

ARKANSAS REGISTER



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Name of Agency Department of Finance and Administration

Department Division of Revenue

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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

10-8-92

DATE

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GROSS RECEIPTS TAX REGULATIONS

Pursuant to the authority vested in the Commissioner of Revenues by the following enactment of the Arkansas General Assembly:

1. Act 131 of 1935;
2. Act 386 of 1941;
3. Act 78 of 1949;
4. Act 265 of 1963;
5. Act 5 of 1968;
6. Act 214 of 1971;
7. Act 68 of 1973;
8. Act 516 of 1973;
9. Act 800 of 1975;
10. Act 54 of 1973;
11. Act 109 of 1979; and
12. Act 401 of 1979, as amended; and

in compliance with §3 of Act 434 of 1967 and Act 583 of 1973, the Commissioner of Revenues of the Arkansas Department of Finance and Administration, with the approval of the Governor, does hereby promulgate the following rules and regulations for the enforcement and administration of Ark. Code Ann. §26-52-101 et seq.

GR-1. EFFECTIVE DATE: All regulations previously promulgated by the Commissioner of Revenues for purposes of enforcing or implementing the Arkansas Gross Receipts Tax Act of 1941 (as amended) are hereby specifically repealed as the effective date of these regulations. These regulations shall be effective from and after midnight, November 1, 1992.

GR-2. PURPOSE OF THE REGULATIONS: The following regulations are promulgated to implement and clarify the Gross Receipts Tax Act (§ 26-52-101 et seq.), and short term rental tax statutes (§§ 26-52-310 and 26-52-311). All persons affected by or relying upon these regulations are advised to read them in their entirety because the meaning of the provisions of one regulation may depend upon the provisions contained in another regulation.

GR-3. DEFINITIONS: For purposes of these regulations, unless otherwise required by their context, the following definitions apply:

- A. Commissioner: The term "Commissioner" means and refers to the Commissioner of Revenues of the State of Arkansas, or any of his duly authorized agents.
- B. Sale: The term "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. The term "Sale" includes the exchange, barter, lease or rental of tangible personal property or services. In the case of leases or rentals of tangible personal property, 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; however, except for short term rentals and rentals of motor vehicles for less than thirty (30) days, the tax shall not apply to gross receipts or gross proceeds derived from leases or rentals of tangible personal property upon which either the Arkansas gross receipts tax or compensating tax was paid at the time of purchase of the tangible personal property. (See GR-20)

A financing arrangement which 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 Tax has been paid on the purchase price of the tangible personal property by one of the parties to the financing arrangement.

- C. Gross Receipts - Gross Proceeds: (1) The term "Gross Receipts" or "Gross Proceeds" means the total amount of consideration for the sale of tangible personal property and such services as are herein provided for, whether the consideration is in money or otherwise, 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, including vehicle manufacturer or dealer rebates and federal luxury excise tax. 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.
- (2) The term "Gross Proceeds" or "Gross Receipts" includes the value of any goods, wares, merchandise, or property withdrawn or used from the established business or from the stock in trade of the established reserves for consumption by or use in such business, or for consumption or use by any other person. (See also GR-18).
- (3) 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. Taxpayer: The term "Taxpayer" means any person making a sale subject to or 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.
- E. Established Business: The term "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.
- F. Seller: The term "Seller" is synonymous with "vendor" and means every person making sales in an established business

as herein defined.

- G. Consumer: The term "Consumer" is synonymous with "user" or "customer" or "purchaser" and means the person to whom a taxable sale is made, or to whom taxable services are furnished or a person who consumes tangible personal property or services. Contractors are deemed to be the consumers of all tangible personal property or taxable services purchased by them in the performance of a contract. (See GR-3L).
- H. The term "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 which 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 point of acceptance of the order, point of payment, or any other condition. "Doing Business" or "Engaging in Business", as set out herein, is equally applicable to sellers of services which are subject to the gross receipts tax.
- I. The term "Tangible Personal Property" means personal property which may be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses.
- J. The term "Machine" means any device consisting of two 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. 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. Hand tools are not machinery. (See GR-55 E(5)).
- K. The term "Person" means and includes individuals, fiduciaries, corporations, partnerships, joint ventures, associations mutual or otherwise, estates, trusts, receivers, trustees appointed by any State or Federal Court, this State, any county, city, municipality, school district, or any other political subdivision or combination acting as a unit, in the plural or singular number.
- L. The term "Contractor" shall mean 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. Persons who construct items of tangible personal property are not contractors. (See GR-21.)

- M. Retailers Permit: "Retailers Permit" means and refers to the retailers permit as required by Ark. Code Ann. §26-52-201.
- N. As used in these regulations, the terms "sales tax" and "gross receipts tax" are synonymous and mean the tax imposed by Ark. Code Ann. §§26-52-301 and 302.

GR-4. AMOUNT AND NATURE OF TAX:

- A. The gross receipts tax levied by Ark. Code Ann. §26-52-101 et seq. is 4½% of the gross receipts or gross proceeds derived from all sales within Arkansas of tangible personal property and certain services and admission fees upon which tax is imposed.
- B. The tax levied by Ark. Code Ann. §26-52-310 (short-term rental tax) is 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 tourism tax. See GR-20.
- C. The tax levied by Ark. Code Ann. §26-52-311 (rental vehicle tax) is 4½% of the gross receipts or gross proceeds derived from short-term rentals of licensed motor vehicles. See GR-20.

GR-5. TAX IMPOSED UPON SALE AND NOT PROPERTY - INTERSTATE AND INTRASTATE SALES:

- A. The Arkansas gross receipts tax is a tax imposed upon the sale of tangible personal property and not the property itself. Thus, when a sale of tangible personal property occurs in Arkansas, a taxable event has occurred and the tax should be collected and remitted. When tangible personal property is sold to a consumer and the seller thereof is engaged in an established business within Arkansas and delivery is made within Arkansas transferring either title or possession of the property, such 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 vendor to order same for direct shipment at or from a source outside this State.
- B. Sellers must collect and remit the tax when the sale of property takes place within the State of Arkansas even though the property may be delivered outside Arkansas as an accommodation or convenience for the consumer's benefit. The fact that the purchaser of property is also a common carrier and the property is to be shipped outside the State does not make the delivery of the goods a non-taxable event. If a customer picks up the property in Arkansas in his own conveyance, then the sale is intrastate and tax must be collected and remitted.
- C. When tangible personal property is sold by a seller engaged in an established business in this State and under the terms of a contract of sale or order, the seller

delivers by common carrier, U. S. Postal Service or in the seller's own conveyance to a point outside this State for consumption and use, such transactions are not subject to the tax and may be deducted provided proper records are preserved to establish such deductions including mail orders, shipping orders and all data pertinent to the purchase and delivery.

- D. When a taxable service is performed in Arkansas a taxable event has occurred and the tax must be collected and remitted even though the consumer of the service resides or is located in another State and/or the property upon which the service is performed is shipped to another State.

GR-6. SERVICES SUBJECT TO TAX-UTILITIES-PUBLIC SERVICES:

- A. All services provided by public utilities or public services are subject to the gross receipts tax. The tax should be collected and remitted by the seller of such services. Sales of public utilities or public services which are subject to the tax include, but are not limited to, sales of natural or artificial gas, electricity, water, ice, steam or any other utility or public service except transportation, sewer, garbage collection or sanitation services.

- B. Low-Income Residential Utility Customer Tax Exemption

1. DEFINITIONS

- (a) The term "income" means gross income less deductions allowed by law for expenses. It shall also include alimony, support money, cash public assistance and relief, 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), all dividends and interest from whatever source derived not included in gross income, worker's compensation, and the gross amount of "loss of time insurance." 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. 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.
- (b) The term "household income" means the combined income received by members of a household during a calendar year.
- (c) The term "household" means an individual and, if

- applicable, his or her spouse.
- (d) The term "electric utility" means any electric utility, cooperative corporation created or existing under the authority of Ark. Code Ann. §23-18-301 et seq. or a municipally-owned electric utility.
2. (a) The sale of the first 500 kilowatt hours of electricity per month to each residential customer whose household income does not exceed twelve thousand dollars (\$12,000.00) per year shall be exempt from the Arkansas Gross Receipts Tax and all other State excise taxes which would otherwise be levied thereon.
 - (b) The total franchise taxes billed to each residential customer whose household income does not exceed twelve thousand dollars (\$12,000.00) per year shall be exempt from the Arkansas Gross Receipts Tax and all other State excise taxes which 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. 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 Revenues for the State of Arkansas. The exemption must be claimed by March 1 of the year following the year in which the customer's income did not exceed \$12,000. Once the exemption is claimed, no further application is required. The exemption continues from year to year until the customer becomes disqualified.
 5. A customer becomes disqualified for the exemption when the customer's household income for a calendar year exceeds \$12,000.00. 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 \$12,000.00. 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 of Revenues.
 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. The claim forms may be obtained by the Claimant directly from the Commissioner of Revenues upon request, and supplies of the forms will also be furnished to the electric utility companies. 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 which it submits to the Arkansas 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. 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 Commissioner of Revenues. Such records shall be preserved for a period of three (3) years and shall be open to examination by the Commissioner at any reasonable time.

GR-7. SERVICES SUBJECT TO TAX--TELEPHONE AND TELEGRAPH COMPANIES:

A. Certain services provided by telephone, telecommunications and telegraph companies are subject to gross receipts tax. Those services are:

1. basic local service and rental charges including:
 - a) installation and construction charges, and
 - b) all service and rental charges having any connection with the transmission of a message or image;
2. long distance service, including:
 - a) long distance messages which originate and terminate within Arkansas;
 - b) interstate long distance messages which originate within Arkansas, and terminate outside Arkansas and are billed to an Arkansas telephone number or address;
 - c) interstate long distance messages which originate outside Arkansas, terminate inside Arkansas and are billed to an Arkansas telephone number or address.
 - d) all service and rental charges having any connection with the transmission of a message or image;
3. customer access line charges billed to an Arkansas telephone number. Only access line charges associated with obtaining access to a long distance network for a customer or end user are taxable.

Charges for long distance network access or other services provided to telephone, telegraph or telecommunications companies which enable the company to provide telecommunications service to customers or end users are not taxable.

- B. The following services are exempt from tax:
1. Any interstate private communications service which is not accessible by the public;
 2. Any interstate service which allows access to private telephone lines and which is not accessible by the public; or
 3. Any interstate-wide area telecommunications service or other similar service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telecommunications service in a specified area which is outside the state in which the station provided with this service is located. An example of this service is a WATS line.

GR-8. SERVICES SUBJECT TO TAX-LODGING: The service of furnishing rooms to transient guests by hotels, motels, apartment hotels, lodging houses and tourist camps is subject to gross receipts tax. These services are subject to the tax if the consumer of the services rents the accommodations on less than a month to month basis and the accommodations are not the consumer's regular place of abode. Mere rental of meeting rooms is not subject to the tax.

GR-9. SERVICES SUBJECT TO TAX-TAXABLE SERVICES:

- A. Service of, addition to or the service of alteration, cleaning, refinishing, replacement and repair of the following items of tangible personal property are subject to the tax: motor vehicles, aircraft, farm machinery and farm implements, motors of all kinds, tires, batteries, boats, electrical appliances, and electrical devices, furniture, rugs including carpets, upholstery, household appliances, television and radio, jewelry, watches, clocks, engineering instruments, medical instruments and surgical instruments, machinery of all kinds, bicycles, office machines, office equipment, shoes, tin and sheet metal, mechanical tools and shop equipment. (But see GR-30, GR-38.2 and GR-57)
- B. The tax applies to the enumerated services performed on the above items whether or not the items are affixed to real property.
- C. The sale of maintenance agreements, service contracts or other written agreements to perform taxable services in the future for a specified period and a fixed price are subject to gross receipts tax. The total cost of the contract is taxable if any services to be performed are taxable.

GR-9.1. SERVICES SUBJECT TO TAX-TELEVISION:

The following services are subject to Gross Receipts Tax:

- A. 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 said services.
- B. The tax levied by this section does not apply to services purchased by radio or television companies for use in providing their services.

GR-10. SERVICES SUBJECT TO TAX-PRINTING AND PHOTOGRAPHY:

- A. The tax must be collected and remitted on the service of printing of all kinds, types and characters, including the service of overprinting. 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. The tax applies to the service of photography of all kinds.

GR-11. SALES OF TICKETS OR ADMISSIONS TO PLACE OF AMUSEMENT:

- A. 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. Fees for the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes, tickets, dues, fees or admissions are subject to the tax; except such sales by municipalities are exempt. (See GR-4)
- B. Membership dues which are paid on a regular basis by members of a club solely for the privilege of membership are not subject to the tax. All admissions or fees paid by members for the privilege of having access to certain facilities (e.g. green fees or equipment use charges) are subject to tax. 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 ticket or admission purchase money.

GR-12. SALE OF MOTOR VEHICLES, TRAILERS AND SEMITRAILERS:

A. GENERAL INFORMATION

All sales of new and used motor vehicles, trailers and semi-trailers 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 certification of title. Sellers of trailers are not required to collect tax.
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 off-road 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 unless the provisions of GR-50 apply.
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.

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 is less than \$2,000.00, then the sale 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 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.
 - 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 property sold, labor service, 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 semi-trailers 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 semi-trailer is a motor vehicle, trailer or semi-trailer.
- 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 purchaser 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 sales or use tax at the time of purchase and registered the vehicle in his own name;
 - 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. §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 the 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

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.

GR-13. SPECIAL RULES FOR USED MOTOR VEHICLE, TRAILER AND SEMI-TRAILER DEALERS: 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. The dealer must hold a retail sales tax permit. 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.

