

**EMERGENCY RULE 2011-2  
ARKANSAS SALES TAX HOLIDAY**

This emergency rule is adopted under the provisions of Ark. Code Ann. §25-15-204, §26-18-101 et seq. and *Act 757 of 2011*, which is codified at Ark. Code Ann. §26-52-444. This rule is necessary to properly administer the provisions of *Act 757 of 2011* regarding the Arkansas sales and use tax holiday.

**A. Definitions.** The following words and phrases, when used in this rule, shall have the following meanings:

1. "Clothing" means an item of human wearing apparel suitable for general use for which the gross receipts or gross proceeds paid for the item of clothing is less than one hundred dollars (\$100).

a. The following list contains examples of clothing but is not intended to be an all-inclusive list:

- i. Aprons for both household and shop use;
- ii. Athletic supporters;
- iii. Baby receiving blankets;
- iv. Bathing suits and caps;
- v. Beach capes and coats;
- vi. Belts and suspenders;
- vii. Boots;
- viii. Coats and jackets;
- ix. Costumes;
- x. Diapers for children and adults, including disposable diapers;
- xi. Ear muffs;
- xii. Footlets;
- xiii. Formal wear;
- xiv. Garters and garter belts;
- xv. Girdles;
- xvi. Gloves and mittens for general use;
- xvii. Hats and caps;
- xviii. Hosiery;
- xix. Insoles for shoes;
- xx. Lab coats;
- xxi. Neckties;
- xxii. Overshoes;
- xxiii. Pantyhose;
- xxiv. Rainwear;
- xxv. Rubber pants;
- xxvi. Sandals;
- xxvii. Scarves;

- xxviii. Shoes and shoe laces;
  - xxix. Slippers;
  - xxx. Sneakers;
  - xxxi. Socks and stockings;
  - xxxii. Steel toed shoes;
  - xxxiii. Underwear;
  - xxxiv. Uniforms, both athletic and non-athletic; and
  - xxxv. Wedding apparel.
- b. The following list contains examples of items that are not clothing but is not intended to be an all-inclusive list:
- i. Belt buckles sold separately;
  - ii. Costume masks sold separately;
  - iii. Patches and emblems sold separately;
  - iv. Protective equipment;
  - v. Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures and thimbles;
  - vi. Sewing materials that become part of “clothing” including, but not limited to, buttons, fabric, lace, thread, yarn, zippers; and
  - vii. Sport or recreational equipment.

2. "Clothing accessory or equipment" means an incidental item worn on the person or in conjunction with clothing for which the gross receipts or gross proceeds paid for the item of clothing accessory or equipment is less than fifty dollars (\$50). The following list contains examples of clothing accessories or equipment but is not intended to be an all-inclusive list:

- a. Briefcases;
- b. Cosmetics;
- c. Hair notions, including, but not limited to: barrettes, hair bows and hair nets;
- d. Handbags;
- e. Handkerchiefs;
- f. Jewelry;
- g. Sun glasses, non-prescription;
- h. Umbrellas;
- i. Wallets;
- j. Watches; and
- k. Wigs and hair pieces.

3. “Department” means the Arkansas Department of Finance and Administration.

4. “Eligible property” means the following list of items as defined in Section “A” of this rule: clothing; clothing accessory or equipment; school art supply; school instructional material; and school supply.

5. "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. The following list contains examples of protective equipment but is not intended to be an all-inclusive list:

- a. Breathing masks;
- b. Clean room apparel;
- c. Ear and hearing protectors;
- d. Face shields;
- e. Hard hats;
- f. Helmets;
- g. Paint or dust respirators;
- h. Protective gloves;
- i. Safety glasses and goggles;
- j. Safety belts;
- k. Tool belts; and
- l. Welder's gloves and masks.

6. "School art supply" means an item commonly used by a student in a course of study for artwork and includes only the following list of items:

- a. Clay and glazes;
- b. Paints; acrylic, tempera and oil;
- c. Paintbrushes for artwork;
- d. Sketch and drawing pads; and
- e. Watercolors.

7. "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. School instructional material includes only the following list of items:

- a. Reference books;
- b. Reference maps and globes;
- c. Textbooks; and
- d. Workbooks.

