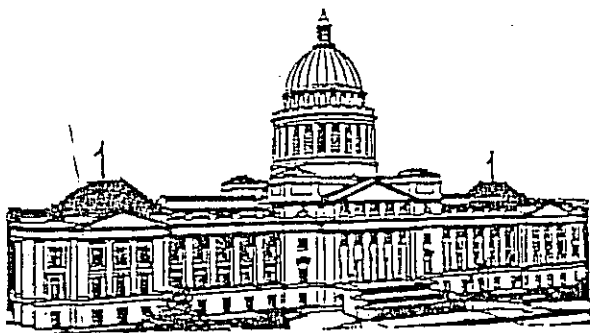


ARKANSAS REGISTER

Transmittal Sheet



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

For Office Use Only: Effective Date 7/24/97 Code Number 006.05.97--023

Name of Agency Department of Finance & Admn.

Department Revenue Division

Contact Person Don Zern Phone 682-7751

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

Intended Effective Date

Legal Notice Published : Aug. 11-17, 1997

☒ Emergency

Final Date for Public Comment N/A

☐ 10 Days After Filing

Filed With Legislative Council July 24, 1997

☐ Other

Reviewed by Legislative Council _____

Adopted by State Agency July 24, 1997

CERTIFICATION OF AUTHORIZED OFFICER

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

Don Zern
Signature

682-7751

Phone Number

Taxpayer Information Officer

Title

July 24, 1997

Date

FILED
97 JUL 24 AM 11:56
SHARON PRIEST
SECRETARY OF STATE
STATE OF ARKANSAS

DEPARTMENT: Department of Finance and Administration
DIVISION: Revenue Division
PERSON COMPLETING
THIS STATEMENT: Ed Hicks, Excise Tax Administrator
TELEPHONE NO.: (501) 682-7200
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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: **Gross Receipts Regulations -- GR-9(C) [Service Contracts, Maintenance Agreements & Extended Warranties]; GR-12(D) [Exemption For Rental Motor Vehicles]; and GR-20(C)(E) and (G) [Long-Term Lease of Vehicles].**

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 Does this proposed, amended, or repealed rule or regulation have a financial impact?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? **None**

1997-98 Fiscal Year

None

1998-99 Fiscal Year

None

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

1997-98 Fiscal Year

No additional cost

1998-99 Fiscal Year

No additional cost

FILED
97 JUL 24 AM 11:56
SHARON PREST
SECRETARY OF STATE
STATE OF ARKANSAS
BY _____

**FINDING OF IMMINENT PERIL
AND STATEMENT OF REASONS**

During the 81st General Assembly, the Arkansas Legislature passed Act 1076 of 1997.

This act provided the following changes to existing law:

- 1) Imposed sales tax on the gross receipts derived from the sale of service contracts covering taxable services;
- 2) Provided an exemption from sales and use tax for motor vehicles used for long-term lease; and,
- 3) Levied a new 1.5% long-term rental tax on the lease of motor vehicles.

This regulation is necessary in order to provide an orderly implementation of Act 1076 and to provide needed direction for motor vehicle lessors. Without this regulation, lessors of motor vehicles may not properly claim the exemption or collect tax. The provisions of this regulation will become effective on August 1, 1997.

FILED
AR. REGISTER DIV.
97 JUL 24 AM 11:57
SHARON FINEST
SECRETARY OF STATE
STATE OF ARKANSAS
BY _____

EMERGENCY REGULATION

These amendments to the Arkansas Gross Receipts Tax Regulations are necessary in order to properly implement and enforce Act 1076 of 1997 which becomes effective on August 1, 1997.

I. Gross Receipts Regulation GR-9(C) is amended to read as follows:

"C. Service Contracts, Maintenance Agreements, & Extended Warranties

1. Sales tax shall apply to the gross receipts derived from the sale of contracts, including service contracts, maintenance agreements and extended warranties, which in whole or in part provide for the future performance of or payment for services which are subject to gross receipts tax. The seller of the contract must collect and remit the tax due on the sale of the contract except when the contract is sold simultaneously with a motor vehicle in which case the purchaser of the vehicle shall pay sales tax on the purchase of the contract at the time of vehicle registration.

2. Sales tax shall not be collected from the consumer on labor or parts used in the performance of services covered by a taxable service contract, maintenance agreement or extended warranty.

3. Examples:

a. Consumer purchases a new vehicle and an extended warranty at the same time. When customer registers the vehicle, he will pay sales tax on the purchase price of the vehicle and the purchase price of the extended warranty. Service and parts provided under the warranty will not be subject to sales tax.

b. Consumer purchases a new computer and a service contract. The seller of the computer collects sales tax on the purchase price of the computer and the service contract. Service and parts provided under the warranty will not be subject to sales tax.

