



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

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RE: Sales Tax – Off-Road Kerosene
Opinion No. 20191107

Dear [REDACTED]:

This letter is in response to your request for a legal opinion from Revenue Legal Counsel. Your letter states:

[REDACTED] *is a wholesale fuel distributor. We are licensed in AR for sales and use tax under permit number [REDACTED]. At times, our customers request to off-road kerosene from the terminal. While no sales of kerosene have occurred, I am proactively working to set up the correct taxes on kerosene for AR. I reached out to the audit division of AR; however, they were unable to provide an answer. Can you tell me if off-road kerosene is subject to sales tax in AR when it is sold from a terminal? Thank you in advance for your help.*

RESPONSE

You have inquired whether the sale of off-road kerosene is subject to sales tax in Arkansas when sold from a terminal. Yes. Kerosene that is sold exempt from Arkansas special distillate fuel tax is subject to the Arkansas Gross Receipts (Sales) Tax.

The Arkansas Gross Receipts (“Sales”) Tax is generally applicable to the sale of tangible personal property and certain enumerated services. *See* Ark. Code Ann. § 26-52-301 (Repl. 2020). Kerosene is tangible personal property and will be subject to the Sales tax unless otherwise exempt. Dyed distillate special fuel which is subject to the special distillate dyed fuel tax under Ark. Code Ann. § 26-56-224 is exempt from sales tax when the dyed special distillate tax “has been paid.” *See* Ark. Code Ann. § 26-52-401(11)(A)(iii) (Repl. 2020).

The special distillate fuel tax in Ark. Code Ann. § 26-56-201 *et seq.* is levied on both dyed and clear distillate special fuels. Ark. Code Ann. §§ 26-56-224 (Repl. 2020) *and* 26-56-201 (Repl. 2020). “Distillate special fuels” means “all liquids or combination of liquids used or suitable for use in an internal combustion engine or motor for the generation of power for motor vehicles.” *See* Ark. Code Ann. § 26-56-102(5)(A)(i) (Repl. 2020). Specifically included in the definition of “distillate special fuels” are “products commonly referred to as diesel, **kerosene**, jet fuel, heating

oil or fuel oil, cutter stock, and light cycle oil.” *See* Ark. Code Ann. § 26-56-102(5)(A)(ii) (Repl. 2020) (Emphasis added).

Generally, sales of special distillate fuels for off-road use are exempt from the special distillate fuel tax when the supplier delivered the special distillate fuel into storage facilities clearly marked “NOT FOR MOTOR VEHICLE USE.” Ark. Code Ann. § 26-56-201(b)(2) (Repl. 2020). Dyed special distillate fuels subject to the Ark. Code Ann. § 26-56-224 levy have a distinct definition found in Ark. Code Ann. § 26-56-223 (Repl. 2020). The levy for off-road dyed distillate fuel in accordance with the federal requirements in Public Law No. 103-66 specifically excludes kerosene from the definition of “special distillate fuel” for the purpose of the tax levy in Ark. Code Ann. § 26-56-224. Ark. Code Ann. § 26-56-223(2) (Repl. 2020).

Because kerosene sold for off-road use is not subject to the Ark. Code Ann. § 26-56-224 special distillate fuel tax, the exemption in Ark. Code Ann. § 26-52-401(11)(a)(iii) does not apply. Therefore, kerosene sold for off-road use under Arkansas law is subject to the gross receipts tax.

This opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules, and regulations. Any change in the facts or law could result in a different opinion. Absent a change in the facts or law, this opinion is valid for three (3) years from the date of issuance. *See* Arkansas Gross Receipts Tax Rule GR-75(B).

Sincerely,

Joel DiPippa, Attorney
Revenue Legal Counsel