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**Department of Finance
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November 7, 2017

[REDACTED]
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Re: Excise Tax – Taxability of Hemp Wraps and Cigarette Papers
Opinion No. 20170831

Dear [REDACTED],

Your request for a legal opinion concerning the taxability of Hemp Wraps and Cigarette Papers has been referenced to me for reply. Your request raises two questions:

1. Would Hemp Wraps be taxed as cigarette papers? If so, how much would be the tax for a case of 25 pack of 2 units per pack?
2. In addition, you included in your emails descriptions of tobacco tubes and cones made from cigarette paper. Although you did not specifically ask about the taxability of these products this opinion will address them as well.
3. What is the legal authority for pro-rata calculation for packaging size that do not approximate 32 counts?

Following a general discussion of the applicable law, I will address each issue in turn following a more detailed description of the Taxpayer's information describing its products.

Discussion

In your emails, you have correctly cited to Arkansas Code Annotated § 26-57-801 which provides:

- (a) Every person required by the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to pay the excise tax on tobacco products and every other person selling cigarette paper at wholesale within this state shall also pay an excise tax on the sale of cigarette paper.
- (b) The tax shall be in the amount of twenty-five cents (25¢) per package of approximately thirty-two (32) sheets.
- (c) The tax shall be remitted to the Director of the Department of Finance and Administration at the same time and in the same manner as prescribed by the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.
- (d) The director shall promulgate such regulations as the director deems necessary for the implementation of this section.

The term “cigarette paper” is not currently defined under Arkansas law other than references to packages of papers sold by cigarette wholesalers and comprising approximately thirty-two (32) sheets per package.

As noted the term “cigarette paper” is not specifically defined in the statute. However, the Arkansas General Assembly indicated its specific intent to control and regulate the use of “tobacco and other tobacco products” under Ark. Code Ann. § 26-57-202 (Supp. 2015):

- (a) It is recognized, found, and determined by the General Assembly that:
 - (1) The Surgeon General has determined that the smoking of cigarettes is detrimental to the health of the smoker;
 - (2) The General Assembly had already recognized this hazard many years ago when it enacted § 5-27-227 regulating the sale of tobacco to minors, §§ 20-27-704 -- 20-27-709 regulating pricing, establishing a policy for public smoking, and this subchapter, to provide for close supervision and control of the sale of cigarettes, other tobacco products, vapor products, alternative nicotine products, and e-liquid products;
 - (3) The state has a very valid governmental interest in preserving and promoting the public health and welfare of its citizens; and
 - (4) It is the responsibility of the General Assembly to enact legislation to protect and further this essential governmental interest.
- (b) It is therefore the intent of this subchapter to:
 - (1) Provide for the close supervision and control of the licensing of persons to sell cigarettes, **other tobacco products**, vapor products, alternative nicotine products, and e-liquid products in this state in order to assure that when these products are distributed in the state, they are fresh, not contaminated, and are properly taxed, stamped, stored, and distributed only to persons authorized to receive these products; and
 - (2) Impose licenses, fees, taxes, and restrictions on the privilege of dealing in or otherwise doing business in **tobacco products**, vapor products, **alternative nicotine products**, and e-liquid products in order to promote the public health and welfare of the citizens of this state and to protect the revenue collection procedures incorporated within this subchapter. (Emphasis added).

Arkansas Code Annotated § 26-57-203(7) defines “cigarette inputs” to include, without limitation, cigarette papers, tubes, filters and component parts intended for use in making cigarette filters, and machinery typically used in the making of cigarettes. The statute goes on to define “tobacco products” to mean “all products containing tobacco for consumption, including without limitation...smoking tobacco substitutes.” *Id.* at (36).

Issue 1. Would Hemp Wraps be taxed as cigarette paper? If so, how much would be the tax for a case of twenty-five (25) packs of two units per pack?

You describe the Hemp Wraps in question as being “...made from non-drug industrial hemp plants which contain no tobacco. They are different from traditional cigarette papers. The product is sold in two per individual pack and there are twenty-five individual packs in a

display unit.” You further stated that your client, as a wholesale distributor, has no information on how the wraps will be used by the ultimate consumer, i.e. to be filled with tobacco, cannabis, or any other substance.

