



STATE OF ARKANSAS

**Department of Finance  
and Administration**

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: Wastewater Treatment Sales Tax Exemption Determination,  
[REDACTED] Project No. [REDACTED]  
Opinion No. 20151009

Dear [REDACTED]

Your October 22, 2015, letter to the Department of Finance and Administration (“DFA”), Revenue Legal Counsel, requesting a legal opinion has been referred to me for a response. You have asked whether the sale of certain machinery and equipment being installed as part of a wastewater treatment facility expansion is tax exempt.

The “Arkansas Gross Receipts” tax, also referred to as the “Sales Tax,” is generally applicable to the sale of tangible personal property and certain enumerated services, unless otherwise exempted. See Ark. Code Ann. § 26-52-301 (Repl. 2014). Tangible personal property is “personal property which may be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses. GR-3(Q). The tax is based on the total value of consideration paid for the taxable property or service. Ark. Code Ann. § 26-52-301; see also Ark. Code Ann. § 26-52-103(13) (Repl. 2014). The Arkansas Compensating (Use) Tax applies to taxable property or services that are purchased outside of the State of Arkansas and delivered for use, storage, or other activities within the State. See Ark. Code Ann. § 26-53-106 (Supp. 2014).

Ark. Code Ann. § 26-52-402(a)(3) provides an exemption for machinery and equipment required by state or federal law or regulations to be installed and utilized (directly or indirectly) by manufacturing and processing plants, cities, or towns in this state to prevent or reduce air or water pollution or contamination that might otherwise result from the operation of the plant or facility. Sales tax exemptions are applied uniformly with Use tax exemptions. Ark. Code Ann. § 26-53-112.

Arkansas Gross Receipts Tax Rule, GR-66(A) provides that a Taxpayer must demonstrate the following to prove entitlement to the exemption:

1. 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
2. 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 Environmental Quality (“ADEQ”) or the United States Environmental Protection Agency.

Further, Arkansas Gross Receipts Tax Rule, GR-66(E) specifically discusses water treatment plants and requires the following conditions for machinery and equipment to qualify for purposes of GR-66(A)(1):

Machinery and equipment used in a city or county wastewater treatment plant are exempt if the machinery and equipment is used to remove contaminants from wastewater. The treatment process begins when solids are first removed from the wastewater and ends when all solids and other contaminants are removed from wastewater.

Arkansas Gross Receipts Tax Rule, GR-66(E)(3) provides examples of items that are **tax exempt** when used in a water treatment plant:

Pipes, pumps, valves, screens, screen baskets, gates, blowers, fans, skimmers, aerators, diffusers, equalization basins, concrete flumes, conveyor belts, flow meters, grit separators, grit removal equipment, back flow preventers, chlorination equipment, digester equipment, vacuators, and air eductors.

Additionally, GR-66(E)(4) provides examples of **taxable** items:

Materials used in constructing improvements to real estate, housing for machinery, handrails, ladders, paint, lighting equipment, pump stations, lift stations, pipes and equipment utilized in sewage collection outside of the treatment area, machinery and equipment which control the flow of wastewater into the treatment facility, sludge dewatering equipment, machinery and equipment used for measuring, controlling, or testing the treatment process, sludge pumping equipment, and sludge application system.

You have provided a letter from ADEQ in which ADEQ has determined the taxability of six requested items. However, the letter does not state whether the items are required by Arkansas or federal law or regulations to be installed and utilized to control pollution or contamination. Because ADEQ has no authority to determine the taxability of sales, we will interpret ADEQ’s statement of whether, “item is eligible for tax exemption,” to denote whether that item is required by Arkansas or federal law or regulation to be installed and utilized to control pollution or contamination.

Also, by ADEQ determining that three of the six items requested are “not eligible” for the exemption, DFA must interpret these as having not been determined to be required by law to be included in this project, and DFA cannot issue an exemption determination for those items. Those items that DFA cannot consider for a taxability determination, and must be determined to be **taxable**, include:

- 1. Protective coatings for metal components of equalization basin;**
- 2. [REDACTED] Appurtenances at [REDACTED] Pump Station; and**
- 3. Mechanical and electrical components for [REDACTED] at [REDACTED] Pump Station.**

The remaining items are determined as follows:

**1. 31MG Concrete Lined Earthen Equalization Basin: Exempt.**

As you stated in your letter, equalization basins are specifically listed as being tax exempt in the examples to GR-66(E)(3). Therefore, this item is exempt from tax.

**2. Mechanical components of equalization basin (piping, water cannons, valves):**

Generally, GR-66(E) states that any machinery and equipment used in a wastewater treatment plant are exempt if the machinery and equipment is used to remove contaminants from wastewater. Without knowing more detail of what mechanical components are included, we can only determine with certainty that the equalization basin (#1 above) is exempt. Any mechanical components used as a component part of the equalization basin, or any mechanical components that independently meet the requirement that they remove contaminants from wastewater, will be exempt from tax.

**3. Structural components of equalization basin (concrete and rebar): Exempt**

As we discussed on the phone, there is no distinction between the equalization basin in #1, above, and the concrete and rebar from which it is composed. Therefore, the determination that the equalization basin is exempt from tax, includes the concrete and rebar from which it is made.

This opinion is based upon my understanding of the facts as set forth in your letter, as currently Arkansas law, rules and regulations govern those facts. Any change in the facts or law could result in a different opinion.

Sincerely,

David W. Parker, Attorney at Law  
Revenue Legal Counsel