

**EMERGENCY RULE 2006-4
SALES OF HEAVY EQUIPMENT**

Pursuant to his authority under Ark. Code Ann. §§ 26-18-301 and 26-52-105, the Director of the Arkansas Department of Finance and Administration promulgates the following regulation for the purpose of implementing Act 1693 of 2005.

SALES OF HEAVY EQUIPMENT

- 1. EFFECTIVE DATE:** This regulation shall be effective on and after July 1, 2005.
- 2. PURPOSE:** This regulation is promulgated to implement and clarify the collection of sales and use tax on sales of heavy equipment and to establish the procedure for affixing decals in connection with such sales as required by Act 1693 of 2005.

3. DEFINITIONS:

A. "Heavy equipment" includes rough terrain fork lifts, scissor lifts, extendable boom lifts, cranes, trenchers, loader backhoes, excavators, bulldozers, motor graders, crawler tractors and loaders, skid-steer loaders, scrapers, earth movers, compaction equipment, asphalt pavers, demolition equipment, concrete pavers, wheel loaders, rock drills, portable air compressors that are 100 CFM or greater, cable plows, boring machines or any other equipment determined by the Director to be heavy equipment following the adoption of a regulation in accordance with state law.

- (i) Demolition equipment is limited to equipment that is used to demolish structures or highway.
- (ii) Rock drills are limited to equipment used to drill holes in rock or concrete.

B. With the exception of portable air compressors, the items listed in paragraph 3(A) of this rule shall be considered to be heavy equipment only if:

- (i) the item is propelled by its own internal engine or internal power source; and
- (ii) the item is intended for outside use.

C. Heavy equipment does not include:

- (i) hand held tools;
- (ii) portable tools and attachments, with the exception of portable air compressors 100 CFM or greater;
- (iii) farm tractors or small tractors used for mowing, gardening, etc.;
- (iv) items used in conjunction with the operation of a manufacturing or processing facility;
- (v) motor vehicles;
- (vi) locomotives;
- (vii) aircraft or watercraft.

4. GENERAL INFORMATION:

A. All sales of new and used heavy equipment are subject to sales or use tax unless otherwise exempted. The tax shall be collected, reported and remitted by the heavy equipment dealer at the time of sale.

B. At the time of sale, every dealer who sells heavy equipment shall affix a decal to each piece of heavy equipment sold as proof that either: 1) sales tax has been paid on the heavy equipment; or 2) either the heavy equipment or the purchaser of the equipment is exempt from tax. The dealer shall record the decal number on the sales invoice or other document evidencing the sale.

C. The dealer shall affix the decal in a prominent and clearly visible place on the heavy equipment.

D. A red decal shall be affixed to heavy equipment that is taxable and for which the dealer collected the tax. If the equipment is exempt from tax under the farming exemption, a blue decal shall be affixed. If the equipment is exempt from tax under any other tax exemption (i.e., manufacturing, timber harvesting, etc.), a green decal shall be affixed. No decal is required for heavy equipment that is sold exempt from tax as a sale for resale, because the dealer will affix the decal at the time the heavy equipment is sold to the ultimate consumer.

E. A dealer who sells used heavy equipment shall remove the old decal from the used equipment before it is resold and a new decal shall be affixed when the item is resold. If the dealer fails to remove the old decal, the Director shall assess the following penalties:

- i) One hundred dollars for the first offense;
- ii) Two hundred dollars for the second offense; and
- iii) Five hundred dollars for the third and subsequent offenses.

F. Decals may be obtained from the Department of Finance and Administration, Sales and Use Tax Section, P.O. Box 1272, Little Rock, Arkansas 72203.

G. In the event a decal on heavy equipment is lost or damaged, the purchaser of the equipment may obtain a replacement decal from the Department of Finance and Administration. Before a replacement decal will be issued, the purchaser must provide the original sales invoice or other document evidencing the sale that shows the original decal number recorded by the dealer at the time of sale.

H. 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.

- (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 Arkansas Department of Finance and Administration. The tax shall be reported and paid to the Sales and Use Tax

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

- (ii) 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.

I. SALES BY AUCTIONEERS: Auctioneers who simply auction items for third parties, and who do not maintain an inventory of their own, are not heavy equipment dealers and are not required to affix a decal on heavy equipment they sell. However, if an auctioneer maintains an inventory of items for sale which includes heavy equipment, then the auctioneer must affix a decal on heavy equipment sold from the inventory. In the event an auctioneer sells the inventory of a heavy equipment dealer that is liquidating, the heavy equipment dealer is responsible for affixing a decal to equipment sold.

J. DIRECT PAY PERMIT HOLDERS: If heavy equipment is sold to the holder of a direct pay permit, the heavy equipment dealer is not required to affix a decal. Instead, the holder of the direct pay permit shall be required to contact DFA to obtain the proper decal for the equipment.

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

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

- (ii) who elect to pay tax on the heavy equipment at the time of sale must affix a red decal indicating that the dealer has collected tax on the sale of the heavy equipment. The purchaser is not required to affix any additional decal at the time of rental.

IN WITNESS WHEREOF, we have hereunto set our hands this 17th day of February 2006.

RICHARD A. WEISS, Director
Arkansas Dept. of Finance & Administration

TIM LEATHERS, Deputy Director
and Commissioner of Revenue