



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

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August 4, 2020

**VIA EMAIL**



RE: Soft Drink Tax – Flavor Cartridges  
Opinion No. 20200526

Dear [REDACTED],

Your letter of May 22, 2020 requesting a legal opinion regarding the taxability of flavor cartridges used in the making of soft drinks on behalf of [REDACTED] (“Requestor”) has been assigned to me for response. Your request specifically states:

I would like a legal opinion on whether some items that my company is about to start selling will require the Arkansas Beverage Tax.

We are going to sell the flavor cartridges for the freestyle [REDACTED] machines (the “Machine”). We have separate items for the regular and sugar-free syrups that go into these machines, and we know they are taxable. But we are unsure of the flavor cartridges that are added to the syrup to make the finished beverage.

In our subsequent conversations, you explained further that the Machine allows the consumer to supplement any soft drink product of [REDACTED] with additional flavorings chosen from a touch-screen menu. For a standard soft drink, the Machine will use a syrup and mix it with water or another substance to produce the beverage for the consumer. If a consumer chooses to supplement a soft drink with additional flavoring, the machine will take a flavor cartridge and add it to the standard soft drink, creating a completely customized drink.

In your request, you ask whether the flavor cartridges that are added to the soft drink in the Machine are taxable under the Arkansas Soft Drink Tax Act of Ark. Code Ann. § 26-57-901 *et seq.* (Repl. 2014) (the “Soft Drink Act”).

**RESPONSE.**

No, the flavor cartridges are not subject to the Soft Drink Tax imposed by the Soft Drink Tax Act of Ark. Code Ann. § 26-57-901 *et seq.* because they are not a “syrup” or “soft drink” that is taxable under the Soft Drink Tax. *See* Ark. Code Ann. § 26-57-902(b)(15) (Repl. 2014).

Under Ark. Code Ann. § 26-57-904(a) (Supp. 2019), the Soft Drink Tax is levied upon every distributor, manufacturer, or wholesale dealer, to be calculated as follows:

- (1) One dollar and twenty-six cents (\$1.26) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the State of Arkansas;
- (2) Twenty and six-tenths cents (20.6¢) per gallon for each gallon of bottled soft drinks sold or offered for sale in the State of Arkansas; and
- (3)(A) When a package or container of powder or other base product, other than a syrup or simple syrup, is sold or offered for sale in Arkansas, and the powder for the purpose of producing a liquid soft drink, then the tax on the sale of each package or container shall be equal to twenty and six-tenths cents (20.6¢) for each gallon of soft drink which may be produced from each package or container by following the manufacturer's directions.

The "Soft Drink Tax" applies to "soft drinks" as defined in Ark. Code Ann. § 26-52-902(14) (Repl. 2014). The Department of Finance and Administration (the "Department") has also issued Soft Drink Tax Regulation 1993-8 to aid in the administration of the Soft Drink Act, and states in pertinent part:

"Soft drink" means any non-alcoholic beverage sold for human consumption including ready-to drink coffee and tea sold in bottles, cans or other sealed containers and "diet" or low-calorie soft drinks. "Soft drink" **does not include products used solely for coloring or flavoring other beverages.**

Soft Drink Tax Regulation 1993-8 (A)(17) (emphasis added).

Moreover, the Soft Drink Act defines "syrup" as "the liquid mixture of basic ingredients used in making, mixing, or compounding soft drinks by mixing the syrup with water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink." Ark. Code Ann. § 26-57-902(b)(15). *See also* Soft Drink Tax Regulation 1993-8 (A)(18). "Simple Syrup" is defined as a "mixture of sugar and water." Ark. Code Ann. § 26-57-902(b)(13); *see also* Soft Drink Tax Regulation 1993-8 (A)(16).

In your request for legal opinion, the flavor cartridges described do not fit within the definition of a "syrup," a "simple syrup," or a "soft drink," that is subject to the Soft Drink Tax. *See* Ark. Code Ann. § 26-57-904(a)(1); § 26-57-902(b)(13)-(15); Soft Drink Tax Regulation 1993-8 (A)(16)-(18). As you described in our communications, the flavor cartridges that go into the Machine are liquid concentrated flavors that supplement a completed soft drink. Therefore, the cartridges at issue in your request are not a syrup or simple syrup that are used to make a complete soft drink because the soft drink exists independently of the flavor that is added. *See* Ark. Code Ann. § 26-57-902(13)-(15); *see also* Soft Drink Regulation 1993-8 (A)(18). Moreover, the Department's Soft Drink Tax Regulation 1993-8 (A)(17) specifically states that a soft drink "does not include products used solely for coloring or flavoring other beverages."

Accordingly, the flavor cartridges are not taxable under the Soft Drink Act.

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