Agency # 006.05

RULE 2005-1

EXEMPTIONS FROM TAX—REPAIR AND M AINTENANCE OF RAILROAD PARTS, RAILROAD CARS AND EQUIPMENT

Pursuant to his authority under Ark. Code Ann. § 26-18-301, the Director of the Arkansas Department of Finance and Administration promulgates the following regulation for the purpose of facilitating compliance with Section 11501(b)(4) of the Railroad Revitalization and Regulatory Reform Act (the "4R Act"), 49 U.S.C. § 10101, et seq. The 4R Act prohibits tax discrimination against rail property and states that no State shall impose a tax on railroad property that discriminates against a rail carrier.

On April 26, 2004, a lawsuit styled *The Arkansas and Missouri Railroad Company v. Richard Weiss, Director of the Arkansas Department of Finance and Administration, et al.* was filed in the U.S. District Court, Western District. The lawsuit alleged that certain Arkansas tax laws are in violation of the 4R Act because Arkansas law exempts barge and commercial aircraft companies (two of the railroad's major competitors) from paying sales and use tax on parts and labor used in the repair and maintenance of barges and aircraft, while railroad carriers are required to pay sales and use tax on the repair and maintenance of railroad cars and equipment unless the railroad cars are brought into the state solely and exclusively for the purpose of being repaired. The Arkansas and Missouri Railroad alleged that this different tax treatment put the railroad at a competitive disadvantage, in violation of the 4R Act. An order was entered in the U.S. District Court on January 13, 2005, stating that effective December 1, 2004, the Department of Finance and Administration is to discontinue the assessment and collection of Arkansas sales and use tax on the gross receipts or gross proceeds derived from the parts and labor used in the repair and maintenance of railroad parts, railroad cars, and equipment. Pursuant to the order of the U.S. District Court, this exemption will not apply to transactions prior to December 1, 2004. Therefore, this regulation is promulgated to ensure that rail carriers in Arkansas are taxed in a manner conforming to federal law.

In accordance with the Court's Order, the gross receipts or gross proceeds derived from the sale of parts and the labor used in the repair and maintenance of railroad parts, railroad cars, and equipment on and after December 1, 2004, are exempt from tax.

In witness whereof, we have hereunto set our hands this _________ day of July, 2005.

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RICHARD A. WEISS, Director Arkansas Dept. of Finance & Adminstration	TIM LEATHERS, Deputy Director and Commissioner of Revenue