

Title 26. Taxation

Chapter I. Generally, Department of Finance and Administration

Subchapter B. Sales and Use Tax

Part 30. Gross Receipts Tax Rules, Compensating Use Tax Rules, and Special Excise Tax Rules

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"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: Rule 2006-9 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) is hereby specifically amended as of the effective date of these rules. These rules shall be effective from and after October 15, 2008."

Subpart 1. Gross Receipts Tax Rules — Generally

26 CAR § 30-101. Purpose.

(a) This part is promulgated to implement and clarify Title 26, Chapter 52 of the Arkansas Code.

(b) All persons affected by or relying upon this part are advised to read it in its entirety because the meaning of the provisions of one (1) rule may depend upon the provisions contained in another rule.

Authority. Arkansas Code § 26-52-105.

26 CAR § 30-102. Definitions.

For purposes of this part, unless otherwise required by their context, the following definitions apply:

(1)(A) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, in which the products are:

- (i) Otherwise distinct and identifiable; and
- (ii) Sold for one (1) nonitemized price.

(B)(i) "Bundled transaction" does not include the sale of any product in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

- (ii) See 26 CAR §§ 30-302 and 30-1226;

(2)(A) "Commissioner" means and refers to the Commissioner of Revenue of the State of Arkansas, or any of his or her duly authorized agents.

(B) For purposes of this part, the terms "commissioner" and "secretary" may be used interchangeably;

(3)(A) "Consumer" is synonymous with "user", "customer", or "purchaser" and means the person to whom:

- (i) A taxable sale is made; or
- (ii) Taxable services are furnished.

(B) Contractors are deemed to be the consumers of all tangible personal property or taxable services purchased by them in the performance of a contract.

(C) See the definition of "contractor" in this section.

(D) Also, see 26 CAR § 30-519 regarding the purchase of materials by contractors performing taxable services;

(4)(A) "Contractor" means 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.

(B)(i) Persons who construct items of tangible personal property are not

contractors.

(ii) See 26 CAR § 30-1003;

(5)(A) "Department" means and refers to the Department of Finance and Administration and its agents.

(B) For purposes of this part, the terms "department" and "DFA" may be used interchangeably;

(6)(A) "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 that 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:

(i) Point of acceptance of the order;

(ii) Point of payment; or

(iii) Any other condition.

(B) Doing business, as set out herein, is equally applicable to sellers of services that are subject to the gross receipts tax;

(7) "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;

(8)(A) "Gross receipts" or "gross proceeds" is synonymous with "sales price" and means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise.

(B) Sales price includes consideration received by the seller from third parties as follows:

(i) The seller actually receives the consideration from a party other than the purchaser and the consideration is directly related to a price reduction or

discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One (1) of the following criteria is met:

(a) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(b) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

(c)(1) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(2) See 26 CAR § 30-901.

(C) The following cannot be deducted from the sales price:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;

(iv) Delivery charge;

(v) The value of exempt tangible personal property given to the purchaser, if taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise (see the

definition of "bundled transaction" in this section and 26 CAR § 30-1226 for the treatment of bundled transactions); and

(vi) Credit for any trade-in unless specifically provided by law.

(D) A separately stated installation charge is not part of the sales price and not taxable unless it is a specifically taxable service.

(E) Sales price does not include the following:

(i) A discount including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(9)(A) "Machine" means any device consisting of two (2) 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.

(B) 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.

(C) Hand tools are not machinery.

(D) See 26 CAR § 30-1136(f);

(10)(A) "Person" means any:

(i) Individual;

(ii) Partnership;

(iii) Limited liability company;

(iv) Limited liability partnership;

(v) Corporation;

- (vi) Estate;
- (vii) Trust;
- (viii) Fiduciary; or
- (ix) Other legal entity.

(B) Person includes the state and any county, city, municipality, school district, or any other political subdivision or combination acting as a unit, in the plural or singular number;

(11)(A) "Prepared food" means food:

- (i) Sold in a heated state or heated by the seller;
- (ii) Consisting of two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or
- (iii) Sold with an eating utensil provided by the seller.

(B) Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent food-borne illnesses as recommended by the United States Food and Drug Administration;

(12) "Retail permit" means and refers to the sales tax permit as required by Arkansas Code § 26-52-201;

(13)(A)(i) "Sale" means any transaction resulting in the transfer of either the title or possession, for a valuable consideration, of tangible personal property or taxable services regardless of the manner, method, instrumentality, or device by which such transfer is accomplished.

(ii) Sale includes the exchange, barter, lease, or rental of tangible personal property or taxable services, or the sale, exchanging, or other disposition of admissions, dues, or fees to clubs, places of amusement, or recreational or athletic events or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(B) Sale does not include the transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(C)(i) In the case of leases or rentals of tangible personal property, including motor vehicles and trailers, for less than thirty (30) days, 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 regardless of whether Arkansas gross receipts or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii) In the case of leases or rentals of tangible personal property, including motor vehicles and trailers, for thirty (30) days or more, 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 unless Arkansas gross receipts or compensating use tax was paid at the time of purchase of the tangible personal property.

(iii) See 26 CAR § 30-1002.

(D) A financing arrangement that 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 use tax has been paid on the purchase price of the tangible personal property by one (1) of the parties to the financing arrangement;

(14) "Sales price": See 26 CAR § 30-102(8);

(15) "Sales tax" and "gross receipts tax" are synonymous and mean the tax imposed by the Arkansas Gross Receipts Act of 1941, Arkansas Code § 26-52-101 et seq.;

(16) "Seller" is synonymous with "vendor" and means every person making a sale, lease, or rental of tangible personal property or taxable services;

(17)(A) "Tangible personal property" means personal property that may be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses.

(B) Tangible personal property includes:

(i) Electricity;

(ii) Water;

- (iii) Gas;
- (iv) Steam; and
- (v) Prewritten computer software;

(18) "Taxpayer" means any person 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; and

(19) "Transportation equipment" means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(B) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds (10,001 lbs.) or greater, trailers, semitrailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(C) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(D) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (19)(A) – (C) of this section.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-103; 26-52-317; 26-52-521"

26 CAR § 30-103. Amount and nature of tax.

(a) Gross receipts tax.

(1) The state 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, certain services, and admission fees upon which tax is imposed.

(2) Manufacturing utilities.

(A) As of July 1, 2008, the state tax rate on sales of natural gas or electricity to a manufacturer for use directly in the manufacturing process is four percent (4%) of the gross receipts or gross proceeds derived from the sale.

(B) From July 1, 2007, through June 30, 2008, the state tax rate on sales of natural gas or electricity to a manufacturer for use directly in the manufacturing process was four and one-half percent (4 ½%) of the gross receipts or gross proceeds derived from the sale.

(C) See 26 CAR pt. 32.

(3) Food and food ingredients.

(A) As of July 1, 2007, the state tax rate on sales of food and food ingredients is three percent (3%) of the gross receipts or gross proceeds derived from the sale.

(B) See 26 CAR pt. 31.

(b) Special excise taxes.

(1)(A) The short-term rental tax levied pursuant to Arkansas Code § 26-63-301 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 the tourism tax.

(B) The tax is in addition to any state or local sales or use taxes due on the rental.

(C) See 26 CAR §§ 30-1002 and 30-1404.

(2)(A) The rental vehicle tax levied pursuant to Arkansas Code § 26-63-302 is equal to ten percent (10%) of the gross receipts or gross proceeds derived from the short-term rental of a motor vehicle required to be licensed, 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.

(B) The tax is in addition to any state or local sales or use taxes due on the rental.

(C) See 26 CAR §§ 30-701, 30-1002, and 30-1405.

(3)(A) The long-term rental vehicle tax levied pursuant to Arkansas Code § 26-63-304 is one and one-half percent (1 1/2%) of the gross receipts or gross proceeds derived from the long-term rental of motor vehicles required to be licensed.

(B) The tax is applicable only if sales or use tax was not paid on the vehicle at the time of registration.

(C) The tax does not apply to:

- (i) Trucks rented or leased for residential moving or shipping;
- (ii) Diesel trucks rented or leased for commercial shipping; or
- (iii) Farm equipment or machinery rented or leased for a commercial purpose.

(D) The tax is in addition to any state or local sales or use taxes due on the rental.

(E) See 26 CAR §§ 30-701, 30-1002, and 30-1406.

(4)(A) The commercial/residential moving tax levied pursuant to Arkansas Code § 26-63-303 is four and one-half percent (4 1/2%) 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.

(B) 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.

(C) The tax is in addition to any state or local sales or use taxes due on the rental.

(D) See 26 CAR § 30-1403.

(5)(A) The tourism tax levied pursuant to Arkansas Code § 26-63-401 et seq., is two percent (2%) of the gross receipts or gross proceeds derived from certain sales

and services, including:

- (i) Furnishing various lodgings to transient guests;
- (ii) Camping fees at campgrounds;
- (iii) Rentals of various watercraft and related equipment; and
- (iv) Admission prices to tourist attractions.

(B) The tax is in addition to any state or local sales or use taxes due on the rental.

(C) See 26 CAR § 30-1407.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-301; 26-52-302"

Subpart 2. Gross Receipts Tax Rules — Tax Imposed Upon Sale and Not Property

26 CAR § 30-201. Tax imposed upon sale and not property — Interstate and intrastate sales.

(a)(1) The Arkansas gross receipts tax is a tax imposed on the sale of tangible personal property and not the property itself.

(2) Thus, when a sale of tangible personal property occurs in Arkansas:

- (A) A taxable event has occurred; and
- (B) 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.

(2) If an out-of-state consumer orders goods from an Arkansas seller and picks up the tangible personal property in Arkansas in the purchaser's own conveyance, then the sale is intrastate and gross receipts tax must be collected and remitted.

(3) Gross receipts tax applies to tangible personal property delivered in Arkansas even though the buyer intends to transport the tangible personal property out of Arkansas.

(c) Interstate sales.

(1) **Delivery from Arkansas.** When tangible personal property is sold by a seller that is engaged in an established business, or sells in an established manner within Arkansas, and the contract of sale or order requires the seller to deliver the property by common carrier, contract carrier, United States Postal Service, or in the seller's own conveyance to a point outside Arkansas for consumption or use, the transaction is interstate and not subject to Arkansas gross receipts tax.

(2) Delivery into Arkansas.

(A) If tangible personal property is purchased for use or consumption in Arkansas from a seller in another state and delivery is made in Arkansas, then such sale is subject to Arkansas compensating use tax.

(B) The out-of-state seller may be required to collect Arkansas tax.

(C) If the out-of-state seller does not collect Arkansas tax, it becomes the responsibility of the Arkansas customer to remit compensating use tax directly to the Department of Finance and Administration.

(D) The Arkansas customer will be given credit for tax legally paid on the item in another state pursuant to Arkansas Code §§ 26-5-101 and 26-53-131.

(E) See Arkansas Code § 26-53-101 et seq., and 26 CAR § 30-1311.

(d) Drop shipments.

(1)(A) A drop shipment is a sales transaction involving three (3) parties:

(i) Two (2) sellers; and

(ii) One (1) consumer.

(B) The first seller sells property to the second seller, who sells to the consumer.

(C) However, the first seller delivers the property directly to the consumer.

(2)(A) The taxability of drop shipments depends on the location of the second seller and the consumer.

(B) 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 1: 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. Since Company B is making a sale to an Arkansas customer, Company B may be required to collect Arkansas tax. If Company B does not collect Arkansas tax, then the Arkansas customer is responsible for reporting and remitting Arkansas compensating use tax. See Arkansas Code § 26-53-101 et seq., and the Arkansas Compensating Use Tax rules, 26 CAR § 30-1301 et seq.

Example 2: An Arkansas retailer, Company A, sells tangible personal property to a company located outside of Arkansas, Company B. Company A ships the tangible personal property directly to Company B's Arkansas customer. If Company B claims the sale-for-resale exemption, then the tax obligation is between Company B and the

Arkansas customer. Company B may be required to collect Arkansas tax. If Company B does not collect Arkansas tax, then the Arkansas customer is responsible for reporting and remitting Arkansas compensating use tax. See Arkansas Code § 26-53-101 et seq., and the Arkansas Compensating Use Tax rules, 26 CAR § 30-1301 et seq.

(e) **Services.**

(1) **Services performed in Arkansas.**

(A) When taxable services are performed in Arkansas and the customer takes receipt of the service in Arkansas, the transaction is subject to Arkansas gross receipts tax.

(B) However, if taxable services are performed in Arkansas, but the customer takes receipt of the service outside of Arkansas, then no Arkansas gross receipts tax is due.

Example: XYZ is a business located in West Memphis, Arkansas, that repairs automobile motors. After repairing the motor, XYZ ships the motor by common carrier to Nashville, Tennessee. Since the customer took receipt of the service in Nashville, Tennessee, XYZ will not collect Arkansas tax.

(2) **Services performed outside of Arkansas.**

(A) If a taxable service is purchased for use or consumption in Arkansas from a seller in another state, then such sale is subject to Arkansas compensating use tax.

(B) The out-of-state seller may be required to collect Arkansas tax.

(C) If the out-of-state seller does not collect Arkansas tax, then the Arkansas customer is responsible for reporting and remitting Arkansas compensating use tax.

(D) The Arkansas customer will be given credit for tax legally paid for the

service in another state pursuant to Arkansas Code §§ 26-5-101 and 26-53-131.

(E) See Arkansas Code § 26-53-101 et seq., and 26 CAR § 30-1311.

Example: XYZ ships office equipment out of state for repairs. Following the repair, the office equipment is returned to XYZ in Arkansas. Office equipment repairs are subject to tax in Arkansas. Tax is due on the parts, labor, and delivery charged based on where the repaired item is delivered within Arkansas.

(f) **Engaged in an established business.** A person is 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.

(g) **Delivery.** Delivery in Arkansas means that physical possession of the tangible personal property is actually transferred to the buyer within Arkansas, or that the tangible personal property is placed in the mail or given to a common or contract carrier at a point outside this state and directed to the buyer in Arkansas.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

Subpart 3. Gross Receipts Tax Rules — Services Subject to Tax

26 CAR § 30-301. Services subject to tax — Utilities — Public services.

(a)(1) 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.

(2) The tax should be collected and remitted by the seller of such services.

(3) See also 26 CAR § 30-1107.

(b) Low-income residential utility customer tax exemption.

(1) **Definitions.** As used in this section:

(A) "Electric utility" means any:

(i) Electric utility;

(ii) Cooperative corporation created or existing under the authority of

Arkansas Code § 23-18-301 et seq.; or

(iii) Municipally owned electric utility;

(B) "Household" means an individual and, if applicable, his or her spouse;

(C) "Household income" means the combined income received by members of a household during a calendar year; and

(D)(i) "Income" means gross income less deductions allowed by law for expenses.

(ii) It shall also include:

(a) Alimony;

(b) Support money;

(c) Cash public assistance and relief;

(d) 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);

(e) All dividends and interest from whatever source derived not included in gross income;

(f) Workers' compensation; and

(g) The gross amount of "loss of time insurance".

(iii) 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.

(iv) 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.

(2)(A) The sale of the first five hundred (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 gross receipts tax and all other state excise taxes that 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 gross receipts tax and all other state excise taxes that 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)(A) 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 Revenue.

(B) 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).

(C) Once the exemption is claimed, no further application is required.

(D) The exemption continues from year to year until the customer becomes disqualified.

(5)(A) A customer becomes disqualified for the exemption when the customer's household income for a calendar year exceeds twelve thousand dollars (\$12,000).

(B) 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).

(C) 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.

(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)(A) The claim forms may be obtained directly from the commissioner upon request, and supplies of the forms will also be furnished to the electric utility companies.

(B) 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 that it submits to the 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)(A) 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 secretary.

(B) Such records shall be:

(i) Preserved for a period of three (3) years; and

(ii) Open to examination by the commissioner at any reasonable time.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-302. Services subject to tax — Telephone communications and related services.

(a) **Definitions.** As used in this section:

(1) "Ancillary service" means a service that is associated with or incidental to the provision of "telecommunications services", including without limitation:

- (A) Detailed telecommunications billing;
- (B) Directory assistance;
- (C) Vertical service; and
- (D) Voicemail services;

(2)(A) "Conference bridging service" means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number.

(B) "Conference bridging service" does not include the telecommunications service used to reach the conference bridge;

(3) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(4) "Directory assistance" means an ancillary service of providing telephone number or address information;

(5) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points;

(6) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider;

(7)(A) "Paging service" means a telecommunications service that provides

transmission of coded radio signals for the purpose of activating specific pagers.

(B) Such transmissions may include messages or sounds;

(8)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.

(B) Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

(C) Telecommunications services include, but are not limited to:

- (i) Fixed wireless service;
- (ii) Mobile wireless service;
- (iii) Paging service; and
- (iv) Value-added nonvoice data service.

(D) Telecommunications service does not include the following:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including but not limited to directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii)(a) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider.

(b) Radio and television audio and video programming services

include, but are not limited to:

(1) Cable service as defined in 47 U.S.C. § 522(6), as in effect on January 1, 2007; and

(2) Audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3, as in effect on January 1, 2007;

(viii) Ancillary services; or

(ix) A digital product delivered electronically, including but not limited

to:

(a) Software;

(b) Music;

(c) Video;

(d) Reading material; or

(e) A ring tone;

(9) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing;

(10) "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(11)(A) "Voicemail service" means an ancillary service that enables the customer to store, send, or receive recorded messages.

(B) Voicemail service does not include any vertical services that the customer may be required to have in order to use the voicemail service.

(b) Bundled transactions.

(1)(A) A bundled transaction is the retail sale of two (2) or more products, except real property and services to real property, where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price.

(B) See 26 CAR § 30-1226.

(2) In the case of a bundled transaction that includes a telecommunications service, ancillary service, internet access, or audio or video programming service the following rules will apply:

(A)(i) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products is also subject to tax unless the provider can identify, by reasonable and verifiable standards, the portion of the products that are nontaxable from its books and records.

(ii) The books and records must be kept in the regular course of business, and include books and records used for nontax purposes.

(iii) Books and records include, but are not limited to:

(a) Financial statements;

(b) General ledgers;

(c) Invoicing and billing systems and reports; and

(d) Reports for regulatory tariffs or other regulatory matters;

(B)(i) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the highest tax rate unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to the lower tax rate from its books and records.

(ii) The books and records must be kept in the regular course of business, and include books and records used for nontax purposes.

(iii) Books and records include, but are not limited to:

(a) Financial statements;

(b) General ledgers;

(c) Invoicing and billing systems and reports; and

(d) Reports for regulatory tariffs or other regulatory matters; and

(C) The provisions of this section shall apply unless superseded by federal law.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-315"

Subpart 4. Gross Receipts Tax Rules — Fax Transmissions, Prepaid Calling Services

26 CAR § 30-401. Facsimile (fax) transmissions.

(a)(1) The gross receipts or gross proceeds derived from charges for the receipt and delivery of incoming facsimiles are not subject to gross receipts tax.

(2) Charges for the receipt and delivery of a facsimile are separate and distinct from the telecommunications service used in transmitting a facsimile.

(b)(1) The paper on which the fax is received is an item of tangible personal property that is deemed incidental to the telephone transmission of the message.

(2) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-315"

26 CAR § 30-402. Prepaid calling service and prepaid wireless calling service.

(a) Sales of a prepaid calling service, a prepaid wireless calling service, or the

recharge of a prepaid calling service or a prepaid wireless calling service are subject to gross receipts tax.

(b) **Definitions.** As used in this section:

(1) "Prepaid calling service" means the right to access exclusively a telecommunications service that:

(A) Must be paid for in advance;

(B) Enables the origination of calls using an access number or authorization code, whether manually or electronically dialed; and

(C) Is sold in predetermined units or dollars of which the number declines with use in a known amount;

(2) "Prepaid telephone calling card" or "prepaid authorization number" mean the exclusive purchase of telephone or telecommunications services, paid for in advance, that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed;

(3) "Prepaid wireless calling service" means a telecommunications service that:

(A) Provides the right to utilize a mobile wireless service as well as other nontelecommunications services, including the download of a digital product delivered electronically, content, and ancillary services;

(B) Must be paid for in advance; and

(C) Is sold in predetermined units of dollars of which the number declines with use in a known amount; and

(4) "Recharge" means the purchase of additional telephone or telecommunications services for a previously purchased prepaid calling service or prepaid wireless calling service.

(c) **Sourcing.**

(1) If the sale or recharge of a prepaid calling service or a prepaid wireless calling service takes place at the retail vendor's place of business, then the sale is sourced to that business location and the applicable local sales tax rate is that of the business location.

(2)(A) If the sale or recharge of a prepaid calling service or a prepaid wireless

calling service does not take place at the retail vendor's place of business, then the sale is sourced to the first of the following addresses that is known to the seller in accordance with Arkansas Code § 26-52-521(b):

(i) The location indicated by instructions for delivery to the purchaser (or donee);

(ii) The address of the purchaser;

(iii) The billing address of the purchaser; or

(iv) The address from which the tangible personal property was shipped or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(B) In the case of a sale of prepaid wireless calling service, the location associated with the mobile telephone number may be used.

(3) A prepaid calling service or a prepaid wireless calling service sold through a vending device is taxed as any other good sold through a vending device.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

Subpart 5. Gross Receipts Tax Rules — Services Subject to Tax

26 CAR § 30-501. 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)(1) "Transient guests" are defined as those who rent accommodations other than their regular place of abode on less than a month-to-month basis.

(2) "Month to month" means a rental that satisfies the following criteria:

(A) Rental payments are due in monthly installments for a monthly rental period;

(B) Thirty-day notice of termination is required for either party to terminate the lease; and

(C) The obligation of the renter to pay the monthly rental is unaffected by the renter's decision to leave the accommodations before the end of the monthly period (i.e., the entire month's rent is owed regardless of the renter staying at the accommodations the entire month).

(3) A rental shall not be considered "month to month" if any of the following criteria are present in the rental arrangement:

(A) The renter can terminate the stay without notice and obligation to pay ceases upon termination of the stay; or

(B) The rental payment obligations accrue on daily or weekly increments regardless of the billing frequency.

Example 1: Renter A rents a room from a hotel for a six-month period. Renter A owes the monthly rental payment for the entire month at the beginning of each month. Renter A shall give a thirty-day notice if A wants to terminate the rental prior to the end of the six (6) months. Renter A is not a transient guest and the rental is not taxable.

Example 2: Renter B pays daily. Renter B occupies the rented accommodations for a period of thirty-four (34) days. Renter B does not pay and is not obligated for the payment of days other than the thirty-four (34) days of occupation of the accommodations. Renter B is a transient guest, and tax should be collected on the daily charges.

Example 3: Renter C is staying at the accommodations indefinitely. Renter C pays the bill at the conclusion of each month. Renter C's bill accrues daily charges. Renter C can leave the accommodations at any time. Renter C is a transient guest and tax should be collected on the entire term of the rental even though Renter C occupied the accommodations for longer than thirty (30) days.

Example 4: Renter D company has a contract calling for the rental of a certain number of rooms on an annual basis. Different people stay in the rooms each night, and different rooms within the hotel are used for this purpose. The company is not a transient guest, and tax is not required to be collected on the rental charges.

(c)(1) 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.

(2) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-502. Services subject to tax — Taxable services.

(a) **Services.**

(1)(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:

- (i) Motor vehicles;
- (ii) Aircraft;
- (iii) Farm machinery and farm implements;
- (iv) Motors of all kinds;
- (v) Tires;
- (vi) Batteries;
- (vii) Boats;
- (viii) Electrical appliances;
- (ix) Electrical devices;
- (x) Furniture;
- (xi) Rugs, including carpets;
- (xii) Flooring;
- (xiii) Upholstery;
- (xiv) Household appliances;
- (xv) Television and radio;
- (xvi) Jewelry;
- (xvii) Watches;
- (xviii) Clocks;
- (xix) Engineering instruments;
- (xx) Medical instruments and surgical instruments;
- (xxi) Machinery of all kinds;
- (xxii) Bicycles;
- (xxiii) Office machines;
- (xxiv) Office equipment;
- (xxv) Shoes;
- (xxvi) Tin and sheet metal;
- (xxvii) Mechanical tools; and

(xxviii) Shop equipment.

(B) See also 26 CAR §§ 30-519, 30-1103, 30-1115, and 30-1141.

(2) The tax applies to the enumerated services performed on the items listed in 26 CAR § 30-502(a)(1) whether or not the items are affixed to real property.

(b) **Additional services.** Additional services subject to gross receipts tax include:

(1) Service of providing transportation or delivery of money, property, or valuables by armored car;

(2) Service of pool cleaning and servicing;

(3) Pager services;

(4) Telephone answering services;

(5) Service of parking a motor vehicle or allowing a motor vehicle to be parked;

(6) Service of storing a motor vehicle;

(7) Service of storing furs;

(8) Service of providing indoor tanning at a tanning salon;

(9) Lawn care and landscaping services (see 26 CAR § 30-504);

(10) Service of providing cleaning or janitorial work (see 26 CAR § 30-506);

(11) Wrecker and towing services (see 26 CAR § 30-507);

(12) Collection and disposal of solid wastes (see 26 CAR § 30-508);

(13) Cleaning of parking lots and gutters (see 26 CAR § 30-509);

(14) Dry cleaning and laundry services and industrial laundry services (see 26 CAR § 30-510);

(15) Mini-warehouse and self-storage rental services (see 26 CAR § 30-511);

(16) Body piercing, tattooing, and electrolysis services (see 26 CAR § 30-512);

(17) Pest control services (see 26 CAR § 30-513);

(18) Security and alarm monitoring services (see 26 CAR § 30-514);

(19) Boat storage and docking fees (see 26 CAR § 30-515);

(20) Furnishing of camping spaces or trailer spaces at public or private campgrounds (see 26 CAR § 30-516);

(21) Locksmith services (see 26 CAR § 30-517); and

(22) Pet grooming and kennel services (see 26 CAR § 30-518).

(c) **Dues and fees.** Dues and fees paid to health spas, health clubs, and fitness clubs are subject to gross receipts tax.

(d) **Service contracts, maintenance agreements, and extended warranties.**

(1)(A) Sales tax shall apply to the gross receipts derived from the sale of contracts, including service contracts, maintenance agreements, and extended warranties that in whole or in part provide for the future performance of or payment for services that 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.

(B) 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.

Example 1: Consumer purchases a new vehicle and an extended warranty at the same time. When customer registers the vehicle, he or she 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.

Example 2: 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.

Example 3: 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 estate 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.

(3) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-503. Services subject to tax — Television, radio, and video.

(a)(1) 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.

(2) 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)(1) 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.

(2) The federal preemption of the collection of local tax on this service does not apply to state tax.

(3) A provider of direct-to-home satellite service is required to collect and remit state sales tax on the service.

(d)(1) 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.

(2) Receipt or access to video images solely through the use of an internet service provider is not a taxable service.

(3) Examples of taxable video services include the following:

(A) Receipt of business, financial, or sports news through a satellite or modem; and

(B) Receipt of video programming through Direct TV or other similar satellite network.

(4) Examples of nontaxable services include the following:

(A) Retrieving information from a database through a satellite network for a fee; and

(B)(i) Radio services include the transmission of AM, FM, or other frequency audio broadcasts by radio waves.

(ii) Radio services do not include the transmission of messages by radio waves over frequencies not available to the public.

(iii) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "AM" means amplitude modulation.

"FM" means frequency modulation.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-504. Services subject to tax — Lawn care and landscaping.

(a)(1) 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.

(2) The business is required to obtain a sales tax permit.

(3) All materials that remain in or on the customer's property should be purchased tax exempt as a sale for resale.

(4) Examples are:

- (A) Fertilizer;
- (B) Weed killer;
- (C) Grass seed;
- (D) Sod;
- (E) Plants;
- (F) Trees; or
- (G) Shrubs.

(5) Materials used or consumed by the business may not be purchased exempt.

(6) Examples are gasoline, oil, cleaning materials, uniforms, tools, mowers, or

other equipment used or consumed by the business.

(b)(1) 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.

(2) 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.

(3) A business that 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) **Definitions.** As used in this section:

(1)(A) "Landscaping" means the installation, preservation, or enhancement of ground covering by planting:

- (i) Trees;
- (ii) Bushes;
- (iii) Shrubbery;
- (iv) Grass;
- (v) Flowers; and
- (vi) Other types of decorative plants.

(B) "Landscaping" does not include:

- (i) Site preparation;
- (ii) Cutting and filling;
- (iii) Leveling;
- (iv) Tree trimming or tree removal; or
- (v) Clearing a site of bushes and trees.

(C) "Landscaping" does include sodding, seeding, and planting, as well as installing items such as:

- (i) Landscape timbers;
- (ii) Edging;

- (iii) Planters; or
- (iv) Similar items.

(D) Landscaping performed on highway easements and right-of-ways is taxable.

(E) Landscaping is taxable whether it is done for decorative purposes or nondecorative purposes such as erosion or sediment control;

(2)(A) "Lawn care" means the maintenance, preservation, or enhancement of ground covering of nonresidential property and does not include planting:

- (i) Trees;
- (ii) Bushes;
- (iii) Shrubbery;
- (iv) Grass;
- (v) Flowers; and
- (vi) Other types of decorative plants.

(B) "Lawn care" includes the following:

- (i) Mowing or raking the yard;
- (ii) Chemical spraying;
- (iii) Fertilizing;
- (iv) Weed control or weed-eating;
- (v) 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
- (vi) General lawn maintenance.

(C) Tree trimming or tree removal is not lawn care; and

(3)(A) "Residential" means a single-family residence used solely as the principal place of residence of the owner or occupant.

(B) Apartment buildings, condominiums, and duplexes are nonresidential property for purposes of this exemption.

(C) A single-family dwelling leased to the occupant is residential property for purposes of this exemption.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-505. 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)(A) 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.

(B) The person for whom the services are performed must bear the risk of loss; and

(3)(A) The employer controls the temporary or leased employee or contract laborer as if he or she were a full-time permanent employee.

(B) The term "control" includes, but is not limited to:

(i) Scheduling work hours;

(ii) Designating work duties; and

(iii) Directing work performance.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of

Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-506. Services subject to tax — Cleaning.

(a)(1)(A) Gross receipts tax applies to the service of providing cleaning or janitorial work.

(B) Arkansas Code § 26-52-301(3)(D)(i).

(2) For purposes of this section, cleaning services are defined as services to rid the interior or exterior of any building, dwelling, or other structure of:

(A) Dirt;

(B) Impurities; or

(C) Extraneous matter.

(3) 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.

(4) However, see 26 CAR § 30-509 regarding the taxable service of cleaning parking lots and gutters.

(b)(1) 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.

(2) Arkansas Code § 26-52-301(3)(B)(i).

(c)(1) The service of pool cleaning and servicing is subject to tax.

(2) Arkansas Code § 26-52-301(3)(D)(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 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)(1) Items that are used or consumed in performing cleaning or janitorial services may not be purchased tax exempt.

(2) This includes, but is not limited to:

- (A) Uniforms;
- (B) Machines;
- (C) Equipment;
- (D) Cleansers;
- (E) Disinfectants;
- (F) Wax;
- (G) Rags;
- (H) Mops;
- (I) Brooms; and
- (J) Sponges.

(3) Such items are subject to state and local gross receipts or use tax when

purchased for use by the service provider.

(4) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-507. Services subject to tax — Wrecker and towing services.

(a)(1) The gross proceeds or gross receipts derived from wrecker and towing services are subject to state and local gross receipts taxes.

(2) The gross proceeds or gross receipts derived from wrecker and towing services include mileage fees and towing charges.

(b) **Definitions.** As used in this section:

(1) "Motor vehicle" means every vehicle subject to registration for use on the public roads and highways;

(2) "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;

(3) "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;

(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; and

(5)(A) "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 nonoperable:

- (i) Motor vehicle;
- (ii) Vehicle;
- (iii) Trailer; or
- (iv) Semitrailer.

(B) 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.

(C) Wrecker and towing services do 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.

(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; and

(2) 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.

Example 1: 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 City of Little Rock sales tax, and the Pulaski County sales tax apply.

Example 2: J.T.'s car breaks down in Fort Smith, Arkansas.

J.T. hires a towing service to tow the car into Oklahoma for repairs. Arkansas state and local sales tax does not apply.

Example 3: J.T.'s car breaks down in Oklahoma, and J.T. hires a towing service to tow the car into Fort Smith, Arkansas, for repairs. Since J.T.'s car was delivered to a destination in Arkansas, the Arkansas state sales tax, the City of Fort Smith sales tax, and the Sebastian County sales tax should apply.

Example 4: 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 City of Little Rock sales tax, and the Pulaski County sales tax apply.

(d) **Persons responsible for collecting and remitting the tax.**

(1) The tax shall be collected and remitted by the seller of the wrecker or towing services.

(2) 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.**

(1) 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.

(2) The charge for an automobile club contract or insurance policy that provides for towing is not subject to tax.

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

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-508. Services subject to tax — Collection and disposal of solid waste.

(a)(1) The gross proceeds or gross receipts derived from the collection and disposal of solid waste are subject to state and local gross receipts taxes.

(2) 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.

(3) Fees paid by a service provider to the state, a city, county, or other governmental subdivision that are passed on to the customer are part of the gross receipts for the collection and disposal of solid waste.

(b) **Definitions.** As used in this section:

(1)(A) "Disposal" means the final disposition of solid waste by means of:

- (i) Landfilling;
- (ii) Incinerating;
- (iii) Composting;
- (iv) Dumping;
- (v) Abandoning; or
- (vi) Other similar method.

(B)(i) For purposes of this section, solid waste disposal does not include the management of hazardous waste in accordance with the provisions of the Arkansas Hazardous Waste Management Act of 1979, Arkansas Code § 8-7-201 et seq.

(ii) Hazardous waste management includes the incineration of solid waste that has become commingled with hazardous waste as part of the treatment of hazardous waste;

(2) "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; and

(3)(A) "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.

(B) Solid waste includes yard waste.

(C) Solid waste does not include solid or dissolved materials in domestic sewage, or low-level radioactive waste as defined by the Central Interstate Low-Level Radioactive Waste Compact codified at Arkansas Code § 8-8-201 et seq.

(D) Solid waste does not include recyclable material as defined in Arkansas Code §§ 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.

(E) 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.

(F) Solid waste shall not include waste tires.

(c) Exemptions from tax.

(1) Sewer services are not subject to the tax.

(2) Septic tank cleaning is not subject to the tax.

(d) Persons responsible for collecting and remitting the tax.

(1)(A) The tax shall be collected and remitted by the seller of the collection or disposal services.

(B) 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) A fee collected by a city, county, or town from its residents for the collection and disposal of solid waste is subject to tax.

(B) The disposal fees paid by the city or county to the landfill or other disposal site are exempt as a sale for resale, provided the city, town, or county collects

and remits the applicable tax to the state.

(C) 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 (\$15.00) per month from its residents for collection and disposal of solid waste. City X should collect tax from its residents on the fifteen-dollar 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 dollars (\$15.00) 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 fee. City X should not pay tax on the fee of twelve dollars and fifty cents (\$12.50) paid to Contractor. Contractor should not pay tax on the disposal fee paid to the landfill.

(3)(A) 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.

(B) 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 the 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 fee of twelve dollars and fifty cents (\$12.50) paid to the Contractor. The disposal fees at the landfill are exempt as a sale for resale.

(e) **Local taxes.** 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.

Example 1: 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 City of 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.

Example 2: 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).

(f) **Multistate transactions.** Collection and disposal services that cross state lines should be treated as follows:

(1) **Collection in Arkansas.**

(A) When waste collection occurs in Arkansas and waste disposal occurs out of state, only the waste collection service is taxable.

(B) Disposal services furnished in another state are not subject to Arkansas sales tax; and

(2) **Disposal in Arkansas.**

(A) When waste is collected in another state and deposited in a landfill in Arkansas, the disposal services are subject to Arkansas sales tax.

(B) Disposal services furnished in Arkansas are subject to tax unless an exemption applies.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-509. 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)(1) The tax applies to the service of cleaning, sweeping, or pressure washing parking lots.

(2) Cleaning up trash from a parking lot is taxable.

(3) Snow removal is taxable.

(4) 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 sandblasting to prepare for resurfacing are not taxable services.

(d)(1) A "parking lot" means an area used for the parking of motor vehicles and includes parking garages and parking decks.

