



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

REVENUE LEGAL COUNSEL

P.O. Box 1272 – Room 2380
Little Rock, Arkansas 72203
Phone: (501) 682-7030
Fax: (501) 682-7599
www.arkansas.gov/dfa

December 3, 2020

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

RE: Gross Receipts Tax – Wastewater Treatment Facility
Opinion No. 20200425

Dear [REDACTED]:

I am writing in response to your request for a legal opinion concerning a construction project at a manufacturer's wastewater treatment plant. Your letter states:

[REDACTED] is requesting a state sales tax exemption determination for a wastewater treatment improvement project that is required by the City of [REDACTED].

This expansion is a result of a manufacturing expansion which increases the volume and loadings of wastewater being generated from the food processing facility. Currently, the project is in construction and project financing is being finalized such that the sales tax assessment will significantly impact the required financing amount.

[REDACTED] is required to provide additional pretreatment for solids and oil/grease prior to discharging to the City's wastewater treatment facility. It is our understanding that under the Gross Receipts Tax Rule GR-66, purchase of pollution control machinery and equipment where it is used by a manufacturing plant to prevent or reduce water pollution is exempt from sales tax. The following is presented for your consideration:

- 1) The [REDACTED] maintains a [REDACTED] with the State of Arkansas Department of Environmental Quality. As a condition in this permit, the City is required to operate an industrial pretreatment program in accordance with Section 402(b)(8) of the Clean Water Act, the General Pretreatment Regulations (40 CFR Part 403), and the approved POTW pretreatment program prepared by the City. Specific limits and pretreatment standards are established under this program and included as permit conditions with [REDACTED]. Attached is a copy of the [REDACTED].

between [REDACTED] and [REDACTED] (operated and maintained by [REDACTED]) for the required wastewater limits.

2) Attached to this correspondence is a summary of machinery or equipment that is being claimed for exemption which removes contaminants from the wastewater during the treatment process.

3) [REDACTED] [REDACTED] [REDACTED] is located in [REDACTED] [REDACTED] and manufactures a variety of frozen foods including brands such as [REDACTED]
[REDACTED]
[REDACTED]

Your letter then lists and describes several broad categories of equipment:

All processes described below are located within the defined area of [REDACTED] wastewater pretreatment system in [REDACTED]. [REDACTED] has operated a pretreatment facility since [REDACTED] where food manufacturing has occurred. Key project components for equipment or machinery include:

- 1) Screen Building Influent Pumps Replacement - lifting of wastewater from the treatment facility receiving pit to rotary drum screens for solids separation.
- 2) 16" Gravity Sewer Piping, Valves, Manholes- conveying wastewater from the screen effluent area to the equalization tank.
- 3) Equalization Tank and Aeration Mixing - provide equalization to reduce peak loadings of solids, oil/grease and flow prior to further pretreatment.
- 4) 8" Force Main, Piping, Valves, Pumps, Manholes - conveyance of wastewater from the equalization tank to pretreatment processes.
- 5) OAF Upgrade - conversion of an existing rectangular gravity clarifier to a dissolved air flotation system to remove solids and oil/grease through microbubbles and chemical addition; equipment components include a dissolved aeration system (saturation tank, pumps), various sized pipes and valves.
- 6) Electrical Upgrades - expansion of existing electrical/MCC systems allowing for additional treatment equipment operation.
- 7) Process Control System Upgrade - installation of new PLC, process control elements and supporting systems to operate new and existing pretreatment equipment in an efficient manner.

Upon receiving your request, I contacted you regarding the need for written documentation from the Arkansas Department of Environmental Quality (“ADEQ”) stating the specific machinery or equipment you are planning to build or replace is required by Arkansas or federal law and that the equipment or machinery will be used for pollution or contamination control. Later, you were able to provide such a letter. Your request to ADEQ was more specific than your request to Revenue Legal Counsel. It listed the actual parts necessary to complete the broad project categories contained in your opinion request. ADEQ responded to that letter by listing the specific parts that qualify as “water pollution control machinery and equipment.” The Department cannot issue a binding opinion on the items contained in your opinion request that were not addressed by ADEQ in its letter. *See* Arkansas Gross Receipts Tax Rule GR-66(A)(2). Therefore, this opinion will only address the specific parts that the ADEQ letter designates as water pollution control machinery and equipment.

For ease of reading, I will first lay out the law generally applicable to Gross Receipts Tax in relation to wastewater treatment plants and then address the taxability of the specific pieces of machinery or equipment.

RESPONSE

The pieces of equipment specified in your letter are exempt from gross receipts tax if they are used either directly or indirectly by a manufacturing or processing plant or facility to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility. A taxpayer claiming this exemption must also provide the Arkansas Department of Finance and Administration (the “Department”) with written documentation from the Arkansas Department of Environmental Quality or the United States Environmental Protection Agency that such equipment is required by Arkansas or federal law.

Subject to certain exemptions, deductions, and credits, sales of tangible personal property and certain enumerated services are subject to gross receipts (“sales”) tax in Arkansas. Ark. Code Ann. § 26-52-301 (Supp. 2019). The Arkansas General Assembly has created a sales tax exemption for machinery and equipment required by state or federal law, rules, or regulations to be installed and utilized by manufacturing and processing plants or facilities, cities, or towns in this state to prevent or reduce air or water pollution or contamination. Ark. Code Ann. § 26-52-402(a)(3) (Suppl. 2019). Arkansas Gross Receipts Tax Rule GR-66(A) implements that statute by describing when pollution control machinery and equipment is exempt:

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 are 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 or the United States
Environmental Protection Agency.