GR-13.1. CREDIT OR REFUND FOR DEFECTIVE VEHICLE: If any taxpayer purchases a new or used automobile which is so defective that either the dealer or the manufacturer gives the taxpayer a full cash refund or replaces the original automobile with another new or used automobile, the amount of tax paid on the defective automobile may:

- A. Be applied as credit upon the tax due from the purchase or receipt of another automobile if the replacement automobile is purchased within sixty (60) days after the

- date the dealer or manufacturer agrees to replace the automobile or refund the purchase money; or
- B. Be refunded to the customer if application for the refund is made within sixty (60) days after the date the dealer or manufacturer agrees to replace the automobile or refund the purchase money.

In order for the credit or refund to be allowed, the taxpayer must present a written statement from the dealer or manufacturer stating that it has replaced the automobile or refunded the purchase money to the person together with the receipt evidencing payment of sales or use tax on the defective automobile. The vehicle identification number (VIN) and the vehicle's date of purchase must also appear on the statement from the dealer or manufacturer.

GR-14. SALE OF AIRCRAFT:

A. GENERAL INFORMATION

1. Sales of new and used airplanes are subject to sales or use tax. 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. 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 \$2,000.00, then sales or use tax is not due.

B. DEFINITIONS

The term "gross receipts" or "gross proceeds" means the total amount of consideration for the sale of the airplane whether the consideration is in money or otherwise, 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. 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.

C. CALCULATION OF TAX DUE

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

D. SALES TAX REPORTS

Every seller of an airplane is required to obtain a sales tax permit and to collect tax from the purchaser. The seller is to report the sale as any other taxpayer subject to the Arkansas Gross Receipts Tax laws. The seller is to provide the Commissioner with the following information

along with the seller's regular sales tax report:

1. Purchaser's name and address.
2. Make, model, serial number and gross sales price of each aircraft sold.
3. 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.
4. Amount of state and local tax collected from the purchaser.
5. Copies of invoices, sales tickets or bills of sale concerning each aircraft sold and taken in trade.
(If the invoice, sales ticket or bill of sale contains the information required by this section, then only the invoices, sales tickets, or bills of sale must accompany the sales tax report.)

E. RECORDS

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

1. Affidavit signed by the seller and purchaser attesting to the sales price or trade-in value of the aircraft.
2. Aircraft valuation schedules prepared by the Assessment Coordination Division of the Arkansas Public Service Commission.
3. Any national trade publication generally accepted by aircraft dealers as accurately reflecting current aircraft market value.
4. The higher of two appraisals prepared by other aircraft dealers.

F. AIRCRAFT RENTAL

1. 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 year from the date of purchase of the aircraft without remitting the tax on the aircraft so used. When the aircraft is eventually sold, however, the tax must be remitted at the time of sale. If the aircraft is sold within the one year 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. If a year passes and the rented or chartered aircraft has not been sold, then the tax must be remitted by the person engaged in the business of selling aircraft in Arkansas on his purchase price.
2. 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 non-taxable service.

If the aircraft alone is rented for a period of less than 30 days, then the sales tax and the 1% short term rental tax must be collected on the rental charge. If the aircraft alone is rented for 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.

G. NEWLY MANUFACTURED AIRCRAFT

On and after June 17, 1981, 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.

H. EFFECTIVE DATES

For purposes of determining whether a sale occurred before May 1, 1991, the effective date of Act 3 of 1991 (Ark. Code Ann. §§26-52-510 and 26-53-126), the date on the bill of sale, contract, or other documents provided by the taxpayer controls.

GR-15. SALE OF MOBILE HOMES AND HOUSE TRAILERS:

A. GENERAL INFORMATION

1. Sales of new and used mobile homes and house trailers are subject to sales or use tax. 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 paid. 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 a new or used mobile home or trailer, other than a manufactured home, is less than \$2,000.00, then sales or use tax is not due.
3. If the total gross receipts or gross proceeds for the sale of a new or used manufactured home is less than \$10,000.00, then sales or use tax is not due.

B. DEFINITIONS

1. A "manufactured home" is defined as a structure, transportable in one or more sections, which, in the traveling mode, is eight (8) feet or more in width, or forty (40) feet or more in length, or when erected on site, is three hundred and twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. This term also includes any structure which meets all other requirements except the size requirement and for which the manufacturer files a

certification required by the Secretary of the Department of Housing and Urban Development. See GR-44 for "custom manufactured home".

2. For purposes of this regulation, the terms "mobile home" and "house trailer" mean a transportable structure other than a manufactured home which is intended for use as a dwelling or place of business, which may be licensed under Ark. Code Ann. §27-14-1601 et seq. and which is excepted from licensing and registration by Ark. Code Ann. § 27-14-703.
3. The term "gross receipts" or "gross proceeds" means the total amount of consideration for the sale of the mobile home, trailer or manufactured home whether the consideration is in money or otherwise, 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. 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.

C. CALCULATION OF TAX DUE

If the seller takes a used mobile home, trailer, or manufactured home in trade as credit or part payment of a sale of a new or used manufactured home, mobile home or house trailer, tax shall be paid on the difference between the total gross receipts or gross proceeds received for the mobile home or trailer and any credit given for the traded-in manufactured home, mobile home or house trailer. No trade-in credit will be allowed if an item other than a used manufactured home, mobile home or house trailer is taken in trade.

D. SALES TAX REPORTS

Every seller of mobile homes or house trailers making sales from an established business is required to obtain a sales tax permit and to collect tax from the purchaser. The seller is to report the sale as any other taxpayer subject to the Arkansas Gross Receipts Tax laws. The seller is to provide the Commissioner with the following information along with the seller's regular sales tax report:

1. Purchaser's name and address.
2. Make, model, serial number and gross sales price of each mobile home or house trailer sold.
3. Make, model, serial number and value assigned to any mobile home or house trailer taken in trade as part payment on the sale of a new or used mobile home or house trailer.
4. Amount of state and local tax collected from the purchaser.
5. Copies of invoices, sales tickets or bills of sale concerning each mobile home or house trailer sold and taken in trade. (If the invoice, sales ticket

or bill of sale contains the information required by 1, 2, 3 and 4, then only the invoices, sales tickets or bills of sale must accompany the sales tax report.)

E. RECORDS

The seller shall retain records reflecting the total gross receipts or gross proceeds received and a description of each mobile home or house trailer sold along with the value and description of each mobile home or house trailer taken in trade. If the seller's records are inadequate or incomplete, the Commissioner may utilize any of the following for purposes of determining sales tax liability:

1. Affidavit signed by the seller and purchaser attesting to the gross receipts or trade-in value of the mobile home or house trailer.
2. Mobile home or house trailer valuation schedules prepared by the Assessment Coordination Division of the Arkansas Public Service Commission.
3. Any national trade publication generally accepted by mobile home and house trailer dealers as accurately reflecting current mobile home or house trailer market value.

F. EFFECTIVE DATES

For purposes of determining whether a sale occurred before May 1, 1991, the effective date of Act 3 of 1991 (Ark. Code Ann. §26-52-504), the date on the bill of sale, contract, or other documents provided by the taxpayer controls.

GR-15.1. NEW AND USED BOATS:

- A. The gross receipts tax applies to the sale of all new boats. 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. The gross receipts tax applies to the sale of all used boats unless: (1) The used property exemption of Ark. Code Ann. §26-52-401(22) applies (See GR-50); or (2) The isolated sale exemption of Ark. Code Ann. §26-52-401(17) applies. 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. All persons in the business of selling new or used boats shall collect the tax and remit it to the Commissioner.
- D. Boat sellers are not required to collect the tax on sales of boat trailers. If the seller sells a boat and trailer to his customer, he should separately state the sales price of the trailer on the sales invoice.

**GR-16. RECEIPTS FROM CERTAIN COIN-OPERATED AMUSEMENT MACHINES
SUBJECT TO TAX:**

- A. 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, and all other similar devices are subject to the tax. Every person holding an Amusement Machine Operator's License pursuant to Ark. Code Ann. §26-57-401 et seq. must obtain a retail permit, and report and remit gross receipts tax.

- B. The tax shall be deemed to be included in the charge for the use of the machine. 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.

GR-17. FLORAL ARRANGEMENTS SUBJECT TO TAX--SPECIAL RULES:

The gross receipts tax applies to the transmittal of any order for flowers, floral arrangements, potted plants or any other article common to the floral business. 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.

GR-18. WHAT CONSTITUTES GROSS RECEIPTS--EXAMPLES:

- A. Freight or Transportation Charges: All freight or transportation charges are part of the gross receipts or gross proceeds on which the tax must be collected and remitted unless the freight charges are billed directly to the purchaser by a carrier other than the seller.
- B. Used Merchandise: The gross receipts derived from the sale of used tangible personal property are subject to the tax except as noted below. (See also GR-50, GR-51, GR-13, GR-14, and GR-15).
 - 1. 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. Sufficient records must be kept to establish that this requirement has been met.
 - 2. Property which 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. 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.
- C. Installation charges: 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 sale price, the gross receipts tax should be collected on the total sale price. If the installation charges are separately stated on the invoice or bill of sale, tax is not due on the separate installation charge. Charges for installation services which are taxable under GR-9 or GR-7 of these regulations are taxable even if they are separately stated.

- D. Withdrawal from stock: If seller has a retail permit and purchases goods from his suppliers without paying tax to those suppliers claiming the "sale for resale" exemption and on various occasions seller withdraws certain merchandise from his stock and gives the merchandise to his customers, prospective customers, or uses the merchandise himself, the value of this merchandise is a part of seller's gross receipts or gross proceeds and seller must remit the tax on the total including enhanced cost of the merchandise at the time of the withdrawal.
- E. Warranty sales: Automobiles. See GR-12.
- F. Warranty sales: Appliances. 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 which 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.
- G. Membership Fees: A bookstore which 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. Manufacturer's Coupons: A manufacturer issues a coupon entitling customers to 25 cents off the retail price of a product. The manufacturer will reimburse retailers who honor the coupons. The 25 cents 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.
- I. Retailer Coupons: Retailer issues a coupon entitling customers to 25 cents off the price of a product. Retailer will not be reimbursed by any third party. The 25 cents 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.
- J. Bad Debts: Taxpayers may deduct bad debts from the total amount upon which the tax is calculated. A "bad debt" means any portion of a debt for an amount which a taxpayer has reported as taxable, which the taxpayer legally claims

as a bad debt deduction for federal income tax purposes. Bad debts include, but are not limited to, worthless checks, worthless credit card payments and uncollectible credit accounts. Bad debts do not include financing charges and interest, uncollectible amounts on property that remain in the possession of the taxpayer or vendor until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to third parties for collection and repossessed property. Bad debts must be deducted within three (3) years of the date of the sale for which the debt was incurred. 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. Any deduction taken or refund paid, which is attributed to bad debts, shall not include interest.

- K. None of the above examples should be construed to limit the definition of "gross receipts" or "gross proceeds".

GR-19. PERSONS REQUIRED TO COLLECT AND REMIT TAX--PAWNBROKERS AND SELLERS OF USED TANGIBLE PERSONAL PROPERTY:

Pawnbrokers and sellers of used tangible personal property are sellers of taxable goods and must obtain a permit. All sales made by pawnbrokers or other sellers of used property are taxable sales. (See GR-50 for exemption relative to trade-in property.)

GR-20. 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. Long-term Leases of Tangible Personal Property (Except for Motor Vehicles):
1. For long-term leases of tangible personal property, except for motor vehicles, the lessor may either purchase the property tax-free as a sale for resale or pay Arkansas sales and use tax on the purchase. If the lessor purchases property intended for subsequent lease without paying Arkansas gross receipts or use tax, he must establish the requirements necessary for a sale-for-resale exemption. See GR-53. 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. 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. A "long-term lease" means a lease of 30 days or more to a

- single consumer.
3. Repair parts purchased by the lessor to keep the leased property in working order are taxable.
 4. See GR-38.3 for exemption for adaptive medical equipment.
- C. Long-term Leases of Motor Vehicles:
1. Leases of motor vehicles for more than 30 days are subject to Arkansas gross receipts tax if the lessor of the motor vehicle has not paid Arkansas gross receipts or use tax or registered the vehicle in Arkansas.
 2. Motor vehicles which are registered in Arkansas and for which Arkansas gross receipts or use tax has been paid or credited may be leased long term, tax free. Lessors of motor vehicles may not purchase motor vehicles tax free as a sale for resale.
- D. Short-term Rentals of Tangible Property (Except for Motor Vehicles):
1. In addition to the state and local sales 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. A "short-term rental" means a rental or lease of tangible personal property for a period of less than thirty (30) days. The tax does not apply to rentals of diesel trucks for commercial shipping; farm machinery and equipment; or motor vehicles required to be licensed for highway use. The tax also does not apply to short-term rentals of tangible property which are subject to the two percent (2%) tourism tax. See Ark. Code Ann. §26-52-1001 et seq.
 2. 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. See GR-53.
- E. Short-term Rentals of Motor Vehicles:
1. In addition to the state and local sales tax, every person in the business of renting licensed motor vehicles must collect four and one-half percent (4½%) rental vehicle tax on short-term rentals of motor vehicles. A "short-term rental" means a lease or rental of a motor vehicle for a period of less than thirty (30) days. The tax does not apply to rentals of diesel trucks for commercial shipping, or farm machinery or equipment.
 2. This tax applies whether or not Arkansas gross receipts or use tax was paid when the vehicle was registered.
 3. Credit:
 - (a) The lessor is entitled to retain any rental vehicle tax collected as a credit against the

amount of Arkansas sales or use tax paid on rental vehicles previously purchased. Tax collected in excess of the gross receipts or use tax previously paid on rental vehicles shall be reported and paid to the Commissioner.

