



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

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July 21, 2020

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

VIA EMAIL: [REDACTED]

RE: Sales Tax – Farm Machinery & Equipment Exemption
Opinion No. 202000602

Dear [REDACTED]:

Your email of June 2, 2020 requesting a legal opinion from the Department has been assigned to me for response. Specifically, you have asked the Department of Finance and Administration (the “Department”) to reissue a December 1, 2008 opinion (Opinion No. 20081033) concerning the taxability of [REDACTED]’s (“Requestor”) purchase of a fertilizer blender and loader. Requestor was formerly known as [REDACTED]. In opinion 20081033, the Department determined that the blending equipment and loader qualified for the farm machinery exemption from state and local Arkansas sales or use tax. However, it is noted that the Department issued supplemental Opinion #20081033-S on November 18, 2009, stating that the original opinion (20081033) was erroneous.

The facts outlined in your request dated June 2, 2020, reflect that the facts are unchanged from those facts considered in Opinion No. 20181033-S. Additionally, the relevant law applicable to the facts outlined in Opinion No. 20181033-S is also unchanged. Since there has been no change in the applicable law or facts, Opinion No. 20181033-S is renewed, as set out below, for a period of three (3) years from the date of this opinion as authorized by Arkansas Gross Receipts Tax Rule GR-75(B) or until a different result is dictated by a subsequent change in Arkansas law.

RESPONSE

Your prior opinion request stated:

[REDACTED] is a fertilizer dealer and has purchased equipment to blend fertilizer to the analysis needed by the farmer based on the chemical analysis desired for their farmland. The equipment is a blender which is accompanied by a loader. The loader is also used exclusively for the farmers to load the fertilizer onto a spreader or truck for them to use on their land.

I need to verify that the blending equipment and loader qualify for the Agricultural Equipment Exemption since it is used exclusively for and by farmers for the production of food or fiber.

You have asked whether Requestor's purchase of the blending equipment and loader qualify for the "agricultural equipment exemption" from state and local Arkansas sales or use tax. As further explained below, Requestor's purchase of the blender and loader are not exempt from Arkansas sales tax under Arkansas Gross Receipts Tax Rule GR-51(E)(2).

Arkansas Gross Receipts (Sales) Tax generally applies to all sales of tangible personal property and certain enumerated services unless a specific exemption applies. Ark. Code Ann. § 26-52-301 (Supp. 2019). The specific exemption relevant to your request is referred to as the farm machinery and equipment exemption. That exemption is found in Ark. Code Ann. § 26-52-403 (Repl. 2014) and provides an exemption for farm machinery and equipment "used exclusively and directly in farming." "Farming" means the agricultural production of food or fiber as a business. Ark. Code Ann. §26-52-403(a)(2) (Repl. 2014). "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. Arkansas Gross Receipts Tax Rule GR-51(B)(1).

The term "farming" is defined by Ark. Code Ann. § 26-52-403(a)(2) to include both the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business. Arkansas Gross Receipts Tax Rule 51(E)(1) defines "engaged in the business of farming" as follows:

The purchaser is engaged in the agricultural production of food, fiber, grass sod, or nursery products as a business for profit as defined in Internal Revenue Code § 26-51-424

Based on the information provided, Requestor is not engaged in the business of farming but is a retail seller of fertilizer and other products used by farmers. By definition, independent fertilizer dealers would not be engaged in the production of food or fiber as a business and the sale of equipment to dealers for the purposes of fertilizer production would not fall within the exemption.

However, Arkansas Gross Receipts Tax Rule GR-51(E)(2) provides a sales tax exemption for the purchase of farm machinery and equipment by a buyer who is not actively engaged in farming, if the following requirements are met:

E. ENGAGED IN THE BUSINESS OF FARMING. A purchaser of farm machinery and equipment shall be considered to be engaged in the business of farming for purposes of the exemption if the purchaser meets the requirements in GR-51(E)(1) or GR-51(E)(2).

2. a. The purchaser provides services to farmers directly related to the production of food, fiber, grass sod, or nursery products;

b. The items of farm machinery and equipment are used exclusively and directly to provide those services; and

c. The items of farm machinery and equipment would have otherwise qualified for the farm machinery exemption if purchased and used exclusively and directly by the farmer for the same activity.

Example: A fertilizer spreader or seed spreader, or chemical applicator purchased by a farmer would qualify for the farm machinery exemption if used exclusively by a farmer in applying fertilizer, planting seed, or applying agricultural chemicals as part of the agricultural production of food, fiber, grass, sod, or nursery products as a business. The farm machinery exemption will also be available to a fertilizer dealer, seed company, or other similar business upon the purchase of these same items provided the items are used exclusively and directly by the business in applying fertilizer, planting seed, or applying agricultural chemicals for farmers.

The farm machinery exemption is only available to non-farmers if equipment and machinery is an implement used exclusively and directly by the business in farming. You indicate the equipment and machinery will be used exclusively to produce and load fertilizer for the farmer who will then spread the fertilizer on their farm. While Requestor may meet the exclusivity requirement, it does not appear that Requestor is providing “services to farmers *directly* related to the production of food, fiber, grass sod, or nursery products” as Requestor is not involved in the applying of the fertilizer as required by Arkansas Gross Tax Receipts Rule GR-51(E)(2)(a). The blender and loader therefore do not qualify for the farm exemption from state and local Arkansas sales or use tax.

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