

REGULATION 2004-6

REFUNDS OF TAX ERRONEOUSLY PAID

Pursuant to the authority granted by Ark. Code Ann. §§ 26-18-301 and 26-52-105, the Director of the Arkansas Department of Finance and Administration promulgates the following regulation for the purpose of facilitating compliance with the Arkansas Gross Receipts Act of 1941, as amended, and to facilitate the process of refunding an overpayment of tax pursuant to Ark. Code Ann. § 26-18-507.

A. REFUNDS OF TAX ERRONEOUSLY PAID.

1. Refunds Allowed. Any taxpayer who has paid tax in excess of the amount lawfully due is entitled to a refund of the tax erroneously paid. The claim for refund must meet the requirements of the Arkansas Tax Procedure Act. The purpose of this regulation is to clarify those requirements.
2. Refund claims may not be pursued under Ark. Code Ann. §26-18-507 or the provisions of this regulation for the following:
 - a. Illegal exaction actions for which a remedy is available pursuant to Article 16, Section 13 of the Arkansas Constitution;
 - b. Actions arising from the issuance of a proposed assessment, jeopardy assessment, or final assessment for which a remedy is available pursuant to Ark. Code Ann. Sections 26-18-204, 26-18-405, and 26-18-406;
 - c. Taxes for which a refund is barred by the statute of limitations (See Section E).

B. DEFINITIONS

1. "Claim for Refund" shall mean
 - a. An amended return that correctly reports tax that was reported incorrectly on an original return, resulting in a refund of part or all of the tax paid with the original return

Example: Taxpayer A reports its gross receipts for the month of June, 2004 as \$132,000 and calculates its tax liability based on that amount. Taxpayer subsequently discovers that its gross receipts for June 2004 were actually \$123,000. The only information required to correct the error is a change, within the limitations period provided by law, to the gross receipts amount. Taxpayer files an amended return for June 2004 correctly reporting its gross receipts as \$123,000 and calculates the tax liability based on \$123,000. Taxpayer is entitled to a refund of the tax applicable to the \$9,000 difference in gross receipts.

or

- b. A verified claim for refund that requires information in addition to that required on an amended return.

Example: Taxpayer collects tax from its customer on the sale of a piece of machinery that sells for \$85,000. Taxpayer reports and remits the tax on \$85,000. The customer obtains an opinion that the machinery is exempt from tax as manufacturing machinery. Taxpayer refunds the tax to the customer and files a verified claim for refund that supplies the information necessary for DFA to determine whether Taxpayer is entitled to the refund claimed (see Sections C and D regarding claim requirements)

2. "Claimant" shall mean the person or entity that files a refund request (claim for refund). The claimant may be the taxpayer (the vendor or a direct pay permit holder), or the person or entity to whom the taxpayer has assigned its claim (assignee, usually the customer). A representative of the claimant who has been granted the Power of Attorney to act on the behalf of the claimant may submit a Claim for Refund. For a consumer use tax claim, the customer who reported and remitted consumer use tax directly to the state rather than to the vendor may file a Claim for Refund.
3. "Director" shall mean the Director of the Department of Finance and Administration, State of Arkansas or his agent.
4. "Taxpayer" shall mean:
 - a. Any person who is subject to or liable for any state tax
 - b. Any person required to file a return, to pay, or to withhold and remit any tax required by the provisions of any state tax law
 - c. Any person required to obtain a license or a permit or to keep any records under any state tax law; or
 - d. Any person who files a return and pays a reported tax without regard to whether he or she was required to file the return.
5. "Assignee" shall mean a person or entity (usually a customer who paid tax to a vendor) to whom a taxpayer (usually a vendor) has assigned its right to a refund of tax that the taxpayer collected from the customer and reported and remitted to the state.
6. For purposes of this regulation the terms "vendor" and "seller" shall have the same meaning and may be used interchangeably. The terms "customer" and "purchaser" shall have the same meaning and may be used interchangeably.

C. CLAIMS FOR REFUND.

1. Who May File a Claim for Refund?

a. Sales or Use Tax.