(b) The lessor shall be entitled to the rental vehicle credit if:

- 1) the vehicle was purchased on or after July 1, 1989;
- 2) the vehicle is licensed in Arkansas;
- 3) the vehicle is used exclusively for short-term rentals;
- 4) the lessor files with the Sales and Use Tax Section a copy of the sales or use tax receipt for the vehicle.

F. Rental of Vehicle with Operator: If tangible personal property is rented with an operator's services included, the rental of the property and operator service is a non-taxable service, provided that the service alone would have been exempt from tax. If, however, the property alone is rented, then the sales and rental tax shall apply as set out in paragraphs A through E above.

GR-21. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESSES--CONTRACTORS:

Contractors defined by GR-3(L) are deemed to be consumers or users of all tangible personal property which they purchase for use in the performance of a contract and should pay the tax at the time of purchase.

In some cases, however, a person ordinarily performing services as a contractor acts as a seller of tangible personal property or a person performing taxable services and must collect the tax from the consumer.

A person who performs services as a contractor in connection with the construction, erection or substantial modification of any building or other improvement or structure affixed to real property (including tenant finish work for tenants of the structures) will not collect the tax on such contracting services. However, if the person performs service work involving the maintenance or repair of items and not as a contractor (for example, by performing repair services on an air conditioning unit, whether or not the unit is affixed to real property), then the person must collect the tax from the consumer.

Materials purchased for use in construction contracts that become recognizable components of the completed project are taxable at a rate of four and one-half percent ($4\frac{1}{2}\%$). These materials are exempt from the additional one-half percent ($\frac{1}{2}\%$) sales and use tax levied by Act 3 of 1991 if the following conditions are satisfied:

- A. Qualifications: Before materials used in construction contracts 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 material must be purchased prior to January 1, 1997.
 4. The seller must keep adequate records to identify all exempt materials sold. 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.
 - (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 of Entitlement to Exemption from Sales and Use Tax Increase for Certain Contracts" form which will be provided upon request by the Revenue Division of the Department of Finance and Administration. The construction contractor shall furnish a completed copy of the form to each seller of exempt property for each contract. The contractor shall also mail a copy of the form to:

Office of Field Audit Administration
P. O. Box 1272
Room 112
Little Rock, AR 72203
 6. The invoice reflecting the sale of exempt materials 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.
- B. Definitions: For the purpose 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 where the contractor has the right 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" means tangible personal property used or purchased by contractors.
- 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(a)(4)) or "withdrawals for use" (Ark. Code Ann. §26-53-102(5)). Where a construction contractor claims the exemption 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 Ark. Code Ann. §26-53-102(5) 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 5, 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 percent ($\frac{1}{2}\%$) 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 do so will result in the exemptions being disallowed and applicable tax, penalty and interest being assessed to the taxpayer.

GR-22. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESS--FUNERAL HOMES AND FUNERAL DIRECTORS:

- A. 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. Where the funeral home or funeral director separately states the charges for items of tangible personal property on his 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. 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. If, however, the body is shipped outside the State of Arkansas, then see GR-5 for applicable rules.
- D. 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. When tangible personal property is sold through a pre-paid funeral plan, the funeral home or funeral director must remit gross receipts tax when the property is provided to the customer. The tax shall be calculated at the rate in effect when the property is provided.

GR-23. RADIO, VIDEO AND TELEVISION TAPES AND FILMS: Retail sales of radio, video and television tapes and films containing commercial or other messages are subject to the tax. Producers must collect and remit the tax from their clients or customers on the total receipts from the production of tapes and films without deducting any production costs attributable to the tapes or films. The sale of a tape or film is complete when the client is billed, even though the seller may retain possession of the tape or film,

or may deliver it directly to a radio or television station for the convenience of the client. The tax does not apply to the sale of broadcasting time, or to any other service which does not contribute to the production of an article of tangible personal property by the seller.

GR-24. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESSES--JOB PRINTERS:

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 therefrom on account of any costs or expenses incurred in the furnishing of such services.

Example: Seller prints business cards, stationery, and envelopes for sale to consumers. Seller also sells these items to retailers who shall resell the items printed. Seller must collect and remit the tax upon the gross receipts or gross proceeds derived from the sale of the items to consumers.

GR-25. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESS--SELLERS OF COMPUTER HARDWARE AND COMPUTER SOFTWARE:

- A. A seller of computer hardware and computer software is engaged in the business of selling tangible personal property and must collect and remit tax upon the gross receipts or gross proceeds derived from the sales and/or rental of the hardware and software without any deduction therefor on account of any costs or expenses incurred in producing, selling or renting the hardware or software.
- B. Examples of hardware referred to above are the computer itself, memory banks, sending and receiving terminals. Examples of software referred to above are tapes, disks, cards or other devices or materials which contain instructions for a computer and dictate different operations or functions to be performed by the computer.
- C. Computers are machinery or electrical devices and any services performed on computers are therefor taxable services. Exceptions are the parts and labor provided under a warranty contract if the warranty is included in the purchase price of the computer and no additional charge is made for warranty parts or labor. Rentals and leases of computer hardware and software are considered as a sale for tax purposes.
- D. The sale of a service contract covering taxable repair services to computers is taxable.

GR-26. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESSES--SELLERS OF BEER, WINE, LIQUOR AND OTHER INTOXICATING BEVERAGES:

- A. 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.

- B. An establishment which 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. Dues or fees paid for membership in a club are not subject to sales tax.
- 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. Before beginning business, permittees must furnish the Commissioner a cash bond, corporate surety bond, letter of credit or certificate of deposit assigned to the State of Arkansas in the following amounts: maximum capacity permit - \$10,000.00; minimum capacity permit - \$5,000.00.
 2. In addition to the gross receipts tax, holders of private club permits issued by the Alcoholic Beverage Control Division must collect and remit the 10% supplemental gross receipts tax upon all charges to members for the preparation and serving of mixed drinks or for the cooling and serving of beer and wine. A private club which 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. Before commencing operations permittees must furnish the Commissioner a cash bond, corporate surety bond, letter of credit or certificate of deposit assigned to the State of Arkansas in the amount of \$10,000.00.
- 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, sellers of alcoholic beverages to consumers for off-premises consumption must collect and remit the three percent (3%) alcoholic beverage excise tax on sales of all wine and liquor. Sales of beer are not subject to the excise tax.
- F. The ten percent (10%) supplemental tax, four percent (4%)

supplemental tax and three percent (3%) liquor excise tax must be reported and remitted to the Department at the same time as the four and one-half percent (4½%) gross receipts tax, on forms provided by the Department.

- G. 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. Each container of sacramental wine sold in the state shall have attached to it a decal containing the words "Sacramental Wine." This decal shall be provided by and attached to the containers by wineries selling sacramental wine in this state.

GR-27. PERSONS REQUIRED TO COLLECT AND REMIT TAX--SPECIFIC BUSINESS--WHOLESALE AND JOBBERS:

Wholesalers and jobbers must collect and remit the tax on the gross receipts or gross proceeds derived from all sales to consumers or sales to retailers who do not have valid permits even though the sales are in wholesale quantities, or sales to retailers who are not regularly in the business of reselling the articles purchased.

GR-28. EXEMPTIONS FROM TAX--SALES OF ITEMS PURCHASED WITH FOOD STAMPS:

- A. 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, 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 Food Program for Women, Infants and Children (WIC) in accordance with Section 17 of the Child Nutrition Act of 1966, as amended, are exempt from the Gross Receipts Tax. 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 purchased through bids under the WIC program are exempt from the Gross Receipts Tax.
- C. The tax exemption provided by this Regulation shall expire if the exemption is no longer required for full participation in the food stamp or WIC program.

GR-29. EXEMPTIONS FROM TAX--FUEL OIL, MOTOR FUEL, MOTOR OIL, LUBRICANTS, CRUDE OIL, AND AUTOMOBILE PARTS:

- A. 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. 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. 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. 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 which constitute "core charges" which 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".

GR-30. EXEMPTIONS FROM TAX--CERTAIN LABOR SERVICES EXEMPT FROM TAX:

- A. Any person who performs taxable labor as described in Ark. Code Ann. §26-52-301(3)(C)(i) and GR-9 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 which are received by mail or common carrier from outside this State and which, 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. 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. 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.
 - 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:
 - A. The rollers have a remanufactured, nonmetallic material covering on all or part of the roller surface, and,
 - B. The rollers are brought into Arkansas solely and exclusively for the purpose of repair or remanufacture, and,
 - C. The rollers are shipped back to their state of origin after repair or remanufacture.

GR-30.1. 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 which 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 12,500 pounds.

GR-31. EXEMPTIONS FROM TAX--SPECIFIC ORGANIZATIONS EXEMPT WHEN THEY PURCHASE TAXABLE GOODS OR SERVICES: Certain specified organizations or groups have been exempted from the tax when they purchase tangible personal property or taxable services from sellers. 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 the following:

- A. The Boy's Clubs of America or any local council or organization thereof;
- B. The Girl's Clubs of America or any local council or organization thereof;
- C. The Poets' Roundtable of Arkansas;
- D. The Boy Scouts of America or any of the Scout Councils located in Arkansas;
- E. The Girl Scouts of the United States of America or any of the Scout Councils located in Arkansas;
- F. U. S. Governmental agencies;
- G. 4-H Clubs and FFA Clubs located in Arkansas;
- H. The Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation and the Arkansas Future Farmers of America Association;
- I. Orphans' homes or childrens' homes located in Arkansas which are not operated for profit and which are operated by a church, religious organization or other benevolent, charitable association;
- J. Public Housing Authorities organized pursuant to Ark. Code Ann. §14-169-201 et seq.;
- K. Regional Water Distribution Districts organized pursuant to Ark. Code Ann. §14-116-101 et seq.;
- L. The Arkansas Country Music Hall of Fame Board;
- M. The American Red Cross;
- N. Humane Societies not operated for a profit and organized under Ark. Code Ann. §20-19-101 et seq. for the prevention of cruelty to animals.
- O. The rental or lease of specialized equipment used in the filming of a motion picture which qualifies for the tax incentives provided by Ark. Code Ann. §26-4-201 et seq.

Sellers of tangible personal property or taxable services should refer to Regulation GR-74 in order to determine the necessary documentation for the purpose of claiming the exemption.

GR-32. EXEMPTIONS FROM TAX--DISABLED AND BLIND VETERANS:

- A. 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 Veterans Administration pursuant to the provisions of Title 38, Section 1901 through 1905 of the United States Code are exempt from the tax. An official letter from the Veterans Administration verifying this fact will be accepted as proof of entitlement to this exemption.
- B. Gross receipts and gross proceeds derived from the sale of new automobiles to a veteran of the United States Armed Services who is blind as the result of a service connected injury shall be exempt from the Arkansas Gross Receipts Tax. This exemption shall apply only to those persons who furnish the Department of Finance and Administration with

a statement from the Veterans Administration certifying that such individual is a veteran of the United States Armed Services and has been blinded as the result of a service connected injury. This statement shall be supplied to the Department upon application for a vehicle license. 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. 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-quarters of a ton and does not include any trailer.

GR-32.1 EXEMPTIONS FROM TAX -- ELECTRICITY AND NATURAL GAS SOLD TO STEEL MILLS:

- A. 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.
- B. "Qualified manufacturer of steel" means a natural person, company or corporation engaged in the manufacture, refinement or processing of steel and more than 50% of the electricity or natural gas consumed by the manufacturer is used either:
 - 1. 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,
 - 2. in the preheating of steel for processing through a rolling mill.

GR-33. EXEMPTIONS FROM TAX--FOODSTUFFS SOLD TO GOVERNMENTAL AGENCIES:

The gross receipts or gross proceeds derived from the sale of 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.

For purposes of this regulation the following definitions shall apply:

- A. The term "governmental agencies" shall mean any agency or department of the United States, the State of Arkansas, counties, cities or towns or school districts. "Governmental agencies" does not include a private non-profit organization funded wholly or in part by public monies.
- B. The term "public institution" shall mean 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.
- C. The term "eleemosynary institution" shall mean any

charitable and non-profit organization which is operated primarily for the benefit of the economically disadvantaged.

- D. The term "free distribution" shall mean that no consideration is required prior to, subsequent to, or at the time of, distribution of the food.
- E. The term "poor and needy" shall mean individuals who are economically disadvantaged (e.g., individuals who receive little or no income in any form or fashion).

GR-34. EXEMPTIONS FROM TAX--MOTOR VEHICLES PURCHASED BY SPECIFIC ORGANIZATIONS:

- A. The gross receipts or gross proceeds derived from the sale of school buses to school districts in Arkansas are exempt from the tax.
- B. 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. The person, firm or corporation desiring to claim this exemption shall obtain an application for registration and license from the Office of Motor Vehicle Registration, Division of Revenue, Arkansas Department of Finance and Administration. The application must be completed and submitted to that office along with the filing fee.
 - 2. The vehicle must be painted a distinguishing color and must have conspicuously displayed thereon in letters and figures not less than three inches tall the identity of the volunteer life saving or first aid crew or rescue squad using such vehicle.
- C. The gross receipts or gross proceeds derived from the sale of motor vehicles to municipalities, counties, State supported colleges, State supported universities or to public school districts in Arkansas are exempt from the tax.
- D. The gross receipts or gross proceeds derived from the sale of new motor vehicles which are: (1) purchased by non-profit organizations and used for the performance of contracts with the Department of Human Services (DHS), or (2) purchased with Urban Mass Transit Funds, are exempt from gross receipts tax if the following conditions are met:
 - a) Ten (10) or more vehicles are purchased at the same time for a fleet price;
 - b) The vehicles meet or exceed applicable state purchasing law specifications; and
 - c) The vehicles are used for transportation under DHS programs for the aging, disabled, mentally ill, or children and family services.