4. If the seller of a taxable contract allows the purchaser to pay for the contract in monthly or other periodic installments, then the seller may report and remit sales tax on the periodic payments.

5. Emergency Regulation 1996-4 is repealed effective July 31, 1997. This amendment is effective on August 1, 1997."

II. Gross Receipts Regulation GR-12(D) is amended to read as follows:

"D. EXEMPTION FOR RENTAL MOTOR 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 person has a rental exemption certificate and retail sales tax permit issued by the Commissioner; and,

b) the motor vehicle is titled and registered in the name of the person holding the 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. "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 rental of licensed motor vehicles for either short-term or long-term use.

d. "Short-term rental" means rental for less than thirty (30) days.

e. "Long-term rental" means rental for thirty (30) days or more. Whether a rental of a motor vehicle is considered long-term or short-term is dependent on the written contract and period for which payment is initially due.

Example: If a vehicle is rented initially for 14 days with the rental contract reflecting a

term of rental for 14 days and the customer subsequently decides to continue renting the vehicle for 21 more days, the transaction is treated as two short-term rentals.

3. In order to claim the exemption from sales and use tax, the motor vehicle purchaser must provide a copy of the 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 and all information must be provided as requested on the certificate. A short-term rental exemption certificate issued previously may not be used to register a vehicle intended for long-term rental. The long-term lessor must register with the Sales and Use Tax Section and obtain a new rental exemption certificate. 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 or long-term rentals. 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. Use of the motor vehicle by anyone other than a short-term or long-term lessee for business or personal purposes will cause the exemption to be revoked. For example, use of a vehicle registered as a leased vehicle as an airport shuttle or free customer "loaner" car will cause the exemption to be revoked. 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, long-term rental tax and record keeping requirements."

III. Gross Receipts Regulation GR-20(C) is amended to read as follows:

"C. Long-term Lease of Vehicles

1. a. With respect to motor vehicles leased on a long-term basis on or after August 1, 1997, the lessor has the option of: (i) remitting sales or use tax on the purchase price of the motor vehicle

at the time of registration (Option 1), or, (ii) registering the vehicle exempt from tax (Option 2).

b. If the lessor chooses Option 1, then the lessor will not collect sales tax or long-term rental tax on the monthly (or other periodic) lease payments due from the lessee. No tax shall be collected by the lessor on the lease of vehicles which have been previously titled and registered in another state by the lessor if sales or use tax was paid to the other state on the purchase price of the vehicle and the total tax paid to the other state equals or exceeds the combined Arkansas state and local use tax as applied to the purchase price of the vehicle.

c. If the lessor chooses Option 2, then the lessor must collect sales tax and long-term rental tax on the entire monthly (or other periodic) lease payment due from the lessee as consideration for the lease of the vehicle. The lessor must report and remit sales tax and long-term rental tax regardless of whether the lessee timely makes the lease payments required in the lease agreement. Assignment of a lease agreement does not relieve the lessor from the obligation to remit sales or use tax and long-term rental tax. The lessor's obligation to remit tax ends at the earlier of the expiration of the lease term, or the valid termination of the lease as provided by the terms of the written lease agreement.

d. Trailers and semi-trailers are not "motor vehicles" and may not be registered exempt under Act 1076 of 1997. The long-term lease of a trailer which has been registered and titled in Arkansas is not subject to gross receipts or long-term rental tax.

e. A vehicle used for long-term or short-term rental which was registered in Arkansas and Arkansas sales or use tax paid or credited prior to August 1, 1997 may be leased on a long-term basis without the collection of sales tax and long-term rental tax. This presumes that the lessor remains the same. If the original lessor sells the vehicle on or after August 1, 1997, then the new lessor has the options described in paragraph 1, above.

f. A motor vehicle which was registered exempt from sales or use tax prior to August 1, 1997 as a short-term rental vehicle may be subsequently leased on a long-term basis. The lessor must choose Option 1 or Option 2 described in paragraph 1, above.

i. If the lessor chooses Option 1, then the lessor must only re-title the vehicle in the lessor's name and pay sales tax at the time of registration. The sales tax will be based on the

lessor's purchase price of the vehicle.

ii. If the lessor chooses Option 2, then the lessor must register with the Sales and Use Tax Section as a long-term rental business, obtain a new rental exemption certificate from the Sales and Use Tax Section and re-title the vehicle in the lessor's name. No sales tax will be paid at the time of registration; however, the lessor must collect and remit sales tax and long-term rental tax on the monthly (or other periodic) lease payments.

