



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

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[REDACTED]

Re: Excise Tax—Taxability of Hemp Wraps and Cigarette Papers
Opinion No. 20191211

Dear [REDACTED]:

Your request for a legal opinion on behalf of [REDACTED] (the “Taxpayer”) concerning the taxability of cigarette papers has been referred to me for response. You state in your request that the Taxpayer produces a cigarette cone product similar to a product that consists of an empty conical shaped wrapper made from cigarette paper and integrated cardboard filters.

The Taxpayer is seeking a ruling from the Department of Finance and Administration (the “Department”) regarding the proper application and calculation of the cigarette paper excise tax. You note correctly that Ark. Code Ann. § 26-57-801 imposes a tax of twenty-five cents (25¢) per package of approximately thirty-two (32) sheets of cigarette paper, and that Ark. Code Ann. § 26-57-808(a) imposes an additional tax of fifty cents (50¢) per package of thirty-two (32) sheets of cigarette paper.

You state that the Taxpayer’s cigarette cone products are sold in packages containing three (3) and six (6) cones per package (3 packs and 6 packs). The question raised in your request is whether the following calculation is proper when determining the excise tax on the Taxpayer’s cones:

Total excise tax per standard pack of cigarette papers: $\$0.75/32 = \0.0234375 per wrap

Extrapolating this calculation to the Taxpayer’s cigarette cone products yields the following:

Number of cones per 3 pack * tax per wrap: $3 * \$0.0234375 = \0.0703125 total tax per 3 pack

Number of cones per 6 pack * tax per wrap: $6 * \$0.0234375 = \0.140625 total tax per 6 pack

RESPONSE.

Are the cones you have described cigarette papers and are they subject to tax? Yes. Are the calculations you presented correct? No.

Arkansas Code Annotated § 26-57-801, as amended by Act 910 of 2019, provides in full:

- (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 Secretary 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 secretary shall promulgate such regulations as the secretary deems necessary for the implementation of this section.

Ark. Code Ann. § 26-57-801 (Supp. 2019). In addition, Ark. Code Ann. § 26-57-807(b) (Supp. 2019) provides that the additional fifty cent (50¢) tax levied under that section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarette paper under this subchapter and the Arkansas Tobacco Products Tax Act of 1977.

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. 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. 2019):

(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 sales 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 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, 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.

Arkansas Code Annotated § 26-57-203(7) (Supp. 2019) 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 also defines “tobacco products” to mean “all products containing tobacco for consumption, including without limitation cigarettes, cigars, little cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking tobacco, including pipe tobacco, and smoking tobacco substitutes.” *Id.* at (32).

When looking to the plain and ordinary language of Ark. Code Ann. §§ 26-57-801(b) and 26-57-807(b), the General Assembly clearly authorized an excise tax “. . . in the amount of twenty-five cents (25¢) and fifty cents (50¢) per package of approximately thirty-two (32) sheets respectively.” A “cigarette paper” by its plain and ordinary meaning must be made of “paper.” The cones that you described are made of paper and are therefore cigarette papers.

The papers are contemplated to be sold in packs of **approximately** thirty-two (32) sheets and the tax is levied based on packs or units of thirty-two (32) papers. The Department has interpreted the relevant statutes to mean that cigarette papers are taxed at a rate of 75¢ per pack, regardless of the amount of papers contained within the pack.

Based on the description above the cones are cigarette papers and qualify as cigarette inputs under Ark. Code Ann. § 26-57-203(7) (Supp. 2019). Thus, they are subject to taxation under Ark. Code Ann. §§ 26-57-202(b)(2) and 26-57-807(b). The excise tax rate is calculated at a rate of 75¢ per pack. Thus, the excise tax for the packages described in your request will be calculated as follows: \$0.75 per 3-pack of cones and \$0.75 per 6-pack of cones.

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. You may rely on this opinion for three years pursuant to Ark. Gross Receipts Tax Rules GR-75(B).

Regards,

Caroline Calvert
Revenue Legal Counsel