GR-35. EXEMPTIONS FROM TAX--FOOD SOLD TO TEACHERS AND PUPILS IN SCHOOL CAFETERIAS AND LUNCHROOMS:

The gross receipts or gross proceeds derived from sales of food in public, common, high school, or college cafeterias and lunchrooms operated primarily for teachers and pupils and not operated for profit or for the general public are exempt from the tax.

For purposes of this regulation the following definitions shall apply:

- A. The phrase "public, common, high school or college" means public kindergartens, public common schools, public middle schools, public junior high schools, public high schools and public colleges.
- B. Food sold to pupils and teachers by a private contractor operating a food service for profit does not qualify for the exemption.

GR-36. EXEMPTIONS FROM TAX--PERSONS ELIGIBLE FOR MEDICARE AND MEDICAID:

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 USC §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. 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 \$150.00 for the sale of a wheelchair to buyer. Seller is reimbursed \$100.00 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 \$50.00 of the sale price for the wheelchair. (See also GR-38.2).

GR-37. 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 non-profit 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 non-profit 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 non-profit 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. For purposes of this regulation, the following definitions shall apply:
- (1) The term "non-profit" shall mean 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 individual, corporation organized for profit, trust organized for profit, or partnership organized for profit.
 - (2) The term "repair" shall mean substantial modifications or substantial work upon the hospital or sanitarium building itself.

Example 1. Charitable, non-profit, non-State hospital purchases light bulbs, floor wax, and other maintenance supplies. The sale of bulbs and supplies is exempt.

Example 2. Charitable, non-profit, non-State hospital hires a contractor to perform major repair work on its building. Contractor should pay tax when materials are purchased to do the job.

Example 3. The same repairs are needed as in Example 2 but hospital purchases the materials needed to do the work in its own name, the hospital must pay the tax when it purchases the materials.
 - (3) The term "hospital" means an institution which provides medical and surgical care for the general public. Two basic factors determine whether an institution is a hospital:
 - (a) The institution provides beds for the overnight stay of patients (an institution which provides "out-patient" services only is not a hospital); and
 - (b) The institution provides a broad range of medical and surgical services.
 - (4) The term "sanitarium" means an institution which provides long-term in-patient medical or mental treatment for the physically or mentally ill.
 - (5) The term "State-owned, tax-supported" means owned by the State of Arkansas and supported by public funds.
 - (6) The term "charitable organization" means an organization whose purpose is benevolent, philanthropic, patriotic or eleemosynary and whose function is performed, and not performed by a private

party, would have to be performed at public expense.

GR-38. EXEMPTIONS FROM TAX--PRESCRIPTION DRUGS AND OXYGEN:

- A. The gross receipts tax does not apply to the sale, purchase or use of prescription drugs by a licensed pharmacist, hospital, oncologist, or dispensing physician registered under Ark. Code Ann. §17-93-102.
- B. Sales of prescription drugs are exempt from the tax only when sold by dispensing physicians or at retail stores, hospitals, and other healthcare facilities. All retail sales of drugs over the counter without the prescription of a licensed medical practitioner are subject to the tax. A "licensed medical practitioner" is any person authorized by law to prescribe drugs for human consumption, including physicians, surgeons, dentists, podiatrists and osteopaths. (But see GR-38.2)
- C. "Dispensing Physician" is any physician licensed under the Arkansas Medical Practices Act (Ark. Code Ann. §17-93-201 et seq.) who purchases legend drugs to be dispensed by him to his or her patients for said patient's personal use and administration outside the physician's office.
- D. "Prescription Drugs" are those substances, other than foods, prepared or compounded for internal or external human consumption primarily for use in the diagnosis, mitigation, treatment, cure, or prevention of diseases or other ailments, and sold at retail pursuant to the prescription of licensed medical practitioner.
- E. Drugs purchased by practitioners not licensed as dispensing physicians from drug wholesalers or suppliers for use in the course of rendering medical services are subject to the tax unless otherwise exempted by law.
- F. The gross receipts tax does not apply to the sale of oxygen for human use when prescribed by a licensed physician.
- G. All licensed pharmacists selling prescription drugs and all persons selling oxygen must maintain adequate records to substantiate tax exempt sales.

GR-38.1. 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.

GR-38.2. EXEMPTIONS FROM TAX--ADAPTIVE MEDICAL EQUIPMENT

- A. The gross receipts or gross proceeds derived from the rental, sale or repair of adaptive medical equipment prescribed for a specific patient by a physician prior to sale are exempt from tax.
- B. The gross receipts or gross proceeds derived from the sale of disposable medical supplies prescribed for a specific patient by a physician prior to sale are exempt from tax.
- C. Sales or rentals of items to physicians, hospitals,

nursing homes or long-term care facilities for use by their patients are not exempt.

- D. The terms "adaptive medical equipment" and "disposable medical supplies" include but are not limited to the following:

- (1) Wheelchairs;
- (2) Leg braces;
- (3) Wheelchair lifts;
- (4) Ostomy, urostomy, and colostomy supplies;
- (5) Raised toilet seats;
- (6) Catheters;
- (7) Wheelchair batteries;
- (8) Enemas, suppositories, and laxatives used in routine bowel care;
- (9) Flexor wrist splints;
- (10) Trapeze bars;
- (11) Grab bars and hand rails;
- (12) Wheelchair adaptive devices;
- (13) Hospital beds and adaptive devices;
- (14) Patient lifts;
- (15) Orthopedic shoes and devices such as shoe lifts and inserts;
- (16) Walkers;
- (17) Crutches;
- (18) Automobile hand controls;
- (19) Shower benches and chairs;
- (20) Disposable undergarments and linen savers;
- (21) Prosthetics;
- (22) Braille writers, large print aids, visual and communication aids for those who are legally blind;
- (23) Hearing aids;
- (24) Telecommunication devices and other communication devices for the deaf, hearing impaired, and others with communicative disorders; and
- (25) Speech devices for those with laryngectomies.

- E. A "physician" means a person licensed under Ark. Code Ann. §17-93-401 et seq. and includes osteopathic physicians (D.O.). The term "physician" does not include chiropractors, podiatrists, dentists, optometrists, or physical therapists.

- F. A "prescription" means a written or verbal order from the physician to the seller stating that the patient requires the medical equipment or supplies for his health care. The seller must maintain adequate records supporting the exemption from tax.

GR-39. EXEMPTIONS FROM TAX--CHARITIES AND CHURCHES:

- A. 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.

- B. The gross receipts or gross proceeds derived from sale 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.
- C. PTA/PTO Fundraising: A PTA/PTO which purchases goods and merchandise from the supplier for resale must pay tax on its purchases. The subsequent resale of the goods are not subject to tax. If the vendor of the goods supplies the PTA/PTO with order forms which are distributed to students and the students solicit orders, the vendor must remit the sales tax on the total sales price for the item. The vendor may allow the student to collect the tax from the customer on the vendor's behalf. However, if the student does not collect the tax for the vendor, the vendor must still remit the total tax due to the state.
- D. For purposes of this regulation, the following definitions shall apply:
 - (1) See GR-37.E.(6) for definition of charitable organization.
 - (2) The phrase "engaged in business for profit" means that the income or receipts of the church or charitable organization inures to the benefit of an individual, corporation organized for profit, trust organized for profit or partnership organized for profit. A charitable organization or church that has obtained a ruling from the United States Internal Revenue Service or Arkansas Department of Finance and Administration, Income Tax Section, which certifies the organization for income tax purposes is presumed to be a non-profit organization.

GR-40. EXEMPTIONS FROM TAX--ADMISSION FEE TO RODEOS AND FAIRS--TICKETS FOR ADMISSION TO ATHLETIC EVENTS AND INTERSCHOLASTIC ACTIVITIES--COLLEGES AND UNIVERSITIES:

- A. The gross receipts or gross proceeds derived from gate admission fees at state, district, county or township fairs are exempt from the tax. The gross receipts or gross proceeds derived from gate admission fees at any rodeo are exempt from the tax if, and only if, the gross receipts or gross proceeds derived from such fees are used exclusively for the improvement, maintenance and operation of such rodeo and if 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 not exempt from the tax; however, each university or college shall be entitled to a refund of all gross receipts taxes collected and remitted on the gross receipts or gross proceeds derived from the sale of the tickets.

GR-41. EXEMPTIONS FOR TAX--RAW FARM PRODUCTS GROWN IN ARKANSAS: 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:

- A. The sale of such products is made by the producer directly to the consumer; and
- B. The sale is not from an established business located off the farm.
- C. Grass sod is not a raw farm product.

GR-42. EXEMPTIONS FROM TAX--DAIRY, LIVESTOCK (INCLUDING DOMESTICATED FISH), POULTRY PRODUCTS:

- A. The gross receipts or gross proceeds derived from the sale of baby chickens in Arkansas are exempt from the tax.
- B. 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. The term "livestock" includes cattle, horses, mules, sheep, hogs, and 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 less than six dairy cows are exempt from the tax if the dairy products are produced in Arkansas and if the dairy products are sold by the producer directly to the consumer and the 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 produced in Arkansas and are sold on the producer's farm and not from an established business.

GR-43. EXEMPTIONS FROM TAX--COTTON GIN BALING MATERIALS; AGRICULTURAL SEED AND TOMATO TWINE:

- A. 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. The gross receipts or gross proceeds derived from the sale of twine which 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. 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. For purposes of this subsection the term "commercial production" means that the purchaser of the seed is engaged in the business of growing agricultural products.
 - E. The term "agricultural" means operations engaged in for the production of food or fiber.

GR-44. EXEMPTIONS FROM TAX--CUSTOM MANUFACTURED HOMES:

- A. A new "custom manufactured home" constructed from materials on which Arkansas Gross Receipts or Arkansas Compensating Tax has been paid shall be exempt from the tax.
- B. The term "custom manufactured home" means a factory built structure made to be moved to a location away from the factory by a conveyance which is not a part of the structure and which structure is designed to be used as a dwelling unit with a permanent foundation. For the purpose of this definition the phrase "with a permanent foundation" means the support system of the home is constructed so that the custom manufactured home may not be moved without a supporting frame or chassis being added to or placed under the structure.
- C. Manufacturers of custom manufactured homes shall be considered contractors within the meaning of Ark. Code Ann. §26-52-307. See GR-3(L).
- D. Furniture, appliances or other furnishings installed or placed in custom manufactured homes by the manufacturers of such homes shall not be exempt from the tax.

GR-45. EXEMPTIONS FROM--CERTAIN PRODUCTS USED FOR LIVESTOCK AND POULTRY--SPECIAL RULES FOR CLAIMING EXEMPTIONS:

- A. The gross receipts or gross proceeds derived from sales of agricultural fertilizer, agricultural limestone, and agricultural chemicals are exempt from the tax. 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. Pesticides and herbicides used in and around poultry and other animal houses 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. For purposes of this regulation, the following definitions shall apply:
 - (1) The term "feedstuffs" shall mean 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. Food supplements need not be nutritious or for medicinal purposes.

- (2) The term "livestock" includes cattle, horses, mules, sheep, hogs, and any other animals kept for commercial use or profit.

GR-46. NON-TAXABLE ADVERTISING SERVICES:

- A. (1) The term "advertising agency" means a business which provides comprehensive, professional advertising services including, but not limited to, artwork, concepting, designing and any other creative services necessary to create, plan and implement an advertising scheme.
- (2) The term "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 which they purchase or consume in providing advertising services.
- (3) The sale of caps, pencils, mugs, shirts or any other item of tangible personal property which 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.

GR-47. EXEMPTIONS FROM TAX--SALES TO THE UNITED STATES GOVERNMENT: The gross receipts or gross proceeds derived from sales to the United States Government are exempt from the tax. 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. Sales to United States Government employees who pay for the articles purchased with their own funds are not exempt.

GR-48. EXEMPTIONS FROM TAX--NEWSPAPERS, PUBLICATIONS, AND BILLBOARDS:

- A. For purposes of this Section, the following definitions are applicable:
 - (1) The term "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.
- (2) The term "advertising space" means space located within the body of a newspaper or publication, containing advertisements which are printed concurrently with the news, articles, features, or other attractions in the newspaper or publication and the classified advertising section.
 - (3) The term "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 which is not physically attached to a newspaper, but which may be distributed with a newspaper or by other means.
 - (4) The term "billboard advertising services" means any and all services rendered in connection with the rental or lease of advertising space on a structure which is affixed to the land for the purpose of posting advertising messages.
 - (5) The term "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.
 - (6) The term "regular subscription" means the purchase by advance payment of a specified number (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. The gross receipts or gross proceeds derived from the sale or rental of advertising space in newspapers and publications are exempt from the tax. Advertising supplements are not exempt from the tax. 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. 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. 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. If the printer is also the distributor, the printer should pay tax on the retail price which the printer would have charged to a customer who purchased the advertising

supplements or publications from the printer in an arms 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 is exempt.
- G. The gross receipts or gross proceeds derived from the sale of any non-subscription 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 GR-55.

GR-49. 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. The term "isolated sale" means the one-time sale of an item, or group of items not made by an established business of any kind of character.
Example: Seller has an inventory of merchandise which 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 non-inventory assets is considered an isolated sale.
- C. This exemption does not apply to the sale of motor vehicles, trailers, semi-trailers, mobile homes or airplanes.
- D. Sales of arts and crafts items at craft fairs and shows are exempt if sales or use tax was paid by the seller on the component parts of their craft items.

