

ARKANSAS REGISTER

FILED
AR. REGISTER DIV.

93 JUN -4 AM 10:34 Transmittal Sheet



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

BY _____

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

For Office
Use Only:

Effective Date 6/4/93 Code Number 006.05.93--002

Name of Agency DEPARTMENT OF FINANCE AND ADMINISTRATION

Department REVENUE DIVISION

Contact Person John H. Theis Telephone 682-7030

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

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Filed With Legislative Council _____

Reviewed by Legislative Council _____

Adopted by State Agency 6-4-93

CERTIFICATION OF AUTHORIZED OFFICER

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

A handwritten signature in dark ink, appearing to read "J. H. Theis", is written over a horizontal line.

SIGNATURE

Chief Counsel

TITLE

6-4-93

DATE

EMERGENCY
VENDING MACHINE REGULATION 1993-1

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SECRETARY OF STATE
LITTLE ROCK, ARKANSAS
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A. DEFINITIONS

1. "Person" means any individual partnership, association or corporation.

2. "Coin-operated vending device" means any and all machines or devices which, upon the payment or insertion of a coin, token or similar object, dispenses tangible personal property, including but not limited to, candies, gum, cold drinks, hot drinks, sandwiches, chips or other edible items; cigarette lighters, prophylactics, ball point pens, or other non-edible items.

This term shall not mean:

1. amusement and game machines;
2. devices used exclusively for the purpose of selling cigarettes, newspapers, magazines or postage stamps; or
3. devices used for the purpose of selling services such as pay telephone booths, parking meters, gas and electric meters or other devices used in the distribution of services.

3. "Coin-operated bulk vending device" means a machine or device containing unsorted merchandise which, upon insertion of a single coin, dispenses the merchandise in appropriately equal portions, at random and without selection by the customer. Such vending machine is a simple mechanical device capable of accepting

a coin of only one denomination (either a penny, nickel, dime or quarter). Unsorted merchandise dispensed by such vending machine includes gum, candy, toys, novelties or similar merchandise.

4. "Registrant" means a person who a) makes a vending device available for public use, b) purchases tangible personal property exempt from sales tax as merchandise for resale and places the merchandise in the vending device for resale, c) possesses an Arkansas Sales and Use Tax Permit, and d) derives income from sales of the merchandise from vending devices. A federal government agency which owns a device and which purchases and places merchandise in the device for sale is not a registrant and is not required to obtain a decal. A non-profit, charitable organization which meets the definition of a "registrant" is required to purchase a vending device decal.

5. A device is "available for public use" when it is placed in any location within Arkansas other than inside of a private residence for private use;

6. "Vending devices" means coin-operated vending devices and coin-operated bulk vending devices.

B. GENERAL INFORMATION

1. Every registrant or owner of a vending device must obtain a separate decal for each vending device that is available for public use. A vending device owner who is not a registrant will be held jointly and severally liable for unpaid decal fees and penalties if the vending device is seized and sealed.

2. Each registrant must not be a convicted felon or a corporation whose president or principal shareholder(s) is (are) a convicted felon(s).

3. Each registrant must have an Arkansas sales tax permit; however, the gross receipts derived from the sale of items through a vending device are exempt from state and local gross receipts tax only if the registrant complies with Act 1037 of 1993. The registrant must file Arkansas gross receipts tax reports (Form ST 400) in accordance with Ark. Code Ann. §26-52-501. A registrant with no sales tax liability must file a sales tax report on January 20 of each year for the preceding calendar year. The registrant must include vending device gross receipts in the total gross receipts reported on line 1 of Form ST 400 and deduct the vending device gross receipts on line L of Form ST 400.

4. Each registrant must maintain separate records reflecting the gross receipts derived from vending devices. If a registrant fails to maintain adequate records supporting exempt vending device sales, it shall be presumed that all sales of tangible personal property by the registrant are subject to gross receipts tax.

5. Each registrant shall provide the Director with the owner and lessor of each device; a description of the items sold through the device; his sales tax permit number; his federal employer identification number or social security number; and such other information as the Director may require.

C. VENDING DEVICE DECAL

1. The decal fee year is from July 1 through June 30 and all

annual decals shall expire on June 30 of each year. For decal applications made between July 1 and December 31 of the decal fee year, the registrant will pay all of the annual fee. For decal applications made between January 1 and June 30 of the decal fee year, the applicant will pay 1/2 of the annual fee.

2. Fees for vending device decals shall be as follows:

a. Coin-operated vending device which

1) requires value of more than \$0.25 in order to purchase the most expensive item in the device\$60.00

2) requires value of \$0.25 or less in order to purchase the most expensive item in the device11.00

b. Coin-operated bulk vending device which

1) requires value of more then \$0.25 in order to purchase the most expensive item in the device\$5.00

2) requires value of \$0.25 or less in order to purchase the most expensive item in the device2.00

c. Special vending device decal

1) If a vending device will be placed in service for use by the general public for less than one year, a special vending device decal may be issued for 30-day periods. The fee shall be equal to 1/10 of the annual fee for the device as described in paragraphs 2(a) and 2(b) above. This decal may be used for vending devices placed in fairs, carnivals, rodeos, seasonal places of amusement and other similar locations.

2) If a vending device is made available to the public for a period beyond that for which the special decal is issued,

then a full year's fee plus penalty, as described in Part D shall be due immediately from the registrant.

