



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

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July 21, 2020

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

RE: Sales and Use Tax Exemption for Farm Machinery and Equipment
Opinion No. 20200527

Dear [REDACTED]:

Your letter dated February 13, 2020 letter seeing a legal opinion on behalf of [REDACTED] [REDACTED] (“Requestor”) has been assigned to me for response. Your letter presented the following facts for consideration:

We are a manufacture[r] in [REDACTED], [REDACTED] and I am inquiring about whether the products we produce and sell, qualify for the agriculture exemption for farmers in Arkansas under tax code GR-51.

The first item we are selling is a livestock shade system. On system is a permanent shade system and the other shade system is a mobile unit. Please refer to our web site link so you can see the details of each product. I have also included our product flyers to refer to.

Both products are used for livestock to help keep them cool in the hot days of summer. I do not see any clear clarification for this type of product to determine whether I can accept the agriculture exemption for these products which is used exclusively and directly in the production of raising and caring of livestock.

I would ask that you provide a ruling for the permanent and portable separately as they may differ in your decision on taxability.

We also produce and sell a mower covers that attaches to a disk (rotary) mower. This is also exclusively and directly for agricultural production. This product typically is a replacement item that is attached to the disk (rotary) mower. I do not see any clear clarification for this type of product. I would ask for a ruling on the item as well.

Requestor holds an Arkansas sales tax permit. The Office of Revenue Legal Counsel has interpreted your question to ask whether Requestor must collect sales tax from the purchasers of its shade systems and mower cover identified in your letter.

LAW

Arkansas sales tax applies to all sales of tangible personal property and certain enumerated services within the State of Arkansas unless a specific exemption applies. Ark. Code Ann. § 26-52-301 (Supp. 2019). Tangible personal property is “personal property which may be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses.” Arkansas Gross Receipts Tax Rule GR-3(Q).

If the seller is acting as a retailer, the seller should collect and remit sales tax on all sales of tangible personal property or services to customers, unless an exemption is available for the transaction. You have indicated that you believe Requestor’s shade systems and mower covers are used exclusively and directly for agricultural production.

Arkansas Code Annotated § 26-52-403 exempts sales of new and used farm equipment and machinery used directly and exclusively in the commercial production of food or fiber from the sales tax. Arkansas Gross Receipts Tax Rule GR-51, outlined below, provides the general guidance needed to address questions regarding application of the farm machinery and equipment exemption.

Arkansas Gross Receipts Tax Rule GR-51 (“GR-51”) provides, in pertinent part, as follows:

B. DEFINITIONS.

1. “Farm equipment and machinery” means agricultural implements used exclusively and directly for the agricultural production of food or fiber as a commercial business or the agricultural production of grass sod or nursery products as a commercial business. Farm equipment and machinery does not include implements used in the production and severance of timber, motor vehicles that are subject to registration, airplanes, or hand tools.
 - a. The following agricultural implements are exempt provided they meet the requirements of GR-51(C)(1) and GR-51(C)(2): Combines, cotton pickers, cotton module builders, cotton trailers, cultivators, discs, farm tractors, (other than garden tractors) harrows, irrigation equipment, milking equipment including milking machines, mechanical pickers, planters, plows, rotary hoes, sprayers, spreaders and threshing machines.

C. The list of exempt items in GR(B)(1)(a) is not intended to be exclusive. Other agricultural implements may qualify for this exemption provided they meet the requirements of GR-51(C)(1) and GR-51(C)(2).

1. An implement may not be treated as tax exempt unless it is used “exclusively” in the agricultural production of food or fiber as a

business or the agricultural production of grass sod or nursery products as a business.

- a. An implement will be presumed to be used exclusively in the agricultural production of food, fiber, grass sod, or nursery production as a business if the implement is used on land owned or leased for the purpose of agricultural production of food, fiber, grass sod, or nursery production.
 - b. A person who uses agricultural implements in the production of food, fiber, grass sod, or nursery products primarily for his own consumption is not entitled to this exemption.
2. An implement may not be treated as tax exempt unless it is used “directly” in the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business. The term “directly” limits the exemption to the following:
- a. Only those implements used in the actual agricultural production of food, fiber, grass sod, or nursery products to be sold in processed form or otherwise at retail; or
 - b. Machinery and equipment used in the agricultural production of farm products to be fed to livestock or poultry which is to be sold ultimately in processed form at retail.
3. Implements which are not exempt include, but are not limited to, the following:
- a. Containers and storage facilities;
 - b. Implements used in the production or severance of timber (except as exempted by GR-51(F) of this rule), or any motor vehicle of a type subject to registration for use on the highway, or airplanes, or hand tools;
 - c. Attachments to and accessories not essential to the operation of the implement itself (except as sold as part of an assembled unit);
 - d. Items which are incorporated into real property; and
 - e. Repair labor and parts.
 - f. Examples of non-exempt items include (1) a machine owned by a commercial farmer but also used at a location other than the farming property (such as a duck club or deer camp); (ii) a machine owned by a commercial farmer but also used for any purpose at any time for activities other than commercial farming, even while located at the commercial farm (such as pleasure