8. "School supply" means an item commonly used by a student in a course of study and includes only the following list of items:

- a. Binders;
- b. Book bags;
- c. Calculators;
- d. Cellophane tape;
- e. Blackboard chalk;
- f. Compasses;
- g. Composition books;
- h. Crayons;
- i. Erasers;
- j. Folders; expandable, pocket, plastic and manila;

- k. Glue, paste and paste sticks;
- l. Highlighters;
- m. Index cards;
- n. Index card boxes;
- o. Legal pads;
- p. Lunch boxes;
- q. Markers;
- r. Notebooks;
- s. Paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board and construction paper;
- t. Pencil boxes and other school supply boxes;
- u. Pencil sharpeners;
- v. Pencils;
- w. Pens;
- x. Protractors;
- y. Rulers; and
- z. Scissors and writing tablets.

9. "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. The following list contains examples of sport or recreational equipment but is not intended to be an all-inclusive list:

- a. Ballet and tap shoes;
- b. Cleated or spiked athletic shoes;
- c. Gloves, including, but not limited to, baseball, bowling, boxing, hockey and golf;
- d. Goggles;
- e. Hand and elbow guards;
- f. Life preservers and vests;
- g. Mouth guards;
- h. Roller and ice skates;
- i. Shin guards;
- j. Shoulder pads;
- k. Ski boots;
- l. Waders; and
- m. Wetsuits and fins.

## **B. General Provisions.**

The gross receipts derived from the sale of the following items shall be exempt from state and local Arkansas sales and use tax from 12:01 a.m. on the first Saturday in August to 11:59 p.m. the following Sunday each year:

- 1. Clothing;
- 2. Clothing accessory or equipment;
- 3. School art supply;

4. School instructional material; and
5. School supply.

**C. Procedural Provisions.** For purposes of administering the Arkansas sales tax holiday, the following procedures will apply:

1. Layaway sales. A sale of eligible property under a layaway sale qualifies for exemption if:
  - a. final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or
  - b. the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.
2. Bundled sales. The Department will follow the provisions of §26-52-103(2) on bundled transactions for purposes of the sales tax holiday.
3. Coupons and discounts. A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.
4. Splitting of items normally sold together. Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, a pair of shoes cannot have each shoe sold separately so that the sales price of each shoe is within a sales tax holiday price threshold.
5. Rain checks. A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify eligible property for the exemption if the property is actually purchased after the exemption period.
6. Exchanges. The procedure for an exchange in regard to a sales tax holiday is as follows:
  - a. If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a

different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.

- b. If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.
- c. If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

7. Delivery charges. Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property as set forth under the Department's Gross Receipts Rule GR-18(A). For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling or service charge to determine if the price threshold is exceeded. The shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property (including an eligible item with a sales price in excess of the price threshold), the seller should allocate the delivery charge by using:

- a. a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
- b. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property.

8. Order date and back orders. For the purpose of a sales tax holiday, eligible property qualifies for exemption if:

- a. the item is both delivered to and paid for by the customer during the exemption period; or
- b. the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

9. Returns. For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

10. Different time zones. The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

#### **D. Taxpayer Assistance.**

Information regarding the administration of the sales tax holiday may be obtained from the Sales & Use Tax Section of the Arkansas Department of Finance and Administration, P.O. Box 1272, Room 1340, Joel Y. Ledbetter Building, Little Rock, Arkansas 72203, Phone: 501-682-7104, FAX: 501-682-7904, <http://www.dfa.arkansas.gov>

#### **E. Examination of records.**

The Department is authorized under §26-18-305 of the Arkansas Tax Procedure Act to audit and examine taxpayer books and records to verify compliance with the provisions of *Act 757 of 2011*.

#### **F. Effective Date.**

Emergency Rule 2011-2 shall be effective beginning on May 1, 2011.

Issued this \_\_\_\_\_ day of April, 2011.

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Richard A. Weiss, Director  
Arkansas Department of Finance & Administration

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Tim Leathers, Deputy Director and Commissioner of Revenue  
Arkansas Department of Finance & Administration