- i. The taxpayer (vendor) who collected and remitted the tax may file a refund claim, if the vendor satisfies one of the following conditions:
 - (A) The vendor has borne the tax (i.e., the vendor did not collect the tax from the customer.);
 - (B) The vendor repaid the tax to the customer from whom the vendor collected the tax; or
 - (C) The customer consents to refunding the tax to the vendor.
- ii. The assignee of a vendor (see section G).
- iii. For use tax, a taxpayer who reported and remitted consumer use tax directly to the state rather than to the vendor.

iv. A holder of a direct pay permit.

b. Income Tax. Only a taxpayer who paid income tax may file a claim for refund. An income tax refund is claimed by filing:

- i. an original return reporting a tax liability that is less than the amount paid through withholding and estimated payments; or
- ii. an amended return.

2. Requirements for Claim. Form 2004-6 is incorporated into and adopted as a part of this regulation and is required to be used by every claimant filing a claim for refund other than an amended return. The form provides a method and format to comply with the requirements for a claim for refund. The form is available on the Internet at www.state.ar.us/salestax. The information listed below in items (a.) through (f.) of this section shall be required in order to process any claim for refund other than an amended return.

- a. The Taxpayer's name and identifying tax information, including sales tax permit number, social security number or FEIN;
- b. The date the tax was paid to the state and the tax period for which the tax was paid;
- c. The nature and kind of tax paid, such as sales tax, withholding tax, use tax, withholding tax, individual income tax, corporate income tax;
- d. The amount of tax that is claimed erroneously paid;
- e. The specific grounds upon which a refund is claimed. For example, if the claimant requests a refund based on a claim that the item purchased is exempt

from tax, the information supplied should explain the specific exemption claimed, and the reasons that the item qualifies for the exemption; and

- f. Any other information relative to the payment required by the director
3. **Deficiencies in Claim.** If the director determines that the information supplied in the claim for refund substantially complies with the claim requirements, the claim will be considered to be filed timely for all periods within the statute of limitations as of the date the claim is filed. However, a refund claim that substantially complies with the claim requirements may lack additional information required by the director to process the claim. The director will send a letter to the claimant that states that the claim for refund is considered timely, explains what additional information is required, and gives the claimant a reasonable time to supply the information. If the information is not supplied within the time allowed, that part of the claim relating to the requested information will be denied.
4. **Treatment of Deficient Claims.** Any claim that does not contain the information listed in subsection (C)(2) and as required on Form 2004-6 will be considered not to be in substantial compliance with the claim requirements. The director will send a letter to the claimant stating that the claim does not meet the claim requirements. The claimant may resubmit the claim, adding the necessary information to substantially comply with the requirements. The statute of limitations shall continue to run on the refund claim until a claim is filed that substantially complies with the claim requirements. Only those taxes that are within the statute of limitations at the time a claim that is in substantial compliance with the claim requirements is submitted will be refunded. The statute of limitations will not relate back to the filing date of a prior claim that was not in substantial compliance with the claim requirements.
5. **Signature.**
 - a. **Claims Filed by Taxpayer.** The refund claim shall be signed by a person authorized by the taxpayer to sign tax documents.
 - b. **Claims Filed by Assignee of Taxpayer.** Any person who signs any document on behalf of a vendor that relates to the assignment of a vendor's right to a tax refund must certify that he or she has access to the vendor's records and can certify on behalf of the vendor that the tax has been paid.

D. PREPARATION AND PRESENTATION OF REFUND REQUEST. To facilitate the prompt and efficient review and analysis of refund requests, it is necessary that refund requests be presented in an orderly and understandable fashion. Toward that end, all sales and use tax refund claims should be organized as follows:

1. **Refund Claims Made by Vendors.** The most common refund request occurs when a vendor requests a refund of taxes previously remitted to the state. In these

circumstances, the vendor sells the product or service, collects the tax from the customer, remits the tax to the state, and subsequently obtains information that the original transaction was not taxable or the amount of tax originally paid was incorrect. In this situation, the vendor will refund the tax to the customer and request a refund of the tax from the state. A vendor seeking a refund under these circumstances must present documentation supporting the refund claim in the following manner:

- a. Complete sections 1 and 2 of Form 2004-6.
 - b. Attach copies of all invoices for which a refund of tax is requested.
 - c. The invoices should be arranged in chronological order from the oldest invoice to the most recent.
 - d. A spreadsheet or other list showing that tax was remitted to the State of Arkansas for all invoices that are included in the refund request.
 - e. Provide documentation showing that:
 - i. The vendor has borne the tax (ie. the vendor did not collect the tax from the customer but did pay the tax to the state);
 - ii. The vendor repaid the tax to the customer from whom the vendor originally collected the tax; or
 - iii. The customer consents to refunding the tax to the vendor.
 - f. Any additional documentation that will assist DFA in verifying the refund claim should be attached.
2. Refund of Taxes Paid Directly by the Purchaser. In some situations, the customer is responsible for paying sales and use tax directly to the State of Arkansas. This typically occurs when a customer pays use tax on purchases made from outside the state or the purchaser holds a direct-pay sales and use tax permit. When a purchaser requests a refund of sales or use tax paid directly to the State of Arkansas, the refund claim should be organized in the following manner:
- a. Complete sections 1 and 2 of Form 2004-6.
 - b. Attach copies of all invoices for which a refund of tax is requested. These invoices should be arranged in chronological order from the oldest invoice to the most recent.
 - c. A spreadsheet or other list showing that tax was remitted to the State of Arkansas for all invoices that are included in the refund request.
 - d. Any additional documentation that will assist DFA in verifying the refund claim should be attached.
3. Vendor Assignment Refund Claims. Occasionally, a vendor will assign the vendor's right to a tax refund to the customer and the customer will request that DFA make a refund directly to the customer. In this circumstance, it is necessary to provide adequate safeguards to insure that DFA refund only taxes that have actually been received by the state from the vendor. Refund claims made by

customers as a result of a vendor assignment must be in the following form to provide these safeguards and to expedite processing of these refund claims:

- a. Complete sections 1, 2, and 3 of Form 2004-6.
 - b. Attach copies of all invoices for which a refund of tax is requested. The invoices should be arranged in chronological order from the oldest invoice to the most recent.
 - c. If a vendor assignment refund is being requested for sales tax paid to more than one vendor, a separate section 2 and a separate section 3 must be included for each vendor. The total amount refunded may be summarized for all vendors on section 1.
 - d. Each vendor assigning its right to a refund must complete column 12 of Section 2 and all of Section 3.
 - e. Any additional documentation that will assist DFA in verifying the refund claim should be attached.
4. Requests for refund that do not include the documentation as described in this section or that are not arranged in the manner outlined in this section will be denied. However, the taxpayer will be provided additional time to correct deficiencies as provided in Section (C)(3).

E. **STATUTE OF LIMITATIONS.** The statute of limitations that applies to tax refunds is found at Ark. Code Ann. § 26-18-306. Refund claims are within the statute of limitations if they are filed within three years from the date the return was filed or two years from the date the tax was paid, whichever is later.

F. **PROCESSING CLAIMS FOR REFUND.**

1. Claims for refund will be processed based upon the information supplied in the claim for refund, either on the forms or otherwise included with the claim for refund.
2. The Director will process claims that substantially comply with the requirements of a claim for refund in the order received.
3. Checks that are issued to pay refunds will be mailed to the claimant's address on the claim for refund.
4. The Director will notify, in writing, claimants whose claims for refund are denied in whole that the claim, or any part, has been denied. The denial will state the basis for the denial of the claim. For remedies available upon denial of a refund, see Section I.

G. VENDOR ASSIGNMENTS.

1. Refunds Made Directly to the Assignee (customer). For sales tax, the customer is not the “taxpayer,” because the customer is not liable to report and remit the tax. A customer who pays tax to a vendor should request a refund of tax erroneously paid from the vendor. After the vendor refunds the tax to the customer, the vendor can then file a claim for refund of the tax refunded to the customer. However, under the common law principles of assignment, the vendor can legally assign its right to refund to the customer (assignee).
2. Vendor Assignment Claim Requirements
 - a. The general claim for refund requirements shall apply to refund claims resulting from an assignment by a vendor of its right to refund to the customer from whom the vendor collected the tax (see subsection (C)(1));
 - b. Verification by the taxpayer (vendor) that the tax claimed has been paid by the taxpayer (vendor) to the state. This verification is satisfied if both the taxpayer and the assignee satisfactorily complete Form 2004-6.
 - c. Certifications of Taxpayer (vendor). Taxpayers who assign the right to refund to an assignee should carefully read Section 3 of Form 2004-6. By signing Section 3, the taxpayer is certifying that:
 - i. The assignee (customer) paid the tax to the vendor;
 - ii. The vendor paid the tax to the state;
 - iii. The vendor has not previously requested or received a refund of the tax on the form;
 - iv. The vendor has not refunded the tax to the customer;
 - v. The vendor agrees not to claim a refund after assigning the claim.
3. Right of Assignee to Refund No Greater Than Right of Taxpayer. If the vendor would not be entitled to a refund, then its assignee is not entitled to a refund. Under Arkansas law, an assignee of contract rights has no greater rights against the debtor than did the assignor. *Tucker v. Scarbrough*, 268 Ark. 736, 740, 596 S.W.2d 4 (1980). The confidentiality provisions of Ark. Code Ann. § 26-18-303 prohibit the Department from disclosing to the assignee facts concerning why the vendor is not entitled to a refund. If applicable, the Department will notify the claimant that the claimant must request the refund directly from the vendor.