Wastewater treatment machinery and equipment is exempt if it is used to remove contaminants from wastewater during the water treatment process. Arkansas Gross Receipts Tax Rule GR-66(E)(1). “The treatment process begins when solids are first removed from the wastewater and ends when all solids and other contaminants are removed from wastewater.” *Id.* Excluded from the treatment process is the collection of wastewater from locations outside the plant, the delivery of wastewater to the plant, and the disposal of solids or other contaminants removed from the wastewater. Arkansas Gross Receipts Tax Rule GR-66(E)(2). Machinery and equipment that is used on solids or contaminants already separated from the wastewater is not exempt.

The following items are expressly exempt from tax if used during the water treatment process:

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.

Arkansas Gross Receipts Tax Rule GR-66(E)(3). This list is not an exhaustive account of all non-taxable equipment and machinery.

The following items are 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.

Arkansas Gross Receipts Tax Rule GR-66(E)(4). Items not included in this list are nonetheless taxable if they do not meet the definition of exempt machinery and equipment under Arkansas Gross Receipts Tax Rule GR-66(E)(1).

a. Pumps

Pumps are exempt from tax if they are used during the water treatment process to remove contaminants from wastewater. Arkansas Gross Receipts Tax Rule GR-66(E). This means the pump must be used to remove contaminants from wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater. *Id.*

ADEQ identified several pumps that qualify as water pollution control machinery and equipment:

- Influent Pump 1
- Influent Pump 2
- Ege Effluent Pump 1
- Ege Effluent Pump 2
- Recirculation Sampling Pump
- Sulfuric Acid Metering Pump 1
- Sulfuric Acid Metering Pump 2
- Primary DAF Recycle Pump 1
- Primary DAF Recycle Pump 2
- Primary DAF Coagulant Feed Pump
- Primary DAF Polymer Feed Pump

Your request does not make clear if these pumps are part of the water treatment process. If they are used to remove contaminants from wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater, then they are exempt from sales tax.

Language in your request and the ADEQ letter suggests that the influent pumps may be used to pump wastewater prior to the first removal of solids. If that is the case, those pumps, and other machinery and equipment attached to them for use prior to the removal of solids, would not be exempt from sales tax.

b. Flow Meters

Flow Meters are exempt from tax if they are used during the water treatment process to remove contaminants from the wastewater. Arkansas Gross Receipts Tax Rule GR-66(E). This means the flow meters must be used to remove contaminants from wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater. *Id.*

The letter from ADEQ identified an influent mag flow meter and an Ege effluent mag flow meter as water pollution control machinery and equipment. Your request does not make clear if these flow meters are used during the water treatment process. If they are used to remove contaminants from wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater, then they are exempt from sales tax.

c. Feb Tank 1

ADEQ identified the feb tank 1 as water pollution control machinery and equipment. The feb tank 1 is exempt from tax if it is used to remove contaminants from wastewater during the water treatment process. If the tank is merely used to store water before or after the water treatment process, it would not be exempt from sales tax.

d. Feb Coarse Bubblers 1

ADEQ identified the feb coarse bubblers 1 as water pollution control machinery and equipment. The Department has traditionally treated bubbler equipment as exempt. The feb coarse bubblers 1 are exempt from sales tax if they are used to remove contaminants from wastewater during the water treatment process.

e. Feb Blower

ADEQ identified the feb blower as water pollution control machinery and equipment. Blowers used to remove contaminants from wastewater during the water treatment process are exempt from sales tax. Arkansas Gross Receipts Tax Rule GR-66(E). The feb blower is exempt from sales tax if it used to remove contaminants from the wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater.

f. Eqe Effluent Control Valve

ADEQ identified the eqe effluent control valve as water pollution control machinery and equipment. Valves used to remove contaminants from wastewater during the water treatment process are exempt from sales tax. Arkansas Gross Receipts Tax Rule GR-66(E). The eqe effluent control valve is exempt from sales tax if it used to remove contaminants from the wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater.

g. Recirculation Static Mixer

ADEQ identified the recirculation static mixer as water pollution control machinery and equipment. The recirculation static mixer is exempt from sales tax if it used to remove contaminants from the wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater.

h. Recirculation Strainer

ADEQ identified the recirculation strainer as water pollution control machinery and equipment. The recirculation strainer is exempt from sales tax if it used to remove contaminants from the wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater.

i. DAF1 Pipe Flocculator 1

ADEQ identified the DAF1 pipe flocculator 1 as water pollution control machinery and equipment. Past Department opinions have treated flocculators used in the water treatment process as exempt from sales tax. The DAF1 pipe flocculator 1 is exempt from sales tax if it used to remove contaminants from the wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater.

j. Primary DAF Aeration Header

ADEQ identified the primary DAF aeration header as water pollution control machinery and equipment. The primary DAF aeration header is exempt from sales tax if it used to remove contaminants from the wastewater between the point where solids are first removed from the wastewater and when all solids and other contaminants are removed from wastewater.

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.

Sincerely,

Keith K. Linder, Attorney
Revenue Legal Counsel