



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

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May 2, 2016

[REDACTED]  
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[REDACTED]

VIA Email at [REDACTED]

RE: Opinion No. 20160101  
Sale Tax – Hazardous Waste Disposal

[REDACTED],

I am writing in response to your request for a Revenue Legal Opinion addressing the Sales Tax on the Hazardous Waste Disposal.

[REDACTED] is requesting a legal ruling on the taxability of hazardous waste services provided to our clients. [REDACTED] has vendors that remove the following types of items for disposal from our clients and based on calls to the sales tax agency we've been told these are services subject to sales and use taxes. However, a client is questioning the taxability. Vendors pick up the following items from our client locations for disposal. Pharmaceuticals, aerosols, oxidizers, flammables, combustibles, and crushed lamps.

**RESPONSE**

Generally, the materials you are describing are not "hazardous waste" under the legal definitions applicable to the exemption for hazardous waste disposal and, therefore, the service of their collection and disposal will be subject to tax.

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. *See* Ark. Code Ann. § 26-52-301 (Repl. 2014). The tax is computed 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). One such specified service subject to tax is the collection and disposal of solid waste. *See* Ark. Code Ann. § Ark. Code Ann. § 26-52-316(a)(2) (Supp. 2015); *and* Arkansas Gross Receipts Tax Rule GR-9.6.

While "solid waste" is given an expansive definition, it does have some limits. Specifically, Rule GR-9.6 defines "solid waste" as:

"Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from residential, industrial, commercial, mining, medical, agricultural, and restaurant operations, and community activities. Solid waste includes yard waste. Solid waste does not include solid or dissolved materials in domestic sewage, or low-level radioactive waste as defined by the Interstate Low-Level Radioactive Waste Compact codified at Ark. Code Ann. § 8-8-201 et seq. Solid waste does not include recyclable material as defined in Ark. Code Ann. §§ 8-9-104 and 8-6-702 that has been separated from the solid waste stream for subsequent use in its present or reprocessed form. Recyclable materials are removed from the solid waste stream at the point where the materials are separated, identified, collected, or sorted for reuse or reprocessing. Solid waste shall not include waste tires.

Ark. Gross Receipts Tax Rules GR-9.6(B)(1). This definition is given a further limitation in the definition of "disposal." Specifically, Rule GR-9.6 defines "disposal" as:

"Disposal" means the final disposition of solid waste by means of landfilling, incinerating, composting, dumping, abandoning, or other similar method. For purposes of this rule, solid waste disposal does not include the management of hazardous waste in accordance with the provisions of Ark. Code Ann. § 8-7-201 et seq. Hazardous waste management includes the incineration of solid waste which has become commingled with hazardous waste as part of the treatment of hazardous waste.

*Id.* at (B)(3) (emphasis added).

Therefore, to determine whether something is considered exempt as hazardous waste in the service of collection and disposal of waste, the Arkansas Hazardous Waste Management Act, Ark. Code Ann. § 8-7-201 through § 8-7-227, must be consulted.

The HWMA defines hazardous waste with reference to the judgement of the Arkansas Department of Environmental Quality. Specifically, the HWMA states:

- (7) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the [Department of Environmental Quality]:
- (A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
  - (B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise improperly managed. Such wastes include, but are not limited to,

those which are radioactive, toxic, corrosive, flammable, irritants, or strong sensitizers or those which generate pressure through decomposition, heat, or other means;

\* \* \*

(8) “Hazardous waste management” means the **systematic control** of the generation, collection, distribution, marketing, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;

Ark. Code Ann. § 8-7-203(emphasis added). Furthermore, the disposal of Hazardous Waste under the HWMA requires a permit from ADEQ pursuant to Ark. Code Ann. § 8-7-215.

The answer is, therefore, not a simple “yes” or “no.” Hazardous Waste Disposal is not what is exempted from the Gross Receipts Tax, but Hazardous Waste Management requiring a systematic control or ongoing, consistent, approved methodology of handling the applicable products. Furthermore, disposal of Hazardous Waste requires licensure from ADEQ and the HWMA does not control the management of all items that may be termed “hazardous” – for example, asbestos is legally considered an air pollutant and not hazardous waste. *See* Ark. Code Ann. § 8-4-309. Generally, in the absence of a permit from ADEQ authorizing an entity to engage in hazardous waste management or a hazardous waste management plan approved by ADEQ, the services provided will be considered solid waste disposal and subject to tax.

Items that you have specifically asked about include “Pharmaceuticals, aerosols, oxidizers, flammables, combustibles, and crushed lamps[.]” While the plan and ordinary language of the HWMA contemplates flammable waste as potentially hazardous, disposal of such waste without an appropriate permit or systemic plan approved by ADEQ will not rise to the level of Hazardous Waste Disposal. Additionally, not all lamps are considered hazardous waste under ADEQ Regulation 23 § 273 and only crushed lamps that meet the definition of hazardous waste could possibly fall within the management of hazardous waste for the potential exemption.

Furthermore, except as otherwise provided in GR-93, gross receipts tax must be collected on the total sales price of a bundled transaction if any service included in the bundled transaction would be taxable if charged separately. If the services being provided could fall under the rubric of hazardous waste disposal for GR-9.6, but are billed in a bundled form with other solid waste disposal, the Arkansas Gross Receipts Tax will be due on the total amount of the bill.

This opinion is based on the facts provided in the opinion request. Any change in the facts or circumstances could result in a different legal opinion. Furthermore, Revenue Legal Opinions are binding only when provided to identifiable taxpayers and are valid for three (3) years pursuant to Ark. Gross Receipts Tax Rules GR-75(B).

If you have further concerns or questions, you may contact me at [joel.dipippa@dfa.arkansas.gov](mailto:joel.dipippa@dfa.arkansas.gov) or 501-683-1536.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joel DiPippa". The signature is fluid and cursive, with the first name "Joel" being more legible than the last name "DiPippa".

Joel DiPippa, Attorney at Law  
Revenue Legal Counsel