



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

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October 19, 2017



RE: Livestock Growers - Exempt Equipment Replacements and Taxable Repair or  
Replacement Parts  
Opinion No. 20170923

Dear [REDACTED],

This is in response to your letter dated September 18, 2017, requesting a legal opinion from the Arkansas Department of Finance and Administration (DFA). You seek clarification regarding the application of Arkansas sales and use tax to various items sold to poultry farmers.

**Questions Presented**

Initially, you ask the following questions:

1. Are livestock (specifically poultry & hogs) growers considered manufacturers (See reference to GR-55)?
2. Are items purchased that are improved versions or upgrades of equipment considered "substantial improvements" or replacement/repair parts?

Elsewhere in your letter, you explain that your purpose for writing for an opinion response is to differentiate between exempt equipment replacements and taxable repair or replacement parts when those items are sold to livestock growers. This question involves the application of the sales tax exemption for farm machinery and equipment as outlined in Gross Receipts Tax Rule GR-51. Also, your letter specifically mentions specific items about which you have questions. Those items specifically mentioned are feed system motors, augers for feeding systems, and feed pans for feeding poultry.

**Livestock Growers – Not Manufacturers**

Farmers are not manufacturers for purposes of the sales and use tax exemption contained in Arkansas Gross Receipts Tax Rule GR-55. Rule GR-55 defines the term "Manufacturing" as follows:

Manufacturing includes those operations commonly understood within their ordinary meaning, and shall also include mining; quarrying; extracting and refining of brine, oil, and gas; cotton ginning; the drying of rice, soybeans and other grains; the manufacturing of feed; the processing of poultry or eggs and livestock and the hatching of poultry; and printing of all kinds, types, and characters, including the services of overprinting and photographic processes incidental to printing; the processing of scrap metal into grades and bales for further processing into steel and other metals; the retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors; the rebuilding or remanufacturing of used parts for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors, provided that the rebuilt or remanufactured parts - are not sold directly to the consumer but are sold for resale; and the production of protective coatings which increase the quality and durability of a finished product.

Entities engaged in the business of growing livestock, including poultry and hogs, are not commonly understood to be manufacturers and items purchased by those entities are not exempt from sales tax under the sales tax exemption outlined in Rule GR-55. Consequently, any discussion of whether items purchased by the livestock grower to improve or upgrade their equipment will be exempt as the substantial replacement under GR-55 is misplaced.

### **Farm Machinery Exemption – Law and Rules**

Arkansas Code Annotated § 26-52-403 provides a sales and use tax exemption for the purchase of farm machinery and equipment. Gross Receipts Tax Rule GR-51 has been issued by this Department to assist in the implementation of that exemption and states as follows:

#### **GR-51.EXEMPTIONS FROM TAX - FARM MACHINERY AND EQUIPMENT, TIMBER HARVESTING EQUIPMENT:**

- A. The gross receipts or gross proceeds derived from the sale of new and used farm equipment and machinery is exempt from gross receipts tax.
- B. DEFINITIONS.
  - 1. “Farm equipment and machinery” means agricultural implements used exclusively and directly for the agricultural production of food or fiber as a commercial business or the agricultural production of grass sod or nursery products as a commercial business. Farm equipment and machinery does not include implements used in the production and severance of timber, motor vehicles that are subject to registration, airplanes, or hand tools.
    - a. The following agricultural implements are exempt provided they meet the requirements of GR-51(C)(1) and GR-51(C)(2):

Combines, cotton pickers, cotton module builders, cotton trailers, cultivators, discs, farm tractors, (other than garden tractors) harrows, irrigation equipment, milking equipment including milking machines, mechanical pickers, planters, plows, rotary hoes, sprayers, spreaders and threshing machines.

b. All terrain vehicles which are not subject to licensing or registration for use on the highways.

c. Machinery and equipment used in poultry grow-out-houses including heaters, cages, feeding systems, storage bins for short term storage of feed, medicators, watering systems, augers, fans and generators.

d. Egg racks, poultry loaders and module coop systems used by egg and poultry producers in farming operations.

2. "Irrigation equipment" means (i) pipes, hoses, tubing and accessories to the pipes, hoses and tubing which deliver irrigation water from the water source to the crops regardless of whether the equipment becomes affixed to real property; and, (ii) pumps, gates, and other equipment other than pipes, hoses and tubing, which is movable and does not become affixed to real property. Irrigation equipment, other than pipes, hoses, and tubing, which is designed or intended to be permanently attached or incorporated into real property is not exempt.

