



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

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April 6, 2016

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

Re: Gross Receipts Tax—Recyclables Collection
Opinion 20160307

Dear [REDACTED]:

This letter is in response to your request for a Revenue Legal Counsel Opinion by letter dated February 5, 2016. Specifically, your letter requested information on behalf of your client regarding the taxability of the collection of recyclable materials from which your client produces a marketable product.

[REDACTED]. Your client collects recyclable protein which is used as input or raw material into the manufacturing process. The client then uses the incoming recyclable protein by changing it into a protein product, which is then sold to customers who blend it into animal feed products. Your client also sells one of his products, [REDACTED] mill, as an organic fertilizer.

Your client sells his products to no less than five customers on a regular basis. The client picks up the recyclables on a regular basis from various food processing plants. Currently, the food processing plants provide their own containers for these pickups. If your client did not pick up the recyclables from the food processing plants, the recyclables would be disposed of in Arkansas landfills.

Depending on protein prices and specific negotiations, your client may charge his customers, [REDACTED], to pick up the protein recyclables from their facilities. Your letter provided examples of how that process may occur. In one example, your client may not charge one processing plant for the recyclable protein, but your client may pay for the freight charges for the collection and transportation of the material. In a second example, the processing plant may deliver the recyclable protein to your client and your client pays the processing plant for the material based on current protein prices. In your third example, your client charges a protein recyclable pickup fee to a [REDACTED] processing facility.

Your letter poses two questions. First, is the collection of recyclables as described above subject to gross receipts/sales tax or is it a non-taxable transaction/service? Second, if taxable, would your client be responsible for the collection and remittance of the tax on the collection of recyclables from his customers? In your letter you specifically quote Arkansas

Gross Receipts Tax Rule GR-9.6(A)-(B)(1), as well as the statutory references contained therein.

Under Arkansas law, the collection and disposal of solid waste is subject to the Arkansas gross receipts tax. The statute provides as follows:

- (a) The gross proceeds or gross receipts derived from the following services are subject to this chapter:

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- (2) Collection and disposal of solid wastes[.]

Ark. Code Ann. § 26-52-316 (Supp. 2015); *see also* Arkansas Gross Receipts Tax Rule GR-9.6. However, as your letter recognizes, by Rule the term “solid waste” does not include “recyclable material” for Arkansas gross receipts tax purposes:

A. The gross proceeds or gross receipts derived from the collection and disposal of solid waste are subject to state and local gross receipts taxes. Tax should be collected on the entire gross receipts derived from the fee charged for collection and disposal of solid waste, without any deduction for costs, fees, labor services performed, interest, losses, or any expenses whatsoever. Fees paid by a service provider to the state, a city, county, or other governmental subdivision, which are passed on to the customer are part of the gross receipts for the collection and disposal of solid waste.

B. DEFINITIONS.

1. "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.

Arkansas Gross Receipts Tax Rule 9.6(A)-(B)(1) (emphasis added).

The Code provisions referenced in the above-quoted Rule regarding “recyclable material” or “recyclables” define those terms identically as follows:

“Recyclable materials” or “recyclables” means those materials from the solid waste stream that can be **recovered for reuse in present or reprocessed form**[.]

Ark. Code Ann. § 8-6-702 (10) (Repl. 2011); Ark. Code Ann. § 8-9-104(a)(5) (Repl. 2011) (emphasis added).

Based upon the facts provided in your letter, the recyclable proteins collected by your client qualify as “recyclable material” or “recyclables”. The recyclable proteins are materials from the solid waste stream that can be recovered for reuse in present or reprocessed form. The collection of such recyclable proteins would not constitute a specifically enumerated taxable service.

Further, it is true that when delivery charges are included on a seller’s invoice, those delivery charges are included within the definition of gross receipts. By statute, Arkansas law defines “delivery charge” as follows:

(6)(A) “Delivery charge” means a charge by a seller of tangible personal property or services for preparation and delivery to a location designated by the purchaser of the tangible personal property or services, including without limitation transportation, shipping, postage, handling, crating, and packing.