riding, household activities, residential yard work, gardening, hunting, fishing); and (iii) a machine purchased by a commercial farmer who also uses the machine to produce

As a general matter, machinery and equipment used by a farmer is exempt from tax if that machinery and equipment is used both exclusively and directly in the production of food or fiber as a business. First, it must be determined that the item for which the exemption is sought is machinery or equipment. Items that are not machinery or equipment do not qualify for the farm machinery exemption. Examples of items used in farming that are not machinery or equipment include buildings, hand tools, fencing, and repair parts.

Next, the item for which the exemption is sought must be used both “exclusively” and “directly” in the production of food or fiber. Items are considered as being used exclusively in farming if the farmer utilizes the item only for the production of food and fiber and does not also use the item for non-production purposes. Items are used “directly” in farming if the item is used in actual production of food or fiber and not some ancillary function. For example, lawn mowers and similar items used to maintain the areas around a poultry house are not used directly in production.

Evidence that only proves a taxpayer uses or operates machinery or equipment on a farm is not sufficient to establish entitlement to the tax exemption for farm machinery and equipment. Whether the machinery or equipment is beneficial to the farming operation is not the test. To qualify, the machinery must contribute directly to the “production” of food or fiber for commercial purposes within the meaning of GR-51.

ANALYSIS AND CONCLUSION

The information provided does not describe facts concerning any specific sale or transaction, so it is not possible for the Department to fully evaluate whether the purchase of Requestor’s shade systems or mower covers meet all of the requirements of the exemption. For example, the Department is unable to determine whether the purchaser is engaged in the business of farming as defined in Arkansas Gross Receipts Tax Rule GR-51(E). In addition, it is not immediately clear that they would, or would not, be used exclusively and directly in the production of food or fiber as a business by a prospective purchaser.

As the seller, Requestor may rely upon the Farm Exemption Certificate provided to them by the customer. A copy of this certificate can be found at:

<https://www.dfa.arkansas.gov/images/uploads/exciseTaxOffice/CommercialFarmExemptionCertificate.pdf>

As an alternative to an exemption certificate, Requestor may accept a certification or other information from the purchaser that establishes the transaction is exempt under Arkansas Gross Receipts Tax Rule 51, as set out above. Arkansas Gross Receipts Rule GR-79(F)(2)(b).

The customer must certify, in writing, on the copy of the invoice or sales ticket to be retained by you that they are engaged in farming and that the farm machinery will be used exclusively and directly in farming as a business.

Arkansas Gross Receipts Tax Rule GR-51(D) states:

Sellers of farm equipment and machinery, which the purchaser claims as an exempt transaction, should refer to GR-79 concerning exemptions. As an alternative to an exemption certificate, a seller may accept a certification from the purchaser that the item (i) will be used exclusively in the agricultural production of food or fiber as a retail business; and either (ii) used directly in the actual agricultural production of food or fiber to be sold in processed form or at retail; or (iii) used directly in the agricultural production of farm products to be fed to livestock or poultry, which is to be sold ultimately in processed form at retail. The suggested certification form appears at the end of this rule.

It is necessary that your customers provide you a copy of this certification in order to qualify for the tax exemption. You, in turn, must certify to the Department of Finance and Administration (“Department”) that the contract price of the farm equipment has been reduced to grant the full benefit of the exemption.

Arkansas Gross Receipts Tax Rule GR-79 provides:

A seller that follows the exemption requirements is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption. If it is determined that the purchaser improperly claimed an exemption, the purchaser will be liable for the nonpayment of tax, as well as any penalty and interest due on the transaction.

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. Please be advised that this opinion may only be binding upon DFA for three (3) years from the date of issuance. *See* Arkansas Gross Receipts Tax Rule GR-75.

The Gross Receipts Rules cited in this opinion may be viewed on DFA’s website at http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf.

Sincerely,

Susan M. Fowler
Revenue Legal Counsel

SMF/ss