The statutes are explicit in that they impose an excise tax on certain categories of products related to tobacco or other forms of nicotine consumption. In order for the State to impose a tax under state tax law the statute shall be strictly construed in limitation of the tax. Ark. Code Ann. § 26-18-313(a). The burden of proof applied to these matters shall be by preponderance of the evidence. *Id.* at (c).

When looking to the plain and ordinary language of Ark. Code Ann. § 26-57-801(b), the General Assembly clearly authorized an excise tax “...in the amount of twenty-five cents (25¢) per package of approximately thirty-two (32) sheets.” A “cigarette paper” by its plain and ordinary meaning must be made of “paper.” While there are few other pieces of information available in the statutes, the papers are contemplated to be sold in packs of approximately thirty-two (32) sheets.

If the Hemp Wraps are simply paper made from hemp they are subject to the cigarette paper excise tax imposed under Ark. Code Ann. § 26-57-801(b). If the wraps consist of another type of substance, such as a woven fabric, they are not paper and thus not subject to the excise tax under strict construction of the statute.

If the tax is applicable the wraps are subject to the pro-rata tax, discussed in section three (3) of this discussion, at a rate of \$0.39 per display unit as follows:

Excise tax for standard pack of cigarette papers:	$\$0.25/32 = \0.0078125 per wrap
Number of wraps per pack * tax per wrap:	$50 * \$0.0078125 = \0.390625 per pack

Issue 2. Are the cones and tubes taxable as cigarette papers?

You state in your request that the Tobacco Tubes are made of cigarette paper, filter and tipping paper by tube making machines, and that the Cigarette Cones are empty conical shaped wrappers made from cigarette papers and integrated cardboard filters. These tubes and cones are generally packaged in boxes of 32 packages containing three or six cones or tubes per pack for a total of ninety-six (96) or one-hundred ninety-two (192) cones per case. You state that the Cones and Tubes are currently taxed as cigarette papers.

Based on this description the cones and tubes qualify as cigarette inputs under Ark. Code Ann. § 26-57-203(7). Thus, they are subject to taxation under Ark. Code Ann. § 26-57-202(b)(2) (Supp. 2015) *supra*. The excise tax rate is the same per unit (cone or tube) as the rate for hemp wraps multiplied by the number of units per package, as discussed in Section 1.

Issue 3. What is the legal authority for pro-rata calculation for packaging size that do not approximate 32 count?

You described the Cigarette Papers in question as paper made from thin and lightweight “rag fibers” (non-wood plant fibers) such as flex, hemp, rice, etc. You stated that the Papers are

available in rolls and rectangular sheets containing between twenty-four (24) and four-hundred (400) sheets per case or package. Currently the excise tax is applied pro-rata on packages that do not contain approximately thirty-two (32) sheets.

The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003). We construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000). When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Weiss v. McFadden*, *supra*. When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject. *Id.*; *Macsteel, Parnell Consultants v. Arkansas Ok. Gas Corp.*, 363 Ark. 22, 210 S.W.3d 878 (2005); *see also* Ops. Att'y Gen. 2005-072 & 2004-339.

The interpretation of an administrative agency charged with the enforcement of a statute is highly persuasive, and will be upheld unless "clearly wrong." *See Macsteel, Parnell Consultants*, 363 Ark., 210 S.W.3d; *see also McLane Co., Inc. v. Davis*, 353 Ark. 539, 110 S.W.3d 251 (2003); *Arkansas State Medical Board v. Bolding*, 324 Ark. 238, 920 S.W.2d 825 (1996); and Op. Att'y Gen. 2005-124. It has also been stated that "A court will not attempt to substitute its judgment for that of the administrative agency. [Citations omitted.] A rule is not invalid simply because it may work a hardship, create inconveniences, or because an evil intended to be regulated does not exist in a particular case." *Arkansas Health Svcs. Comm'n v. Regional Care Facilities, Inc.*, 351 Ark. 331, 338, 93 S.W.3d 672 (2002).

The intent of the legislature is clear that there is an excise tax on cigarette papers. Because it is the responsibility of the Department of Finance and Administration to interpret the law when there is a question of how the law should be enforced, the use of pro-rata calculations for package sizes not anticipated in the statute is an appropriate method of enforcing the law.

Your client's identity was not provided when you requested this opinion. Therefore, this opinion is not binding upon the Department. In accordance with GR-75, this opinion is issued only for general information purposes. A letter opinion may not be relied on if more than three (3) years old, but may be renewed on request. 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.

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