Sales Tax Report Schedule, a List of Cities and Counties with Local Sales and Use Tax (along with the applicable tax rates), and an envelope for Sales Tax Remittance. Vendors that do not have a retail sales tax permit must collect sales tax on all sales and report and pay the tax to the promoter at the end of the event. The promoter should always make certain that he has provided each vendor with his name and address. The vendor must make his or her check payable to the Department of Finance and Administration and place the check, along with the reporting form, into the envelope provided by the promoter. The envelope is then turned in to the promoter

who will forward the report and payment to the Department of Finance and Administration by the 20th of the month following the month in which the event ends.

- B. Special event vendors who hold sales tax permits will continue to report their sales to the Sales Tax Section and by providing their permit number to the promoter will not be required to report and pay the tax to the promoter.
- C. Vendors who are a church or nonprofit, charitable organization, are not required to collect the tax under this provision. However, charitable organizations whose sales compete with for-profit businesses are required to collect the tax. (See GR-39(C).)
- D. Definitions – For purposes of this rule, the following definitions shall apply:
 - 1. "Promoter" or "Organizer" means a person who organizes or promotes a special event which results in the rental, occupation or use of any structure, lot, tract of land, motor vehicle, sample or display case, table, or any other similar items for the exhibition and sale of tangible personal property by special events vendors.
 - 2. "Special Event Vendor" means a person making sales of tangible personal property at a special event.
 - 3. "Special Event" means an entertainment, amusement, recreation or marketing event which occurs at a single location on an irregular basis and where tangible personal property is sold. Such special events include auto shows, boat shows, gun shows, knife shows, craft shows, flea markets, carnivals, circuses, bazaars, fairs, art or other merchandise displays or exhibits. Special events does not include any county, district, or state fair or the Four States Livestock Show that has been approved, pursuant to the rules and regulations of the Arkansas Livestock and Poultry Commission, to receive state funds.

Source: Ark. Code Ann. § 26-52-518

GR-50. EXEMPTIONS FROM TAX--SECONDHAND AND USED TANGIBLE PERSONAL PROPERTY:

- A. Gross receipts or gross proceeds derived from the sale of secondhand and used tangible personal property will be exempt only if both the following conditions listed below are met:
 - 1. Used property was traded-in to and accepted by the seller of tangible personal property as part of the purchase price of newly acquired tangible personal property. It is necessary that the gross receipts tax be collected and paid on the total consideration for the sale of the newly acquired tangible personal property in order to qualify for the exemption unless the sale of the newly acquired tangible personal property was otherwise exempt under other provisions of the Arkansas Gross Receipts Act; and
 - 2. a. Arkansas gross receipts tax was collected and paid on the total amount of consideration for the sale of the newly acquired tangible personal property without any deduction or credit for the value of the used tangible personal property; or.
Example: Seller of boats sells a new boat to a customer. The customer trades in his old boat and pays sales tax to seller on the full purchase price of the new boat without any deduction for the trade-in. When seller sells the traded-in used boat, he is not required to collect sales tax.
 - b. The new personal property was originally exempt from tax under the provisions of the Arkansas Gross Receipts Act.
Example: Seller of farm equipment sells a new tractor to a farmer. The farmer trades in his old tractor that was purchased tax exempt under the gross receipts tax exemption for farm equipment and machinery. When the seller sells

the used tractor, he is not required to collect sales tax.

- B. The foregoing does not apply to transactions involving (a) used motor vehicles or trailers, (b) used mobile homes or (c) used aircraft, but is applicable to boats, motors, appliances, etc. (See GR-13, GR-14 and GR-15.)
- C. Property purchased by a seller and not taken as a trade-in does not qualify for the exemption.

Source: Ark. Code Ann. § 26-52-401(22)

GR-51. EXEMPTIONS FROM TAX--FARM MACHINERY AND EQUIPMENT, TIMBER HARVESTING EQUIPMENT:

- A. The gross receipts or gross proceeds derived from the sale of new and used farm equipment and machinery is exempt from gross receipts tax.
- B. The term "farm equipment and machinery" means agricultural implements used exclusively and directly for the agricultural production of food or fiber as a commercial business or the agricultural production of grass sod or nursery products as a commercial business. "Farm equipment and machinery" does not include implements used in the production and severance of timber, motor vehicles that are subject to registration, airplanes, or hand tools.
 - 1. The following agricultural implements are exempt provided they meet the requirements of paragraphs B(3) and B(4) of this rule:
 - a. Combines, cotton pickers, cotton module builders, cotton trailers, cultivators, discs, farm tractors, (other than garden tractors) harrows, irrigation equipment, milking equipment including milking machines, mechanical pickers, planters, plows, rotary hoes, sprayers, spreaders and threshing machines. "Irrigation equipment" means (i) pipes, hoses, tubing and accessories to the pipes, hoses and tubing which deliver irrigation water from the water source to the crops regardless of whether the equipment becomes affixed to real property; and, (ii) pumps, gates, and other equipment other than pipes, hoses and tubing, which is movable and does not become affixed to real property. Irrigation equipment, other than pipes, hoses and tubing, which is designed or intended to be permanently attached or incorporated into real property is not exempt.
 - b. All terrain vehicles which are not subject to licensing or registration for use on the highways.
 - c. Machinery and equipment used in poultry grow-outhouses including heaters, cages, feeding systems, storage bins for short term storage of feed, medicators, watering systems, augers, fans and generators.
 - d. Egg racks, poultry loaders and module coop systems used by egg and poultry producers in farming operations.
 - 2. The list of exempt items in B(1)(a) is not intended to be exclusive. Other agricultural implements may qualify for this exemption provided they meet the requirements of paragraphs B(3) and B(4) of this rule.
 - 3. An implement may not be treated as tax exempt unless it is used "exclusively" in the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business.
 - a. An implement will be presumed to be used exclusively in the agricultural production of food, fiber, grass sod, or nursery products as a business if the implement is used on land owned or leased for the purpose of agricultural production of food, fiber, grass sod, or nursery products.
 - b. A person who uses agricultural implements in the production of food, or fiber,

grass sod, or nursery products primarily for his own consumption is not entitled to this exemption.

4. An implement may not be treated as tax exempt unless it is used "directly" in the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business. The term "directly" limits the exemption to:
 - a. only those implements used in the actual agricultural production of food, fiber, grass sod, or nursery products to be sold in processed form or otherwise at retail, or
 - b. machinery and equipment used in the agricultural production of farm products to be fed to livestock or poultry which is to be sold ultimately in processed form at retail.
5. Implements which are not exempt include but are not limited to the following:
 - a. Containers or storage facilities.
 - b. Implements used in the production or severance of timber (except as exempted by paragraph E of this rule), or any motor vehicle of a type subject to registration for use on the highway, or airplanes, or hand tools.
 - c. Attachments to and accessories not essential to the operation of the implement itself (except when sold as part of an assembled unit).
 - d. Items which are incorporated into real property.
 - e. Repair labor and repair parts.
 - f. Examples of non-exempt items include a machine owned by a commercial farmer but also used at a location other than the farming property (such as a duck club or deer camp); a machine owned by a commercial farmer but also used for any purpose at any time for activities other than commercial farming, even while located at the commercial farm (such as pleasure riding, household activities, residential yard work, gardening, hunting, fishing); a machine purchased by a commercial farmer who also uses the machine to produce food or fiber primarily for his own consumption.
- C. Certification. For the purchase to be tax-exempt, the taxpayer must certify in writing that the machinery will be:
 1. used **exclusively** in the agricultural production of food or fiber as a retail business; **AND**
 2. used **directly** in the actual agricultural production of food or fiber to be sold in processed form or at retail, OR used **directly** in the agricultural production of farm products to be fed to livestock or poultry, which is to be sold ultimately in processed form at retail.The suggested certification form appears at the end of this rule.
- D. A purchaser of farm machinery and equipment shall be considered to be engaged in the business of farming for purposes of the exemption if:
 1. The purchaser is engaged in the agricultural production of food, fiber, grass sod, or nursery products as a business for profit as defined in Internal Revenue Code § 183 as adopted by Ark. Code Ann. § 26-51-424; or
 2. a. The purchaser provides services to farmers directly related to the production of food, fiber, grass sod, or nursery products;
b. The items of farm machinery and equipment are used exclusively and directly to provide those services; and
The items of farm machinery and equipment would have otherwise qualified for the

farm machinery exemption if purchased and used exclusively and directly by the farmer for the same activity.

EXAMPLE: A fertilizer spreader or seed spreader, or chemical applicator purchased by a farmer would qualify for the farm machinery exemption if used exclusively by a farmer in applying fertilizer, planting seed, or applying agricultural chemicals as part of the agricultural production of food, fiber, grass, sod, or nursery products as a business. The farm machinery exemption will also be available to a fertilizer dealer, seed company, or other similar business upon the purchase of these same items provided the items are used exclusively and directly by the business in applying fertilizer, planting seed, or applying agricultural chemicals for farmers.

- E. TIMBER HARVESTING. The first Fifty Thousand Dollars (\$50,000) of the purchase price of new and used machinery or equipment and related attachments sold to or used by a person engaged primarily in the harvesting of timber are exempt from gross receipts tax.
 - 1. In order for the machinery or equipment and related attachments to be exempt, it must be:
 - a. Purchased by a person who commits more than fifty percent (50%) of his or her activities to the harvesting of timber; and
 - b. Used exclusively in the off-road activity of harvesting of timber.
 - 2. Only complete systems or units that operate exclusively and directly in the off-road harvesting of timber are exempt from tax. The equipment and related attachments meet this requirement if they are used in harvesting timber from the time the tree is severed from the ground through the point at which the tree or its parts in any form have been loaded in the field in or on a truck or other vehicle for transport to the place of use. Examples of such equipment include skidders, feller bunchers, delimiters of all kinds, and bulldozers equipped with grapples used as skidders.
 - 3. This exemption does not apply to repair or replacement parts for the machinery and equipment used in timber harvesting.

Source: Ark. Code Ann. §§ 26-52-403; 26-52-431

Commercial Farming Machinery & Equipment Sales Tax Exemption Certification

I, _____, am engaged in, or provide services for, the production of
(purchaser's name – please print)
_____ as a commercial farming business. The farm machinery and equipment
(products grown or raised)

I am purchasing will be used **exclusively and directly** in the agricultural production of food and fiber to be sold in the commercial marketplace OR used directly in the agricultural production of farm products to be fed to livestock or poultry which will be sold in processed form at retail. I am aware that this claim for exemption will be reviewed by the Department of Finance and Administration. I am also aware that any false representation made by me in an attempt to purchase farm machinery and equipment free from Arkansas sales tax will result in the assessment of tax, penalty, and interest against me and is punishable as a misdemeanor under Arkansas law.

Signature of Purchaser

Date

Telephone Number

Address	City	State	Zip
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*These certifications shall be kept on file by the seller for six years from the date of sale for audit purposes.

GR-51.1. EXEMPTIONS FROM TAX-- LIVESTOCK REPRODUCTION EQUIPMENT:

- A. The gross receipts or gross proceeds derived from the sale of livestock reproduction equipment or substances are exempt from gross receipts tax.
- B. Definitions.
 - 1. For purposes of this exemption, "livestock" means any mammal the products of which are used for food or human consumption.
 - 2. 'Livestock reproduction equipment' includes any of the following used in the reproduction of livestock:
 - a. Nitrogen;
 - b. Nitrogen tanks; and
 - c. Any equipment used to implement the reproduction technique.
 - 3. "Livestock reproduction substance" means any natural or artificial substance used in the reproduction of livestock, including semen or embryos.

Source: Ark. Code Ann. § 26-52-438

GR-52. EXEMPTIONS FROM TAX--VESSELS, BARGES AND TOWBOATS OF AT LEAST FIFTY TONS LOAD DISPLACEMENT; AND RAILROAD CARS, PARTS AND EQUIPMENT:

- A. The gross receipts or gross proceeds derived from the sale of vessels, barges, and towboats of at least fifty (50) tons load displacement are exempt from the tax.
- B. The gross receipts or gross proceeds derived from the sale of parts and labor used in the repair and construction of vessels, barges and towboats of at least fifty (50) tons load displacement are exempt from the tax.
- C. The gross receipts or gross proceeds derived from the sale or lease of railroad rolling stock manufactured for use in transporting persons or property in interstate commerce are exempt from the tax.
 - 1. For purposes of this section, "railroad rolling stock" means completed railroad locomotives and railroad cars designed to haul either passengers or freight, and includes repair parts and materials used to repair railroad locomotives and railroad cars.
 - 2. Railroad rolling stock does not include machinery used to repair or maintain railroad cars, locomotives, track, railroad ties, or railroad roadway.
- D. The gross receipts or gross proceeds derived from the sale of parts or labor used in the repair and maintenance of railroad parts, railroad cars, and equipment owned or leased by railroad companies or carrier are exempt from the tax.

Source: Ark. Code Ann. §§ 26-52-407; 26-52-426; 26-52-428

GR-53. EXEMPTIONS FROM TAX--SALES FOR RESALE:

A. SALES FOR RESALE - GENERALLY

The gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles or services purchased whether purchased within or without the State are exempt from the tax; provided, however, that such sales within the state are made to persons to whom sales tax permits have been issued as provided in Ark. Code Ann. § 26-52-201 *et. seq.* and rule number GR-72. (See also GR-74.)

B. PROOF OF ENTITLEMENT TO EXEMPTION - CERTIFICATION

1. It is necessary that the person claiming the benefits of this sale for resale exemption prove to the seller that he is engaged in the business of reselling the articles or services purchased by him. The purchaser must provide the seller with the purchaser's retail permit number if the sale is made within Arkansas. In addition to furnishing his retail permit number to the seller, the purchaser must certify in writing to the seller that he (the purchaser) is engaged in the business of reselling the articles purchased. Failure to so certify, or to falsely certify with the knowledge that the items or services purchased are not for resale, shall be sufficient grounds upon which the Commissioner may cause the purchaser's retail permit to be canceled. Certification may be made on the bill, invoice or sales slip retained by the seller; or by furnishing a certification letter to the seller which contain the following:
 - a. the name and address of the purchaser;
 - b. the retail permit number of the permit issued to the purchaser;
 - c. a statement that the purchaser is engaged in the business of reselling the articles or services purchased;
 - d. a statement that the articles or services purchased are purchased for resale;
 - e. the signature of the purchaser or a person authorized to legally bind the purchaser.
2. If certification is made directly on the bill, sales slip or invoice, the purchaser need only note his retail permit number and write the following statement (or a reasonable approximation thereof): "I, (name, position, business name), hereby certify that the materials or services listed on the (bill, invoice or sales slip) are purchased for resale and that I am regularly engaged in the business of reselling the items or services noted on this (bill, invoice or sales slip)." The purchaser or his authorized agent must then sign the bill, invoice or sales slip and return a copy thereof to the seller for his records.
3. Alternatively, certification may be made in compliance with this rule by completing a resale certificate.
4. If a retail permit holder purchases goods, services, wares, and merchandise from a seller on a regular basis, then the permit holder may furnish the certification letter described in Section (B) of this rule to the seller and the seller may subsequently make sales of tangible personal property or services to the retail permit holder without requiring a certification letter or certification statement for each subsequent sale. The retail permit holder must notify the seller of all purchases which are not for resale and remit the applicable amount of tax thereon. If the retail permit holder fails to so notify the seller of purchases not intended for resale, then sufficient grounds shall exist for the Commissioner to cancel the retail permit of the retail permit holder who failed to so notify the seller.

C. SELLER OF GOODS – LIABILITY FOR TAX

1. The seller of items or services intended for resale must satisfy the requirements of Section (B) or (C) of this rule. If the seller does not require the purchaser to perform the requirements listed in Section (B) or (C) and the sale was otherwise taxable, then the seller shall be liable for the tax upon the gross receipts or gross proceeds derived from the sale of the items or services.
2. If the seller of items or services intended for resale accepts a certification or completed Resale Certificate in good faith, then the seller shall not be liable for tax on the gross receipts from the sale of goods or services regardless of the subsequent taxable use of the goods or services by the purchaser. A seller takes a Resale Certificate in good faith if he has no actual knowledge at the time of the sale that the purchaser is not entitled to the resale exemption. Actual knowledge of the purchaser's business, knowledge of the purchaser's intended use for the goods or services, or other facts and circumstances which would cause a reasonable person to refuse to accept the Resale Certificate as a basis for exempting the transaction from sales tax.

D. SALE FOR RESALE - MANUFACTURERS

1. Goods, services, wares, merchandise and property sold for use in manufacturing, compounding, processing, assembling or preparing for sale, can be classified as having been sold for resale purposes only in the event such goods, services, wares, merchandise, or property becomes a recognizable integral part of the manufactured, compounded, processed, assembled or prepared products. Sales of goods, services, wares, merchandise, and property not conforming to this requirement are classified as being for consumption or use of the purchaser thereof and are taxable. For purposes of this Section, the following definitions shall apply:
 - a. The term "recognizable" means capable of being recognized in the finished product. The capability to recognize the effect of goods, wares, merchandise, or property upon the finished product is insufficient to establish that the goods, wares, merchandise or property has been resold.
 - b. The term "integral" means essential to the completeness of the finished product.
2. Services shall be considered a "recognizable" and "integral" part of the finished product if:
 - a. The services were actually performed on the items or articles being sold; and
 - b. The services enhance the value of the items being sold.
3. Other services performed for businesses engaged in manufacturing, compounding, processing, assembling, or preparing items for sale shall not be entitled to the sale for resale exemption.
4. Manufacturers, compounders, processors, assemblers and preparers of goods for sale must also satisfy the requirements found in Sections A, B, C, and D of this rule.
5. Packaging Materials:
 - a. Generally, the sale of materials used by the manufacturer or processor to package the finished product for sale or delivery is exempt if the materials become part of the finished product. Shrink wrap and strapping which bind the finished product together for shipment to the consumer are exempt. Non-returnable pallets which are delivered with the final product are also exempt. Returnable pallets are taxable.

