

Chapter Four

Taxable Services and Contractors

GR-9. Taxable Services

Service of, addition to or the service of alteration, cleaning, refinishing, replacement and repair of the following items of tangible personal property are subject to the tax.

1. Motor vehicles, aircraft and boats.
2. Farm machinery and farm implements.
3. Motors of all kinds.
4. Tires and batteries.
5. Electrical appliances and electrical devices.
6. Furniture, rugs including carpets, and upholstery.
7. Household appliances.
8. Televisions and radios.
9. Jewelry, watches, clocks.
10. Engineering instruments, medical instruments, surgical instruments.
11. Machinery of all kinds.
12. Bicycles.
13. Office machines, office equipment.
14. Shoes.
15. Tin and sheet metal.
16. Mechanical tools and shop equipment.

The tax applies to the above items whether or not the items are affixed to real property.

Effective August 1, 1997 – Act 1076 of 1997 provides that service contracts, maintenance agreements and extended warranties which cover taxable services are subject to sales tax.

AMENDMENTS TO REGULATIONS DEALING WITH SERVICES

Act 5 of 1992 Special Session levies the sales tax on many services which had not previously been subject to tax. These services are as follows:

1. The transportation of property by armored car.
2. Providing a credit report. (Repealed with Act 1263 of 1997 – effective 4/9/97)
3. Collecting a debt or account receivable. (Repealed with Act 1263 of 1997 – effective 4/9/97)
4. Cleaning or janitorial work.
5. Pool cleaning and servicing.
6. Pager services.
7. Telephone answering services.
8. Lawn care and landscaping services. (Lawn care applies to commercial property only)
9. Parking a motor vehicle or allowing a motor vehicle to be parked.
10. Storing a motor vehicle.
11. Storing furs.
12. Indoor tanning.
13. Dues & fees to health spas, health clubs and fitness clubs.
14. Dues & fees to private clubs that hold any permit issued by the Alcoholic Beverage control Board allowing the sale, dispensing, or serving of alcoholic beverages of any kind.

GR-9.1. Television

1. The service of cable television, community antenna television, and any and all other distribution of television, video, or radio services with or without the use of wires provided to subscribers or paying customers or users are subject to the tax.

Includes all service charges and rental charges, whether for basic service, premium channels, or other special service, including installation and repair service charges and any other charges having any connection with the providing of the said services.

Services provided for programming satellites, as well as services provided to repair and reprogram satellites are taxable services under Ark. Code Ann. § 26-52-301 (3)(D)(i). Satellites are covered by this provision because it applies to all other distribution of television services with or without the use of wires. This provision taxes all service charges including installation charges, repair service charges, and any other charges having any connection in providing television services.

2. Does not apply to purchase of services by radio and television companies for use in providing their services.
3. Converter boxes for cable television are subject to the Arkansas use tax at the time of purchase by the cable television operator. These converters are items which are used and consumed by the cable television operator in providing cable television services. The converters are provided to the ultimate customer as part of the overall cable television service. Therefore, the use tax must be paid on the converter at the time of purchase the same as any other item purchased for use or consumption in the cable television operator's business. In addition, the sales tax must be collected on all charges having any connection with providing cable television services, including any separately stated charge for the use of the converter.
4. The purchase of fabrication of props and other such items used in the studio are taxable. Broadcasters frequently give away promotional merchandise and these purchases would be taxable.
5. Direct Satellite Services – The Federal Telecommunications Act was passed by Congress February 8, 1996. Section 602 of this act states that a provider of direct-to-home satellite services is exempt from the collection or remittance of taxes or fees imposed by any local taxing jurisdiction, including local sales and use taxes. It does not exempt these services from applicable state taxes. The exemption applies only to the programming provided, not the equipment.

A provider of direct-to-home satellite services includes vendors transmitting, broadcasting, selling or distributing programming by satellite without the use of equipment other than that at the subscribers' premises or in the uplink process to the satellite. This exemption does not extend to cable television services.

GR-10. Printing and Photography

The tax must be collected on the service of printing of all kinds, types and characters, including the service of overprinting.

1. All businesses engaged in providing such services, including job printers and others must collect and remit the tax on the gross proceeds from providing the services.
2. The tax also applies to the service of photography of all kinds.

Act 835 Labor

Act 835 of 1995, the "fixture rule" amends the definition of contractor to include construction or repair of a building or improvement to property including component parts and excludes from sales tax the following services:

Alteration, addition, cleaning, refinishing, replacement, or repair of non-mechanical, passive or manually operated components of buildings or other improvements or structures affixed real estate including:

- A. Walls, floors and ceilings.
- B. Doors, locks, windows, and glass.
- C. Heat and air ducts.
- D. Roofs.
- E. Wiring, breakers, and breaker boxes.
- F. Electrical switches, and receptacles.
- G. Light fixtures.
- H. Pipes and plumbing fixtures.
- I. Fire and security alarms.
- J. Intercoms.
- K. Sprinkler systems.
- L. Parking lots, fences and gates.
- M. Fireplaces.
- N. Similar components which become a part of real estate after installation.

GR-21. CONTRACTORS

Contractors are deemed to be consumers or users of all tangible personal property which they purchase for use in the performance of a contract.

1. Tax should be paid on the tangible personal property at the time of purchase.
2. Contractors which act as a seller of tangible personal property must collect tax from their

customer on that sale of tangible personal property.

3. Contractors which perform taxable services (GR-9) must collect tax from their customer.
4. Persons performing work as a contractor in connection with the construction, erection or substantial modification of any building, or other improvement or structure affixed to real property will not collect the tax on such contracting services.

This includes tenant finish work for tenants of the structures.

5. Definitions:

- A. Construction contract means a contract to construct, manage or supervise the construction, erection or substantial modification of a building or other improvement or structure affixed to real property.

Construction contract does not include contracts to produce tangible personal property.

- B. Recognizable means capable of being recognized in the finished product.

Recognizing the effect of the materials upon the finished structure or improvement is insufficient to establish materials as exempt.

- C. Materials means tangible personal property used or purchased by contractors.

6. Withdrawals from stock.

- A. Some construction contractors maintain an inventory of materials and pay sales or use tax on withdrawals from stock or inventory.

- B. If a construction contractor claims the exemption for withdrawals, the contractor must maintain all records required by this regulation including copies of the contracts for which the exemption is claimed.

7. Burden of proof.

- A. The burden of proving entitlement to an exemption is on the taxpayer.

- B. In the case of an audit of a seller's business, the burden is on the seller to keep records adequate to prove the validity of the claimed exemptions.

- C. In the case of an audit of a construction contractor's business, the burden is on the construction contractor to keep records adequate to prove the validity of the claimed exemptions.

- D. Failure to keep adequate records will result in the exemptions being disallowed.

GR-30. EXEMPT LABOR SERVICES

Resale Labor

GR-9 labor which is performed for a person holding a retail permit is allowed the sale for resale exemption if the labor is to be charged to and collected from the ultimate consumer.