



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

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July 22, 2020

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

RE: Gross Receipts Tax – Wastewater Treatment Plant  
Opinion No. 20191231-SS

Dear [REDACTED]

I am writing in response to your second request for a supplemental legal opinion concerning a construction project at a city wastewater treatment plant. In relevant part, your email states:

[I]n response to our telephone discussion last week, I am sending this email per your request, as concerns the opinion not to allow the final clarifier support columns for the above referenced subject to be tax exempt. As part of our discussion, I mentioned how the same clarifiers were installed in the [REDACTED] WWTP project back in 2011 (of which [REDACTED] was the Project Engineers and submitted the Sales Tax Exemption Request) and that the Department of Finance and Administration (DFA) approved those clarifiers for exemption (I have attached the entire DFA response and also separated out the page referring to the clarifier equipment). These clarifiers at [REDACTED] are no different. The reason given by DFA on the [REDACTED] project for not allowing the center column to be tax exempt was that the “center column is an improvement to real estate”. When I asked you to please explain to me how a metal support column that supports (and provides a needed function in the wastewater treatment ) the clarifier operating equipment and is replacing an existing support column is “an improvement to real estate”, you refused to give me an explanation, that you could not discuss the reason, only “that is the opinion”.

Other correspondence on [REDACTED] opinions stated that “exempt equipment must be an integral part of the functioning of the exempt machinery or equipment which is used directly in wastewater treatment”. I cannot think of any reason that this support column is not “an integral part of the functioning” of the clarifier equipment. Without this support column and all of the attachments, there is no complete treatment of the wastewater and basically the treatment plant will not function as designed. The bottom part of the support column receives the wastewater internally into the column section from the attachments and distributes it to the Return Activated Sludge Pumps. It is “a functioning part of the machinery or equipment used directly in the wastewater treatment”.

On behalf of the [REDACTED] we again request that the DFA maintain consistency with previous opinions on the same equipment from previous project requests and that the support columns for this clarifier equipment on this project be approved for sales tax exemption.

This opinion is issued to address the perceived inconsistencies between Opinion 20191231-S and previous opinions you have requested on similar topics.

## **RESPONSE**

For a general discussion of the law surrounding exemption of machinery and equipment used in wastewater treatment facilities, please refer to Revenue Legal Counsel Opinions 20191231 and 20191231-S.

When comparing recent Revenue Legal Counsel opinions to opinions issued in the past to different taxpayers, it is important to remember that opinions are only valid for three years and only binding as between the Department and the identified requestor. Arkansas Gross Receipts Tax Rule GR-75(B). The opinion that you perceive to be in conflict with opinion 20191231-S has lapsed. Therefore, that opinion is not binding on the Department. Additionally, that opinion did not deal with this specific piece of equipment but instead dealt broadly with “clarifier drives and mechanisms.”

Past Revenue Legal Counsel opinions dealing with the piece of equipment at issue here, the clarifier support column, have concluded that the support column is not exempt from tax because it is an “improvement[t] to real estate and housing for machinery.” Revenue Legal Counsel Opinion 20190424. However, you have provided additional information which indicates that the support column at issue in this particular project should be exempt from sales tax.

The previous supplemental opinion issued regarding this project stated:

The support column is attached to the suction/scraping arm and is almost completely submerged in wastewater. As the name would suggest, the support column is a permanent structural support . . . The support column is an improvement to real estate. Improvements to real estate are among the examples of taxable items provided by the Department’s rules. Arkansas Gross Receipts Tax Rule GR-66(E)(4). Therefore, the support column is taxable.

Your June 22 email provided additional information about the function of the support column:

Without this support column and all of the attachments, there is no complete treatment of the wastewater and basically the treatment plant will not function as designed. The bottom part of the support column receives the wastewater internally into the column section from the attachments and distributes it to the Return Activated Sludge Pumps. It is “a functioning part of the machinery or equipment used directly in the wastewater treatment”.

Opinion 20191231-S was written with the understanding that, although the support column was submerged in the wastewater, its role in the clarifier chamber was that of support for the suction/scraping arms and the underground clarifier housing. Your response makes clear that the support column is not just a submerged structural support. Instead, the support column plays an important role in the actual removal of contaminants from the wastewater during the wastewater treatment process by “reciev[ing] wastewater internally” and then “distribut[ing] it to the return activated sludge pumps.” Therefore, it would be accurate to say the support column is “used to remove contaminants from wastewater,” as that phrase is used in Gross Receipts Tax Rule GR-66.

After considering the additional information provided, the Department concludes the clarifier support column(s) needed for this project is exempt from gross receipts tax pursuant to Arkansas Gross Receipts Tax Rule GR-66 and Ark. Code Ann. § 26-52-402(a)(3)(A).

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 change in the facts or law could result in a different opinion. Only the requestor may rely on this opinion, and, pursuant to Arkansas Gross Receipts Tax Rule GR-75(B), this opinion will only be binding on the Department for three (3) years from the date of issuance.

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](http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf).

Sincerely,

Keith K. Linder, Attorney  
Revenue Legal Counsel