

ARKANSAS REGISTER

FILED

AR. REGISTER DIV.

94 AUG 18 PH 3:42

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

BY _____

Transmittal Sheet



W.J. "BILL" McCuen

Secretary of State

State Capitol

Little Rock, Arkansas 72201-1094

For Office
Use Only:

Effective Date 8/18/94 Code Number 006.05.94-002

Name of Agency Department of Finance & Administration

Department Revenue Division

Contact Person John Theis Telephone (501) 682-7030

Statutory Authority for Promulgating Rules 26 - 18 - 101

Intended
Effective Date

Date

Legal Notice Published

8/18/1994

☒ Emergency

Final Date for Public Comment

☐ 20 Days

Filed With Legislative Council

After Filing

Reviewed by Legislative Council

☐ Other

Adopted by State Agency

8/12/1994

CERTIFICATION OF AUTHORIZED OFFICER

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

John Theis
SIGNATURE
Chief Counsel
TITLE
8/18/94
DATE

006.05.94--002

FILED

EMERGENCY REGULATION 1994-1 AR. REGISTER DIV.

94 AUG 18 PM 3:42

FINDING OF IMMINENT PERIL AND STATEMENT
OF REASONS THEREFORE

"BILL" McCUEN
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

BY _____

Act 1059 of 1993 will be effective September 1, 1994. The Act provides for certain changes in the leasing and sale of motor vehicles. The current Department rules and regulations concerning GR-12 Sales of Motor Vehicles, Trailers and Semitrailers and GR-20 Rentals and Leases will become obsolete on September 1, 1994.

Ark Code Ann. §26-18-301 (1992 Repl.) provides that the Commissioner of Revenues shall have authority to promulgate rules and regulations when necessary to administer and enforce state tax law.

To eliminate possible confusion by taxpayers and to ensure understanding of and compliance with Act 1059 of 1993 and to prescribe procedures for the implementation of the law, emergency regulations as authorized by Ark. Code Ann. §25-15-204 (h) (1993 Supp.) are to be effective beginning September 1, 1994.

For the above reasons it is found that there exists an imminent peril to the welfare of the State of Arkansas and the attached emergency regulations, regarding the application of Act 1059 of 1993 are necessary.

Executed this 16 day of August, 1994.



Timothy J. Leathers
Commissioner of Revenues
Department of Finance and Administration

EMERGENCY REGULATION 1994-1

FILED
AR. REGISTER DIV.

AMENDMENTS TO ARKANSAS GROSS RECEIPTS REGULATIONS (11/1/92)

94 AUG 18 PM 3:42

W.J. "DILL" MCCUEN
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

These amendments to the Arkansas Gross Receipts Regulations are necessary in order to properly implement and ~~enforce Act 1059-~~ of 1993 (effective 9/1/94) and for other purposes.

SECTION 1: Gross Receipts Regulation GR-12 is amended to read as follows:

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 unless the exemption described in Paragraph D of this regulation applies. 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.
 - f. Transfer of title to a newly-formed partnership or corporation by the vehicle owner if the newly-formed partnership, corporation or limited liability company is merely a change of form of an ongoing business operated by the vehicle owner. Example: John Smith operates a store in the name John Smith d/b/a Smith's Store. Mr. Smith owns a car which is titled in the name "John Smith." Mr. Smith decides to incorporate his business and transfers all assets to the corporation including the car. The transfer of the vehicle to the corporation is not taxable.
 - g. Transfer of title by a dissolving partnership, corporation or limited liability company to a partner, shareholder or member as a distribution to the partner, shareholder or member.