- b. Materials purchased by the manufacturer or processor to transport the product to the customer and which are owned by and returned to the manufacturer or which do not become part of the finished product received by the consumer are taxable. Dunnage bags which prevent containers of products from shifting during transit are taxable.
- E. Restaurant Supplies:
 1. As a general rule, gross receipts derived from the sale of the following items to restaurants are exempt as sales for resale: Paper, plastic and styrofoam cups used for dispensing beverages, the paper and plastic lids for such cups; paper and plastic bowls, paper boats, boxes and containers used for dispensing food items, and the wrappers for such bowls, boats, boxes and containers.
 2. Gross receipts derived from the sale of the following items purchased by restaurants are not exempt as a sale for resale: paper plates; paper and plastic straws and stirrers; plastic tableware and utensils; paper napkins; paper sacks; and premoistened towelettes. However, restaurants or other food sellers that use paper plates or other containers for dispensing the food items sold may purchase the plates or containers exempt as a sale for resale.
 3. Gross receipts derived from the sale of toys which are included as a component part of a children's meal are exempt as sales for resale when those toys are purchased by the restaurant.
- F. Businesses engaged in the business of leasing or renting tangible personal property may purchase repair parts exempt from sales tax if the leased property was originally purchased exempt as a sale for resale. However, this exemption does not apply to service charges for repairs or maintenance work on the property.
- G. New and used car dealers shall be entitled to purchase services preformed on dealer-owned vehicles exempt as a sale for resale if the dealer is purchasing the services solely and exclusively to prepare the vehicle for sale and the service enhances the value of the vehicle. For example, the repairing of windshields, dents, scratches, radiators, engines, and car detailing would be exempt as a sale for resale if the service enhances the value of the vehicle. The sale for resale exemption is available only for services performed on the vehicle held for resale. All other services performed for the dealership will remain taxable.
- H. Tangible Personal Property Received in Connection with Taxable Services. See the rule regarding the taxable services. Generally, the service rules begin at GR-9 and continue consecutively thereafter.

Source: Ark. Code Ann. §§ 26-52-401(12); 26-52-517; 26-52-519; 26-52-510(c)

GR-54. SALES AND USE TAX INCENTIVES, CREDITS AND REFUNDS:

- A. Arkansas Tourism Development Act ("TDA"). The Arkansas Tourism Development Act program provides financial incentives to induce the construction or expansion of tourism attractions. The Act is codified in Ark. Code Ann. § 15-11-501 *et. seq.* The program authorizes State sales tax credits and State income tax credits. "Tourism attraction" is defined to include cultural or historical sites, recreational or entertainment facilities, areas of natural phenomena or scenic beauty, theme parks, amusement or entertainment parks, indoor or outdoor plays or music shows, botanical gardens and cultural or educational centers. Certain lodging facilities may also qualify as a tourism attraction project. A facility regulated under the Arkansas Horse Racing Law, or the Arkansas Greyhound Racing Law, shall be a tourism attraction for pur-

poses of this Act for any approved project. The tourism development program is administered by the Arkansas Department of Economic Development ("ADED"). Upon receiving notification from the Director of ADED that an approved company has entered into a tourism project agreement and is entitled to the sales tax credits, the Director of the Department of Finance and Administration (DFA) shall provide the approved company with such forms and instructions as are necessary to claim those credits.

1. The amount of sales tax credit will be based on a percentage of approved costs expended by an approved company. An approved company shall be entitled to a credit if the company certifies to the Director of DFA that it has expended at least Five Hundred Thousand (\$500,000) in a high-unemployment county and One Million (\$1,000,000) in all other counties in approved costs and the Director of ADED certifies that the approved company is in compliance with the Act.
 - a. The Director of DFA shall issue a sales tax credit memorandum to the approved company equal to fifteen percent (15%) of the approved costs. In high unemployment counties, the Director shall issue a credit memorandum to the approved company equal to twenty-five percent (25%) of the approved costs.
 - b. The sales tax credit memorandum shall not include an offset of the tourism tax levied under Ark. Code Ann. § 26-52-1001.
 - c. Only increased sales tax liability as defined in the Act may be offset by the issued credit.
 - d. An approved company shall be entitled to use one hundred percent (100%) of the issued credit to offset increased state sales tax liability during the first year if its tax liability is equal to or greater than the amount issued in the state sales tax credit memorandum.
 - e. No sales tax credit memorandum shall be issued for any approved costs expended after two (2) years from the date the agreement the tourism project agreement was signed. However, in limited circumstances, the Director of DFA may authorize sales tax credits for approved costs expended up to four (4) years after the agreement was signed.
 2. ADED has promulgated rules for the implementation and administration of this Act, which rules should be obtained from ADED. These rules may be obtained from ADED's website: www.1800arkansas.com
 3. Accurate and up to date records of all expenditures shall be maintained by the approved business and available for inspection and audit by the Director. The eligibility of questionable items is determined by the Director.
- B. Eligible businesses that signed a financial incentive agreement with ADED prior to March 3, 2003, may be entitled to incentives provided under the following programs:
1. Economic Investment Tax Credit (EIC). The Economic Investment Tax Credit Act (formerly the Manufacturer's Investment Sales and Use Tax Credit Act of 1985) is commonly referred to as the InvestArk Program. The purpose of the EIC program is to encourage manufacturers and businesses to continue operations in Arkansas. The EIC program allows an eligible business to receive a credit against its monthly direct pay Sales and Use tax liability for purchases only. The credit against the qualified business' sales and use tax liability shall be seven percent (7%) of the eligible project costs. In any one (1) year, the amount of EIC credit used cannot exceed fifty-percent (50%) of the State sales and use tax liability of

- a program participant, however, a company with an eligible defense industry project may claim a credit for one hundred percent (100%) of the sales and use tax liability for a reporting period.
- a. ADED is responsible for determining the eligibility of certain approved projects to receive specified sales and use tax credits and refunds. ADED has promulgated rules for the implementation and administration of this Act which should be obtained from ADED.
 - b. In order to qualify for the tax credits provided by this Act, a manufacturer must: (a) have been in continuous operation in Arkansas for at least two years prior to applying for tax credits; (b) expend at least Five Million Dollars (\$5,000,000) on eligible items; (c) hold a direct pay sales and use tax permit issued by the Sales and Use Tax Section of the Revenue Division.
 - c. Accurate and up to date records of all expenditures for the project approved by ADED shall be maintained by the manufacturer and available for inspection and audit by the Director. The eligibility of questionable items is determined by the Director.
2. Enterprise Zone (EZ). The Arkansas Enterprise Zone Act of 1993, commonly referred to as the Advantage Arkansas Program, provides State income tax credits and State sales and use tax refunds to eligible businesses. The EZ program authorizes a refund of State sales and use tax, and local sales or use taxes if authorized by the pertinent city or county, on the purchases of materials used in the construction of a building or any addition or improvement thereon and machinery and equipment to be located in or in connection with the building. The entire State of Arkansas is an enterprise zone, therefore, there are no restrictions concerning where a participant must be located.
- a. ADED reviews applications to ensure eligibility. If a business is approved for participation in the EZ program, ADED will issue a certificate of eligibility and forward the certificate to the Department of Finance and Administration (DFA). DFA will provide forms and instructions needed for the approved business to receive the sales and use tax refunds.
 - b. ADED has promulgated rules for the implementation and administration of this Act, which rules should be obtained from ADED.
 - c. Accurate and up to date records of all expenditures shall be maintained by the approved business and available for inspection and audit by the Director. The eligibility of questionable items is determined by the Director.
3. Economic Development Act ("EDA"). The Arkansas Economic Development Act of 1995 provides benefits similar to the benefits offered in the Advantage Arkansas Program. The EDA program provides State income tax credits and State sales and use tax refunds to eligible businesses. The EDA program authorizes a refund of State sales and use tax, and local sales or use taxes if authorized by the city or county, on the purchases of materials used in the construction of a building or any addition or improvement thereon and machinery and equipment to be located in or in connection with the building.
- a. The EDA program requires that at least one hundred (100) new employees be hired within twenty-four (24) months of the date an agreement is entered into between the eligible business and ADED. The qualifying business must spend at least Five Million Dollars (\$5,000,000) on the project covered by the agreement with ADED.

- b. The EDA program requires the eligible business to file an endorsement resolution with ADED and DFA, and the business and its contractors must give preference and priority to Arkansas manufacturers, suppliers, contractors, and labor in certain circumstances.
 - c. ADED has promulgated rules for the implementation and administration of this Act, which rules should be obtained from ADED.
 - d. Accurate and up to date records of all expenditures shall be maintained by the approved business and available for inspection and audit by the Director. The eligibility of questionable items is determined by the Director.
- C. Effective March 3, 2003, in accordance with Act 182 of 2003 ("Consolidated Incentive Act of 2003"), as amended by Act 1296 of 2005, eligible businesses that sign a financial incentive agreement with the ADED may be entitled to State sales tax refunds or State sales tax credits. ADED has promulgated rules for the implementation and administration of this Act, which rules should be obtained from ADED.
1. Retention Sales and Use Tax Credit (InvestArk). – Act 182 of 2003, § 15-4-2706(c) This incentive program, commonly referred to as InvestArk, authorizes tax credits for qualified businesses. In order to qualify, a business must have been in continuous operation in the state for at least two(2) years, invest a minimum of Five Million Dollars (\$5,000,000) in a project (including land, buildings and equipment, and hold a direct-pay sales and use tax permit from the Arkansas Department of Finance and Administration. If allowed, the amount of the credit shall be one-half percent (0.5%) above the state sales and use tax rate in effect at the time a financial incentive agreement is signed. In any one (1) year following the year of the expenditures, credits taken cannot exceed fifty percent (50%) of the direct pay sales and use tax liability of the business for taxable purchases.
 2. Sales and Use Tax Refunds for New and Expanding Businesses (Tax Back). An incentive program commonly referred to as Tax Back- Act 182 of 2003, Ark. Code Ann. § 15-4-2706(d), authorizes a refund of state and local sales and use taxes to eligible businesses that meet the qualifications for investment and payroll thresholds for the tier in which it locates or expands and are approved for benefits by ADED. To qualify, the eligible business must invest in excess of One Hundred Thousand Dollars (\$100,000) and meet the eligibility criteria of the Advantage Arkansas (§ 15-4-2705), Create Rebate (§ 15-4-2707) or ArkPlus (§ 15-4-2706(b)) job creation incentive programs. This incentive program grants a refund of state and local sales and use taxes paid on the purchases of the material used in the construction of a building or buildings or any addition, modernization or improvement to a new or expanding eligible business. The refund is also allowed for the purchases of taxable machinery or equipment associated with the building or project. For projects approved on or after July 1, 2005, the refund of state sales and use taxes shall not include the refund of taxes dedicated to the Educational Adequacy Fund provided in § 19-5-1227 or the taxes dedicated to the Conservation Tax Fund provided in Ark. Code Ann. § 19-6-484.
 3. Sales and Use Tax Refund for Targeted Businesses. Act 182 of 2003 , Ark. Code Ann. § 15-4-2706(e)(1) This incentive program extends the benefits of the Tax Back Sales and use tax refund program to a category of new and expanding eligible businesses referred to as "targeted businesses." This incentive is a discretionary incentive and is offered only at the discretion of the Director of ADED.

Targeted businesses are found within six growing business sectors that include: Advanced materials and manufacturing systems; Agricultural, food and environmental sciences; Biotechnology, bioengineering, and life sciences; Information technology; Transportation logistics; and Bio-based products. To qualify as a targeted business, the ADED must determine that the business falls within one of the six categories noted above, the business must have been in operation for five (5) years or less and must pay, at minimum, one hundred fifty percent (150%) of the lesser of the state or county wage. In addition, the targeted business must have an annual payroll of at least One Hundred Thousand Dollars (\$100,000) and demonstrate evidence of an equity investment in the targeted business of at least Four hundred Thousand Dollars (\$400,000). A targeted business with an annual payroll in excess of One Million Dollars (\$1,000,000) will not qualify for the targeted business sales and use tax refund, but may be eligible for other incentives offered through the Consolidated Incentive Act of 2003 (Act 182 of 2003) as amended by Act 1296 of 2005. In addition, the business must invest in excess of One Hundred Thousand Dollars (\$100,000) and meet the eligibility criteria of the Targeted Business payroll income tax credit incentive program (Ark. Code Ann. § 15-4-2709)

- D. Nonprofit Incentive Act of 2005. The Nonprofit Incentive Act of 2005, Ark. Code Ann. § 15-4-3101 *et. seq.*, creates new financial incentives to encourage certain nonprofit organizations to locate in the State of Arkansas. The incentives consist of a payroll rebate and a sales and use tax refund. "Nonprofit organization" is defined as an entity that has been approved by the Arkansas Secretary of State as having met the qualifications for a nonprofit organization in Arkansas, and which has also received a 501(c)(3) designation from the Internal Revenue Service.
1. Eligibility. In order to be eligible for this program, a nonprofit organization must satisfy the following criteria:
 - a. The organization must have a payroll of new full-time permanent employees in excess of One Million Dollars (\$1,000,000);
 - b. The organization must pay wages that average in excess of one hundred ten percent (110%) of the lesser of the county or state average wage;
 - c. The organization must receive a minimum of seventy-five percent (75%) of its income from out-of-state sources;
 - d. Hospitals, medical clinics, educational institutions and churches are specifically excluded; and
 - e. The organization must qualify for payroll rebate benefits in order to receive a sales and use tax refund. The eligibility requirements for the payroll rebate are found in Ark. Code Ann. § 15-4-3106. The payroll rebate is based on the incentive agreement between the nonprofit organization and Department of Economic Development. The granting of the payroll rebate is at the discretion of the Director of the Department of Economic Development (ADED). ADED has promulgated rules for the implementation and administration of this Act, which rules should be obtained from ADED.
 - f. A sales and use tax refund shall be made only if after audit of expenditures and payroll by the Revenue Division of the Department of Finance and Administration, the Revenue Division determines that the nonprofit organization is in compliance with all qualifications to receive the benefits of this program.

- g. The organization must sign a financial incentive agreement with the ADED prior to the start of any construction.
- 2. Sales and use tax refund. An application for a sales and use tax refund under the nonprofit organization incentive program shall be filed with the ADED and shall include an endorsement resolution from the governing authority of a municipality or county where the nonprofit organization is or will be located. The resolution must endorse the applicant's application in the sales and use tax refund program and authorize the refund of any sales and use tax levied by the municipality or county. The Director of the Department of Finance and Administration shall authorize a sales and use tax refund of state and local sales and use taxes on the purchases by the nonprofit organization of the material used in the construction or renovations of a building housing any new or expanding nonprofit organization and machinery and equipment to be located in or in connection with the building. To qualify for this refund, a qualified nonprofit organization must spend in excess of Five Hundred Thousand Dollars (\$500,000) on buildings, machinery, and equipment in the new or improved facility. All claims for refunds must be filed with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.
- E. The Motion Picture Incentive Act of 1997. Act 919 of 1997 provides incentives for motion picture and television industries in the State of Arkansas. A company must first apply with the Arkansas Film Office of the Arkansas Economic Development Commission to receive approval prior to the commencement of filming in Arkansas. To qualify the company must: spend Five Hundred Thousand Dollars (\$500,000) within a six (6) month period in connection with the filming and/or production of one (1) feature film, telefilm, music video, documentary, episodic television show, or commercial advertising project; or spend in excess of One Million Dollars (\$1,000,000) within a twelve (12) month period in connection with the filming and /or production of one (1) or more feature films, telefilms, music video, documentary, episodic television show, or commercial advertising projects. The qualified production company shall be entitled to a tax refund of one hundred percent (100%) of the sales or use tax paid on the purchase of property and services in Arkansas in connection with the filming and/or production projects within Arkansas. The refund would not include any sales or use tax imposed by constitutional amendment, which as of this date is only the one-eighth percent (1/8%) conservation tax, or any local taxes.

Source: Ark. Code Ann. §§ 15-4-1701 *et. seq.*; 15-11-501 *et. seq.*; 15-4-2701 *et. seq.*; 26-52-701 *et. seq.*; 15-4-1901 *et. seq.*; 15-4-2001 *et. seq.*

GR-55. EXEMPTIONS FROM TAX--MANUFACTURERS:

- A. Machinery and Equipment - Generally - The gross receipts or gross proceeds derived from sales of tangible personal property consisting of machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, and/or packaging of articles of commerce at manufacturing plants or facilities in Arkansas are exempt from the tax if, and only if, the machinery and equipment is purchased and used for purposes set forth in this rule.
- B. New Manufacturing Plants - The gross receipts or gross proceeds derived from the sale of machinery and equipment purchased and used to create new manufacturing plants or facilities in Arkansas are exempt from the tax if:
 - 1. The machinery and equipment performs one or more essential functions and is utilized directly in the manufacturing process; and

2. The machinery and equipment is utilized in actual manufacturing operations at any time from the initial stage where the raw material is first acted upon and changed in any essential respect through the completion and packaging of the article of commerce, as defined at subsection F(6) of this rule; and
 3. The machinery and equipment does not consist of hand tools, buildings, transportation equipment, office machines and equipment, machinery and equipment used in administrative, accounting, sales or other such activities of the business involved, or any and all other machinery and equipment not directly used in the manufacturing operation.
- C. Plant Expansion - The gross receipts or gross proceeds derived from the sale of machinery and equipment purchased and used to expand a manufacturing plant or facility in Arkansas are exempt from tax if:
1. The machinery and equipment satisfy the requirements of subsections B(1), B(2), and B(3) of this rule; and either
 2. The purchase of the machinery results in an economic expansion of the taxpayer's plant or facility (regardless of whether there is a physical expansion) by:
 - a. increasing production, volume; or,
 - b. increasing employment; or,
 - c. increasing the number of different types or models of property that can be manufactured; or
 3. The purchase of the machinery results in a physical expansion of the taxpayer's plant or facility regardless of whether there is an economic expansion.
- D. Replacement Machinery - Machinery and equipment purchased to replace existing machinery and equipment and used directly in producing, manufacturing, fabricating, assembling, processing, finishing or packaging of articles of commerce at manufacturing or processing plants or facilities in this state will be exempt from the tax if:
1. The machinery and equipment satisfies the requirements of subsection B(1), B(2), and B(3) of this rule; and
 2. The "machinery and equipment purchased to replace existing machinery" means that substantially all of the machinery and equipment required to perform an essential function is physically replaced with new machinery. The term "substantially" is intended to exclude routine repairs and maintenance and partial replacements - but is not intended to mean that foundations and minor components that can be economically adapted, rebuilt, or refurbished must be substantially replaced when such replacement would be more expensive or impractical than adapting, rebuilding or refurbishing the old foundation or minor components.
 3. When individual machines or machinery are interconnected in order to accomplish a single function and the function of each such individual machine is not complete before the adjacent machines begin to function, the result is a new single identifiable machine. The machinery purchased to replace this resulting existing machine must satisfy the requirements of subsection D(2) above and the exemption is not available for the replacement of only some of the individual machines that now form component parts of the aforementioned machine. An individual machine that performs a separate distinct function in the manufacturing operation as part of a production line, constitutes a single machine for purposes of this exemption and may be replaced tax exempt.
- E. Software - Software necessary for the operation of machinery used directly in manufacturing is exempt if the software is specifically designed for the machine. Operating sys-

tem software which is commercially produced for general use, such as Windows, Linux, BeOS, DOS, OS/2, UNIX, or Macintosh, is not exempt. Software which provides word-processing, accounting, graphics, database, or another similar function not directly associated with the operation of the manufacturing machinery is subject to tax.

