

ARKANSAS REGISTER



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W.J. "BILL" McCuen
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

BY _____

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Secretary of State
State Capitol
Little Rock, Arkansas 72201-1094

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Name of Agency Dept. of Finance and Administration

Department Division of Revenue

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Adopted by State Agency 5/1/91

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance With Act 434 of 1967 As Amended.

Cora L. Gentry

SIGNATURE

Revenue Legal Counsel

TITLE

April 19, 1991

DATE

1991-3
EMERGENCY REGULATION

SALE OF MOTOR VEHICLES, TRAILERS AND SEMITRAILERS

FILED
REGISTERED DIV.
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W. J. "BILL" MOORE
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

A. GENERAL INFORMATION

All sales of new and used motor vehicles, trailers and semitrailers are subject to sales or use tax. The tax is to be collected as follows:

1. Tax due on vehicles and trailers which are required by Arkansas law to be registered and licensed for use on public streets and highways shall be paid by the purchaser at the time of registration and application for certificate of title.

2. For purposes of this regulation, motor vehicles which are not required by Arkansas law to be registered and licensed for use on public streets and highways are: 1) mopeds, motorcycles, and motor-driven cycles which are designed or manufactured exclusively for competition or off-road use, and 2) three and four-wheel, all-terrain cycles and motorized bicycles.

3. Tax due on the sale of mopeds, motorcycles, and motor-driven cycles which are designed or manufactured exclusively for competition or offroad use is to be collected by the seller on the full purchase price without regard to trade-in.

4. Tax due on the sale of three and four-wheel, all-terrain cycles and motorized bicycles shall be collected by the seller on the full purchase price without regard to trade-in.

5. Tax due on the sale of motorcycles and motor-driven cycles registered for street use is to be paid by the purchaser at the time of registration and application for certificate of title. However, when the motorcycle or motor-driven cycle was sold in such a condition that it could not be licensed for street use and sales tax was collected and remitted by the seller, upon the purchaser's subsequent application for a license to operate the cycle upon the street, the purchaser shall be entitled to a credit for the sales tax paid by the seller. The purchaser shall present proper proof of such payment of sales tax at the time of registration.

CALCULATION OF TAX DUE

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

a. If the total gross receipts or gross proceeds for the sale of a new or used motor vehicle or trailer is less than \$2,000.000, then the sales or use tax is not due on the vehicle or trailer.

b. If the total gross receipts or gross proceeds for the sale of a motor vehicle or trailer is \$2,000.00 or more, then the 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 a used motor vehicle or trailer.

c. The term "Gross Receipts" or "Gross Proceeds" means the total amount of consideration for the sale of the motor vehicle or trailer, whether the consideration is in money or otherwise and including any manufacturer's or dealer's rebates and federal luxury excise tax, without any deduction therefor on account of the cost of the property sold, labor service performed, interest paid by the retailer, losses or any expenses whatsoever. Federal manufacturer's excise taxes are not a part of the "Gross Receipts" or "Gross Proceeds" if the excise taxes are separately stated or separately billed to the consumer. The term "Gross Receipts" or "Gross Proceeds" includes the value of any property taken in lieu of or in addition to money as consideration for a sale.

d. Local Tax: The local sales or use tax levied by the city and county of the purchaser's residence shall be due on the sale of the motor vehicle. A corporation or partnership is a resident of any city and county in which it maintains an office or place of business.

e. For all motor vehicles and trailers purchased after November 3, 1989, no credit will be allowed for sales or use taxes paid to another state on purchases of motor vehicles, trailers or semitrailers which were first registered by the purchaser in Arkansas.

f. Warranties: Sales or use tax is due on the gross receipts or proceeds received for an extended warranty on a new or used vehicle offered either by the manufacturer or the dealer. When the extended warranty 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. Effective May 1, 1991, used car dealers are no longer required to collect sales tax on extended warranties on used vehicles when the warranty is sold at the time the car is sold or prior to registration of the vehicle. Tax on used car warranties

is to be paid by the purchaser to the Director at the time of registration. The dealer will be liable for sales tax on the warranty if the warranty is sold at the same time as the vehicle but is billed to the customer on a separate invoice. If the dealer or manufacturer sells a warranty on a new or used car after the car has been registered, the dealer or manufacturer must continue to 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.

g. 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 motor vehicle, trailer or semitrailer.

2. Motor Vehicles Not Required to be Licensed and Registered

a. The trade-in deduction in Act 3 of 1991 does not apply to vehicles not required by Arkansas law to be licensed and registered for use on public streets and highways, as defined in paragraph A(2) of this regulation.

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

C. TAXABLE TRANSACTIONS

1. A transaction is a "sale" for purposes of imposing tax when possession or title to a motor vehicle or trailer is transferred from the seller to the buyer for valuable consideration.

2. Examples of taxable "sales" include:

a. Sale by a bankruptcy trustee of the debtor's vehicle or trailer.

b. Sale by the holder of a repairman's lien arising under Ark. Code Ann. § 18-45-201 et seq. to either a third party or to himself.

c. Sale by the executor or administrator of an estate.

d. Sale by the owner for consideration where the seller is unable to transfer title and the purchasee must obtain an order quieting title to the vehicle and ordering the Department to issue title to the purchaser.