D. EXEMPTION FOR SHORT-TERM RENTAL VEHICLES

1. The gross receipts or gross proceeds derived from the sale of a motor vehicle to a person engaged in the business of renting licensed motor vehicles shall be exempt from sales and use tax if:
 - a) the motor vehicle is used exclusively for the purpose of rentals for a period of less than thirty (30) days;
 - b) the person has a short-term rental exemption certificate and retail sales tax permit issued by the Commissioner; and,

- c) the motor vehicle is titled and registered in the name of the person holding the short-term rental certificate.
2. Definitions - The following terms for purposes of this regulation and regulation GR-20 shall have the following meanings:
- a. "Licensed motor vehicle" means any automobile, truck, van, motorcycle, truck tractor or other self-propelled vehicle required to be licensed for highway use under the law of Arkansas. A vehicle which is titled and registered in a state other than Arkansas but which is the type of vehicle that would be required to be registered for highway use in Arkansas is a licensed motor vehicle. Trailers and semi-trailers are not motor vehicles. The term "motor vehicle" does not include special mobile equipment as defined in Ark. Code Ann. §27-14-211 or implements of husbandry as defined in Ark. Code Ann. §27-14-212.
- b. "Engaged in the business of renting licensed motor vehicles" means that the person regularly and persistently rents licensed motor vehicles for gain or profit.
- c. "Short-term rental exemption certificate" means a certificate issued by the Commissioner through the Sales and Use Tax Section which provides that the person is registered to engage in the short-term rental of licensed motor vehicles.
3. In order to claim the exemption from sales and use tax, the motor vehicle purchaser must provide a copy of the short-term rental exemption certificate to the Revenue Division Office at the time of registration and titling of each vehicle along with the other documents required by law for registration and titling. The certificate will become a part of the permanent record of the Office of Motor Vehicles. A separate copy of the certificate must be presented for each vehicle registered and titled.
- 4.(a) The exemption is valid only if the motor vehicle is used exclusively for short-term rentals of less than thirty (30) days. If the motor vehicle is used for any other purpose, then the exemption granted at the time of registration is revoked and the purchaser is obligated to pay the applicable sales or use tax, plus penalty and interest as provided by the Arkansas Tax Procedure Act.
- (b) Uses of the motor vehicle which will cause the exemption to be revoked are: (1) one or more rentals of the vehicle for 30 days or more; (2) use of the vehicle by anyone other than a short-term lessee for business or personal purposes. Driving the vehicle to the nearest repair facility for purposes of repairs will not cause the exemption to be revoked.
5. See GR-20 for application of the rental vehicle tax and

record keeping requirements.

E. 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.

F. EFFECTIVE DATES

1. The effective date of Act 3 of 1991 is May 1, 1991. For purposes of determining whether a sale occurred before the effective date of Act 3 of 1991, the date on the bill of sale, contract, or other documents provided by the taxpayer controls.
2. The effective date of Act 1059 of 1993 is September 1, 1994. A vehicle purchased on or after September 1, 1994 is eligible for the sales and use tax exemption described in Paragraph D of this regulation if the bill of sale, contract or other documents reflect that title or possession of the vehicle passed to the purchaser on or after September 1, 1994.

SECTION 2: Gross Receipts Regulation GR-20 is amended to read as follows:

GR-20. LEASES AND RENTALS:

- A. 1. 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.

2. Definitions:

- a) As used in this regulation, the term "commercial shipping" means the service of transporting the personal property of another for gain or profit.
- b) As used in this regulation, the term "motor vehicle" means a vehicle which is self-propelled and is required to be registered for use on the highway.
- c) As used in this regulation, the term "vehicle" means every device in, upon, or by which any person or property is, or may be transported upon a highway and which is required to be registered for use on the highway.

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. Long term 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

Vehicles):

1. a) 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.
 - b) The tax does not apply to:
 - (1) farm machinery and equipment;
 - (2) vehicles, including diesel trucks, trailers and semi-trailers, required to be licensed for highway use. Vehicles not otherwise exempt and which are not registered for highway use are subject to the tax.
 - (3) 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: [Effective until September 1, 1994]

- 1.a) 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 licensed motor vehicles. See GR-12(D)(2) for definitions. A "short-term rental" means a lease or rental of a motor vehicle for a period of less than thirty (30) days.
 - b) The tax does not apply to:
 - (1) rentals of diesel trucks for commercial shipping;
 - (2) trailers, semi-trailers or other non-motor vehicles.
 - (3) 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 [expires August 31, 1994]:
 - (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.