F. Definitions - For purposes of this rule, the following definitions shall apply:

1. The term "machinery" shall mean mechanical devices or combinations of mechanical powers and devices purchased or constructed by a taxpayer or his agent and used to perform some function and to produce a certain effect or result. Machinery includes electrical, mechanical and electronic components which are a part of machinery and are necessary for the machine to produce its effect or result.
2. a. The term "equipment" shall mean any tangible personal property other than machinery as defined at subsection G(1) of this rule, used directly in the manufacturing process except those items specifically excluded from the exemption as provided at subsection B(3) of this rule.
b. The Arkansas Supreme Court has determined that in certain circumstances, chemicals can be considered "equipment" for purposes of this exemption if the chemicals are used directly in manufacturing, serve as instruments or tools with some degree of complexity, possess continuing utility, and are not fully integrated into some other object. The initial purchase of chemicals which meet these tests is exempt from sales and use tax. Purchases of replacement chemicals will be exempt if the provisions of (D)(2) of this rule are met. See Weiss v. Chem-Fab Corporation, 336 Ark. 21 (1999). See also, GR-55.1, Exemptions from Manufacturing - Chemicals Used in Manufacturing.

Examples:

- (i) Annealing chemicals which physically alter the grain structure in metal in order to bend and form parts are exempt.
 - (ii) Salts which mill away metal through direct chemical action are exempt.
 - (iii) Chemicals which are sprayed onto metal parts to detect cracks are exempt.
3. The term "directly" limits the exemption to only that machinery and equipment which is used in actual production during processing, fabricating or assembling raw materials or semi-finished materials into the form in which such personal property is to be sold in the commercial market.

Example i. Machinery and equipment used in actual production include machinery and equipment that meet all other applicable requirements and which cause a recognizable and measurable mechanical, chemical, electrical, or electronic action to take place as a necessary and integral part of manufacturing, the absence of which would cause the manufacturing operation to cease. "Directly" does not mean that the machinery and equipment must come into direct physical contact with any of the materials that become necessary and integral parts of the finished product. Machinery and equipment which handle raw, semi-finished, or finished materials or property before the manufacturing process begins are not utilized directly in the manufacturing process. Machinery and equipment which are necessary for purposes of storing the finished product are not utilized directly in the manufacturing process. Machinery and equipment used to transport or handle product while manufacturing is taking place are used directly.

Example ii. Machinery and equipment "used directly" in the manufacturing process shall include, but shall not be limited to the following: molds and dies that determine the physical characteristics of the finished product or its packaging mate-

rials to the extent that the dies and molds satisfy the requirement of GR-56; testing equipment to measure the quality of the finished product; computers and related peripheral equipment that directly control or measure the manufacturing process; machinery and equipment that produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process but which are consumed during the course of the manufacturing process and do not become necessary and integral parts of the finished product. NOTE: The exemption is limited only to the machinery and equipment that produce steam, electricity or chemical catalysts and solutions and does not exempt the steam, electricity or chemical catalysts and solutions.

Example iii. Machinery and equipment "used directly" in the manufacturing process shall not include the following: hand tools; machinery, equipment, and tools used in maintaining and repairing any type of machinery and equipment; transportation equipment, including conveyors, used solely before or after the manufacturing process has been started or completed; office machines and equipment including computers and related peripheral equipment not directly used in controlling or measuring the manufacturing process; buildings; machinery and equipment used in administrative, accounting, sales or other such activities of the business; all furniture; and all other machinery and equipment not used directly in manufacturing or processing operations as defined herein.

Example iv. Machinery and equipment used by a manufacturer to produce or repair replacement dies, molds, repair parts, or replacement parts used or consumed in the manufacturer's own manufacturing process are not "used directly" and are not exempt.

4. The term "manufacturing", as defined herein, includes those operations commonly understood within their ordinary meaning, and shall also include mining, quarrying, extracting and refining of brine, oil, and gas, cotton ginning, the drying of rice, soybeans and other grains and the manufacturing of feed, the processing of poultry or eggs and livestock and the hatching of poultry, and printing of all kinds, types and characters, including the services of overprinting, and photographic processes incidental to printing, the processing of scrap metal into grades and bales for further processing into steel and other metals, the retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors, and the rebuilding or remanufacturing of used parts for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors, provided that the rebuilt or remanufactured parts - are not sold directly to the consumer but are sold for resale, and the production of protective coatings which increase the quality and durability of a finished product.
5. The term "hand tool" shall mean any tool which is solely powered by a human being.
6. "Article of commerce" includes any property to be placed on the market for retail sale to the general public and any property which becomes a recognizable integral part of a manufactured product in its finished and packaged form ready to be placed on the market for retail sale. Custom items which are produced for specific customers in response to special orders and which are not readily marketable to the general public are not articles of commerce.
7. The term "special foundation" as used in subsection D(2) of this rule means a customized foundation necessary for the support and proper operation of the machin-

ery. The special foundation may be affixed to a building foundation but must be capable of being removed without major structural damage to the building or its foundation.

8. The exempt gross receipts or gross proceeds under this rule include gross receipts or gross proceeds as defined at GR-3(c)(1).

See also GR-66 for exemption related to pollution control machinery and equipment.

- G. Contractors. A contractor may claim an exemption from sales tax for machinery and equipment that meets all the requirements for exemption as manufacturing machinery and equipment if the contractor purchases the machinery and equipment in connection with a construction contract with a manufacturer who will use the machinery and equipment for manufacturing articles of commerce. A contractor may not claim the manufacturing exemption on items of machinery and equipment that the contractor will use to perform installation or construction work necessary to complete or perform the contract with the manufacturer.
- H. Packaging and Labeling Machinery and Equipment. Machinery and equipment that generally meets the requirements for exemption as machinery and equipment used in manufacturing and that is used in the packaging of articles of commerce may be purchased by the manufacturer exempt from tax. Machinery and equipment that is used for the manufacturer's own convenience to palletize or otherwise package items for warehousing or shipping purposes other than to ship the product to the purchaser does not qualify for the exemption from tax. Example: Manufacturer sells a product which is shrink-wrapped and palletized for shipping to its customers. The shrink-wrapping machine and the palletizer used for these functions may be purchased exempt from tax. Manufacturer purchased a second palletizer which is located in the warehouse and is used to palletize items for efficient storage in the warehouse. The purchase of this palletizer is taxable.
- I. Testing Equipment. Testing equipment that is used to measure the quality of the manufactured article of commerce and otherwise meets the requirements for exemption as manufacturing machinery and equipment is exempt from tax. The equipment is exempt if it is used to test any portion of the product from the point when manufacturing begins. Testing equipment that tests the raw materials prior to the beginning of manufacturing is not exempt. Testing equipment that tests items other than the product, or its component parts, is not exempt. For example, equipment that tests whether the manufacturing machinery is functioning properly is not exempt as testing equipment.
- J. Computers and Related Peripheral Equipment. Computers and related peripheral equipment that directly control or measure the manufacturing process meet the "used directly" requirement for manufacturing machinery and equipment and are exempt provided they meet the other requirements for the exemption. Computers and related peripheral equipment must either (i) directly control, measure, or record an aspect of the manufacturing process itself, or (ii) directly control, measure, or record the operation of other items of exempt manufacturing machinery and equipment used in the manufacturing process. Except as provided in GR66, computers and related peripheral equipment that controls, measures, or records the environment, processes other than the processes directly involved in manufacturing, or equipment that does not itself qualify for the exemption as manufacturing machinery and equipment are not exempt.

Source: Ark. Code Ann. § 26-52-402

GR-55.1. EXEMPTIONS FROM TAX - CHEMICALS USED IN MANUFACTURING:

- A. Chemicals used in manufacturing may be exempt from gross receipts or use tax if:

1. the chemicals become a recognizable, integral part of the manufactured goods (see GR-53(E));
 2. the chemicals are "equipment" (see GR-55(F)(2)); or,
 3. the provisions of this rule are met.
- B. DEFINITIONS. For purposes of this rule, the following definitions apply:
1. "Catalyst" means a substance that initiates or provokes a chemical reaction allowing such reaction to proceed under milder conditions, such as lower temperatures or with less resistance to reaction.
 2. "Chemical" means an element, combination of elements, or a compound obtained by a chemical process.
 3. "Reagent" means any substance which by reason of its capacity for taking part in certain reactions is used for various purposes, including detecting, examining, or measuring other substances or in preparing materials. A reagent is also a substance used to convert one substance into another by means of the reaction that it causes. To be a reagent for purposes of this exemption, a substance must be primarily used as a reagent.
 4. "Solution" means a chemical in a liquid form that contains a dissolved substance.
- C. MANUFACTURING OPERATIONS
1. The gross receipts or gross proceeds derived from the sale of catalysts, chemicals, reagents and solutions which are consumed or used directly in manufacturing or processing articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas are exempt from gross receipts tax. "Manufacturing or processing" has the same meaning as set forth in Ark. Code Ann. § 26-52-402(b) and GR-55.
 2. For purposes of this section, the term "substance" means only chemicals, catalysts, reagents or solutions as defined in paragraph B, above. A substance may be in the form of liquid, solid or gas.
 - a. A substance is consumed or used in manufacturing or processing an article of commerce if it is used to produce a chemical or physical effect during the manufacturing process and the chemical or physical effect is a direct and necessary step in the production of the article.
 - b. Substances used in testing the quality of the finished article of commerce are exempt.
 - c. Substances used to fuel, cool, heat, lubricate, clean, protect, maintain, operate, repair or otherwise affect machinery or equipment used in a manufacturing or processing facility, or the facility itself, are not exempt.

Examples:

 - i. Substances used to polish, paint, refinish, clean or sanitize machinery, equipment, structures, floors, ceilings and walls of a manufacturing facility are not exempt.
 - ii. Gas, diesel, oil, natural gas, or other materials used to power machinery and equipment are not exempt.
 - d. Substances used before the manufacturing process begins or after the manufacturing process concludes are not exempt.
 - e. Water used during the manufacturing process is not exempt.
 3. In order to be exempt, substances must be used by a manufacturer during a manufacturing process.

- a. A business which processes photographic film or negatives, and prints photographs, plates, slides or other similar items from the film or negatives is not a manufacturer.
- b. A business which produces printed material is a manufacturer. Substances used in processing film, negatives or other similar items are not exempt unless such processing is incidental to the printing.

Source: Ark. Code Ann. § 26-52-401(36)

GR-56. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--DIES AND MOLDS:

- A. The gross receipts derived from the sale of molds and dies are exempt if:
 - 1. the molds or dies are used directly in manufacturing, and
 - 2. the molds or dies determine the physical characteristics of the finished product or its packaging material.
- B. Machinery and equipment used by a manufacturer to produce or repair replacement dies, molds, repair parts, or replacement parts used or consumed in the manufacturer's own manufacturing process is not exempt from gross receipts tax as manufacturing machinery and equipment. Ark. Code Ann. § 26-52-402(c)(2)(C)(ix)
- C. Forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers or composites thereof which determine the physical characteristics of a product and which are destroyed or consumed during the manufacture of the product are exempt from gross receipts tax. Ark. Code Ann. § 26-52-422.
- D. The gross receipts derived from the service of cleaning or repairing a mold or die are subject to gross receipts tax. The gross receipts or gross proceeds derived from the service of altering or modifying an existing die or mold in order to accommodate design or product changes are exempt from the gross receipts tax.
- E. The gross receipts derived from the replacement of any item that was originally exempt as a die or mold, or any of its component parts, shall be exempt from the gross receipts tax.
- F.
 - 1. The term "mold" means:
 - a. a frame on or around which a product is constructed and which is designed to cause the product to take on a specific shape;
 - b. a cavity into which raw materials such as metal, glass, rubber, plastic, resin or other substances are packed, poured, or injected, sometimes under pressure, or through which materials are passed, the result of which is a product whose size or shape is directly attributable to that of the cavity; or
 - c. a form that is used to give a product a distinctive size or shape.
 - 2. The term "die" means a tool or device that is attached to, or part of, a unit of machinery and that imparts a predetermined and distinctive shape, pattern, texture, or finish to a material or impresses an object or material, including any replacement tooling that performs the intended function.
- G. Examples of molds or dies:
 - 1. Cutting or shaping tools that when moved toward each other or another component of a machine impart a desired physical characteristic to an object by pressure or by a blow.
 - 2. Taps and internally threaded screw-cutting tools used for forming threads.
 - 3. Perforated blocks through which material is drawn or extruded for shaping.
 - 4. Die blocks and inserts and other devices attached to a die block and used during the manufacturing process.

5. Printing plates.
- H. Examples of items that are NOT molds or dies:
 1. Tools such as grinding wheels, sanding belts and disks, and saw blades.
 2. Stencils that are not part of a more complex die unit or machine.
 3. Hand tools.

Source: Ark. Code Ann. §§ 26-52-402; 26-52-422

GR-56.1. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION—SPECIFIC BUSINESSES - PRINTERS

- A. Machinery and equipment used directly by a manufacturer in the printing process and which otherwise satisfies the requirements of GR-55, is exempt from tax. For purposes of the manufacturing exemption, the printing process begins at the time a job is received in either electronic form or in the form of drawings or copy and includes all processes needed to convert the electronic form, drawing or copy into printed material, including the following processes:
 1. the initial typesetting and composition, producing a paste-up, combining photographs with words, making page makeups and taking pictures of them, making proofs and paper for editing, producing negatives for plate-ready films, producing an image carrier installed on a printing press, or equivalent prepress technology employed to produce an image carrier, and the bindery/finishing stage; or
 2. using computers, scanners, proofers, typesetters, photographic equipment, film processors, and direct-to-plate equipment exclusively in performing any of the processes listed in (1) above. Manufacturing printed material does not include using computers, scanners, and the other equipment listed to design, write or compose an original item or document to be printed.
- B. "Typesetting" includes converting images into standardized letter forms of a certain style which usually are hyphenated, justified and indented automatically by means of machinery and equipment. Typesetting machinery and equipment includes fonts, video display terminals, tape and disc making equipment, computers and typesetters which are interconnected to operate essentially as one machine.

Source: Ark. Code Ann. §§ 26-52-402; 26-53-114

GR-56.2 EXEMPTIONS FROM TAX—MANUFACTURING EXEMPTION—SPECIFIC BUSINESSES – NEWSPAPER PUBLISHERS

- A. Machinery and equipment used directly in the manufacturing of a printed newspaper by newspaper publishers and printers will be exempt from the tax. In all events, the machinery and equipment purchased exempt from the tax and used for manufacture of a printed newspaper must comply with the requirements of GR-55.
- B. "Newspaper" is defined to mean, a stated short interval publication usually daily or weekly in sheet form customarily printed on newsprint consisting of news, editorials, feature articles, and advertising intended for general circulation.
- C. The manufacturing process of printed newspapers begins for purpose of this tax exemption when words are put into a network with typesetting and involves all the intermediate processes including actual printing of the paper and the assembling of the completed sections ready for single copy sale of a new edition. The process begins with typesetting which includes what is known in the newspaper trade as a "front-end system". The manufacturing process continues through the composition of type for news stories and advertising, pasting up of stories, photographs, headlines, the necessary

camera work attendant to screening half tones, other illustrations, the enlargement or reduction of all elements and includes the assembly process completed either manually or electronically, the plate-making process involving producing full-page size negatives, the making of the offset plate or blanket and the printing of the paper. The manufacturing process is complete when the newspaper is fully assembled. This requires either hand inserting of the separate sections making up the complete newspaper or the use of automated inserting systems. Manufacturing includes sub-assembly work leading to completion of the finished newspaper. Machinery and equipment used in the post manufacturing elements are subject to taxation.

- D. Items such as computers, digital cameras, scanners, video display terminals, computer hardware, printing presses, copiers, pasteup flats, waxing machines, bundle-tying machines and other machinery and equipment used directly in the above described manufacturing process of printing a newspaper and which otherwise comply with the requirements of GR-55 are not subject to tax.
- E. Items such as repair or replacement parts, tools, supplies and other consumable parts and supplies are not exempt from the tax.