3. Examples of non-taxable transfers include transfer by:

a. Gift, where the donor and recipient of the vehicle or trailer sign an affidavit attesting to the gift and the donor paid

Arkansas sales or use tax at the time of purchase;

b. Inheritance or intestate succession, where the beneficiary provides the Commissioner with a certified copy of a Probate Court order or other proof of testamentary transfer;

c. Court order, other than quiet title actions, where the prevailing party provides the Commissioner with a certified copy of the order or decree ordering the Commissioner to issue title;

d. Repossession pursuant to Ark. Code Ann. § Ark. Code Ann. 4-9-501 et seq.;

e. Transfer of title by an insured to the insurance carrier which paid the insured or a lienholder replacement cost of a damaged motor vehicle or trailer.

D. PROOF OF VALUE

When a motor vehicle or trailer is sold or taken in trade, the taxpayer shall provide to the Commissioner documented proof of the gross receipts or gross proceeds or the value assigned to the traded-in item. Examples of sufficient documents include:

1. Bill of sale or financing contract signed by the seller and buyer separately stating the total gross receipts or gross proceeds for the sale, value assigned to the traded-in vehicle or trailer, description and vehicle identification number (VIN) of the vehicle or trailer sold and vehicle or trailer traded-in.

2. Affidavit signed by seller and the buyer stating the total gross receipts or gross proceeds for the sale, value assigned to the traded-in vehicle or trailer, and description and vehicle identification number (VIN) of the vehicle or trailer sold and vehicle or trailer traded-in.

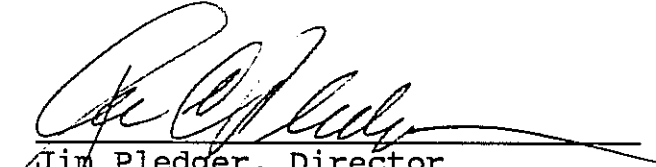
3. If the taxpayer is unable to provide sufficient documentation for either the total gross receipts or gross proceeds for the sale of the vehicle or trailer or the value of the traded-in vehicle or trailer, then the Commissioner may accept the average retail value of the vehicle as stated in the current edition of the NADA Official Used Car Guide.

E. EFFECTIVE DATES

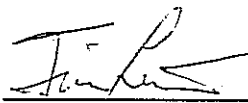
1. The effective date of Act 3 of 1991 is May 1, 1991. For purposes of determining whether a sale occurred before the effective date of Act 3 of 1991, the date on the bill of sale, contract, or other documents provided by the taxpayer controls.

2. These regulations are effective May 1, 1991.

Executed this 19th day of April, 1991.



Jim Pledger, Director
Arkansas Department of Finance
and Administration



Tim Leathers
Commissioner of Revenues
Arkansas Department of Finance
and Administration

FINDING OF IMMINENT PERIL
AND STATEMENT OF REASONS

Act 3 of 1991 was signed by the Governor of the State of Arkansas on January 25, 1991, and will be in full force and effect from and after May 1, 1991. The Act provides for the application of the Arkansas Gross Receipts Tax and Arkansas Compensating Use Tax on sales of all new and used motor vehicles, trailers, mobile homes and airplanes. The Act also provides for a deduction for trade-ins and an exemption from tax for these items sold for less than \$2,000.00.

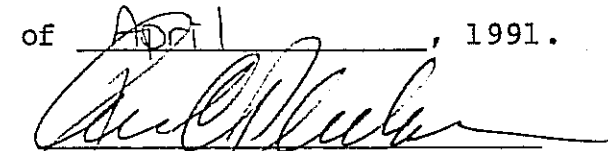
Section 4 of Act 401 of 1979, as amended, provides that the Commissioner of Revenues shall administer and enforce the provisions of every state tax law, including the Arkansas Gross Receipts Tax and the Arkansas Compensating Use Tax, and shall promulgate rules and regulations necessary for the enforcement thereof.

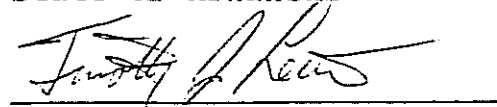
The current rules and regulations regarding the taxation of new and used motor vehicles, trailers, mobile homes and airplanes do not address the changes in tax law created by Act 3 of 1991.

To ensure understanding of and compliance with Act 3 of 1991 and to prescribe procedures for the implementation of the law, emergency regulations as authorized by Section 3 of Act 434 of 1967 (Ark. Code Ann. § 25-15-204) to be effective immediately upon filing thereof with the Secretary of State, are necessary.

For the above reasons, it is found that there exists an imminent peril to the welfare of the State of Arkansas and the attached emergency regulations, regarding the application of the Arkansas Gross Receipts Tax and the Arkansas Compensating Use Tax to new and used motor vehicles, trailers, mobile homes and airplanes, are necessary.

Executed this 19th day of April, 1991.


JIM C. PLEDGER, Director
Department of Finance and
Administration
State of Arkansas


TIMOTHY J. LEATHERS
Commissioner of Revenues
Department of Finance and
Administration
State of Arkansas