



STATE OF ARKANSAS
**Department of Finance
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June 6, 2017

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

RE: Gross Receipts Tax - Exemption Requirements for Volunteer Fire Departments
Opinion No. 20170126

Dear [REDACTED],

Your request for a legal opinion concerning the taxability of items purchased by the [REDACTED] Volunteer Fire Department (the VFD) has been referred to me for response. I apologize for the delayed response time.

You stated that it was your understanding that that pursuant to Arkansas Gross Receipts Tax Rule GR-31.1 and Arkansas Code Annotated § 26-52-101 et. seq., that the purchase of all firefighting equipment, vehicles, first aid supplies and building materials for use by the VFD are considered as exempt from sales and use tax in the state of Arkansas.

You further stated that you have had issues with an unidentified supplier in claiming the tax exemption because the supplier insists that in order to claim the exemption the VFD must be issued an exemption permit from the Department of Finance and Administration (the Department), that you have provided the supplier a streamlined sales and use tax certificate of exemption, a copy of the letter issued by the Arkansas Office of Fire Services, and a copy of GR-31.1, but the supplier still requires a tax exemption permit from the Department.

Your question is whether the VFD is required to be issued a tax exemption permit from the Department in order to claim the exemption from sales tax.

Answer: No.

DISCUSSION

1. Requirements to Qualify as a Volunteer Fire Department

Arkansas Code Annotated § 26-52-434 provides a sales tax exemption to volunteer fire departments for the purchase of or repair to fire protection equipment and emergency equipment owned and exclusively used by the volunteer fire department. The exemption also applies to purchases of supplies and materials to be used in the construction and maintenance of a volunteer fire department.

The exemption is exclusive to volunteer fire departments as defined by GR-31.1, and does not extend to items sold to regular, non-volunteer fire departments¹. GR-31.1(C)(3) defines a volunteer fire department as:

- a. A rural volunteer fire department, including a fire department organized by a city that provides fire protection to areas both within and without the city limits, formed as a subordinate service district of the county or an improvement district, or a subscription fire service department formed as a nonprofit organization for fire protection under the laws of this state;
- b. A fire department in which seventy-five percent (75%) or more of the fire fighters employed are volunteer fire fighters, who receive no regular compensation for their services;
- c. A fire department with service areas established by the appropriate quorum courts pursuant to Ark. Code Ann. § 14-284-207; and
- d. A fire department registered with the Administrator of the Office of Fire Services.

As a threshold matter, your letter does not include enough information to determine if the VFD has satisfied the above conditions. If the above conditions of GR-31.1(C)(3) are satisfied, the VFD qualifies as a volunteer fire department for purposes of the exemption.

2. Exempt Purchases

Arkansas Gross Receipts Rule GR-31.1, the Department's tax rule pertaining to the exemption, provides a list of exempt fire protection and emergency equipment, and supplies and materials. *See* GR-31(E) and (F). Your letter does not identify the specific types of purchases for which you are attempting to claim the exemption. For purposes of this opinion it is assumed that the purchases at issue qualify for the exemption outlined above.

3. Vendor Requirements for Exemptions Claimed by Purchasers

Sellers are required to follow the guidelines set out in GR-79 (discussed below) for sales involving an exemption. GR-31.1(G). Sellers may also verify the consumer's registration as a volunteer fire department by calling Fire Services at Arkansas Department of Emergency Management at (501) 683-6700, and are encouraged to obtain indemnification agreements from customers and should maintain adequate records to establish entitlement to this exemption. *Id.*

¹ As described by the Attorney General's Office:

As this office, has noted in several previous contexts, what is referred to as a "volunteer fire department" under Arkansas law may take any one of a number of legal forms. *See, e.g.,* Op. Att'y Gen. 96-114 at n. 2. The term "voluntary fire department" could conceivably include municipal volunteer fire departments, rural fire departments formed as subordinate service districts of the county or as improvement districts, or subscription fire departments formed as non-profit organizations. *See, generally* A.C.A. 14-28-101 (Repl. 1998) (defining "volunteer public safety organization" under provisions pertaining to workers' compensation coverage).

The following provisions apply when a purchaser claims an exemption:

- a. The seller must obtain identifying information of the purchaser and the reason the purchaser is claiming a tax exemption at the time of the purchase;
- b. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper certificate is used;
- c. The seller must use the standard form for claiming an exemption electronically;
- d. The seller is required to obtain the same information for proof of the claimed exemption regardless of the medium in which the transaction occurred; and
- e. The Department may authorize a system wherein a purchaser that is exempt from the payment of tax is issued an identification number that must be presented to the seller at the time of sale.

GR-79(E)(1).

In addition, a seller that follows the exemption requirements above is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption. If it is determined that the purchaser improperly claimed an exemption, the purchaser will be liable for the nonpayment of tax, as well as any penalty and interest due on the transaction. This relief from liability does not apply to a seller who:

- a. Fraudulently fails to collect the tax;
- b. Solicits a purchaser to participate in the unlawful claim of an exemption; or
- c. Accepts an exemption certificate from a purchaser claiming an entity-based exemption, as defined in Ark. Code Ann. § 26-21-103, if:
 - (1) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and
 - (2) The multistate certificate of exemption (SSTGB Form F0003) clearly and affirmatively indicates that the claimed exemption is not available in Arkansas.

GR-79(E)(2).

Unless otherwise provided, an exemption that is not the sale-for-resale exemption should be claimed through the use of the general exemption certificate (Form ST 391) or the multistate certificate of exemption (SSTGB Form F0003). Both forms may be obtained on the Department's website at: www.state.ar.us/salestax. As an alternative to an exemption certificate, a seller may accept a certification or other information from the purchaser that establishes the transaction is exempt under Arkansas law. GR-79(F)(1) and (2).

4. Conclusion

The Department does not issue “exemption permits,” as you have described in your letter, for the sales tax exemption for volunteer fire departments. Instead, the proper method to claim the exemption for purchases from an individual seller is to fill out the exemption certificate, or otherwise provide the seller with the relevant information as described in GR79(E)(2). In

addition, the seller may contact Fire Services at Arkansas Department of Emergency Management at (501) 683-6700, and are encouraged to obtain indemnification agreements from customers and should maintain adequate records to establish entitlement to this exemption as described in GR31.1(G).

In accordance with Arkansas Gross Receipts Tax Rule GR-75, this opinion is based upon my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any changes in the facts or law could result in a different opinion. This opinion will not be binding upon the Department for any topic not specifically addressed herein. The taxpayer may seek a supplemental opinion should it desire guidance in any topic not addressed within this opinion or if the taxpayer has additional questions after reading this opinion. Please be advised that this opinion may only be relied upon by the taxpayer and will only be binding upon the Department for three (3) years from the date of issuance. *See* Arkansas Gross Receipts Tax Rule GR-75.

A copy of the Arkansas Gross Receipts Tax Rules referenced in this letter is available online at http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf.

Sincerely,

Greg Ivester, Attorney
Revenue Legal Counsel