(2) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-510. Services subject to tax — Dry cleaning and laundry services and industrial laundry services.

(a)(1) The gross proceeds or gross receipts derived from the sale of the following services are subject to sales tax:

(A) Dry cleaning services;

(B) Laundry services; and

(C) Industrial laundry services.

(2) These services shall be defined as follows:

(A) "Cloth or fabric" shall include, but not be limited to, items such as:

(i) Clothing;

- (ii) Garments;
- (iii) Uniforms;
- (iv) Wedding dresses;
- (v) Linens;
- (vi) Draperies;
- (vii) Tablecloths;
- (viii) Rugs;
- (ix) Towels; and
- (x) Products that consist at least partially of cloth or fabric, such as

door mats with a rubber base;

(B) "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;

(C) "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; and

(D) "Laundry services" shall mean the washing of cloth or fabric with water, including the ironing, pressing, folding, or starching of washed cloth or fabric.

(b)(1) 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:

(A) Repairs;

(B) Alterations; and

(C) The treatment of cloth or fabric with chemicals that provide waterproofing or protection from staining or soiling.

(2) 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)(1) 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.

(2) However, the gross proceeds or gross receipts derived by a charitable, nonprofit nursing, retirement, or convalescence facility from dry cleaning or laundry services provided by such facility to its residents are not subject to tax.

(e)(1) Long-term rentals of uniforms, linens, towels, mats, and similar items are not subject to the tax on the service of industrial laundry.

(2)(A) 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.

(B) See 26 CAR § 30-1002.

(f)(1) Items that are used or consumed in performing dry cleaning and laundry services may not be purchased tax exempt.

(2) This includes, but is not limited to:

- (A) Uniforms;
- (B) Machines;
- (C) Equipment;
- (D) Detergent;
- (E) Dry cleaning solvents;
- (F) Bleach;
- (G) Powder; and
- (H) Starch.

(3) Such items are subject to state and local gross receipts or use tax when purchased for use by the service provider.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-511. Services subject to tax — Mini-warehouse and self-storage rental services.

(a) **Definitions.** As used in this section:

(1)(A) "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.

(B) This term includes, but is not limited to, storage lockers or storage units in:

(i) 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);

(ii) Amusement parks;

(iii) Water parks;

(iv) Recreational facilities; and

(v) Other public locations where lockers are rented for self-storage.

(2) For the purpose of this section, "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.

Example 1: 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.

Example 2: 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)(A) The total amount charged for providing mini-warehouse and self-storage services is subject to tax.

(B) Charges associated with the cost of self-storage such as locks or keys are part of the taxable purchase price.

(C) 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.

(D) A security deposit is not part of the taxable purchase price unless it is converted into a rental payment.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-512. 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.** As used in this section:

(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) "Electrolysis" means the destruction or permanent removal of hair from the human body by the use of:

(A) An electric needle; or

(B) Any other kinds of devices or appliances; and

(3) "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.

(c) **Exemptions and 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-513. Services subject to tax — Pest control services.

(a) Services subject to the tax.

(1) Arkansas state and local gross receipts (sales) tax shall apply to the gross proceeds derived from the performance of pest control services.

(2) 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:

- (A) Costs;
- (B) Fees;
- (C) Labor services performed;
- (D) Interest;
- (E) Losses; or
- (F) Any expenses whatsoever.

(3) Fees paid by a service provider to the state, a city, county, or other governmental subdivision that are passed on to the customer are part of the gross receipts for providing pest control services.

(b) Definitions. As used in this section:

(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) that is injurious to health or the environment;
- and

(2)(A) "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.

(B) Such services shall include, but shall not be limited to, the prevention, control, or repelling of:

(i) Arthropods, mammals, birds, reptiles, wood-damaging or wood-destroying insects, wood-damaging or wood-destroying fungi, and any organisms that may invade or infest:

(a) Homes, other buildings, or similar structures; and

(b) Their adjacent grounds; and

(ii) Arthropods, mammals, birds, reptiles, and plant diseases that may invade, infest, or infect:

(a) Shade trees;

(b) Shrubs;

(c) Lawns; and

(d) Turf.

(c) **Persons responsible for collecting and remitting 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 tax.**

(1) 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.

(2)(A) 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.

(B) Agricultural purposes also means the production of flowering,

ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location.

(3) 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.

(4)(A) The tax on pest control services is not intended to apply to the performance of either commercial or residential weed control services.

(B) However, weed control services may be taxable as a lawn care service.

(e) Chemicals and building materials.

(1) 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.

(2) 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.

(3) All items purchased for use or consumption in providing pest control services are subject to tax.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-514. 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.** As used in this section:

(1)(A) "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:

- (i) Burglary;
- (ii) Fire;
- (iii) Vandalism;
- (iv) Bodily injury; or
- (v) Other emergency.

(B) "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; and

(2) "Security services" means video monitoring and security guard services used 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.

(c) **Exemptions from tax.**

(1) Security services provided by an employee, or a temporary or leased employee as defined by Arkansas Code § 26-52-301(3)(B)(vi), of the business using the services are not subject to the tax.

(2) Wireless tracking, recovery, communications, diagnostics systems, 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.

(3) See 26 CAR § 30-1226.

(d) **Persons responsible for collecting and remitting tax.**

(1) The tax shall be collected and remitted by the seller (the person or entity billing the consumer) of the security or alarm monitoring services.

(2)(A) The installation of a security alarm is not a taxable service.

(B) 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.

(1) For the purpose of determining the correct local gross receipts taxes to collect, security and alarm monitoring services are sourced based upon where the customer makes first use of the service.

(2) Video monitoring services, security guard services, and alarm monitoring services are specific to an actual location and the local taxes at the location of the residence, place of business, or other fixed premises where the services are rendered shall be applied.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-515. Services subject to tax — Boat storage and docking.

(a)(1) Boat storage and docking fees are subject to gross receipts tax.

(2) 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)(1) All fees and charges associated with boat storage or dockage are included in the amount subject to tax.

(2) This includes, but is not limited to:

(A) Space or slip rental fees;

(B) Fees for putting the boat in or out of the water; and

(C) Winterization fees, including charges for shrink wrapping or installing a cover.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-516. Services subject to tax — Furnishing camping or trailer spaces.

(a)(1) 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 state and local gross receipts tax.

(2)(A) This tax is levied in addition to the two percent (2%) tourism tax levied in Arkansas Code § 26-63-401 et seq.

(B) See 26 CAR § 30-1407.

(b)(1) Camping or trailer spaces rented on a month-to-month basis are not subject to the tax.

(2) The criteria for a month-to-month rental are set forth in 26 CAR § 30-501(b).

(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)(1) The tax levied by this section does not apply to campground spaces furnished by the federal government.

(2) In the event property owned by the federal government is leased to a nonfederal entity and the nonfederal entity uses such property for the furnishing of camping or trailer spaces (e.g., the United States Army Corps of Engineers leases property to the Arkansas State Game and Fish Commission and the commission furnishes camping or trailer spaces), then tax must be collected by the nonfederal entity on the gross receipts received by the nonfederal 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-517. 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 section, "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.**

(1) The following examples are intended to illustrate how the tax is applied to certain charges for locksmith services.

(2) All examples provided herein are based upon the specific statement of facts set forth in the example.

(3) Any change in the facts could result in a different conclusion.

(4) In no case are these examples intended to limit the application of tax to other transactions.

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.

Example 2: A motorist locks his or her keys inside his or her automobile. The charge for unlocking the door to the automobile is subject to tax.

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.

Example 4: Repairing or replacing a lock or locks in an existing home or building is subject to tax.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-518. Services subject to tax — Pet grooming and kennel services.

(a) **Definitions.** As used in this section:

(1)(A) "Grooming" consists of any act performed to maintain or improve the appearance of a pet and includes, but is not limited to:

- (i) Washing;
- (ii) Combing;
- (iii) Hair cutting; and
- (iv) Nail clipping.

(B) This term shall not include services such as:

- (i) Teeth cleaning and dental work;
- (ii) Flea dipping;
- (iii) Treatments for skin disease; or
- (iv) Similar procedures;

(2)(A) "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:

- (i) Consideration;
- (ii) Profit; or
- (iii) Compensation.

(B) This term shall include all boarding activities for varying periods of time and does not require an overnight stay.

(C) This term shall not include:

- (i) Individuals who temporarily, and not in the normal course of business, board or care for animals owned by other individuals;
- (ii) Breeding services;
- (iii) Boarding as part of medical or veterinary treatment, observation, or care of an animal; or
- (iv) Horse stables; and

(3)(A) A "pet" is any animal that has been tamed or gentled.

(B) The term "pet" does not include:

- (i) Dogs trained to aid the handicapped or elderly;
- (ii) Dogs used in law enforcement;
- (iii) Greyhounds that are used in greyhound racing meets pursuant to the Arkansas Greyhound Racing Law, Arkansas Code § 23-111-101 et seq.; or

(iv) Livestock such as:

(a) Cattle;

(b) Horses;

(c) Mules;

(d) Sheep; or

(e) Hogs.

(b) Administration.

(1)(A) The gross proceeds or gross receipts derived from pet grooming and kennel services are subject to state and local gross receipts taxes.

(B) 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)(A) Grooming performed for veterinary purposes shall not be taxable if it is an integral part of the nontaxable service of veterinary care.

(B) If grooming is done for both veterinary and cosmetic reasons, the primary purpose for the treatment will determine if tax should be collected.

(C) 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.

(D) 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.

(E) 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 are used or consumed by them in rendering their services and should pay tax on the purchase of these items.

(4)(A) Persons or firms providing pet grooming services that the purchaser claims as an exempt transaction should refer to 26 CAR § 30-1210 concerning

exemptions.

(B) As an alternative to an exemption certificate, a seller may accept a certification from the purchaser that the:

(i) Animal fits within one (1) of the categories enumerated in 26 CAR § 30-518(a)(3) and is not a pet; or

(ii) Transaction is exempt for other reasons as provided by Arkansas law.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-519. Services subject to tax — Initial installation.

(a) The initial installation of any of the following is taxable, unless one (1) 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 sheet metal;
- (23) Mechanical tools; and
- (24) Shop equipment.

(b) **Definitions.** As used in this section:

(1) "Electrical appliances and devices" includes items commonly understood to be appliances that have electrical components and items such as:

- (A) Electrical signs;
- (B) Transformers or other items installed on electrical utility power lines;
- (C) Cell phone towers; and
- (D) Computer hardware;

(2) "Flooring" shall mean:

- (A) Tile;
- (B) Hardwood;
- (C) Vinyl;
- (D) Carpet;
- (E) A finished surface applied to concrete or other subfloor; or
- (F) Any other floor covering that overlays the subfloor of a structure to

provide a finished surface for the floor, including decorative finishes;

(3)(A) "Household appliances" shall mean, for purposes of this section, any household appliance that requires installation, including:

- (i) Dishwashers;

(ii) Disposals; and

(iii) Any other household appliance that is not an electrical appliance or device such as a hot water heater.

(B) For purposes of this section, household appliances does not include items that are not required to be installed, such as:

(i) Toasters;

(ii) Mixers;

(iii) Blenders;

(iv) Can openers;

(v) Food processors; and

(vi) Other items that are considered to be small household appliances that do not require installation; and

(4)(A) "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.

(B) "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.

(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.

(A) 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.

(B) 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.

(C) 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.

(A) 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.

(B) The initial installation of such nonmechanical components is not taxable.

(C) 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 an existing building is taxable.

(1) 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.

(2) Any materials or parts installed are taxable to the customer.

(3) The labor to install ductwork and other nonmechanical, passive, or manually operated components that become part of the real estate is not taxable.

(4)(A) If both taxable and nontaxable services are provided, the nontaxable charges must be separately stated on the invoice.

(B) Otherwise, the entire charge will be taxable.

(e) Repairs and replacements.

(1) The repair or replacement of flooring is taxable.

(2) 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.

(3)(A) Any business or individual should continue to collect and remit tax on taxable repair and replacement services.

(B) See 26 CAR § 30-1003(e)(1)(B) – (D).

(f) Purchase of materials.

(1) 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.

(2)(A) Any materials used in the performance of nontaxable services, including initial installation in new construction, are not taxed to the customer.

(B) However, the business must self-assess, report, and pay sales tax as a withdrawal from inventory (stock) on the purchase price of the materials.

(3) The business must collect sales tax from its customers on retail sales of materials.

(4) Sales tax on materials used in performing taxable services is to be collected from the customer along with the labor charges.

(5) A business that is not required to hold a sales tax permit must pay tax on all purchases of materials.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-316"

26 CAR § 30-520. 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 Arkansas Code §§ 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 section 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 Arkansas Code §§ 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-521. Services subject to tax — Printing and photography, job printers, printers as manufacturers.

(a)(1) The tax must be collected and remitted on the service of printing of all kinds, types, and characters, including the service of overprinting.

(2) 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)(1) Printers who print articles of commerce for sale to consumers are considered to be manufacturers.

(2)(A) 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.

(B) See 26 CAR § 30-1134.

(3) Printers must pay tax on items used in the printing process that do not become a recognizable, integral part of the printed product.

(d)(1) The tax applies to the service of photography of all kinds.

(2) State and local sales tax apply to photography services based on where the customer receives the service.

(3) The photography service, including the sitting, is received when the customer views the product of the service (i.e., proofs, pictures, etc.).

Example 1: A Fayetteville photographer is hired to photograph the senior pictures of a Eureka Springs student. The photographer takes the pictures in Eureka Springs, but the pictures are picked up at the photographer's studio in Fayetteville. Arkansas state sales tax, as well as the City of Fayetteville and Washington County sales tax will apply because the

customer receives the product in Fayetteville. (If the photographer charged a separate sitting fee, then Arkansas state, City of Fayetteville, and Washington County sales tax will also apply to the sitting fee.)

Example 2: A Fayetteville photographer is hired to photograph the senior pictures of a Eureka Springs student. The photographer takes the pictures in Eureka Springs and makes the proofs available for viewing on its website. The applicable local tax is the first of the following locations known by the photographer: the address of the customer, the billing address of the customer, or the address of the photographer.

Example 3: A Conway photographer is hired to videotape a wedding in Little Rock and the wedding dance in Vilonia. The videotape is mailed to the customer's home in Mayflower. Arkansas state sales tax, as well as the City of Mayflower and Faulkner County sales tax will apply.

Example 4: A Fayetteville photographer is hired by a Bentonville resident to photograph pictures in Texas. The photographer takes the pictures in Texas, and per his customer's instruction, mails the proofs to Little Rock. Arkansas state sales tax, as well as the City of Little Rock and Pulaski County sales tax will apply.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-522. 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)(A) 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.

(B) The tax will not apply regardless of whether the seller affixes the labels to the material to be mailed; and

(3)(A) The production of multiple copies of letters, manuscripts, or other documents using word processing or data processing equipment.

(B) The term "multiple copies" includes form letters produced with a slight variation that personalizes essentially the same letter.

(C)(i) The term "word processing equipment or data processing equipment" means computer hardware and software used to produce, create, edit, and print original documents.

(ii) The term "word processing equipment or data processing equipment" does not include photocopying or duplication equipment.

(b)(1) A seller providing nontaxable services under this section must pay tax on any tangible personal property used in providing these services at the time the items are purchased.

(2) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of

Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-301"

Subpart 6. Gross Receipts Tax Rules — Sales of Tickets and Postage Stamps

26 CAR § 30-601. Sales of tickets, dues, or fees.

(a)(1) 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.

(2) Fees for the privilege of having access to or the use of amusement, entertainment, athletic, or recreational facilities are subject to the tax, except such sales by municipalities are exempt.

(3) 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 (1) or more times, or for a fixed period of time.

(4) 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 that 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 subsection (a) of this section or subsection (c) of this section.

(c)(1) 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 Arkansas Code § 3-9-202(10), that holds any permit from the Alcoholic Beverage Control Board are subject to the tax.

(2)(A) If a club is a nonprofit charitable organization, dues and membership fees are not subject to tax.

(B) See 26 CAR § 30-1009.

(3) 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.

(4) As specifically provided in Arkansas Code § 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-602. 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)(1) Postage stamps sold at more than face value are subject to gross receipts tax.

(2) Gross receipts tax shall be collected on the entire gross receipts for the sale of postage stamps sold at more than face value.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-301"

Subpart 7. Gross Receipts Tax Rules — Sales of Motor Vehicles, Aircraft, Mobile Homes, and Boats

26 CAR § 30-701. Sale of motor vehicles, trailers, and semitrailers.

(a) General information.

(1) All sales of new and used motor vehicles, trailers, and semitrailers are subject to sales or use tax unless a specific exemption applies.

(2) The tax is to be collected as follows:

(A)(i) Tax due on vehicles and trailers that 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.

(ii) Sellers of trailers are not required to collect tax;

(B) For purposes of this section, motor vehicles that are not required by Arkansas law to be registered and licensed for use on public streets and highways are:

(i) Mopeds, motorcycles, and motor-driven cycles that are designed or manufactured exclusively for competition or off-road use; and

(ii) Three-wheel and four-wheel all-terrain cycles and motorized bicycles;

(C) Tax due on the sale of mopeds, motorcycles, and motor-driven cycles that 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;

(D) Tax due on the sale of three-wheel 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 26 CAR § 30-1130 apply; and

(E)(i) 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.

(ii) 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.

(iii) 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 are less than two thousand five hundred dollars (\$2,500), then the sales or use tax is not due on the vehicle or trailer.

(B)(i) If the total gross receipts or gross proceeds for the sale of a motor vehicle or trailer are two thousand five hundred dollars (\$2,500) 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.

(ii) See also 26 CAR §§ 30-702 and 30-703.

(C) Local tax.

(i) The local sales or use tax due is determined by the location indicated at the time of registration and application for certification of title.

(ii) See Arkansas Code § 26-52-521 and 26 CAR § 30-1207.

(D) 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 semitrailers that were first registered by the purchaser in Arkansas.

(E) Warranties.

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) Tax is due on the total amount of the gross receipts for the sale of the warranty or service contract.

(F) Trade-in credit shall be allowed only if the item taken in trade for the sale of a motor vehicle, trailer, or semitrailer is a:

- (i) Motor vehicle;
- (ii) Trailer; or
- (iii) Semitrailer.

(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 subdivision (a)(2)(B) of this section.

(B) **Local tax.** The local sales or use tax due is determined by Arkansas Code § 26-52-521 and 26 CAR § 30-1207.

(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 the following:

- (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 Arkansas Code § 18-45-201 et seq., to either a third party or to himself or herself;
- (C) Sale by the executor or administrator of an estate; and

(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 of Finance and Administration to issue title to the purchaser.

(3) Examples of nontaxable transfers include transfer by the following:

(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 or her own name;

(B) Inheritance or intestate succession, where the beneficiary provides the Commissioner of Revenue with:

(i) A certified copy of a probate court order; or

(ii) 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 Arkansas Code § 4-9-501 et seq.;

(E)(i) 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.

(ii) A cash settlement includes payment to a lienholder.

(iii) For the replacement of the motor vehicle by the owner, see 26 CAR § 30-702;

(F) 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; and

(G) 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 that 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.

(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 in the following circumstances:

(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 section and 26 CAR § 30-1002 shall have the following meanings:

(A) “Engaged in the business of renting licensed motor vehicles” means that the person regularly and persistently rents licensed motor vehicles for gain or profit;

(B)(i) “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.

(ii) A vehicle that is titled and registered in a state other than Arkansas but is the type of vehicle that would be required to be registered for highway use in Arkansas is a licensed motor vehicle.

(iii) Trailers and semitrailers are not motor vehicles.

(iv) The term “motor vehicle” does not include:

(a) Special mobile equipment as defined in Arkansas Code § 27-14-211; or

(b) Implements of husbandry as defined in Arkansas Code § 27-14-212;

(C)(i) “Long-term rental” means rental for thirty (30) days or more.

(ii) 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.

(D) "Rental exemption certificate" means a certificate issued by the commissioner through the Sales and Use Tax Section of the Revenue Division of the Department of Finance and Administration that provides that the person is registered to engage in the rental of licensed motor vehicles for either short-term or long-term use; and

(E) "Short-term rental" means rental for less than thirty (30) days.

(3)(A) 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 of the Department of Finance and Administration at the time of registration and titling of each vehicle along with the other documents required by law for registration and titling.

(B) The certificate will become a part of the permanent record of the Office of Motor Vehicle of the Department of Finance and Administration, and all information must be provided as requested on the certificate.

(C) A short-term rental exemption certificate issued previously may not be used to register a vehicle intended for long-term rental.

(D) The long-term lessor must register with the Sales and Use Tax Section and obtain a new rental exemption certificate.

(E) A separate copy of the certificate must be presented for each vehicle

registered and titled.

(4)(A)(i) The exemption is valid only if the motor vehicle is used exclusively for short-term or long-term rentals.

(ii) 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, Arkansas Code § 26-18-101 et seq.

(B)(i) 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.

(ii) 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.

(iii) Driving the vehicle to the nearest repair facility for purposes of repairs will not cause the exemption to be revoked.

(5) See 26 CAR §§ 30-1002, 30-1405, and 30-1406 for the application of the:

- (A) Rental vehicle tax;
- (B) Long-term rental tax; and
- (C) Recordkeeping requirements.

(e) Proof of value.

(1)(A) When a motor vehicle or trailer is sold or taken in trade, the taxpayer shall provide to the commissioner documented proof of the:

- (i) Gross receipts or gross proceeds; or
- (ii) Value assigned to the traded-in item.

(B) Examples of sufficient documents include the following:

(i) A bill of sale or financing contract signed by the seller and buyer separately stating the:

- (a) Total gross receipts or gross proceeds for the sale;
- (b) Value assigned to the traded-in vehicle or trailer; and
- (c) Description and vehicle identification number (VIN) of the:
 - (1) Vehicle or trailer sold; and
 - (2) Vehicle or trailer traded in; or

(ii) An affidavit signed by the seller and the buyer stating the:

- (a) Total gross receipts or gross proceeds for the sale;
- (b) Value assigned to the traded-in vehicle or trailer; and
- (c) Description and VIN of the:
 - (1) Vehicle or trailer sold; and
 - (2) 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:

(A) The actual sales price as provided on the:

- (i) Bill of sale;
- (ii) Invoice; or
- (iii) Financing agreement; or

(B) The average loan value of the vehicle as listed in:

- (i) The most current edition of the National Automobile Dealers' Association Official Used Car Guide; or
- (ii) Any pricing guide that may be approved by the Secretary of the Department of Finance and Administration for use in determining vehicle values.

(f) Used motor vehicles registered by vehicle dealers.

(1)(A) Used motor vehicle dealers are prohibited from assigning a motor vehicle using the manufacturer's statement of origin (MSO).

(B) Used vehicle dealers are required to apply for title and registration to the vehicle before it may be transferred.

(2)(A)(i) Pursuant to Arkansas Code § 26-52-510(f), any motor vehicle dealer who has purchased a used motor vehicle for resale may 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 subdivision (f)(2)(B) of this section.

(ii) 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)(A) "Used motor vehicle" is defined as any motor vehicle that:

(i) Has previously been sold, bargained, exchanged, given away, or the title thereto transferred from the person or corporation who first took title from the:

(a) Manufacturer;

(b) Importer;

(c) Dealer; or

(d) Agent of the manufacturer or importer; or

(ii) Is so used as to have become what is commonly known as a secondhand or previously owned motor vehicle.

(B) In the event of a transfer reflected on the 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:

(i) Register the vehicle;

(ii) Obtain a certificate of title; and

(iii) Pay sales tax on the listed retail price of the new vehicle.

(B)(i) 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.

(ii) The value of the used service vehicle shall be the vehicle's highest

wholesale value as listed in:

(a) The most current edition of the National Automobile Dealers' Association Official Used Car Guide; or

(b) Any pricing guide that may be approved by the commissioner for use in determining vehicle values.

(2)(A) For purposes of this subsection (g), 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 that are:

(i) Rented by the dealership;

(ii) Used as demonstration vehicles;

(iii) Used by dealership employees for personal use; or

(iv) Used to haul or pull other vehicles.

(h)(1) 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.

(2) The gross proceeds in excess of nine thousand one hundred fifty dollars (\$9,150) are exempt from tax.

(3) This exemption does not apply to local (city, town, or county) tax.

(i)(1) 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.

(2) The gross proceeds in excess of one thousand dollars (\$1,000) are exempt from tax.

(3) This exemption does not apply to local (city, town, or county) tax.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-436; 26-52-510; 26-63-302; 26-63-304"

26 CAR § 30-702. Sales tax credit for private sale of a used vehicle.

(a) **Purpose.** This section 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.** As used in this section:

(1) "Consumer" means any private individual, business, organization, or association;

(2)(A) "Sale" means 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.

(B) 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;

(3) "Trade-in" means a vehicle taken by a seller as a credit or partial payment on the sale of another vehicle; and

(4) "Vehicle" means:

(A) An automobile;

(B) A truck;

(C) A motorcycle (registered for highway use);

(D) A trailer; and

(E) A semitrailer.

(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)(A) 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.

(B) However, the credit shall not exceed the price paid by the consumer for the newly purchased vehicle.

(d) Certification.

(1)(A) In order to obtain the sales tax credit as set forth in this section, the consumer must provide a properly completed bill of sale to the Department of Finance and Administration.

(B)(i) 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.

(ii) The bill of sale must be signed by both the consumer and the purchaser.

(iii) The bill of sale must include:

(a) Name and address of purchaser and seller;

(b) Vehicle description and VIN;

(c) Sales price; and

(d) Date of sale.

(iv) A bill of sale form and instructions can be found on the department website in the motor vehicle section.

(v) Failure to provide a bill of sale will result in the disallowance of the deduction.

(C) 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 Tax Credits and Special Refunds Section of the Department of Finance and Administration at the following address:

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

(2)(A) The bill of sale and refund forms will be provided by the department.

(B) The consumer shall be responsible for properly completing the form.

(C) Arkansas law provides that it is a felony to knowingly submit a form containing false information.

(e) Multiple sales.

(1) If the consumer sells more than one (1) vehicle within the forty-five-day period 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.

(2) However, the cumulative credit:

(A) Shall not exceed the price paid by the consumer for his or her newly purchased vehicle; and

(B) Shall not be carried forward and applied to the purchase of additional vehicles.

(f) Trade-in.

(1) 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.

(2) 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.

(1) 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.

(2) **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-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.

(3) **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-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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "VIN" means vehicle identification number.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-510"

26 CAR § 30-703. Special rules for used motor vehicle, trailer, and semitrailer dealers.

(a)(1) 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.

(2) The dealer must hold a retail sales tax permit.

(3) 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.

(b)(1) New and used car dealers shall be entitled to purchase services performed on dealer-owned vehicles exempt as a sale for resale if:

(A) The dealer is purchasing the services solely and exclusively to prepare the vehicle for sale; and

(B) The service enhances the value of the vehicle.

(2) For example, the repairing of windshields, dents, scratches, radiators, and engines and car detailing would be exempt as a sale for resale if the service enhanced the value of the vehicle.

(3)(A) The sale for resale exemption is available only for services performed on vehicles held for resale.

(B) All other services performed for the dealership will remain taxable.

(c) Car dealers that are purchasing parts, accessories, or services as a sale for resale must satisfy the requirements found in 26 CAR § 30-1134.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-510"

26 CAR § 30-704. Credit for vehicle destroyed by a 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)(1) The vehicle owner must file a written request for credit with the Tax Credits and Special Refunds Section of the Revenue Division of the Department of Finance and Administration and establish his or her entitlement to the credit.

(2) 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)(1) "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.

(2) Examples include:

- (A) Tornadoes;
- (B) Earthquakes;
- (C) Floods;
- (D) Tsunamis;
- (E) Volcanic eruptions; and
- (F) Hurricanes.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "NADA" means National Automobile Dealers Association.

This section as promulgated prior to codification into the Code of Arkansas Rules

contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-519"

26 CAR § 30-705. Sale of aircraft.

(a) General information.

(1)(A) Sales of new and used airplanes are subject to sales or use tax.

(B) 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.

(C) 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) Calculation of tax due.

(1) 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.

(2) No trade-in credit will be allowed if an item other than a used aircraft is taken in trade.

(c) Sales tax reports.

(1) Every seller of an airplane is required to collect tax from the purchaser.

(2) The seller is to report the sale as any other taxpayer subject to the Arkansas Gross Receipts Act of 1941, Arkansas Code § 26-52-101 et seq.

(3) The seller is to provide the Secretary of the Department of Finance and Administration with the following information along with the seller's regular sales tax report:

(A) Purchaser's name and address;

(B) Make, model, serial number, and gross sales price of each aircraft

sold;

(C) 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;

(D) Amount of state and local tax collected from the purchaser; and

(E)(i) Copies of invoices, sales tickets, or bills of sale concerning each aircraft sold and taken in trade.

(ii) If the invoice, sales ticket, or bill of sale contains the information required by subsection (c) of this section, then only the invoices, sales tickets, or bills of sale must accompany the sales tax report.

(d) **Records.**

(1) 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.

(2) If the seller's records are inadequate or incomplete, the Commissioner of Revenue may utilize any of the following for purposes of determining sales tax liability:

(A) Affidavit signed by the seller and purchaser attesting to the sales price or trade-in value of the aircraft;

(B) Aircraft valuation schedules prepared by the Assessment Coordination Division of the Department of Finance and Administration;

(C) Any national trade publication generally accepted by aircraft dealers as accurately reflecting current aircraft market value; or

(D) The higher of two (2) appraisals prepared by other aircraft dealers.

(e) **Aircraft rental.**

(1)(A)(i) 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 (1) year from the date of purchase of the aircraft without remitting the tax on the aircraft so used.

(ii) 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 (2) years before tax is due.

(iii) The purchaser must collect gross receipts and one percent (1%) short-term rental tax (see Arkansas Code § 26-63-301 and 26 CAR § 30-1404) on all noncharter rentals.

(iv) When the aircraft is eventually sold, however, the tax must be remitted at the time of sale.

(v) 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.

(vi) 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 or her purchase price.

(B) "Modification" or "refurbishing" means the repair, replacement, or restoration of components, parts, or equipment affixed to or which are part of the aircraft.

(C) "Substantial" means any repair, replacement, or restoration that costs fifty percent (50%) or more of the fair market value of the aircraft prior to the modification or refurbishing.

(2)(A) 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 nontaxable service.

(B) If the aircraft alone is rented for a period of less than thirty (30) days, then the sales tax and the one percent (1%) short-term rental tax (see Arkansas Code § 26-63-301 and 26 CAR § 30-1404) must be collected on the rental charge.

(C) 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.

(f) **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.

(g) The retail sale, lease, or rental of an aircraft must be sourced in accordance with Arkansas Code § 26-52-521 and 26 CAR § 30-1207.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-706. Sale of manufactured homes, modular homes, and mobile homes.

(a) **Definitions.** As used in this section:

(1) "Manufactured home" means a factory-built structure produced in accordance with the federal Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., and designed to be used as a dwelling unit;

(2) "Mobile home" means a structure built in a factory prior to the enactment of the federal Manufactured Home Construction and Safety Standards Act of 1974 and designed to be used as a dwelling unit;

(3) "Modular home" means a factory-built structure:

(A) Produced in accordance to state or local construction codes and standards; and

(B) Designed to be used as a dwelling unit; and

(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.

(1) Every seller of new manufactured homes or modular homes in Arkansas is required to:

- (A) Obtain a sales tax permit; and
- (B) Collect tax from the purchaser.

(2) 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.

(3) 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)(A) Sales tax shall be calculated on sixty-two percent (62%) of the sales price of a new manufactured home or modular home.

(B) 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, and 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)(A) 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:

- (i) The seller of the manufactured or modular home;
- (ii) A contractor who installs the home at the consumer's location; or
- (iii) A different contractor or subcontractor who installs specific

property such as heating and cooling units.

(B) 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.

(4) Sales of manufactured homes and modular homes are sourced in accordance with the sourcing rules provided in Arkansas Code § 26-52-521 and 26 CAR § 30-1207.

(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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-707. New and used boats.

(a)(1) The gross receipts tax applies to the sale of all new boats.

(2) 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)(1) The gross receipts tax applies to the sale of all used boats unless the:

(A)(i) Used property exemption of Arkansas Code § 26-52-401(22) applies.

(ii) See 26 CAR § 30-1130; or

(B) Isolated sale exemption of Arkansas Code § 26-52-401(17) applies.

(2) 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)(1) All persons in the business of selling new or used boats shall collect the tax

and remit it to the Commissioner of Revenue.

(2) Sales of boats are sourced in accordance with the sourcing rules provided in Arkansas Code § 26-52-521 and 26 CAR § 30-1207.

(d)(1) Boat sellers are not required to collect the tax on sales of boat trailers.

(2) The tax is collected at the revenue office when the owner registers and licenses the boat trailer.

(3) If the seller sells a boat and trailer to his or her customer, the seller should separately state the sales price of the trailer on the sales invoice.

(4) If the seller does not separately state the sales price of the boat and trailer, then the seller 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-301"

Subpart 8. Gross Receipts Tax Rules — Sales of Equipment and Special Rules for Floral Sales

26 CAR § 30-801. Sales of heavy equipment.

(a) Definitions.

(1)(A) "Heavy equipment" includes:

- (i) Rough terrain forklifts;
- (ii) Scissor lifts;
- (iii) Extendable boom lifts;
- (iv) Cranes;
- (v) Trenchers;

- (vi) Loader backhoes;
- (vii) Excavators;
- (viii) Bulldozers;
- (ix) Motor graders;
- (x) Crawler tractors and loaders;
- (xi) Skid-steer loaders;
- (xii) Scrapers;
- (xiii) Earth movers;
- (xiv) Compaction equipment;
- (xv) Asphalt pavers;
- (xvi) Demolition equipment;
- (xvii) Concrete pavers;
- (xviii) Wheel loaders;
- (xix) Rock drills;
- (xx) Portable air compressors that are one hundred cubic feet per minute (100 CFM) or greater;
- (xxi) Cable plows;
- (xxii) Boring machines; or
- (xiii) Any other equipment determined by the Secretary of the Department of Finance and Administration to be heavy equipment following the adoption of a rule in accordance with state law.

(B) Demolition equipment is limited to equipment that is used to demolish structures or highway.

(C) 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 subdivision (a)(3) of this section shall be considered to be heavy equipment only if the item is:

- (A) Propelled by its own internal engine or internal power source; and
- (B) Intended for outside use.

(3) "Heavy equipment" does not include the following:

- (A) Handheld tools;
- (B) Portable tools and attachments, with the exception of portable air compressors that are one hundred cubic feet per minute (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
- (H) Watercraft.

(b) General information.

(1)(A) All sales of new and used heavy equipment are subject to sales or use tax unless otherwise exempted.

(B) The tax shall be collected, reported, and remitted by the heavy equipment dealer at the time of sale.

(2)(A) 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:

- (i) Sales tax has been paid on the heavy equipment; or
- (ii) Either the heavy equipment or the purchaser of the equipment is exempt from tax.

(B) 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) A red decal shall be affixed to heavy equipment that is taxable and for which the dealer collected the tax.

(B) If the equipment is exempt from tax under the farming exemption, a blue decal shall be affixed.

(C) If the equipment is exempt from tax under any other tax exemption

(i.e., manufacturing, timber harvesting, etc.), a green decal shall be affixed.

(D) 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) 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.

(B) If the dealer fails to remove the old decal, the secretary shall assess the following penalties:

- (i) One hundred dollars (\$100) for the first offense;
- (ii) Two hundred dollars (\$200) for the second offense; and
- (iii) Five hundred dollars (\$500) for the third and subsequent

offenses.

(6) Decals may be obtained from:

Department of Finance and Administration
Sales and Use Tax Section
P.O. Box 1272
Little Rock, Arkansas 72203

(7)(A) 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.

(B) 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)(A) 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.

(B)(i) 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 department.

(ii) The tax shall be reported and paid to the Sales and Use Tax Section.

(iii) Upon payment of the tax, the purchaser shall receive a decal to affix to each piece of heavy equipment purchased.

(C) 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.

(c) Sales by auctioneers.

(1)(A) Auctioneers who simply auction items for third parties, and who do not maintain an inventory of their own:

(i) Are not heavy equipment dealers; and

(ii) Are not required to affix a decal on heavy equipment they sell.

(B) However, if an auctioneer maintains an inventory of items for sale that includes heavy equipment, then the auctioneer must affix a decal on heavy equipment sold from the inventory.