Source: Ark. Code Ann. § 26-52-402

GR-57. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--SPECIFIC BUSINESSES--REFINING AND EXTRACTING OIL, BRINE AND NATURAL GAS--SERVICES TO OIL, BRINE AND NATURAL GAS WELLS:

- A. Refining - the following items of tangible personal property are examples of exempt machinery and equipment purchased by oil, brine and gas refiners to construct new, or expand existing, refining plants or facilities in Arkansas:
 - 1. Tanks or containers in which the actual refining takes place;
 - 2. Pipes, valves and pumps through which crude oil, brine or natural gas is actually transported during refining operations from wellhead through treatment tanks at the well site.
 - 3. Machinery and equipment used to refine or process oil, brine, or natural gas into articles of commerce.
- B. Refining. The following items of tangible personal property are examples of non-exempt machinery and equipment purchased by oil, brine and natural gas refiners:
 - 1. Storage tanks or containers used to store oil, brine, or natural gas prior to or subsequent to the actual refining process;
 - 2. Pipes used to transport oil, brine, or natural gas from separators and treatment tanks at a well site to refineries or processing facilities and pipes used to transport the finished product after refining or processing has been completed;
- C. Extraction. The following items of tangible personal property are examples of exempt machinery and equipment purchased to construct new, or redrill existing oil, brine, or natural gas extraction plants or facilities in Arkansas. "Redrill" means an expansion [See GR-55(C)] of an existing well by drilling the well to a deeper depth to enhance production from another zone.
 - 1. Separator and treater; meters and regulators;
 - 2. Production casing, production tubing, pumps, motors and any other equipment or machinery that becomes a component part of a newly constructed well or a redrilled well;
 - 3. Drilling rigs. All machinery and equipment that becomes a component part of a newly constructed drilling rig, e.g., crown block, drill bit, drill string are exempt. However, any subsequent replacement of drilling rig components will be taxable

- unless the replacement is made in conjunction with a complete or substantial replacement of an entire drilling rig.
4. Brine Supply Well – New or rebuilt pump, motor and protector when all three items are purchased to replace an existing pump, motor and protector at the same time. However, if less than all three items are replaced at the same time, a “substantial replacement” has not occurred and the items purchased will be taxable.
 5. Oil Wells – Machinery and equipment purchased to completely or substantially replace an existing oil well.
- D. Extraction. The following items of tangible personal property are examples of non-exempt machinery and equipment purchased for use in an existing oil, brine, or natural gas extraction plant or facility in Arkansas:
1. Machinery or equipment purchased for a drilling rig when the rig is not being completely or substantially replaced. or
 2. Machinery or equipment purchased to rework or workover an existing oil well.
- E. Services. The services of alteration, addition, cleaning, fracturing, refinishing, replacement, or repair, rework or workover of any part of an existing oil, brine, or natural gas drilling rig or an existing oil, brine, or natural gas well are taxable. However, perforating an existing oil, brine or natural gas well is not a taxable service if the non-taxable perforation is stated separately from other taxable services on the invoice issued by the provider of the services.
- F. The following oil, brine, and natural gas extraction equipment is exempt from tax under the pollution control provisions of GR-66:
1. Surface casing and concrete used to enclose the casing, down hole casing, injection tubing, and well bottom packer;
 2. Brine disposal well, including the inline pipeline pumps and wellhead booster pumps, valves and pipes used to transport the brine to a brine disposal well.

Source: Ark. Code Ann. § 26-52-402

GR-58. RESERVED

GR-59. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--SPECIFIC BUSINESS-MINING AND QUARRYING: Machinery and equipment purchased and used by mining or quarrying operations are exempt from the tax if the requirements of GR-55 are satisfied. The exemption may be claimed only for machinery and equipment utilized for the actual mining or quarrying operation itself which may include machinery and equipment used to wash, grade and separate the mined or quarried articles of commerce if such operation is carried on at the same site and as part of the continuous mining operation. Dump trucks or other transportation vehicles are not exempt from the tax.

Source: Ark. Code Ann. § 26-52-402

GR-60. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTIONS--SPECIFIC BUSINESSES--RICE, SOYBEANS AND GRAIN DRYING:

- A. The following machinery and equipment purchased and used by rice driers, soybean driers and other grain driers constitutes machinery and equipment used directly in the process of drying those grains:
 1. bins in which the grain is dried;
 2. control panels and motors utilized to operate the grain drying process;
 3. conveyor systems used during the drying process in the bins.
- B. The following machinery and equipment purchased and used by rice driers, soybean

driers and other grain driers does not qualify for this exemption:

1. scales used to weigh grain before drying process begins;
 2. conveyor systems used to transport grain to and from storage bins, freight cars, or trucks;
 3. machinery and equipment purchased for use in unloading grain from trucks or freight cars (i.e., hydraulic lifts, bottom dumps, prods used to test grains before the process begins);
 4. bins not used for drying.
- C. In all events, the machinery and equipment purchased and used by rice driers, soybean driers and other grain driers must satisfy the requirements of rule number GR-55.

Source: Ark. Code Ann. § 26-52-402

GR-61. COTTON GINNERS:

- A. The following machinery and equipment purchased and used by cotton ginnings constitutes machinery and equipment used directly in the ginning of cotton:
1. suction systems, lint cleaners, dryers, gin stands, stick machines, feeders, and separators;
 2. conveyor systems used during the ginning operation;
 3. cotton presses, end scales, strapping machines;
 4. control panels and motors used to operate the ginning process.
- B. The following machinery and equipment used by cotton ginnings does not qualify for the exemption:
1. tractors and trailers used to transport cotton to and from the gin;
 2. transportation equipment used in the gin yard or to move baled cotton from the gin;
 3. bins used to store cotton seed;
 4. conveyor systems used to transport cotton seed from the gin to storage bins;
 5. scales used to weigh raw cotton.

Source: Ark. Code Ann. § 26-52-402

GR-62. EXEMPTION FROM TAX--MANUFACTURING EXEMPTION--SPECIFIC BUSINESSES--POULTRY AND LIVESTOCK FEED:

- A. The following machinery and equipment purchased and used by poultry and livestock feed "manufacturers" constitutes machinery and equipment used directly in the making of feed:
1. mixing and grinding machinery and equipment;
 2. computers, motors and conveyors utilized during the process of mixing and grinding the feed;
 3. bins in which the mixing and grinding of feed actually occur and the structure supporting the bins;
 4. scales used to weigh the feed for packaging after the mixing and grinding process.
- B. The following machinery and equipment purchased and used by poultry and livestock feed "manufacturers" does not qualify for the exemption:
1. storage bins and facilities;
 2. structures used to support the storage bins and facilities;
 3. scales used to weigh raw materials before the feed manufacturing process begins and weigh the feed after the process ends;
 4. machinery and equipment purchased and used to unload raw materials from trucks before the feed manufacturing process begins.
- C. In all events, the machinery and equipment purchased and used by poultry and livestock feed mills must satisfy the requirements of GR-55.

GR-63. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--SPECIFIC BUSINESSES--HATCHING OF POULTRY:

- A. The following machinery and equipment purchased and used by poultry hatching facilities constitutes machinery and equipment used directly in the hatching of poultry.
 - 1. incubators;
 - 2. temperature and humidity control machinery and equipment directly associated with incubators;
 - 3. plastic egg trays, hatchery trays, hatchery tray washers and rolling racks used to hold eggs during incubation process.
- B. Washing machines and maintenance equipment purchased and used by poultry hatching facilities do not qualify for the exemption.
- C. In all events, the machinery and equipment purchased and used by poultry hatcheries must satisfy the requirements of GR-55.

GR-64. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTIONS--SPECIFIC BUSINESSES--EGG PROCESSORS AND POULTRY PROCESSORS:

- A. The following machinery and equipment purchased and used by egg processors constitutes machinery and equipment used directly in processing eggs.
 - 1. machinery and equipment used in the washing, grading, candling and packaging of eggs;
 - 2. conveyor systems used to convey eggs during the process;
 - 3. forklift trucks used to transport eggs during the process.
 - 4. egg wire baskets used to transport eggs to retailers.
- B. The following machinery and equipment purchased and used by egg processors do not qualify for the exemption.
 - 1. heating, cooling and freezing machinery and equipment and ductwork used in storage areas;
 - 2. forklift trucks used to transport packaged eggs to the storage area;
 - 3. machinery and equipment used for washing the egg processing equipment.
- C. In all events, the machinery and equipment purchased and used by egg processors must satisfy the requirements of GR-55.
- D. The following machinery and equipment purchased and used by poultry processors constitutes machinery and equipment used directly in poultry processing.
 - 1. live poultry dumping system
 - 2. machinery and equipment used directly in the poultry processing operation from the point the birds are killed through the packaging of the finished product, including "quick freeze" processing including shackle washing systems and ice maker systems;
 - 3. pneumatic air compressors for the operation of machinery and equipment referred to in subsection (1) above and air compressor dryers;
 - 4. forklift trucks and conveyor systems used exclusively in actual processing at any point from the time the birds are killed until packaging;
 - 5. cooking vats, cooking equipment, cutting and packaging machinery, and pneumatic and electrical machinery used directly in the process of cooking poultry;
 - 6. quality control devices on line used to test each unit produced.
- E. The following machinery and equipment purchased and used by poultry processors does not qualify for the exemption:

1. heating, cooling and freezing machinery, equipment and ductwork used in storage areas;
 2. forklift trucks used in storage area;
 3. storage racks used in the storage area.
- F. In all events, the machinery and equipment purchased and used by poultry processors must satisfy the requirements of GR-55.

Source: Ark. Code Ann. § 26-52-402

GR-65. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTIONS--SPECIFIC BUSINESS--(A) AUTOMOBILE PARTS REBUILDERS, (B) TIRE RETREADERS:

- A. Machinery and equipment purchased and used by persons rebuilding or remanufacturing used parts for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors, are exempt from the tax provided that the rebuilt or remanufactured parts or retreaded tires are not sold directly to the consumer but are sold for resale. In all events, the machinery and equipment purchased and used by automobile parts rebuilders and tire retreaders must satisfy the requirements of GR-55.
- B. Machinery and equipment purchased and used by persons retreading tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors, are exempt from the tax regardless of whether the retreaded tires are sold for subsequent resale. In all events, the machinery and equipment purchased and used by tire retreaders must satisfy the requirements of GR-55.

Source: Ark. Code Ann. § 26-52-402

GR-66. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--POLLUTION CONTROL MACHINERY :

- A. The gross receipts or gross proceeds derived from the sale of pollution control machinery and equipment are exempt from the tax if:
 1. The machinery and equipment is utilized, either directly or indirectly, by manufacturing or processing plants or facilities, or cities or towns in Arkansas to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility; and,
 2. The machinery and equipment is required by Arkansas or federal law or regulations to be installed and utilized to control pollution or contamination as evidenced by written documentation from the Arkansas Department of Environmental Quality or the U. S. Environmental Protection Agency.
- B. Supplies and chemicals used by pollution control machinery and equipment are taxable.
- C. Replacement and repair parts for pollution control machinery and equipment are exempt from tax if the machinery or equipment to be repaired or refurbished was initially exempt under this rule.
- D. Chemicals
 1. The gross receipts or gross proceeds derived from the sale of catalysts, chemicals, reagents or solutions which are consumed or used by manufacturing or processing plants or facilities, or cities or towns, in this state to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the facility are exempt from gross receipts tax.
 2. a. A substance prevents or reduces air or water pollution if it acts directly on the air or water to remove or alter an impurity in the air or water.

EXAMPLE: Chlorine used to kill bacteria in wastewater is exempt.

- b. Chemicals, catalysts, reagents and solutions used to test the quality of the air or water are exempt.
3. DEFINITIONS. For purposes of this rule, the following definitions apply:
 - a. "Catalyst" means a substance that initiates or provokes a chemical reaction allowing such reaction to proceed under milder conditions, such as lower temperatures or with less resistance to reaction.
 - b. "Chemical" means an element, combination or elements or compound obtained by a chemical process.
 - c. "Reagent" means any substance which by reason of its capacity for taking part in certain reactions is used for various purposes, including detecting, examining, or measuring other substances or in preparing materials. A reagent is also a substance used to convert one substance into another by means of the reaction which it causes. To be a reagent for purposes of this exemption, a substance must be primarily used as a reagent.
 - d. "Solution" means a chemical in a liquid form which contains a dissolved substance.
- E. Wastewater Treatment Plants.
 1. Machinery and equipment used in a city or county wastewater treatment plant are exempt if the machinery and equipment is used to remove contaminants from wastewater. The treatment process begins when solids are first removed from the wastewater and ends when all solids and other contaminants are removed from wastewater.
 2. The water treatment process does not include:
 - a. Collecting wastewater from locations outside of the treatment plant and delivering wastewater to the treatment plant; or
 - b. Disposing of solids or other contaminants removed from wastewater.
 3. The following items are examples of exempt machinery and equipment provided that the machinery and equipment is used during the water treatment process as described in paragraph E(1) above:

Examples: pipes, pumps, valves, screens, screen baskets, gates, blowers, fans, skimmers, aerators, diffusers, equalization basins, concrete flumes, conveyor belts, flow meters, grit separators, grit removal equipment, back flow preventers, chlorination equipment, digester equipment, vacuators, and air eductors.
 4. The following items are examples of taxable items:

Examples: materials used in constructing improvements to real estate, housing for machinery, handrails, ladders, paint, lighting equipment, pump stations, lift stations, pipes and equipment utilized in sewage collection outside of the treatment area, machinery and equipment which control the flow of wastewater into the treatment facility, sludge de-watering equipment, machinery and equipment used for measuring, controlling, or testing the treatment process, sludge pumping equipment, and sludge application system.

Source: Ark. Code Ann. §§ 26-52-402; 26-52-401(36)

GR-67. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--SPECIFIC BUSINESS--(A) CONCRETE MIXERS AND BATCH PLANTS, (B) SAWMILLS AND LUMBER MILLS:

- A. 1. Concrete mix trucks and ready-mix concrete batch plants are not machinery and equipment used directly in manufacturing and do not qualify for the manufacturing exemption.

2. The term "batch" means the quantity produced as the result of one operation or the quantity needed for one operation. A concrete batch plant combines cement, water, and other raw components for delivery of "wet" concrete to a consumer's construction site.
- B. Machinery and equipment used directly in the manufacturing of a finished lumber product by sawmills and lumber mills will be exempt from the tax. A finished lumber product includes any new article of commerce created by sawmills or lumber mills. Items such as portable chain saws, hand tools, buildings, storage facilities, and all other similar items will be subject to the tax. In all events, the machinery and equipment purchased and used by sawmills must satisfy the requirements of GR-55.

Source: Ark. Code Ann. § 26-52-402

GR-68. EXEMPTIONS FROM TAX--BORDER CITY EXEMPTION-TEXARKANA:

- A. The gross receipts or gross proceeds derived from sales of tangible personal property or services in Texarkana, Arkansas, are exempt from the tax if sold by an established business located in Texarkana, Arkansas, and if the property or services are exempt or not taxed in Texas. Sellers desiring to claim the border city exemption should contact the appropriate taxing authority in Texas to determine the tax status of the property or services in Texas and maintain proof of that status.
- B. Goods are "sold" by a business in Texarkana, Arkansas if title to or possession of the property passes from the seller to the buyer in Texarkana, Arkansas in accordance with the rules of GR-5.
- C. Services are sold by a business in Texarkana if the services are performed within the City of Texarkana, Arkansas.

Source: Ark. Code Ann. § 26-52-303

GR-69. EXEMPTIONS FROM TAX—TEXTBOOKS AND OTHER INSTRUCTIONAL MATERIALS

- A. The gross receipts or gross proceeds derived from the sale of textbooks, library books, and other instructional materials are exempt from tax if purchased by:
 1. An Arkansas school district or Arkansas public school that receives state funding; or
 2. The State of Arkansas for free distribution to Arkansas school districts or Arkansas public schools.
- B. The exemption will not apply unless the instructional materials are to be provided to the students free of charge. Private schools and public libraries are not entitled to the exemption.
- C. For purposes of the exemption, "instructional materials" means and includes the following:
 1. Traditional books, sheet music, and trade books in printed and bound forms;
 2. Activity-oriented educational programs that may include manipulatives;
 - a. "Activity-oriented educational programs" are academic programs that incorporate hands-on learning strategies to enhance learning.
 - b. "Manipulatives" are tools used in conjunction with an educational activity that allow the student to explore and learn through direct manipulation of physical objects.
 3. Hand-held calculators.
 4. Technology-based educational materials and electronic software that require the use of electronic equipment in order to be used in the learning process, e.g. software and software licenses.

- a. "Technology-based educational materials" does not include the equipment required to make use of these materials, e.g. computer hardware. Computer hardware is taxable.
- b. Only software actually used in the learning process qualifies for the exemption. Other software, such as software used for class preparation or administrative purposes, does not qualify for the exemption.
- 5. Maps, globes, art supplies, workbooks, flash cards, educational blocks, educational models, manipulatives, and charts for classroom use.
- 6. Video tapes, DVDs, films, or cassettes containing instructional information designed to be presented to students as part of a course of study.
- D. "Instructional materials" does not include:
 - 1. Items purchased for use in interscholastic extracurricular activities:
 - 2. Items purchased for use in administration or maintenance of the school including, but not limited to, computer supplies; record keeping, evaluation, or testing supplies; general use furnishings, equipment, and supplies, including photographic or audio visual equipment; other administrative or maintenance supplies; even if these supplies are distributed free of charge to the students: or
 - 3. Construction materials or supplies.
- E. This exemption does not apply to colleges, universities, or other post-secondary education facilities.

Source: Ark. Code Ann. § 6-21-411, Ark. Code Ann. § 26-52-437

GR-70. SALES TO CREDIT UNIONS:

- A. Sales of tangible personal property and taxable services to state chartered credit unions are subject to the gross receipts tax. Sellers are required to collect and remit the tax on the gross receipts or gross proceeds derived from taxable sales made to state chartered credit unions.
- B. Pursuant to 12 U.S.C. § 1768, sales to federally chartered credit unions are exempt from gross receipts tax.

Source: Ark. Code Ann. § 26-52-305

GR-71. TAX COLLECTED BY SELLER--PROHIBITED PRACTICE--TAX DUE ON GROSS RECEIPTS--LOCAL TAXES:

- A. The gross receipts tax must be collected by the seller of tangible personal property or taxable services in all cases except those cases where the tax is to be paid directly to the State by the purchaser.
- B. The amount of tax to be collected by the seller is six percent (6%) of the gross receipts or gross proceeds derived from the sale.
- C. In computing the tax to be collected upon any particular sale, the total sales price of the property sold must first be calculated and then tax applied accordingly. Sellers may not compute tax upon each item sold in a particular transaction.
- D. Sellers are liable for an amount equal to six percent (6%) of the gross receipts or gross proceeds derived from all sales during the taxable period as explained previously in this rule. The tax must be computed by multiplying the tax rate, six percent (6%), times the amount of the total combined gross receipts during the taxable period.
- E. Local taxes. Towns, cities, and counties have authority under Arkansas law to levy sales taxes. Some of these taxes are administered by the Commissioner of Revenues. Taxpayers should contact the Sales and Use Tax Section of the Revenue Division if they have a question as to whether they are within a jurisdiction which re-

quires them to collect and remit a local tax. When the Commissioner is authorized or required to collect or administer a local sales tax, that tax shall be administered in accordance with these rules. For specific rules concerning the administration of local sales taxes see GR-91.