GR-50. 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 under (1) and (2) below are met:
 - (1) Property was traded in to and accepted by the seller of tangible personal property as part of the purchase price of other tangible personal property. It is necessary that the gross receipts tax be collected and paid on the total consideration for in the sale of other tangible personal property involved in order to qualify for the exemption unless the sale of the other tangible personal property was otherwise exempt under other

- provisions of the Arkansas Gross Receipts Tax Act.
- (2) The Arkansas Gross Receipts Tax was collected and paid on the total amount of consideration for the sale of the other tangible personal property without any deduction or credit for the value of the used tangible personal property.

Example: Seller of boats sells a new boat to a customer. The customer trades in his 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 is not required to collect sales tax.

- B. The foregoing does not apply to transactions involving (a) used motor vehicles or trailers, (b) used mobile homes or (c) used aircraft, but is applicable to boats, motors, appliances, etc. See GR-13, GR-14 and GR-15.
- C. Property purchased by a seller and not taken as a trade-in does not qualify for the exemption.

GR-51. EXEMPTIONS FROM TAX--FARM MACHINERY AND 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. The term "farm equipment and machinery" means agricultural implements used exclusively and directly for the agricultural production of food or fiber as a business.

- (1) The following agricultural implements are exempt provided they meet the requirements of paragraphs B(3) and B(4) of this regulation:

- (a) Combines, cotton pickers, cotton module builders, cotton trailers, cultivators, discs, farm tractors, (other than garden tractors) harrows, irrigation equipment, milking equipment including milking machines, mechanical pickers, planters, plows, rotary hoes, sprayers, spreaders and threshing machines. "Irrigation equipment" means pipes, hoses, pumps, gates, and other equipment which is movable and does not become affixed to real property. Irrigation equipment which is designed or intended to be permanently attached or incorporated into real property is not exempt.
- (b) All terrain vehicles which are not subject to licensing or registration for use on the highways.
- (c) Machinery and equipment used in poultry grow-out houses including heaters, cages, feeding systems, storage bins for short term storage of feed, medicators, watering systems, augers, fans and generators.
- (d) Egg racks, poultry loaders and module coop systems used by egg and poultry producers in

farming operations.

- (2) The list of exempt items in B(1)(a) is not intended to be exclusive. Other agricultural implements may qualify for this exemption provided they meet the requirements of paragraphs B(3) and B(4) of this regulation.
 - (3) 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.
 - (a) An implement will be presumed to be used exclusively in the agricultural production of food or fiber as a business if the implement is used on land owned or leased for the purpose of agricultural production of food or fiber.
 - (b) A person who uses agricultural implements in the production of food or fiber primarily for his own consumption is not entitled to this exemption.
 - (4) 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.

The term "directly" limits the exemption to:

 - (a) only those implements used in the actual agricultural production of food or fiber to be sold in processed form or otherwise at retail, or
 - (b) machinery and equipment used in the agricultural production of farm products to be fed to livestock or poultry which is to be sold ultimately in processed form at retail.
 - (5) Implements which are not exempt include but are not limited to the following:
 - (a) Containers or storage facilities.
 - (b) Implements used in the production or severance of timber, or any motor vehicle of a type subject to registration for use on the highway, or airplanes, or hand tools.
 - (c) Attachments to and accessories not essential to the operation of the implement itself (except when sold as part of an assembled unit).
 - (d) Items which are incorporated into real property.
 - (e) Repair labor and repair parts.
- C. Each purchaser of farm machinery and equipment must certify, in writing, on the copy of the invoice or sales ticket to be retained by the Seller, that he is engaged in farming and the farm machinery and equipment will be used only in farming. Language similar to the following will meet this certification requirement: "I _____ am engaged in the business of farming and the farm machinery and equipment I have purchased will be used exclusively and directly in the agricultural production of food or fiber as a business. I am aware that any false

representation made by me in an attempt to purchase farm machinery and equipment free from Arkansas Sales Tax is a misdemeanor." Seller shall certify to the Arkansas Department of Finance and Administration that the contract price of the items has been reduced to grant the full benefit of the exemption. For the seller to meet this certification requirement the invoice shall reflect that no Sales Tax has been charged on machinery and equipment qualifying for this exemption. Violation hereof by the Purchaser or Seller shall be a misdemeanor, and upon violation or conviction for a second offense, the Arkansas Revenue Commissioner shall revoke the Seller's Sales Tax Permit.

GR-52. EXEMPTIONS FROM TAX--VESSELS, BARGES AND TOWBOATS OF AT LEAST FIFTY TONS LOAD DISPLACEMENT:

- 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.

GR-53. EXEMPTIONS FROM TAX--SALES FOR RESALE--MANUFACTURERS, COMPOUNDERS AND PROCESSORS:

- A. The gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased whether purchased within or without the State are exempt from the tax; provided, however, that such sales within the state are made to persons to whom sales tax permits have been issued as provided in Ark. Code Ann. §26-52-201 et seq. and regulation number GR-72. (See also GR-74.)
- B. It is necessary that the person claiming the benefits of this sale for resale exemption prove to the seller that he is engaged in the business of reselling the articles purchased by him. The purchaser must provide the seller with the purchaser's retail permit number if the sale is made within Arkansas. In addition to furnishing his retail permit number to the seller, the purchaser must certify in writing to the seller that he (the purchaser) is engaged in the business of reselling the articles purchased. Failure to so certify, or to falsely certify with the knowledge that the items purchased are not for resale, shall be sufficient grounds upon which the Commissioner may cause the purchaser's retail permit to be canceled. Certification may be made on the bill, invoice or sales slip retained by the seller; or by furnishing a certification letter to the seller which contain the following:
 - (1) the name and address of the purchaser;

- (2) the retail permit number of the permit issued to the purchaser;
- (3) a statement that the purchaser is engaged in the business of reselling the articles purchased;
- (4) a statement that the articles purchased are purchased for resale;
- (5) the signature of the purchaser or a person authorized to legally bind the purchaser.

If certification is made directly on the bill, sales slip or invoice, the purchaser need only note his retail permit number and write the following statement (or a reasonable approximation thereof): "I, (name, position, business name), hereby certify that the materials listed on the (bill, invoice or sales slip) are purchased for resale and that I am regularly engaged in the business of reselling the items noted on this (bill, invoice or sales slip)." The purchaser or his authorized agent must then sign the bill, invoice or sales slip and return a copy thereof to the seller for his records.

- C. If a retail permit holder purchases goods, wares, and merchandise from a seller on a regular basis, then the permit holder may furnish the certification letter described in Section (B) of this regulation to the seller and the seller may subsequently make sales of tangible personal property to the retail permit holder without requiring a certification letter or certification statement for each subsequent sale. The retail permit holder must notify the seller of all purchases which are not for resale and remit the applicable amount of tax thereon. 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 to cancel the retail permit of the retail permit holder who failed to so notify the seller.
- D. The seller of items intended for resale must satisfy the requirements of Section (B) or (C) of this regulation. If the seller does not require the purchaser to perform the requirements listed in Section (B) or (C) and the sale was otherwise taxable, then the seller shall be liable for the tax upon the gross receipts or gross proceeds derived from the sale of the items.
- E. Goods, 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, wares merchandise or property becomes a recognizable integral part of the manufactured, compounded, processed, assembled or prepared products. Sales of goods, wares, merchandise, and property not conforming to this requirement are classified as being for consumption or use of the purchaser thereof and are taxable. For purposes of this Section, the following definitions shall apply:

- (1) The term "recognizable" means capable of being recognized in the finished product. 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) The term "integral" means essential to the completeness of the finished product.
- F. Manufacturers, compounders, processors, assemblers and preparers of goods for sale must also satisfy the requirements found in Sections A, B, C, and D of this regulation.
- G. 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: Paper, plastic and styrofoam cups used for dispensing beverages, the paper and plastic lids for such cups; 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) Gross receipts derived from the sale of the following items purchased by restaurants are not exempt as resale: paper plates; paper and plastic straws and stirrers; plastic tableware and utensils; paper napkins; paper sacks; and premoistened towelettes.
- H. Gross receipts derived from the sale of repair parts to businesses engaged in the business of leasing or renting tangible personal property and which parts are used to repair the leased property are not exempt from tax unless the leased property was originally purchased exempt as a sale for resale.
- I. Packaging Materials:
1. 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. Shrink wrap and strapping which bind the finished product together for shipment to the consumer are exempt. Non-returnable pallets which are delivered with the final product are also exempt. Returnable pallets are taxable.
 2. Materials purchased by the manufacturer or processor to transport the product to the customer and which are owned by and returned to the manufacturer or which do not become part of the finished product received by the consumer are taxable. Dunnage bags which prevent containers of products from shifting during transit are taxable.

**GR-54. MANUFACTURER'S INVESTMENT SALES AND USE TAX CREDIT ACT
OF 1985:**

- A. The Director of Arkansas Industrial Development Commission (AIDC) is responsible for determining the eligibility of certain approved projects to receive specified sales and use tax credits. AIDC has promulgated rules and regulations for the implementation and administration of this Act which should be obtained.
- B. In order to qualify for the tax credits provided by this Act, a manufacturer must: (1) have been in continuous operation in Arkansas for at least two years prior to applying for tax credits; (2) expend at least five million dollars (\$5,000,000.00) on eligible items; (3) hold a direct pay sales and use tax permit issued by the Revenue Division.
- C. Accurate and up to date records of all expenditures for the project approved by AIDC shall be maintained by the manufacturer and available for inspection and audit by the Commissioner of Revenue. The eligibility of questionable items is determined by the Commissioner of Revenue.

GR-55. 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 regulation.
- B. 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:
 - (1) The machinery and equipment performs one or more essential functions and is utilized directly in the manufacturing process; and
 - (2) The machinery and equipment 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 at subsection E(6) of this regulation; and
 - (3) The machinery and equipment does not consist of hand tools, buildings, transportation equipment, office machines and equipment, machinery and equipment used in administrative, accounting, sales or other such activities of the business involved, or any and all other machinery and equipment not directly used in the manufacturing operation.
- C. 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 subsections B(1), B(2), and B(3) of this regulation; and either
 - (2) 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:
 - (a) increasing production, volume; or,
 - (b) increasing employment; or,
 - (c) increasing the number of different types or models of property that can be manufactured; or
 - (3) 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. Machinery purchased to replace existing machinery 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:
- (1) The machinery satisfies the requirements of subsection B(1), B(2), and B(3) of this regulation; and
 - (2) The "machinery 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 that performs the essential function more efficiently or with a longer useful life than the old machinery being replaced. The term "substantially" is intended to exclude routine repairs and maintenance and partial replacements that do not improve efficiency or extend the useful life of the entire machine 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.
 - (3) 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. The machinery purchased to replace this resulting existing machine must satisfy the requirements of subsection D(2) 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. 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. For purposes of this regulation, the following definitions shall apply:

- (1) The term "machinery" shall mean mechanical devices or combinations of mechanical powers and devices purchased or constructed by a taxpayer or his agent and used to perform some function and to produce a certain effect or result. Machinery includes electrical, mechanical and electronic components which are a part of machinery and are necessary for the machine to produce its effect or result.
- (2) The term "equipment" shall mean any tangible personal property other than machinery as defined at subsection E(1) of this regulation, used directly in the manufacturing process except those items specifically excluded from the exemption as provided at subsection B(3) of this regulation.
- (3) The term "directly" limits the exemption to only that machinery and equipment which 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 i. Machinery and equipment used in actual production include machinery and equipment that meet all other applicable requirements and which 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 which 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 which 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 ii. 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 GR-56; 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 iii. 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.

- (4) The term "manufacturing", as defined herein, includes those operations commonly understood within their ordinary meaning, and shall also include mining, quarrying, refining, extracting oil and gas, cotton ginning, the drying of rice, soybeans and other grains and the manufacturing of feed, the processing of poultry or eggs and livestock and the hatching of poultry, and printing of all kinds, types and characters, including the services of overprinting, and photographic processes incidental to printing, the processing of scrap metal into grades and bales for further processing into steel and other metals and the rebuilding or remanufacturing of used parts and retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors, provided that the rebuilt or remanufactured parts of retreaded tires are not sold directly to the consumer but are sold for resale.
- (5) The term "hand tool" shall mean any tool which is

- solely powered by a human being.
- (6) "Article of Commerce" includes any property to be placed on the market for retail sale to the general public and any property which 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. Custom items which are produced for specific customers in response to special orders and which are not readily marketable to the general public are not articles of commerce.
 - (7) The term "special foundation" as used in subsection D(2) of this regulation means a customized foundation necessary for the support and proper operation of the machinery. The special 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.
 - (8) The exempt gross receipts or gross proceeds under this regulation includes gross receipts or gross proceeds as defined at GR-3(C)(1).

GR-56. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--DIES AND MOLDS: Sellers of dies and molds must collect and remit the tax on the gross receipts or gross proceeds derived from sales of the dies and molds unless the dies and molds satisfy the provisions contained in GR-55. The sale of a first die or mold of a particular design for each power unit, whether or not sold as part of a power unit is exempt, but replacement of said die or mold or duplicate thereof is taxable.