(c) Any rental vehicle credit remaining after August 31, 1994 may not be used to offset any rental vehicle tax liability incurred on or after September 1, 1994. The remaining credit may be used for rental vehicle tax liability which arises before September 1, 1994 or which is assessed against the lessor for period before September 1, 1994. The credit is non-transferable and may not be used against any other tax liability. No refunds will be made for unused rental vehicle tax credit.

E. Short-term Rentals of Motor Vehicles: [Effective September 1, 1994.]

1. a) In addition to the state and local gross receipts (sales) tax, every person in the business of renting licensed motor vehicles in Arkansas must collect rental vehicle tax on short-term rentals of licensed motor vehicles. See GR-12(D)(2) for definition of "licensed motor vehicle." The rate of the rental vehicle tax is equal to the sum of the Arkansas Gross Receipts tax (currently 4.5%) plus the local gross receipts tax rate of the city and county in which the lessor's business is located. A lessor with no physical business location should collect the city and county portion of the rental vehicle tax based on the city and county in which the lessee resides. A "short-term rental" means a lease or rental of a motor vehicle for a period of less than thirty (30) days.
 - b) The rental vehicle tax does not apply to:
 - (1) rentals of diesel trucks for commercial shipping;
 - (2) semi-trailers, trailers or other non-motor vehicles.
 - (3) 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. The lessor must retain for at least 6 years records which establish the rental history of each vehicle including copies of written contracts with the lessee and mileage incurred on the vehicle by each lessee. Failure to adequately document the exclusive use of the vehicle for short-term rentals will constitute a presumption that the vehicle was not exclusively used for short term

rentals resulting in the revocation of the sales tax exemption claimed at the time of registration of the vehicle. See GR-12.

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.

G. The chart below sets forth the various taxes which must be collected on the described short term rentals. "Resid. Moving" means the residential moving tax levied under Ark. Code Ann. §26-52-312. "Short term rent. tax" means the short term rental tax levied under Ark. Code Ann. §26-52-311.

SHORT-TERM RENTALS Less than 30 days	State Sales Tax 4.5% + local	Resid. Moving Tax 4.5%	Rental Vehicle Tax 4.5% + local	Short Term Rent. Tax 1%	Total State Tax Rate
TRUCKS - Diesel For commercial shipping	Y	N	N	N	4.5
TRUCKS - Diesel For residential moving	Y	Y	N	N	9.0
TRUCKS - Diesel For purpose other than residential move or commercial shipping	Y	N	Y	N	9.0
TRUCKS - Gasoline For residential moving	Y	Y	N	N	9.0
TRUCKS - Gasoline For any other purpose	Y	N	Y	N	9.0
CARS, MOTORCYCLES	Y	N	Y	N	9.0

SHORT TERM RENTALS Less than 30 days	State Sales Tax 4.5% + Local	Resid. Moving Tax 4.5%	Rental Vehicle Tax 4.5% + Local	Short Term Rent. Tax 1%	Total State Tax Rate
TRAILERS W/VEHICLE For residential moving	Y	Y	N	N	9.0
TRAILERS W/VEHICLE For commercial ship- ping with diesel truck	Y	N	N	N	4.5
TRAILERS W/VEHICLE For other purpose	Y	N	Y ¹	N	9.0 ₁
TRAILERS W/O VEHICLE For residential moving	Y	N	N	N	4.5
TRAILERS W/O VEHICLE For commercial shipping	Y	N	N	N	4.5
TRAILERS W/O VEHICLE For other purpose	Y	N	N	N	4.5
MOVING MATERIALS Sale or lease with truck for residential moving [same invoice]	Y	Y	N	N	9.0
MOVING MATERIALS Sale for non- residential move or w/o truck	Y	N	N	N	4.5
MOVING MATERIALS Lease for non- residential move or w/o truck	Y	N	N	Y	5.5

¹ If the consideration for the lease of the vehicle is not separately stated from the consideration for the lease of the trailer, the rental vehicle tax will apply to the total consideration for the rental of both vehicles.