Source: Ark. Code Ann. §§ 26-52-501; 26-52-508; 26-52-301; 26-52-302; 26-52-103(8); various sections of Title 26, Chapters 73, 74, and 75

GR-72. SELLERS REQUIRED TO OBTAIN PERMIT-- FEE OR BOND:

- A. Every person liable to remit the tax or make a return or report for the purpose of claiming any exemption from the payment of the tax levied by Ark. Code Ann. § 26-52-101 *et. seq.* shall make application for a permit on forms prescribed by the Commissioner. The permit application must be completed in all relevant respects and must be signed by the person making application for the permit or an authorized agent of the person making application for the permit. If an agent makes application for a permit on behalf of his principal, a copy of the document authorizing him to act on behalf of his principal must be attached to the application. A separate permit for each business location in Arkansas must be obtained.
Ark. Code Ann. §§ 26-52-201, 26-52-202.
- B. Each application shall be accompanied by a nonrefundable fee of Fifty Dollars (\$50).
Ark. Code Ann. § 26-52-203.
- C. Failure to obtain a permit may subject a person making sales of tangible personal property or taxable services to either criminal or civil sanctions, or both, as provided by law.
- D. Every permit obtained must be surrendered to the Department of Finance and Administration, Revenue Division, Sales and Use Tax Section upon the discontinuance of business at any location for which the permit was issued. Failure to surrender the permit in such instances shall constitute sufficient cause to subsequently refuse the person a permit required by these rules. Ark. Code Ann. § 26-52-207.

Source: Ark. Code Ann. §§ 26-52-201 *et. seq.*

GR-73. CANCELLATION OF PERMIT; AUTOMATIC EXPIRATION OF PERMIT :

- A. Failure to comply with any requirement of Ark. Code Ann. § 26-52-101 *et. seq.* or with any provision of these rules shall constitute sufficient grounds for cancellation of any permit issued under the authority of the Code or the rules.
- B. The permit of any taxpayer who has filed twelve consecutive monthly reports reporting zero sales shall automatically expire. This does not apply to permits issued to taxpayers who are not primarily engaged in selling taxable goods or services. The Director shall notify the taxpayer in writing that the permit has expired. The taxpayer shall return the permit to the Director within thirty days of the date of the notice. Any taxpayer who has received notice but reasonably expects to engage in business within the twelve-month period following the notification may petition the Director to retain the permit. The Director may allow any taxpayer who demonstrates to the Director's satisfaction that the taxpayer will require a permit to retain the permit.

Source: Ark. Code Ann. §§ 26-52-208; 26-52-210

GR-74. EXEMPTION CLAIMS:

- A. The Department of Finance and Administration, Revenue Division, does not issue exemption certificates. Consumers who represent to sellers that their purchases of prop-

erty or services are exempt from the tax must conclusively prove their entitlement to the exemption to the seller. The seller must accept the consumer's representations that the transaction is exempt from tax in good faith. (See GR-79.) If the transaction is not exempt from tax and the seller accepted the consumer's representations in good faith, the purchaser assumes liability for the amount of tax, penalty and interest due on the transaction. If the seller does not act in good faith, the seller is liable for the tax if the transaction does not qualify for an exemption.

- B. Sellers may obtain indemnification agreements from their customers claiming an exemption. Sellers may also require their customers to submit a copy of Form ST391 (purchaser's certification of exemption), available on the Department of Finance and Administration's website (www.arkansas.gov/dfa) or by contacting the Sales and Use Tax Section at (501) 682-1895.
- C. Valid retail permits, or resale permits, including those issued by other states, may be accepted by Arkansas sellers if the requirements of GR-53, relating to Arkansas retail permits, are satisfied. Retail permits may not be used to establish entitlement to any exemption other than the "sale for resale" exemption.

Source: Ark. Code Ann. §§ 26-52-517; 26-52-519

GR-75. LEGAL OPINIONS ISSUED BY THE DEPARTMENT:

- A. The propriety of the taxation or exemption of a sale may be substantiated by having a legal opinion rendered by the Department of Finance and Administration, Revenue Division, which states that the sale or transaction is taxable or exempt. A legal opinion may only be relied upon by a seller if it is addressed to him or is tendered by a customer to whom it is addressed and only to the extent that all material facts relative to the sale or transaction in question are contemplated by the legal opinion request and the legal opinion. Requests for legal opinions must specifically describe the person claiming an exemption and set forth all material facts relevant to the questioned sale or transaction.
- B. Legal opinions may not be relied upon if more than three (3) years old, but may be renewed on request. The effect of legal opinions may change at any time as a result of legislative action, court interpretation and changes in these rules without actual notice to any holder of a legal opinion.
- C. If the legal opinion contains such language, as "based upon the facts presented in your opinion request of . . .", then a copy of the legal opinion request must accompany the legal opinion at all times.
- D. Requests for opinions will be answered in the order of receipt, provided all facts or other information required to respond to the request are submitted with the original request. Requests for which additional information must be provided will be considered received upon the date all necessary information is provided.
- E. Opinions issued by any other agency, whether formal or informal, are not binding on the Department of Finance and Administration, Revenue Division.

GR-76. RESERVED

GR-77. REPORTS, RETURNS AND REMITTANCES:

- A. Monthly Report:
 - 1. The tax shall be due and payable on the first day of every month by any person liable for the payment of any tax due.
 - 2. It is the duty of all taxpayers (sellers) to deliver to the Director, on or before the twentieth (20th) day of each month, a return under oath showing the total com-

bined gross receipts or gross proceeds derived from all taxable sales, and the total combined gross receipts or gross proceeds derived from all nontaxable or exempt sales, during the preceding calendar month. Date of mailing of a return as reflected by the postmark of the United States Postal Service is deemed to be the date of delivery. The following information must also appear on the return:

- a. the name and address of the business (if the name or address of the business has changed, the new name or address must be submitted to the Department along with the old name or address of the business);
 - b. the permit number of the business;
 - c. the amount of tax due and payable with the return;
 - d. a brief statement of the nature of the claimed nontaxable or exempt gross receipts (e.g., "sales to hospitals", "manufacturing exemption", "nontaxable services", etc.) and
 - e. if the business has engaged in unusual business activities unrelated to the regular business activities of the business reflected upon the application for permit or previous returns (e.g., seller of property began to furnish either taxable or nontaxable services to its customers; seller of property is contemplating the sale of his business, etc.), then the taxpayer must so note on a statement attached to the return.
3. The appropriate amount of tax due and payable and as reflected on the return must accompany the returns as required herein.
 4. Although separate permits are required for each business location in Arkansas, every taxpayer shall file a single report combining all of the gross receipts or gross proceeds derived from sales at its Arkansas locations that are registered with the Director under the same Federal Employer's Identification Number (FEIN) or Social Security number. This provision applies regardless of whether the taxpayer is an individual, corporation, partnership, limited liability company, or other entity.
- B. Quarterly Report: When the average amount of tax for which the taxpayer is liable for the previous fiscal year (July 1 through June 30) does not exceed One Hundred Dollars (\$100) per month, the Director may notify the taxpayer that the taxpayer may file quarterly reports on or before July 20, October 20, January 20, and April 20. Taxpayers should continue to file monthly reports until they receive the notice to begin filing quarterly reports.
- C. Yearly Report: When the average amount of tax for which the taxpayer is liable for the previous fiscal year (July 1 through June 30) does not exceed Twenty-five Dollars (\$25) per month, the Director may notify the taxpayer that the taxpayer may file one yearly report on or before January 20 for the preceding 12-month period. Taxpayers should not change their method of filing until they receive the notice to begin filing annually.
- D. Prepayment. Ark. Code Ann. § 26-52-512.
1. All taxpayers in Arkansas that have average net sales of Two Hundred Thousand Dollars (\$200,000) or more per month for a period of one (1) year must prepay their monthly gross receipts tax liability by electronic funds transfer. The Department's Sales and Use Tax Section will review a taxpayer's reported taxable sales for each month beginning in July and ending with the following June to determine if a taxpayer must make prepayments. This review is performed once each year by the Department.
 2. The prepayment program applies only to those sales that are subject to gross receipts tax. Any sales that the taxpayer reports that are subject to compensating

use tax or any other type of excise tax are not taken into account when determining if the taxpayer must make prepayments.

3. Two (2) methods of making the electronic funds transfer prepayments are available to the taxpayer each month. The taxpayer is free to choose one method or the other for any period of time. The taxpayer is not required to commit to either prepayment method on a month-by-month basis. The two prepayment options are:
 - a. Two (2) equal electronic funds transfer prepayments calculated and prescribed by the Department. Each prepayment will be equal to forty percent (40%) of the taxpayer's monthly average gross receipts tax due for the preceding year. The two (2) payments will be due on or before the 12th and 24th days of the current month. Any remaining balance of tax due for the current month should be remitted along with the taxpayer's gross receipts tax report (Form ST400), which must be filed on or before the 20th day of the following month; or
 - b. One (1) electronic funds transfer prepayment calculated by the taxpayer of at least eighty percent (80%) of the total amount of tax that will be due for the current month. This single prepayment will be due on or before the 24th day of the current month. Any remaining balance of tax due for the current month should be remitted along with the taxpayer's gross receipts tax report (Form ST400), which must be filed on or before the twentieth (20th) day of the following month.

E. Electronic Funds Transfer. Ark. Code Ann. §§ 26-19-101 *et. seq.*

1. Each taxpayer whose monthly liability for gross receipts tax or compensating use tax exceeds Twenty Thousand Dollars (\$20,000) shall pay the taxes due by electronic funds transfer. Monthly liability is determined on the basis of average monthly liability for the preceding year. The transfer shall be made no later than 3:00 p.m. C.S.T. one business day before the payment due date so that payment is received on or before the due date.
2. For purposes of this rule, "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

F. Failure to Pay by EFT.

1. A taxpayer that is required to pay taxes by electronic funds transfer and fails to do so is subject to certain penalties and is disallowed the advantage of certain benefits otherwise allowed. Any such taxpayer who fails to pay the amount of tax required on or before the due date of such payment shall be assessed a penalty in the amount of five percent (5%) of the amount of tax due. This penalty is in addition to other penalties imposed under the Arkansas Tax Procedure Act. (See Rule GR-85.) In addition to such penalties, any such taxpayer who is required to pay by electronic funds transfer and fails to do so by the due date of such payment shall not be allowed the benefit of the discount for prompt payment, or the discount for timely remitting the prepayments required of taxpayers whose average net sales exceed Two Hundred Thousand Dollars (\$200,000) per month.
2. A taxpayer is considered to have failed to pay taxes by electronic funds transfer if the conditions in either (a) or (b) are not met:

- a. In order for an electronic funds transfer by automated clearinghouse "debit" to be effective, the following conditions must be met on or before the due date of the payment:
 - (i) The taxpayer initiates the automated clearinghouse debit by calling the designated toll-free telephone number by 3:00 p.m. C.S.T. on the last business day prior to the due date;
 - (ii) The taxpayer must have accurately provided the Director with sufficient information from which the payment may be applied to the correct account, including, but not limited to, the taxpayer's name, account number, tax type, tax period, and the amount of the payment; and
 - (iii) The taxpayer's bank account designated as the account to be debited contains adequate funds to cover the payment of taxes by debit transfer at the time the debit transaction is initiated and continuing through the due date of the tax payment.
- b. In order for an electronic funds transfer by automated clearinghouse "credit" to be effective, the following conditions must be met on or before the due date of the payment:
 - (i) The taxpayer must have initiated a successful prenote or test transaction containing necessary information in cash concentration or disbursement plus tax payment addendum (CCD + TXP) format. The term "tax payment addendum format" means a technical format for the communication of limited tax remittance data accompanying a payment through the automated clearinghouse system and includes a list of standard tax-type and account-type codes;
 - (ii) The transfer must contain an electronic addenda which allows the Director to identify the taxpayer, tax account number, tax payment amount, tax type, and tax period in accordance with instructions provided by the Director;
 - (iii) The taxpayer must have transferred the amount of funds due; and
 - (iv) The taxpayer's designated bank account must contain adequate funds to cover the credit transfer at the time the credit transaction is initiated and continuing through the due date of the tax payment.
- G. Returns and remittances by the taxpayer as described in this rule do not constitute an assessment of tax for audit or examination purposes.

Source: Ark. Code Ann. §§ 26-52-501; 26-52-519; 26-19-101 *et. seq.*

GR-78. CASH BASIS RETURNS:

- A. Any taxpayer who does business wholly or partly on a credit basis may apply to the Director for permission to prepare returns on the basis of cash actually received. If the Director determines that the State of Arkansas will not suffer any loss of tax upon the gross receipts or gross proceeds derived by the applicant from the sale of tangible personal property or taxable services due to the cash basis method of accounting for gross receipts, the application shall be granted.
- B. Any taxpayer making such application shall be taxable on the gross receipts collected by him during the taxable period including, but not limited to, all service charges, late payment penalties collected, bad debts, losses or expenses. No person may report on the cash basis unless permission has been expressly granted by the Director.
- C. Any taxpayer who has received permission from the Director to report sales tax on a cash basis must collect local tax on all monies received by the taxpayer after the effective date of any applicable local tax, regardless of the date of service or the billing

date.

- D. Taxpayer must keep accurate and complete records which reflect the amount of cash sales and credit sales. These records must show collections on accounts and be open for inspection and audit by the Director or his agents. See GR-18(J) and Ark. Code Ann. § 26-52-309.

Source: Ark. Code Ann. § 26-52-502

GR-79. PERSONS LIABLE FOR TAX :

- A. The tax must be collected, reported and remitted by the seller of tangible personal property; the seller or collector of admissions to places of amusement, recreational or athletic events; the seller of privileges of access to, or the use of amusement, entertainment, athletic, or recreational facilities; and by any other person furnishing any service subject to the tax.
- B. If the seller of tangible personal property or taxable services is a corporation and if the corporation fails to collect, truthfully account for, and remit the proper amount of tax, interest and penalty, then the officers or employees of the corporation charged with those duties shall also be personally, jointly and severally liable for a penalty equal to the amount of the tax.
- C. The sales tax liability for all sales of tangible personal property or taxable services is upon the seller unless, at or before the time of sale, the seller relies in good faith on a claim by the purchaser or documentation provided by the purchaser that the purchaser is entitled to a sales tax exemption.
 - 1. A seller exempts a purchase in good faith if he has no actual knowledge of information or circumstances at the time of the sale indicating that it is unlikely the purchaser is entitled to a sales tax exemption. Any claim for exemption signed by the purchaser is prima facie evidence of good faith.
 - 2. If the seller has acted in good faith, the liability for the tax is transferred to the purchaser who shall be liable for tax, penalty, and interest due on the purchase.

Source: Ark. Code Ann. §§ 26-52-501; 26-52-508; 26-52-517; 26-52-519

GR-80. RECORD KEEPING AND RECORD RETENTION:

A. PURPOSE

- 1. The purpose of this rule is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under the Arkansas Tax Procedure Act (codified at Ark. Code Ann. § 26-18-101 *et. seq.*) It is also the purpose of the rule to address these requirements where all or a part of the taxpayer's records are received, created, maintained or generated through various computer, electronic and imaging processes and systems.

B. DEFINITIONS

- 1. For purposes of this rule, these terms shall be defined as follows:
 - a. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.
 - b. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.
 - c. "Hard copy" means any documents, records, reports or other data printed on paper.
 - d. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that

are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

- e. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.
- f. "Taxpayer" as used in this rule means any person subject to or liable for any state tax; any person required to file a return, or to pay, or withhold and remit any tax required by the provisions of any state tax law; or any person required to obtain a license or a permit or to keep any records under the provisions of any state tax law.
- g. "Director" as used in this rule means the Director of the Department of Finance and Administration, State of Arkansas, or the Administrative Assistant for Revenue, or his authorized agent.

C. RECORD KEEPING REQUIREMENTS - GENERAL

- 1. A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under the Arkansas Tax Procedure Act. All required records must be made available on request by the Director or his authorized representatives as provided for in Ark. Code Ann. § 26-18-506. Such records shall include, but not be necessarily limited to: normal books of account ordinarily maintained by the average prudent businessman engaged in such business, all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account, and all schedules or working papers used in connection with the preparation of tax returns.
- 2. If a taxpayer retains records required to be retained under this rule in both machine-sensible and hard-copy formats, the taxpayer may make the records available to the Director in machine-sensible format upon request of the Director.
- 3. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule.

D. RECORD KEEPING REQUIREMENTS - MACHINE-SENSIBLE RECORDS

- 1. General Requirements
 - a. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Director upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.
 - b. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.
 - c. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.
- 2. Electronic Data Interchange Requirements

- a. Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Director to interpret the coded information.
- b. The taxpayer may capture the information necessary to satisfy Section D-2(a) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the Director. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

3. Electronic Data Processing Systems Requirements

The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

4. Business Process Information

- a. Upon the request of the Director, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.
- b. The taxpayer shall be capable of demonstrating
 - (i) the functions being performed as they relate to the flow of data through the system;
 - (ii) the internal controls used to ensure accurate and reliable processing; and
 - (iii) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.
- c. The following specific documentation is required for machine-sensible records retained pursuant to this rule:
 - (i) record formats or layouts;
 - (ii) field definitions (including the meaning of all codes used to represent information);
 - (iii) file descriptions (e.g., data set name); and
 - (iv) detailed charts of accounts and account descriptions.

E. RECORDS MAINTENANCE REQUIREMENTS

- 1. The Director recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location

and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. [The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, edition.]

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. ACCESS TO MACHINE-SENSIBLE RECORDS

1. The manner in which the Director is provided access to machine-sensible records as required in subsection C-2 of this rule may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.
2. Such access will be provided in one or more of the following manners:
 - a. The taxpayer may arrange to provide the Director with the hardware, software and personnel resources to access the machine-sensible records.
 - b. The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records.
 - c. The taxpayer may convert the machine-sensible records to a standard record format specified by the Director, including copies of files, on a magnetic medium that is agreed to by the Director.
 - d. The taxpayer and the Director may agree on other means of providing access to the machine-sensible records.

G. TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY

1. In conjunction with meeting the requirements of section D, a taxpayer may create files solely for the use of the Director. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of section D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.
2. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this rule.

H. ALTERNATIVE STORAGE MEDIA

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.
2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:
 - a. Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be

followed through the conversion system as well as internal procedures established for inspection and quality assurance.

- b. Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under section J.
- c. Upon request by the Director, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.
- d. When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.
- e. All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.
- f. There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. EFFECT ON HARD-COPY RECORDKEEPING REQUIREMENTS

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on a record keeping medium as provided in section H of this rule.
2. If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.
3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. Such details include those listed in subsection D-2(a).
4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.
5. Nothing in this section shall prevent the Director from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

J. RECORDS RETENTION - TIME PERIOD

All records required to be retained under this rule shall be preserved for six (6) years pursuant to Ark. Code Ann. § 26-18-506(b) unless the Director has provided in writing that the records are no longer required.

Source: Ark. Code Ann. §§ 26-52-506

GR-81. ASSESSMENTS:

If, upon audit or examination, the Director or his duly authorized agent determines there is additional tax due, the Director shall prepare a schedule reflecting the amount of additional tax, interest and penalties payable and shall furnish to the taxpayer, if available, a copy of this schedule. A "Notice of Proposed Assessment" and "Taxpayer's Bill of Rights" shall also be mailed to the taxpayer at the address listed upon the application for retail permit or the actual business address of the taxpayer or hand delivered to the taxpayer.

GR-81.1 REFUNDS:

A. REFUNDS OF TAX ERRONEOUSLY PAID.

1. Refunds Allowed. Any taxpayer who has paid tax in excess of the amount lawfully due is entitled to a refund of the tax erroneously paid. The claim for refund must meet the requirements of the Arkansas Tax Procedure Act. The purpose of this regulation is to clarify those requirements.
2. Refund claims may not be pursued under Ark. Code Ann. § 26-18-507 or the provisions of this regulation for the following:
 - a. Illegal exaction actions for which a remedy is available pursuant to Article 16, Section 13 of the Arkansas Constitution;
 - b. Actions arising from the issuance of a proposed assessment, jeopardy assessment, or final assessment for which a remedy is available pursuant to Ark. Code Ann. §§ 26-18-204, 26-18-405, and 26-18-406;
 - c. Taxes for which a refund is barred by the statute of limitations. (See Section E.)

B. DEFINITIONS

1. "Claim for Refund" shall mean:
 - a. An amended return that correctly reports tax that was reported incorrectly on an original return, resulting in a refund of part or all of the tax paid with the original return.

Example: Taxpayer A reports its gross receipts for the month of June, 2004 as One Hundred Thirty-two Thousand Dollars (\$132,000) and calculates its tax liability based on that amount. Taxpayer subsequently discovers that its gross receipts for June 2004 were actually One Hundred Twenty-three Thousand Dollars (\$123,000). The only information required to correct the error is a change, within the limitations period provided by law, to the gross receipts amount. Taxpayer files an amended return for June 2004 correctly reporting its gross receipts as One Hundred Twenty-three Thousand Dollars (\$123,000) and calculates the tax liability based on One Hundred Twenty-three Thousand Dollars (\$123,000). Taxpayer is entitled to a refund of the tax applicable to the Nine Thousand Dollar (\$9,000) difference in gross receipts; or

- b. A verified claim for refund that requires information in addition to that required on an amended return.

Example: Taxpayer collects tax from its customer on the sale of a piece of machinery that sells for Eighty-five Thousand Dollars (\$85,000). Taxpayer reports and remits the tax on Eighty-five Thousand Dollars (\$85,000). The customer obtains an opinion that the machinery is exempt from tax as manufacturing machinery. Taxpayer refunds the tax to the customer and files a verified claim for refund that supplies the information necessary for DFA to determine whether Taxpayer is entitled to the refund claimed. (See Sections C and D regarding claim requirements.)

2. "Claimant" shall mean the person or entity that files a refund request (claim for refund). The claimant may be the taxpayer (the vendor or a direct pay permit holder), or the person or entity to whom the taxpayer has assigned its claim (assignee, usually the customer). A representative of the claimant who has been granted the Power of Attorney to act on the behalf of the claimant may submit a Claim for Refund. For a consumer use tax claim, the customer who reported and

remitted consumer use tax directly to the state rather than to the vendor may file a Claim for Refund.

3. "Director" shall mean the Director of the Department of Finance and Administration, State of Arkansas or his agent.
 4. "Taxpayer" shall mean:
 - a. Any person who is subject to or liable for any state tax
 - b. Any person required to file a return, to pay, or to withhold and remit any tax required by the provisions of any state tax law
 - c. Any person required to obtain a license or a permit or to keep any records under any state tax law; or
 - d. Any person who files a return and pays a reported tax without regard to whether he or she was required to file the return.
 5. "Assignee" shall mean a person or entity (usually a customer who paid tax to a vendor) to whom a taxpayer (usually a vendor) has assigned its right to a refund of tax that the taxpayer collected from the customer and reported and remitted to the state.
 6. For purposes of this regulation the terms "vendor" and "seller" shall have the same meaning and may be used interchangeably. The terms "customer" and "purchaser" shall have the same meaning and may be used interchangeably.
- C. CLAIMS FOR REFUND.
1. Who May File a Claim for Refund?
 - a. Sales or Use Tax.
 - i. The taxpayer (vendor) who collected and remitted the tax may file a refund claim, if the vendor satisfies one of the following conditions:
 - (A) The vendor has borne the tax (i.e., the vendor did not collect the tax from the customer);
 - (B) The vendor repaid the tax to the customer from whom the vendor collected the tax; or
 - (C) The customer consents to refunding the tax to the vendor.
 - ii. The assignee of a vendor (see section G).
 - iii. For use tax, a taxpayer who reported and remitted consumer use tax directly to the state rather than to the vendor.
 - iv. A holder of a direct pay permit.
 - b. Income Tax. Only a taxpayer who paid income tax may file a claim for refund. An income tax refund is claimed by filing:
 - i. an original return reporting a tax liability that is less than the amount paid through withholding and estimated payments; or
 - ii. an amended return.
 2. Requirements for Claim. Form 2004-6 is incorporated into and adopted as a part of this regulation and is required to be used by every claimant filing a claim for refund other than an amended return. The form provides a method and format to comply with the requirements for a claim for refund. The form is available on the Internet at http://www.arkansas.gov/dfa/excise_tax_v2/et_su_forms.html. The information listed below in items (a) through (f) of this section shall be required in order to process any claim for refund other than an amended return.
 - a. The Taxpayer's name and identifying tax information, including sales tax permit number, social security number or FEIN;

- b. The date the tax was paid to the state and the tax period for which the tax was paid;
 - c. The nature and kind of tax paid, such as sales tax, withholding tax, use tax, withholding tax, individual income tax, corporate income tax;
 - d. The amount of tax that is claimed erroneously paid;
 - e. The specific grounds upon which a refund is claimed. For example, if the claimant requests a refund based on a claim that the item purchased is exempt from tax, the information supplied should explain the specific exemption claimed, and the reasons that the item qualifies for the exemption; and
 - f. Any other information relative to the payment required by the director
3. Deficiencies in Claim. If the director determines that the information supplied in the claim for refund substantially complies with the claim requirements, the claim will be considered to be filed timely for all periods within the statute of limitations as of the date the claim is filed. However, a refund claim that substantially complies with the claim requirements may lack additional information required by the director to process the claim. The director will send a letter to the claimant that states that the claim for refund is considered timely, explains what additional information is required, and gives the claimant a reasonable time to supply the information. If the information is not supplied within the time allowed, that part of the claim relating to the requested information will be denied.
4. Treatment of Deficient Claims. Any claim that does not contain the information listed in subsection (C)(2) and as required on Form 2004-6 will be considered not to be in substantial compliance with the claim requirements. The director will send a letter to the claimant stating that the claim does not meet the claim requirements. The claimant may resubmit the claim, adding the necessary information to substantially comply with the requirements. The statute of limitations shall continue to run on the refund claim until a claim is filed that substantially complies with the claim requirements. Only those taxes that are within the statute of limitations at the time a claim that is in substantial compliance with the claim requirements is submitted will be refunded. The statute of limitations will not relate back to the filing date of a prior claim that was not in substantial compliance with the claim requirements.
5. Signature.
- a. Claims Filed by Taxpayer. The refund claim shall be signed by a person authorized by the taxpayer to sign tax documents.
 - b. Claims Filed by Assignee of Taxpayer. Any person who signs any document on behalf of a vendor that relates to the assignment of a vendor's right to a tax refund must certify that he or she has access to the vendor's records and can certify on behalf of the vendor that the tax has been paid.
- D. PREPARATION AND PRESENTATION OF REFUND REQUEST. To facilitate the prompt and efficient review and analysis of refund requests, it is necessary that refund requests be presented in an orderly and understandable fashion. Toward that end, all sales and use tax refund claims should be organized as follows:
- 1. Refund Claims Made by Vendors. The most common refund request occurs when a vendor requests a refund of taxes previously remitted to the state. In these circumstances, the vendor sells the product or service, collects the tax from the customer, remits the tax to the state, and subsequently obtains information that the original transaction was not taxable or the amount of tax originally paid was incorrect. In this situation, the vendor will refund the tax to the customer and request a refund of

- the tax from the state. A vendor seeking a refund under these circumstances must present documentation supporting the refund claim in the following manner:
- a. Complete Sections 1 and 2 of Form 2004-6.
 - b. Attach copies of all invoices for which a refund of tax is requested.
 - c. The invoices should be arranged in chronological order from the oldest invoice to the most recent.
 - d. A spreadsheet or other list showing that tax was remitted to the State of Arkansas for all invoices that are included in the refund request.
 - e. Provide documentation showing that:
 - i. The vendor has borne the tax (i.e., the vendor did not collect the tax from the customer but did pay the tax to the state);
 - ii. The vendor repaid the tax to the customer from whom the vendor originally collected the tax; or
 - iii. The customer consents to refunding the tax to the vendor.
 - f. Any additional documentation that will assist DFA in verifying the refund claim should be attached.
2. Refund of Taxes Paid Directly by the Purchaser. In some situations, the customer is responsible for paying sales and use tax directly to the State of Arkansas. This typically occurs when a customer pays use tax on purchases made from outside the state or the purchaser holds a direct-pay sales and use tax permit. When a purchaser requests a refund of sales or use tax paid directly to the State of Arkansas, the refund claim should be organized in the following manner:
- a. Complete Sections 1 and 2 of Form 2004-6.
 - b. Attach copies of all invoices for which a refund of tax is requested. These invoices should be arranged in chronological order from the oldest invoice to the most recent.
 - c. A spreadsheet or other list showing that tax was remitted to the State of Arkansas for all invoices that are included in the refund request.
 - d. Any additional documentation that will assist DFA in verifying the refund claim should be attached.
3. Vendor Assignment Refund Claims. Occasionally, a vendor will assign the vendor's right to a tax refund to the customer and the customer will request that DFA make a refund directly to the customer. In this circumstance, it is necessary to provide adequate safeguards to ensure that DFA refund only taxes that have actually been received by the state from the vendor. Refund claims made by customers as a result of a vendor assignment must be in the following form to provide these safeguards and to expedite processing of these refund claims:
- a. Complete Sections 1, 2, and 3 of Form 2004-6.
 - b. Attach copies of all invoices for which a refund of tax is requested. The invoices should be arranged in chronological order from the oldest invoice to the most recent.
 - c. If a vendor assignment refund is being requested for sales tax paid to more than one vendor, a separate Section 2 and a separate Section 3 must be included for each vendor. The total amount refunded may be summarized for all vendors on Section 1.
 - d. Each vendor assigning its right to a refund must complete column 12 of Section 2 and all of Section 3.

- e. Any additional documentation that will assist DFA in verifying the refund claim should be attached.
- 4. Requests for refund that do not include the documentation as described in this section or that are not arranged in the manner outlined in this section will be denied. However, the taxpayer will be provided additional time to correct deficiencies as provided in Section (C)(3).
- E. STATUTE OF LIMITATIONS. The statute of limitations that applies to tax refunds is found at Ark. Code Ann. § 26-18-306. Refund claims are within the statute of limitations if they are filed within three (3) years from the date the return was filed or two (2) years from the date the tax was paid, whichever is later.
- F. PROCESSING CLAIMS FOR REFUND.
 - 1. Claims for refund will be processed based upon the information supplied in the claim for refund, either on the forms or otherwise included with the claim for refund.
 - 2. The Director will process claims that substantially comply with the requirements of a claim for refund in the order received.
 - 3. Checks that are issued to pay refunds will be mailed to the claimant's address on the claim for refund.
 - 4. The Director will notify, in writing, claimants whose claims for refund are denied in whole that the claim, or any part, has been denied. The denial will state the basis for the denial of the claim. For remedies available upon denial of a refund, see Section I.
- G. VENDOR ASSIGNMENTS.
 - 1. Refunds Made Directly to the Assignee (customer). For sales tax, the customer is not the "taxpayer," because the customer is not liable to report and remit the tax. A customer who pays tax to a vendor should request a refund of tax erroneously paid from the vendor. After the vendor refunds the tax to the customer, the vendor can then file a claim for refund of the tax refunded to the customer. However, under the common law principles of assignment, the vendor can legally assign its right to refund to the customer (assignee).
 - 2. Vendor Assignment Claim Requirements
 - a. The general claim for refund requirements shall apply to refund claims resulting from an assignment by a vendor of its right to refund to the customer from whom the vendor collected the tax [See subsection (C)(1).];
 - b. Verification by the taxpayer (vendor) that the tax claimed has been paid by the taxpayer (vendor) to the state. This verification is satisfied if both the taxpayer and the assignee satisfactorily complete Form 2004-6.
 - c. Certifications of Taxpayer (vendor). Taxpayers who assign the right to refund to an assignee should carefully read Section 3 of Form 2004-6. By signing Section 3, the taxpayer is certifying that:
 - i. The assignee (customer) paid the tax to the vendor;
 - ii. The vendor paid the tax to the state;
 - iii. The vendor has not previously requested or received a refund of the tax on the form;
 - iv. The vendor has not refunded the tax to the customer;
 - v. The vendor agrees not to claim a refund after assigning the claim.
 - 3. Right of Assignee to Refund No Greater Than Right of Taxpayer. If the vendor would not be entitled to a refund, then its assignee is not entitled to a refund. Under Arkansas law, an assignee of contract rights has no greater rights against the

debtor than did the assignor. Tucker v. Scarbrough, 268 Ark. 736, 740, 596 S.W.2d 4 (1980). The confidentiality provisions of Ark. Code Ann. § 26-18-303 prohibit the Department from disclosing to the assignee facts concerning why the vendor is not entitled to a refund. If applicable, the Department will notify the claimant that the claimant must request the refund directly from the vendor.

H. ELECTRONIC RECORDS:

The age of technology has afforded many companies the ability to conduct purchasing activities in a "paperless" environment. There may be times when "paper documents" are not available and can not be included as required with the Claim for Refund. For the purposes of this rule, "paperless" will mean that a traditional "hard copy invoice or paper invoice" cannot be produced, does not exist and has not been issued from the vendor to the purchaser. When this situation occurs, the claimant is to:

1. Prepare the spreadsheet as discussed in Section 2 of the Claim for Refund packet.
2. The claimant will substitute documentation that will provide the necessary information to substantiate that tax was paid to a vendor or was accrued by the taxpayer. This information should include the date of purchase, vendor name and address, transaction tracking number used by vendor and purchaser, description of item purchased, dollar amount paid for the item purchased and the amount of tax that was accrued by the purchaser or paid to the vendor.
3. Any other information thought to be helpful by the claimant for refund verification purposes should also be submitted with the Claim for Refund.
4. The director may request additional information necessary to verify the claim for refund.

I. REMEDIES AVAILABLE TO CLAIMANT FOLLOWING DENIAL OF A CLAIM FOR REFUND.

1. Administrative hearing. The claimant has thirty (30) days following the issuance of a written denial of a claim to file a protest of the denial and request an administrative hearing. An assignee shall have the same rights to hearing that the taxpayer would have under the Arkansas Tax Procedure Act.
2. File suit in court to contest the denial. Any claimant may file suit in circuit court to contest a refund denial. The suit must be filed within one year from:
 - a. The director's written denial of the claim for refund; or
 - b. The final decision of either the hearing board or the director on revision following an administrative hearing.
3. If the director fails to issue a refund or a written denial of the claim within six months of the date the claim is filed, the claimant may file suit in circuit court on the claim.

