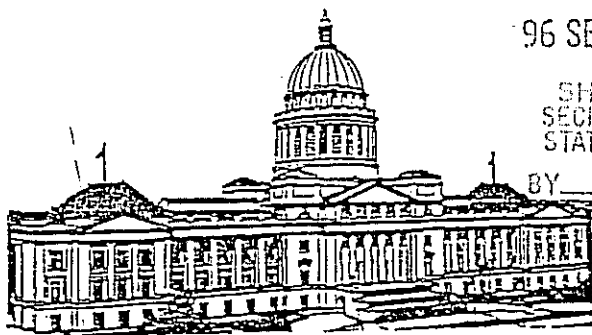


# ARKANSAS REGISTER

FILED  
AR. REGISTER DIV.

96 SEP 19 PM 3:4 Transmittal Sheet

SHARON PRIEST  
SECRETARY OF STATE  
STATE OF ARKANSAS



BY

Sharon Priest  
Secretary of State  
State Capitol Rm. 01  
Little Rock, Arkansas 72201-1094

For Office  
Use Only:

Effective Date 9/19/96 Code Number 006.05.96--008 <sup>007</sup>

Name of Agency Department of Finance & Administration

Department Revenue Division

Contact Person Don Zern Phone 682-7751

Statutory Authority for Promulgating Rules Arkansas Code Annotated 26-18-101 et seq.

Intended Effective Date

Legal Notice Published : . . . . . No <sup>Date</sup>

☒ Emergency

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☐ Other

Reviewed by Legislative Council . . . . .

Adopted by State Agency . . . . . 10/1/96

## CERTIFICATION OF AUTHORIZED OFFICER

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

Donald J. Zern  
Signature

682-7751  
Phone Number

Taxpayer Information Officer  
Title

September 19, 1996  
Date

EMERGENCY GROSS RECEIPTS REGULATION 1996 SEP 19 PM 3:44

On July 15, 1996, the Arkansas Supreme Court ruled in State of Arkansas v. Staton, Case No. 96-215, that the gross receipts from the sale of extended service contracts covering motor vehicles were not subject to sales tax. This regulation is necessary in order to follow the ruling of the court. The provisions of this regulation will become effective on October 1, 1996. In the event that service contracts covering taxable services become subject to sales tax, this regulation shall become void.

**PART I: NEW REGULATION**

**A. Taxation of Service Contracts**

1. The gross receipts derived from the separate sale of service contracts or warranties are subject to sales tax only if the following factors exist:

- a. The contract includes the provision or reimbursement of taxable services to be performed in the future;
- b. The contract includes the provision or reimbursement of any services that are to be performed in the future on a regular basis, such as inspection or regular maintenance; and,
- c. The contract covers a specified period of time and the fee for each of the services to be performed is not separately stated.

2. A taxable contract would include a contract which for a single fee covered the repair, regular maintenance or regular inspection of heating and cooling equipment, electrical devices and appliances, computer equipment, boats, and motor vehicles. Repairs and maintenance are taxable services. The contract is taxable because the contract provides for regular maintenance or inspection of the property. These services are certain to be performed in the future and the entire consideration for the contract is taxable. If the contract separately stated the charge for repairs and the charge for the routine services, then only the fee for those separately stated taxable services would be taxable.

3. A non-taxable contract would include a contract which for a single fee covered only the repair or any other contingent service of an item of tangible personal property. An extended service contract or extended warranty covering a motor vehicle or other item of property which only provided coverage for specified repairs would not be taxable. Repairs are not regularly performed and are needed only when a component of the item is broken. Because the services might never be performed, the contract is not taxable.

## B. Taxation of Services Performed Under Service Contracts

1. To the extent that a person providing a taxable service receives gross receipts directly from the customer or as payment under a **non-taxable** service contract, those receipts are subject to sales tax. Any parts used in providing the service are also subject to tax on the retail price.

Example A: Customer purchases an extended service contract covering only stated repairs to his motor vehicle. Customer does not pay sales tax on the consideration for the extended service contract. Mechanic makes repairs of \$1,500 to customer's transmission and the repairs and parts used are covered under the extended service contract. The transmission repairs and parts are taxable regardless of whether the customer pays the mechanic or whether the mechanic receives payment under the extended service contract.

Example B: Customer purchases a service contract covering regular maintenance and repairs of his heating and cooling system. Customer paid sales tax on the consideration for the contract. Any additional payments received by the repair person for services or parts covered by the contract are not subject to sales tax. Any deductible amount, non-covered labor charges or parts are taxable.