GR-57. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--SPECIFIC BUSINESSES--REFINING AND EXTRACTING OIL AND GAS--SERVICES TO OIL AND GAS WELLS:

- A. Refining - the following items of tangible personal property are offered as examples of exempt machinery and equipment purchased to establish or expand refining plants or facilities in Arkansas:
 - (1) Tanks or containers in which the actual refining takes place;
 - (2) Pipes through which crude oil or gas is actually conveyed during refining operations from wellhead through treatment tanks.
- B. The following items of tangible personal property are offered as examples of non-exempt machinery and equipment purchased by oil and gas refiners:
 - (1) Storage tanks or containers used to store oil and gas prior to or subsequent to the actual refining process;
 - (2) Pipes used to convey the oil or gas to the refining process before the process begins; and pipes used to convey the oil and gas after the refining process has been completed;

- C. Extracting oil and Gas - the following items of tangible personal property are offered as examples of exempt machinery and equipment purchased to establish oil and gas extraction plants or facilities in Arkansas:
- (1) surface casing and the cement purchased to enclose surface casing (actually exempt as pollution control equipment);
 - (2) separator and treater; meters and regulators;
 - (3) all component machines, equipment or parts used to construct a new drilling rig, e.g., crown block, drill bit, drill string.
- All subsequent replacements of foregoing items on a drilling rig, following first use of rig, will be subject to tax. Entire drill rig must be replaced for any exemption from tax to apply.
- D. The services of alteration, addition, cleaning, refinishing, replacement or repair of any part of an oil and gas drilling rig or existing oil or gas well are subject to tax, except that the perforating of an existing oil or gas well will not be a taxable service unless the lifting unit and the machinery associated therewith, e.g., motor engine, pump unit, polish rod, stuffing box, sucker rods, scrappers, bottomhole pump or tubing, are removed prior to taxable services referred to herein being performed.

GR-58. REFUND OF TAX--ENTERPRISE ZONE REFUND:

- A. The Revenue Division of the Department of Finance and Administration shall authorize a refund of sales and use tax imposed by the state, and, upon approval of the governing authority of the enterprise zone, from sales tax imposed by it, on the purchases of the material used in the construction of a building or buildings, or any addition or improvement thereon, for housing any legitimate business enterprise, and machinery and equipment to be located in or in connection with such building.
- B. (1) A sales and use tax refund as provided for in subsection A of this regulation shall be authorized provided that:
- (a) The qualified business is an industry that fits into Standard Industrial Classification (SIC) numbers 20 through 39, 7375, or 7376, or is a distribution center located within Arkansas;
 - (b) The firm and its contractors give preference and priority to Arkansas manufacturers, suppliers, contractors, and labor, except where it is not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operational efficiency;
 - (c) The firm is physically located within an

- enterprise zone;
- (d) The firm certifies that at least thirty-five percent (35%) of its net new employees will be:
 - (i) Residents of the same county as the location of the business or counties adjacent thereto; and
 - (ii) (A) Are or were receiving some form of public assistance immediately prior to employment; or
(B) Are or were considered unemployable by traditional standards or lacking in basic skills at the time of employment with the business;
 - (e) The request for such refund is accompanied by an endorsement resolution approved by the governing body of a municipality or county in whose jurisdiction the facility is located; and
 - (f) In the event it is found that any business receiving the benefits contained in subsection (A) of this regulation has failed to comply with the conditions contained in this subsection, that business will be liable for the payment of all sales and use taxes which were refunded under subsection (A) of this regulation.
- (2) (a) The term "distribution center" shall mean a facility for the reception, storage, or shipping of a business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets.
- (b) For a distribution center to qualify for the benefits provided in this regulation, it must meet the following requirements:
- (i) The distribution center must not make retail sales to the general public; and
 - (ii) The distribution center must employ one hundred (100) or more employees. These employees must be employed by the distribution center within eighteen (18) months of the date distribution actually begins.
- (c) If a distribution center does not meet the requirements of subdivisions B(2)(b)(i) and (ii) above, then the distribution center will automatically be disqualified from receiving any benefits under this regulation and will be required to repay any tax benefits already received hereunder plus penalty and interest as allowed by law.
- C. The calculation of "net new employees" for the purposes of this Regulation will be made using those employees who

- worked a minimum of twenty (20) hours per week, and who have worked a minimum of six (6) months, as determined by the company's average annual employment as reported to the Arkansas Employment Security Department.
- D. An applicant for an enterprise zone sales or use tax refund must meet all other requirements for an enterprise zone business provided in the Arkansas Enterprise Zone Act, Ark. Code Ann. §15-4-801 et seq.
- E. (1) A sales and use tax refund as provided for in subsection A of this regulation may be claimed by qualified aircraft businesses. A qualified aircraft business is any business which manufactures, assembles, repairs, rebuilds, converts, modifies, or maintains commercial jet aircraft, commercial jet aircraft components, or commercial jet aircraft subcomponents. The sales and use tax refund shall also be available to any other entity which constructs or expands a facility solely for use by a qualified aircraft business. The term "commercial jet aircraft" shall mean any commercial, military, private or other turbine or turbo jet aircraft having a maximum take-off weight of more than 12,500 pounds.
- (2) To qualify for the refund, the qualified aircraft business must meet the requirements set out in Act 58 of 1992 [Ark. Code Ann. §15-4-807(f)].
- (3) The prerequisites set out in subsection (B) and (D) of this regulation shall not apply to qualified aircraft businesses or other entities which construct or expand a facility solely for use by a qualified aircraft business.

GR-59. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--SPECIFIC BUSINESS-MINING AND QUARRYING--ELECTRICITY USED IN MANUFACTURING ALUMINUM METAL: Machinery and equipment purchased and used by mining or quarrying operations are exempt from the tax if the requirements of GR-55 are satisfied. 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.

Dump trucks or other transportation vehicles are not exempt from the tax. 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.

GR-60. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTIONS--SPECIFIC BUSINESSES--RICE, SOYBEANS 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;
 - (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);
 - (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 Regulation Number GR-55.

GR-61. COTTON GINNERS:

- 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;
 - (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) transportation equipment used 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;
 - (5) scales used to weigh raw cotton.

GR-62. EXEMPTION 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;
- (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;
 - (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 GR-55.

GR-63. 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;
 - (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 GR-55.

GR-64. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTIONS--SPECIFIC BUSINESSES--EGG PROCESSORS AND POULTRY PROCESSORS:

- A. 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.
 - (4) egg wire baskets used to transport eggs to retailers.
- B. The following machinery and equipment purchased and used by egg processors do 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;
- (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 GR-55.
- D. 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 including shackle washing systems and ice maker systems;
 - (3) pneumatic air compressors for the operation of machinery and equipment referred to in subsection (1) 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;
 - (6) quality control devices on line used to test each unit produced.
- E. 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;
 - (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 GR-55.

GR-65. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTIONS--SPECIFIC BUSINESS--(A) AUTOMOBILE PARTS REBUILDERS, (B) TIRE RETREADERS:

Machinery and equipment purchased and used by persons rebuilding or remanufacturing used parts and retreading of tires 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. In all events, the machinery and equipment purchased and used by automobile parts rebuilders and tire retreaders must satisfy the requirements of GR-55.

**GR-66. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--
POLLUTION CONTROL MACHINERY:** The gross receipts or gross proceeds derived from the sale of pollution control machinery and equipment are exempt from the tax if:

- A. The machinery and equipment is 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 which might otherwise result from the operation of the plant or facility; and,
- B. The machinery and equipment is 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 Arkansas Department of Pollution Control and Ecology or the U. S. Environmental Protection Agency.
- C. Supplies and chemicals used by pollution control machinery and equipment are taxable.

GR-67. EXEMPTIONS FROM TAX--MANUFACTURING EXEMPTION--SPECIFIC BUSINESS--(A) CONCRETE MIXERS AND BATCH PLANTS, (B) SAWMILLS AND LUMBER MILLS:

- A. 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.
- B. Machinery and equipment used directly in the manufacturing of a finished lumber product by sawmills and lumber mills will be exempt from the tax. A finished lumber product includes any new article of commerce created by sawmills or lumber mills. Items such as portable chain saws, hand tools, buildings, storage facilities, and all other similar items will be subject to the tax. In all events, the machinery and equipment purchased and used by sawmills must satisfy the requirements of GR-55.

GR-68. EXEMPTIONS FROM TAX--BORDER CITY EXEMPTION-TEXARKANA:

The gross receipts or gross proceeds derived from sales of tangible personal property or services in Texarkana, Arkansas, are exempt from the tax if sold by an established business located in Texarkana, Arkansas, and if the property or services are exempt or not taxed in Texas. Sellers desiring to claim the border city exemption should contact the appropriate taxing authority in Texas to determine the tax status of the property or services in Texas and maintain proof of that status.

GR-69. EXEMPTIONS FROM TAX--TEXTBOOKS: The gross receipts or gross proceeds derived from sale of textbooks, library books, or other items purchased by the State of Arkansas pursuant to the provisions contained in Ark. Code Ann. §6-21-401 et seq. and which are to be distributed free of any charge to the public schools of Arkansas are exempt from the tax. This exemption does not apply to

colleges, universities, or other post-secondary education facility.

GR-70. TAXABLE SALES--CREDIT UNIONS: From and after the effective date of these regulations, sellers shall be required to collect and remit the tax on gross receipts or gross proceeds derived from sales of tangible personal property and taxable services to state chartered credit unions.

GR-71. TAX COLLECTED BY SELLER--BRACKET SYSTEM--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.
- B. The amount of tax to be collected by the seller is four and one-half percent ($4\frac{1}{2}\%$) of the gross receipts or gross proceeds derived from the sale.
- C. The following brackets may be followed by sellers in computing the gross receipts tax due upon a particular sale:

Amount of Sale		Tax
0.00	to 0.11	0.00
0.12	0.33	0.01
0.34	0.55	0.02
0.56	0.77	0.03
0.78	0.99	0.04
1.00	1.22	0.05
1.23	1.44	0.06
1.45	1.66	0.07
1.67	1.88	0.08
1.89	2.11	0.09
2.12	2.33	0.10
2.34	2.55	0.11
2.56	2.77	0.12
2.78	2.99	0.13
3.00	3.22	0.14
3.23	3.44	0.15
3.45	3.66	0.16
3.67	3.88	0.17
3.89	4.11	0.18
4.12	4.33	0.19
4.34	4.55	0.20
4.56 and above-scaled accordingly		

The use of the above bracket system does not relieve the seller from the duty to remit an amount equal to four and one-half percent ($4\frac{1}{2}\%$) of the gross receipts or gross proceeds derived from all sales during the taxable period including an amount equal to the cost of all merchandise withdrawn from stock.

- D. In computing the tax to be collected upon any particular sale, the total sales price of the property sold must first be calculated and then tax applied accordingly. Sellers may not compute tax upon each item sold in a particular transaction.
- E. Sellers are liable for an amount equal to four and one-half percent ($4\frac{1}{2}\%$) of the gross receipts or gross proceeds derived from all sales during the taxable period as explained previously in this regulation. The tax must be computed by multiplying the tax rate, four and one-half percent ($4\frac{1}{2}\%$), times the amount of the total combined gross receipts during the taxable period.
- F. Local taxes. Towns, cities, and counties have authority under Arkansas law to levy sales taxes. Some of these taxes are administered by the Commissioner of Revenues. Taxpayers should contact the Sales and Use Tax Section of the Revenue Division if they have a question as to whether they are within a jurisdiction which requires them to collect and remit a local tax. When the Commissioner is authorized or required to collect or administer a local sales tax, that tax shall be administered in accordance with these regulations. For specific rules concerning the administration of local sales taxes see GR-91.

GR-72. SELLERS REQUIRED TO OBTAIN PERMIT--DEPOSIT OR BOND:

- A. 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 Ark. Code Ann. §26-52-101 et seq. shall make application for a permit on forms prescribed by the Commissioner. 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. If an agent makes application for a permit on behalf of his principal, a copy of the document authorizing him to act on behalf of his principal must be attached to the application. A separate permit for each business location in Arkansas must be obtained.
- B. (1) Each application shall be accompanied by a tax deposit of \$250.00. The deposit shall be credited against the taxpayer's account for use against future State tax liability.
(2) If no tax liability exists after the taxpayer has been in business for 6 months or after the taxpayer discontinues business, the taxpayer may apply for a refund of the credit balance on forms supplied by the Commissioner. Each request for refund may be subject to verification by audit.
- 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. Every permit obtained must be surrendered to the Department of Finance and Administration, Revenue Division, Sales and Use Tax Section upon the discontinuance of business at any location for which the permit was issued. Failure to surrender the permit in such instances shall constitute sufficient cause to subsequently refuse the person a permit required by these regulations.

GR-73. CANCELLATION OF PERMIT: Failure to comply with any requirement of Ark. Code Ann. §26-52-101 et seq. or with any provision of these Regulations shall constitute sufficient grounds for cancellation of any permit issued under the authority of the Code or the Regulations.

GR-74. EXEMPTION CLAIMS: The Department of Finance and Administration, Revenue Division, does not issue exemption certificates. Consumers who represent to sellers that their purchases of property or services are exempt from the tax must conclusively prove their entitlement to the exemption to the seller.

Even though the seller accepts the consumer's representations that the transaction is exempt from the tax, seller shall be liable for the tax if the transaction does not, in fact, qualify for an exemption. Sellers are, therefore, encouraged to obtain indemnification agreements from their customers claiming exemption.

Valid retail permits, or resale permits, including those issued by other states, may be accepted by Arkansas sellers if the requirements of GR-53, relating to Arkansas retail permits, are satisfied. Retail permits may not be used to establish entitlement to any exemption other than the "sale for resale" exemption.

GR-75. LETTER OPINIONS ISSUED BY THE DEPARTMENT: The propriety of the taxation or exemption of a sale may be substantiated by having a Letter Opinion rendered by the Department of Finance and Administration, Revenue Division, which states that the sale or transaction is taxable or exempt. A Letter Opinion may only be relied on by a seller if it is addressed to him 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 Letter Opinion request and the Letter Opinion. Requests for Letter Opinions must specifically describe the person claiming an exemption and set forth all material facts relevant to the questioned sale or transaction.

Letter Opinions may not be relied on if more than three (3) years old, but may be renewed on request. The effect of Letter Opinions may change at any time as a result of legislative action, court interpretation and changes in these regulations without actual notice to any holder of a Letter Opinion.