GR-81.2 ADMINISTRATIVE AND JUDICIAL REMEDIES

A. Protest.

1. Protest of Assessment. If a taxpayer objects to a proposed assessment of tax, the taxpayer must file his protest in writing within thirty (30) days of receipt of the Notice of Proposed Assessment setting forth under oath facts and/or law supporting the protest of the assessment. The protest shall be mailed to the address set forth in the Notice of Proposed Assessment. If the taxpayer fails to file a written protest within thirty (30) days of receipt of the Notice of Proposed assessment, then the Director shall issue by certified mail, return receipt, a Notice of Final Assessment. Failure to pay the Notice of Final Assessment within thirty (30) days of receipt shall subject the taxpayer to the filing of a Certificate of Indebtedness, constituting a

- judgment, and to the collection remedies available to the Director.
2. Protest of Refund Claim Denial. If a taxpayer objects to the denial of a claim for refund, the taxpayer must file his or her protest in writing within thirty (30) days of receipt of the Notice of Claim Denial setting forth under oath facts and law to support the protest. The protest shall be mailed to the address set forth in the notice. The taxpayer shall specify the form of hearing as described in Section B(2).
- B. Hearings.
1. If the taxpayer files a written protest of the Notice of Proposed Assessment, or a written protest of the denial of a claim for refund, within the thirty (30) day time period allowed for a protest then the taxpayer will be granted a hearing before a Hearing Officer. The Hearing Officer shall set the time and place for the hearing which will be in any city in which the Revenue Division maintains a Field Audit District Office, or in such city as the Director, in his or her discretion, may designate. It is not necessary to request an administrative hearing prior to seeking judicial relief.
 2. At the hearing the taxpayer has the option of:
 - a. appearing in person and representing himself or herself or being represented by an authorized spokesperson for the presentation of evidence or argument in support of the taxpayer's protest of the assessment;
 - b. not personally appearing, but requesting that a hearing be held and a decision rendered by the Hearing Officer upon the basis of documentation or written arguments submitted by the taxpayer; or
 - c. requesting a hearing to be held by telephone, video conference, or other electronic means available to the Revenue Division.
 3. The taxpayer shall elect the form of administrative hearing in his or her written protest. In any instance an attorney for the Revenue Division may appear to offer evidence and legal argument in support of the Notice of Proposed Assessment or the denial of the claim for refund.
- C. Revisions.
1. Upon completion of the hearing and submission of all documentary evidence and argument, the Hearing Officer shall render a decision in writing and serve copies upon the taxpayer and the Office of Revenue Legal Counsel. If the Notice of Proposed Assessment or the denial of the claim for refund is sustained in whole or in part, the taxpayer may request in writing, within twenty (20) days of the mailing of the decision, that the Director revise the decision of the Hearing Officer. The request for revision to the Director shall state the legal or factual basis for the revision. If the Director affirms the written decision of the Hearing Officer or if the taxpayer fails to request the Director to revise the decision, then a Notice of Final Assessment shall be issued, by certified mail return receipt, to the taxpayer based upon the decision of the Hearing Officer or request for revision by the Director.
 2. The Director may within twenty (20) days of the decision revise the decision without a request from the taxpayer. A taxpayer may not request a revision of the final determination made by the Director. If the Director determines that the assessment is sustained, a Notice of Final Assessment shall be issued based upon the final determination of the Director.
- D. Judicial Relief
1. Proposed Assessments of Tax. Within thirty (30) days of the issuance of the Notice of Final Assessment provided for in Section (C), a taxpayer may seek judicial relief by one of the following methods:

- a. within one (1) year of the date of the notice of final assessment, paying the tax, penalty, and interest assessed for at least one (1) taxable period within the audit period and then filing suit within one (1) year of the date of payment. Collection activities will proceed with respect to any taxable periods that are not paid. A taxable period for gross receipts, use or withholding tax is one (1) month. A taxable period for income tax is one year. or;
 - b. within thirty (30) days of the notice of final assessment, filing with the Director a surety bond, letter of credit, or other collateral approved by the Director in double the amount of the tax deficiency, interest, and penalty and filing suit in Chancery Court within thirty (30) days to stay the determination of the Director. The taxpayer shall faithfully and diligently prosecute the suit to a final determination and shall pay any deficiency found by the Court to be due and any court cost assessed against him or her. The failure of the taxpayer to file suit, diligently prosecute the suit or pay any tax deficiency and court costs shall result in the forfeiture of the collateral in the amount of the assessment and assessed court costs.
2. Denial of Claims for Refund. Within one (1) year of the issuance of the Notice of Claim Denial, decision of the hearing officer, or revision decision of the Director, whichever occurs latest, the taxpayer may file suit in chancery court seeking a refund. It is not necessary to request an administrative hearing prior to seeking judicial relief.

Source: Ark. Code Ann. §§ 26-52-404; 26-18-405; 26-18-406.

GR-82. INTEREST ACCRUED ON UNDERPAYMENTS OF TAX - RATE: Interest on underpayments of tax shall be due and payable at the rate of ten percent (10%) per annum from the date such tax was due to be paid until the date of payment. Sales and use tax is due to be paid on the twentieth (20th) day of the month following the month in which the sale occurs. Interest on any unpaid sales or use tax begins to accrue on the twenty-first (21st) day of the month in which the tax is due.

Source: Ark. Code Ann. §§ 26-18-508; 26-52-501

GR-83. OVERPAYMENTS AND REFUNDS - INTEREST ON OVERPAYMENTS AND REFUNDS:

- A. After an examination of a return, if it shall appear that a taxpayer has overpaid the amount of tax required to be paid, then the excess so paid with interest at the rate specified below may be refunded to the taxpayer. If the amount overpaid was collected by the taxpayer from his customers, then the taxpayer must establish that he has repaid the tax to persons from whom collected, or has obtained the consent of such person to the allowance of the refund or credit. The rate of interest on overpayments is ten percent (10%) per annum. If an overpayment of tax is refunded by the Director within ninety (90) days after the date provided for filing the return for the tax, no interest shall be allowed on the overpayment.
- B. If a taxpayer believes an overpayment has occurred, an amended return or verified claim for refund may be filed. The claim shall specify the name of the taxpayer, the time when and the period for which the tax was paid, the amount of tax claimed to have been erroneously overpaid, and the grounds upon which a refund is claimed. The Director shall then determine what amount of refund is due as soon as practicable after a claim has been filed, and in any event within six (6) months after the filing of such claim. The Director shall then make a written determination and give notice to the tax-

payer concerning whether a refund is due. If a refund is due, the Director shall certify that the claim is to be paid to the taxpayer as provided by law and a refund check will be issued.

- C. No claim for refund will be allowed if made after the expiration of the period of limitation for assessment of additional tax.

Source: Ark. Code Ann. §§ 26-18-507; 26-18-508

GR-84. DISCOUNT FOR PROMPT PAYMENT:

- A. Discount for Prompt Payment. If the tax is remitted to the Director on or before the due date required by rule GR-77, the taxpayer is entitled to deduct two percent (2%) of the state tax due and two percent (2%) of the city and county tax due as a discount for prompt payment of the tax. A taxpayer's discount for prompt payment of state tax shall not exceed One Thousand Dollars (\$1,000) for each month included in the tax report, regardless of whether the taxpayer files a report monthly, quarterly, annually, or occasionally. A taxpayer who operates more than one location shall be entitled to one aggregate monthly discount of One Thousand Dollars (\$1,000) for state tax, whether the taxpayer files one consolidated monthly report or separate reports for each location. There is no limitation on the discount for prompt payment of city and county tax collected and remitted to the Director. Ark. Code Ann. § 26-52-503. The two percent (2%) discount may not be deducted from prepayments but may only be taken on the excise tax report (Form ST 400). See GR-77.
- B. Forfeiture of Discount. Failure to remit the tax on or before the due date shall result in a forfeiture of the two percent (2%) discount and the full amount of the tax due must be remitted. Ark. Code Ann. § 26-52-503. The forfeiture of the discount applies to taxpayers who remit their tax payments directly by cash, check, or otherwise, and to taxpayers who are required to remit tax by electronic funds transfer or other method of prepayment. (See GR-77.)

Source: Ark. Code Ann. §§ 26-52-503; 26-52-512

GR-85. PENALTIES:

- A. Negligence Penalty. If any part of a deficiency in tax is determined to be due to negligence or intentional disregard of these rules or state law, then a penalty of ten percent (10%) of the deficiency shall be added. If a fraud penalty, a failure to file penalty, or a failure to pay penalty is assessed, no negligence penalty will be assessed.
- B. Fraud Penalty. If any part of a deficiency in tax required to be shown on a return is determined to be due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the deficiency, in addition to any interest provided by law. If a fraud penalty is assessed, no negligence penalty, failure to file penalty, or failure to pay penalty will be assessed.
- C. Failure to File Penalty. If a taxpayer fails to file a return on or before the first day of the month following the month in which a return was required to be filed, there shall be added to the tax a penalty of five percent (5%) of the tax due for each month or fraction of a month that the tax remains unreported. The penalty shall not exceed thirty-five percent (35%) of the tax due. No penalty will be assessed if the failure to file is due to reasonable cause and not to willful neglect. If a penalty is assessed for failure to file a return, no penalty will be assessed for failure to pay tax.
- D. Failure to Pay Penalty. If a taxpayer fails to pay the reported tax on or before the first day of the month following the month in which the payment was required, there shall be added to the tax a penalty of five percent (5%) of the tax due for each month or

fraction of a month that the tax remains unpaid. The penalty shall not exceed thirty-five percent (35%) of the tax due. No penalty will be assessed if the failure to pay is due to reasonable cause and not to willful neglect. If a penalty is assessed for failure to pay tax, no penalty will be assessed for failure to file a return.

- E. A penalty of Fifty Dollars (\$50) per return will be assessed when a taxpayer continues to disregard previous notification by the Director that the taxpayer has
 - 1. failed to include required information on a return;
 - 2. included false information on a return
 - 3. failed to file a return; or
 - 4. failed to notify the Director that the taxpayer is no longer required to file a return.

No penalty will be assessed if the taxpayer's failure is due to reasonable cause and not willful neglect.

- F. If a taxpayer that is required to pay tax by electronic funds transfer fails to do so on or before the due date, there shall be added to the tax a penalty of five percent (5%) of the tax due.
- G. If a taxpayer that is required to make prepayment of sales tax fails to do so on or before the due date of each prepayment, there shall be added to the tax a penalty of five percent (5%) of the amount of the prepayment due. A taxpayer who elects to pay eighty percent (80%) of its tax liability for the month on or before the twenty-fourth (24th) of the month, and fails to do so will not be assessed the five percent (5%) penalty if the taxpayer proves that more than twenty percent (20%) of its tax liability arose from sales that occurred after the twenty-fourth and before the last day of the month.

Source: Ark. Code Ann. § 26-18-208

GR-86. BAD CHECKS AND ACCEPTANCE OF PERSONAL CHECKS:

- A. If any person makes payment to the Department of Finance and Administration by means of a check, draft, money order, or electronic funds transfer drawn on any bank, person, firm or corporation, and the check, draft, money order, or electronic funds transfer is later returned without the amount due having been paid in full, the Director is authorized and empowered to impose a penalty of ten percent (10%) of the face amount of such check, draft, money order, or electronic funds transfer or Twenty Dollars (\$20), whichever is greater, against the maker or drawer of such check, draft, money order, or electronic funds transfer. This section shall not apply if the person establishes to the satisfaction of the Director that he tendered such check, draft, money order, or electronic funds transfer in good faith and with reasonable cause to believe it would be duly paid.

- B. The Director will refuse to accept personal checks in the following instances:
 1. When a second personal check is tendered in payment of an invalid check previously tendered.
 2. When the Director has received from a particular individual one or more personal checks within a twelve (12) month period that have been returned due to insufficient funds or other reason.
 3. When an individual is attempting to secure an immediate release of a tax lien.
 4. When tax payments are required to be made by electronic funds transfer as required by Arkansas law.
 5. When a corporation or fiduciary is attempting to file a final tax return prior to disposing of assets.
 6. When an individual attempts to obtain a clearance letter from the Revenue Division in order to renew an Alcoholic Beverage Control permit or a Tobacco Control Board permit.
 7. When transient vendors sell at fairs and special events.
 8. When a taxpayer pays the tax liability following service of a business closure order.

Source: Ark. Code Ann. §§ 19-2-203; 19-2-204

GR-87. DIRECT PAYMENT TO THE STATE:

- A. In his discretion, the Commissioner may permit a consumer to accrue and remit the tax directly to the Commissioner instead of having such tax collected and paid by the seller. In order for a consumer to obtain a direct payment number he must show and certify the following:
 1. that he will comply with the provisions of Ark. Code Ann. §§ 26-52-101 *et. seq.*, 26-53-101 *et. seq.*, and 26-18-101 *et. seq.*, and these rules;
 2. that he will faithfully report and remit all state and local taxes due to the Director on or before the twentieth (20th) day of the month for the previous month's taxable purchases, sales or rentals.
- B. Direct payment permits may be canceled by the Commissioner at any time whenever the Commissioner determines that the person holding the permit has not complied with the provisions of this rule or that the cancellation would be in the best interests of the collection of the tax. A direct pay permittee is not entitled to any discount for prompt payment of the tax.
- C. The tax will be remitted directly by a direct pay permit holder to the Commissioner of Revenues. A use vendor or sales tax retailer selling to the holder of a valid direct pay permit is not responsible for the collection of the tax.
- D. Direct pay permit holders shall accrue and remit the local tax of the city or county where the property purchased is first used, stored, consumed or distributed. When direct pay permit holders purchase taxable services, they must accrue and remit the local tax of the city or county where the services are performed.

Source: Ark. Code Ann. §§ 26-52-509; 26-52-510

GR-88. TRANSIENT BUSINESS REQUIRED TO POST BOND: Every person desiring to engage in business within this State and who does not maintain a permanent business within this State, shall be required to obtain a retailer's permit and post a bond sufficient to cover the anticipated tax liability during the period the business is to operate in this State, not to exceed one year. A bond by a surety company or the assignment of a Certificate of Deposit in an Arkansas financial institution is acceptable in lieu of a cash bond.

Source: Ark. Code Ann. §§ 17-49-109; 26-52-203; 26-52-105; 26-52-201

GR-89. BUSINESS CLOSURE:

- A. **BUSINESS CLOSURE AUTHORITY.** The Department of Finance and Administration (DFA) has the authority to close any business that fails to pay the gross receipts tax due for three (3) months in a twenty-four (24) month period and does not, within the time allowed, either (i) satisfy that liability through a lump sum payment or a payment plan, or (ii) request an administrative hearing.
- B. **NOTICE.** Taxpayers are given a number of notices prior to business closure. The number of notices that the taxpayer receives will depend upon how many months the taxpayer has failed to pay, or file and pay.
1. The taxpayer receives a notice of proposed assessment for each month that the taxpayer fails to pay, or fails to file and pay. These notices are sent by U.S. Mail, first class, to the business address listed on the taxpayer's permit application, or a subsequent address provided by the taxpayer. If the taxpayer does not pay or file and pay, then a final notice is sent by mail to the taxpayer.
 2. The notice of business closure is delivered to the taxpayer when the Department's records show that the taxpayer failed to pay (or file a report and pay) a third month's tax liability within a twenty-four (24) consecutive month period. The notice of business closure is also delivered when the taxpayer defaults on a business closure payment plan that includes more than three (3) months of delinquency on or after July 1, 2004. The notice of business closure notifies the taxpayer that three (3) or more months are delinquent and that if the taxpayer does not either (i) pay in full or enter into a payment plan accepted by the Department, or (ii) request a hearing within five (5) days of the day the notice is received, the business will be closed. The Department will attempt to personally deliver the notice of business closure to either the business owner (if a sole proprietor) or, in the case of a corporation or other non-individual owner to either the agent for service, the person who signed the sales tax permit application as a person authorized to act or behalf of the corporation, or a person who represented that the person was an officer or agent authorized to accept service for the corporation or entity. If service cannot be had by any of these methods, service is made by certified mail to the business address on the sales tax account.
- C. **OPTIONS TO AVOID BUSINESS CLOSURE.** A taxpayer who does not wish to voluntarily close its business when served with a business closure order has two (2) options:
1. Satisfy the delinquent liability by paying the liability in full within five (5) business days of the date the business closure order is served or entering into an installment payment agreement that is approved by DFA; or
 2. Request an administrative hearing within five (5) business days of the date the business closure order is served. The request must be in writing and must be received by DFA within five (5) business days of the date the business closure is served.
- D. **INSTALLMENT PAYMENT AGREEMENTS.**
1. All agreements to pay the delinquent liability in installments shall be approved by the Sales and Use Tax section of the Department.
 2. All payment agreements shall provide for full payment of the total amount of tax, penalty, and interest owed for months subsequent to July 1, 2004.
 3. No payment agreements will be approved until all delinquent returns are filed.
 4. Any taxpayer who requests a payment agreement rather than an administrative

hearing when given a notice of business closure and who subsequently fails to pay the liability as agreed will be given an additional notice of business closure upon default. The notice will notify the taxpayer that it is entitled to a hearing on the closure of the business.

5. Any taxpayer who is current on the terms of a business closure payment agreement but fails to pay (or file and pay) its tax liability for three (3) months that are not included in the payment agreement will be served with a business closure order. The notice will notify the taxpayer that it is entitled to a hearing on the closure of the business.
 6. Any taxpayer who pays the payment agreement liability in full but subsequently fails to pay (or file and pay) its tax liability for three (3) months in a twenty-four (24) month period will again be subject to business closure.
- E. ADMINISTRATIVE HEARINGS.
1. A business closure hearing must be held within fourteen (14) calendar days of the date the taxpayer protests and requests a hearing.
 2. The only defenses available to a taxpayer at an administrative hearing on business closure are:
 - a. Written proof that the taxpayer filed all delinquent returns and paid the delinquent tax, penalty, and interest; or
 - b. That the taxpayer has entered into a payment agreement to satisfy the tax.
- F. JUDICIAL RELIEF. A taxpayer who receives a decision from the Hearing Board that orders the closure of the business may appeal the administrative decision to close the business to the Pulaski County Circuit Court or the circuit court of the county in which the taxpayer resides or in which the business is located. The appeal must be filed within twenty (20) calendar days of the date of the administrative decision. The taxpayer may appeal an unfavorable decision of the circuit court to the appropriate appellate court.
- G. CLOSURE.
- Representatives of the Sales and Use Tax Section, along with law enforcement personnel, will affix a business closure sign and close the business of a taxpayer upon the occurrence of any of the following:
1. Failure of a taxpayer served with a business closure order to pay the delinquent liability, enter into a payment agreement, or request an administrative hearing within five business days of the service of the notice;
 2. An administrative decision upholding business closure that is not appealed to the appellate court within twenty (20) calendar days of the decision; or
 3. A decision of the appellate court upholding business closure.

Source: Ark. Code Ann. §§ 26-18-1001 *et. seq.*

GR-90. WHOLESALERS TO FURNISH LIST OF RETAILERS: It shall be the duty of all persons, firms and corporations, and all business establishments of every kind, engaged in the wholesale business of selling merchandise in this State, to furnish in written form upon request of the Commissioner of Revenues of this State, the name or names of any retailer or retailers, or other persons to whom such sales have been made, together with the amount of such sales for any given period, to be used by the Commissioner or his agents, for the purposes of collecting tax as may be due this State.