C. The list of exempt items in GR-51(B)(1)(a) is not intended to be exclusive. Other agricultural implements may qualify for this exemption provided they meet the requirements of GR-51(C)(1) and GR-51(C)(2).

1. An implement may not be treated as tax exempt unless it is used "exclusively" in the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business.

a. An implement will be presumed to be used exclusively in the agricultural production of food, fiber, grass sod, or nursery products as a business if the implement is used on land owned or leased for the purpose of agricultural production of food, fiber, grass sod, or nursery products.

b. A person who uses agricultural implements in the production of food, fiber, grass sod, or nursery products primarily for his own consumption is not entitled to this exemption.

2. An implement may not be treated as tax exempt unless it is used "directly" in the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business. The term "directly" limits the exemption to the following:

a. Only those implements used in the actual agricultural production of food, fiber, grass sod, or nursery products to be sold in processed form or otherwise at retail; or

b. Machinery and equipment used in the agricultural production of farm products to be fed to livestock or poultry which is to be sold ultimately in processed form at retail.

3. Implements which are not exempt include, but are not limited to, the following:

a. Containers or storage facilities;

b. Implements used in the production or severance of timber (except as exempted by GR-51(F) of this rule), or any motor vehicle of a type subject to registration for use on the highway, or airplanes, or hand tools;

c. Attachments to and accessories not essential to the operation of the implement itself (except when sold as part of an assembled unit);

d. Items which are incorporated into real property; and

e. Repair labor and repair parts.

f. Examples of non-exempt items include (i) a machine owned by a commercial farmer but also used at a location other than the farming property (such as a duck club or deer camp); (ii) a machine owned by a commercial farmer but also used for any purpose at any time for activities other than commercial farming, even while located at the commercial farm (such as pleasure riding, household activities, residential yard work, gardening, hunting, and fishing); and (iii) a machine purchased by a commercial farmer who also uses the machine to produce food or fiber primarily for his own consumption.

D. **PROOF OF ENTITLEMENT.** Sellers of farm equipment and machinery, which the purchaser claims as an exempt transaction, should refer to GR-79 concerning exemptions. As an alternative to an exemption certificate, a seller may accept a certification from the purchaser that the item (i) will be used exclusively in the agricultural production of food or fiber as a retail business; and either (ii) used directly in the actual agricultural production of food or fiber to be sold in processed form or at retail; or (iii) used directly in the agricultural production of farm products to be fed to livestock or poultry, which is to be sold ultimately in processed form at retail. The suggested certification form appears at the end of this rule.

E. **ENGAGED IN THE BUSINESS OF FARMING.** A purchaser of farm machinery and equipment shall be considered to be engaged in the business of

farming for purposes of the exemption if the purchaser meets the requirements in GR-51(E)(1) or GR-51(E)(2).

1. The purchaser is engaged in the agricultural production of food, fiber, grass sod, or nursery products as a business for profit as defined in Internal Revenue Code § 183 as adopted by Ark. Code Ann. § 26-51-424; or
2.
  - a. The purchaser provides services to farmers directly related to the production of food, fiber, grass sod, or nursery products;
  - b. The items of farm machinery and equipment are used exclusively and directly to provide those services; and
  - c. The items of farm machinery and equipment would have otherwise qualified for the farm machinery exemption if purchased and used exclusively and directly by the farmer for the same activity.

Example: A fertilizer spreader or seed spreader, or chemical applicator purchased by a farmer would qualify for the farm machinery exemption if used exclusively by a farmer in applying fertilizer, planting seed, or applying agricultural chemicals as part of the agricultural production of food, fiber, grass, sod, or nursery products as a business. The farm machinery exemption will also be available to a fertilizer dealer, seed company, or other similar business upon the purchase of these same items provided the items are used exclusively and directly by the business in applying fertilizer, planting seed, or applying agricultural chemicals for farmers. (GR-51F & G related to Timber Machinery were omitted from this quote)

### **Analysis – Farm Machinery and Equipment or Repair Part**

Growers of livestock, including poultry and hogs, are farmers for purposes of the farm exemption outlined in GR-51. For a purchase to qualify for this farm exemption, the following conditions must be satisfied:

1. The purchaser must be engaged in the production of food, fiber, grass sod, or nursery items as a business;
2. The item purchased must be an item of farm machinery or equipment;
3. The item of farm machinery or equipment purchased must be used directly in the agricultural production of food, fiber, grass sod or nursery items;
4. The item of farm machinery or equipment purchased must be used exclusively in the agricultural production of food, fiber, grass sod, or nursery items.