If the Letter Opinion contains such language, as "based upon

the facts presented in your opinion request of . . .", then a copy of the Letter Opinion request must accompany the Letter Opinion at all times.

GR-76. NO OTHER OPINIONS BINDING: No opinion, whether formal or informal, issued by any other agency can be binding on the Department of Finance and Administration, Revenue Division.

GR-77. 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) It is the duty of all taxpayers (sellers) to deliver to the Commissioner, on or before the twentieth (20th) day of each month, a return under oath showing the total combined gross receipts or gross proceeds derived from all taxable sales, and the total combined gross receipts or gross proceeds derived from all nontaxable or exempt sales, during the preceding calendar month. 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. The following information must also appear on the return:
 - (a) 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 along with the old name or address of the business);
 - (b) the permit number of the business;
 - (c) the amount of tax due and payable with the return;
 - (d) a brief statement of the nature of the claimed nontaxable or exempt gross receipts (e.g., "sales to hospitals", "manufacturing exemption", "nontaxable services", etc.) and
 - (e) if the business has engaged in unusual business activities unrelated to the regular business activities of the business reflected upon the application for permit or previous returns (e.g., seller of property began to furnish either taxable or nontaxable services to its customers; seller of property is contemplating the sale of his business, etc.), then the taxpayer must so note on a statement attached to the return.
- (3) The appropriate amount of tax due and payable and as reflected on the return must accompany the returns as required herein.
- (4) Each taxpayer having average net sales of more than \$200,000 per month for the preceding calendar year

shall make two (2) tax payments for each month. Each payment shall equal forty percent (40%) of the tax due on the monthly average net sales and shall be made on or before the twelfth and twenty-fourth day of each month. The balance of tax due on actual gross receipts for each month shall be paid with the monthly report.

- B. Quarterly Report: When the total amount of tax for which such taxpayer is liable for any month does not exceed \$100.00, quarterly reports may be made on or before July 20, October 20, January 20, and April 20 of each year.
- C. Yearly Report: When the total amount of tax for which such taxpayer is liable for any month does not exceed \$25.00, a yearly report may be made on or before January 20 of each year.
- D. Returns and remittances by the taxpayer as described in this regulation do not constitute an assessment of tax for audit or examination purposes.

GR-78. CASH BASIS RETURNS: Any taxpayer who does business wholly or partly on a credit basis may apply to the Commissioner for permission to prepare returns on the basis of cash actually received. If the Commissioner 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.

Any taxpayer making such application shall be taxable on the gross receipts collected by him during the taxable period including, but not limited to, all service charges, late payment penalties collected, bad debts, losses or expenses. No person may report on the cash basis unless permission has been expressly granted by the Commissioner.

Taxpayer must keep accurate and complete records which reflect the amount of cash sales and credit sales. These records must show collections on accounts and be open for inspection and audit by the Commissioner of Revenues or his agents. See GR-18(J) and Ark. Code Ann. §26-52-309.

GR-79. PERSONS LIABLE FOR TAX:

- A. The tax must be collected, reported and remitted by the seller of tangible personal property; the seller or collector of admissions to places of amusement, recreational or athletic events; the seller of privileges of access to, or the use of amusement, entertainment, athletic, or recreational facilities; and by any other person furnishing any service subject to the tax.
- B. If the seller of tangible personal property or taxable services is a corporation and if 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.

GR-80. TAXPAYER TO KEEP ADEQUATE RECORDS - PRESERVATION OF RECORDS - ESTIMATED ASSESSMENT:

- (1) In General. Every taxpayer doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep complete and adequate records as may be necessary for the Commissioner to determine the amount of sales or use tax for the payment and collection of which that taxpayer is liable. Unless the Commissioner authorizes an alternative method of recordkeeping in writing, these records shall show:

- a. Gross receipts from sales, or rental payments from leases, of tangible personal property (including any services that are a part of the sale or lease) made in this state, irrespective of whether the taxpayer regards the receipts to be taxable or nontaxable.
- b. All deductions allowed by law and claimed in filing the return.
- c. Total purchase price of all tangible personal property purchased for sale or consumption or lease in this state.

These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account together with all schedules or working papers used in connection with the preparation of tax returns.

- (2) Microfilm and Microfiche Records. Records, including general books of account, such as cash books, journals, voucher registers, ledgers and like documents may be microfilmed or microfiched, as long as such microfilmed and microfiched records are authentic, accessible, and readable and the following requirements are fully satisfied:

- a. Appropriate facilities are to be provided for preservation of the films or fiche for the periods required and open to examination and the taxpayers must agree to provide transcriptions of any information on microfilm or microfiche which may be required for verification of tax liability.
- b. All microfilmed and microfiched data must be indexed, cross-referenced and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included, and must be systematically filed to permit ready access.
- c. Taxpayer must make available upon request of the Commissioner a reader/printer in good working order

- at the examination site for reading, locating and reproducing any record concerning sales and/or use tax liability maintained on microfilm or microfiche.
- d. Taxpayer must set forth in writing the procedures governing the establishment of its microfilm or microfiche system and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the Board of Directors, general partner(s), or owner, whichever is applicable.
 - e. The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of the business.
 - f. Taxpayer must establish procedures with appropriate documentation so that the original document can be followed through the microfilm or microfiche system.
 - g. Taxpayer must establish internal procedures for microfilm or microfiche inspection and quality assurance.
 - h. Taxpayers are responsible for the effective identification, processing, storage, and preservation of microfilm or microfiche, making it readily available for as long as the contents may be material in the administration of any state revenue law.
 - i. Taxpayer must keep a record identifying by whom the microfilm or microfiche was produced.
 - j. When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material must exhibit a high degree of legibility and readability. 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. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.
 - k. All production of microfilm or microfiche and processing duplication, quality control, storage, identification, and inspection thereof must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards.
- (3) Records Prepared by Automated Data Processing Systems (ADP). An ADP tax accounting system may be used to provide the records required for the verification of tax liability. Although ADP systems will vary from one taxpayer to another, all such systems must include a method of producing legible and readable records which will provide the necessary information for verifying such tax liability. The following requirements apply to any taxpayer who maintains any such records on an ADP system:
- a. Recorded or Reconstructible Data. ADP records shall

- provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time when they are processed, the systems must have the ability to reconstruct these transactions.
- b. General and Subsidiary Books of Account. A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.
 - c. Supporting Documents and Audit Trail. The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the Commissioner upon request. The system shall be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available.
 - d. Program Documentation. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate: (A) the application being performed; (B) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory descriptions of the input or output procedures); and (C) the controls used to insure accurate and reliable processing. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record.
 - e. Data Storage Media. Adequate record retention facilities shall be available for storing tapes and printouts, as well as all supporting documents as may be required by law.
- (4) Records Retention. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than 6 years.
 - (5) Examination of Records. All of the foregoing records shall be made available for examination on request by the Commissioner or his authorized representatives.
 - (6) Failure of the Taxpayer to Maintain and Disclose Complete and Adequate Records. Upon failure by the taxpayer, without reasonable cause, to substantially comply with the requirements of this regulation, the Commissioner shall:
 - a. Impose and not abate or reduce in amount any penalty as may be authorized by law.
 - b. Enter such other order as may be necessary to obtain compliance with this regulation in the future by any

taxpayer found not to be in substantial compliance with the requirements of this regulation.

GR-81. ASSESSMENTS AND HEARINGS: This section shall govern the assessments of tax and any subsequent administrative proceedings.

- A. If, upon audit or examination, the Commissioner of Revenues or his duly authorized agent determines there is additional tax due, the Commissioner shall prepare a schedule reflecting the amount of additional tax, interest and penalties payable and shall furnish to the taxpayer, if available, a copy of this schedule. A "Notice of Proposed Assessment" and "Taxpayer's Bill of Rights" shall also be mailed to the taxpayer at the address listed upon the application for retail permit or the actual business address of the taxpayer.
- B. If a taxpayer objects to the Notice of Proposed Assessment, he must file his protest in writing within thirty (30) days of receipt of the Notice of Proposed Assessment setting forth under oath facts and/or law supporting his protest of the assessment. Said protest shall be mailed to the address set forth in the Notice of Proposed Assessment. If the taxpayer fails to file a written protest within thirty (30) days of receipt of the Notice of Proposed assessment, then the Commissioner shall issue by certified mail, return receipt, a Notice of Final Assessment. 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 Commissioner.
- C. If the taxpayer files a written protest of the Notice of Proposed Assessment within the thirty (30) day time period set forth in Section (B), then the taxpayer will be granted a hearing before a Hearing Officer or a panel of Hearing Officers. The Hearing Officer(s) shall set the time and place for the hearing which will be in any city in which the Revenue Division maintains a Field Audit District Office, or in such city as the Commissioner of Revenue, in his discretion, may designate.
- D. At the hearing the taxpayer has the option of: (1) appearing in person and representing himself or being represented by an authorized spokesperson for the presentation of evidence or argument in support of his protest of the assessment or (2) 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. The taxpayer shall indicate in his request for hearing whether he desires to personally appear for the hearing or whether he requests that the decision of the Hearing Officer be rendered on the basis of written

documents submitted. In either instance an attorney for the Revenue Division may appear to offer evidence and legal argument in support of the Notice of Proposed Assessment.

- E. 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. If the Notice of Proposed Assessment is sustained in whole or in part, the taxpayer may request in writing, within twenty (20) days of the mailing of the decision, that the Commissioner of Revenue revise the decision of the Hearing Officer. The request for revision to the Commissioner by the taxpayer shall state the legal or factual basis for the revision. If the Commissioner affirms the written decision of the Hearing Officer or if the taxpayer fails to request the Commissioner to revise the decision, then a Notice of Final Assessment shall be issued, by certified mail return receipt, to the taxpayer based upon the decision of the Hearing Officer or request for revision by the Commissioner.
- F. Within thirty (30) days of the issuance of the Notice of Final Assessment provided for in Section (E), a taxpayer may seek judicial relief by either: (1) paying the amount of the tax deficiency, plus any penalty or interest under protest, and filing suit in Chancery Court within one (1) year from the date of payment under protest to recover said sum paid under protest. Failure of the taxpayer to file suit within one (1) year from the date of payment under protest will result in the payment being released from the protest fund in satisfaction of the assessment, or; (2) filing with the Commissioner a surety bond approved by the Commissioner in double the amount of the tax deficiency, interest and penalty and filing suit in Chancery Court within thirty (30) days to stay the determination of the Commissioner. The taxpayer shall faithfully and diligently prosecute the suit to a final determination and shall pay any deficiency found by the Court to be due and any court cost assessed against him. 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 bond in the amount of the assessment and assessed court costs.

GR-82. INTEREST ACCRUED ON UNDERPAYMENTS OF TAX - RATE:

For all tax periods beginning after midnight, July 3, 1983, interest on underpayments of tax shall be due and payable at the rate of ten percent per annum from the date such tax was due to be paid until the date of payment.

GR-83. OVERPAYMENTS AND REFUNDS - INTEREST ON OVERPAYMENTS AND REFUNDS:

- A. 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 credited against a subsequent tax or refund at the option of the taxpayer. If the amount overpaid was collected by the taxpayer from his customers, then the taxpayer must establish that he has borne the tax in question, repaid the tax to persons from whom collected, or obtain consent of such person to the allowance of the refund or credit. The rate of interest on overpayments is ten percent (10%) per annum. If an overpayment of tax is refunded by the Commissioner within ninety (90) days after the date provided for filing the return for the tax, no interest shall be allowed on the overpayment.
- B. If a taxpayer believes an overpayment has occurred, an amended return or verified claim for refund may be filed. The claim shall specify the name of the taxpayer, the time when and the period for which the tax was paid, the amount of tax claimed to have been erroneously overpaid, and the grounds upon which a refund is claimed. The Commissioner 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. The Commissioner shall then make a written determination and give notice to the taxpayer concerning whether a refund is due. If a refund is due, the Commissioner shall certify that the claim is to be paid to the taxpayer as provided by law or credited against taxes due or to become due.
- C. No claim for refund will be allowed if made after the expiration of the period of limitation for assessment of additional tax.

GR-84. DISCOUNT FOR PROMPT PAYMENT - FAILURE TO FILE PENALTY - FAILURE TO PAY PENALTY - PROCEDURE WHEN BOTH PENALTIES ARE ASSESSED:

- A. Discount for Prompt Payment. If the tax is remitted to the Commissioner on or before the due date required by regulation GR-77, the taxpayer is entitled to deduct two percent (2%) of the tax due as a discount for prompt payment of the tax. 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.
- B. Failure to File Penalty. 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 report remains unfiled. The penalty shall not exceed thirty-five percent (35%) of the tax due. No penalty will be assessed if the failure to file is due to reasonable cause and not to willful neglect. If a penalty is assessed for failure to pay tax, no penalty will be assessed for failure to file a return.

- C. Failure to Pay Penalty. 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. The penalty shall not exceed thirty-five percent (35%) of the tax due. No penalty will be assessed if the failure to pay is due to reasonable cause and not to willful neglect. If a penalty is assessed for failure to file a return, no penalty will be assessed for failure to pay tax.
- D. A penalty of fifty dollars (\$50.00) per return will be assessed when a taxpayer continues to disregard previous notification by the Director that the taxpayer has
 - (1) failed to include required information on a return;
 - (2) included false information on a return;
 - (3) failed to file a return; or
 - (4) failed to notify the Director that the taxpayer is no longer required to file a return.

No penalty will be assessed if the taxpayer's failure is due to reasonable cause and not willful neglect.

GR-85. NEGLIGENCE AND FRAUD PENALTIES:

- A. If any part of a deficiency in tax is determined to be due to negligence or intentional disregard of these regulations or state law, then a penalty of ten percent (10%) of the deficiency shall be added. If a penalty under GR-84 is assessed, no negligence penalty will be assessed.
- B. 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.