(2) 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.

(d) Direct pay permit holders.

(1) If heavy equipment is sold to the holder of a direct pay permit, the heavy equipment dealer is not required to affix a decal.

(2) Instead, the holder of the direct pay permit shall be required to contact the department to obtain the proper decal for the equipment.

(e) Rentals.

(1)(A) Dealers who sell heavy equipment to purchasers and 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.

(B)(i) The purchaser must obtain the applicable decal from the

department prior to renting the equipment.

(ii)(a) For example, if the lessor rents to an exempt entity, the appropriate decal would be an "exempt" decal.

(b) However, if the lessor is required to collect tax on the stream of rental payments, the appropriate decal would be a red decal.

(2)(A) Dealers who sell heavy equipment to purchasers and 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.

(B) The purchaser is not required to affix any additional decal at the time of rental.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-318"

26 CAR § 30-802. Receipts from certain coin-operated amusement machines subject to tax.

(a)(1) 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.

(2) Every person holding an Amusement Machine Operator's License pursuant to Arkansas Code § 26-57-401 et seq., must:

(A) Obtain a retail permit; and

(B) Report and remit gross receipts tax.

(b)(1) The tax shall be deemed to be included in the charge for the use of the

machine.

(2) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-308"

26 CAR § 30-803. Floral arrangements subject to tax — Special rules.

(a) Pursuant to Arkansas Code § 26-52-521(i), the implementation of the destination sourcing rules provided in 26 CAR § 30-1207 are delayed as those rules relate to florists.

(b)(1) The gross receipts tax applies to the transmittal of any order for:

- (A) Flowers;
- (B) Floral arrangements;
- (C) Potted plants; or
- (D) Any other article common to the floral business.

(2) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-507"

Subpart 9. Gross Receipts Tax Rules — What Constitutes Gross Receipts

26 CAR § 30-901. What constitutes gross receipts — Examples.

(a) Delivery charges.

(1) Delivery charges are part of the gross receipts or gross proceeds on which the tax must be collected and remitted unless the charges are billed directly to the purchaser by a carrier other than the seller.

(2) If the tangible personal property being shipped is exempt from sales and use tax, the delivery charges are also exempt from tax.

(3)(A) If a shipment includes tax-exempt property and taxable property, the seller must pay the tax imposed only on the percentage of the delivery charge allocated to the taxable property.

(B) To determine the percentage, the seller may use either of the following options:

(i) A percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all the property in the shipment.

(b) Used merchandise.

(1)(A) The gross receipts derived from the sale of used tangible personal property are subject to the tax except as otherwise provided.

(B) See also 26 CAR §§ 30-703, 30-705, 30-706, 30-1130, and 30-1131.

(2)(A) 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.

(B) Sufficient records must be kept to establish that this requirement has been met.

(3)(A) Property that 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.

(B) 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 ten thousand dollars (\$10,000) on credit. Purchaser pays three thousand dollars (\$3,000), then defaults on the payment agreement. Seller repossesses merchandise and resells for eight thousand dollars (\$8,000). (Assume five percent (5%) tax.) Tax on original sale was five hundred dollars (\$500) ($\$10,000 \times 5\% = \500). Proceeds received from both original sale and resale equals eleven thousand dollars (\$11,000) ($\$3,000 + \$8,000$). Tax computed on total proceeds equals five hundred fifty dollars (\$550) ($\$11,000 \times 5\%$). The difference equals fifty dollars (\$50.00) ($\$550 - \500). Tax to be remitted to the Secretary of the Department of Finance and Administration on resale is fifty dollars (\$50.00).

Example 2: Same facts as in Example 1, except merchandise resells for six thousand dollars (\$6,000). Now total proceeds equal nine thousand dollars (\$9,000). Tax computed on total proceeds equals four hundred fifty dollars (\$450). The seller is entitled to a refund of fifty dollars (\$50.00) on resale.

(c) Installation charges.

(1) 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 sales price, the gross receipts tax should be

collected on the total sales price.

(2)(A) If the installation charges are separately stated on the invoice or bill of sale, tax is not due on the separate installation charge, unless the installation is a specifically enumerated taxable service, such as the installation services in 26 CAR § 30-502 or 26 CAR § 30-519.

(B) Charges for installation services that are taxable under 26 CAR § 30-502 or 26 CAR § 30-519 are taxable even if they are separately stated.

(d) **Withdrawal from stock.**

(1) **Withdrawal of purchased goods.** If a seller has a retail permit and purchases goods from its suppliers without paying tax to those suppliers claiming the sale for resale exemption and the seller withdraws the merchandise from stock and gives the merchandise to customers or other third parties, or uses the merchandise itself, then the value of this merchandise is a part of the seller's gross receipts or gross proceeds and the seller must remit the tax on the purchase price of the goods paid by the seller.

(2) **Withdrawal of manufactured or processed goods.**

(A)(i) 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.

(ii) 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.

(B) 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:

(i) 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; or

(ii) If the business does not sell any 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: A business produces and installs windows. The business also sells windows to third parties without installation. When the business sells windows as a manufacturer to itself as a contractor, the business should remit tax on the sales price of the windows.

Example 2: A business produces and installs windows. The business does not sell any windows to third parties. When the 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.

(3) 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.

(4) 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.

(5)(A) Tax is due at the time the item is withdrawn from stock.

(B) The applicable local tax for a withdrawal from stock is determined by the location at which the item is withdrawn.

(e) **Warranty sales — Automobiles.** See 26 CAR §§ 30-502 and 30-701.

(f) Warranty sales — Appliances.

(1) 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 that 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.

(2) See 26 CAR § 30-502.

(g) Membership fees. See 26 CAR § 30-601 regarding taxable membership fees.

Example: A bookstore that 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.

(h) Coupons and buydowns.

(1) **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 twenty-five cents (25¢) off the retail price of a product. The manufacturer will reimburse retailers who honor the coupons. The twenty-five cents (25¢) 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.

(2) **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 twenty-five cents (25¢) off the price of a product. Retailer will not be reimbursed by any third party. The twenty-five cents (25¢) 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.

(3) **Manufacturer's buydowns.**

(A) 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.

(B) A buydown is a transaction between the manufacturer and the retailer, to which the consumer is not a party.

(C) For products on which a buydown has been paid, the buydown is not considered a part of the gross proceeds or gross receipts paid by consumers.

(i) **Vehicle manufacturer or dealer rebates.** Vehicle manufacturer or dealer rebates are part of the consideration received for the motor vehicle and are considered part of the gross proceeds or gross receipts.

(j) **Bad debts.**

(1)(A) A taxpayer may deduct bad debts from the total amount upon which the tax is calculated.

(B) For purposes of the bad debt deduction, the taxpayer is the person required by law to remit to the Secretary of the Department of Finance and Administration the tax attributable to the transaction for which the bad debt deduction is claimed.

(C) Unless otherwise provided by statute, the person required by law to

remit sales tax is the seller.

(2) A bad debt may be deducted on the sales and use tax return of a taxpayer for the tax period during which the:

(A) Bad debt is written off as uncollectible in the taxpayer's books and records; and

(B) Taxpayer is eligible to deduct the bad debt for federal income tax purposes.

(3)(A) A taxpayer may claim a bad debt deduction on its sales and use tax return if the taxpayer:

(i) Is not required to file a federal income tax return; or

(ii) Uses the cash method of accounting for income tax.

(B) However, a taxpayer may not claim a bad debt deduction on its sales and use tax return if the taxpayer has received permission to report and remit sales tax on a cash basis instead of an accrual basis pursuant to Arkansas Code § 26-52-502 and 26 CAR § 30-1209.

(4) A taxpayer cannot claim a bad debt deduction on its sales and use tax return before the taxpayer has reported and remitted the tax for the debt at issue to the state.

(5) Debts that are secured by tangible personal property that has been repossessed upon default do not qualify for the bad debt deduction.

(6)(A) If the amount of bad debt exceeds the amount of taxable sales for the tax period during which the bad debt is written off, the taxpayer may file a claim for a refund.

(B) A bad debt must be deducted, or claim for refund filed, within three (3) years from the due date of the sales and use tax return on which the bad debt could first be claimed.

(7)(A) 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.

(B) For the purposes of reporting a payment received on a previously

claimed bad debt, any payment made on a debt or account is applied:

(i) First, proportionally to the taxable price of the tangible personal property or service and the sales tax on the tangible personal property or service; and

(ii) Second, to interest, service charges, and any other charges.

(8) Any deduction taken or refund paid, which is attributed to bad debts, shall not include interest.

(9) Except as provided in Arkansas Code § 26-52-309(f), concerning certified service providers, the only party entitled to a bad debt deduction or refund pursuant to this section is the taxpayer that originally reported and remitted the tax in question.

(k) None of the above examples should be construed to limit the definition of "gross receipts", "gross proceeds", or "sales price".

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-103(6); 26-52-103(13); 26-52-301; 26-52-301(3); 26-52-301(6); 26-52-301(7); 26-52-309; 26-52-401(38); 26-52-517"

Subpart 10. Gross Receipts Tax Rules — Persons Required to Collect and Remit Tax

26 CAR § 30-1001. Persons required to collect and remit tax — Pawnbrokers and sellers of used tangible personal property.

(a) Pawnbrokers and sellers of used tangible personal property are sellers of taxable goods and must obtain a permit.

(b) All sales made by pawnbrokers or other sellers of used property are taxable sales.

(c) See 26 CAR § 30-1130 for the exemption applicable to trade-in property.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1002. Leases and rentals.

(a) **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.

(b) **Definitions.** As used in this section:

(1) "Commercial shipping" means either:

(A) The service of transporting the personal property of another for gain or profit; or

(B) 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;

(2) "Long-term lease" means a contract to rent or lease property for a term of thirty (30) days or longer to a single consumer;

(3)(A) "Long-term rental vehicle tax" means the one and one-half percent (1 1/2%) tax levied pursuant to Arkansas Code § 26-63-304 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.

(B) See 26 CAR § 30-1406;

(4) "Motor vehicle" means a vehicle that is self-propelled and is required to be registered for use on the highway and does not include trailers or semitrailers;

(5)(A) "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.

(B) 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.

(C) 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;

(6)(A) "Rental vehicle tax" means the tax levied pursuant to Arkansas Code § 26-63-302 and is equal to ten percent (10%) of the gross receipts or gross proceeds derived from the short-term rental of a motor vehicle 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.

(B) See 26 CAR § 30-1405;

(7) "Short-term rental" means a contract to lease property for a term of less than thirty (30) days to a single consumer;

(8)(A) "Short-term rental tax" means the one percent (1%) tax levied pursuant to Arkansas Code § 26-63-301 on the entire payment for the short-term rental of tangible personal property.

(B) See 26 CAR § 30-1404; and

(9) "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 semitrailers.

(c) Long-term leases of tangible personal property (except for motor vehicles).

(1)(A) For long-term leases of tangible personal property, except for motor vehicles, the lessor may either:

- (i) Purchase the property tax free as a sale for resale; or
- (ii) Pay Arkansas sales and use tax on the purchase.

(B)(i) If the lessor purchases property intended for subsequent lease without paying Arkansas gross receipts or use tax, he or she must establish the requirements necessary for a sale-for-resale exemption.

(ii) See 26 CAR § 30-1134.

(C) 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.

(D) 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 26 CAR § 30-1115 for the exemption for leases of:

(A) Durable medical equipment;

(B) Mobility enhancing equipment; and

(C) Prosthetic devices.

(d) 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 the following:

(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)(i) If the lessor chooses Option 1, then the lessor will not collect sales tax or long-term rental vehicle tax on the consideration for the lease of the motor vehicle paid by the lessee.

(ii) 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)(i) 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.

(ii) The trade-in deduction available to purchasers of motor vehicles and described in 26 CAR § 30-701 shall not apply to leased motor vehicles.

(iii) The deduction available to purchasers on account of the sale of a used motor vehicle and described in 26 CAR § 30-702 shall not apply to leased motor vehicles.

Example 1: 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 five-thousand-dollar value of the used motor vehicle.

Example 2: Lessee owns a used motor vehicle that 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)(i) If the lessor chooses Option 2, then the lessor must collect sales tax

and long-term rental vehicle 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.

(ii) The lessor must report and remit sales tax and long-term rental vehicle tax regardless of whether the lessee timely makes the lease payments required in the lease agreement.

(iii) Assignment of a lease agreement does not relieve the lessor from the obligations to remit sales or use tax and long-term rental vehicle tax.

(iv) The lessor's obligation to remit tax ends at the earlier of the:

(a) Expiration of the lease term; or

(b) 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 vehicle tax are due.

Example 1: 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 vehicle tax on five thousand dollars (\$5,000) as consideration for the lease of the motor vehicle.

Example 2: Lessee owns a used motor vehicle that 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 vehicle tax on five

thousand dollars (\$5,000) as consideration for the lease of the motor vehicle.

(C)(i) Trailers and semitrailers are not "motor vehicles" and may not be registered exempt from gross receipts tax.

(ii) The long-term lease of a trailer or semitrailer that has been registered and titled in Arkansas is not subject to gross receipts or long-term rental vehicle tax.

(D)(i)(a) A motor vehicle used for long-term or short-term rental that was registered in Arkansas and for which 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 vehicle tax.

(b) This presumes that the lessor remains the same.

(ii) If the original lessor sells the motor vehicle on or after August 1, 1997, then the new lessor has the options described in 26 CAR § 30-1002(d)(1).

(E)(i) 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.

(ii) The lessor must choose Option 1 or Option 2 as described in 26 CAR § 30-1002(d)(1).

(iii)(a) If the lessor chooses Option 1, then the lessor must only retitle the vehicle in the lessor's name and pay sales tax at the time of registration.

(b) The sales tax will be based on the lessor's purchase price of the vehicle.

(iv) If the lessor chooses Option 2, then the lessor must:

(a) Register with the Sales and Use Tax Section as a long-term rental business;

(b) Obtain a new rental exemption certificate from the Sales and Use Tax Section; and

(c) Retitle the vehicle in the lessor's name.

(v)(a) No sales tax will be paid at the time of registration.

(b) However, the lessor must collect and remit sales tax and long-term rental vehicle tax on the monthly (or other periodic) lease payments.

(4) **Definitions for motor vehicle leasing.** As used in this section:

(A) A motor vehicle is "leased on a long-term basis on or after August 1, 1997" when the:

(i) Written lease agreement covering the motor vehicle is signed by the lessee on or after August 1, 1997; and

(ii) Motor vehicle was not registered and titled in Arkansas by the lessor before August 1, 1997;

(B)(i) "Lessor" means the person who owns the motor vehicle at the time that the lessee signs the lease agreement.

(ii) 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.

(iii) Lessor does not include an assignee of the lease agreement or of the vehicle when the assignment occurs after the lessee signs the lease; and

(C) **Rental term.**

(i) 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.

(ii) 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, not one (1) long-term rental.

(5)(A)(i) 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.

(ii) The lessor must maintain records that accurately reflect that the

motor vehicle is no longer leased to an Arkansas resident.

(B)(i) 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.

(ii) 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.

(iii) 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 twenty-four-month motor vehicle lease, which notes the invoice price of the motor vehicle as thirty thousand dollars (\$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 (1) 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 thirty thousand dollars (\$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 twenty-four-month motor vehicle lease, which notes the invoice price of the motor vehicle as thirty thousand dollars (\$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 (1) 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 twenty-four-month motor vehicle lease, which notes the invoice price of the motor vehicle as thirty thousand dollars (\$30,000). The motor vehicle was registered in Georgia, and Georgia sales tax was paid on the invoice price. The Georgia sales tax rate exceeds the Arkansas sales tax rate. One (1) 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 twenty-four-month motor vehicle lease, which notes the invoice price of the motor vehicle as thirty thousand dollars (\$30,000). The motor vehicle was registered in Georgia, and Georgia sales tax was paid on the invoice price. The Georgia sales tax rate is less than the Arkansas sales tax rate. One (1) 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.

(6) Direct pay permit.

(A) Option 1.

(i) Sales or use tax must be paid at the time of registration of the motor vehicle.

(ii) A lessee holding a direct pay permit may not accrue and remit sales or use tax on the motor vehicle.

(B) Option 2.

(i) 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.

(ii) 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.

(iii) 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.

(7) International registration plan.

(A) "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 Arkansas Code § 27-14-501 et seq.

(B) The taxability of gross receipts derived from a truck or trailer registered under the Arkansas IRP is determined by 26 CAR § 30-1002(d).

(e) Short-term rentals of tangible personal property (except for motor vehicles).

(1) In addition to the state and local sales tax, a one percent (1%) short-term rental tax (see Arkansas Code § 26-63-301 and 26 CAR § 30-1404) 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.

(2)(A) 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.

(B) See 26 CAR § 30-1134.

(3)(A) Repair parts purchased to keep the rental property in working order are exempt from gross receipts tax as sales for resale.

(B) See 26 CAR § 30-1134.

(4)(A) Lessors must maintain sufficient records to establish the intended term of the rental.

(B) 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.

(f) **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.

(B) 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 (see Arkansas Code § 26-63-302 and 26 CAR § 30-1405) on short-term rentals of licensed motor vehicles.

(C) See 26 CAR § 30-701(d)(2) for definition of "licensed motor vehicle".

(2) The gross receipts or gross proceeds derived from the sale of a motor vehicle to a person engaged in the business of renting a motor vehicle required to be licensed is exempt from state and local sales or use taxes if the motor vehicle is used exclusively for the purpose of rentals for periods of less than thirty (30) days.

(3)(A) 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.

(B) 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.

(C) See 26 CAR § 30-701.

(g) Rental of tangible personal property with operator.

(1) If tangible personal property is rented with an operator’s services included, the rental of the property and operator service is a nontaxable service, provided that the service alone would have been exempt from tax.

(2) If, however, the property alone is rented, then the sales and rental tax shall apply.

(h) The chart below sets forth the various taxes that must be collected on the described short-term rentals.

(i) The lease or rental of tangible personal property, including motor vehicles, is sourced in accordance with Arkansas Code § 26-52-521 and 26 CAR § 30-1207.

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	Y	N	Y	N	16%

commercial shipping					
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%
SHORT TERM RENTALS Less than 30 days	State Sales Tax 6% + local	Residenti al Moving Tax 4.5%	Rental Vehicle Tax 10% + local	Short Term Rental Tax 1%	Total State Tax Rate
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	Y	N	N	N	6%

For residential moving					
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%

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-103; 26-63-301 et seq."

26 CAR § 30-1003. Persons required to collect and remit tax — Specific businesses — Contractors.

(a) **Definitions.** As used in this section:

(1)(A) "Consumer" or "user" means the person to whom the taxable sale is made or to whom the taxable services are furnished.

(B) 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.

(C) 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.

(D) 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)(A) "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.

(B) The term "contract" shall not include a contract to produce tangible personal property; and

(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) **Nontaxable services and sales.** The following represents services that are not subject to sales tax:

(1)(A) The initial installation, alteration, addition, cleaning (with exceptions noted in subdivision (c)(2) of this section), 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 that become a part of real estate after installation, are not taxable services.

(B) This means, generally, that services performed on nonmechanical components or fixtures within or on a building or other improvement to real estate are not taxable;

(2)(A) 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.

(B) 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.

(C) The initial installation of mechanical or electrical equipment into an existing building is taxable.

(D) See subsection (d) of this section for tax liability on materials; and

(3)(A) 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.

(B) The initial installation of carpet or other flooring in an existing building is taxable.

(C) See subsection (d) of this section for tax liability on materials.

(c) Taxable services.

(1) See 26 CAR §§ 30-502 – 30-519 for additional taxable services.

(2)(A) The services enumerated in Arkansas Code § 26-52-301(3)(D), including the service of providing cleaning or janitorial work, are taxable.

(B) The cleaning of the interior or exterior of any building or structure, including vents, ducts, windows, walls, ceilings, or floors, is a taxable service.

(3)(A) The initial installation, alteration, addition, cleaning, refinishing, replacement, and repair of motors, electrical appliances, machines, and other

mechanical items are taxable.

(B) 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.

(4) The initial installation in existing buildings and the alteration, addition, cleaning, refinishing, replacement, and repair of carpet and rugs remain taxable.

(5) The replacement or repair of elevators is a taxable service.

(d) **Taxation of materials.**

(1) **Permitted business.**

(A) 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.

(B)(i) Any materials used in the performance of nontaxable services are not taxed to the customer.

(ii) However, the business must self-assess, report, and pay sales tax as a withdrawal from inventory (stock) on the purchase price of the materials.

(C)(i) Tax is due at the time the goods are withdrawn from stock.

(ii) See 26 CAR § 30-901.

(D) The business must collect sales tax from its customers on retail sales of materials.

(E) Sales tax on materials used in performing taxable services is to be collected from the customer along with the labor charges.

(2) **Nonpermitted business.**

(A) A business that is not required to hold a sales tax permit must pay tax on all purchases of materials.

(B) 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)(i) The original installation of heat and air ductwork in new or existing construction is not a taxable service.

(ii) 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.

(iii) The initial installation of mechanical or electrical components of heating and cooling units in existing construction is a taxable service.

(iv) The contractor must either:

(a) Pay tax to the supplier on the materials and equipment used in the installation; or

(b) Self-assess tax as a withdrawal from inventory (stock) on the purchase price of all materials including the heating and air units.

(B)(i) 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.

(ii) Any materials or parts used in the repairs or replacement are also taxable to the consumer.

(C)(i) Replacement or repair of heating and air ductwork is not a taxable service.

(ii) The contractor must either:

(a) Pay tax to the supplier on the materials used in the work; or

(b) 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.**

(A) The installation, replacement, or repair of pipes and nonmechanical plumbing fixtures are not taxable services.

(B) The plumbing contractor is to:

(i) Pay tax to the vendor on plumbing materials used in these services; or

(ii) Self-assess tax as a withdrawal from inventory (stock) on the purchase price of the materials used.

(C) No tax will be collected from the customer.

(D) The initial installation of mechanical or electrical items or appliances in new construction is not taxable.

(E) The initial installation of mechanical or electrical items or appliances in an existing building is taxable.

(F) Tax must be collected from the customer for both the taxable labor and the sale of any tangible personal property.

(3) Electrical contractors.

(A)(i) The installation, repair, or replacement of nonmechanical materials that become a part of a structure, such as wiring, breakers, and light fixtures, is not a taxable service.

(ii) The contractor must either:

(a) Pay tax to the supplier on the materials used in the work; or

(b) Self-assess tax as a withdrawal from inventory (stock) on the purchase price of the materials used.

(B)(i) 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.

(ii) Any parts used in the service are also taxable to the customer.

(4) Carpeting and flooring installation.

(A)(i) The initial installation of carpet or flooring into a newly constructed or substantially modified building is not a taxable service.

(ii) The contractor should either:

(a) Pay tax to the supplier on the materials used in the installation; or

(b) Self-assess tax as a withdrawal from stock (inventory) on the purchase price of all materials.

(B)(i) The initial installation of carpet or flooring in an existing building and the replacement or repair of carpet or flooring is a taxable service.

(ii) Sales tax is to be collected from the customer on all charges for labor and materials.

(5) Carpenters.

(A)(i) The installation, repair, or replacement of custom or standard sized cabinets, shelves, or other built-in furnishings that become affixed to real property are not taxable services.

(ii) 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.

(iii) Contractors are required to either:

(a) Pay tax to their suppliers on their purchases of materials; or

(b) 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 or she 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)(i) The initial installation of a garage door in new construction, whether electronically controlled or not, is not a taxable service.

(ii) The contractor must either:

(a) Pay tax to the supplier on the materials and equipment used in the installation; or

(b) Self-assess tax as a withdrawal from inventory (stock) on the purchase price of all materials, including the garage door and its components.

(B)(i) 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.

(ii) Any materials or parts used in the repairs or replacement are also taxable to the consumer.

(C)(i) Repair or replacement of nonmechanical or nonelectric components of the garage door system is not a taxable service.

(ii) For example, if the contractor replaces the door only, the replacement labor is not taxable.

(iii) The contractor must either:

(a) Pay tax to the supplier on all materials used in the work; or

(b) Self-assess tax as a withdrawal from inventory (stock) on the purchase price of the materials used.

(f) Requirement of sales tax permit.

(1) If a business performs both taxable and nontaxable services or if a business sells tangible personal property at retail, then the business is required to obtain a sales tax permit.

(2) If no taxable services are performed and no retail sales are made by the business, then a sales tax permit is not required.

(g) Direct pay permits.

(1) A direct pay permit is only for the use of the holder to whom it is issued.

(2) A contractor cannot use the direct pay permit of another person when purchasing materials or services.

(3) A direct pay permit holder is not entitled to accrue and remit tax on behalf of other persons.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-103; 26-52-201; 26-52-301; 26-52-307"

26 CAR § 30-1004. Rates for property purchased for use in the performance of a construction contract — Increase in sales and use tax rates.

(a)(1) 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.

(2) A contractor that purchases these materials is entitled to a rebate on certain increases in state and local sales or use taxes if the following conditions are satisfied:

(A) The materials must be used in a construction contract entered into before the effective date of the tax increase;

(B) The materials must be purchased within five (5) years from the effective date of the tax increase; and

(C) The contractor paid the additional sales or use tax to the seller.

Example 1: Pulaski County local sales and use tax is increased by one percent (1%), effective October 1, 2008. Purchases of materials used in completing construction contracts entered into prior to October 1, 2008 (but after January 1, 2008), will be eligible for a rebate of the additional one percent (1%) tax until September 30, 2013.

Example 2: On November 1, 2008, a construction contractor purchases a hammer and fifty pounds (50 lbs.) of nails for use in framing an apartment building. The construction contract was

signed prior to the October 1, 2008 (but after January 1, 2008), 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 subject to the rebate because the nails, although they cannot be seen, are a recognizable part of the building.

(3) This section is not applicable to cost-plus contracts that allow the contractor to pass any additional tax on to the principal as a part of the contractor's cost.

(4)(A) For the purposes of the rebate, "construction contract" means a contract to construct, manage, or supervise the construction, erection, or substantial modification of a building or other improvement or structure affixed to real property.

(B) "Construction contract" does not mean a contract to produce tangible personal property.

(b) Claims for credit or rebate.

(1) Self rebate.

(A) A contractor that holds an active Arkansas sales and use tax permit and files excise tax reports with the Department of Finance and Administration may offset the amount of credit or rebate claimed against any municipal and county sales or use tax due to be remitted with the return.

(B) The contractor must list each local code and the amount of additional tax paid to the seller on the return.

(C) If the total amount of the credit or rebate being requested is larger than the local tax due for that month, then the contractor will deduct the remaining credit or rebate from the state tax due on the return and remit the difference.

(D) The contractor must maintain documentation, such as photocopies of the invoices or receipts provided by the seller, for which the credit or rebate is being requested.

(2) File a claim. A contractor that qualifies for a rebate but is not required to

file a sales or use tax return as provided in subdivision (b)(1) of this section may file a claim for a credit or rebate by completing the Claim for Refund Form 2004-6.

(c) Burden of proof.

(1) The burden of proving entitlement to the rebate is on the contractor.

(2) The contractor is required to:

(A) Keep adequate records to identify the purchases that are eligible for the rebate; and

(B) Follow the process outlined in this section.

(3) Failure to do so will result in the rebate being disallowed.

(d) Contracts executed prior to January 1, 2008.

(1) Materials purchased for use in construction contracts that become recognizable components of the completed project are exempt from certain increases in state or local sales and use taxes if the following conditions are satisfied:

(A) The construction contract was executed prior to January 1, 2008;

(B) The materials must be used in a construction contract entered into before the effective date of the tax increase; and

(C) The materials must be purchased within five (5) years from the effective date of the tax increase.

(2) The construction contractor shall:

(A) Furnish a completed exemption certificate or "Certificate of Proof for Contractor's Entitlement to Exemption from Sales and Use Tax Increase" to each seller of exempt property for each contract; and

(B) Retain a copy of the certificate with his or her purchase records.

(3)(A) The contractor must keep adequate records to identify all exempt materials sold.

(B) The seller's invoices or other sales documents must contain a statement that the seller has received the certificate, which is retained in his or her records.

(4) The exemption is not applicable to cost-plus contracts that allow the contractor to pass any additional tax on to the principal as a part of the contractor's

cost.

(5) Consumer use tax reports.

(A) Some construction contractors report the use tax due on materials purchased from out-of-state sellers directly to the department.

(B) When such a construction contractor claims the exemption, the construction contractor must keep all records required by this section, including maintaining copies of purchase invoices and the contracts for which the exemption is claimed.

(6)(A) The burden of proving entitlement to an exemption is on the contractor.

(B) In the case of an audit of a seller's business, the burden is on the seller to keep adequate records pursuant to 26 CAR § 30-1210.

(C) 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.

(D) Failure to do so will result in:

(i) The exemptions being disallowed; and

(ii) Applicable tax, penalty, and interest being assessed.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-427"

26 CAR § 30-1005. Persons required to collect and remit tax — Specific businesses — Funeral homes and funeral directors.

(a) **Generally.** 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) **Invoicing.** Where the funeral home or funeral director separately states the charges for items of tangible personal property on his or her 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) **Shipment.**

(1) 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.

(2) If, however, the body is shipped outside the State of Arkansas, then see 26 CAR § 30-201 for applicable rules.

(d) **Consumers.** 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 prepaid funeral plan, the funeral home or funeral director has the following options:

(A)(i) Remitting gross receipts tax when the property is provided to the customer.

(ii) The tax shall be calculated at the rate in effect when the property is provided; or

(B)(i) Remitting gross receipts tax on the date the contract is purchased.

(ii) The tax shall be calculated at the rate in effect when the contract is purchased.

(2)(A) 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.

(B) 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 26

CAR § 30-1209.

(f) **Sourcing.**

(1) The state and local sales or use tax due is determined by Arkansas Code § 26-52-521 and 26 CAR § 30-1207.

(2) Tangible personal property sold in connection with the services offered by funeral homes and funeral directors, such as caskets, clothing, or similar items, are deemed received at the location where the remains are placed in the casket.

(3) The tax applicable to the sale of burial vaults and other items purchased for delivery is determined by the location of delivery.

Example: If the burial vault is delivered to a cemetery, then the applicable local tax is that of the cemetery location.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1006. Radio, video, and television tapes and films.

(a) 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.

(b) 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.

(c) The sale of a tape, film, or media is complete when the client is billed, even though the seller may:

- (1) Retain possession of the tape, film, or media; or
- (2) Deliver it directly to a radio or television station for the convenience of the client.

(d)(1) The tax does not apply to the sale of broadcasting time or to any other service that 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.

- (2) See 26 CAR § 30-1124.

Example 1: Producer is directed to videotape one (1) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "CD" means compact disc.

"DVD" means digital video disc.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-301"

26 CAR § 30-1007. Special rules for fundraising and other infrequent sales.

(a) PTAs/PTOs or other school organizations.

(1) 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.

(2) 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.

(3)(A) The students are permitted to collect tax on the vendor's behalf.

(B) However, if the students do not collect the tax for the vendor, the vendor must remit the total tax due to the state.

(4) Tax is due on the gross receipts received by the students from the purchaser.

(b) Exempt organizations.

(1) Exempt organizations may purchase items exempt from tax.

(2) For a list of organizations that are statutorily exempt from tax on their purchases, see 26 CAR § 30-1105.

(3) Exempt organizations are not specifically exempt from tax on sales made by the organizations.

(4) An exempt organization that operates as an established business is required to collect tax on its sales.

(c) Charitable nonprofit organizations.

(1) Charitable organizations that are not engaged in business for profit are not generally required to collect tax on sales made by the charitable organization.

(2) 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.

(3) See 26 CAR § 30-1117(c) for information regarding whether sales are

considered to compete with those of for-profit businesses.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "PTA/PTO" means parent teacher association/parent teacher organization.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-401; 26-52-430; 26-63-403; 26-63-404"

26 CAR § 30-1008. Persons required to collect and remit tax — Specific businesses — Sellers of computer hardware and computer software.

(a)(1) Sales tax is levied on the gross receipts or gross proceeds received from sales of:

- (A) Computer hardware;
- (B) Computer software; and
- (C) The service of repairing or maintaining computer equipment or

hardware in any form.

(2) Software that is delivered electronically or by load and leave is not taxable.

(b) **Definitions.** As used in this section:

(1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(2)(A) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(B) Computer software does not include software that is delivered electronically or by load and leave;

(3) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; and

(5) "Load and leave" means delivery to the purchaser by use of a tangible storage media in which the tangible storage media is not physically transferred to the purchaser.

(c) Prewritten computer software.

(1) The combining of two (2) or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser.

(3)(A) Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software.

(B) However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

(4) If a person modifies or enhances computer software of which the person is not the author or creator, then the person shall be deemed to be the author or creator only of such person's modifications or enhancements.

(d)(1) Computers are electrical devices, and any services performed on computers, including initial installation of the computer or any of its hardware, are taxable services.

(2) Exceptions are the parts and labor provided under a warranty contract if:

(A) The warranty is included in the purchase price of the computer; and

(B) No additional charge is made for warranty parts or labor.

(3) Rentals and leases of computer hardware and software are considered to be a sale for tax purposes.

(e) The sale of a service contract covering taxable repair services to computers is subject to state and local tax.

(f)(1) Gross receipts derived from the sale or licensing of both prewritten 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.

(2) 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 on the invoice or billing statement from charges for any:

- (A) Manuals;
- (B) Disks;
- (C) CDs; or
- (D) Other tangible property.

(g) **Examples.**

(1) **Hardware.** Examples of hardware referred to above are:

- (A) The computer itself;
- (B) Memory banks; and
- (C) Sending and receiving terminals.

(2) **Software.** Examples of software referred to above are tapes, disks, cards, or other devices or materials that contain a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(h) **Nontaxable services.**

(1) Separately stated charges for technical support for software are not subject to tax.

(2)(A) Software programming services and the development of custom software for a particular customer are not taxable services.

(B)(i) The software programming services or custom software development services remain nontaxable even though the customer may receive a de minimis amount of tangible personal property containing the results of programming, such as a backup disk or manual.

(ii) The true object of the transaction was the provision of programming services and not the purchase of software on a tangible medium.

(C) See 26 CAR § 30-1226(d)(1) and (d)(2) for guidance concerning the true object exclusion and de minimis exclusion for bundled transactions.

(3)(A) If a nontaxable service is sold in conjunction with tangible personal property for a nonitemized price (i.e., software programming services and one thousand (1,000) copies of the software delivered on a tangible medium), then the entire transaction is subject to sales tax unless the true object or de minimis exclusion applies.

(B) See 26 CAR § 30-1226(d)(1) and (d)(2).

(4)(A) The use of prewritten computer software in providing software programming services does not cause the programming services to become taxable unless tangible personal property is provided to the customer.

(B) If tangible personal property is provided, then the taxability of the transaction will be determined by the true object exclusion or de minimis exclusion for bundled transactions.

(C) If the sale of software programming services is the true object of the transaction, or the tangible personal property is de minimis, then the software programming services remain nontaxable even though the programmer utilizes or incorporates prewritten computer software in the performance of the programming services.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "CD" means compact disc.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1009. Persons required to collect and remit tax — Specific businesses — Sellers of beer, wine, liquor, and other intoxicating beverages.

(a)(1) 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.

(2) All state and local sales taxes must be paid in full prior to the renewal of a liquor permit or license.

(b)(1) An establishment that 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.

(2) 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.

(3) See 26 CAR §§ 30-601 and 30-1117.

(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)(A) In addition to the gross receipts tax, holders of private club permits issued by the division must collect and remit the ten percent (10%) supplemental gross receipts tax upon all charges to members for the:

- (i) Preparation and serving of mixed drinks; or
- (ii) Cooling and serving of beer and wine.

(B) A private club that 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, there is a three percent (3%) alcoholic beverage excise tax on sales of wine and liquor to consumers for off-premises consumption.

(f) In addition to the gross receipts tax, there is levied a one percent (1%) beer excise tax on sales of beer to consumers for off-premises consumption.

(g) The ten percent (10%) supplemental tax, four percent (4%) supplemental tax, three percent (3%) liquor and wine excise tax, and one percent (1%) beer excise tax must be reported and remitted to the Department of Finance and Administration at the same time as the state gross receipts tax, on forms provided by the department.

(h)(1) 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.

(2) Each container of sacramental wine sold in the state shall have attached to it a decal containing the words "Sacramental Wine".