3. For the decal fee year July 1, 1993 - June 30, 1994, the registrant may elect to purchase decals for two six (6) month periods: July 1, 1993 - December 31, 1993 and January 1, 1994 - June 30, 1994. The fee for the 6 month decal is 1/2 of the annual fee. Fees for subsequent annual decals shall be paid in full on or before July 1 of the fee year.

4. Decal

a. Each decal will reflect the period for which it is issued and the unique registration number for that vending device. Before placing each vending device in use and during use, the decal must be permanently affixed to each vending device so that the decal is clearly visible to the user of the vending device. Failure to affix the decal within 10 days of issuance may result in forfeiture in accordance with paragraph C and a penalty being assessed in accordance with paragraph D. For the period July 1, 1993 - June 30, 1994, all decals must be affixed directly to the vending device using the adhesive on the back of the decal and may not be affixed by either taping the decal to the inside or outside of the vending device or affixing the decal to a removable plaque.

b. If a registrant has purchased and affixed a decal to a vending device which within the decal year is permanently removed from use because of theft or irreparable damage, the registrant may request from the Director a replacement decal for a replacement vending device. The registrant shall establish to the Director's

satisfaction that the original device is no longer in use by such proof as a police report or service company report. The registrant may place the replacement device in use for up to 10 days without a decal. After such time, penalties may be imposed.

c. If a registrant has purchased and affixed a decal to a vending device which within the decal year is sold or traded for another vending device, the registrant must: 1) remove the decal from the vending device and 2) notify the Director of the removed decal's registration number to enable the Director to cancel that decal. The registrant for the purchased or traded vending device must register and purchase a decal in accordance with this regulation within 10 days of purchase.

d. If a registrant has purchased and affixed a decal to a vending device which during the decal year is temporarily removed from service for repair, refurbishing, maintenance, or modification and the vending device is replaced temporarily by the owner or lessor with another vending device, the replacement vending device must have a valid decal affixed to it in a visible location. The decal may be either an annual or special decal and may be purchased either by the owner, lessor or registrant of the vending device. The decal on the replaced vending device may not be transferred to the replacement vending device.

D. PENALTIES - Any person who makes a vending device available to the general public for use and operation without a valid and current annual or special vending device decal being affixed shall be liable for the decal fee in the amount prescribed in paragraph

C(2) above plus a penalty of \$100 per vending device. Such failure to obtain a decal is a Class C misdemeanor.

E. FORFEITURE

1. A vending device which does not have a valid and current decal shall be subject to forfeiture to the State of Arkansas. The Director, sheriff, or other law enforcement officer shall seize the vending device and seal its coin slots. The vending device may not be moved from its location without authorization of the Director.

2. Upon seizure of the device, the device and any cash within it shall be deemed to be in the possession of the Director. The Director shall give the vending device owner and any known registrant 30 days written notice at their last known addresses of an administrative hearing on the vending device forfeiture. The Director shall also assess the applicable decal fee plus penalty against the owner and any registrant, jointly and severally.

3. If the hearing officer determines that the vending device and any cash within it should be forfeited, he shall issue a written decision directing the sale of the device and sustaining the fee and penalty assessment. The vending device owner or registrant may pursue their administrative remedies under Ark. Code Ann. §26-18-405(d)(4) [revision request].

4. After the Director issues a final notice of assessment and forfeiture, the vending device owner or registrant may pursue judicial remedies under Ark. Code Ann. §26-18-406 by either paying the assessed fee and penalty under protest or by filing a bond in

twice the amount of the decal fee and penalty, and filing suit in chancery court.

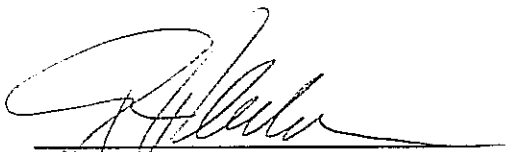
5. The Director shall provide the vending device owner at his last known address with at least 30 days written notice of the sale of the vending device. At least thirty (30) days prior to sale, the Director shall also either 1) post a notice of sale in five (5) conspicuous places in the county of the sale, or 2) publish notice of sale in a newspaper of general circulation in the county of the sale.

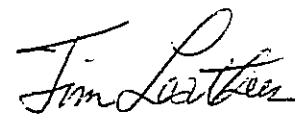
6. The sale of the vending device by the Director, his authorized agent, or the county sheriff, may occur either in the county where the vending device was seized or Pulaski County. The proceeds of the sale will be applied in the following order:

- a. Costs of seizure and sale of the device;
- b. Taxes, delinquent decal fees and penalties due on the device;
- c. Remaining balance to the owner.

7. Any cash within the vending device is forfeited to the State of Arkansas as an additional penalty for which no notice of assessment is required.

DATED this 4th day of June, 1993.


Jim Pledger
Director, Department of
Finance and Administration


Tim Leathers
Commissioner of Revenues

FINDING OF IMMINENT PERIL
AND STATEMENT OF REASONS

Acts 1037 and 1233 of 1993 become effective on July 1, 1993. These require certain coin-operated vending devices to be registered and contain decals. The acts also provide for forfeiture of unregistered devices. These acts represent a substantial change in the law affecting vending devices. Accordingly, there exists an imminent peril to the welfare of the State of Arkansas.

In order to ensure understanding of and compliance with Acts 1037 and 1233, this emergency regulation as authorized by Ark. Code Ann. §26-15-204 is necessary. This emergency regulation shall be effective immediately upon filing with the Secretary of State.