



STATE OF ARKANSAS  
**Department of Finance  
and Administration**

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January 29, 2016

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

Re: Sales Tax—Railway Car Maintenance, Repair and Industrial Cleaning  
Opinion Number 20151206

Dear [REDACTED]:

Your request for a Revenue Legal Counsel Opinion, dated November 18, 2015, has been referred to me for response. The Opinion request was made on behalf of your employer, [REDACTED] (“[REDACTED]”), and requested a determination of the applicability of certain gross receipts/sales tax exemptions to the company’s railcar services. I apologize for the delay in this response.

Based upon your letter referenced above and our subsequent communications, it is my understanding that [REDACTED] is in the business of providing railcar maintenance services and repair-shop “pre-prepping” activities that customers bring into its business locations in Arkansas. These maintenance services and activities are solely for maintenance, repairs, and often industrial cleaning. Once your work is completed, these railcars are returned to other locations across the country.

In your letter you explained that most of these railcars have been hauling crude oil or other types of hazardous materials. For this reason, these railcars are in need of being “degassed” of flammable hydrocarbon vapors or any remaining hazardous material residue that remain in the railcars after the railcars are unloaded. This is necessary so that the railcars can be inspected by manned entry or to have any other types of maintenance, repair, or other type of service work performed on them. This industrial cleaning service process that your company performs often involves the use of chemicals, steam, and/or other abrasive blasting activities and, of course, proper waste stream management. Your company considers its services to be unique and unlike any other residential or commercial cleaning service activities.

It is clear by statute that the Arkansas gross receipts/sales tax does not apply to the repair or maintenance of railroad cars brought into Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this State. That statute specifically provides as follows:

**Additionally, the gross receipts tax levied in this section shall not apply to the repair or maintenance of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.**

Ark. Code Ann. § 26-52-301(3)(B)(iii) (Repl. 2014) (emphasis added). To make it absolutely clear that the gross receipts tax does not apply to these types of services, there is also a statutory exemption for such services that provides as follows:

**There is specifically exempted from any tax imposed by this chapter, as amended, including, but not limited to, §§ 26-52-301 and 26-52-302, the gross receipts or gross proceeds derived from the sale of parts and other tangible personal property incorporated into or which ultimately become a part of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.**

Ark. Code Ann. § 26-52-428 (Repl. 2014) (emphasis added).<sup>1</sup>

Similarly, there is an exemption for such repair and maintenance services from Arkansas' compensating use tax. That statute provides as follows:

(a) **The tax levied in this subchapter shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive, or railroad companies brought into the State of Arkansas solely and exclusively for:**

(1) **Refurbishing, conversion, or modification within this state and which is not used or intended for use in this state, and the presence of such tangible personal property within this state shall not be construed as storage, use, or consumption in this state for the purpose of this subchapter if the aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this state within sixty (60) days from the date of the completion of the refurbishing, conversion, or modification; or**

(2) Storage for use outside or inside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas.

(b) If any such property is subsequently initially used in the State of Arkansas, the tax levied by this subchapter shall be and become applicable to the property so used in Arkansas.

(c) **The General Assembly determines that it was not the intent of this subchapter to impose the compensating tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment or to any tangible personal property owned or leased by aircraft, airmotive, or railroad companies as provided in § 26-53-106 and as classified by this section.**

Ark. Code Ann. § 26-53-115 (Repl. 2014) (emphasis added).

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<sup>1</sup> Your letter did not reference the selling or leasing of railroad rolling stock manufactured for use in transporting persons or property in interstate commerce, but there is an exemption for that also. However, that exemption does not extend to machinery used to repair or maintain railroad cars, locomotives, track, railroad ties, or railroad roadway. See Ark. Code Ann. § 26-52-426 (Repl. 2014).

As you pointed out in your letter requesting this Opinion, the Arkansas Gross Receipts Tax Rules also address these statutory exemptions. Specifically, of relevance to your request, those Rules provide as follows:

After December 1, 2004, **the tax does not apply to the parts or labor used in the repair and maintenance of** railroad parts, **railroad cars** and equipment owned by railroad companies or carriers.

Arkansas Gross Receipts Tax Rule GR-30(D) (emphasis added). The Rules further provide as follows:

C. The gross receipts or gross proceeds derived from the sale or lease of railroad rolling stock manufactured for use in transporting persons or property in interstate commerce are exempt from the tax.

1. For purposes of this section, "railroad rolling stock" means completed railroad locomotives and railroad cars designed to haul either passengers or freight, and includes repair parts and materials used to repair railroad locomotives and railroad cars.

2. Railroad rolling stock does not include machinery used to repair or maintain railroad cars, locomotives, track, railroad ties, or railroad roadway.

D. **The gross receipts or gross proceeds derived from the sale of parts or labor used in the repair and maintenance of railroad parts, railroad cars, and equipment owned or leased by railroad companies or carrier are exempt from the tax.**

Arkansas Gross Receipts Tax Rule 52(C)-(D) (emphasis added).

As your letter appears to recognize, certain cleaning services are subject to Arkansas' gross receipts tax, such as "cleaning and janitorial work" and the cleaning of pools, parking lots, and gutters. *See* Ark. Code Ann. § 26-52-301(3)(D)(i)(b)-(c) (Repl. 2014). The Arkansas Gross Receipts Tax Rules expand on what is meant by the terms "cleaning and janitorial work" as follows in relevant part:

A. Gross receipts tax applies to the service of providing cleaning or janitorial work. Ark. Code Ann. § 26-52-301(3)(D)(i). **For purposes of this rule, cleaning services are defined as services to rid the interior or exterior of any building, dwelling, or other structure of dirt, impurities, or extraneous matter.** Generally, the service of cleaning streets, sidewalks, driveways, or other areas that are not part of the interior or exterior of a building is not taxable. However, see GR-9.7 regarding the taxable service of cleaning parking lots and gutters.

B. The service of cleaning motor vehicles, aircraft, farm machinery and implements, motors of all kinds, tires and batteries, boats, electrical appliances and devices, furniture, rugs, flooring, upholstery, household appliances, televisions and radio, jewelry, watches and clocks, engineering instruments,

medical and surgical instruments, machinery of all kinds, bicycles, office machines and equipment, shoes, tin and sheetmetal, mechanical tools, and shop equipment is subject to tax. Ark. Code Ann. § 26-52-301(3)(B)(i).

Arkansas Gross Receipts Tax Rule 9.4(A)-(B) (emphasis added). From the quoted language, it is clear that the general reference to “cleaning and janitorial work” means the services to rid the interior or exterior of any building, dwelling, or other structure of dirt, impurities, or extraneous matter. That would not include the industrial cleaning of railcars.

**Based upon the factual circumstances provided in light of the law cited and quoted above, [REDACTED] services of repair, maintenance, and industrial cleaning of railcars brought into the State of Arkansas solely and exclusively for that purpose, then for departure from Arkansas after the performance of such services, is not a taxable service in Arkansas. Stated most simply, the services you have described are not subject to Arkansas gross receipts/sales or compensating use tax.**

This opinion is based on my understanding of the facts as set out in your inquiry as current Arkansas laws, rules and regulations govern those facts. Any change in the facts or law could result in a different opinion. Otherwise, this Opinion shall be binding for three years and can be renewed upon request.

Please do not hesitate to contact me in the event you have any questions regarding this Opinion. Your time and attention to this matter are greatly appreciated.

Sincerely,

Tim E. Howell, Attorney at Law  
Revenue Legal Counsel