(3) This decal shall be provided by and attached to the containers by wineries selling sacramental wine in this state.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1010. Persons required to collect and remit tax — Specific businesses — Wholesalers and jobbers.

Wholesalers and jobbers must collect and remit the tax on the gross receipts or gross proceeds derived from all:

(1) Sales to consumers or sales to retailers who do not have valid permits even though the sales are in wholesale quantities; or

(2) Sales to retailers that are not regularly in the business of reselling the articles purchased.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

Subpart 11. Gross Receipts Tax Rules — Exemptions from Tax

26 CAR § 30-1101. Exemptions from tax — Sales of items purchased with food stamps.

(a)(1) 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, Pub. L. No. 88-525, 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 Nutrition Program for Women, Infants and Children (WIC) in accordance with Section 17 of the Child Nutrition Act of 1966, Pub. L. No. 111-296, as amended, are exempt from the gross receipts tax.

(2) 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 and food ingredients purchased through bids under the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) program are exempt from the gross receipts tax.

(c) The tax exemption provided by this section shall expire if the exemption is no longer required for full participation in the food stamp or Special Supplemental Nutrition Program for Women, Infants and Children (WIC) program.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1102. Exemptions from tax — Fuel oil, motor fuel, motor oil, lubricants, crude oil, and automobile parts.

(a)(1) 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.

(2) 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)(1) 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.

(2) 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 that constitute "core charges" that 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 forty dollars (\$40.00) plus a core charge of eight dollars (\$8.00) and returns a used core for eight dollars (\$8.00), tax would be due only on the forty-dollar purchase price because the core was traded in or returned.

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

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1103. 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 that are received by mail or common carrier from outside this state and that, 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)(1) 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.

(2) 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.

(3) 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 telephone 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 the rollers:

(1) Have a remanufactured, nonmetallic material covering on all or part of the roller surface;

(2) Are brought into Arkansas solely and exclusively for the purpose of repair or manufacture; and

(3) 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 26 CAR § 30-1134 as a sale for resale if, and only if, all requirements of 26 CAR § 30-1134 are met and the:

(1) Business for which the detailing is performed is in the business of reselling the detailing service; or

(2) Detailing becomes a recognizable and integral part of an automobile that is to be sold by a person or company regularly engaged in the business of reselling automobiles.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1104. Exemptions from tax — Repair of commercial jet aircraft.

(a) The gross receipts or gross proceeds derived from the alteration, addition, cleaning, refinishing, 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 that 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 twelve thousand five hundred pounds (12,500 lbs.).

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1105. Exemptions from tax — Specific organizations exempt when they purchase taxable goods or services.

(a)(1) Certain specified organizations or groups have been exempted from the tax when they purchase tangible personal property or taxable services.

(2) 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 such specified organizations.

(b) **Exempt organizations.** The following specified organizations are exempt from sales tax:

- (1) The Boys' Clubs of America or any local council or organization thereof;
- (2) The Girls' Clubs of America or any local council or organization thereof;

- (3) The Poets' Roundtable of Arkansas;
- (4) The Boy Scouts of America or any of the scout councils located in Arkansas;
- (5) The Girl Scouts of the United States of America or any of the scout councils located in Arkansas;
- (6) United States Government agencies;
- (7) 4-H clubs and National FFA Organization clubs located in Arkansas;
- (8) The Arkansas 4-H Foundation, the Arkansas FFA Foundation, and the Arkansas FFA Association;
- (9) Orphans' homes or children's homes located in Arkansas that are:
 - (A) Not operated for profit; and
 - (B) Operated by a:
 - (i) Church;
 - (ii) Religious organization; or
 - (iii) Other benevolent, charitable association;
- (10) Public housing authorities organized pursuant to Arkansas Code § 14-169-201 et seq.;
- (11) Regional water distribution districts organized pursuant to The Regional Water Distribution District Act, Arkansas Code § 14-116-101 et seq.;
- (12) The Arkansas Country Music Hall of Fame board;
- (13) The American Red Cross;
- (14) Humane societies not operated for a profit and organized under Arkansas Code § 20-19-101 et seq., for the prevention of cruelty to animals;
- (15) The rental or lease of specialized equipment used in the filming of a motion picture that qualifies for the tax incentives provided by Arkansas Code § 26-4-201 et seq. [repealed];
- (16) Community Services Clearinghouse, Inc., of Fort Smith, Arkansas Code § 26-52-424;
- (17) Habitat for Humanity, Arkansas Code § 26-52-401(31);
- (18) Heifer International, Inc., Arkansas Code § 26-52-401(34);

(19) The Salvation Army, Arkansas Code § 26-52-401(33);

(20) 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 that is declared a disaster area by the Governor pursuant to Arkansas Code § 26-52-401(38);

(21)(A) Sales made by the canteen at Camp Joseph T. Robinson to active and retired members of the armed forces and full-time employees of the Department of the Military are exempt under Arkansas Code § 12-63-406.

(B) If sales are made to other purchasers, they are subject to gross receipts tax;

(22) The Arkansas Symphony Orchestra Society, Inc., pursuant to Arkansas Code § 26-52-401(37); and

(23) Regional airport authorities organized pursuant to Arkansas Code § 14-362-121.

Authority. Arkansas Code § 26-52-105.

Codification Notes. Arkansas Code § 26-4-201 et seq., was repealed by Acts 2013, No. 1143, § 1.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1106. Exemptions 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 and local sales or 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 and local sales or use taxes.

(c) **Definitions.** As used in this section:

(1) "Emergency equipment" means any tangible personal property used directly in the performance of emergency services by a volunteer fire department, such as:

(A) Fire fighting;

(B) Hazardous or toxic waste materials response and recovery;

(C) Search and rescue; and

(D) Other services that prevent, minimize, or repair injury and damage resulting from major emergencies or from disasters;

(2) "Protection equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property, but are not suitable for general use; and

(3) "Volunteer fire department" means the following:

(A) A rural volunteer fire department, including a fire department organized by a city that provides fire protection to areas both within and without the city limits, formed as a subordinate service district of the county or an improvement district, or a subscription fire service department formed as a nonprofit organization for fire protection under the laws of this state;

(B) A fire department in which seventy-five percent (75%) or more of the fire fighters employed are volunteer fire fighters who receive no regular compensation for their services;

(C) A fire department with service areas established by the appropriate quorum courts pursuant to Arkansas Code § 14-284-207; and

(D) A fire department registered with the Director of the Office of Fire Protection Services.

(d) **Compensation for services.**

(1) The receipt of appearance fees of less than twenty dollars (\$20.00) per call

by a volunteer is not deemed compensation but as reimbursement for expenses associated with responding to a fire.

(2) The waiver of fire protection fees owed by a volunteer firefighter does not constitute compensation.

(e) **Fire protection equipment and emergency equipment — Examples.** Fire protection equipment and emergency equipment include, but are not limited to, the following:

- (1) Axes;
- (2) Cascade systems;
- (3) Communication equipment, including radios, pagers, etc., and batteries for communication equipment;
- (4) Compressed air, as used in SCBAs;
- (5) Dry fire hydrants;
- (6) Fire extinguishers;
- (7) Fire retardant agents, such as foam;
- (8) First aid equipment;
- (9) Generators, as used to power fire protection and emergency equipment;
- (10) Hazardous/toxic material disposal equipment;
- (11) Hoses;
- (12) Individual firefighter's turn-out gear, i.e., helmets, visors, boots, gloves, pants, hoods, belts, face shields, or masks, etc.;
- (13) Jaws of life;
- (14) Ladders;
- (15) Lights;
- (16) Motion detectors;
- (17) 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:

(A)(i) The volunteer fire department desiring to claim exemption shall obtain an application for registration from the Office of Motor Vehicle.

(ii) The application must be completed and submitted to that office along with a filing fee; and

(B) The vehicle must:

(i) Be painted a distinguishing color; and

(ii) Have conspicuously displayed thereon in letters and figures not less than three inches (3") tall the identity of the volunteer fire department owning such vehicle;

(18) Nozzles;

(19) Oxygen;

(20) SCBAs, self-contained breathing apparatuses;

(21) Sirens;

(22) Training aids, such as VCRs, overhead projectors, etc.;

(23) Water rescue equipment;

(24) Winches; and

(25) Motor oil, grease, antifreeze, and other items used to maintain fire protection and emergency equipment.

(f) Supplies and materials — Examples.

(1) Supplies and materials include, but are not 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:

(i) Furnaces;

(ii) Condensing units; and

(iii) Window units;

(G) Carpeting; and

(H) Windows and doors.

(2) Examples of items that are not supplies and materials because the items are not fixtures include, but are not limited to, the following:

(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.

(g) Documentation.

(1) Sellers must follow the guidelines in 26 CAR § 30-1210 for sales involving an exemption.

(2) Sellers may verify the consumer's registration as a volunteer fire department by calling the Office of Fire Protection Services at (501) 683-6700.

(3) Sellers are encouraged to obtain indemnification agreements from customers and should maintain adequate records to establish entitlement to this exemption.

(h) 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 the:

(1) Exempt supplies and materials are separately stated on the purchase invoice; and

(2) Contractor provides documentation that the supplies and materials will be used in an exempt volunteer fire department project.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "VCR" means videocassette recorder.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-434"

26 CAR § 30-1107. Exemptions from tax — Fuel for manufacturing.

(a) Steel mills.

(1) 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.

(2) "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:

(A) 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

(B) 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.

(1) 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.

(2) "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.**

(1) 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.

(2) 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.**

(1) 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.

(2) 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.**

(1) 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.

(2) 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.

(3) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"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"

26 CAR § 30-1108. Exemptions from tax — Foodstuffs sold to governmental agencies and nonprofit food distribution agencies.

(a)(1) The gross receipts or gross proceeds derived from the sale of food or food ingredients or prepared 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.

(2) The gross receipts or gross proceeds derived from the sale of food or food ingredients to nonprofit agencies organized under the Arkansas Nonprofit Corporation Act, Arkansas Code § 4-28-201 et seq., for free distribution to the poor and needy are exempt from gross receipts tax.

(b) **Definitions.** As used in this section:

(1) "Eleemosynary institution" means any charitable and nonprofit organization that is operated primarily for the benefit of the economically disadvantaged;

(2) "Free distribution" means that no consideration is required prior to, subsequent to, or at the time of distribution;

(3)(A) "Governmental agencies" means any agency or department of the United States, the State of Arkansas, counties, cities, towns, or school districts.

(B) Government agencies do not include a private nonprofit organization funded wholly or in part by public monies;

(4) "Poor and needy" means individuals who are economically disadvantaged (e.g., individuals who receive little or no income in any form or fashion); and

(5) "Public institution" means 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1109. Exemptions from tax — Motor vehicles purchased by specific individuals and organizations.

(a)(1) 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 Department of Veterans Affairs pursuant to the provisions of 38 U.S.C. §§ 1901 – 1905 are exempt from the tax.

(2) An official letter from the United States Department of Veterans Affairs verifying this fact will be accepted as proof of entitlement to this exemption.

(b)(1) Gross receipts and gross proceeds derived from the sale of new automobiles to a veteran of the United States Armed Forces who is blind as the result of a service-connected injury shall be exempt from the Arkansas gross receipts tax.

(2) This exemption shall apply only to those persons who furnish the Department of Finance and Administration with a statement from the United States Department of Veterans Affairs certifying that such individual is a veteran of the United States Armed Forces and has been blinded as the result of a service-connected injury.

(3) This statement shall be supplied to the Department of Finance and

Administration upon application for a vehicle license.

(4) 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.

(5) 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-fourths (3/4) of a ton and does not include any trailer.

(c)(1) The gross receipts or gross proceeds derived from the sale of school buses to school districts in Arkansas are exempt from the tax.

(2) 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:

(A) 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;

(B) 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;

(C) The school district is obligated under the terms of the contract to pay any taxes related to the school buses; and

(D) The buses must be equipped with flashing white strobe lights and bus-mounted crossing gates as required under Arkansas Code § 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)(A) The person, firm, or corporation desiring to claim this exemption shall obtain an application for registration and license from the Office of Motor Vehicle.

(B) The application must be completed and submitted to that office along with the filing fee; and

(2) The vehicle must be painted a distinguishing color and must have conspicuously displayed thereon in letters and figures not less than three inches (3") tall the identity of the volunteer lifesaving or first aid crew or rescue squad using such vehicle.

(e)(1) 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.

(2) 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.

(3)(A) The term "training purposes" means that the motor vehicle must be used as an instructional or educational tool rather than for the school's or college's transportation needs.

(B) For example, a motor vehicle purchased by a vocational-technical school exclusively for use in its automobile repair courses would qualify for the exemption.

(C) 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 that are purchased by nonprofit organizations and used for the performance of contracts with the Department of Human Services or 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 Department of Human Services 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:

- (A) Passenger cars;
- (B) Trucks;
- (C) Semi-trucks;
- (D) Buses;
- (E) Motorcycles as defined in Arkansas Code § 27-20-101;
- (F) School buses;
- (G) Ambulances;
- (H) Hearses; and
- (I) Motor homes.

(2) Vehicles that do not have to be licensed include:

(A) Special mobile equipment as defined in Arkansas Code § 27-14-211 (farm tractors, road construction and maintenance equipment, ditch-digging and well-boring equipment, etc.);

(B) Implements of husbandry as defined in Arkansas Code § 27-14-212 (farm tractors, combines, etc.);

(C) Motorized bicycles;

(D) Golf carts;

(E) Riding lawn mowers; and

(F) All-terrain vehicles as defined in Arkansas Code § 27-21-102.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1110. Exemptions from tax — Schools.

(a)(1) There is no general exemption that applies to all sales to school districts or

public schools.

(2) There is no general exemption that applies to sales by school districts or public schools.

(3) However, there are certain specific exemptions that apply to schools and school districts that are addressed or referenced in this section.

(b) **Textbooks and instructional materials.** For sales of textbooks and instructional materials see 26 CAR § 30-1153.

(c) **Sales of food.**

(1) Sales of food or food ingredients or prepared 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.

(2) 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 or food ingredients or prepared food.

(d) **PTA/PTO fundraising.** For special rules pertaining to fundraising see 26 CAR § 30-1007.

(e) **School buses and motor vehicles.** For sales of school buses or motor vehicles see 26 CAR § 30-1109.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "PTA/PTO" means parent teacher association/parent teacher organization.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-401(3); 26-52-410; 26-52-437"

26 CAR § 30-1111. Exemptions from tax — Persons eligible for Medicare and Medicaid.

(a)(1) 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 U.S.C. § 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.

(2) 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 (\$50.00) of the sale price for the wheelchair. See also 26 CAR § 30-1115.

(b) Medical equipment includes, but is not limited to:

- (1) Durable medical equipment;
- (2) Mobility enhancing equipment;
- (3) Prosthetic devices;
- (4) Contact lenses; and
- (5) Corrective eyeglasses.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1112. 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 nonprofit 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 nonprofit 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 nonprofit 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) **Definitions.** As used in this section:

(1) "Charitable organization" means an organization whose:

(A) Purpose is benevolent, philanthropic, patriotic, or eleemosynary; and

(B) Function if not performed by a private party would have to be

performed at public expense;

(2)(A) "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.

(B) The addition or expansion of parking facilities is also an "expansion";

(3)(A) "Hospital" means an institution that provides medical and surgical care for the general public.

(B) Two (2) basic factors determine whether an institution is a hospital:

(i) The institution provides beds for the overnight stay of patients (an institution that provides outpatient services only is not a hospital); and

(ii) The institution provides a broad range of medical and surgical services;

(4) "Nonprofit" means 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:

(A) Individual;

(B) Corporation organized for profit;

(C) Trust organized for profit; or

(D) Partnership organized for profit;

(5)(A) "Repair" means substantial modifications or substantial work upon the hospital or sanitarium building itself that are necessary because of some extraordinary occurrence such as fire, earthquake, flood, explosion, or structural failure.

(B) Repair does not include the replacement of items or work performed on the hospital or sanitarium building as a result of:

(i) Ordinary wear and tear;

(ii) Depreciation;

(iii) Maintenance; or

(iv) Vandalism.

(C) Repair does not include remodeling or refurbishing of any part of the existing hospital or sanitarium facility not necessitated by damage;

(6) "Sanitarium" means an institution that provides long-term inpatient medical or mental treatment for the physically or mentally ill, including a charitable, nonprofit nursing home or a charitable, nonprofit hospice; and

(7) "State-owned, tax-supported" means owned by the State of Arkansas and

supported by public funds.

(f)(1)(A) Materials purchased by the hospital (except for state-owned hospitals) for repairs are subject to sales tax.

(B) 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.

(2) Materials purchased by a charitable, nonprofit, non–state-owned hospital for maintenance or routine replacement are exempt.

(g)(1) 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.

(2) For example, a clinic that is a subsidiary or affiliate of a hospital but that provides outpatient services only or otherwise fails to qualify as a hospital is not exempt from tax on purchases of items paid with the subsidiary or affiliate’s own funds.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1113. 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) **Definitions.** As used in this section:

(1)(A) “Drug” means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than “food and food

ingredients”, “dietary supplements”, or “alcoholic beverages” that is the following:

(i) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body.

(B) Examples of drugs include, but are not limited to, the following:

(i) Radioactive isotopes;

(ii) Medical grade gases;

(iii) Vaccines; and

(iv) Legend drugs;

(2)(A) “Physician” means a licensed medical practitioner authorized by Arkansas law to prescribe drugs that are used for human consumption.

(B) Physicians include:

(i) Surgeons;

(ii) Dentists;

(iii) Podiatrists; and

(iv) Osteopaths.

(C) See 26 CAR § 30-1115; and

(3) “Prescription” means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a physician.

(c)(1) The exemption applies to sales of drugs that can only be legally dispensed by prescription.

(2) Drugs that may be purchased without a prescription are not eligible for the exemption even if the drug is prescribed by a physician.

(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 that 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-406"

26 CAR § 30-1114. 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-419"

26 CAR § 30-1115. Exemptions from tax — Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.

(a) The gross receipts or gross proceeds derived from the rental, sale, or repair of the following items are exempt from tax if prescribed by a physician:

- (1) Durable medical equipment;

- (2) Mobility-enhancing equipment;
- (3) Disposable medical supplies; or
- (4) A prosthetic device.

(b) This exemption shall only apply to durable medical equipment, mobility-enhancing equipment, disposable medical supplies, or a prosthetic device sold to a specific patient pursuant to a prescription written by a physician prior to sale.

(c)(1) Physicians, hospitals, nursing homes, and long-term care facilities are considered consumers of all property and services that they purchase for use in the practice of their professions.

(2) Physicians, hospitals, nursing homes, and long-term care facilities are liable for the sales and use tax on their purchases unless the requirements of this exemption or other applicable exemption are satisfied.

(d)(1) For the purpose of this section, "physician" means a person licensed under Arkansas Code § 17-95-401 et seq., and includes osteopathic physicians (D.O.).

(2) The term "physician" does not include:

- (A) Chiropractors;
- (B) Podiatrists;
- (C) Dentists;
- (D) Optometrists; or
- (E) Physical therapists.

(e) Durable medical equipment.

(1) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that meets the following conditions:

- (A) Can withstand repeated use;
- (B) Is primarily and customarily used to serve a medical purpose;
- (C) Generally is not useful to a person in the absence of illness or injury;
- (D) Is not worn in or on the body; and
- (E) Is for home use.

(2) Durable medical equipment does not include mobility-enhancing equipment.

(3) For the purposes of durable medical equipment, repair and replacement parts include all components or attachments used in conjunction with durable medical equipment.

(4) Examples of durable medical equipment include, but are not limited to, the following items:

- (A) Respiratory humidifier;
- (B) Glucose meters;
- (C) Apnea monitors;
- (D) Bili lights;
- (E) Vaporizers;
- (F) Injection guns;
- (G) Enteral feeding bags;
- (H) Wheelchair cushions; and
- (I) Traction equipment.

(f) Mobility-enhancing equipment.

(1) "Mobility-enhancing equipment" means equipment, including repair and replacement parts for the equipment, that meets the following conditions:

(A) Is primarily and customarily used to provide or increase the ability to move from one (1) place to another and that is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by a person with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(2) "Mobility-enhancing equipment" does not include durable medical equipment.

(3) Examples of mobility-enhancing equipment include, but are not limited to, the following items:

- (A) Crutches;
- (B) Canes;
- (C) Lift chairs;

- (D) Transfer belts;
- (E) Walkers;
- (F) Wheelchair ramps; and
- (G) Swivel seats.

(g) **Disposable medical supplies.** Examples of disposable medical supplies include, but are not limited to, the following items:

- (1) Ostomy, urostomy, and colostomy supplies;
- (2) Enemas, suppositories, and laxatives used in routine bowel care; and
- (3) Disposable undergarments and linen savers.

(h) **Prosthetic device.**

(1) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn in or on the body to:

- (A) Artificially replace a missing portion of the body;
- (B) Prevent or correct physical deformity or malfunction; or
- (C) Support a weak or deformed portion of the body.

(2) "Prosthetic device" does not include:

- (A) Corrective eyeglasses;
- (B) Contact lenses; or
- (C) Dental prostheses.

(3) Examples of prosthetic devices include, but are not limited to, the following items:

- (A) Abdominal belts;
- (B) Catheters;
- (C) Hearing aids;
- (D) Artificial limbs;
- (E) Insulin pumps;
- (F) Mastectomy surgical bras; and
- (G) Orthopedic shoes.

(4)(A) Many prosthetic devices cannot be purchased directly by a patient.

(B) A prosthetic device that would be exempt if it could be purchased

directly by the patient is exempt if the physician procures the device from the medical supplier on behalf of a specific patient.

(C) A prosthetic device that is purchased for use or consumption in the performance of nontaxable medical services or otherwise not purchased on behalf of a specific patient does not meet the requirements of Arkansas Code § 26-52-433.

(5)(A) The general exemption certificate (Form ST 391) or the multi-state certificate of exemption (SSTGB Form F0003) may be used to claim this exemption on behalf of the patient.

(B) Both forms may be obtained on the Department of Finance and Administration's website.

(C) Documentation must be maintained to support that the prosthetic device was purchased on behalf of the specific patient pursuant to a prescription.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-433"

26 CAR § 30-1116. Sales by ophthalmologists, optometrists, opticians, and eyewear retailers.

(a) **Definitions.** As used in this section:

(1)(A) "Corrective eyeglasses" means eyewear that is designed to improve or protect the patient's vision.

(B) Corrective eyeglasses normally consist of:

- (i) Eyeglass lenses;
- (ii) Complete eyeglasses; or
- (iii) Contact lenses;

(2) "Doctor" means an ophthalmologist or optometrist;

(3)(A) "Eyewear retailer" means a business enterprise engaged primarily in the retail sale of eyewear and eyewear related products.

(B) Examples of an eyewear retailer include a discount store's in-house optical shop or vision center and national chain store vision centers.

(C) An eyewear retailer may (and often does) offer the services of one (1) or more optometrists;

(4) "Independent optician" means a self-employed optician engaged in the business of selling and servicing eyewear and eyewear related products; and

(5) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of Arkansas.

(b) Sales by ophthalmologists and optometrists.

(1)(A) Doctors are deemed to be the consumers or users of corrective eyeglasses requiring a prescription that are used or consumed by them in the rendition of nontaxable professional medical services.

(B) Corrective eyeglasses requiring a prescription are not taxable when sold by the doctor.

(C) The sale of tangible personal property other than corrective eyeglasses requiring a prescription by doctors to their patients is subject to sales tax.

(2) Doctors should purchase corrective eyeglasses and other products that are sold or otherwise transferred to their patients as follows:

(A)(i) The doctor may purchase tangible personal property exempt from sales or use tax as a sale for resale.

(ii) See 26 CAR § 30-1134.

(iii) At the time any item other than corrective eyeglasses requiring a prescription is sold, the doctor must collect sales tax from the patient based upon the sales price of the property to the patient.

(iv) As corrective eyeglasses requiring a prescription are 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; or

(B)(i) Alternatively, if the doctor makes no sales of items other than corrective eyeglasses requiring a prescription, sales or use tax on the materials used in producing corrective eyeglasses requiring a prescription may be paid to the vendor at the time of purchase.

(ii) The doctor is responsible for remitting use tax on purchases from unregistered vendors.

(3) Sales by doctors to nonpatients.

(A) When a doctor merely fills another doctor's prescription for corrective eyeglasses, such sales are not considered to be part of the doctor's nontaxable professional medical services.

(B) 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.

(1) The sale of tangible personal property, including corrective eyeglasses requiring a prescription, 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 medical services.

(2)(A) Opticians should purchase all tangible personal property tax exempt as sales for resale.

(B) See 26 CAR § 30-1134.

(3) Sales tax should be collected from the optician's customers at the time of sale.

(d) Sales by eyewear retailers.

(1) The sale of tangible personal property, including corrective eyeglasses requiring a prescription, by any eyewear retailer is subject to sales tax.

(2)(A) Eyewear retailers should purchase all tangible personal property that is for resale tax exempt as sales for resale.

(B) See 26 CAR § 30-1134.

(3) Sales tax should be collected from the retailer's customers at the time of

sale.

(e) Corrective eyeglasses and contact lenses are not considered to be prosthetic devices and therefore may not be sold to consumers tax exempt pursuant to Arkansas Code § 26-52-433 and 26 CAR § 30-1115.

Authority. Arkansas Code § 26-52-105.

26 CAR § 30-1117. Exemptions from tax — Charities and churches.

(a)(1) 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.

(2) 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.

(3) See subsection (c) of this section.

(b)(1) 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.

(2) 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 the Department of Finance and Administration certifying that it:

(A) Is a church or charitable organization; and

(B) 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) 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

(B) 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; and

(B) Sales at concession stands operated by a nonprofit little league or soccer association or other similar athletic association.

(5) The sale of fireworks by a nonprofit charitable organization shall be deemed to compete with for-profit organizations.

(d) **Definitions.** As used in this section:

(1) See 26 CAR § 30-1112(e)(1) for the definition of "charitable organization"; and

(2)(A) "Engaged in business for profit" means that the income or receipts of the church or charitable organization inures to the benefit of:

(i) An individual;

(ii) A corporation organized for profit;

(iii) A trust organized for profit; or

(iv) A partnership organized for profit.

(B) A charitable organization or church that has obtained a ruling from the Internal Revenue Service or Income Tax Section of the Department of Finance and Administration that certifies the organization for income tax purposes is presumed to be a nonprofit organization.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-401; 26-52-430"

26 CAR § 30-1118. Exemptions from tax — Admission fees to rodeos and fairs — Tickets for admission to athletic events and interscholastic activities — Colleges and universities.

(a)(1) The gross receipts or gross proceeds derived from gate admission fees at state, district, county, or township fairs are exempt from the tax.

(2) The gross receipts or gross proceeds derived from gate admission fees at any rodeo are exempt from the tax if, and only if:

(A) The gross receipts or gross proceeds derived from such fees are used exclusively for the improvement, maintenance, and operation of such rodeo; and

(B) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1119. 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)(A) The sale is not from an established business located off the farm.

(B) 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.

(C) 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 nonedible trees, shrubs, or plants by florists or nurserymen are not exempt from tax.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1120. Exemptions from tax — Dairy, livestock (including domesticated fish), and poultry products.

(a) The gross receipts or gross proceeds derived from the sale of baby chickens in Arkansas are exempt from the tax.

(b)(1) 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.

(2) The term "livestock" includes:

(A) Cattle;

(B) Horses;

(C) Mules;

(D) Sheep;

(E) Hogs; and

(F) 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 fewer than six (6) dairy cows are exempt from the tax if the:

(1) Dairy products are produced in Arkansas;

(2) Dairy products are sold by the producer directly to the consumer; and

(3) 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:

(1) Produced in Arkansas; and

(2) Sold on the producer's farm and not from an established business.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1121. Exemptions from tax — Cotton gin baling materials, agricultural seed, and tomato twine.

(a)(1) 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.

(2) The gross receipts or gross proceeds derived from the sale of twine that 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)(1) 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.

(2) Also, the gross receipts or gross proceeds derived from the sale of seedlings used in the commercial production of timber are exempt from tax.

(3) 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:

- (1) Food;
- (2) Fiber or timber;
- (3) Sod; or
- (4) Nurseryman products.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-408"

26 CAR § 30-1122. [Reserved].

26 CAR § 30-1123. Exemptions from tax — Certain products used for livestock and poultry — Special rules for claiming exemptions.

(a)(1) The gross receipts or gross proceeds derived from sales of agricultural fertilizer, agricultural limestone, and agricultural chemicals are exempt from the tax.

(2) 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.

(3) 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) **Definitions.** As used in this section:

(1) "Agricultural" means operations engaged in for the production of:

- (A) Food;
- (B) Fiber;
- (C) Timber;
- (D) Sod; and
- (E) Nurseryman products;

(2)(A) "Feedstuffs" means 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.

(B) Food supplements need not be nutritious or for medicinal purposes;

and

(3) "Livestock" includes:

(A) Cattle;

(B) Horses;

(C) Mules;

(D) Sheep;

(E) Hogs; and

(F) Any other animals kept for commercial use or profit.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows: "Source: Ark. Code Ann. § 26-52-404"

26 CAR § 30-1124. Nontaxable advertising services.

(a) **Definitions.** As used in this section:

(1) "Advertising agency" means a business that provides comprehensive, professional advertising services, including, but not limited to:

(A) Artwork;

(B) Concepting;

(C) Designing; and

(D) Any other creative services necessary to create, plan, and implement an advertising scheme; and

(2) "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 that they purchase or consume in providing advertising services.

(3) The sale of caps, pencils, mugs, shirts, or any other item of tangible personal property that 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1125. Exemptions from tax — Sales to the United States Government.

(a) The gross receipts or gross proceeds derived from sales to the United States Government are exempt from the tax.

(b) 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.

(c) Sales to United States Government employees who pay for the articles purchased with their own funds are not exempt.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-401(5)"

26 CAR § 30-1126. Exemptions from tax — Federal credit card purchases.

(a)(1) Sales tax is not due on credit card purchases that are direct-billed to and paid for by the federal government.

(2) 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.

(3) The following information is designed to assist you in determining whether or not tax applies to transactions paid for with GSA SmartPay®2 charge cards.

(b) Cards that are always direct-billed to the federal government and are therefore exempt from sales or lodgings taxes begin with digits 4486, 4614, 4716, 5565, 5568, or 8699.

(c)(1) Prefixes 4486, 4614, 5565, and 5568 are issued on cards that are both direct-billed and individually billed.

(2) To know the difference you must look at the sixth digit.

(d)(1) If the sixth digit is 0, 6, 7, 8, or 9, the card is direct-billed and the transactions are tax-exempt.

(2) 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.

(3) State sales and tourism taxes apply only against transactions made with federal Visa or MasterCard credit cards that 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 (2) exceptions to the above statements:

(1)(A) The United States Department of the Interior will use an integrated MasterCard issued by NationsBank.

(B) The same card will be used for both direct-billed and individually billed purchases.

(C) The bank will sort the purchases during the billing process depending on the merchant's code.

(D) Purchases for office supplies and other procurements will be direct-billed to the federal government and, therefore, tax-exempt.

(E) Purchases for lodgings and restaurant food will be individually billed to the federal employee and, therefore, taxable.

(F) These cards will have the agency's federal tax-exempt identification number (14-0001849) on the face of the card.

(G) The account numbers will begin "5568-16".

(H) 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; and

(2)(A) The cards issued to the United States Bureau of Land Reclamation will be direct-billed for all purchases, including lodgings and restaurant charges.

(B) Accordingly, cashiers will have to differentiate purchases on cards issued to the United States Department of the Interior and purchases on cards issued to the United States Bureau of Land Reclamation.

(C) Purchases for lodgings and restaurant food on cards issued to the United States Department of the Interior are taxable.

(D) Purchases for lodgings and restaurant food on cards issued to the United States Bureau of Land Reclamation are tax-exempt.

(E) This system is expected to be in place for approximately one (1) year beginning in 1999, at which time all purchases on this integrated card will be direct-billed and tax-exempt.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-52-401(5); 26-63-401 et seq."

26 CAR § 30-1127. Exemptions from tax — Newspapers, publications, and billboards.

(a) **Definitions.** As used in this section:

(1) "Advertising space" means:

(A) Space located within the body of a newspaper or publication containing advertisements that are printed concurrently with the news, articles, features, or other attractions in the newspaper or publication; and

(B) The classified advertising section;

(2) "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 that is not physically attached to a newspaper, but which may be distributed with a newspaper or by other means;

(3) "Billboard advertising services" means any and all services rendered in connection with the rental or lease of advertising space on a structure that is affixed to the land for the purpose of posting advertising messages;

(4) "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;

(5) "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; and

(6) "Regular subscription" means the purchase by advance payment of a specified number (two (2) 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)(1) The gross receipts or gross proceeds derived from the sale or rental of advertising space in newspapers and publications are exempt from the tax.

(2) Advertising supplements are not exempt from the tax.

(3) 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)(1) 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.

(2) 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.

(3) If the printer is also the distributor, the printer should pay tax on the retail price that the printer would have charged to a customer who purchased the advertising supplements or publications from the printer in an arm's-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 nonsubscription 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 26 CAR § 30-1136.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-401"

26 CAR § 30-1128. 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) "Isolated sale" means the one-time sale of an item or group of items not made by an established business of any kind or character.

Example: Seller has an inventory of merchandise that 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 noninventory assets is considered an isolated sale.

(c)(1) This exemption does not apply to the sale of motor vehicles, trailers, semitrailers, mobile homes, airplanes, or sales of tangible personal property at special events.

(2) See 26 CAR § 30-1129.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1129. Special events — Exception to isolated sales exemption.

(a)(1) The isolated sale exemption does not apply to items sold at special events.

(2) 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.

(3)(A) The department will then provide the promoter with packets of materials that are to be handed out to each vendor at the beginning of the special event.

(B) The packets will include:

(i) A sales tax report schedule;

(ii) A list of cities and counties with local sales and use tax (along with the applicable tax rates); and

(iii) An envelope for sales tax remittance.

(4)(A) 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.

(B) The promoter should always make certain that he or she has provided each vendor with his or her name and address.

(C) The vendor must make his or her check payable to the department and place the check, along with the reporting form, into the envelope provided by the promoter.

(D) The envelope is then turned in to the promoter who will forward the report and payment to the department by the twentieth 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 and Use 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)(1) Vendors who are a church or nonprofit charitable organization are not required to collect the tax under this provision.

(2) However, charitable organizations whose sales compete with for-profit businesses are required to collect the tax.

(3) See 26 CAR § 30-1128(c).

(d) **Definitions.** As used in this section:

(1) "Promoter" or "organizer" means a person who organizes or promotes a special event that 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)(A) "Special event" means an entertainment, amusement, recreation, or marketing event that occurs at a single location on an irregular basis and where tangible personal property is sold.

(B) Such special events include:

- (i) Auto shows;
- (ii) Boat shows;
- (iii) Gun shows;
- (iv) Knife shows;
- (v) Craft shows;
- (vi) Flea markets;
- (vii) Carnivals;
- (viii) Circuses;
- (ix) Bazaars;
- (x) Fairs;
- (xi) Art; or
- (xii) Other merchandise displays or exhibits.

(C) Special events do not include any county, district, or state fair or the Four States Livestock Show that has been approved, pursuant to the rules of the Arkansas Board of Animal Health, to receive state funds; and

(3) "Special event vendor" means a person making sales of tangible personal property at a special event.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of

Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-518"

26 CAR § 30-1130. 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)(A) 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.

(B) 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 of 1941, Arkansas Code § 26-52-101 et seq.; and

(2) Either:

(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 or her 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 or she 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 of 1941.

Example: Seller of farm equipment sells a new tractor to a farmer. The farmer trades in his or her 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 or she is not required to collect sales tax.

(b)(1) The foregoing does not apply to transactions involving used motor vehicles or trailers, used mobile homes, or used aircraft, but is applicable to boats, motors, appliances, etc.

(2) See 26 CAR §§ 30-703, 30-705, and 30-707.

(c) Property purchased by a seller and not taken as a trade-in does not qualify for the exemption.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1131. 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) **Definitions.** As used in this section:

(1)(A) "Farm equipment and machinery" means agricultural implements used exclusively and directly for the agricultural production of:

- (i) Food or fiber as a commercial business; or
- (ii) Grass sod or nursery products as a commercial business.

