STATE OF ARKANSAS

Department of Finance and Administration

REVENUE LEGAL COUNSEL
Post Office Box 1272, Room 2380
Little Rock, Arkansas 72203-1272
Phone: (501) 682-7030
Fax: (501) 682-7599
http://www.dfa.arkansas.gov

David Parker, Attorney at Law
david.parker@dfa.arkansas.gov

May 17, 2017

[redacted]

RE: Wastewater Treatment Sales Tax Exemption Determination
[redacted]
Opinion No. 20170209

Dear [redacted],

Your January 23, 2017, letter to the Department of Finance and Administration ("DFA"), Revenue Legal Counsel, requesting a legal opinion has been referred to me for a response. You have asked whether the purchase of certain machinery or equipment being installed as part of a wastewater treatment facility expansion is exempt from Gross Receipts tax. In your letter, you stated:

> The [redacted] will be replacing treatment equipment at the [redacted] in the near future. The facility operates under Permit No. [redacted] of the National Pollutant Discharge Elimination System and the Arkansas Water and Air Pollution Control Act. Pursuant to Arkansas Gross Receipts Tax Rule GR-66, the [redacted] is requesting an opinion on equipment used to remove contaminants from wastewater subject to a sales tax exemption.
>
> Referring to examples of tax exempt equipment that are listed in GR-66(E)(3), the following list of equipment is requested for tax exemption:
>
> Bar Screen Package
> Fine Screens – Removes larger contaminants from the wastewater
> Screenings Sluice – Transfers the screens from the screens to the screening washer/compactor
> Screenings Waster/Compactor – Compacts the screenings and transfers to dumpster before disposal
>
> Grit Removal Package

Grit Removal Equipment – Removes grit (finer contaminants) from the wastewater
Grit Pumps – Transfers grit to the grit separators
Grit Separators – Separates the grit from the grit slurry
Grit Conveyor – Transfers the concentrated grit to dumpster before disposal
Piping System – Pipes and valves connecting the various components necessary for operation of the grit removal package

Yard Piping Package
Yard Piping/Valves – Pipes and valves connecting the screens to the flow equalization basins

Disinfection Package
Ultra Violet (UV) Disinfection Equipment Package – Equipment used to disinfect contaminants in wastewater before discharging to the environment. The UV equipment will replace existing chlorination equipment and chlorine gas used for disinfection; items of which have been determined to be tax exempt in the past.

Exhibits for the proposed various improvements are attached for reference.

Additionally, is any of the reinforced concrete construction that is required to contain the wastewater and associated equipment referenced above subject to a tax exemption, i.e. walls and/or bottoms of concrete channels (flumes)?

Response:
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, unless otherwise exempted. *See* Ark. Code Ann. § 26-52-301. Tangible personal property is "personal property which may be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses. Gross Receipts Tax Rule GR-3(Q). The tax is 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). The Arkansas Compensating (Use) Tax applies to taxable property or services that are purchased outside of the State of Arkansas and delivered for use, storage, or other activities within the State. *See* Ark. Code Ann. § 26-53-106.

Arkansas Code Annotated § 26-52-402(a)(3) provides an exemption for machinery and equipment required by state or federal law or regulations to be installed and utilized (directly or indirectly) by manufacturing and processing plants, cities, or towns in this state to prevent or reduce air or water pollution or contamination that might otherwise result from the operation of the plant or facility. Sales tax exemptions are applied uniformly with Use tax exemptions. Ark. Code Ann. § 26-53-112.

Arkansas Gross Receipts Tax Rule, GR-66(A) provides that a Taxpayer must demonstrate the following to prove entitlement to the exemption:

1. The machinery and equipment is utilized, either directly or indirectly, by manufacturing or processing plants or facilities, or cities or towns in Arkansas to

> prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility; and
>
> 2. The machinery and equipment is required by Arkansas or federal law or regulations to be installed and utilized to control pollution or contamination as evidenced by written documentation from the Arkansas Department of Environmental Quality ("ADEQ") or the United States Environmental Protection Agency.

Id. Further, Arkansas Gross Receipts Tax Rule, GR-66(E) specifically discusses water treatment plants and requires the following conditions for machinery and equipment to qualify for purposes of GR-66(A)(1):

> Machinery and equipment used in a city or county wastewater treatment plant are exempt if the machinery and equipment is used to remove contaminants from wastewater. The treatment process begins when solids are first removed from the wastewater and ends when all solids and other contaminants are removed from wastewater.

Arkansas Gross Receipts Tax Rule, GR-66(E)(3) provides examples of items that are **tax exempt** when used in a water treatment plant:

> Pipes, pumps, valves, screens, screen baskets, gates, blowers, fans, skimmers, aerators, diffusers, equalization basins, concrete flumes, conveyor belts, flow meters, grit separators, grit removal equipment, back flow preventers, chlorination equipment, digester equipment, vacuators, and air eductors.

