

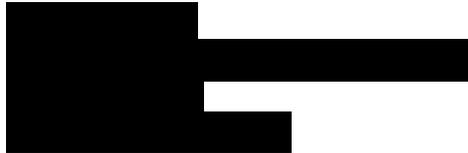


STATE OF ARKANSAS  
**Department of Finance  
and Administration**

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April 4, 2016



RE: Sales Tax – Blast Freezing Operations  
Opinion 20151008-S

Dear [REDACTED]:

The Office of Revenue Legal Counsel issued a legal opinion (20151008) to you on February 9, 2016. After further consideration of this matter, the Department has determined that the legal opinion should be revised. Your original request for a legal opinion dated October 29, 2015, is set forth below:

[REDACTED] ["taxpayer"] is a cold storage and blast freezing facility in [REDACTED], Arkansas. There are two primary aspects of our business. One aspect of our business is to receive and appropriately store frozen, refrigerated and dry products for our customers until sale or relocation of the products.

The second aspect of our business is to complete a portion of the manufacturing process of our customer's products. Products that are in an intermediate state of production are brought into our facility. We prepare the product by placing product separators and blast freezing the products, transforming the state of the products from fresh to frozen. Once the blast freezing process is complete, product dividers are removed from the product and packaging of the palletized product is completed. The process of blast freezing or equivalent method of rapid temperature reduction is required by USDA FSIS per 9 CFR 381.66(f)(2) before the products can be sold as a frozen ready-to-cook product. This process stops microbial growth ensuring wholesomeness and adding shelf life to the product. This process incurs a large electric cost to change the physical state of the products and reduce the temperature to below zero degrees Fahrenheit.

We have requested the addition of NAICS code "311411 Blast freezing on a contract basis" or a similar [code] to our Sales and Use Tax Permit so we may apply for reduced sales tax rates on utilities (AR ET185 ARC) for the electric power used in our portion of the manufacturing process. Per a telephone conversation with Mr. Wayne Jones on October 23, 2015, our request has been denied.

Because blast freezing ensures the wholesomeness and adds shelf life to the product, the manufacturing process is not complete until the product passes through the blast freezing or other rapid freezing process. Only then can the product be available for shipment or storage or else the products will spoil and be hazardous. For this reason, blast freezing or another similar method is required by USDA FSIS for frozen ready-to-cook products before they can be sold for consumption. The blast freezing process is clearly identified (311411 Blast freezing on a contract basis) in the NAICS codes as belonging in manufacturing. Alternatively, the rapid freezing process could equally well be included in NAICS code 311615 “Poultry processing” as it is the last step before the product is available for storage or shipment for consumption. There are other cold storage facilities in Arkansas conducting the same process that are approved for the manufacturing classification and the corresponding reduced tax rate on electric power.

Question: Does the taxpayer qualify for a reduced sales tax rate under §26-52-319 for the electricity consumed by its blast freezers to freeze poultry food products manufactured by its customers?

Response: Yes. Ark. Code Ann. §26-52-319 authorizes a reduced sales tax rate for electricity purchased and used by a manufacturer for use directly in the actual manufacturing process. The Department promulgated Rule 2007-5 to address the administration of the reduced sales tax rate in greater detail. Two requirements, set forth below, must be satisfied in order to qualify for the reduced tax rate:

I. The term “manufacturer” is defined by the statute, in part, as a manufacturer classified within sectors 31 through 33 or sector 115111 of the North American Industry Classification System, as in effect on January 1, 2011. NAICS Sector 3114 is for Fruit and Vegetable Preserving and Specialty Food Manufacturing. Code 311411, which falls within Sector 3114, is for Frozen Fruit, Juice and Vegetable Manufacturing. The reference under 311411 to “blast freezing on a contract basis” refers to the freezing of fruit, vegetables and juices. Since the taxpayer freezes poultry products, code 311411 would not be applicable. However, NAICS Sector 3116 is for Animal Slaughtering and Processing. Code 311615, which falls within Sector 3116, is for the processing of poultry, including frozen poultry. Since the taxpayer freezes newly processed poultry products, it falls within the scope of code 311615 and would therefore be considered a “manufacturer” for purposes of the reduced sales tax rate.

II. The electricity at issue must be used “directly” in the poultry manufacturing process. The taxpayer's blast freezing service is used to preserve and prevent spoilage of poultry food products. Under Rule GR-64(D)(2), “quick freeze” processing is a direct part of the manufacturing process. The taxpayer’s blast freezing equipment and machinery is therefore used “directly” in the poultry manufacturing process. Although the taxpayer is a separate and different entity from the owner and processor of the poultry, the taxpayer’s blast freezing service is nonetheless a direct part of the poultry manufacturing process.

It is my understanding that the taxpayer also provides storage services (dry, refrigerated and frozen) that are separate and distinct from the blast freezing portion of its business. Under Rule 2007-5(B)(7)(b), electricity used “in storage and warehousing facilities” does not qualify for the reduced sales tax rate. Any electricity used by the taxpayer for its separate storage operation would therefore not qualify for the reduced sales tax rate. However, Rule 2007-5(B)(7)(b) also states that electricity used for power in “temporary cooling/chilling areas ... at the end of the process which are needed to enhance, maintain, and protect the integrity of the product” is used directly in the manufacturing process. The electricity used for the temporary storage of blast frozen poultry products prior to the departure of those products from the taxpayer’s facility would therefore qualify for the reduced sales tax rate.

Please contact Manager Cecilia Hutson in the Department’s Sales and Use Tax Section to make the necessary arrangements to properly register and certify for the reduced sales tax rate on your blast freezing operations.

The Gross Receipts Tax Rules cited in this opinion may be viewed on the Department’s website at [www.dfa.arkansas.gov/revenue rules/excise tax](http://www.dfa.arkansas.gov/revenue%20rules/excise%20tax).

This opinion is based on my understanding of the facts as set out in your inquiry, and the application of Arkansas laws, rules, and regulations to those facts. Any change in the facts or law could result in a different opinion.

Sincerely,

Michael Wehrle  
Office of Revenue Legal Counsel