(B) Farm equipment and machinery does not include:

- (i) Implements used in the production and severance of timber;
- (ii) Motor vehicles that are subject to registration;
- (iii) Airplanes; or
- (iv) Hand tools.

(C) The following agricultural implements are exempt provided they meet the requirements of subdivisions (c)(2) and (c)(3) of this section:

- (i) Combines;
- (ii) Cotton pickers;
- (iii) Cotton module builders;
- (iv) Cotton trailers;
- (v) Cultivators;
- (vi) Discs;
- (vii) Farm tractors (other than garden tractors);
- (viii) Harrows;
- (ix) Irrigation equipment;
- (x) Milking equipment, including milking machines;
- (xi) Mechanical pickers;
- (xii) Planters;
- (xiii) Plows;
- (xiv) Rotary hoes;
- (xv) Sprayers;
- (xvi) Spreaders; and
- (xvii) Threshing machines.

(D) All-terrain vehicles that are not subject to licensing or registration for use on the highways.

(E) Machinery and equipment used in poultry grow-out houses, including:

- (i) Heaters;

- (ii) Cages;
- (iii) Feeding systems;
- (iv) Storage bins for short-term storage of feed;
- (v) Medicators;
- (vi) Watering systems;
- (vii) Augers;
- (viii) Fans; and
- (ix) Generators.

(F) Egg racks, poultry loaders, and module coop systems used by egg and poultry producers in farming operations; and

(2)(A) "Irrigation equipment" means:

(i) Pipes, hoses, tubing, and accessories to the pipes, hoses, and tubing that 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 that is movable and does not become affixed to real property.

(B) Irrigation equipment, other than pipes, hoses, and tubing, that is designed or intended to be permanently attached or incorporated into real property is not exempt.

(c)(1)(A) The list of exempt items in subdivision (b)(1)(C) of this section is not intended to be exclusive.

(B) Other agricultural implements may qualify for this exemption provided they meet the requirements of subdivisions (c)(2) and (c)(3) of this section.

(2)(A) 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.

(B) 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:

- (i) Food;
- (ii) Fiber;
- (iii) Grass sod; or
- (iv) Nursery products.

(C) A person who uses agricultural implements in the production of food, fiber, grass sod, or nursery products primarily for his or her own consumption is not entitled to this exemption.

(3)(A) 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.

(B) The term "directly" limits the exemption to the following:

(i) 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

(ii) Machinery and equipment used in the agricultural production of farm products to be fed to livestock or poultry that is to be sold ultimately in processed form at retail.

(4)(A) Implements that are not exempt include, but are not limited to, the following:

- (i) Containers or storage facilities;
- (ii) Implements used in the production or severance of timber (except as exempted by subsection (f) of this section);
- (iii) Any motor vehicle of a type subject to registration for use on the highway;
- (iv) Airplanes;
- (v) Hand tools;
- (vi) Attachments to and accessories not essential to the operation of the implement itself (except when sold as part of an assembled unit);
- (vii) Items that are incorporated into real property; and
- (viii) Repair labor and repair parts.

(B) Examples of nonexempt items include:

(i) 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);

(ii) 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, and fishing); and

(iii) A machine purchased by a commercial farmer who also uses the machine to produce food or fiber primarily for his or her own consumption.

(d) **Proof of entitlement.**

(1) Sellers of farm equipment and machinery that the purchaser claims as an exempt transaction should refer to 26 CAR § 30-1210 concerning exemptions.

(2) As an alternative to an exemption certificate, a seller may accept a certification from the purchaser that the item:

(A) Will be used exclusively in the agricultural production of food or fiber as a retail business; and

(B) Either used directly in the agricultural production of:

(i) Food or fiber to be sold in processed form or at retail; or

(ii) Farm products to be fed to livestock or poultry, which is to be sold ultimately in processed form at retail.

(3) The suggested certification form appears at the end of this section.

(e) **Engaged in the business of farming.** A purchaser of farm machinery and equipment shall be considered to be engaged in the business of farming for purposes of the exemption if the purchaser meets the requirements in subdivision (e)(1) or subdivision (e)(2) of this section:

(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 Arkansas Code § 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:

(i) Are used exclusively and directly to provide those services; and

(ii) 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, 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.

(f) Timber harvesting.

(1) If new or used machinery or equipment and related attachments are sold to or used by a person engaged primarily in the harvesting of timber, then the purchaser is entitled to a rebate of gross receipts tax paid on the first fifty thousand dollars (\$50,000) of the purchase price.

(2) In order for the machinery or equipment and related attachments to be subject to the rebate, 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.

(3)(A) Only complete systems or units that operate exclusively and directly in the off-road harvesting of timber are subject to the rebate of tax.

(B) 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.

(C) Examples of such equipment include:

- (i) Skidders;
- (ii) Feller bunchers;
- (iii) Delimbers of all kinds; and
- (iv) Bulldozers equipped with grapples used as skidders.

(4) This rebate does not apply to repair or replacement parts for the machinery and equipment used in timber harvesting.

(g) Claims for rebate for timber harvesting machinery and equipment.

(1) Self rebate.

(A) A purchaser that holds an active Arkansas sales and use tax permit and files excise tax reports with the Department of Finance and Administration may offset the amount of credit or rebate claimed against any municipal or county sales or use tax due to be remitted with the return.

(B) The purchaser must list each local code and the amount of tax paid to the seller on the return.

(C) If the total amount of the credit or rebate being requested is larger than the local tax due for that month, then the purchaser will deduct the remaining credit or rebate from the state tax due on the return and remit the difference.

(D) The purchaser must maintain documentation, such as photocopies of the invoices or receipts provided by the seller, for which the credit or rebate is being requested.

(2) **File a claim.** A purchaser that qualifies for a rebate, but is not required to file a sales or use tax return as provided in subdivision (g)(1) of this section, may file a claim for a credit or rebate by completing the Claim for Refund Form 2004-6.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of

Arkansas Rules contained a footnote as follows:

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

Commercial Farming Machinery & Equipment Sales Tax Exemption Certification

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

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

26 CAR § 30-1132. 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.** As used in this section:

(1) "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; and

(3) "Livestock reproduction substance" means any natural or artificial substance used in the reproduction of livestock, including semen or embryos.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-439"

26 CAR § 30-1133. Exemptions from tax — Vessels, barges, and towboats of at least 50 tons load displacement — 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)(1) 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.

(2) 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.

(3) 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 carriers are exempt from the tax.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1134. Exemptions from tax — Sales for resale.

(a)(1) 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 are exempt from tax provided that such sales are made to persons to whom a permit has been issued as provided in Arkansas Code § 26-52-201 et seq., and 26 CAR § 30-1203.

(2) A seller may accept a valid retail permit or resale permit issued by another state.

(3) Sellers should refer to 26 CAR § 30-1210 for the general provisions concerning exemption claims and liability.

(b) Proof of entitlement to exemption.

(1) The sale for resale exemption may be claimed through the use of the exemption certificate (Form ST 391) or the multistate certificate of exemption (SSTGB Form F0003).

(2)(A) A purchaser may also claim the sale-for-resale exemption by providing information to the seller that otherwise establishes that the purchaser is reselling the

articles purchased.

(B) Such information includes the purchaser's retail permit number or a written certification to the seller that the articles or services are purchased for resale.

(3)(A) Any person repeatedly selling the same type of property to the same purchaser for resale may accept a blanket certificate covering more than one (1) transaction.

(B) A blanket certificate may not be used if a period of more than twelve (12) months elapses between transactions.

(4)(A) If a retail permit holder purchases goods, services, wares, and merchandise from a seller on a regular basis, then the retail permit holder must notify the seller of all purchases that are not for resale and remit the applicable amount of tax thereon.

(B) 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 of Revenue to cancel the retail permit of the retail permit holder who failed to so notify the seller.

(5)(A) A seller has ninety (90) days from the date of sale to obtain a fully completed exemption certificate or information that is the equivalent of the information required by the exemption certificate.

(B) If a seller has not obtained an exemption certificate or equivalent information and the Department of Finance and Administration makes a request for substantiation of the exemption, the seller has one hundred twenty (120) days from the date of the request to prove by other means that the transaction was not subject to sales or use tax or to obtain in good faith a fully completed exemption certificate from the purchaser.

(C) See 26 CAR § 30-1210.

(c) Sale for resale — Manufacturers.

(1)(A) 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.

(B) 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.

(C) For purposes of this subsection, the following definitions shall apply:

(i) "Integral" means essential to the completeness of the finished product; and

(ii)(a) "Recognizable" means capable of being recognized in the finished product.

(b) 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.

(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 subsections (a) – (c) of this section.

(5) Packaging materials.

(A)(i) 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.

(ii) Shrink wrap and strapping that bind the finished product together for shipment to the consumer are exempt.

(iii) Nonreturnable pallets that are delivered with the final product are

also exempt.

(iv) Returnable pallets are taxable.

(B)(i) Materials purchased by the manufacturer or processor to transport the product to the customer and that are owned by and returned to the manufacturer or that do not become part of the finished product received by the consumer are taxable.

(ii) Dunnage bags that prevent containers of products from shifting during transit are taxable.

(d) Sale for resale — 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:

(A) Paper, plastic, and Styrofoam cups used for dispensing beverages and the paper and plastic lids for such cups; and

(B) 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)(A) Gross receipts derived from the sale of the following items purchased by restaurants are not exempt as a sale for resale:

(i) Paper plates;

(ii) Paper and plastic straws and stirrers;

(iii) Plastic tableware and utensils;

(iv) Paper napkins;

(v) Paper sacks; and

(vi) Premoistened towelettes.

(B) 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 that 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.

(e) Sale for resale — Leases and rentals.

(1) 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.

(2) However, this exemption does not apply to service charges for repairs or maintenance work on the property.

(f) Sale for resale — Car dealers.

(1) New and used car dealers shall be entitled to purchase services performed on dealer-owned vehicles exempt as a sale for resale if the:

(A) Dealer is purchasing the services solely and exclusively to prepare the vehicle for sale; and

(B) Service enhances the value of the vehicle.

(2) 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.

(3)(A) The sale-for-resale exemption is available only for services performed on the vehicle held for resale.

(B) All other services performed for the dealership will remain taxable.

(g) Tangible personal property provided in connection with taxable services.

(1) See the section regarding the taxable services.

(2) Generally, the service rules begin at 26 CAR § 30-502 and continue consecutively thereafter.

(h) **Sale for resale — Drop shipments.** In the case of drop shipment sales, a third-party vendor (e.g., drop shipper) may claim a resale exemption based on an exemption certificate provided by its customer (e.g., the reseller) or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption regardless of whether its customer (e.g., the reseller) is registered with the department to collect and remit sales or use tax.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1135. Sales and use tax incentives, credits, and refunds.

(a) Arkansas Tourism Development Act, Arkansas Code § 15-11-501 et seq.

(1)(A) The Arkansas Tourism Development Act program provides financial incentives to induce the construction or expansion of tourism attractions.

(B) The Arkansas Tourism Development Act is codified in Arkansas Code § 15-11-501 et seq.

(C) The program authorizes state sales tax credits and state income tax credits.

(2)(A) "Tourism attraction" is defined to include:

- (i) Cultural or historical sites;
- (ii) Recreational or entertainment facilities;
- (iii) Areas of natural phenomena or scenic beauty;
- (iv) Theme parks;
- (v) Amusement or entertainment parks;
- (vi) Indoor or outdoor plays or music shows;
- (vii) Botanical gardens; and
- (viii) Cultural or educational centers.

(B) Certain lodging facilities may also qualify as a tourism attraction project.

(C) A facility regulated under the Arkansas Horse Racing Law, Arkansas Code § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, Arkansas Code § 23-111-101 et seq., shall be a tourism attraction for purposes of the Arkansas Tourism Development Act for any approved project.

(3)(A)(i) The tourism development program is administered by the Arkansas Economic Development Commission.

(ii) Upon receiving notification from the Director of the Arkansas Economic Development Commission that an approved company has entered into a tourism project agreement and is entitled to the sales tax credits, the Secretary of the Department of Finance and Administration shall provide the approved company with such forms and instructions as are necessary to claim those credits.

(B)(i) The amount of sales tax credit will be based on a percentage of approved costs expended by an approved company.

(ii) An approved company shall be entitled to a credit if the company certifies to the secretary that it has expended at least five hundred thousand dollars (\$500,000) in a high-unemployment county and one million dollars (\$1,000,000) in all other counties in approved costs and the director certifies that the approved company is in compliance with the Arkansas Tourism Development Act.

(iii)(a) The secretary shall issue a sales tax credit memorandum to the approved company equal to fifteen percent (15%) of the approved costs.

(b) In high unemployment counties, the secretary shall issue a credit memorandum to the approved company equal to twenty-five percent (25%) of the approved costs.

(c) Qualified amusement parks entering into a financial incentive agreement on or after January 1, 2006, for an approved project that will exceed one million dollars (\$1,000,000) are eligible for a sales tax credit equal to twenty-five percent (25%) of the approved costs.

(iv) The sales tax credit memorandum shall not include an offset of the tourism tax levied under Arkansas Code § 26-63-401 et seq.

(v) Only increased sales tax liability as defined in the Arkansas Tourism Development Act may be offset by the issued credit.

(vi) 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.

(vii)(a) No sales tax credit memorandum shall be issued for any approved costs expended after two (2) years from the date the tourism project agreement was signed.

(b) However, in limited circumstances, the secretary may authorize sales tax credits for approved costs expended up to four (4) years after the agreement was signed.

(C)(i) The commission has promulgated rules for the implementation and administration of the Arkansas Tourism Development Act, which rules should be obtained from the commission.

(ii) These rules may be obtained from the commission's website: www.arkansasedc.com.

(D)(i) Accurate and up-to-date records of all expenditures shall be maintained by the approved business and available for inspection and audit by the secretary.

(ii) The eligibility of questionable items is determined by the secretary.

(b) Eligible businesses that signed a financial incentive agreement with the commission prior to March 3, 2003, may be entitled to incentives provided under the following programs:

(1)(A) Economic Investment Tax Credit (EIC).

(B)(i) The Economic Investment Tax Credit Act, Arkansas Code § 26-52-701 et seq. [repealed], (formerly the Manufacturer's Investment Sales and Use Tax Credit Act of 1985) is commonly referred to as the InvestArk Program.

(ii) The purpose of the EIC program is to encourage manufacturers and businesses to continue operations in Arkansas.

(iii) The EIC program allows an eligible business to receive a credit against its monthly direct pay sales and use tax liability for purchases only.

(iv) The credit against the qualified business's sales and use tax liability shall be seven percent (7%) of the eligible project costs.

(v)(a) 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.

(b) 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.

(C)(i) The commission is responsible for determining the eligibility of certain approved projects to receive specified sales and use tax credits and refunds.

(ii) The commission has promulgated rules for the implementation and administration of the Economic Investment Tax Credit Act, which should be obtained from the commission.

(D) In order to qualify for the tax credits provided by the Economic Investment Tax Credit Act, a manufacturer must:

(i) Have been in continuous operation in Arkansas for at least two (2) years prior to applying for tax credits;

(ii) Expend at least five million dollars (\$5,000,000) on eligible items;
and

(iii) Hold a direct pay sales and use tax permit issued by the Sales and Use Tax Section of the Revenue Division of the Department of Finance and Administration.

(E)(i) Accurate and up-to-date records of all expenditures for the project approved by the commission shall be maintained by the manufacturer and available for inspection and audit by the secretary.

(ii) The eligibility of questionable items is determined by the secretary;

(2)(A) Enterprise Zone (EZ).

(B)(i) The Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq., commonly referred to as the Advantage Arkansas Program, provides state income tax credits and state sales and use tax refunds to eligible businesses.

(ii) 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.

(iii)(a) The entire State of Arkansas is an enterprise zone.

(b) Therefore, there are no restrictions concerning where a participant must be located.

(C)(i) The commission reviews applications to ensure eligibility.

(ii) If a business is approved for participation in the EZ program, the commission will issue a certificate of eligibility and forward the certificate to the department.

(iii) The department will provide forms and instructions needed for the approved business to receive the sales and use tax refunds.

(D) The commission has promulgated rules for the implementation and administration of the Arkansas Enterprise Zone Act of 1993, which rules should be obtained from the commission.

(E)(i) Accurate and up-to-date records of all expenditures shall be maintained by the approved business and available for inspection and audit by the secretary.

(ii) The eligibility of questionable items is determined by the secretary; and

(3)(A) Arkansas Economic Development Act of 1995, Arkansas Code § 15-4-1901 et seq.

(B)(i) The Arkansas Economic Development Act of 1995 provides benefits similar to the benefits offered in the Enterprise Zone Program.

(ii) The Arkansas Economic Development Act of 1995 program provides state income tax credits and state sales and use tax refunds to eligible businesses.

(iii) The Arkansas Economic Development Act of 1995 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.

(C)(i) The Arkansas Economic Development Act of 1995 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 the commission.

(ii) The qualifying business must spend at least five million dollars (\$5,000,000) on the project covered by the agreement with the commission.

(D) The Arkansas Economic Development Act of 1995 program requires the eligible business to file an endorsement resolution with the commission and the department, and the business and its contractors must give preference and priority to Arkansas manufacturers, suppliers, contractors, and labor in certain circumstances.

(E) The commission has promulgated rules for the implementation and administration of the Arkansas Economic Development Act of 1995, which rules should be obtained from the commission.

(F)(i) Accurate and up-to-date records of all expenditures shall be maintained by the approved business and available for inspection and audit by the secretary.

(ii) The eligibility of questionable items is determined by the secretary.

(c)(1)(A) Effective March 3, 2003, in accordance with Acts 2003, No. 182 (Consolidated Incentive Act of 2003), as amended by Acts 2005, No. 1296, and Acts 2007, No. 1596, eligible businesses that sign a financial incentive agreement with the commission may be entitled to state sales tax refunds or state sales tax credits.

(B) The commission has promulgated rules for the implementation and administration of this act, which rules should be obtained from the commission.

(2) Retention sales and use tax credit (InvestArk) — Acts 2003, No. 182, Arkansas Code § 15-4-2706(c).

(A) This incentive program, commonly referred to as InvestArk, authorizes

tax credits for qualified businesses.

(B) In order to qualify, a business must:

(i) Have been in continuous operation in the state for at least two (2) years;

(ii) Invest a minimum of five million dollars (\$5,000,000) in a project, including land, buildings, and equipment; and

(iii) Hold a direct pay sales and use tax permit from the department.

(C) If allowed, the amount of the credit shall be one-half percent (1/2%) above the state sales and use tax rate in effect at the time a financial incentive agreement is signed.

(D) 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.

(3) Sales and use tax refunds for new and expanding businesses (Tax Back).

(A) An incentive program commonly referred to as Tax Back, Acts 2003, No. 183, Arkansas Code § 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 the commission.

(B) To qualify, the eligible business must:

(i) Invest in excess of one hundred thousand dollars (\$100,000); and

(ii) Meet the eligibility criteria of the Advantage Arkansas (Arkansas Code § 15-4-2705), Create Rebate (Arkansas Code § 15-4-2707), or ArkPlus (Arkansas Code § 15-4-2706(b)) job creation incentive programs.

(C) 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.

(D) The refund is also allowed for the purchases of taxable machinery or

equipment associated with the building or project.

(E) 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:

(i) Educational Adequacy Fund provided in Arkansas Code § 19-5-1227; or

(ii) Conservation Tax Fund provided in Arkansas Code § 19-6-484.

(4) Sales and use tax refund for targeted businesses — Acts 2003, No. 182, Arkansas Code § 15-4-2706(e)(1).

(A) 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”.

(B) This incentive is a discretionary incentive and is offered only at the discretion of the director.

(C) Targeted businesses are found within six (6) growing business sectors that include:

(i) Advanced materials and manufacturing systems;

(ii) Agricultural, food, and environmental sciences;

(iii) Biotechnology, bioengineering, and life sciences;

(iv) Information technology;

(v) Transportation logistics; and

(vi) Bio-based products.

(D) To qualify as a targeted business, the:

(i) Commission must determine that the business falls within one (1) of the six (6) categories noted above; and

(ii) Business must:

(a) Have been in operation for five (5) years or less; and

(b) Pay, at minimum, one hundred fifty percent (150%) of the lesser of the state or county average hourly wage.

(E) In addition, the targeted business must:

(i) Have an annual payroll of at least one hundred thousand dollars

(\$100,000); and

(ii) Demonstrate evidence of an equity investment in the targeted business of at least four hundred thousand dollars (\$400,000).

(F) 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 (Acts 2003, No. 182), as amended by Acts 2005, No. 1296, and Acts 2007, No. 1596.

(G) 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 (Arkansas Code § 15-4-2709).

(5) Technology-based enterprises investment — Income tax or sales and use tax credit (Targeted ArkPlus) — Acts 2007, No. 1596, Arkansas Code § 15-4-2706(b)(7) – (13).

(A)(i) At the discretion of the director, a technology-based enterprise, as defined by Arkansas Code § 14-164-203(12), may earn an optional income tax credit or a sales and use tax credit based on new investment.

(ii) The targeted business must:

(a) Invest a minimum of two hundred fifty thousand dollars (\$250,000) within four (4) years of the effective date of the financial incentive agreement;

(b) Create a new payroll of at least two hundred fifty thousand dollars (\$250,000); and

(c) Pay wages that are at least one hundred seventy-five percent (175%) of the state or county average hourly wage, whichever is less.

(iii) The amount of credit earned shall be based upon a percentage of the investment and ranges from a minimum of two percent (2%) to a maximum of eight percent (8%) of the investment.

(B)(i) Prior to the execution of the financial incentive agreement, the targeted business must elect to receive the tax credits as sales and use tax credits or

income tax credits.

(ii) The percentage of the targeted business's tax liability that may be offset is determined by the average hourly wage paid to the new full-time permanent employees and ranges from a minimum of fifty percent (50%) to a maximum of one hundred percent (100%) of its tax liability.

(C)(i) The approved targeted business must certify eligible project expenditures annually with the department.

(ii) Upon verification of eligibility, the department shall issue the credit according to the tax type specified in the financial incentive agreement.

(iii) The sales and use tax credit may be applied against the company's state sales and use tax liability as reported on its monthly sales and use tax report in the calendar year following the calendar year of expenditure.

(iv) The reported tax liability that may be offset by the credit may be derived from:

(a) Sales made by the approved company and collected from the customer;

(b) Use taxes accrued by the company for out-of-state purchases and sales; and

(c) Use taxes accrued and reported on the company's monthly direct-pay report.

(v) The credit may not be applied against any taxes collected from the company by the seller.

(vi) Any unused credit may be carried forward for a period not to exceed nine (9) calendar years after the calendar year in which it was first earned.

(d) **Nonprofit Incentive Act of 2005, Arkansas Code § 15-4-3101 et seq. [repealed].**

(1)(A) The Nonprofit Incentive Act of 2005 [repealed], creates new financial incentives to encourage certain nonprofit organizations to locate in the State of Arkansas.

(B) The incentives consist of a payroll rebate and a sales and use tax

refund.

(C) "Nonprofit organization" is defined as an entity that has been approved by the 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.

(2) **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 hourly 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;

(E)(i) The organization must qualify for payroll rebate benefits in order to receive a sales and use tax refund.

(ii) The eligibility requirements for the payroll rebate are found in Arkansas Code § 15-4-3106 [repealed].

(iii) The payroll rebate is based on the incentive agreement between the nonprofit organization and the commission.

(iv) The granting of the payroll rebate is at the discretion of the director.

(v) The commission has promulgated rules for the implementation and administration of the Nonprofit Incentive Act of 2005 [repealed], which rules should be obtained from the commission;

(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 division determines that the nonprofit organization is in compliance with all qualifications to receive the benefits of this program; and

(G) The organization must sign a financial incentive agreement with the commission prior to the start of any construction.

(3) Sales and use tax refund.

(A) An application for a sales and use tax refund under the nonprofit organization incentive program shall be filed with the commission and shall include an endorsement resolution from the governing authority of a municipality or county where the nonprofit organization is or will be located.

(B) The resolution must:

(i) Endorse the applicant's application in the sales and use tax refund program; and

(ii) Authorize the refund of any sales and use tax levied by the municipality or county.

(C) The secretary 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.

(D) 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.

(E) All claims for refunds must be filed with the division within three (3) years from the date of the qualified purchase or purchases.

(e) The Motion Picture Incentive Act of 1997 [repealed], Arkansas Code § 15-4-2001 et seq.

(1) The Motion Picture Incentive Act of 1997 [repealed], expired June 30, 2007.

(2) Pursuant to the sunset clause contained in Arkansas Code § 15-4-2011, the opportunity for a tax incentive provided in Arkansas Code § 15-4-2005 expired on June 30, 2007.

Authority. Arkansas Code § 26-52-105.

Codification Notes. Arkansas Code § 26-52-701 et seq., was repealed by Acts 2017, No. 465, § 5.

Arkansas Code § 15-4-3101 et seq., was repealed by Acts 2017, No. 208 § 1.

The Motion Picture Incentive Act of 1997, Acts 1997, No. 919, was repealed and replaced by the Digital Product and Motion Picture Industry Development Act of 2009, Acts 2009, No. 816.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 15-4-1701 et seq.; 15-4-1901 et seq.; 15-4-2001 et seq.; 15-4-2701 et seq.; 15-4-3101 et seq.; 15-11- 501 et seq.; 26-52-701 et seq."

26 CAR § 30-1136. Exemptions from tax — Manufacturers.

(a) 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 section.

(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 the machinery and equipment:

(1) Performs one (1) or more essential functions and is utilized directly in the manufacturing process;

(2) 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 in subdivision (f)(1)(A) of this section; and

(3) Does not consist of:

(A) Hand tools;

(B) Buildings;

(C) Transportation equipment;

(D) Office machines and equipment;

(E) Machinery and equipment used in administrative, accounting, sales, or other such activities of the business involved; or

(F) 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 subsection (b) of this section; and

(2) Either:

(A) 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 increasing:

(i) Production volume;

(ii) Employment; or

(iii) The number of different types or models of property that can be manufactured; or

(B) 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.**

(1) 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 the:

(A) Machinery and equipment satisfies the requirements of subsection (b) of this section; and

(B)(i) "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.

(ii) 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.

(2)(A) 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.

(B) The machinery purchased to replace this resulting existing machine must satisfy the requirements of subdivision (d)(1)(B) of this section, 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.

(C) 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.**

(1) Software necessary for the operation of machinery used directly in manufacturing is exempt if the software is specifically designed for the machine.

(2) Operating system software that is commercially produced for general use, such as Windows, Linux, BeOS, DOS, OS/2, UNIX, or Macintosh, is not exempt.

(3) Software that 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.**

(1) As used in this section:

(A)(i) "Article of commerce" includes any property to be placed on the market for retail sale to the general public and any property that 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.

(ii) Custom items that are produced for specific customers in response to special orders and are not readily marketable to the general public are not articles of commerce;

(B) "Directly" limits the exemption to only that machinery and equipment that 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 1: Machinery and equipment used in actual production include machinery and equipment that meet all other applicable requirements and that 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 that 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 that 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 2: 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 materials to the extent that the dies and molds satisfy the requirement of 26 CAR § 30-1138, 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 3: 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 4: 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.

(C)(i) "Equipment" means any tangible personal property, other than machinery as defined in subdivision (f)(1)(F) of this section, used directly in the manufacturing process except those items specifically excluded from the exemption as provided in subdivision (b)(3) of this section.

(ii) In certain circumstances chemicals can be considered "equipment" for purposes of this exemption.

(iii) See 26 CAR § 30-1137;

(D)(i) "Foundation", as used in subdivision (d)(1)(B) of this section, means a customized foundation necessary for the support and proper operation of the machinery.

(ii) The 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;

(E) "Hand tool" means any tool that is solely powered by a human being;

(F)(i) "Machinery" means mechanical devices or combinations of

mechanical powers and devices purchased or constructed by a taxpayer or his or her agent and used to perform some function and to produce a certain effect or result.

(ii) "Machinery" includes electrical, mechanical, and electronic components that are a part of machinery and are necessary for the machine to produce its effect or result; and

(G) "Manufacturing" includes those operations commonly understood within their ordinary meaning and shall also include:

(i) Mining;

(ii) Quarrying;

(iii) Extracting and refining of:

(a) Brine;

(b) Oil; and

(c) Gas;

(iv) Cotton ginning;

(v) The drying of:

(a) Rice;

(b) Soybeans; and

(c) Other grains;

(vi) The manufacturing of feed;

(vii) The processing of poultry or eggs and livestock and the hatching of poultry;

(viii) Printing of all kinds, types, and characters, including the services of overprinting and photographic processes incidental to printing;

(ix) The processing of scrap metal into grades and bales for further processing into steel and other metals;

(x) The retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors;

(xi) 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

(xii) The production of protective coatings that increase the quality and durability of a finished product.

(2)(A) The exempt gross receipts or gross proceeds under this section include gross receipts or gross proceeds as defined in 26 CAR § 30-102.

(B) See also 26 CAR § 30-1150 for the exemption related to pollution control machinery and equipment.

(g) Contractors.

(1) 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.

(2) 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.

(1) 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.

(2) 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 that 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 that 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.

(1) 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.

(2) The equipment is exempt if it is used to test any portion of the product from the point when manufacturing begins.

(3) Testing equipment that tests the raw materials prior to the beginning of manufacturing is not exempt.

(4)(A) Testing equipment that tests items other than the product, or its component parts, is not exempt.

(B) For example, equipment that tests whether the manufacturing machinery is functioning properly is not exempt as testing equipment.

(j) Computers and related peripheral equipment.

(1) 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.

(2) Computers and related peripheral equipment must either:

(A) Directly control, measure, or record an aspect of the manufacturing process itself; or

(B) Directly control, measure, or record the operation of other items of exempt manufacturing machinery and equipment used in the manufacturing process.

(3) Except as provided in 26 CAR § 30-1150, 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1137. Exemptions from tax — Chemicals used in manufacturing.

(a) Chemicals used in manufacturing may be exempt from gross receipts or use tax if the following occur:

(1) The chemicals become a recognizable, integral part of the manufactured goods (see 26 CAR § 30-1134(c));

(2) The chemicals are "equipment" (see subsection (d) of this section); or

(3) The provisions of this section are met.

(b) **Definitions.** As used in this section:

(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)(A) "Reagent" means any substance that 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.

(B) A reagent is also a substance used to convert one substance into another by means of the reaction that it causes.

(C) To be a reagent for purposes of this exemption, a substance must be primarily used as a reagent; and

(4) "Solution" means a chemical in a liquid form that contains a dissolved

substance.

(c) Manufacturing operations.

(1)(A) The gross receipts or gross proceeds derived from the sale of catalysts, chemicals, reagents, and solutions that 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.

(B) "Manufacturing or processing" has the same meaning as set forth in Arkansas Code § 26-52-402(b) and 26 CAR § 30-1136.

(2)(A) For purposes of this section, the term "substance" means only chemicals, catalysts, reagents, or solutions as defined in subsection (b) of this section.

(B) A substance may be in the form of:

- (i) Liquid;
- (ii) Solid; or
- (iii) Gas.

(C)(i) A substance is consumed or used in manufacturing or processing an article of commerce if:

(a) It is used to produce or prevent a chemical or physical effect during the manufacturing process; and

(b) The chemical or physical effect, or prevention of that effect, is a direct and necessary step in the production of the article.

(ii) Example:

(a) Mold release chemicals;

(b) Nitrogen used to prevent oxidation in an annealing process;

(c) Cutting/cooling oil applied to metalwork in process during milling; and

(d) Sanitization chemicals used to meet United States Department of Agriculture standards for machinery and equipment used in processing meat and poultry for human consumption.

(D) Substances used in testing the quality of the finished article of commerce are exempt.

(E)(i) 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.

(ii) Examples:

(a) Substances used to polish, paint, refinish, clean, or sanitize machinery, equipment, structures, floors, ceilings, and walls of a manufacturing facility are not exempt; and

(b) Gas, diesel, oil, natural gas, or other materials used to power machinery and equipment are not exempt.

(F) Substances used before the manufacturing process begins or after the manufacturing process concludes are not exempt.

(G) Water used during the manufacturing process is not exempt.

(3)(A) In order to be exempt, substances must be used by a manufacturer during a manufacturing process.

(B) A business that processes photographic film or negatives and prints photographs, plates, slides, or other similar items from the film or negatives is not a manufacturer.

(C)(i) A business that produces printed material is a manufacturer.

(ii) Substances used in processing film, negatives, or other similar items are not exempt unless such processing is incidental to the printing.

(d)(1) The 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.

(2) The initial purchase of chemicals that meet these tests is exempt from sales and use tax.

(3)(A) Purchases of replacement chemicals will be exempt if the provisions of 26 CAR § 30-1136(d)(1)(B) are met.

(B) See *Weiss v. Chem-Fab Corporation*, 336 Ark. 21 (1999).

(4) The following are examples:

(A) Annealing chemicals that physically alter the grain structure in metal in order to bend and form parts are exempt;

(B) Salts that mill away metal through direct chemical action are exempt;
and

(C) Chemicals that are sprayed onto metal parts to detect cracks are exempt.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-401(35)"

26 CAR § 30-1138. 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.

(c) Forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers, or composites thereof that determine the physical characteristics of a product and that are destroyed or consumed during the manufacture of the product are exempt from gross receipts tax.

(d)(1) The gross receipts derived from the service of cleaning or repairing a mold

or die are subject to gross receipts tax.

(2) 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) As used in this section:

(1) "Mold" means the following:

(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; and

(2) "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) The following are 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; and

(5) Printing plates.

(h) The following are 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; and
- (3) Hand tools.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1139. Exemptions from tax — Manufacturing exemption — Specific businesses — Printers.

(a)(1) Machinery and equipment used directly by a manufacturer in the printing process and that otherwise satisfies the requirements of 26 CAR § 30-1136, is exempt from tax.

(2) 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:

(A) 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

(B)(i) Using computers, scanners, proofers, typesetters, photographic equipment, film processors, and direct-to-plate equipment exclusively in performing any of the processes listed in subdivision (a)(2)(A) of this section, above.

(ii) 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)(1) "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.

(2) Typesetting machinery and equipment includes fonts, video display terminals, tape and disc making equipment, computers, and typesetters that are interconnected to operate essentially as one (1) machine.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1140. Exemptions from tax — Manufacturing exemption — Specific businesses — Newspaper publishers.

(a)(1) Machinery and equipment used directly in the manufacturing of a printed newspaper by newspaper publishers and printers will be exempt from the tax.

(2) 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 26 CAR § 30-1136.

(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)(1) 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.

(2) The process begins with typesetting, which includes what is known in the

newspaper trade as a "front-end system".

(3) 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:

- (A) Assembly process, completed either manually or electronically;
- (B) Plate-making process involving producing full-page size negatives;
- (C) Making of the offset plate or blanket; and
- (D) Printing of the paper.

(4)(A) The manufacturing process is complete when the newspaper is fully assembled.

(B) This requires either:

(i) Hand inserting of the separate sections making up the complete newspaper; or

(ii) The use of automated inserting systems.

(5) Manufacturing includes subassembly work leading to completion of the finished newspaper.

(6) 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 that otherwise comply with the requirements of 26 CAR § 30-1136 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of

Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1141. 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 — Exempt.** 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; and
- (3) Machinery and equipment used to refine or process oil, brine, or natural gas into articles of commerce.

(b) **Refining — Nonexempt.** The following items of tangible personal property are examples of nonexempt 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; and
- (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.**

(1)(A) Machinery and equipment purchased to construct new oil, brine, or natural gas extraction plants or facilities in Arkansas or machinery and equipment purchased to recomplete or redrill existing oil, brine, or natural gas extraction plants or facilities in Arkansas are exempt from tax if the provisions of this section and 26 CAR § 30-1136 are satisfied.

(B) "Recomplete" or "redrill" shall have the same meaning as indicated in subsection (f) of this section.

(2) A "new" well is a well that has not been put into production.

(3)(A) To qualify for the exemption, the machinery must be used directly in the extraction process.

(B)(i) The extraction process for oil shall be considered as beginning with the erection of the drilling rig at the drilling location and shall be considered as terminating at the heater treater or settling tank immediately prior to transportation.

(ii) Oil tanks used for storage alone shall be subject to tax.

(C)(i) The extraction process for natural gas shall be considered as beginning with the erection of the drilling rig at the location of the well and shall be considered as terminating once the gas has reached the Christmas tree.

