



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

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October 17, 2016

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

RE: Request for Revision
In the Matter of [REDACTED]
Gross Receipts Tax and Compensating Use Tax Assessments
Docket Nos. 16-348, 16-493

[REDACTED]:

This letter is written in response to the Taxpayer's request for a revision of the Administrative Decision entered in the above referenced cases. Your letter is considered a timely filed request for revision in relation to the issues identified therein. This letter will constitute the final decision of the Department in relation to docket numbers 16-348 and 16-493 under Ark. Code Ann. § 26-18-405. After a review of this decision, the documentation in the case file, and the revision request provided by the Taxpayer, it is determined that the Administrative Decision should be sustained in full.

FACTS

Auditor Timothy Keltner ("the Auditor") initially contacted [REDACTED] (the "Taxpayer") regarding an unregistered taxpayer performing taxable services. According to the Taxpayer's Representative, the Taxpayer provides the service of converting "oxygen molecules into ozone gas using transformers and electrical plates. The production of purified air, disinfection, and odor control are potential byproducts of this service." Disinfection is described by the Taxpayer's Representative as "destroying or preventing the growth of disease-carrying microorganisms." A gross receipts tax and compensating use tax audit of the Taxpayer's records was conducted by the Auditor for periods January 1, 2012 to March 27, 2015. Records reviewed for the sales tax audit were sales invoices, monthly sales summaries, and bank account records. All taxable sales for the entire audit period were reviewed and compiled in a spreadsheet. Records reviewed for the compensating use tax audit were purchase invoices, credit card statements, and purchase receipts. These records were also compiled into a spreadsheet. After the audit, a Notice of Proposed Assessment was issued on July 27, 2015. The

Notice listed a tax liability of \$19,477.10, with \$4,143.46 in interest, for a total of \$23,620.56. The Taxpayer filed a timely protest and brief in support.

In the administrative decision, the hearing officer noted that the Taxpayer's Representative briefed the following three arguments: (1) the Taxpayer's services are not taxable explaining that the molecular conversion of air is not taxable and are excluded under Arkansas Gross Receipts Tax Rule GR-9.4(D); (2) the Taxpayer's sales of ozone generators qualify as exempt isolated sales; and (3) the assessed materials purchased to construct the ozone generators should qualify as sales for resale.

The Department's Representative argued that: (1) the Taxpayer's services qualify as taxable janitorial or cleaning services under Arkansas Gross Receipts Tax Rule GR-9.4(A) and (2) the Taxpayer cannot qualify for the sale for resale exemption under Ark. Code Ann. § 26-52-401(12)(A) (Supp. 2015) because the Taxpayer did not possess a sales tax permit at the time of the purchase.

ANALYSIS

Arkansas Gross Receipts Tax generally applies to the entire gross proceeds of all sales of tangible personal property and certain specifically enumerated services within the State of Arkansas. Ark. Code Ann. § 26-52-301 (Repl. 2014). GR-9.4(A) provides in pertinent part: "Gross receipts tax applies to the service of providing cleaning or janitorial work. 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."

The hearing officer noted that the Taxpayer herself described her business as "cleaning air bacteria, etc. using ozone machines" and "cleaning units of bacteria [and] mold using ozone machines" in her application for an Arkansas sales tax permit. The hearing officer also noted that a cached image of the Taxpayer's former website provided the following description of the Taxpayer's business: "[REDACTED] purification systems produce clean and purified air through ozone oxidation technology[.] Our ozone air purifier systems provide disinfection and odor control for ozone air environments." The hearing officer determined that the Department's argument, that the Taxpayer's activities do clean the interior of a building by affecting the walls, floors, ceilings, and fixtures, was persuasive because the sterilization effects of increased air concentrations affects the entire structure and is not limited to the air inside a building.

Upon review of the parties' briefs and attached exhibits, the hearing officer determined that an ozone treatment will result in sanitizing or disinfecting surfaces within a structure (and thus a taxable cleaning service) regardless of whether the primary objective was merely odor removal which may or may not have required the sanitization of structural components to accomplish that goal. Further, the cleaning of air is not simply a byproduct of the ozone production.

Customers are paying for the sterilization or disinfection services performed within the air and upon a building's interior services using the ozone generators.

TAXPAYER'S REQUEST FOR REVISION

In your letter requesting a revision, your primary argument is that you do not perform a janitorial service. Your letter states:

We still insist that 'we ourselves' DO NOT and HAVE NOT performed any janitorial service by allowing our ozone machines to run for several hours on timer in a smelly environment. The machines simply provide the ozone gas that our earth's atmosphere also creates in the 'upper ozone layer' of our planet to rid bacteria that cause odors. We simply put the machines on timer, leave . . . and several hours later pick them back up . . . As far as my writing on the invoice about different causes for the ozone treatment, it was the apartment managers request that I do so! WE ourselves did nothing to rid the problems, the ozone machines' gas does it all!

You also state that unnamed persons at the county courthouse told you that your ozone business was not taxable, that you have spent money fighting this matter, and that you and your husband have several health problems. No additional pertinent documentary evidence was provided with your request for revision. Regarding the compensating use tax assessment, your request for revision does not make any statements or request clarification regarding the hearing officer's determination that the parts purchased to create the ozone machines could not be purchased exempt as sales for resale. As noted in the Administrative Decision, the Taxpayer did not possess a sales tax permit until April of 2015 and the Taxpayer did not demonstrate that the transactions were "one-time" sales of items not made by an established business of any kind of character.

As to whether the Taxpayer provided a taxable cleaning or janitorial service, the governing statute and rule do not distinguish between taxable cleaning accomplished through the use of a cleaning product and a paper towel applied to the interior of a building or cleaning accomplished through the use of ozone applied to those surfaces. *See generally* GR-9.4. Furthermore, the Arkansas Supreme Court held in *Rineco Chemical Industries, Inc. v. Weiss*, 344 Ark. 118, 40 S.W.3d 257 (2001), that a taxpayer's structuring of a transaction and the terms affixed to particular charges are not controlling. Instead, the economic reality of a transaction must govern over form when addressing tax implications. *Id.* The economic reality of Taxpayer's service is that customers are not paying just for the production of ozone but are primarily paying for the sterilization or disinfection services performed within the air and upon a building's interior surfaces utilizing the ozone generators

In the Matter of [REDACTED]
Revision Request
October 17, 2016
Page 4 of 4

CONCLUSION

The administrative decision is upheld in full. This concludes the taxpayer's administrative remedies. If the taxpayer wishes to pursue this matter in court, it must follow the procedures for judicial relief set forth in Ark. Code Ann. § 26-18-406.

Sincerely,

Tim Leathers
Deputy Director and
Commissioner of Revenue