

ARKANSAS REGISTER



Transmittal Sheet

W.J. "Bill" McCuen
Secretary of State
State Capitol
Little Rock, Arkansas 72201-1094

For Office
Use Only:

Effective Date 4-25-91 Code Number 006.05.91-005

Name of Agency Department of Finance and Administration, Revenue Division

Department Division of Revenue

Contact Person Cora L. Gentry Telephone 682-7030

Statutory Authority for Promulgating Rules Ark. Code Ann. 26-18-301

Intended
Effective Date

Date

Legal Notice Published

☒ Emergency

Final Date for Public Comment

☐ 20 Days
After Filing

Filed With Legislative Council

April 25, 1991

☐ Other

Reviewed by Legislative Council

Adopted by State Agency

May 1, 1991

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 24, 1991

DATE

82 APR 25 PM 3:28

FILED
AR. REGISTER DIV.

006 05.91--005

EMERGENCY
REGULATION 1991-6
SALES AND USE TAX
CONSTRUCTION CONTRACTORS

Materials purchased for use in construction contracts are exempt from the additional 1/2% sales and use tax levied by Act 3 of 1991 if the qualifications set out in this regulation are met.

A. DEFINITIONS - for the purposes of this regulation the following definitions apply:

1. "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. The term "construction contract" shall not include the following:

a) A contract to produce tangible personal property.

b) A cost plus contract or any contract which allows the contractor to pass any additional tax on to the principal as a part of the contractor's cost.

2. "Recognizable" means capable of being recognized in the finished product. The capability to recognize the effect of the materials upon the finished structure or improvement is insufficient to establish the materials are exempt.

3. "Materials" mean tangible personal property used or purchased by contractors.

B. QUALIFICATIONS - before materials used in construction contract are exempt the materials and construction contract must meet the following qualifications:

1. The materials must be used in a construction contract.

2. The materials must be used in a construction contract entered into before May 1, 1991.

3. The materials must be purchased prior to January 1, 1997.

4. The seller must keep adequate records to identify all materials sold exempt. Records will be adequate where the following information is available.

a) The construction contractor's name and address.

b) The name and address of the party for whom the construction contractor is performing work.

91 APR 25 PM 3:28

FILED
MR. NELSON DIV.

c) A brief description of the work performed by the construction contractor which indicates the contract is actually a "construction contract" as defined in this regulation.

d) The date of the construction contract which must be prior to May 1, 1991.

e) The contract number where applicable.

f) The location where the construction contractor is to perform the construction contract.

5. The construction contractor shall complete and sign, under oath, the "Affidavit and Certificate of Proof to Entitlement to Exemption from Sales and Use Tax Increase for Certain Contractors" form which will be provided upon request by the Revenue Division of The Department of Finance and Administration. The construction contractor shall file a completed copy of each of these executed forms with each seller to whom the exemption is claimed for each contract claimed and also shall mail a copy of each form to:

Office of Field Audit Administration
P. O. Box 1272
Room 112
Little Rock, Arkansas 72203

6. The invoice reflecting the sale of exempt material shall contain information which will allow an auditor to locate the "Affidavit and Certificate" form, as well as the other records required by this regulation, in the seller's records. This information may consist of a file number or customer number or any identifying mark which will allow reasonable access to the information in the seller's business records.

C. WITHDRAWAL FROM STOCK OR WITHDRAWAL FOR USE:

Some construction contractors maintain an inventory of materials and pay sales or use tax on "withdrawals from stock" (Ark. Code Ann 26-52-103) or "withdrawals for use" (Ark. Code Ann 26-53-102(5)(a)(4)). Where a construction contractor claims the exemption, granted by Act 548 of 1991 for withdrawals, the construction contractor shall maintain all records required by this regulation including maintaining copies of the contracts for which the exemption is claimed.

D. CONSUMER USE TAX REPORTS:

Some construction contractors report the use tax due on materials purchased from out-of-state sellers directly to the Revenue Division of the Department of Finance and Administration. When such a construction contractor claims the

exemption granted by Act 548 of 1991 the construction contractor shall keep all records required by this regulation including maintaining copies of the contracts for which the exemption is claimed.

E. EXAMPLES:

On May 6, 1991, a construction contractor purchases a hammer and 50 pounds of nails for use in framing an apartment building. The construction contractor furnishes all necessary information required by this regulation to the seller.