(ii) Once the gas has reached the bee catcher or separator for the first stage of removing impurities from the gas, refining has begun and shall be considered as continuing until the gas leaves the outlet on the discharge side of the final gathering compressor station.

(iii) The pipeline from the outlet to the transmission line shall be subject to tax.

(d) **Extraction — Exempt.** The following items are examples of exempt machinery and equipment used directly in the extraction process:

(1)(A) Drilling rigs.

(B) 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.

(C) 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;

(2) Production casing, production tubing, pumps, motors, and other machinery or equipment that becomes a component part of a newly constructed well or a redrilled well;

(3) Christmas trees, meters, regulators, separators, and treaters located at the

wellhead and auxiliary equipment used around the well, e.g., electrical generators, pumps, air compressors, shakers, hoists, blow-out preventers (BOPs);

(4) Drilling mud;

(5) Machinery and equipment purchased to completely or substantially replace an existing oil or gas well; and

(6)(A) Brine supply well.

(B)(i) New or rebuilt pump, motor, and protector when all three (3) items are purchased to replace an existing pump, motor, and protector at the same time.

(ii) However, if less than all three (3) items are replaced at the same time, a "substantial replacement" has not occurred and the items purchased will be taxable.

(e) **Extraction — Nonexempt.** The following items of tangible personal property are examples of nonexempt machinery and equipment used in the extraction process:

(1) Machinery and equipment purchased for a drilling rig when the rig is not being completely or substantially replaced;

(2) Machinery and equipment purchased to rework or workover an existing well;

(3) Dump trucks or other transportation vehicles;

(4) Pipe and compressors located beyond the outlet on the discharge side of the final gathering compressor station;

(5) Monitoring equipment used to monitor the pressure and flow rate of gas;

(6) Water, sand, proppants, explosives, chemicals (unless the chemicals qualify as exempt chemicals pursuant to 26 CAR § 30-1137), and other consumable supplies purchased and used by contractors and oil and gas service providers in their performance of well services; and

(7) Storage tanks, dog houses, and portable trailers.

(f) **Services.**

(1)(A) The total gross receipts derived from the services of alteration, addition, cleaning, perforating, fracturing, refinishing, replacement, 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 as services performed upon manufacturing machinery and equipment.

(B) However, perforating, fracturing, and other completion services performed on a new well to begin initial production, or in conjunction with the redrilling or recompletion of an existing well, are not subject to tax.

(2)(A) "Completion" means the first configuring of the well inside the production casing and perforating of the casing to allow gas from the surrounding rock into the casing and to the surface.

(B) Completion services include running casing, cementing, logging, perforating, fracturing, acidizing, swabbing, and other special services depending on the characteristics of the formation.

(3) "Recompletion" means completion operations performed in a source of supply that is separate and distinct from the source of supply in which the well was successfully completed prior to the commencement of the current completion operations, e.g., an existing well is perforated and fractured to initiate gas production from a new and different zone from the zone that was already producing.

(4) "Redrill" means an expansion (see 26 CAR § 30-1136(c)) of an existing well by drilling the well to a deeper depth to enhance production from another zone.

(5) "Rework" or "workover" means work of a remedial nature performed within the vertical confines of the same source of supply.

(6) Service providers should pay tax on all consumables used in providing the services, regardless of whether the service is a taxable service under this section.

(g) The following oil, brine, and natural gas extraction equipment is exempt from tax under the pollution control provisions of 26 CAR § 30-1150:

(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; and

(3) Pit liners.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1142. [Reserved].

26 CAR § 30-1143. Exemptions from tax — Manufacturing exemption — Specific businesses — Mining and quarrying.

(a) Machinery and equipment purchased and used by mining or quarrying operations are exempt from the tax if the requirements of 26 CAR § 30-1136 are satisfied.

(b) 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.

(c) Dump trucks or other transportation vehicles are not exempt from the tax.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1144. Exemptions from tax — Manufacturing exemptions —

Specific businesses — Rice, soybean, 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; and
- (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); and
- (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 26 CAR § 30-1136.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1145. Cotton ginner.

(a) The following machinery and equipment purchased and used by cotton ginner 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; and

(4) Control panels and motors used to operate the ginning process.

(b) The following machinery and equipment used by cotton ginner does not qualify for the exemption:

(1) Tractors and trailers used to transport cotton to and from the gin;

(2) Equipment used for transportation 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; and

(5) Scales used to weigh raw cotton.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1146. Exemptions 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; and

(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; and

(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 26 CAR § 30-1136.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1147. 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; and

(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 26 CAR § 30-1136.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1148. Exemptions from tax — Manufacturing exemption — Specific businesses — Egg processors and poultry processors.

(a) **Egg processors.** 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; and

(4) Egg wire baskets used to transport eggs to retailers.

(b) **Egg processors — Nonexempt.** The following machinery and equipment purchased and used by egg processors does 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; and

(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 26 CAR § 30-1136.

(d) **Poultry processing.** 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 and shackle washing systems, and ice maker systems;

(3) Pneumatic air compressors for the operation of machinery and equipment referred to in subdivision (d)(1) of this section, 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; and

(6) Quality control devices on line used to test each unit produced.

(e) **Poultry processing — Nonexempt.** 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; and

(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 26 CAR § 30-1136.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1149. Exemptions from tax — Manufacturing exemption — Specific businesses — Automobile parts rebuilders, tire retreaders.

(a)(1) 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.

(2) In all events, the machinery and equipment purchased and used by automobile parts rebuilders and tire retreaders must satisfy the requirements of 26 CAR § 30-1136.

(b)(1) 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.

(2) In all events, the machinery and equipment purchased and used by tire retreaders must satisfy the requirements of 26 CAR § 30-1136.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1150. 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 the machinery and equipment is:

(1) 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 that might otherwise result from the operation of the plant or facility; and

(2) 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 Division of Environmental Quality or the United States 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 section.

(d) **Chemicals.**

(1) The gross receipts or gross proceeds derived from the sale of catalysts, chemicals, reagents, or solutions that 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 that might otherwise result from the operation of the facility are exempt from gross receipts tax.

(2)(A)(i) 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.

(ii) **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.** As used in this section:

(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 of elements, or compound

obtained by a chemical process;

(C)(i) "Reagent" means any substance that by reason of its capacity for taking part in certain reactions is used for various purposes, including:

(a) Detecting, examining, or measuring other substances; or

(b) In preparing materials.

(ii) A reagent is also a substance used to convert one substance into another by means of the reaction that it causes.

(iii) To be a reagent for purposes of this exemption, a substance must be primarily used as a reagent; and

(D) "Solution" means a chemical in a liquid form that contains a dissolved substance.

(e) Wastewater treatment plants.

(1)(A) Machinery and equipment used in a city or county wastewater treatment plant is exempt if the machinery and equipment is used to remove contaminants from wastewater.

(B) 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 subdivision (e)(1) of this section, above:

(A) Pipes;

(B) Pumps;

(C) Valves;

(D) Screens;

(E) Screen baskets;

- (F) Gates;
- (G) Blowers;
- (H) Fans;
- (I) Skimmers;
- (J) Aerators;
- (K) Diffusers;
- (L) Equalization basins;
- (M) Concrete flumes;
- (N) Conveyor belts;
- (O) Flow meters;
- (P) Grit separators;
- (Q) Grit removal equipment;
- (R) Back flow preventers;
- (S) Chlorination equipment;
- (T) Digester equipment;
- (U) Vacuators; and
- (V) Air eductors.

(4) The following items are examples of taxable items:

- (A) Materials used in constructing improvements to real estate;
- (B) Housing for machinery;
- (C) Handrails;
- (D) Ladders;
- (E) Paint;
- (F) Lighting equipment;
- (G) Pump stations;
- (H) Lift stations;
- (I) Pipes and equipment utilized in sewage collection outside of the treatment area;
- (J) Machinery and equipment that controls the flow of wastewater into the treatment facility;

- (K) Sludge dewatering equipment;
- (L) Machinery and equipment used for measuring, controlling, or testing the treatment process;
- (M) Sludge pumping equipment; and
- (N) Sludge application system.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1151. Exemptions from tax — Manufacturing exemption — Specific businesses — Concrete mixers and batch plants, sawmills and lumber mills.

(a) Concrete mixers and batch plants.

(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)(A) "Batch" means the quantity:

- (i) Produced as the result of one (1) operation; or
- (ii) Needed for one (1) operation.

(B) A concrete batch plant combines cement, water, and other raw components for delivery of "wet" concrete to a consumer's construction site.

(b) Saw mills and lumber mills.

(1) Machinery and equipment used directly in the manufacturing of a finished lumber product by sawmills and lumber mills will be exempt from the tax.

(2) A finished lumber product includes any new article of commerce created by sawmills or lumber mills.

(3) Items such as portable chain saws, hand tools, buildings, storage facilities, and all other similar items will be subject to the tax.

(4) In all events, the machinery and equipment purchased and used by sawmills must satisfy the requirements of 26 CAR § 30-1136.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-402"

26 CAR § 30-1152. [Reserved].

26 CAR § 30-1153. 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)(1) The exemption will not apply unless the instructional materials are to be provided to the students free of charge.

(2) 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)(A) Activity-oriented educational programs that may include manipulatives.

(B) "Activity-oriented educational programs" are academic programs that incorporate hands-on learning strategies to enhance learning.

(C) "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)(A) 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.

(B)(i) "Technology-based educational materials" does not include the equipment required to make use of these materials, e.g., computer hardware.

(ii) Computer hardware is taxable.

(C)(i) Only software actually used in the learning process qualifies for the exemption.

(ii) 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; and

(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 the following:

(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:

(A) Computer supplies;

(B) Recordkeeping, evaluation, or testing supplies;

(C) General use furnishings, equipment, and supplies, including photographic or audio visual equipment; or

(D) Other administrative or maintenance supplies even if these supplies are distributed free of charge to the students; and

(3) Construction materials or supplies.

(e) This exemption does not apply to colleges, universities, or other post-secondary education facilities.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "DVD" means digital video disc.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-437"

Subpart 12. Gross Receipts Tax Rules — Other Provisions

26 CAR § 30-1201. Sales to credit unions.

(a)(1) Sales of tangible personal property and taxable services to state chartered credit unions are subject to the gross receipts tax.

(2) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-305"

26 CAR § 30-1202. 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) Tax rate.

(1) The amount of state tax to be collected by the seller is six percent (6%) of the gross receipts or gross proceeds derived from the sale.

(2) Manufacturing utilities.

(A) As of July 1, 2008, the state tax rate on sales of natural gas or electricity to a manufacturer for use directly in the manufacturing process is four percent (4%) of the gross receipts or gross proceeds derived from the sale.

(B) From July 1, 2007, through June 30, 2008, the state tax rate on sales of natural gas or electricity to a manufacturer for use directly in the manufacturing process was four and one-half percent (4 1/2%) of the gross receipts or gross proceeds derived from the sale.

(C) See 26 CAR pt. 32, Reduced Sales Tax Rate for Natural Gas or Electricity Used Directly in the Manufacturing Process.

(3) Food and food ingredients.

(A) As of July 1, 2007, the state tax rate on sales of food and food ingredients is three percent (3%) of the gross receipts or gross proceeds derived from the sale.

(B) See 26 CAR pt. 31, Special Rules for Sales of Food and Food Ingredients and Prepared Food.

(c) Computation.

(1)(A) In computing the tax to be collected upon any particular sale, sellers may elect to compute the tax due on a transaction on a per item or an invoice basis.

(B) However, sellers must apply the rounding rule to the aggregated state and local sales or use taxes.

(2) Rounding rule. Sellers must utilize the following rounding algorithm for

sales or use tax computation:

(A) Tax computation must be carried to the third decimal place; and

(B) The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four (4).

Example 1: Computing tax on an item basis. XYZ retailer sells a book and a magazine to Purchaser A. The sales price of the book is seventeen dollars and ninety-five cents (\$17.95), and the sales price of the magazine is six dollars (\$6.00). The applicable state sales tax rate is six percent (6.0%). XYZ retailer elects to compute the tax due on a per item basis. The state tax on the book is one dollar and eight cents (\$1.08) (6% of \$17.95 = \$1.077). The state tax on the magazine is thirty-six cents (\$0.36) (6% of \$6.00 = \$0.36). The total state tax computed on a per item basis is one dollar and forty-four cents (\$1.44).

Example 2: Computing tax on an invoice basis. XYZ retailer sells a book and a magazine to Purchaser A. The sales price of the book is seventeen dollars and ninety-five cents (\$17.95) and the sales price of the magazine is six dollars (\$6.00). The applicable state sales tax rate is six percent (6.0%). XYZ retailer elects to compute the tax due on an invoice basis. The invoice price before tax is twenty-three dollars and ninety-five cents (\$23.95). The total state tax computed on the invoice basis is one dollar and forty-four cents (\$1.44) (6% of \$23.95 = \$1.437).

(d) **Liability.**

(1) Sellers are liable for the sales tax derived from all taxable sales during the taxable period at the combined state, city, and county sales tax rate.

(2) See 26 CAR § 30-1210.

(e) **Local taxes.**

(1) Towns, cities, and counties have authority under Arkansas law to levy sales

taxes.

(2) Taxpayers should contact the Sales and Use Tax Section of the Revenue Division of the Department of Finance and Administration if they have a question as to whether they are within a jurisdiction that requires them to collect and remit a local tax.

(3) When the Commissioner of Revenue is authorized or required to collect or administer a local sales tax, that tax shall be administered in accordance with this part.

(4) See 26 CAR § 30-1224 for specific rules concerning the administration of local sales taxes.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"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"

26 CAR § 30-1203. Sellers required to obtain a permit.

(a)(1) 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 Arkansas Code § 26-52-101 et seq., shall make application for a permit on forms prescribed by the Commissioner of Revenue.

(2) 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.

(3) If an agent makes application for a permit on behalf of his or her principal, a copy of the document authorizing him or her to act on behalf of his or her principal must be attached to the application.

(4) A separate permit for each business location in Arkansas must be obtained.

(b) Each application shall be accompanied by a nonrefundable fee of fifty dollars

(\$50.00).

(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)(1) Every permit obtained must be surrendered to the Sales and Use Tax Section of the Revenue Division of the Department of Finance and Administration upon the discontinuance of business at any location for which the permit was issued.

(2) Failure to surrender the permit in such instances shall constitute sufficient cause to subsequently refuse the person a permit required by this part.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1204. Cancellation of permit — Automatic expiration of permit.

(a) Failure to comply with any requirement of the Arkansas Gross Receipts Act of 1941, Arkansas Code § 26-52-101 et seq., or with any provision of this part shall constitute sufficient grounds for cancellation of any permit issued under the authority of the Arkansas Code or this part.

(b)(1) The permit of any taxpayer who has filed twelve (12) consecutive monthly reports reporting zero (0) sales shall automatically expire.

(2) This does not apply to permits issued to taxpayers who are not primarily engaged in selling taxable goods or services.

(3) The Secretary of the Department of Finance and Administration shall notify the taxpayer in writing that the permit has expired.

(4) The taxpayer shall return the permit to the secretary within thirty (30) days

of the date of the notice.

(5) Any taxpayer who has received notice but reasonably expects to engage in business within the twelve-month period following the notification may petition the secretary to retain the permit.

(6) The secretary may allow any taxpayer who demonstrates to the secretary's satisfaction that the taxpayer will require a permit to retain the permit.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1205. [Reserved].

26 CAR § 30-1206. Legal opinions issued by the Department of Finance and Administration.

(a)(1) 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 that states that the sale or transaction is taxable or exempt.

(2) A legal opinion may only be relied upon by a seller if it is addressed to him or her 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.

(3) 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)(1) Legal opinions may not be relied upon if more than three (3) years old but may be renewed on request.

(2) The effect of legal opinions may change at any time as a result of legislative action, court interpretation, and changes in this part 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)(1) 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.

(2) 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.

(f)(1) Opinions issued by the department are subject to the Arkansas Freedom of Information Act of 1967, Arkansas Code § 25-19-103(5)(A), and will be disclosed once confidential information is redacted of any information that identifies a taxpayer or other individual or entity.

(2) Such information includes not only the name, address, and any other identifying information or numbers, such as taxpayer ID numbers, but also any facts that would reveal identity.

(3) See *Ryan & Company AR, Inc. v. Richard Weiss*, 371 Ark. 43 (2007).

Authority. Arkansas Code § 26-52-105.

Codification Notes. “ID” means identification.

26 CAR § 30-1207. Determination of tax due — Sourcing transactions.

(a) Sales transactions shall be sourced in accordance with this section unless otherwise provided.

(b) **Applicability.**

(1) **Products.** The sourcing provisions of this section apply regardless of the characterization of a product as tangible personal property or a service.

(2) **Sellers.** The provisions of this section only apply to determine a seller's obligation to pay or collect and remit sales or use tax with respect to the seller's retail sale of a product.

(3) **Purchasers.** The provisions of this section do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdiction of that use.

(c) **Receive and receipt.**

(1) For the purposes of this section, "receive" and "receipt" mean taking possession of tangible personal property or making first use of services.

(2) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(d) **Retail sales — Excluding leases and rentals.**

(1) Except as otherwise provided, a retail sale is sourced as follows.

(A) **Over the counter.** When the purchaser receives tangible personal property or a service at the business location of the seller, the sale is sourced to that business location.

Example: XYZ is a business located in Jacksonville, Arkansas, that repairs automobile motors. After repairing the motor, the customer picks up the motor at the shop in Jacksonville. XYZ will collect the state sales tax, Jacksonville sales tax, and Pulaski County sales tax.

(B) **Delivery to a specified address.** When the purchaser does not receive the tangible personal property or service at the business location of the seller, the sale is sourced to the location of receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser), including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

Example 1: XYZ is a business located in Jacksonville, Arkansas, that repairs automobile motors. After repairing the motor, XYZ ships the motor by common carrier to Conway, Arkansas. Since the customer took receipt of the service in Conway, XYZ will collect the state sales tax, Conway sales tax, and Faulkner County sales tax.

Example 2: ABC performs a landscaping job in Monticello, Arkansas. ABC will collect the state sales tax, Monticello sales tax, and Drew County sales tax.

(C) **Delivery address unknown.** When the purchaser does not receive the tangible personal property or service at the business location of the seller and the delivery address is unknown, the sale is sourced to the first of the following addresses that is known to the seller:

- (i) The address of the purchaser;
- (ii) The billing address of the purchaser; or
- (iii) The address from which the tangible personal property was shipped or from which the service was provided.

(2) **Retail sales of specific property.**

(A) **Motor vehicles, trailers, and semitrailers that do not qualify as transportation equipment.**

(i) The sale of motor vehicles, trailers, and semitrailers that are required by Arkansas law to be registered and licensed for use on public streets and highways are sourced to the location indicated at the time of registration and application for certification of title.

(ii) The sale of motor vehicles, trailers, and semitrailers that are not required by Arkansas law to be registered and licensed for use on public streets and highways are sourced in accordance with subdivision (d)(1) of this section.

(B) **Aircraft that does not qualify as transportation equipment.**

The sale of aircraft is sourced in accordance with subdivision (d)(1) of this section.

(C) **Watercraft, modular homes, manufactured homes, and mobile homes.** The sale of watercraft, modular homes, manufactured homes, and mobile homes are sourced in accordance with subdivision (d)(1) of this section.

(D) **Transportation equipment.**

(i) The retail sale of transportation equipment is sourced as provided in subdivision (d)(1) of this section.

(ii) See 26 CAR § 30-102 for the definition of "transportation equipment".

(iii) Sales of property that meet the definition of "transportation equipment" are sourced in accordance with the specific provisions pertaining to transportation equipment and not as motor vehicles, trailers, semitrailers, or aircraft.

(e) **Leases and rentals.**

(1)(A) Except as otherwise provided, the lease or rental of tangible personal property is sourced as follows.

(B) **Periodic payments.**

(i) For a lease or rental that requires recurring periodic payments, the first payment is sourced the same as a retail sale in accordance with subdivision (d)(1) of this section.

(ii) Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment.

(iii) The primary property location shall be indicated by the address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith.

(iv) This location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

Example 1: XYZ is located in Little Rock and leases forklifts. The payment terms are a down payment and twenty-four (24) monthly

payments. The customer picks up the forklift in Little Rock and takes it to the customer's warehouse in North Little Rock. State, Little Rock, and Pulaski County sales taxes apply to the down payment, and state, North Little Rock, and Pulaski County sales taxes apply to the remaining monthly lease payments.

Example 2: XYZ is located in Little Rock and leases forklifts. The payment terms are a down payment and twenty-four (24) monthly payments. XYZ delivers the forklift to the customer's warehouse in North Little Rock. State, North Little Rock, and Pulaski County sales taxes apply to the down payment and all monthly lease payments.

Example 3: XYZ is located in Little Rock and leases backhoes. XYZ delivers a backhoe to its customer in Jonesboro, Craighead County, on January 1, 2008. Two (2) months later, the customer moves to Little Rock. On March 1, 2008, the customer informs XYZ that the backhoe is in Little Rock. State, Jonesboro, and Craighead County sales taxes apply to the lease payments for January and February. State, Little Rock, and Pulaski County sales taxes apply to the lease payments beginning with the March payment.

Example 4: XYZ is located in Little Rock and leases backhoes. XYZ leases a backhoe for six (6) months to its customer for use at a construction site in Tennessee. The customer picks up the backhoe in Little Rock. Because the customer (lessee) receives the equipment in Arkansas, the first payment is subject to Arkansas state and local sales taxes. The remaining lease payments are subject to any applicable Tennessee taxes.

(C) **Nonperiodic payments.** For a lease or rental that does not require

recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subdivision (d)(1) of this section.

Example 1: XYZ is located in Little Rock and rents tables and chairs for meetings and parties. The customer picks up the tables and chairs at XYZ's business location. State, Little Rock, and Pulaski County sales tax apply, as well as the short-term rental tax.

Example 2: XYZ is located in Little Rock and rents tables and chairs for meetings and parties. XYZ delivers the tables and chairs at the party location in North Little Rock. State, North Little Rock, and Pulaski County sales tax apply, as well as the short-term rental tax.

(2) Leases and rentals of specific property.

(A) Motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment.

(i) Periodic payments.

(a) For a lease or rental that requires recurring periodic payments, each payment is sourced to the primary property location.

(b) The primary property location shall be indicated by the address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith.

(c) This location shall not be altered by intermittent use at different locations.

(ii) Nonperiodic payments. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subdivision (d)(1) of this section.

Example 1: XYZ is located in Little Rock and rents motor vehicles on a short-term basis (less than thirty (30) days). The customer picks up the motor vehicle at XYZ's business location. XYZ should collect state, Little Rock, and Pulaski County sales taxes, as well as state and local short-term rental vehicle taxes. Use of the motor vehicle outside of Little Rock or Pulaski County does not affect the state or local taxes collected.

Example 2: XYZ is located in Little Rock and rents motor vehicles on a long-term basis (thirty (30) days or more). The customer picks up the motor vehicle at XYZ's business location, but the primary property location of the motor vehicle is in Sherwood, Pulaski County. If sales tax was not paid on the motor vehicle at the time of registration, then XYZ should collect state, Sherwood, and Pulaski County sales taxes, as well as the long-term rental tax. If sales tax was paid on the motor vehicle at the time of registration, then tax is not collected on the period payments.

Example 3: XYZ is located in Little Rock and rents airplanes on a short-term basis (less than thirty (30) days). The customer takes receipt of the airplane in Little Rock. XYZ should collect state, Little Rock, and Pulaski County sales taxes, as well as the short-term rental tax, regardless of whether tax was paid on the airplane at the time of purchase.

Example 4: XYZ is located in Little Rock and rents an airplane for six (6) months to a business (a long-term rental). The primary property location of the airplane is Fayetteville, Washington County. If tax was not paid on the aircraft at the time of purchase, then XYZ will collect state, Fayetteville, and Washington County sales

taxes on all payments for the lease of the airplane. If sales tax was paid on the aircraft at the time of purchase, then tax is not collected on the payments for the long-term rental.

(B) **Watercraft, modular homes, manufactured homes, and mobile homes.** The lease or rental of watercraft, modular homes, manufactured homes, and mobile homes are sourced in accordance with subdivision (e)(1) of this section.

(C) **Transportation equipment.**

(i) The lease or rental of transportation equipment is sourced as a retail sale in accordance with subdivision (d)(1) of this section.

(ii) See 26 CAR § 30-102 for the definition of "transportation equipment".

(iii) The lease or rental of property that meets the definition of "transportation equipment" is sourced in accordance with the specific provisions pertaining to transportation equipment and not as motor vehicles, trailers, semitrailers, or aircraft.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-521"

26 CAR § 30-1208. 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)(A) It is the duty of all taxpayers (sellers) to deliver to the Secretary of the Department of Finance and Administration, on or before the twentieth day of each

month, a return showing the tax due during the preceding calendar month.

(B) 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.

(C) The following information must also appear on the return:

(i) 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 of Finance and Administration along with the old name or address of the business);

(ii) The permit number of the business; and

(iii) The amount of tax due and payable with the return.

(3) The appropriate amount of tax due and payable as reflected on the return must accompany the returns as required herein.

(4)(A) Although separate permits are required for each business location in Arkansas, every taxpayer shall file a single report combining all of the tax due derived from sales at its Arkansas locations that are registered with the secretary under the same federal employer identification number or Social Security number.

(B) This provision applies regardless of whether the taxpayer is:

(i) An individual;

(ii) A corporation;

(iii) A partnership;

(iv) A limited liability company; or

(v) Another entity.

(b) Quarterly report.

(1) 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 secretary may notify the taxpayer that the taxpayer may file quarterly reports on or before July 20, October 20, January 20, and April 20.

(2) Taxpayers should continue to file monthly reports until they receive the notice to begin filing quarterly reports.

(c) Yearly report.

(1) 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 (\$25.00) per month, the secretary may notify the taxpayer that the taxpayer may file one (1) yearly report on or before January 20 for the preceding twelve-month period.

(2) Taxpayers should not change their method of filing until they receive the notice to begin filing annually.

(d) Prepayment — Arkansas Code § 26-52-512.

(1)(A) All taxpayers 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.

(B) See subsections (e) and (f) of this section.

(C)(i) The Sales and Use Tax Section of the Revenue Division of the Department of Finance and Administration 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.

(ii) This review is performed once each year by the department.

(2)(A) The prepayment program applies only to those sales that are subject to gross receipts tax.

(B) 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)(A) Two (2) methods of making the electronic funds transfer prepayments are available to the taxpayer each month.

(B) The taxpayer is free to choose one (1) method or the other for any period of time.

(C) The taxpayer is not required to commit to either prepayment method on a month-by-month basis.

(D) The two (2) prepayment options are:

(i)(a) Two (2) equal electronic funds transfer prepayments calculated and prescribed by the department.

(b) Each prepayment will be equal to forty percent (40%) of the taxpayer's monthly average gross receipts tax due for the preceding year.

(c) The two (2) payments will be due on or before the twelfth and twenty-fourth days of the current month.

(d) Any remaining balance of tax due for the current month should be remitted along with the taxpayer's gross receipts tax report (Form ET400), which must be filed on or before the twentieth day of the following month; or

(ii)(a) 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.

(b) This single prepayment will be due on or before the twenty-fourth day of the current month.

(c) 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 day of the following month.

(e) Electronic funds transfer — Arkansas Code § 26-19-101 et seq.

(1)(A) 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.

(B) Monthly liability is determined on the basis of average monthly liability for the preceding year.

(C) The transfer shall be made no later than 3:00 p.m. central standard time (CST) one (1) business day before the payment due date so that payment is received on or before the due date.

(2) For purposes of this section, "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 electronic funds transfer.

(1)(A) 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.

(B) 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.

(C)(i) This penalty is in addition to other penalties imposed under the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.

(ii) See 26 CAR § 30-1218.

(D) 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 either of the following conditions 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. central standard time (CST) on the last business day prior to the due date;

(ii) The taxpayer must have accurately provided the secretary 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; or

(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)(a) 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.

(b) 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 that allows the secretary to identify the taxpayer, tax account number, tax payment amount, tax type, and tax period in accordance with instructions provided by the secretary;

(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.

(3)(A) The department provides an alternative method for making a same-day payment if an electronic funds transfer for payment of all remittances required under the provisions of Arkansas law fails for any reason.

(B) If an electronic funds transfer fails on its due date, then the taxpayer should contact the department at (501) 682-7105 and provide the following information:

(i) Arkansas Sales Tax Permit Number;

(ii) The tax type code;

(iii) The tax period end date;

(iv) Payment amount; and

(v) Account information.

(g) Returns and remittances by the taxpayer as described in this section do not

constitute an assessment of tax for audit or examination purposes.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-19-101 et seq.; 26-21-108; 26-52-501"

26 CAR § 30-1209. Cash basis returns.

(a)(1) Any taxpayer who does business wholly or partly on a credit basis may apply to the Secretary of the Department of Finance and Administration for permission to prepare returns on the basis of cash actually received.

(2) If the secretary 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)(1) Any taxpayer making such application shall be taxable on the gross receipts collected by him or her during the taxable period including, but not limited to, all:

- (A) Service charges;
- (B) Late payment penalties collected;
- (C) Bad debts;
- (D) Losses; or
- (E) Expenses.

(2) No person may report on the cash basis unless permission has been expressly granted by the secretary.

(c) Any taxpayer who has received permission from the secretary 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)(1) Taxpayer must keep accurate and complete records that reflect the amount of cash sales and credit sales.

(2) These records must show collections on accounts and be open for inspection and audit by the secretary or his or her agents.

(3) See 26 CAR § 30-901(j) and Arkansas Code § 26-52-309.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-502"

26 CAR § 30-1210. Persons liable for tax and exemptions.

(a) The tax must be collected, reported, and remitted by:

(1) The seller of tangible personal property;

(2) The seller or collector of admissions to places of amusement, recreational, or athletic events;

(3) The seller of privileges of access to, or the use of amusement, entertainment, athletic, or recreational facilities; and

(4) Any other person furnishing any service subject to the tax.

(b) **Corporations.** If the seller of tangible personal property or taxable services is a corporation and 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) **Liability.**

(1) The sales tax liability for all sales of tangible personal property or taxable services is upon the seller unless the purchaser claims an exemption.

(2) See subsections (e) and (f) of this section.

(d) Relief from certain liability.

(1) **Sellers.** Except as provided in subdivision (d)(3) of this section, a seller or certified service provider using a database provided by the Department of Finance and Administration shall not be liable to the State of Arkansas or its local jurisdictions for charging and collecting the incorrect amount of sales or use tax if the seller or the certified service provider relied on erroneous data provided by the department on sales or use tax rates, boundaries, or taxing jurisdiction assignments, or the taxability matrix, which may be viewed on the department website at <https://www.dfa.arkansas.gov/excise-tax/sales-and-use-tax>.

(2) Purchasers.

(A) Except as provided in subdivision (d)(3) of this section, a purchaser may be relieved of liability for failing to pay the correct amount of sales or use tax.

(B) **Relief from liability for tax and interest.** Except where prohibited by the Arkansas Constitution, a purchaser will be relieved from liability for tax and interest owed for having failed to pay the correct amount of sales or use tax as described in subdivision (d)(2) of this section if this state erroneously classified terms in the library of definitions section of the taxability matrix as "taxable" or "exempt", "included in the sales price" or "excluded in the sales price", or "included in the definition" or "excluded in the definition".

(C) Relief from liability for penalty.

(i) A purchaser will be relieved from liability for penalty owed for having failed to pay the correct amount of sales or use tax in the following circumstances:

(a) A purchaser's seller or certified service provider relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix;

(b) A purchaser holding a direct pay permit relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix; or

(c) A purchaser relied on erroneous data provided by this state in

the taxability matrix.

(ii) For purposes of this section, the term “penalty” means an amount imposed for noncompliance that is not fraudulent, willful, or intentional that is in addition to the correct amount of sales or use tax and interest.

(3)(A) If the department provides an address-based boundary database for assigning taxing jurisdictions and their associated sales or use tax rates, the department may cease providing the relief from liability provided in subdivisions (d)(1) and (d)(2) of this section if the department gave adequate notice.

(B) If it is demonstrated that requiring the use of the address-based database would create an undue hardship, the department may extend the relief from liability to the seller for a designated period of time.

(4) The seller, certified service provider, or purchaser must maintain proper records pertaining to the erroneous information provided at the time of the transaction and provide them to the department when requested.

(e) **Exemptions.**

(1) The following provisions apply when a purchaser claims an exemption:

(A) The seller must obtain identifying information of the purchaser and the reason the purchaser is claiming a tax exemption at the time of the purchase;

(B) A purchaser is not required to provide a signature to claim an exemption from tax unless a paper certificate is used;

(C) The seller must use the standard form for claiming an exemption electronically;

(D) The seller is required to obtain the same information for proof of the claimed exemption regardless of the medium in which the transaction occurred; and

(E) The department may authorize a system wherein a purchaser that is exempt from the payment of tax is issued an identification number that must be presented to the seller at the time of sale.

(2)(A) A seller that follows the exemption requirements is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption.

(B) If it is determined that the purchaser improperly claimed an exemption, the purchaser will be liable for the nonpayment of tax, as well as any penalty and interest due on the transaction.

(C) This relief from liability does not apply to a seller who does any of the following:

- (i) Fraudulently fails to collect the tax;
- (ii) Solicits a purchaser to participate in the unlawful claim of an exemption; or
- (iii) Accepts an exemption certificate from a purchaser claiming an entity-based exemption, as defined in Arkansas Code § 26-21-103, if:
 - (a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and
 - (b) The multistate certificate of exemption (SSTGB Form F0003) clearly and affirmatively indicates that the claimed exemption is not available in Arkansas.

(3)(A) A seller has ninety (90) days from the date of sale to obtain a fully completed exemption certificate or information that is the equivalent of the information required by the exemption certificate.

(B) For example, if the seller cannot obtain a fully completed exemption certificate, then the seller has ninety (90) days to obtain the following information:

- (i) Name and address of the seller;
- (ii) Name and address of the purchaser;
- (iii) Any applicable permit or account numbers;
- (iv) The nature of the purchaser's business;
- (v) Identifying information of the transaction (date, invoice, or purchase number); and
- (vi) The exemption claimed.

(4) If a seller has not obtained an exemption certificate or equivalent information and the department makes a request for substantiation of the exemption,

then the seller has one hundred twenty (120) days from the date of the request to:

(A) Prove by other means that the transaction was not subject to sales or use tax; or

(B) Obtain in good faith a fully completed exemption certificate from the purchaser.

(5) The seller must maintain proper records of exempt transactions and provide them to the department when requested.

(6) Sellers may obtain indemnification agreements from their customers claiming an exemption.

(f) Exemption certificates.

(1) Sale-for-resale exemption.

(A)(i) The sale-for-resale exemption may be claimed through the use of the exemption certificate (Form ST 391) or the multistate certificate of exemption (SSTGB Form F0003).

(ii) Both forms may be obtained on the department's website at www.state.ar.us/salestax.

(B)(i) A purchaser may also claim the sale-for-resale exemption by providing information to the seller that otherwise establishes that the purchaser is reselling the articles or services purchased.

(ii) See 26 CAR § 30-1134.

(C)(i) Any person repeatedly selling the same type of property to the same purchaser for resale may accept a blanket certificate covering more than one (1) transaction.

(ii) A blanket certificate may not be used if a period of more than twelve (12) months elapses between transactions.

(2) Other exemptions.

(A)(i) Unless otherwise provided, an exemption that is not the sale-for-resale exemption should be claimed through the use of the general exemption certificate (Form ST 391) or the multistate certificate of exemption (SSTGB Form F0003).

(ii) Both forms may be obtained on the department's website at www.state.ar.us/salestax.

(B) As an alternative to an exemption certificate, a seller may accept a certification or other information from the purchaser that establishes the transaction is exempt under Arkansas law.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-18-501; 26-21-106; 26-21-107; 26-52-508; 26-52-517"

26 CAR § 30-1211. Record keeping and record retention.

(a) Purpose.

(1) The purpose of this section 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, Arkansas Code § 26-18-101 et seq.

(2) It is also the purpose of this section 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.

(3) This section will govern the recordkeeping and record retention requirements of taxpayers unless otherwise provided by law.