As you point out in your letter, GR-51(C)(3)(e) provides that repair parts may not be purchased tax free under the farm exemption. You ask that this opinion response specifically address the issue of when items purchased by your customers will be exempt as the purchase of farm machinery or equipment and when those purchases will be taxable as the purchase of a repair part for farm machinery or equipment.

In the case of Heath v. Research-Cottrell, Inc., 258 Ark. 813, 529 S.W.2d 336 (1975), the Arkansas Supreme Court addressed the determination of what constitutes a machine using the following language:

In Blankenship v. W.E. Cox & Sons, 204 Ark. 427, 162 S.W.2d 918 (1942), we relied upon the Webster International Dictionary, definition of the word “machine” as being “any device consisting of two or more resistant, relatively constrained parts, which, by a certain pre-determined intermotion, may serve to transmit and modify force and motion so as to produce some given effect or to do some desired kind of work... Later in Ben Pearson, Inc. v. The John Rust Co., 223 Ark. 697, 168 S.W.2d 893 (1954), we incorporated the definition found in Blankenship, supra, and added an extract from Coming v. Burden, 56 U.S. (15 How.) 252, 14 L.Ed. 683, to the effect that “the term machine includes every mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result.”

Applying this language to your question, an item of farm machinery would include mechanical devices that consist of two or more resistant, relatively constrained parts that perform some given task in the production of agricultural products. Rule GR-51 provides several examples of machinery including tractors, combines, cotton pickers, poultry feeding systems, and poultry watering systems. The list in GR-51 is not an exhaustive list of exempt farm machinery. However, these examples reveal that an item of farm machinery is a combination of mechanical components that work together to directly perform a single function in the production of food or fiber. If you have questions about specific items of machinery, you may submit an opinion request regarding those items.

The term “equipment” has been defined by the Arkansas Supreme Court to include implements, tools or devices of some degree of complexity and continuing utility. See Ragland v. Dumas, 292 Ark. 515, 732 S.W.2d 119 (1987). Farm equipment consists of non-mechanical items that directly perform a function in the production of food, fiber, grass sod, or nursery items. Items of equipment referenced in Rule GR-51 include plows, egg racks, and irrigation pipe. Again, the list provided in GR-51 is not an exclusive list of exempt farm equipment; however, the examples reveal that farm equipment means a non-mechanical device of some degree of complexity and continuing utility that directly performs a single function in the production of food or fiber.

A farmer who purchases a complete item of farm machinery or equipment may purchase the item free from Arkansas sales or use tax if the requirements of GR-51 described above are satisfied. When less than a full item of machinery or equipment is purchased, the purchase will be a repair or replacement part. Consequently, the purchase of a repair part or replacement part used to return an item of farm machinery or equipment to its original working order or to improve the performance of the farm machinery or equipment would be subject to Arkansas sales or use tax.

In your opinion request you mention specific items about which you have questions. Those items specifically mentioned are feed system motors, augers for feeding systems, and feed pans for feeding poultry. The replacement of a poultry feeding system motor or a feed pan would be subject to sales tax. The taxability of that replacement does not depend on the reason for the replacement.

These replacements are equally subject to sales or use tax whether they are replaced to repair a broken item or to replace the item with a new and improved model. Both the motor and the feed pan are component parts of the poultry feeding system and any replacement is taxable as a repair part.

Regarding the replacement of augers, you point out that Rule GR-51(B)(1)(c) defines both “feeding systems” used in poultry grow-out houses and “augers” used in poultry grow-out houses as items of exempt farm machinery or equipment. You then explain that augers are one component of a feeding system. Consequently, you question whether Rule GR-51 exempts both the item of machinery (the feeding system) and exempts a single component of that feeding system (the auger). If so, is there a conflict in the rule between the exemption of the auger as a component part of the feeding system and that portion of GR-51 stating that repair parts are not entitled to the farm machinery exemption?

Although Rule GR-51 could be clearer on this point, there is no conflict between these two portions of the rule. To the extent an auger is a component part of a single item of farm machinery, the replacement of the auger would be subject to sales tax as a repair part. To the extent an auger is a separate item of farm machinery or equipment having its own specific function in the agricultural production of food, fiber, grass sod, or nursery items, the auger would be exempt. If you have questions regarding specific types of augers you sell, you may request the issuance of an opinion regarding those items.

This opinion is based upon my understanding of the facts as set out in your inquiry and as current law and rules apply to those facts. Any changes in the facts or law could result in a different opinion. You may rely on this opinion for three years pursuant to Arkansas Gross Receipts Tax Rules GR-75(B).

Sincerely,

John H. Theis, Attorney  
Arkansas Department of Finance and Administration  
Office of Revenue Legal Counsel