GR-86. BAD CHECKS: If any person makes payment to the Commissioner by means of a check, draft, or order drawn on any bank, person, firm or corporation, without the Commissioner having been paid in full, the Commissioner is authorized and empowered to impose a penalty of ten percent (10%) of the face amount of such check, draft or order, or Ten Dollars (\$10.00) whichever is greater, against the maker or drawer of such check, draft or order. This section shall not apply if the person establishes to the satisfaction of the Commissioner that he tendered such check, draft or order in good faith and with reasonable cause to believe it would be duly paid.

GR-87. DIRECT PAYMENT TO THE STATE:

- A. In his discretion, the Commissioner 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. In order for a consumer to obtain a direct payment number he must show and certify the following:
- (1) that he will comply with the provisions of Ark. Code Ann. §§26-52-101 et seq., 26-53-101 et seq. and 26-18-101 et seq., and these regulations;
 - (2) that he will faithfully report and remit the tax on or before the twentieth day of the month for the previous month's taxable purchases.
- B. 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 regulation or that the cancellation would be in the best interests of the collection of the tax. A direct pay permittee is not entitled to any discount for prompt payment of the tax.
- C. The tax will be remitted directly by a direct pay permit holder to the Commissioner of Revenues. 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. Direct pay permit holders shall accrue and remit the local tax of the city or county where the property purchased is first used, stored, consumed or distributed. When direct pay permit holders purchase taxable services, they must accrue and remit the local tax of the city or county where the services are performed.

GR-88. TRANSIENT BUSINESS REQUIRED TO POST BOND: 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 year. 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.

GR-89. PERMITS ISSUED PRIOR TO EFFECTIVE DATE OF THESE REGULATIONS VALID: These regulations shall not affect the validity of any outstanding permits authorized by Ark. Code Ann. §26-52-201 (retail) or of any outstanding permits authorized by Ark. Code Ann. §26-52-509 (direct pay).

GR-90. 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 Revenues 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 agents, for the purposes of collecting tax as may be due this State.

GR-91. LOCAL GROSS RECEIPTS TAXES: The collection and administration of a gross receipts tax collected for any town, city, or county by the Commissioner of Revenues shall be collected and administered in accordance with these regulations.

A. Single Transactions. All local taxes shall be collected only to a maximum of \$25.00 on any single transaction. The term "single transaction" is defined by ordinance by each taxing jurisdiction. Because the definition of single transaction may vary from local taxing jurisdiction to jurisdiction, taxpayers should familiarize themselves with the definition of single transaction for those jurisdictions in which they operate. Appropriate local authorities should be contacted to obtain the single transaction definition for each jurisdiction. In a jurisdiction which has enacted more than one local tax by separate ordinances, the maximum tax limit shall apply to each tax.

B. Determination of Taxable Sales:

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 - The local sales tax levied on sales of tangible personal property other than motor vehicles shall be at the rate of the city and county where the seller is located. The tax shall be applicable to sales to residents and nonresidents of the levying city and county unless the provisions of B(4) apply.
3. Services - The local sales tax on services shall be at the rate imposed by the city and county where the services are performed.
4. Exemptions - Local sales tax is not applicable to sales of tangible personal property to nonresidents of the levying city and county if the sale is made for delivery to an address which is in a city or county that does not impose a local tax and (a) the sale is of property sold primarily through meter and route delivery or (b) the sale is of aviation fuel; distillate special fuel used for agricultural purposes; agricultural machinery; parts, repairs and supplies for agricultural machinery; water wells and well supplies; agricultural feed, seed and fertilizer; or agricultural chemicals. The actual sale and delivery must be documented by invoice. (See also GR-87(d)).

C. Direct Pay Permit Holders:

1. A direct pay permit holder that makes taxable

purchases of tangible personal property shall report and pay local sales or use tax on those purchases. The local tax shall be calculated at the rate imposed by the city and county in which the property is first used, stored, consumed or distributed.

2. A direct pay permit holder that makes taxable purchases of services shall report and pay local sales tax on those purchases. The local tax shall be calculated at the rate imposed by the city and county in which the services are performed.

ARKANSAS COMPENSATING (USE) TAX REGULATIONS

Pursuant to the authority vested in the Commissioner of Revenues and in compliance with §3 of Act 434 of 1967 and Act 583 of 1973, the Commissioner of Revenues of the Arkansas Department of Finance and Administration, with the approval of the Governor, does hereby promulgate the following rules and regulations for the enforcement and administration of Ark. Code Ann. §26-53-101 et seq.

UT-1. EFFECTIVE DATE: All regulations previously promulgated by the Commissioner of Revenues for the purposes of enforcing or implementing Ark. Code Ann. §26-53-101 et seq. are hereby specifically repealed as of the effective date of these regulations. These regulations shall be effective from and after midnight, November 1, 1992.

UT-2. PURPOSE OF THE REGULATIONS: The following regulations are promulgated to implement and clarify Ark. Code Ann. §26-53-101 et seq. All persons affected by the Compensating Tax Act are advised to first read the Arkansas Gross Receipts Tax Act (Ark. Code Ann. §26-52-101 et seq.) and the regulations promulgated by the Commissioner of Revenues pursuant thereto since the Gross Receipts Tax Act and the Compensating Tax Act are complimentary legislative enactments and should be read together. The following regulations are intended to clarify only those portions of the Arkansas Compensating Tax Act which are different from the Arkansas Gross Receipts Tax Act and the regulations promulgated thereto. When there is no conflict in the law or regulations, then the Gross Receipts Regulations shall control.

UT-3. DEFINITIONS: For the purposes of these regulations, unless otherwise required by their context, the following definitions apply:

- A. The term "purchaser" means and includes any person who is the recipient for a valuable consideration of any sale of tangible personal property acquired for use, storage, consumption or distribution in this State.
- B. The term "sale" means any transfer, barter or exchange of the title or ownership of tangible personal property; 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. For the purpose of this regulation the place of delivery of tangible personal property to the purchaser, user, storer, consumer or distributor shall be deemed to be the place of sale, whether such delivery is made by the vendor or by

- common carriers, private contractors, mails, express, agents, salesmen, solicitors, hawkers, representatives, consignees, peddlers, canvassers, or otherwise.
- C. The term "vendor" means and includes every person engaged in making sales of tangible personal property by mail order, by advertising, by agent; or by peddling tangible personal property, soliciting, or taking orders for sales of same, for storage, use, consumption or distribution in this State. Irrespective of whether persons are making sales on their own behalf or on behalf of others, such persons are regarded as vendors for the purposes of this Act.
 - D. The term "use" 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.
 - E. The term "storage" means and includes any keeping or retention in this State of tangible personal property purchased from a vendor for any purpose, except sale or subsequent use solely outside this State. If a "use" of the property occurs in this State within the scope of paragraph D of this Regulation, the use tax will apply to the property even though the property is stored and subsequently used outside the State of Arkansas.
 - F. The term "purchase" means the sale of tangible personal property by a "vendor" to a person for the purpose of storage, use, consumption or distribution in this State. Furthermore, for the purposes of this regulation, 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, and in such event, the tax shall be computed on the value of such tangible personal property at the time it is brought into this State; provided, however, that no tax shall be computed to the extent that such withdrawal consists of carbonaceous materials such as petroleum, coke or carbon anodes which are to be directly used or consumed in the electrolytic reduction process of producing tangible personal property for ultimate sale at retail.
 - G. The term "sales price" shall mean the consideration paid or given, or contracted to be paid or given, by the purchaser to the vendor for the article of tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and including any amount for which credit is given to the purchaser by the vendor, without any deduction therefrom on account of the costs of the property sold, the costs of materials used, labor or service costs, interest charged, losses or any other

expenses whatsoever; provided that cash discounts allowed and taken on sales shall not be included and "sales price" shall not include the amount charged for property returned by customers upon rescission of the contract of sales where the entire amount charged therefore is refunded either in cash or credit or the amount charged for labor or services rendered in installing or applying the property sold, the use, storage, consumption or distribution of which is taxable. "Sales price" also includes any manufacturer's or dealer's rebates and Federal luxury excise tax. In addition, "sales price" shall not mean or include the federal manufacturer's excise taxes levied upon articles if such federal manufacturer's excise taxes are separately stated or separately billed. The term shall include, in addition to the consideration paid or given, or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article stored, used, consumed or distributed in this State.

UT-4. AMOUNT AND NATURE OF TAX: The tax levied by Ark. Code Ann. §26-53-101 et seq. is 4 1/2% percent of the sales price of tangible personal property purchased for storage, use, consumption or distribution in this State. 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 in this State. The tax will not apply with respect to the storage, use, consumption or distribution of any article of tangible personal property 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 co-mingled with the general mass of property of this State.

UT-5. COLLECTION OF TAX:

- A. Every vendor making a sale of tangible personal property 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 therefor. The required amount of tax collected by the vendor from the purchaser shall be displayed separately on the document evidencing the sale. The tax shall be displayed either as a separate line item or included within the total sales price on the document evidencing the sale. If the tax is included within the total sales price the vendor shall state "Arkansas Tax Included" on the document evidencing the sale.
- B. Every vendor selling tangible personal property for storage, use, consumption or distribution in this State shall register with the Commissioner and give the names and addresses of all agents operating in this State and such other information as the Commissioner may require and shall furnish all agents with a statement to the effect

that the agent's principal has been and is complying with the provisions of this Act.

- C. Irrespective of the foregoing regulation, every person storing, using, consuming or distributing tangible personal property in this State which was purchased from a vendor shall be liable for the tax imposed by this Act. 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 and regulations as the Commissioner may prescribe to collect the tax imposed hereunder. Such a receipt given to the purchaser, by a registered vendor, in accordance with the foregoing regulation shall be sufficient to relieve the purchaser from liability for the tax to which such receipt may refer.

UT-6. ENFORCEMENT: The tax levied by Ark. Code Ann. §26-53-101 et seq. shall constitute a lien upon the property of the purchaser of tangible personal property coming within the provisions of that Act.

UT-7. RETURN AND PAYMENT OF TAX: Every vendor selling tangible personal property for storage, use, consumption or distribution in this State shall on or before the 20th 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. The form shall include the total combined sales price of all tangible personal property sold by the vendor during such preceding monthly period, the storage, use, consumption or distribution of which is subject to the use tax, and such other information as the Commissioner may deem necessary for the proper administration of this Act. 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. The return shall be signed by the vendor or his duly authorized agent.

Every person purchasing tangible personal property 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 20th 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. The form shall include the total sales price of the tangible personal property purchased during such preceding monthly period and such other information as the Commissioner may deem necessary. 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 during the period covered by the return. Such return shall be signed by the person liable for the tax or his duly authorized agent.

UT-8. PRESUMPTION: For the purpose of the proper administration of Ark. Code Ann. §26-53-101 et seq., and to prevent evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal property sold by any vendor for delivery in this State or transportation to this State is sold for storage, use, consumption or distribution in this State unless the vendor selling such tangible personal property shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser to the effect that the property was purchased for resale. It shall be further presumed that tangible personal property shipped, mailed, transported or brought into this State by the purchaser thereof was purchased from a vendor for storage, use, consumption or distribution in this State.

UT-9. EXEMPTION: There is specifically exempted from the tax levied in Ark. Code Ann. §26-53-101 et seq. the following:

- A. All sales on which the Arkansas gross receipts tax is levied and all sales which are specifically exempted from taxation by Ark. Code Ann. §26-52-101 et seq.
- B. Aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property owned and 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 if 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. However, if any such property is subsequently initially used in Arkansas, the tax shall be applicable to the property so used in Arkansas. NOTE: This does not exempt from taxation any materials used in the refurbishing, conversion or modification of such property in Arkansas which are subject to the Arkansas Gross Receipts Tax Act.

UT-10. CONTRACTORS SPECIAL RULES:

- A. Contractors are defined to be consumers of all tangible personal property, used, or consumed in the performance of a contract in this State, and of all tangible personal property stored for use or upon which the contractor may exercise any right or power, in this State.
- B. All tangible personal property which is procured from without the 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 the Arkansas Compensating Tax on the purchase price or its market or

book value (whichever is greater) if such property has been subjected to prior use before coming to rest for use, storage or consumption within this State. 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 the Arkansas Compensating 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. The provisions shall not apply with respect to the use, consumption, storage or distribution of tangible personal property upon which a like tax equal to or greater than the amount imposed by Ark. Code Ann. §26-53-101 et seq. has been paid in another state, the proof of payment of such tax to be according to rules and regulations made by the Commissioner of Revenues. If the amount of tax paid in another state is not at least equal to or greater than the amount of Arkansas 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. 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.

UT-11. LOCAL TAX: Towns, cities and counties have the authority under Arkansas law to levy use taxes. Some of these taxes are administered by the Commissioner. Vendors and purchasers should contact the Sales and Use Tax Section of the Revenue Division if they have a question as to whether they are within a jurisdiction which requires them to collect and remit a local tax. When the Commissioner is authorize or required to collect or administer a local use tax, that tax shall be administered in accordance with these regulations. See also GR-91.

UT-12. SERVICES: The Arkansas compensating use tax shall not apply to services performed outside the state of Arkansas. The tax shall apply to any tangible personal property which is a part of the sale of services, including any parts or materials, if the property is subsequently brought into Arkansas for storage, use, distribution or consumption. A credit shall be allowed against the Arkansas tax for any lawfully imposed sales or use tax paid to the state where the services were performed or the property sold. If the sales invoice, bill of sale or other documents fail to separately state the charge for services and the charge for tangible personal property, the Arkansas tax will be due on the entire consideration for the sale.