(b) Definitions. As used in this section:

(1) "Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database;

(2) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format;

(3) "Hard copy" means any documents, records, reports, or other data printed

on paper;

(4)(A) "Machine-sensible record" means a collection of related information in an electronic format.

(B) 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;

(5)(A) "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.

(B) 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; and

(6) "Taxpayer" as used in this section means any person:

(A) Subject to or liable for any state tax;

(B) Required to file a return or to pay or withhold and remit any tax required by the provisions of any state tax law; or

(C) Required to obtain a license or a permit or to keep any records under the provisions of any state tax law.

(c) Recordkeeping requirements — General.

(1)(A) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under the Arkansas Tax Procedure Act.

(B) All required records must be made available on request by the Secretary of the Department of Finance and Administration or his or her authorized representatives as provided for in Arkansas Code § 26-18-506.

(C) Such records shall include, but not be necessarily limited to:

(i) Normal books of account ordinarily maintained by the average prudent businessperson engaged in such business;

(ii) All bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account; and

(iii) 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 section in both machine-sensible and hard-copy formats, the taxpayer may make the records available to the secretary in machine-sensible format upon request of the secretary.

(3) Nothing in this section 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 section.

(d) Recordkeeping requirements — Machine sensible records.

(1) General requirements.

(A)(i) 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 secretary upon request.

(ii) A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this section 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)(i) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business.

(ii) 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)(i) 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.

(ii) 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.

(iii) Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the secretary to interpret the coded information.

(B)(i) The taxpayer may capture the information necessary to satisfy 26 CAR § 30-1211(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.

(ii) For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers.

(iii) 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.

(iv) 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 secretary.

(v) 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 section.

(4) **Business process information.**

(A)(i) Upon the request of the secretary, the taxpayer shall provide a description of the business process that created the retained records.

(ii) 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 the following:

(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 section:

(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)(A) The secretary recommends but does not require that taxpayers refer to the United States National Archives and Records Administration's 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.

(B) The United States National Archives and Records Administration standards may be found at 36 C.F.R. pt. 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 secretary is provided access to machine-sensible records as required in subdivision (c)(2) of this section 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 (1) or more of the following manners:

(A) The taxpayer may arrange to provide the secretary 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 secretary, including copies of files, on a magnetic medium that is agreed to by the secretary; or

(D) The taxpayer and the secretary may agree on other means of providing access to the machine-sensible records.

(g) Taxpayer responsibility and discretionary authority.

(1)(A) In conjunction with meeting the requirements of subsection (d) of this section, a taxpayer may create files solely for the use of the director.

(B) For example, if a database management system is used, it is consistent with this section for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of subsection (d) of this section.

(C) The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2)(A) A taxpayer may contract with a third party to provide custodial or management services of the records.

(B) Such a contract shall not relieve the taxpayer of its responsibilities under this section.

(h) Alternative storage media.

(1)(A) 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 section 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.

(B) Documents that may be stored on these media include, but are not limited to:

- (i) General books of account;
- (ii) Journals;
- (iii) Voucher registers;
- (iv) General and subsidiary ledgers; and
- (v) Supporting records of details, such as:
 - (a) Sales invoices;
 - (b) Purchase invoices;
 - (c) Exemption certificates; and
 - (d) Credit memoranda.

(2) Microfilm, microfiche, and other storage-only imaging systems shall meet the following requirements:

(A)(i) 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.

(ii) 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 subsection (j) of this section;

(C) Upon request by the secretary, 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)(i) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability.

(ii) 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.

(iii) 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; and

(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)(A) Except as otherwise provided in this subsection, the provisions of this section 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.

(B) Hard-copy records may be retained on a recordkeeping medium as provided in subsection (h) of this section.

(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)(A) 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 section.

(B) Such details include those listed in subdivision (d)(2)(A) of this section.

(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 secretary 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 section shall be preserved for six (6) years pursuant to Arkansas Code § 26-18-506(b) unless the secretary has provided in writing that the records are no longer required.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-18-506"

26 CAR § 30-1212. Assessments.

(a) If, upon audit or examination, the Secretary of the Department of Finance and Administration or his or her duly authorized agent determines there is additional tax due, the secretary shall:

(1) Prepare a schedule reflecting the amount of additional tax, interest, and penalties payable; and

(2) Furnish to the taxpayer, if available, a copy of this schedule.

(b) A "Notice of Proposed Assessment" and "Taxpayer's Bill of Rights" shall also be:

(1) Mailed to the taxpayer at the address listed upon the application for retail permit or the actual business address of the taxpayer; or

(2) Hand delivered to the taxpayer.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-18-401 et seq.; 26-18-801 et seq."

26 CAR § 30-1213. Refunds.

(a) **Refunds of tax erroneously paid.**

(1) **Refunds allowed.**

(A) Any taxpayer who has paid tax in excess of the amount lawfully due is entitled to a refund of the tax erroneously paid.

(B)(i) The claim for refund must meet the requirements of the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.

(ii) The purpose of this section is to clarify those requirements.

(2) Refund claims may not be pursued under Arkansas Code § 26-18-507 or the provisions of this section 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 Arkansas Code §§ 26-18-204, 26-18-405, and 26-18-406; or

(C)(i) Taxes for which a refund is barred by the statute of limitations.

(ii) See subsection (e) of this section.

(b) **Definitions.** As used in this section:

(1) "Assignee" means 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;

(2) "Claim for refund" means:

(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; or

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 difference in gross receipts.

(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 the Department of Finance and Administration to determine whether Taxpayer is entitled to the refund claimed. (See subsections (c) and (d) of this section regarding claim requirements.)

(3)(A) "Claimant" means the person or entity that files a refund request (claim for refund).

(B) 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).

(C) 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.

(D) 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;

(4) "Taxpayer" means:

(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; and

(5)(A) For purposes of this section, the terms "vendor" and "seller" shall have the same meaning and may be used interchangeably.

(B) The terms "customer" and "purchaser" shall have the same meaning and may be used interchangeably.

(c) Claims for refund.

(1) Who may filed 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 (1) 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 subsection (g) of this section).

(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.

(i) Only a taxpayer who paid income tax may file a claim for refund.

(ii) An income tax refund is claimed by filing:

(a) An original return reporting a tax liability that is less than the amount paid through withholding and estimated payments; or

(b) An amended return.

(2) Requirements for claim.

(A) Form 2004-6 is incorporated into and adopted as a part of this section and is required to be used by every claimant filing a claim for refund other than an amended return.

(B) The form provides a method and format to comply with the requirements for a claim for refund.

(C) The form is available on the internet at <https://www.dfa.arkansas.gov/images/uploads/exciseTaxOffice/RefundClaimFormandInstructions.pdf>.

(D) The information listed below in this subdivision (c)(2)(D) of this section shall be required in order to process any claim for refund other than an amended return:

(i) The taxpayer's name and identifying tax information, including:

(a) Sales tax permit number;

(b) Social Security number; or

(c) FEIN;

(ii) The date the tax was paid to the state and the tax period for which the tax was paid;

(iii) The nature and kind of tax paid, such as:

(a) Sales tax;

(b) Withholding tax;

(c) Use tax;

(d) Withholding tax;

(e) Individual income tax; or

(f) Corporate income tax;

(iv) The amount of tax that is claimed erroneously paid;

(v)(a) The specific grounds upon which a refund is claimed.

(b) 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

(vi) Any other information relative to the payment required by the Secretary of the Department of Finance and Administration.

(3) Deficiencies in claim.

(A) If the secretary 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.

(B) However, a refund claim that substantially complies with the claim requirements may lack additional information required by the secretary to process the claim.

(C) The secretary 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.

(D) 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.

(A) Any claim that does not contain the information listed in subdivision (c)(2) of this section and as required on Form 2004-6 will be considered not to be in substantial compliance with the claim requirements.

(B) The secretary will send a letter to the claimant stating that the claim does not meet the claim requirements.

(C) The claimant may resubmit the claim, adding the necessary information to substantially comply with the requirements.

(D) The statute of limitations shall continue to run on the refund claim until a claim is filed that substantially complies with the claim requirements.

(E) 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.

(F) 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.

(1)(A) 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.

(B) Toward that end, all sales and use tax refund claims should be organized as follows.

(2) Refund claims made by vendors.

(A) The most common refund request occurs when a vendor requests a refund of taxes previously remitted to the state.

(B) 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.

(C) In this situation, the vendor will refund the tax to the customer and request a refund of the tax from the state.

(D) A vendor seeking a refund under these circumstances must present

documentation supporting the refund claim in the following manner:

- (i) Complete Sections 1 and 2 of Form 2004-6;
 - (ii) Attach copies of all invoices for which a refund of tax is requested;
 - (iii) The invoices should be arranged in chronological order from the oldest invoice to the most recent;
 - (iv) 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;
 - (v) Provide documentation showing that:
 - (a) 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);
 - (b) The vendor repaid the tax to the customer from whom the vendor originally collected the tax; or
 - (c) The customer consents to refunding the tax to the vendor;
- and
- (vi) Any additional documentation that will assist the department in verifying the refund claim should be attached.

(3) Refund of taxes paid directly by the purchaser.

(A) In some situations, the customer is responsible for paying sales and use tax directly to the State of Arkansas.

(B) 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.

(C) 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:

- (i) Complete Sections 1 and 2 of Form 2004-6;
- (ii)(a) Attach copies of all invoices for which a refund of tax is requested.
 - (b) These invoices should be arranged in chronological order from the oldest invoice to the most recent;
- (iii) 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; and

(iv) Any additional documentation that will assist the department in verifying the refund claim should be attached.

(4) Vendor assignment refund claims.

(A) Occasionally, a vendor will assign the vendor's right to a tax refund to the customer and the customer will request that the department make a refund directly to the customer.

(B) In this circumstance, it is necessary to provide adequate safeguards to ensure that the department refund only taxes that have actually been received by the state from the vendor.

(C) 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:

(i) Complete Sections 1, 2, and 3 of Form 2004-6;

(ii)(a) Attach copies of all invoices for which a refund of tax is requested.

(b) The invoices should be arranged in chronological order from the oldest invoice to the most recent;

(iii)(a) If a vendor assignment refund is being requested for sales tax paid to more than one (1) vendor, a separate Section 2 and a separate Section 3 must be included for each vendor.

(b) The total amount refunded may be summarized for all vendors on Section 1;

(iv) Each vendor assigning its right to a refund must complete column 12 of Section 2 and all of Section 3; and

(v) Any additional documentation that will assist the department in verifying the refund claim should be attached.

(5)(A) 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.

(B) However, the taxpayer will be provided additional time to correct deficiencies as provided in subdivision (c)(3) of this section.

(e) Statute of limitations.

(1) The statute of limitations that applies to tax refunds is found at Arkansas Code § 26-18-306.

(2) 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 secretary 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)(A) The secretary will notify, in writing, claimants whose claims for refund are denied in whole that the claim, or any part, has been denied.

(B) The denial will state the basis for the denial of the claim.

(C) For remedies available upon denial of a refund, see subsection (i) of this section.

(g) Vendor assignments.

(1) Refunds made directly to the assignee (customer).

(A) For sales tax, the customer is not the taxpayer, because the customer is not liable to report and remit the tax.

(B) A customer who pays tax to a vendor should request a refund of tax erroneously paid from the vendor.

(C) 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.

(D) 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)(i) 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.

(ii) See subdivision (c)(1) of this section.

(B)(i) Verification by the taxpayer (vendor) that the tax claimed has been paid by the taxpayer (vendor) to the state.

(ii) This verification is satisfied if both the taxpayer and the assignee satisfactorily complete Form 2004-6.

(C) Certifications of taxpayer (vendor).

(i) Taxpayers who assign the right to refund to an assignee should carefully read Section 3 of Form 2004-6.

(ii) By signing Section 3, the taxpayer is certifying that:

(a) The assignee (customer) paid the tax to the vendor;

(b) The vendor paid the tax to the state;

(c) The vendor has not previously requested or received a refund of the tax on the form;

(d) The vendor has not refunded the tax to the customer; and

(e) The vendor agrees not to claim a refund after assigning the claim.

(3) Right of assignee to refund no greater than right of taxpayer.

(A) If the vendor would not be entitled to a refund, then its assignee is not entitled to a refund.

(B)(i) Under Arkansas law, an assignee of contract rights has no greater rights against the debtor than did the assignor.

(ii) *Tucker v. Scarbrough*, 268 Ark. 736, 740, 596 S.W.2d 4 (1980).

(C) The confidentiality provisions of Arkansas Code § 26-18-303 prohibit the department from disclosing to the assignee facts concerning why the vendor is not entitled to a refund.

(D) If applicable, the department will notify the claimant that the claimant must request the refund directly from the vendor.

(h) **Electronic records.**

(1) The age of technology has afforded many companies the ability to conduct purchasing activities in a paperless environment.

(2) There may be times when paper documents are not available and cannot be included as required with the claim for refund.

(3) For the purposes of this section, "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.

(4) When this situation occurs, the claimant is to:

(A) Prepare the spreadsheet as discussed in Section 2 of the claim for refund packet;

(B)(i) 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.

(ii) This information should include the:

(a) Date of purchase;

(b) Vendor name and address;

(c) Transaction tracking number used by vendor and purchaser;

(d) Description of item purchased;

(e) Dollar amount paid for the item purchased; and

(f) Amount of tax that was accrued by the purchaser or paid to the vendor;

(C) Any other information thought to be helpful by the claimant for refund verification purposes should also be submitted with the claim for refund; and

(D) The secretary 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.**

(A) The claimant has sixty (60) days following the issuance of a written denial of a claim to file a protest of the denial and request an administrative hearing.

(B) An assignee shall have the same rights to a hearing that the taxpayer would have under the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.

(2) File suit in court to contest the denial.

(A) Any claimant may file suit in circuit court to contest a refund denial.

(B) The suit must be filed within one (1) year from the:

(i) Secretary's written denial of the claim for refund; or

(ii) Final decision of either the hearing board or the secretary on revision following an administrative hearing.

(3) If the secretary fails to issue a refund or a written denial of the claim within six (6) months of the date the claim is filed, the claimant may file suit in circuit court on the claim.

Authority. Arkansas Code § 26-52-105.

Codification Notes. "FEIN" means federal employer identification number.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-18-507"

26 CAR § 30-1214. Administrative and judicial remedies.

(a) Protest.

(1) Protest of assessment.

(A) If a taxpayer objects to a proposed assessment of tax, the taxpayer must file his or her protest in writing within sixty (60) days of receipt of the notice of proposed assessment setting forth under oath facts and/or law supporting the protest of the assessment.

(B) The protest shall be mailed to the address set forth in the notice of proposed assessment.

(C) If the taxpayer fails to file a written protest within sixty (60) days of receipt of the notice of proposed assessment, then the Secretary of the Department of Finance and Administration shall issue by certified mail, return receipt, a notice of final assessment.

(D) 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 secretary.

(2) Protest of refund claim denial.

(A) If a taxpayer objects to the denial of a claim for refund, the taxpayer must file his or her protest in writing within sixty (60) days of receipt of the notice of claim denial setting forth under oath facts and law to support the protest.

(B) The protest shall be mailed to the address set forth in the notice.

(C) The taxpayer shall specify the form of hearing as described in subdivision (b)(2) of this section.

(b) Hearings.

(1)(A) 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 sixty-day time period allowed for a protest then the taxpayer will be granted a hearing before a hearing officer.

(B) The hearing officer shall set the time and place for the hearing, which will be in any city in which the Revenue Division of the Department of Finance and Administration maintains a field audit district office, or in such city as the secretary, in his or her discretion, may designate.

(C) 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)(A) The taxpayer shall elect the form of administrative hearing in his or her written protest.

(B) 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)(A) 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.

(B) If the notice of proposed assessment or the denial of the claim for refund is sustained in whole or in part, the taxpayer or Revenue Division legal counsel may request in writing, within twenty (20) days of the mailing of the decision, that the secretary revise the decision of the hearing officer.

(C) Either the taxpayer or Revenue Division legal counsel must provide a copy of any written request for revision to the other.

(D) The request for revision to the secretary shall state the legal or factual basis for the revision.

(E) If the secretary revises the decision of the hearing officer, the secretary must send the final decision to the taxpayer and Revenue Division legal counsel.

(F) If the secretary's final decision sustained a proposed assessment of tax, then a notice of final assessment shall be issued.

(G) No further notice will be issued for a final decision of the secretary that results in no tax due, including the denial of a claim for refund.

(H) A taxpayer may not request a revision of the final decision of the secretary.

(2) If the secretary refuses to make a revision, or if the taxpayer or Revenue Division legal counsel does not make a request for revision, then the secretary will send either of the following:

(A) A final assessment to the taxpayer, as provided by Arkansas Code § 26-18-401, that is made upon the final determination of the hearing officer that sustained the proposed assessment of tax; or

(B) A notice in writing to both the taxpayer and Revenue Division legal counsel, if a revision was requested, of the secretary's determination not to revise a decision that resulted in no tax due, including the denial of a claim for refund.

(d) Judicial relief.

(1) **Proposed assessments of tax.** A taxpayer may seek judicial relief by one (1) of the following methods:

(A)(i) 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.

(ii) Collection activities will proceed with respect to any taxable periods that are not paid.

(iii) A taxable period for gross receipts, use, or withholding tax is one (1) month.

(iv) A taxable period for income tax is one (1) year; or

(B)(i) Within thirty (30) days of the notice of final assessment, filing with the secretary a surety bond, letter of credit, or other collateral approved by the secretary in double the amount of the tax deficiency, interest, and penalty and filing suit in circuit court within thirty (30) days to stay the determination of the secretary.

(ii) The taxpayer shall:

(a) Faithfully and diligently prosecute the suit to a final determination; and

(b) Pay any deficiency found by the court to be due and any

court cost assessed against him or her.

(iii) 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.

(A) Within one (1) year of the issuance of the notice of claim denial, decision of the hearing officer, or revision decision of the secretary, whichever occurs latest, the taxpayer may file suit in court seeking a refund.

(B) It is not necessary to request an administrative hearing prior to seeking judicial relief.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1215. Interest accrued on underpayments of tax — Rate.

(a) 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.

(b) Sales and use tax is due to be paid on the twentieth day of the month following the month in which the sale occurs.

(c) Interest on any unpaid sales or use tax begins to accrue on the twenty-first day of the month in which the tax is due.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of

Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1216. Overpayments and refunds — Interest on overpayments and refunds.

(a)(1) 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.

(2) If the amount overpaid was collected by the taxpayer from his or her customers, then the taxpayer must establish that he or she 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.

(3) The rate of interest on overpayments is ten percent (10%) per annum.

(4) If an overpayment of tax is refunded by the Secretary of the Department of Finance and Administration within ninety (90) days after the date provided for filing the return for the tax, no interest shall be allowed on the overpayment.

(b)(1) If a taxpayer believes an overpayment has occurred, an amended return or verified claim for refund may be filed.

(2) The claim shall specify the:

(A) Name of the taxpayer;

(B) Time when and the period for which the tax was paid;

(C) Amount of tax claimed to have been erroneously overpaid; and

(D) Grounds upon which a refund is claimed.

(3) The secretary 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.

(4) The secretary shall then make a written determination and give notice to the taxpayer concerning whether a refund is due.

(5) If a refund is due, the secretary 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1217. Discount for prompt payment.

(a) Discount for prompt payment.

(1) If the tax is remitted to the Secretary of the Department of Finance and Administration on or before the due date required by 26 CAR § 30-1208, 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.

(2) 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.

(3) A taxpayer who operates more than one (1) location shall be entitled to one (1) aggregate monthly discount of one thousand dollars (\$1,000) for state tax, whether the taxpayer files one (1) consolidated monthly report or separate reports for each location.

(4) There is no limitation on the discount for prompt payment of city and county tax collected and remitted to the secretary.

(5)(A) The two percent (2%) discount may not be deducted from prepayments but may only be taken on the excise tax report (Form ET 400).

(B) See this section.

(b) Forfeiture of discount.

(1) 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.

(2) 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.

(3) See 26 CAR § 30-1208.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1218. Penalties.

(a) Negligence penalty.

(1) If any part of a deficiency in tax is determined to be due to negligence or intentional disregard of this part or state law, then a penalty of ten percent (10%) of the deficiency shall be added.

(2) 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.

(1) 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.

(2) 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.

(1) 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.

(2) The penalty shall not exceed thirty-five percent (35%) of the tax due.

(3) No penalty will be assessed if the failure to file is due to reasonable cause and not to willful neglect.

(4) 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.

(1) 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.

(2) The penalty shall not exceed thirty-five percent (35%) of the tax due.

(3) No penalty will be assessed if the failure to pay is due to reasonable cause and not to willful neglect.

(4) If a penalty is assessed for failure to pay tax, no penalty will be assessed for failure to file a return.

(e)(1) A penalty of fifty dollars (\$50.00) per return will be assessed when a taxpayer continues to disregard previous notification by the Secretary of the Department of Finance and Administration that the taxpayer has failed to include required information on a return, included false information on a return, failed to file a return, or failed to notify the secretary that the taxpayer is no longer required to file a return.

(2) 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)(1) 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.

(2) A taxpayer that elects to pay eighty percent (80%) of its tax liability for the month on or before the twenty-fourth 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.

Authority. Arkansas Code §§ 26-18-208, 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-18-208"

26 CAR § 30-1219. Bad checks and acceptance of personal checks.

(a)(1) 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 Secretary of the Department of Finance and Administration 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 (\$20.00), whichever is greater, against the maker or drawer of such check, draft, money order, or electronic funds transfer.

(2) This section shall not apply if the person establishes to the satisfaction of the secretary that he or she 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 secretary 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 secretary has received from a particular individual one (1) or more personal checks within a twelve-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 of the Department of Finance and Administration in order to renew an Alcoholic Beverage Control Board permit or an Arkansas Tobacco Control Board permit;

(7) When transient vendors sell at fairs and special events; and

(8) When a taxpayer pays the tax liability following service of a business closure order.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1220. Direct payment to the state.

(a)(1) The Commissioner of Revenue 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.

(2) In order to obtain a direct payment number, the consumer must show and certify the following:

(A) That the consumer will comply with the provisions of the Arkansas Tax

Procedure Act, Arkansas Code § 26-18-101 et seq., the Arkansas Gross Receipts Act of 1941, Arkansas Code § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, Arkansas Code § 26-53-101 et seq., and this part; and

(B) That the consumer will faithfully report and remit all state and local taxes due to the Secretary of the Department of Finance and Administration on or before the twentieth day of the month for the previous month's taxable purchases, sales, or rentals.

(b)(1) 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 section or that the cancellation would be in the best interests of the collection of the tax.

(2) A direct pay permittee is not entitled to any discount for prompt payment of the tax.

(c)(1) The tax will be remitted directly by a direct pay permit holder to the commissioner.

(2) 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)(1) Direct pay permit holders shall accrue and remit the local tax pursuant to the sourcing rules provided in Arkansas Code §§ 26-52-521 and 26-52-522 and 26 CAR § 30-1207.

(2) When direct pay permit holders purchase tangible personal property or taxable services, they must accrue and remit the local tax that applies in the location where the tangible personal property or service is received.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-509"

26 CAR § 30-1221. Transient business required to post bond.

(a) 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 (1) year.

(b) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1222. Business closure.

(a) **Business closure authority.** The Department of Finance and Administration has the authority to close any business that fails to pay the gross receipts tax due for three (3) months in a twenty-four-month period and does not, within the time allowed, either:

- (1) Satisfy that liability through a lump sum payment or a payment plan; or
- (2) Request an administrative hearing.

(b) **Notice.**

(1)(A) Taxpayers are given a number of notices prior to business closure.

(B) The number of notices that the taxpayer receives will depend upon how many months the taxpayer has failed to pay or file and pay.

(2)(A) The taxpayer receives a notice of proposed assessment for each month that the taxpayer fails to pay or fails to file and pay.

(B) These notices are sent by United States mail, first class, to the

business address listed on the taxpayer's permit application or a subsequent address provided by the taxpayer.

(C) If the taxpayer does not pay or file and pay, then a final notice is sent by mail to the taxpayer.

(2)(A) 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-consecutive-month period.

(B) 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.

(C) The notice of business closure notifies the taxpayer that three (3) or more months are delinquent and that if the taxpayer does not either pay in full or enter into a payment plan accepted by the department, or request a hearing within five (5) days of the day the notice is received, the business will be closed.

(D) 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 nonindividual owner, to either:

(i) The agent for service;

(ii) The person who signed the sales tax permit application as a person authorized to act on behalf of the corporation; or

(iii) A person who represented that the person was an officer or agent authorized to accept service for the corporation or entity.

(E) 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:

(A) Paying the liability in full within five (5) business days of the date the business closure order is served; or

(B) Entering into an installment payment agreement that is approved by the department; or

(2)(A) Request an administrative hearing within five (5) business days of the date the business closure order is served.

(B) The request must be:

(i) In writing; and

(ii) Received by the department 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 Revenue Division of the Department of Finance and Administration.

(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)(A) 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.

(B) The notice will notify the taxpayer that it is entitled to a hearing on the closure of the business.

(5)(A) 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.

(B) 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-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.**

(1) 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.

(2) The appeal must be filed within twenty (20) calendar days of the date of the administrative decision.

(3) 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 (5) 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.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1223. 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 Revenue 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 or her agents for the purposes of collecting tax as may be due this state.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-105"

26 CAR § 30-1224. Local gross receipts taxes.

(a) The collection and administration of a gross receipts tax collected for any town, city, or county by the Commissioner of Revenue shall be collected and administered in accordance with this part.

(b) **Maximum tax limitation.**

(1)(A) All local taxes shall be collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price of a single:

(i) Motor vehicle;

- (ii) Aircraft;
- (iii) Watercraft;
- (iv) Modular home;
- (v) Manufactured home; or
- (vi) Mobile home.

(B) The term "motor vehicle" means a self-propelled vehicle registered for highway use.

(C)(i) The term "watercraft" means a:

- (a) Boat;
- (b) Canoe;
- (c) Kayak;
- (d) Sailboat;
- (e) Party barge;
- (f) Raft;
- (g) Jet ski;
- (h) Houseboat; or
- (i) Amphibious vehicle.

(ii) "Watercraft" does not include a tug boat or barge.

(2)(A) Sellers should apply the two thousand five hundred-dollar cap on the sale of a single:

- (i) Motor vehicle;
- (ii) Aircraft;
- (iii) Watercraft;
- (iv) Modular home;
- (v) Manufactured home; or
- (vi) Mobile home.

(B) The purchase of additional tangible personal property in conjunction with the above enumerated items are eligible for the cap if the property is installed, affixed, or otherwise becomes a part of the motor vehicle, aircraft, watercraft, modular home, manufactured home, or mobile home prior to purchase.

Example: J.T. purchases a motorcycle. While at the dealer, J.T. picks out a windshield, saddle bags, pipes, and a helmet. If the windshield, saddle bags, and pipes are installed prior to the purchase, then those items are eligible for the cap. Tax should be calculated on the helmet separately.

(3)(A) A rebate of local sales and use tax is available for certain qualifying purchases of tangible personal property or a taxable service.

(B) See Arkansas Code § 26-52-523 and 26 CAR § 30-1225.

(c) **Determination of tax due.**

(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 and services.** Sales of tangible personal property and taxable services are sourced in accordance with the sourcing rules provided in Arkansas Code §§ 26-52-521 and 26-52-522 and 26 CAR § 30-1207.

(d) **Direct pay permit holders.**

(1) A direct pay permit holder that makes taxable purchases of tangible personal property and services shall report and pay local sales or use tax on those purchases.

(2) The local tax shall be calculated pursuant to the sourcing rules provided in Arkansas Code §§ 26-52-521 and 26-52-522 and 26 CAR § 30-1207.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1225. Rebates for qualifying purchases.

(a) **Definitions.** As used in this section:

(1) "Qualifying purchase" means a purchase of tangible personal property or a taxable service:

(A) For which the purchaser may take a business expense deduction pursuant to 26 U.S.C. § 162, as in effect on January 1, 2007;

(B) For which the purchaser may take a depreciation deduction pursuant to 26 U.S.C. § 167, as in effect on January 1, 2007;

(C) By an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007; or

(D) By a state, or any county, city, municipality, school district, state-supported college or university, or any other political subdivision of a state, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not one (1) of the entities enumerated in this subdivision; and

(2) "Single transaction" means any sale of tangible personal property or a taxable service reflected on a single invoice, receipt, or statement for which an aggregate sales or use tax amount has been reported and remitted to the state for a single local taxing jurisdiction.

(b) **Generally.**

(1) A purchaser that pays any municipal sales or use tax in excess of the tax due on the first two thousand five hundred dollars (\$2,500) of gross receipts or gross proceeds from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of municipal sales or use tax paid on each single transaction.

(2) A purchaser that pays any county sales or use tax in excess of the tax due

on the first two thousand five hundred dollars (\$2,500) of gross receipts or gross proceeds from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of county sales or use tax paid on each single transaction.

(3) Except as provided in subdivision (b)(4) of this section, the rebate applies to any local sales or use tax collected by the Secretary of the Department of Finance and Administration pursuant to any state tax law authorizing a county or municipality to levy a sales or use tax.

(4) The rebate does not apply to local sales tax levied in accordance with Arkansas Code § 26-52-303 or § 26-75-502.

(c) Claims for credit or rebate.

(1) Self rebate.

(A) A purchaser that holds an active Arkansas sales and use tax permit and files excise tax reports with the Department of Finance and Administration may offset the amount of credit or rebate claimed against any municipal or county sales or use tax due to be remitted with the return.

(B) The purchaser must list each local code and the amount of additional tax paid to the seller for the qualifying purchase on the return.

(C) If the total amount of the credit or rebate being requested is larger than the local tax due for that month, then the purchaser will deduct the remaining credit or rebate from the state tax due on the return and remit the difference.

(D) The purchaser must maintain documentation, such as photocopies of the invoices or receipts provided by the vendor, for which the credit or rebate is being requested.

(2) File a claim.

(A) A purchaser that qualifies for a rebate but is not required to file a sales or use tax return as provided in 26 CAR § 30-1225(c)(1) may file a claim for a credit or rebate with the secretary.

(B)(i) In order to request a refund of the local sales and use tax for qualifying purchases, the purchaser should complete the Claim for Local Cap Rebate

Form ET-179A and the supplemental schedule Form ET-179B, if needed.

(ii) The form requires the following:

(a) A listing of the invoices on which the local tax has been paid to the seller;

(b) A determination of the amount of refund owed to the purchaser; and

(c) Photocopies of the invoices for which the refund is being requested.

(C) The completed form and copies of the invoices should be mailed to the Department of Finance and Administration, Local Tax Rebate Unit, P.O. Box 3566, Little Rock, AR 72203.

(D) The form may be obtained by contacting the Sales and Use Tax Section of the Revenue Division of the Department of Finance and Administration by telephone at (501) 682-7105 or may be downloaded from the department's website at: <https://www.dfa.arkansas.gov/excise-tax/sales-and-use-tax> and selecting Sales and Use Tax Forms.

(d) Time.

(1)(A) No credit or rebate will be paid for any claim filed after six (6) months (i.e., one hundred eighty (180) days) from the date of the qualifying purchase or after six (6) months (i.e., one hundred eighty (180) days) from the date of payment, if later.

(B) Non-direct pay permit holders.

(i) For purchasers that do not hold a direct pay permit, the date of payment is the date the business pays tax to the vendor for the qualifying purchase.

(ii) The date of payment is evidenced by a receipt provided by the vendor.

Example: On May 1, Company A purchased several computers from Company B. Company A has an account with Company B and did not pay for the computers until May 20. The time for Company A to claim the credit or rebate runs from May 20.

(C) **Direct pay permit holders.** For purchasers that hold a direct pay permit, the date of payment is the date the business pays tax to the department on the qualifying purchase.

Example: A business that holds a direct pay permit fails to self rebate and remits tax on the full sales price of a qualifying purchase. The date of payment is the date the business remits tax on the full sales price of the qualifying purchase.

(2) A claim for a credit or rebate must be filed with the local taxing jurisdiction if, at the time the claim is filed, the local sales or use tax that is the subject of the claim has been out of existence for more than sixty (60) days.

(3) For the purposes of Arkansas Code § 26-52-523, a month is a thirty-day period.

(e) **Interest.** No interest will accrue or be paid on an amount subject to a claim for a credit or rebate.

(f) Claims for credit or rebate pursuant to Arkansas Code § 26-52-523 and this section are governed by the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-523"

26 CAR § 30-1226. Bundled transactions.

(a) Except as otherwise provided by this section, sales tax must be collected on the

sales price of a bundled transaction if any product included in the bundled transaction would be taxable if sold separately.

(b) **Products.**

(1) For purposes of this section, products include:

- (A) Tangible personal property;
- (B) Services;
- (C) Intangibles; and
- (D) Digital goods.

(2) Products do not include real property and services to real property.

(3) **Examples.** Services to real property include:

- (A) Building framing;
- (B) Roofing;
- (C) Plumbing;
- (D) Electrical;
- (E) Painting;
- (F) Janitorial;
- (G) Pest control; and
- (H) Window cleaning.

(c) **Bundled transaction.**

(1) A bundled transaction is the retail sale of two (2) or more products where the products are:

- (A) Otherwise distinct and identifiable; and
- (B) Sold for one (1) nonitemized price.

(2) **Distinct and identifiable products.**

(A)(i) A bundled transaction is a retail sale of two (2) or more products that are "distinct and identifiable".

(ii) The following are not distinct and identifiable products.

(B)(i) Packaging is not a separate and distinct product when it accompanies the retail sale of a product and is incidental or immaterial to the retail sale thereof.

(ii) **Examples.** Packaging that is incidental or immaterial to the retail sale includes:

- (a) Grocery sacks;
- (b) Shoeboxes;
- (c) Dry cleaning garment bags;
- (d) Express delivery envelopes and boxes;
- (e) Bottles; or
- (f) Other materials such as:
 - (1) Wrapping;
 - (2) Labels;
 - (3) Tags; and
 - (4) Instruction guides.

(C)(i) A product provided free of charge with the purchase of another product is not a separate and distinct product.

(ii) A product is considered to be provided free of charge if the sales price of the product purchased does not vary based on the inclusion of the product that was provided free of charge.

(iii) Such products provided free of charge are considered "promotional products".

(iv) Examples:

- (a) A free car wash with the purchase of gasoline; or
- (b) Free dinnerware with the purchase of groceries.

(D)(i) Items included in the definition of "sales price" and "purchase price" are not distinct and identifiable products.

(ii) See 26 CAR §§ 30-102 and 30-1302.

(3) One (1) nonitemized price.

(A) If a retail sale of two (2) or more distinct and identifiable products is not made for one (1) nonitemized price, then the retail sale is not a bundled transaction.

(B) A retail transaction is not sold for one (1) nonitemized price in the

following scenarios:

(i) If, by negotiation or otherwise, the sales price varies or is negotiable based on the purchaser's selection of the products being sold;

(ii) If the purchaser has the option of choosing products or declining to purchase any of the products being sold and, as a result of the purchaser's selection of products, the sales price varies or a different price is negotiated;

(iii) The price is separately identified by product on binding sales or other supporting sales-related documentation, which is made available to the customer in paper or electronic form, such as:

(a) An invoice;

(b) A bill of sale;

(c) A receipt;

(d) A contract;

(e) A service agreement;

(f) A lease agreement;

(g) A periodic notice of rates and services;

(h) A rate card; or

(i) A price list;

(iv) If a seller bills or invoices one (1) price for the sale of distinct and separate products, but the price invoiced is equal to the total of the individually priced or itemized products contained in the supporting sales-related documentation, such as a:

(a) Catalog;

(b) Price list; or

(c) Service agreement; or

(v) If the seller bills or invoices one (1) price for a transaction that includes a bundle of products and also includes one (1) or more additional products that are individually priced or itemized in a catalog or price list, the additional products individually priced or itemized will not be considered to be a part of the bundled products sold for one (1) nonitemized price.

(C)(i) If a transaction does not qualify as a bundled transaction because of the provisions in subdivision (c)(3)(B) of this section, the transaction will not be classified as a bundled transaction as a result of the seller offering a subsequent discount of the total sales price without itemizing the amount of the discount for each product.

(ii) In such a situation, if there is no sales-related documentation showing the allocation of the discount, the discount will be considered to be allocated pro rata among the otherwise separately itemized products.