Source: Ark. Code Ann. §§ 26-52-105

GR-91. LOCAL GROSS RECEIPTS TAXES: The collection and administration of a

gross receipts tax collected for any town, city, or county by the Commissioner of Revenues shall be collected and administered in accordance with these rules.

A. Single Transactions.

1. All local taxes shall be collected only on the first Twenty-five Hundred Dollars (\$2,500) of gross receipts on any single transaction. The term "single transaction" is defined by ordinance by each taxing jurisdiction. Because the definition of single transaction may vary from local taxing jurisdiction to jurisdiction, taxpayers should familiarize themselves with the definition of single transaction for those jurisdictions in which they operate. Appropriate local authorities should be contacted to obtain the single transaction definition for each jurisdiction. In a jurisdiction which has enacted more than one local tax by separate ordinances, the maximum tax limit shall apply to each tax.
2. Local ordinances often contain similar terms which are not defined. The following definitions will apply if the ordinance does not contain definitions:
 - a. "Single invoice" - Some ordinances define a single transaction as a single sale reflected on a single invoice, receipt or statement upon which sales tax has been reported and remitted. A single invoice is generally the invoice or billing statement sent by the seller to the customer from which the customer is expected to pay the seller.
 - b. Leases - Each periodic payment for a lease of tangible personal property is treated as a single transaction.
 - c. "Major equipment and machinery" - Some ordinances state that each unit of major equipment or machinery is treated as a single transaction. A unit of major equipment or machinery is a complete, fully functional unit capable of independently performing a given task or function.
Example: A computer system (CPU, monitor and keyboard) is a single unit of major equipment.

B. Determination of Taxable Sales:

1. Motor Vehicles and Trailers - The local sales tax levied by the city and county of the purchaser's residence shall be due on the sale of a motor vehicle or trailer.
2. Other Sales of Tangible Personal Property -
 - a. The local sales tax levied on sales of tangible personal property other than motor vehicles shall be at the rate of the city and county where the seller is located. The tax shall be applicable to sales to residents and nonresidents of the levying city and county unless the provisions of B(4) apply.
 - b. Determining Seller's Location.
 - (i) Multiple locations – A seller may have multiple locations within and without Arkansas. If an order for goods to be delivered to an Arkansas customer is placed through a seller's Arkansas office, the local tax applicable at that office will apply whether the goods are shipped from a second Arkansas location or from an out of state location. If an order for goods to be delivered to an Arkansas customer is placed through a seller's office located out of state, then –
 - (A) if the goods are shipped from an Arkansas location, the local tax applicable at the shipping location will apply.
 - (B) if the goods are shipped from an out of state location, the local tax applicable at the customer's location will apply.
 - (ii) Route sales – Some goods, such as water, coffee, tools and food, are sold

through regular route deliveries. A regular route delivery is one in which sales of particular items are ordered in advance of the delivery. Goods sold in this fashion are subject to local tax based on the location where the order was placed. Goods that are sold to customers off the truck without a previous order are subject to local tax based on the location of the customer.

3. Services - The local sales tax on services shall be at the rate imposed by the city and county where the services are performed. Local tax on repair parts or other tangible personal property sold as part of the taxable service is to be collected based on the location of the service work.

4. Exemptions –

(a) Local sales tax is not applicable to sales of tangible personal property to non-residents of the levying city and county if the sale is made for delivery to an address which is in a city or county that does not impose a local tax and (i) the sale is of property sold primarily through meter and route delivery, without regard to the manner by which the item was ordered, or (ii) the sale is of aviation fuel; distillate special fuel used for agricultural purposes; agricultural machinery; parts, repairs and supplies for agricultural machinery; water wells and well supplies; agricultural feed, seed and fertilizer; or agricultural chemicals. The actual sale and delivery must be documented by invoice. [See also GR-87(d).]

(b) "Meter and route delivery" means that the goods must be capable of being metered from the delivery vehicle into the customer's containers. Propane, butane and welding gases are examples of items which can be metered.

C. Direct Pay Permit Holders:

1. A direct pay permit holder that makes taxable purchases of tangible personal property shall report and pay local sales or use tax on those purchases. The local tax shall be calculated at the rate imposed by the city and county in which the property is first used, stored, consumed or distributed.

2. A direct pay permit holder that makes taxable purchases of services shall report and pay local sales tax on those purchases. The local tax shall be calculated at the rate imposed by the city and county in which the services are performed.

Source: Ark. Code Ann. §§ 26-74-212; 26-74-220; 26-74-320; 26-75-222; 26-75-319; 26-74-407; 26-74-412; 26-74-212; 26-75-216; 26-74-608

ARKANSAS COMPENSATING (USE) TAX RULES

UT-1. EFFECTIVE DATE: All rules previously promulgated by the Commissioner of Revenues for the purposes of enforcing or implementing Ark. Code Ann. § 26-53-101 *et. seq.* are hereby specifically repealed as of the effective date of these rules. These rules shall be effective from and after December 1, 2006.

Source: Ark. Code Ann. §§ 26-18-301; 26-53-104

UT-2. PURPOSE OF THE RULES: The following rules are promulgated to implement and clarify Ark. Code Ann. § 26-53-101 *et. seq.* All persons affected by the Compensating Tax Act are advised to first read the Arkansas Gross Receipts Act (Ark. Code Ann. § 26-52-101 *et. seq.*) and the rules promulgated by the Commissioner of Revenues pursuant thereto since the Gross Receipts Act and the Compensating Tax Act are complimentary legislative enactments and should be read together. The following rules are intended to clarify only those portions of the Arkansas Compensating Tax Act that are different from the Arkansas Gross Receipts Act and the rules promulgated thereto. When there is no conflict in the law or rules, then the Gross Receipts Rules shall control.

Source: Ark. Code Ann. §§ 26-18-301; 26-53-104

UT-3. DEFINITIONS: For the purposes of these rules, unless otherwise required by their context, the following definitions apply:

- A. The term "purchaser" means and includes any person who is the recipient for a valuable consideration of any sale of tangible personal property acquired for use, storage, consumption or distribution in this State.
- B. The term "sale" means any transfer, barter or exchange of the title or ownership of tangible personal property; or the right to use, store, consume or distribute the same for a consideration paid or to be paid, in installments or otherwise, and includes any transaction whether called leases, rentals, bailments, loans, conditional sales, or otherwise, notwithstanding that the title or possession of said property, or both, is retained for security. For the purpose of this rule the place of delivery of tangible personal property to the purchaser, user, storer, consumer or distributor shall be deemed to be the place of sale, whether such delivery is made by the vendor or by common carriers, private contractors, mails, express, agents, salesmen, solicitors, hawkers, representatives, consignees, peddlers, canvassers, or otherwise.
- C. The term "vendor" means and includes every person engaged in making sales of tangible personal property by mail order, by advertising, by agent; or by peddling tangible personal property, soliciting, or taking orders for sales of same, for storage, use, consumption or distribution in this State; and includes all salesmen, solicitors, hawkers, representatives, consignees, peddlers, or canvassers as agents of the dealers, distributors, consignors, supervisors, principals, or employers under whom they operate or from whom they obtain tangible personal property sold by them. Irrespective of whether persons are making sales on their own behalf or on behalf of others, or whether any formal agency relationship exists, such persons are regarded as vendors.

A person or enterprise that sells tangible personal property for storage, use, distribution, or consumption in Arkansas is a vendor for the purposes of these Rules when that person or enterprise has a physical presence in Arkansas either directly or through another person or enterprise to the full extent allowed by the United States Constitution art. I, § 8, cl. 3. A taxpayer who may be deemed a vendor under these Rules with respect to any sale shall be deemed a vendor for all sales of tangible personal property for

storage, use, distribution, or consumption in Arkansas regardless of the circumstances of any particular sale.

- D. The term "use" means and includes the exercise of any right or power over tangible personal property incidental to the ownership or control of that property, except that it shall not include the sale of that property in the regular course of business.
- E. The term "storage" means and includes any keeping or retention in this State of tangible personal property purchased from a vendor for any purpose, except sale or subsequent use solely outside this State. If a "use" of the property occurs in this State within the scope of paragraph D of this rule, the use tax will apply to the property even though the property is stored and subsequently used outside the State of Arkansas.
- F. The term "purchase" means the sale of tangible personal property by a "vendor" to a person for the purpose of storage, use, consumption or distribution in this State. Furthermore, for the purposes of this rule, the term "purchase" also includes any withdrawal of tangible personal property from a stock or reserve maintained out of the State by any person and subsequently brought into this State and thereafter stored, consumed, used or distributed by that person or by any other person, and in such event, the tax shall be computed on the value of such tangible personal property at the time it is brought into this State; provided, however, that no tax shall be computed to the extent that such withdrawal consists of carbonaceous materials such as petroleum, coke or carbon anodes which are to be directly used or consumed in the electrolytic reduction process of producing tangible personal property for ultimate sale at retail.
- G. The term "sales price" shall mean the consideration paid or given, or contracted to be paid or given, by the purchaser to the vendor for the article of tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and including any amount for which credit is given to the purchaser by the vendor, without any deduction therefrom on account of the costs of the property sold, the costs of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever; provided that cash discounts allowed and taken on sales shall not be included and "sales price" shall not include the amount charged for property returned by customers upon rescission of the contract of sales where the entire amount charged is refunded either in cash or credit or the amount charged for labor or services rendered in installing or applying the property sold, the use, storage, consumption or distribution of which is taxable. "Sales price" also includes any manufacturer's or dealer's rebates and Federal luxury excise tax. In addition, "sales price" shall not mean or include the federal manufacturer's excise taxes levied upon articles if such federal manufacturer's excise taxes are separately stated or separately billed. The term shall include, in addition to the consideration paid or given, or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article stored, used, consumed or distributed in this State.
- H. The term "consumption" shall mean a using up or wearing away of property which constitutes the final and ultimate employment of the property.
- I. The term "distribution" shall mean effectuating the delivery or deployment of tangible personal property in this state, either directly or indirectly, and encompasses a taxpayer's directing another to deliver to intended recipients property to which the taxpayer holds legal title. Promotional materials, such as catalogs, sent into this state via interstate mail are considered to be distributed for purposes of the use tax.

Source: Ark. Code Ann. § 26-53-102

UT-4. AMOUNT AND NATURE OF TAX: The tax levied by Ark. Code Ann. § 26-53-101

et. seq. is six percent (6%) of the sales price of tangible personal property purchased for storage, use, consumption or distribution in this State. The tax shall be collected from every person in this State for the privilege of storing, using, consuming or distributing any article of tangible personal property in this State. The tax will not apply with respect to the storage, use, consumption or distribution of any article of tangible personal property purchased, produced or manufactured outside this State until the transportation of such article has finally come to rest within this State or until such article has become co-mingled with the general mass of property of this State.

Source: Ark. Code Ann. § 26-53-106; 26-53-107

UT-5. COLLECTION OF TAX:

- A. Every vendor making a sale of tangible personal property directly or indirectly for the purpose of storage, use, consumption or distribution in this State shall collect the tax from the purchaser and give a receipt to the customer. The required amount of tax collected by the vendor from the purchaser shall be displayed separately on the document evidencing the sale. The tax shall be displayed either as a separate line item or included within the total sales price on the document evidencing the sale. If the tax is included within the total sales price the vendor shall state "Arkansas Tax Included" on the document evidencing the sale.
- B. Every vendor selling tangible personal property for storage, use, consumption or distribution in this State shall register with the Commissioner and give the names and addresses of all agents operating in this State and such other information as the Commissioner may require and shall furnish all agents with a statement to the effect that the agent's principal has been and is complying with the provisions of this Act.
- C. Irrespective of the foregoing rule, every person storing, using, consuming or distributing tangible personal property in this State which was purchased from a vendor shall be liable for the tax levied by Ark. Code Ann. § 26-53-101 *et. seq.* The liability shall not be extinguished until the tax has been paid to the State unless that person has a receipt from a vendor authorized by the Commissioner under such rules as the Commissioner may prescribe to collect the tax imposed hereunder. Such a receipt given to the purchaser, by a registered vendor, in accordance with the foregoing rule shall be sufficient to relieve the purchaser from liability for the tax to which such receipt may refer.

UT-6. RESERVED

UT-7. RETURN AND PAYMENT OF TAX: Every vendor selling tangible personal property for storage, use, consumption or distribution in this State shall on or before the twentieth (20th) day of each month file with the Commissioner a return for the preceding monthly period in such form as may be prescribed by the Commissioner. The form shall include the total combined sales price of all tangible personal property sold by the vendor during such preceding monthly period, the storage, use, consumption or distribution of which is subject to the use tax, and such other information as the Commissioner may deem necessary for the proper administration of this Act. The return shall be accompanied by remittance of the amount of tax required to be collected by the vendor during the period covered by the return. The return shall be signed by the vendor or his duly authorized agent.

Every person purchasing tangible personal property for storage, use, consumption or distribution in this State and who has not paid the tax due to a registered vendor, shall on or before the twentieth (20th) day of each month file with the Commissioner a return for the preceding monthly period in such form as may be prescribed by the Commissioner. The form shall include the total sales price of the tangible personal property purchased during such preceding monthly period and such other information as the Commissioner may deem necessary. The return shall be accompa-

nied by a remittance of the amount of tax required to be paid by the person purchasing such tangible personal property during the period covered by the return. Such return shall be signed by the person liable for the tax or his duly authorized agent.

Source: Ark. Code Ann. § 26-53-127

UT-8. RESERVED

UT-9. EXEMPTION: There is specifically exempted from the tax levied in Ark. Code Ann. § 26-53-101 *et. seq.* the following:

- A. All sales on which the Arkansas gross receipts tax is levied and all sales which are specifically exempted from taxation by Ark. Code Ann. § 26-52-101 *et. seq.*
- B. Aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property owned and leased by aircraft, airmotive or railroad companies brought into Arkansas solely and exclusively for (i) refurbishing, conversion or modification within Arkansas and is not used or intended for use in this State if such aircraft, aircraft equipment, and railroad parts, cars, and equipment or tangible personal property is removed from this State within sixty (60) days from the date of the completion of such refurbishing, conversion or modification or (ii) storage for use outside or inside Arkansas regardless of the length of time any such property is so stored in Arkansas. However, if any such property is subsequently initially used in Arkansas, the tax shall be applicable to the property so used in Arkansas. NOTE: This does not exempt from taxation any materials used in the refurbishing, conversion or modification of such property in Arkansas which are subject to the Arkansas Gross Receipts Act.
- C. The gross receipts or gross proceeds derived from the sale or lease of railroad rolling stock manufactured for use in transporting persons or property in interstate commerce are exempt from the tax.
 1. For purposes of this section, "railroad rolling stock" means completed railroad locomotives and railroad cars designed to haul either passengers or freight, and includes repair parts and materials used to repair railroad locomotives and railroad cars.
 2. Railroad rolling stock does not include machinery used to repair or maintain railroad cars, locomotives, track, railroad ties, or railroad roadway.
- D. The gross receipts or gross proceeds derived from the sale of parts or labor used in the repair and maintenance of railroad parts, railroad cars, and equipment owned or leased by railroad companies and carriers are exempt from the tax.

Source: Ark. Code Ann. § 26-53-112; 26-53-115; 26-53-130; 26-53-139

UT-10. CONTRACTORS SPECIAL RULES:

- A. Contractors are defined to be consumers of all tangible personal property, used, or consumed in the performance of a contract in this State, and of all tangible personal property stored for use or upon which the contractor may exercise any right or power, in this State.
- B. All tangible personal property which is procured from without the State for use, storage, consumption or distribution including machinery, equipment, repair or replacement parts, materials and supplies used, stored or consumed by a contractor in the performance of a contract in this State shall be subject to the Arkansas Compensating Tax on the purchase price or its market or book value (whichever is greater) unless such property has been subjected to prior use before coming to rest for use, storage or consumption within this State. Such tax shall be due and payable regardless of whether or not any right, title, or interest in the tangible personal property becomes vested in the contractor.
- C. In the case of leases or rentals of tangible personal property by a contractor for use,

storage, consumption or distribution in this State, the contractor shall report and remit the Arkansas Compensating Tax on the basis of rental or lease payments made to the lessor of such tangible personal property during the term of the lease or rental.

- D. The provisions shall not apply with respect to the use, consumption, storage or distribution of tangible personal property upon which a like tax equal to or greater than the amount imposed by Ark. Code Ann. § 26-53-101 *et. seq.* has been paid in another state, the proof of payment of such tax to be according to rules made by the Commissioner of Revenues. If the amount of tax paid in another state is not at least equal to or greater than the amount of Arkansas use tax, then the contractor shall pay to the Commissioner an amount sufficient to make the tax paid in the other state and this State equal to the total amount of tax due under Arkansas law. No credit shall be given under this section for taxes paid on such property in another state if that state does not grant credit for taxes paid on similar tangible personal property in this State.

Source: Ark. Code Ann. § 26-53-203

UT-11. LOCAL TAX: Towns, cities and counties have the authority under Arkansas law to levy use taxes. Some of these taxes are administered by the Commissioner. Vendors and purchasers should contact the Sales and Use Tax Section of the Revenue Division if they have a question as to whether they are within a jurisdiction which requires them to collect and remit a local tax. When the Commissioner is authorized or required to collect or administer a local use tax, that tax shall be administered in accordance with these rules. (See also GR-91.)

Source: Ark. Code Ann. § 26-74-201 *et. seq.*; 26-75-210 *et. seq.*

UT-12. SERVICES: The Arkansas compensating use tax shall not apply to services performed outside the state of Arkansas. The tax shall apply to any tangible personal property which is a part of the sale of services, including any parts or materials, if the property is subsequently brought into Arkansas for storage, use, distribution or consumption. A credit shall be allowed against the Arkansas tax for any lawfully imposed sales or use tax paid to the state where the services were performed or the property sold. If the sales invoice, bill of sale or other documents fail to separately state the charge for services and the charge for tangible personal property, the Arkansas tax will be due on the entire consideration for the sale.

Source: Ark. Code Ann. § 26-53-102

Richard A. Weiss, Director
Arkansas Department of Finance and
Administration

Tim Leathers, Deputy Director/
Commissioner of Revenue
Arkansas Department of Finance and
Administration

Date: November _____, 2006

Date: November _____, 2006