(B) If a shipment includes tax-exempt property and taxable property, the seller shall pay the tax imposed by this chapter only on the percentage of the delivery charge allocated to the taxable property by using:

- (i) A percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or
- (ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment[.]

Ark. Code Ann. § 26-52-103(6) (Repl. 2014); *see also* Arkansas Gross Receipts Tax Rule GR-18(A). Arkansas statutory law further provides that delivery charges on a seller’s invoice is included in, and cannot be deducted from, the definition of gross receipts:

(13)(A) **“Gross receipts”, “gross proceeds”, or “sales price” means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:**

- (i) The seller's cost of the property sold;
- (ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller;
- (iii) Any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;
- (iv) **Delivery charge;**
- (v)(a) Installation charge.

- (b) Installation charges will not be included in the “gross receipts”, “gross proceeds”, or “sales price” if they are not a specifically taxable service under this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser; or
- (vi) Credit for any trade-in.

Ark. Code Ann. § 26-52-103(13)(A) (Repl. 2014) (emphasis added); *see also* Arkansas Gross Receipts Tax Rule 18(A).

However, in the facts provided, your client uses the incoming recyclable protein by changing it to a protein product which is then sold to his customers who blend it into animal feed products. One of his products, [REDACTED], is also sold to a customer as an organic fertilizer. Arkansas law specifically provides for a sale for resale exemption:

There is specifically exempted from the tax imposed by this chapter the following:

.....

(12)(A) **Gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the state if the sales within the state are made to persons to whom gross receipts tax permits have been issued as provided in § 26-52-202.**

(B)(i) Goods, wares, merchandise, and property sold for use in manufacturing, compounding, processing, assembling, or preparing for sale can be classified as having been sold for the purposes of resale or the subject matter of resale only in the event the goods, wares, merchandise, or property becomes a recognizable integral part of the manufactured, compounded, processed, assembled, or prepared products.

(ii) The sales of goods, wares, merchandise, and property not conforming to this requirement are classified for the purpose of this act as being “for consumption or use”[.]

Ark. Code Ann. § 26-52-401(12) (Supp. 2015) (emphasis added); *see also* Arkansas Gross Receipts Tax Rule GR-53. The delivery charges when your client purchases recyclable protein product is included as a part of the cost of raw material for your client’s products. **Based upon the facts presented, the majority of your client’s purchases, including any delivery charges, would also be exempt based upon the sale for resale exemption.**¹

¹ In order to make such purchases tax exempt, your client would need to obtain an Arkansas Sales and Use Tax Permit and provide his suppliers with appropriate Exemption Certificates. Similarly, if your client sells his products to purchasers who will be reselling product containing his products, your client should obtain appropriate Exemption Certificates. *See* Ark. Code Ann. § 26-52-517 (Repl. 2014); *see also* Arkansas Gross Receipts Tax Rule GR-79(E). Finally, if your client sells his recycled or reprocessed protein products to end consumers taking first receipt in Arkansas for which there is no applicable exemption, your client should collect, report, and remit Arkansas Gross Receipts Tax. *See* Ark. Code Ann. § 26-52-301(1) (Repl. 2014); *see also* Arkansas Gross Receipts Tax Rule GR-4.

As a final matter, you are requesting information based on an unidentified client or for general information purposes. Therefore, please be aware that Arkansas Gross Receipts Tax Rule GR-75 provides that a letter opinion may only be relied on by a seller if it is addressed to him or is tendered by a customer to whom it is addressed. In order to be binding, requests for Opinions must specifically describe the person or entity requesting the Opinion and set forth all material facts relevant to the questioned sale or transaction. In order to receive a binding opinion you must submit a request specifically describing the person or entity involved in the transaction, and specifically detailing the factual circumstances. A letter opinion may not be relied on if more than three (3) years old, but may be renewed on request.

This opinion is based on my understanding of the facts as set forth 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.

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