The additional one-half cent tax is due on the price of the hammer. The hammer will not become a recognizable part of the completed structure and therefore is not exempt.

The nails are exempt from the additional one-half cent tax. The nails become part of the frame of the house. The nails cannot be seen after the house is completed, but they remain as a recognizable part of the house.

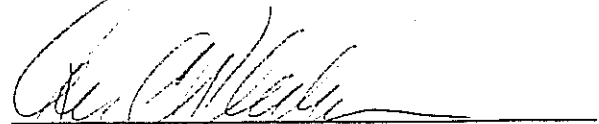
F. BURDEN OF PROOF:

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

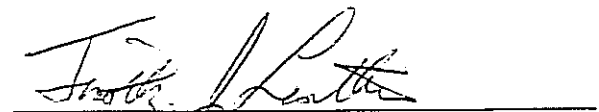
G. EFFECTIVE DATE:

This regulation shall be effective from and after May 1, 1991.

Executed this 25th day of April, 1991.



Jim C. Pledger
Director
Department of Finance and
Administration



Timothy J. Leathers
Commissioner of Revenues

AFFIDAVIT AND CERTIFICATE OF PROOF FOR ENTITLEMENT TO EXEMPTION
FROM SALES AND USE TAX INCREASE FOR CERTAIN CONTRACTORS

STATE OF _____
COUNTY OF _____

Act 548 of 1991 exempts certain materials used in construction contracts from the additional 1/2% sales and use taxes. Before materials are exempt from the additional tax the following conditions must be met:

1. The contract must be for the construction or substantial modification of real property.
2. The materials must be used in a construction contract entered into before May 1, 1991.
3. The materials must be purchased prior to January 1, 1997.
4. The materials must become a recognizable part of the completed structure or improvement to real property.
5. The materials must be billed on an invoice containing information which matches each invoice with the applicable certificate.
6. This exemption does not apply to cost plus contracts or to any other contract where the contractor has the right to pass any additional tax on to the principal as a part of the contractor's cost.

SELLER: (Name) _____ (Address) _____
CONTRACTOR: (Name) _____ (Address) _____
OTHER PARTY TO CONTRACT: (Name) _____
(Address) _____
DESCRIPTION OF WORK: _____

LOCATION WHERE CONTRACT PERFORMED: _____
State County City/Town

CONTRACT NO. _____ DATE OF CONTRACT _____
(Must be prior to May 1, 1991)

The contractor below certifies, under oath, to the above Vendor that the materials purchased for this contract qualify for the exemption from the additional 1/2% sales and use taxes which were levied by Act 3 of 1991. The contractor understands that a false statement on this form is punishable as a Class D felony under Ark. Code Ann 26-18-204.

CONTRACTOR

Subscribed and sworn to before me this ____ day of _____, 19__.

My Commission Expires: _____

NOTARY PUBLIC

A COPY OF THIS FORM MUST BE MAILED BY THE CONTRACTOR TO:

OFFICE OF FIELD AUDIT, ADMINISTRATION SECTION
P. O. BOX 1272, ROOM 112
LITTLE ROCK, ARKANSAS 72203

FINDING OF IMMINENT PERIL AND STATEMENT
OF REASONS THEREFOR

Act 548 of 1991 was signed by the Governor of the State of Arkansas on March 14, 1991, and is in full force and effect from and after that date. The Act provide for the exemption from the application of the 1/2% Arkansas Gross Receipts Tax and Arkansas Compensating Use Tax to materials purchased for a construction contract entered into before May 1, 1991.

Section 4 of Act 401 of 1979 (Ark. Code Ann 26-18-301) 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.

There are currently no rules or regulations regarding the application of Act 548 of 1991, exemption for, or the imposition of the 1/2% Arkansas Gross Receipts Tax or Arkansas Compensating Use Tax to the materials purchased for a construction contract entered into before May 1, 1991.

To ensure understanding of and compliance with Act 548 of 1991, and to prescribe procedures for the implementation of the law, emergency regulations as authorized by Section 3 of Act 434 of 1967, the same being Ark. Code Ann 23-15-204, 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 1/2% Arkansas Gross Receipts Tax and the Arkansas Compensating Use Tax to materials purchased for a construction contract, are necessary.

Executed this 25th 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