2. DEFINITIONS:

a. A motor vehicle is "leased on a long-term basis on or after August 1, 1997" when the written lease agreement covering the vehicle is signed by the lessee on or after August 1, 1997 and the vehicle was not registered and titled in Arkansas by the lessor before August 1, 1997..

b. "Entire monthly (or other periodic) lease payment" includes all charges, fees, taxes, interest, penalties, late payments or other amounts included in the lease agreement as due and payable by the lessee to the lessor on a monthly or other periodic basis as consideration for the lease of the motor vehicle. With respect to leases containing a terminal rental adjustment clause (TRAC), the upward adjustment of a lease payment is considered part of the entire monthly payment subject to tax. In the event that a lease payment is adjusted downward under a TRAC, the lessor is entitled to take a deduction from gross receipts for such downward adjustment if the lessor refunds to the lessee taxes previously collected from the lessee.

c. "Long-term rental tax" means the 1.5% tax levied by Act 1076 of 1997 on the entire monthly (or other periodic) payment for the long-term lease of a motor vehicle required to be licensed for use on the highway. The tax is to be collected by the lessor from the lessee and remitted to the Department of Finance and Administration. The long-term rental tax does not apply to gross receipts from the long-term lease of:

- i. diesel trucks leased for commercial shipping,
- ii. farm machinery or farm equipment leased for a commercial purpose,
- iii. trucks leased for residential moving or shipping,
- iv. special mobile equipment or other motor vehicles not required to be licensed, and
- v. trailers. If, however, a motor vehicle is leased on a long-term basis with a trailer,

then the long-term rental tax applies to the total consideration for the lease of the motor vehicle and trailer unless the consideration for the lease of the motor vehicle is separately stated from the consideration for the lease of the trailer.

d. "Long-term rental" means rental or lease of a motor vehicle for thirty (30) days or more. Whether a rental of a motor vehicle is considered long-term or short-term is dependent on the written contract and period for which payment is initially due. If a vehicle is rented initially for 14 days with the rental contract reflecting a term of rental for 14 days and the customer subsequently decides to continue renting the vehicle for 21 more days, the transaction is treated as two short-term rentals, not one long-term rental.

e. "Lessor" means the person who owns the motor vehicle at the time that the lessee signs the lease agreement. The lessor is presumed to be the vehicle owner if the vehicle is titled in the name of the lessor or if the lessor is the last person to whom the vehicle title has been assigned at the time of the lease agreement. "Lessor" does not include an assignee of the lease agreement or of the vehicle when the assignment occurs after the lessee signs the lease.

4. a. Sales or use tax to be collected and remitted by the lessor means Arkansas gross receipts or compensating use tax (the current rate is 4.625%) plus local city and county sales or use tax. The applicable local tax is the sales or use tax imposed by the city and county in which the lessor resides.

b. A lessor with a business location in Arkansas and vehicles leased to an Arkansas resident collects and remits local sales tax based on the city and county of the lessor's business location. A lessor with no business location in Arkansas and with vehicles leased to an Arkansas resident collects local sales tax based on the city and county in which the lessee resides. A lessee is presumed to reside in the county in which the vehicle is garaged or assessed for property tax purposes.

5. a. If a vehicle is initially leased to an Arkansas resident under Option 2 and the lessee later becomes a resident of another state during the term of the lease, then the lessor is no longer required to collect and remit Arkansas sales tax and long-term rental tax on the remainder of the monthly lease payments. The lessor must maintain records which accurately reflect that the vehicle is no longer leased to an Arkansas resident.

b. If a vehicle is initially leased to a resident of another state and the lessee later becomes a resident of Arkansas during the term of the lease, then the lessor must begin collecting and reporting Arkansas sales tax and long-term rental tax only if no tax was paid to another state when the vehicle was registered and the lessor chooses Option 2. If no tax was paid to another state and the lessor chooses Option 1, then the lessor must pay state and local use tax on the stated invoice price of the vehicle and not collect sales or long-term rental tax from the lessee. If tax was paid to another state and the vehicle was first registered in another state, then the lessor is entitled to credit against the Arkansas use tax for taxes paid to the other state, and pay the balance due, if any.

Example 1: Lessee is a Georgia resident at the inception of the 24 month vehicle lease which notes the invoice price of the vehicle as \$30,000. The vehicle was registered in Georgia; however, no Georgia sales tax was paid. The lessor collected applicable Georgia sales taxes on the monthly rental payments. One year later, Lessee becomes an Arkansas resident and brings his leased car to Arkansas. Lessor chooses Option 1. When Lessee (or Lessor) registers the vehicle in Arkansas, Arkansas use tax is due based on the invoice price of \$30,000. Lessor will not be obligated to collect and remit tax on the monthly lease payments. No credit is given for taxes paid on the monthly lease payments.