Additionally, GR-66(E)(4) provides examples of **taxable** items:

> Materials used in constructing improvements to real estate, housing for machinery, handrails, ladders, paint, lighting equipment, pump stations, lift stations, pipes and equipment utilized in sewage collection outside of the treatment area, machinery and equipment which control the flow of wastewater into the treatment facility, sludge de-watering equipment, machinery and equipment used for measuring, controlling, or testing the treatment process, sludge pumping equipment, and sludge application system.

You have not provided a letter from ADEQ as to whether the items are required by Arkansas or federal law or regulations to be installed and utilized to control pollution or contamination. Without appropriate documentation from ADEQ, none of the requested equipment can be exempt from tax. However, assuming you are in the process of obtaining the necessary ADEQ documentation, the below analysis will apply as to the taxability of the items you requested:

Bar Screen Package: Varies.
Pursuant to GR-66(E)(3), screens are exempt if used during the treatment process as defined in GR-66(E)(1). GR-66(E)(1) provides that the treatment process begins when solids are first removed from the wastewater and ends when all solids and other contaminants are removed from

the wastewater. Further, the water treatment process does not include disposing of solids or other contaminants removed from the wastewater. GR-66(E)(2)(b).

The facts you have presented indicate that the fine screens remove larger contaminants from the wastewater. This satisfies the requirement that the equipment is "used during the water treatment process," and the fine screens are exempt from sales tax. *See* GR-66(E)(1).

However, the screenings sluices and screenings washer/compactor, which transfer the screens and compact the screenings before disposal, are used after the contaminants have been removed from the wastewater. These items do not occur during the treatment process and are therefore not exempt from sales tax.

Grit Removal Package: Varies.
Similar to the bar screen packages above, GR-66(E)(1) provides that the treatment process begins when solids are first removed from the wastewater and ends when all solids and other contaminants are removed from the wastewater.

Based on the information you provided, the Grit Removal Equipment removes grit (finer contaminants) from the wastewater. This satisfies the requirement that the equipment is "used during the water treatment process," and the fine screens are exempt from sales tax. *See* GR-66(E)(1).

The process of transferring, separating, and disposing of grit already removed from the wastewater is not part of the "water treatment process." *See* GR-66(E)(2)(b). Therefore, based on the descriptions provided, the actions of the Grit Pumps, Grit Separators, and Grit Conveyor do not occur during the "water treatment process" and are therefore not exempt from sales tax.

Whether the Piping System, as described in your request, is exempt will depend on whether it meets the definitions above of "used to remove contaminants from wastewater." If the Piping System only transfers grit or contaminants already removed from wastewater, it would not be exempt from sales tax.

Yard Piping Package: Varies.
Pipes and valves that will come into contact with the wastewater and have an active role in the actual wastewater treatment process are exempt from gross receipts tax. As you described, any pipes and valves connecting the screens to the flow equalization basins are exempt. However, any piping, valves, or fittings used before the treatment process begins or after the treatment process ends do not qualify for the exemption.

Disinfection Package: Exempt.
Pursuant to GR-66(E)(3), chlorination disinfection equipment is specifically identified as exempt if used during the treatment process as defined in GR-66(E)(1). Though an ultraviolet (UV) radiation disinfection system is not specifically identified, the Arkansas Department of Finance and Administration understands that such UV equipment will operate as the disinfection system in place of the formerly standard chlorination disinfection system due to the United States Environmental Protection Agency's discouragement of using chlorination to disinfect

wastewater during the treatment process. Gross Receipts Tax Rule GR-66(E)(1) provides that the treatment process begins when solids are first removed from the wastewater and ends when all solids and other contaminants are removed from the wastewater. Accordingly, the UV radiation disinfection system, which will be used during the wastewater treatment process instead of a chlorination disinfection system, is exempt.

Reinforced Concrete Construction (walls, flumes, etc.): Varies.
Not all concrete purchased for a wastewater treatment facility is exempt. Whether concrete qualifies for the exemption depends on how the concrete is used. Concrete used to construct channels, tunnels, flumes, basins or tanks that control or contain water or sludge during the treatment process are eligible for the pollution control exemption because these structures are used during the treatment process to control pollution or contamination. However, concrete used to construct sidewalks, steps, driveways, or footings would not qualify because they are not used during the treatment process to control pollution.

The concrete used in your project to support the screening equipment and to contain wastewater during the treatment process will meet the exemption. Any concrete used merely to house the screening equipment will not meet the exemption.

This opinion is based upon my understanding of the facts as set forth in your letter, as currently Arkansas law, rules and regulations govern those facts. Any change in the facts or law could result in a different opinion.

Sincerely,

David W. Parker, Attorney at Law
Revenue Legal Counsel