Example C: Customer purchases a service contract for \$750 from XYZ for the repair of his computer which he also purchased from XYZ. XYZ agrees to provide certain listed repairs and parts for a period of 3 years with no additional cost to the customer. The service contract is not taxable because it only provided for contingent repair services. When XYZ provides the listed repairs and parts, there is no sales tax due because XYZ does not receive any additional consideration as all future parts and repairs were paid for by customer at the time the contract was purchased.

2. Payments received by a service provider from a product manufacturer based on the manufacturer's warranty are not subject to tax. For example, a vehicle manufacturer provides a warranty for a specified time covering certain vehicle components. There is no separate charge to the customer for the warranty which "runs" with the vehicle. Any parts and repair costs performed by a dealer which are covered by the warranty are reimbursed by the manufacturer. These manufacturer reimbursements are not taxable.

3. A repair facility may purchase parts used in performing repairs exempt as purchases for resale. Any parts withdrawn from inventory for use in performing repairs are not subject to tax as withdrawals from stock. Tax will be collected on the repair parts and charges in accordance with paragraph 1 and examples above.

PART II: AMENDMENT TO GROSS RECEIPTS REGULATIONS GR-12 AND GR-18

GR-12(B)(f) is amended to read as follows:

"f. Warranties: Effective immediately the sale of extended service contracts or extended warranties which are non-taxable pursuant to Emergency Regulation 1996-4 are not subject to tax. Vehicle dealers are no longer required to collect sales tax on sales of non-taxable warranties. Vehicle purchasers are no longer required to pay sales tax on non-taxable warranties at the time of registration. **In the event that a vehicle dealer sells an extended service contract which is deemed taxable pursuant to Emergency Regulation 1996-4, then the dealer must collect tax on the consideration for the contract regardless of whether the contract is sold along with the vehicle or subsequent to the sale of the vehicle.**"

GR-18(F) is amended to read as follows:

"F. See Emergency Regulation 1996-4."

Issued this 19<sup>th</sup> day of Sept, 1996 in the City of Little Rock, Arkansas.



Richard A. Weiss, Director  
Department of Finance and Administration



Tim Leathers, Commissioner of  
Revenue and Deputy Director  
Department of Finance and  
Administration

FINDING OF IMMINENT PERIL  
AND STATEMENT OF REASONS

On July 15, 1996, the Arkansas Supreme Court ruled in State of Arkansas v. Staton, Case No. 96-215, that the gross receipts from the sale of extended service contracts covering motor vehicles were not subject to sales tax. This regulation is necessary in order to follow the ruling of the court and to implement the collection of tax on taxable repair services. The decision of the Arkansas Supreme Court substantially alters the manner in which sales tax is applied to service contracts and repairs. Accordingly, there exists an imminent peril to the welfare of the State of Arkansas.

In order to ensure the understanding of and compliance with the decision of the court, this emergency regulation as authorized by Ark. Code Ann. §26-15-204 is necessary. The provisions of this regulation will become effective on October 1, 1996.

DEPARTMENT: Department of Finance and Administration  
DIVISION: Revenue Division  
PERSON COMPLETING THIS STATEMENT: Ed Hicks, Excise Tax Administrator  
TELEPHONE NO.: (501) 682-7200  
FAX NO.: (501) 682-7900

FINANCIAL IMPACT STATEMENT

To comply with Act 884 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE: Revenue Emergency Regulation 1996-4.

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes: No: **XX**
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. **Does Not Apply**

1995-96 Fiscal Year

General Revenue: \_\_\_\_\_  
Federal Funds: \_\_\_\_\_  
Cash Funds: \_\_\_\_\_  
Special Revenue: \_\_\_\_\_  
Other: \_\_\_\_\_  
Total: \_\_\_\_\_

**Does Not Apply**

1996-97 Fiscal Year

General Revenue: \_\_\_\_\_  
Federal Funds: \_\_\_\_\_  
Cash Funds: \_\_\_\_\_  
Special Revenue: \_\_\_\_\_  
Other: \_\_\_\_\_  
Total: \_\_\_\_\_

**Does Not Apply**

4. What is the total estimated cost by fiscal year to any party subject to the, proposed, amended, or repealed rule or regulation? **Unknown**

1995-96 Fiscal Year

**Unknown**

1996-97 Fiscal Year

**Unknown**

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

1995-96 Fiscal Year

**No additional cost**

1996-97 Fiscal Year

**No additional cost**