Example 2: Lessee is a Georgia resident at the inception of the 24 month vehicle lease which notes the invoice price of the vehicle as \$30,000. The vehicle was registered in Georgia; however, no Georgia sales tax was paid. The lessor collected applicable Georgia sales taxes on the monthly rental payments. One year later, Lessee becomes an Arkansas resident and brings his leased car to Arkansas. Lessor chooses Option 2. Lessor must obtain an Arkansas sales tax permit and rental exemption certificate before the vehicle may be registered tax free. Lessor must collect and remit tax on the monthly lease payments.

Example 3: Lessee is a Georgia resident at the inception of the 24 month vehicle lease which notes the invoice price of the vehicle as \$30,000. The vehicle was registered in Georgia

and Georgia sales tax paid on the invoice price. The Georgia sales tax rate exceeds the Arkansas sales tax rate. One year later, Lessee becomes an Arkansas resident and brings his leased car to Arkansas. Lessor is not required to collect and remit tax on the monthly lease payments because tax was paid to Georgia when the vehicle was registered.

Example 4: Lessee is a Georgia resident at the inception of the 24 month vehicle lease which notes the invoice price of the vehicle as \$30,000. The vehicle was registered in Georgia and Georgia sales tax paid on the invoice price. The Georgia sales tax rate is less than the Arkansas sales tax rate. One year later, Lessee becomes an Arkansas resident and brings his leased car to Arkansas. If Lessor chooses Option 1, Lessor is to pay the difference between the Georgia tax and Arkansas tax at registration. If Lessor chooses Option 2, Lessor must obtain an Arkansas sales tax permit and rental certificate. Lessor must collect and remit tax on the monthly rental payments.

6. DIRECT PAY PERMIT

a. Option 1: Sales or use tax must be paid at the time of registration. A lessee holding a direct pay permit may not accrue and remit sales or use tax on the vehicle.

b. Option 2: If a lessee holds a direct pay sales tax permit, then the lessor is not obligated to collect state and local sales tax or long-term rental tax from the lessee. The lessor must maintain records reflecting that the lessee intends to report and remit the tax on its monthly sales tax report under its direct pay permit number. No Manufacturer's Investment Credit may be taken to offset liability of a direct pay permit holder for long-term rental tax or short-term rental tax."

IV. Gross Receipts Regulation GR-20(E)(3) is amended to read as follows:

"E.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 rentals will constitute a presumption that the vehicle was not exclusively used for rentals resulting in the revocation of the sales tax exemption claimed at the time of registration of the vehicle. See GR-12."

V. Gross Receipts Regulation GR-20(G) is amended to read as follows:


"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 4.625% + local	Residential Moving Tax 4.5%	Rental Vehicle Tax 4.5% + local	Short Term Rental Tax 1%	Total State Tax Rate
TRUCKS - Diesel For commercial shipping	Y	N	N	N	4.625%
TRUCKS - Diesel For residential moving	Y	Y	N	N	9.125%
TRUCKS - Diesel For purpose other than residential moving or commercial shipping	Y	N	Y	N	9.125%
TRUCKS - Gasoline For residential moving	Y	Y	N	N	9.125%
TRUCKS - Gasoline For any other purpose	Y	N	Y	N	9.125%
CARS, MOTORCYCLES	Y	N	Y	N	9.125%
TRAILERS WITH VEHICLE For residential moving	Y	Y	N	N	9.125%


TRAILERS WITH VEHICLE For commercial shipping with diesel truck	Y	N	N	N	4.625%
TRAILERS WITH VEHICLE For other purpose	Y	N	Y	N	9.125% See note 1 below.
TRAILERS W/O VEHICLE For residential moving	Y	N	N	N	4.625%
TRAILERS W/O VEHICLE For commercial shipping	Y	N	N	N	4.625%
TRAILERS W/O VEHICLE For other purpose	Y	N	N	N	4.625%
MOVING MATERIALS Sale or lease with truck for residential moving - same invoice	Y	Y	N	N	9.125%
MOVING MATERIALS Sale for non-residential move or w/o truck	Y	N	N	N	4.625%
MOVING MATERIALS Lease for non-residential move or w/o truck	Y	N	N	Y	5.625%

1. If the consideration for the lease of the motor 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.

Executed this 24th day of July, 1997.



Richard A. Weiss, Director
Arkansas Department of
Finance and Administration



Tim Leathers, Commissioner of Revenue
Arkansas Department of
Finance and Administration