(d) **Exclusions from bundled transactions.** A transaction that otherwise meets the definition of a bundled transaction as defined above is not considered a bundled transaction if the transaction falls within one (1) of the following exceptions:

(1) **True object exclusion.**

(A)(i) This exclusion only applies to transactions that include a service.

(ii) The exclusion does not apply to transactions that include only tangible personal property.

(B)(i) The retail sale of tangible personal property and a service where the true object of the transaction is the service and the tangible personal property is:

(a) Essential to the use of the service; and

(b) Provided exclusively in connection with the service.

(ii) If the transaction is not a bundled transaction as a result of this exception, then the true object of the transaction will be the retail sale of the service and should be taxed accordingly.

Example: Computer programming services where the client is given a back-up disk and instruction manual. The true object of the transaction is the provision of the programming services. The computer programmer is selling nontaxable services and is not making a sale of a bundled transaction. Arkansas sales tax is not due on the programmer's charge for services. Sales tax is due on the programmer's purchases of tangible personal property used to

fulfill the service.

(C)(i) The retail sale of services where:

(a) One (1) service is provided that is essential to the use or receipt of a second service;

(b) The first service is provided exclusively in connection with the second service; and

(c) The true object of the transaction is the second service.

(ii) If the transaction is not a bundled transaction as a result of this exception, then the true object of the transaction will be the retail sale of the second service and should be taxed accordingly.

(D) Factors that should be considered to determine the true object of a transaction are the following:

(i) The seller's line of business;

(ii) The purchaser's object of the transaction;

(iii) Whether the tangible personal property or service that is essential to the second service is available for sale separately without the second service; and

(iv) How the tangible personal property or service is essential to the second service.

(E) Sellers of a bundled transaction that includes tangible personal property and a service or a bundled transaction that includes multiple services may use the true object exclusion or the de minimis exclusion;

(2) De minimis exclusion.

(A)(i) This exclusion may be applied to transactions that include all types of products.

(ii) If the taxable product in a transaction is de minimis, then the transaction is not taxable.

(B) "De minimis" means the seller's purchase price or sales price of the taxable product is ten percent (10%) or less of the total purchase price or sales price of the products.

(C)(i) A seller may use either the purchase price or the sales price of the products to determine if the price of the taxable products is de minimis.

(ii) A seller may not use a combination of the purchase price and sales price of the products to determine if the price of the taxable products is de minimis.

(D)(i) A seller must use the full term of a service contract to determine if the taxable products in the transaction are de minimis.

(ii) For the purpose of determining whether services in the transaction are de minimis, the price of the services shall not be prorated based on the term of the service contract.

(E) Sellers of a bundled transaction that includes tangible personal property and a service or a bundled transaction that includes multiple services may use the true object exclusion or the de minimis exclusion; or

(3) Food, drugs, and medical items.

(A)(i) This exclusion does not apply to transactions that include services.

(ii) If the nontaxable products in a transaction are the primary products of the transaction (more than fifty percent (50%)), then the transaction is not taxable.

(B)(i) For this exclusion to apply, at least one (1) product must be:

(a) Food and food ingredients;

(b) Drugs;

(c) Durable medical equipment;

(d) Mobility enhancing equipment;

(e) Over-the-counter drugs;

(f) A prosthetic device; or

(g) Disposable medical supplies.

(ii) See 26 CAR §§ 30-102, 30-1113, and 30-1115 for definitions of these terms.

(C)(i) A seller may use either the purchase price or the sales price of the products to determine if the taxable tangible personal property is fifty percent (50%) or

less of the total purchase price or sales price of the tangible personal property.

(ii) A seller may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.

Example: A retailer prepares and sells gift boxes that consist of the following items: a mug, a book, and coffee beans. The seller's purchase prices for the items are three dollars (\$3.00), five dollars (\$5.00), and three dollars (\$3.00), respectively. The total purchase price for the items is eleven dollars (\$11.00). The purchase price of the nonfood items, subject to the full state sales tax rate, is eight dollars (\$8.00). The purchase price of the coffee, subject to the reduced state sales tax rate on food and food ingredients, is three dollars (\$3.00). The gift box is subject to the full state sales tax rate and any applicable local tax because the percentage for the nonfood items is seventy-three percent (73%) ($\$8.00/\$11.00 = .727$). (**Note.** If the percentage for the food and food ingredients in the gift box was more than fifty percent (50%), then the gift box would be subject to the reduced state sales tax rate and any applicable local tax.)

(e) **Records.** In order to show whether a retail sale consisted of one (1) or more distinct and identifiable products and whether the products were sold for one (1) nonitemized price, a seller shall maintain copies of invoices, service agreements, contracts, catalogs, price lists, rate cards, and other sales-related documents given to, or made available to, the purchaser.

(f) **Telecommunications services.**

(1)(A) In the case of a bundled transaction that includes a telecommunication service, ancillary service, internet access, or audio or video programming service the following rules will apply.

(B) See 26 CAR § 30-302.

(2)(A) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products is subject to tax unless the provider can identify, by reasonable and verifiable standards, the portion of the products that are nontaxable from its books and records.

(B) The books and records must be kept in the regular course of business, and include books and records used for nontax purposes.

(C) Books and records include, but are not limited to:

- (i) Financial statements;
- (ii) General ledgers;
- (iii) Invoicing and billing systems and reports; and
- (iv) Reports for regulatory tariffs or other regulatory matters.

(3)(A) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the highest tax rate unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to the lower tax rate from its books and records.

(B) The books and records must be kept in the regular course of business, and include books and records used for nontax purposes.

(C) Books and records include, but are not limited to:

- (i) Financial statements;
- (ii) General ledgers;
- (iii) Invoicing and billing systems and reports; and
- (iv) Reports for regulatory tariffs or other regulatory matters.

(4) The provisions of this section shall apply unless superseded by federal law.

Authority. Arkansas Code § 26-52-105.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-52-103"

Subpart 13. Compensating Use Tax Rules

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"UT-1. EFFECTIVE DATE: Rule 2006-9 previously promulgated by the Commissioner of Revenue for the purposes of enforcing or implementing Ark. Code Ann. § 26-53-101 et seq. is hereby specifically amended as of the effective date of these rules. These rules shall be effective from and after October 15, 2008.

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

26 CAR § 30-1301. Purpose.

(a) This subpart is promulgated to implement and clarify the Arkansas Compensating Tax Act of 1949, Arkansas Code § 26-53-101 et seq.

(b) All persons affected by the Arkansas Compensating Tax Act of 1949 are advised to first read the Arkansas Gross Receipts Act of 1941, Arkansas Code § 26-52-101 et seq., and the rules promulgated by the Commissioner of Revenue pursuant thereto since the Arkansas Gross Receipts Act of 1941 and the Arkansas Compensating Tax Act of 1949 are complimentary legislative enactments and should be read together.

(c) This subpart is intended to clarify only those portions of the Arkansas Compensating Tax Act of 1949 that are different from the Arkansas Gross Receipts Act of 1941 and the rules promulgated thereto.

(d) When there is no conflict in the law or rules, then the gross receipts tax rules shall control.

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1302. Definitions.

For the purposes of this part, unless otherwise required by their context, the following definitions apply:

(1)(A) "Commissioner" means and refers to the Commissioner of Revenue of the State of Arkansas or any of his or her duly authorized agents.

(B) For purposes of this part, the terms "commissioner" and "director" may be used interchangeably;

(2) "Consumption" means a using up or wearing away of tangible personal property or taxable services that constitutes the final and ultimate employment of the tangible personal property or taxable services;

(3) "Department" means and refers to the Department of Finance and Administration;

(4)(A) "Distribution" means effectuating the delivery or deployment of tangible personal property or taxable services 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 or taxable services.

(B) Promotional materials, such as catalogs, sent into this state via interstate mail are considered to be distributed for purposes of the use tax;

(5)(A) "Person" includes any:

- (i) Individual;
- (ii) Partnership;
- (iii) Limited liability company;
- (iv) Limited liability partnership;
- (v) Corporation;
- (vi) Estate;

- (vii) Trust;
- (viii) Fiduciary; or
- (ix) Other legal entity.

(B) "Person" includes the state and any county, city, municipality, school district, or any other political subdivision or combination acting as a unit, in the plural or singular number;

(6)(A) "Purchase" means the sale of tangible personal property or taxable services by a vendor to a person for the purpose of storage, use, consumption, or distribution in this state.

(B) 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.

(C) In such an event, the tax shall be computed on the value of such tangible personal property at the time it is brought into this state.

(D) No tax shall be computed to the extent that a withdrawal consists of carbonaceous materials such as petroleum coke or carbon anodes that are to be directly used or consumed in the electrolytic reduction process of producing tangible personal property for ultimate sale at retail;

(7) "Purchase price": see subdivision (9) of this section;

(8) "Purchaser" means a person to whom a sale of tangible personal property is made or to whom a taxable service is furnished;

(9)(A) "Sale" means any transfer, barter, or exchange of the title or ownership of tangible personal property or taxable services 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.

(B) For the purpose of this section the sale of tangible personal property or taxable services shall be sourced according to Arkansas Code §§ 26-52-521 and 26-

52-522 and 26 CAR § 30-1207;

(10)(A) "Sales price" is synonymous with "purchase price" and means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or taxable services are sold, leased, or rented, valued in money, whether received in money or otherwise.

(B) "Sales price" includes consideration received by the seller from third parties if:

(i) The seller actually receives the consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One (1) of the following criteria is met:

(a) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(b) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

(c)(1) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(2) See 26 CAR § 30-901.

(C) The following cannot be deducted from the sales price or purchase price:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;

(iv) Delivery charge;

(v)(a) The value of exempt tangible personal property given to the purchaser if taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) See the definition of "bundled transaction" in this section and 26 CAR § 30-1226 for the treatment of bundled transactions; and

(vi) Credit for any trade-in unless specifically provided by law.

(D) A separately stated installation charge is not part of the sales price and not taxable unless it is a specifically taxable service.

(E) The term "sales price" or "purchase price" does not include the following:

(i) A discount including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(11)(A) "Storage" means and includes any keeping or retention in this state of tangible personal property or taxable services purchased from a vendor for any purpose, except sale or subsequent use solely outside this state.

(B) If a "use" of the tangible personal property or taxable services occurs

in this state within the scope of subdivision (11) of this section, the use tax will apply to the tangible personal property or taxable services even though the tangible personal property or taxable services is stored and subsequently used outside this state;

(12)(A) "Use", with respect to tangible personal property, 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.

(B) With respect to taxable services, "use" means the privilege of using the service, enjoyment of the service, or the first act within this state by which the purchaser takes or assumes dominion or control of the service or the article of tangible personal property upon which the service was performed; and

(13)(A)(i) "Vendor" means and includes:

(a) Every person engaged in making sales of tangible personal property or taxable services by mail order, by advertising, or by agent, by peddling tangible personal property or taxable services, by soliciting, or by taking orders for sales of same, for storage, use, consumption, or distribution in this state; and

(b) 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 or taxable services sold by them.

(ii) 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.

(B)(i) A person or enterprise that sells tangible personal property or taxable services for storage, use, distribution, or consumption in Arkansas is a vendor for the purposes of this subpart 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.

(ii) A taxpayer who may be deemed a vendor under this subpart with respect to any sale shall be deemed a vendor for all sales of tangible personal property

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

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-53-102"

26 CAR § 30-1303. Amount and nature of tax.

(a)(1) The tax levied by the Arkansas Compensating Tax Act of 1949, Arkansas Code § 26-53-101 et seq., is six percent (6%) of the sales price of tangible personal property or taxable services purchased for storage, use, consumption, or distribution in this state.

(2) Manufacturing utilities.

(A) As of July 1, 2008, the state tax rate on natural gas or electricity purchased by a manufacturer for use directly in the manufacturing process is four percent (4%) of the sales price.

(B) From July 1, 2007, through June 30, 2008, the state tax rate on natural gas or electricity purchased by a manufacturer for use directly in the manufacturing process was four and one-half percent (4 1/2%) of the sales price.

(C) See 26 CAR pt. 32, Reduced Sales Tax Rate for Natural Gas or Electricity Used Directly in the Manufacturing Process.

(3) Food and food ingredients.

(A) As of July 1, 2007, the state tax rate on food and food ingredients purchased for storage, use, consumption, or distribution in this state is three percent (3%) of the sales price.

(B) See 26 CAR pt. 31, Special Rules for Sales of Food and Food Ingredients and Prepared Food.

(b)(1) 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 or taxable services in this state.

(2) The tax will not apply with respect to the storage, use, consumption, or distribution of any article of tangible personal property or taxable services 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 comingled with the general mass of property of this state.

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1304. Collection of tax.

(a)(1) Every vendor making a sale of tangible personal property or taxable services 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.

(A) The required amount of tax collected by the vendor from the purchaser shall be displayed separately on the document evidencing the sale.

(B) The tax shall be displayed either as a separate line item or included within the total sales price on the document evidencing the sale.

(C) If the tax is included within the total sales price the vendor shall state "Arkansas Tax Included" on the document evidencing the sale.

(2)(A) Arkansas compensating use tax is applicable to the sale of tangible personal property or a taxable service if the sale is sourced to Arkansas pursuant to Arkansas Code §§ 26-52-521 and 26-52-522 and 26 CAR § 30-1207.

(B) Notwithstanding the laws of another state, the sourcing provisions

determine a vendor's obligation to collect or pay Arkansas compensating use tax on the vendor's retail sale of tangible personal property or a taxable service.

(b) Every vendor selling tangible personal property or taxable services for storage, use, consumption, or distribution in this state shall register with the Commissioner of Revenue.

(c)(1) Irrespective of the foregoing rule, every person storing, using, consuming, or distributing tangible personal property or taxable services in this state which was purchased from a vendor shall be liable for the tax levied by the Arkansas Compensating Tax Act of 1949, Arkansas Code § 26-53-101 et seq.

(2) 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.

(3) 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.

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-53-106"

26 CAR § 30-1305. Voluntary seller registration.

(a) A vendor that has no legal requirement to register in Arkansas may register electronically through an online registration system at www.streamlinedsalestax.org.

(b) A vendor that registers electronically is not required to provide a written signature and is permitted to register through an agent.

(c) A vendor may cancel its registration under the online registration system at any

time.

(d) Cancellation does not relieve the vendor of its liability for remitting the proper tax collected.

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-21-104"

26 CAR § 30-1306. Return and payment of tax.

(a)(1) Every vendor selling tangible personal property or taxable services for storage, use, consumption, or distribution in this state shall on or before the twentieth day of each month file with the Commissioner of Revenue a return for the preceding monthly period in such form as may be prescribed by the commissioner.

(2) The form shall include:

(A) The total combined tax due on all tangible personal property or taxable services sold by the vendor during such preceding monthly period, the storage, use, consumption, or distribution of which is subject to the use tax; and

(B) Such other information as the commissioner may deem necessary for the proper administration of the Arkansas Compensating Tax Act of 1949, Arkansas Code § 26-53-101 et seq.

(3) 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.

(4) The return shall be signed by the vendor or his or her duly authorized agent.

(5) A return filed electronically does not need to be signed.

(b)(1) Every person purchasing tangible personal property or taxable services 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 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.

(2) The form shall include the total tax due on all tangible personal property or taxable services purchased during such preceding monthly period and such other information as the commissioner may deem necessary.

(3) The return shall be accompanied by a remittance of the amount of tax required to be paid by the person purchasing such tangible personal property or taxable services during the period covered by the return.

(4) Such return shall be signed by the person liable for the tax or his or her duly authorized agent.

(c)(1) Each purchaser liable for a use tax on tangible personal property or taxable service is entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him or her with respect to the same property or service to another state and any subdivision thereof.

(2) The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied pro rata against the amount of any use tax due a local jurisdiction.

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-5-101; 26-53-125; 26-53-131"

26 CAR § 30-1307. [Reserved].

26 CAR § 30-1308. Exemption.

There is specifically exempted from the tax levied in the Arkansas Compensating

Tax Act of 1949, Arkansas Code § 26-53-101 et seq., the following:

(1) All sales on which the Arkansas gross receipts tax is levied and all sales that are specifically exempted from taxation by the Arkansas Gross Receipts Act of 1941, Arkansas Code § 26-52-101 et seq.;

(2)(A) Aircraft, aircraft equipment, and railroad parts, cars, and equipment or tangible personal property owned or 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 and 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.

(B) However, if any such property is subsequently initially used in Arkansas, the tax shall be applicable to the property so used in Arkansas.

(C) **Note.** This does not exempt from taxation any materials used in the refurbishing, conversion, or modification of such property in Arkansas that are subject to the Arkansas Gross Receipts Act of 1941;

(3)(A) 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.

(B) 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.

(C) "Railroad rolling stock" does not include machinery used to repair or maintain:

(i) Railroad cars;

(ii) Locomotives;

(iii) Track;

- (iv) Railroad ties; or
- (v) Railroad roadway; and

(4) 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.

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-53-112; 26-53-115; 26-53-130; 26-53-137; 26-53-139"

26 CAR § 30-1309. Contractors special rules.

(a) Contractors are defined to be consumers of:

(1) All tangible personal property used or consumed in the performance of a contract in this state; and

(2) All tangible personal property stored for use or upon which the contractor may exercise any right or power in this state.

(b)(1) All tangible personal property that is procured from outside this 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 compensating use 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.

(2) 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 compensating use 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)(1) The provisions shall not apply with respect to the use, consumption, storage, or distribution of tangible personal property or taxable services upon which a like tax equal to or greater than the amount imposed by the Arkansas Compensating Tax Act of 1949, Arkansas Code § 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 Revenue.

(2) If the amount of tax paid in another state is not at least equal to or greater than the amount of the Arkansas compensating 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.

(3) 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.

(e) **Rebates.**

(1)(A) A contractor that purchases tangible personal property that becomes a recognizable part of a completed structure or improvement to real property and that is purchased for use or consumption in the performance of a construction contract shall be entitled to a rebate on any additional sales or compensating use tax levied by this state or any city or county if certain requirements are met.

(B) See Arkansas Code § 26-53-138 and 26 CAR § 30-1004.

(2)(A) As of January 1, 2008, local caps on single transactions no longer apply.

(B) Contractors may be eligible for a rebate or refund of the additional local tax paid on qualifying purchases on invoices exceeding two thousand five hundred dollars (\$2,500).

(C) Contractors should pay the full tax on the purchase of materials and follow the rebate procedures provided in Arkansas Code § 26-52-523 and 26 CAR § 30-1225.

(f) **Withdrawal from stock.**

(1) An out-of-state contractor that withdraws an item from stock for use in a

construction contract in Arkansas is responsible for any applicable Arkansas state and local use tax.

(2) The applicable local use tax for the withdrawal from stock is determined by the location of the job site.

(3) The out-of-state contractor will be given credit for tax paid on the item in another state pursuant to Arkansas Code § 26-53-131.

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-53-138; 26-53-203"

26 CAR § 30-1310. Local tax.

(a) Towns, cities, and counties have the authority under Arkansas law to levy use taxes.

(b) Vendors and purchasers should contact the Sales and Use Tax Section of the Revenue Division of the Department of Finance and Administration if they have a question as to whether they are within a jurisdiction that requires them to collect and remit a local tax.

(c)(1) When the Commissioner of Revenue is authorized or required to collect or administer a local use tax, that tax shall be administered in accordance with this part.

(2) See also 26 CAR § 30-1224.

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

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

26 CAR § 30-1311. Services.

(a)(1) As of January 1, 2008, Arkansas compensating use tax applies to services in the same manner as tangible personal property.

(2) Services purchased out of state that would have been taxable if purchased in Arkansas are subject to use tax.

(b) **Purchasers.** [Reserved.]

(c) **Vendors.**

(1) Arkansas compensating use tax is applicable to the sale of a taxable service if the sale is sourced to Arkansas pursuant to Arkansas Code §§ 26-52-521 and 26-52-522 and 26 CAR § 30-1207.

(2) Notwithstanding the laws of another state, the sourcing provisions determine a vendor's liability for Arkansas compensating use tax on the vendor's retail sale of a service taxable in Arkansas.

Example 1: XYZ takes office equipment to a Missouri vendor for repair. Following the repair, XYZ picks up the office equipment and returns to Arkansas. Repair service is not taxable in Missouri, and the vendor did not collect Missouri sales tax. The vendor has nexus with Arkansas. Pursuant to Arkansas Code § 26-52-521(b)(1) and 26 CAR § 30-1207(d)(1)(A), the repair service is sourced to Missouri. Accordingly, the vendor does not have an obligation to collect and remit Arkansas compensating use tax.

Example 2: XYZ takes office equipment to a Missouri vendor for repair. Following the repair, the office equipment is returned to XYZ in Arkansas by common carrier. Repair service is not taxable in Missouri, and the vendor did not collect Missouri sales tax. The vendor has nexus with Arkansas. Pursuant to Arkansas Code § 26-52-521(b)(2) and 26 CAR § 30-1207(d)(1)(B), the repair service is sourced to Arkansas. Accordingly, the

vendor is obligated to collect and remit Arkansas compensating use tax based on the location indicated by the instructions for delivery.

Example 3: A Nebraska printer has an Arkansas customer with several retail locations. The customer orders brochures to be printed in bulk with delivery taking place at a later date and to multiple locations. The bulk order is paid for prior to delivery. At the time of purchase the Nebraska printer does not know where the brochures will be shipped. The Nebraska printer has nexus with Arkansas. Pursuant to Arkansas Code § 26-52-521(b)(3) and 26 CAR § 30-1207(d)(1)(C), the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business. The Nebraska printer is obligated to collect and remit Arkansas compensating use tax based on this location.

Example 4: XYZ has a physical location in North Little Rock. XYZ sends a ring to a jeweler in Texas to have the setting repaired. The jeweler does not charge Texas sales tax on the service. Following the repair, the jeweler sends the ring to XYZ's post office box in Little Rock. The jeweler has nexus with Arkansas. Pursuant to Arkansas Code § 26-52-521(b)(2) and 26 CAR § 30-1207(d)(1)(B), the sale is sourced to the point of delivery, and the jeweler is obligated to collect and remit Arkansas compensating use tax applicable to the post office box in Little Rock.

(d) **Credit.**

(1) Arkansas compensating use tax does not apply to any tangible personal property or taxable services used, consumed, distributed, or stored in Arkansas upon which a like tax equal to or greater than Arkansas compensating use tax has been paid in another state.

(2) A credit is allowed against the amount of Arkansas compensating use tax

due for sales tax legally paid to the state or local jurisdiction where the services were performed.

(3) The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied pro rata against the amount of any use tax due a local jurisdiction.

Authority. Arkansas Code § 26-53-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. §§ 26-5-101; 26-53-106; 26-53-107; 26-53-131"

Subpart 14. Special Excise Tax Rules

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Pursuant to the authority granted by Ark. Code Ann. §§ 26-18-301 and 26-63-104, the Director of the Arkansas Department of Finance and Administration promulgates the following rules for the purpose of facilitating the compliance, administration, enforcement, and collection of the Arkansas Special Excise Taxes, Ark. Code Ann. § 26-63-101 et seq.

ET-1. EFFECTIVE DATE: These rules shall be effective from and after October 15, 2008."

26 CAR § 30-1401. Purpose.

(a) This subpart is promulgated to implement and clarify Title 26, Chapter 63 of the Arkansas Code entitled Arkansas Special Excise Taxes.

(b) All persons affected by or relying upon this subpart are advised to read it in its entirety because the meaning of the provisions of one section may depend upon the provisions contained in another section.

(c) All persons affected by the special excise taxes are advised to also read the Arkansas Gross Receipts Act of 1941, Arkansas Code § 26-52-101 et seq., the Compensating Tax Act of 1949, Arkansas Code § 26-53-101 et seq., and the rules promulgated thereto.

Authority. Arkansas Code § 26-63-104.

26 CAR § 30-1402. Definitions.

As used in this subpart:

(1) "Commissioner" means and refers to the Commissioner of Revenue of the State of Arkansas or any of his or her duly authorized agents;

(2) "Consumer" means a person to which the taxable sale is made or to which a taxable service is furnished;

(3)(A) "Department" means and refers to the Department of Finance and Administration and its agents.

(B) For purposes of this subpart, the terms "department" and "DFA" may be used interchangeably;

(4) "Engage in business" means any local activity regularly and persistently pursued by any seller or vendor through agents, employees, or representatives with the object of gain, profit, or advantage and that results in a sale, delivery, or the transfer of the physical position of any tangible personal property by the vendor to the vendee at or from any point within Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the control of the seller effecting such a 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;

(5)(A) "Gross receipts" or "gross proceeds" means the total amount of

consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise.

(B) "Gross receipts" or "gross proceeds" includes consideration received by the seller from third parties as follows:

(i) The seller actually receives the consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One (1) of the following criteria is met:

(a) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(b) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

(c)(1) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(2) See 26 CAR § 30-901.

(C) The following cannot be deducted from gross receipts or gross proceeds:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, any

loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;

(iv) Delivery charge;

(v)(a) The value of exempt tangible personal property given to the purchaser if taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) See the definition of "bundled transaction" in this section and 26 CAR § 30-1226 for the treatment of bundled transactions; and

(vi) Credit for any trade-in unless specifically provided by law.

(D) A separately stated installation charge is not part of gross receipts or gross proceeds and not taxable unless it is a specifically taxable service.

(E) "Gross receipts" or "gross proceeds" does not include the following:

(i) A discount including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(6) "Long-term rental" means a lease of thirty (30) days or more to a single consumer;

(7) "Motor vehicle" means a vehicle that is self-propelled and is required to be registered for use on the highway;

(8)(A) "Person" includes any:

(i) Individual;

(ii) Partnership;

- (iii) Limited liability company;
- (iv) Limited liability partnership;
- (v) Corporation;
- (vi) Estate;
- (vii) Trust;
- (viii) Fiduciary; or
- (ix) Other legal entity.

(B) "Person" includes the state and any county, city, municipality, school district, or any other political subdivision or combination acting as a unit, in the plural or singular number;

(9)(A)(i) "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.

(ii) "Sale" includes the exchange, barter, lease, or rental of tangible personal property or services, or the sale, exchanging, or other disposition of admissions, dues, or fees to clubs, places of amusement, or recreational or athletic events or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(B) "Sale" does not include the transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(C)(i) In the case of leases or rentals of tangible personal property, including motor vehicles and trailers, for less than thirty (30) days, 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 regardless of whether Arkansas gross receipts or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii) In the case of leases or rentals of tangible personal property, including motor vehicles and trailers, for more than thirty (30) days, 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 unless Arkansas gross receipts or compensating use tax was paid at the time of purchase of the tangible personal property.

(iii) See 26 CAR § 30-1002.

(D) A financing arrangement that 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 use tax has been paid on the purchase price of the tangible personal property by one of the parties to the financing arrangement;

(10) "Secretary" means the Secretary of the Department of Finance and Administration or any of his or her authorized agents;

(11) "Short-term rental" means a rental or lease of tangible personal property for a period of less than thirty (30) days to a single consumer;

(12) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses; and

(13) "Taxpayer" means any person liable to remit a tax levied by Arkansas Special Excise Taxes, Arkansas Code § 26-63-101 et seq., or to make a report for the purpose of claiming any exemption from payment of a tax levied by Arkansas Code § 26-63-101 et seq.

Authority. Arkansas Code § 26-63-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-63-102"

26 CAR § 30-1403. Amount and nature of tax.

(a) **Short-term rental tax.** The tax levied by Arkansas Code § 26-63-301 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 the tourism tax.

(b) **Rental vehicle tax.**

(1) The tax levied pursuant to Arkansas Code § 26-63-302 is equal to ten percent (10%) of the gross receipts or gross proceeds derived from the short-term rental of a motor vehicle required to be licensed, 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.

(2) The tax is in addition to any state or local sales or use taxes due on the rental.

(3) The tax does not apply to:

(A) Trucks rented or leased for residential moving or shipping;

(B) Diesel trucks rented or leased for commercial shipping; or

(C) Farm equipment or machinery rented or leased for a commercial purpose.

(c) **Long-term rental vehicle tax.**

(1) The tax levied by Arkansas Code § 26-63-304 is one and one-half percent (1 1/2%) of the gross receipts or gross proceeds derived from the long-term rental of motor vehicles required to be licensed.

(2) The tax is applicable only if sales or use tax was not paid on the vehicle at the time of registration.

(3) The tax does not apply to:

(A) Trucks rented or leased for residential moving or shipping;

(B) Diesel trucks rented or leased for commercial shipping; or

(C) Farm equipment or machinery rented or leased for a commercial purpose.

(d) **Commercial/residential moving tax.**

(1) The tax levied by Arkansas Code § 26-63-303 is four and one-half percent (4 1/2%) 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.

(2) 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.

(3) The tax is in addition to any state or local sales or use taxes due on the rental.

(e) **Tourism tax.** The tax levied by Arkansas Code § 26-63-401 et seq., is two percent (2%) of the gross receipts or gross proceeds derived from certain sales and services, including:

- (1) Furnishing various lodgings to transient guests;
- (2) Camping fees at campgrounds;
- (3) Rentals of various watercraft and related equipment; and
- (4) Admission prices to tourist attractions.

Authority. Arkansas Code § 26-63-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-63-101 et seq."

26 CAR § 30-1404. Short-term rental tax.

(a)(1) In addition to the state and local sales or use 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.

(2) See 26 CAR § 30-1002.

(b) The short-term rental tax does not apply to the following:

- (1) Farm machinery or equipment leased or rented for a commercial purpose;
- (2) Motor vehicles, trailers, semitrailers, or other vehicles required to be

licensed for highway use under Arkansas law;

(3) A diesel truck leased or rented for commercial shipping; and

(4)(A) Short-term rentals of tangible personal property that are subject to the two percent (2%) tourism tax.

(B) See Arkansas Code § 26-63-401 et seq., and 26 CAR § 30-1407.

(c) Vehicles not otherwise exempt and that are not required to be registered for highway use are subject to the short-term rental tax.

(d)(1) Lessors must maintain sufficient records to establish the intended term of the rental.

(2) 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)(1) Aircraft rented for a period of less than thirty (30) days is subject to the short-term rental tax.

(2) The short-term rental tax does not apply to charter rentals.

(3) See 26 CAR § 30-705.

Authority. Arkansas Code § 26-63-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-63-301"

26 CAR § 30-1405. Rental vehicle tax.

(a)(1) In addition to the state and local sales or use tax, there is a rental vehicle tax on the gross receipts or gross proceeds derived from the short-term rental of motor vehicles required to be licensed in Arkansas.

(2) The rate of the rental vehicle tax is equal to ten percent (10%) of the gross receipts or gross proceeds, 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.

(3) This section should be read in conjunction with 26 CAR §§ 30-702 and 30-1002.

(b)(1) A motor vehicle required to be licensed in Arkansas includes any automobile, truck, van, motorcycle, truck tractor, or other self-propelled vehicle required to be licensed for highway use under the law of Arkansas, as well as a vehicle that is titled and registered in a state other than Arkansas, but that is the type of vehicle that would be required to be registered for highway use in Arkansas.

(2) The term "motor vehicle" does not include special mobile equipment as defined in Arkansas Code § 27-14-211 or implements of husbandry as defined in Arkansas Code § 27-14-212.

(c) The rental vehicle tax does not apply to the following:

- (1) Rentals of diesel trucks for commercial shipping;
- (2) Semitrailers, trailers, or other nonmotor vehicles;
- (3) Farm machinery or equipment leased for a commercial purpose; and
- (4) A gasoline-powered or diesel-powered truck leased or rented for residential moving or shipping.

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

(e) 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.

(f) The rental vehicle tax applies whether or not Arkansas gross receipts or use tax was paid when the vehicle was registered.

(g)(1) 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.

(2) 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, not one (1) long-term rental.

(3) Lessors must maintain sufficient records to establish the intended term of the rental.

Authority. Arkansas Code § 26-63-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-63-302"

26 CAR § 30-1406. Long-term rental vehicle tax.

(a)(1) In addition to the state and local sales and use tax, there is a long-term rental vehicle tax at the rate of one and one-half percent (1 1/2%) of the gross receipts or gross proceeds derived from the long-term rental of motor vehicles required to be licensed.

(2) The tax is applicable only if sales or use tax was not paid on the vehicle at the time of registration.

(3) This section should be read in conjunction with 26 CAR §§ 30-702 and 30-1002.

(b) The long-term rental tax does not apply to gross receipts from the long-term lease of the following:

- (1) A diesel truck rented or leased for commercial shipping;
- (2) Farm machinery or farm equipment leased for a commercial purpose;
- (3) A gasoline-powered or diesel-powered truck rented or leased for residential moving or shipping; or

(4)(A) Special mobile equipment or other motor vehicles not required to be licensed, trailers, and semitrailers.

(B) If, however, a motor vehicle is leased on a long-term basis with a trailer or semitrailer, then the long-term rental tax applies to the total consideration for

the lease of the motor vehicle and trailer or semitrailer unless the consideration for the lease of the motor vehicle is separately stated from the consideration for the lease of the trailer or semitrailer.

(c) International Registration Plan.

(1) 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 the vehicle:

(A) Will be used solely and exclusively for the transportation of goods in interstate commerce; and

(B) Has been registered under the International Registration Plan in another state.

(2) "International Registration Plan" means the International Registration Plan, Inc., 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 Arkansas Code § 27-14-501 et seq.

(d)(1) 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.

(2) 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, not one (1) long-term rental.

Authority. Arkansas Code § 26-63-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-63-304"

26 CAR § 30-1407. Tourism tax.

(a) In addition to state and local sales or use tax, a two percent (2%) tourism tax

on the gross receipts or gross proceeds derived from the following:

(1) The service of furnishing a condominium, townhouse, or rental house to a transient guest;

(2) The service of furnishing a guest room, suite, or other accommodation by a:

(A) Hotel;

(B) Motel;

(C) Lodging house;

(D) Tourist camp;

(E) Tourist court;

(F) Property management company; or

(G) Any other provider of an accommodation to a transient guest;

(3)(A) A camping fee at a public or privately owned campground, except a federal campground.

(B) See 26 CAR § 30-516;

(4) The rental of a watercraft, boat motor and related boat equipment, life jacket or cushion, water skis, or oar or paddle by a:

(A) Boat dock;

(B) Marina;

(C) Canoe or raft rental business; or

(D) Other business engaged in the rental of watercraft; and

(5) The admission price to a tourist attraction.

(b) **Definitions.** As used in this section:

(1)(A) "Camping fee" means a fee for furnishing a camping space or trailer space on less than a month-to-month basis.

(B) See 26 CAR § 30-516;

(2) "Special event" means any attraction, festival, or other event of not more than fourteen (14) days' duration;

(3)(A) "Tourist attraction" means:

(i) Theme parks;

- (ii) Water parks;
- (iii) Water slides;
- (iv) River boat and lake boat cruises and excursions;
- (v) Local sightseeing and excursion tours;
- (vi) Helicopter tours;
- (vii) Excursion railroads;
- (viii) Carriage rides;
- (ix) Horse racing;
- (x) Dog racing;
- (xi) Car racing;
- (xii) Indoor and outdoor plays or music shows;
- (xiii) Folk centers;
- (xiv) Observation towers;
- (xv) Privately owned or operated museums;
- (xvi) Privately owned historic sites or buildings; and
- (xvii) Natural formations such as:
 - (a) Springs;
 - (b) Bridges;
 - (c) Rock formations;
 - (d) Caves; and
 - (e) Caverns.

(B) "Tourist attraction" does not include:

- (i) A special event;
- (ii) An event of a school, college, or university; or
- (iii) An event of a restaurant, coffee shop, dinner theater that admits dinner guests only, cafe, cafeteria, or any other public eating establishment that is open for business every month of the year;

(4)(A) "Transient guest" means a person that rents an accommodation, other than the person's regular place of abode, on less than a month-to-month basis.

(B) The criteria for a month-to-month rental are set forth in 26 CAR § 30-

501(b); and

(5)(A) "Watercraft" means a:

- (i) Boat;
- (ii) Canoe;
- (iii) Kayak;
- (iv) Sailboat;
- (v) Party barge;
- (vi) Raft;
- (vii) Jet ski;
- (viii) Houseboat; or
- (ix) Amphibious vehicle.

(B) "Watercraft" does not include a tug boat or barge.

(c) **Credit cards.** For guidance concerning federal credit cards see 26 CAR § 30-1126.

Authority. Arkansas Code § 26-63-104.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote as follows:

"Source: Ark. Code Ann. § 26-63-401 et seq."