H. ELECTRONIC RECORDS:

The age of technology has afforded many companies the ability to conduct purchasing activities in a “paperless” environment. There may be times when “paper documents” are not available and can not be included as required with the Claim for Refund. For the purposes of this regulation, “paperless” will mean that a traditional

“hard copy invoice or paper invoice” can not be produced, does not exist and has not been issued from the vendor to the purchaser.

When this situation occurs, the claimant is to:

- a. Prepare the spreadsheet as discussed in Section 2 of the Claim for Refund packet.
- b. The claimant will substitute documentation that will provide the necessary information to substantiate that tax was paid to a vendor or was accrued by the taxpayer. This information should include the date of purchase, vendor name and address, transaction tracking number used by vendor and purchaser, description of item purchased, dollar amount paid for the item purchased and the amount of tax that was accrued by the purchaser or paid to the vendor.
- c. Any other information thought to be helpful by the claimant for refund verification purposes should also be submitted with the Claim for Refund.
- d. The director may request additional information necessary to verify the claim for refund.

I. REMEDIES AVAILABLE TO CLAIMANT FOLLOWING DENIAL OF A CLAIM FOR REFUND.

1. Administrative hearing. The claimant has thirty (30) days following the issuance of a written denial of a claim to file a protest of the denial and request an administrative hearing. An assignee shall have the same rights to hearing that the taxpayer would have under the Arkansas Tax Procedure Act.
2. File suit in court to contest the denial. Any claimant may file suit in circuit court to contest a refund denial. The suit must be filed within one year from:
 - a. The director’s written denial of the claim for refund; or
 - b. The final decision of either the hearing board or the director on revision following an administrative hearing
3. If the director fails to issue a refund or a written denial of the claim within six months of the date the claim is filed, the claimant may file suit in circuit court on the claim.

This resolution is effective on and after the _____ day of November 2004.

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

Tim Leathers, Deputy Director
and Commissioner of Revenue

General Instructions
Arkansas – Claim for Refund
ARKANSAS STATE AND LOCAL SALES/USE TAXES

This packet may be used by a buyer or a seller to request a refund of state and local sales/use tax paid in error. Procedures and definitions used throughout this packet are in accordance with Arkansas Regulation 2004-6.

How to request a refund in Arkansas:

1. Refund Claims Made by Vendors. Taxes are paid to the state by a vendor. The vendor is requesting the refund from the state. The vendor is the claimant.

Documentation needed:

1. Section 1 and 2 of this packet. (Forms available at www.state.ar.us/salestax or by calling 501-682-7130).
2. Copies of all invoices included as part of the refund request, arranged in chronological order from the oldest invoice to the most recent.
3. A spreadsheet or detailed listing showing that tax was remitted to the State of Arkansas for all invoices that are included in this refund request.
4. Documentation to show that:
 - a. The vendor has borne the tax (i.e., the vendor did not collect the tax from the customer but did pay the tax to the state).
 - b. The vendor repaid the tax to the customer from whom the vendor collected the tax; or
 - c. The customer consents to refunding the tax to the vendor.
5. Any additional documentation that will assist DFA in verifying the refund claim.

2. Refund of Taxes Paid Directly to the State by the Purchaser. Taxes are paid directly to the state by a purchaser. The purchaser is requesting the refund from the state. The purchaser is the claimant.

Documentation needed:

1. Sections 1 and Section 2 of this packet
2. Copies of all invoices included as part of the refund request, arranged in chronological order from the oldest invoice to the most recent.
3. A spreadsheet or detailed listing showing that tax was remitted to the State of Arkansas for all invoices that are included in this refund request.
4. Any additional documentation that will assist DFA in verifying the refund claim.

3. Vendor Assignment Refund Claims. Taxes are paid to a vendor by a purchaser. The vendor is assigning the right to the refund to his customer. The purchaser is the claimant.

Documentation needed:

1. Sections 1, 2 and 3 of this packet.
2. Copies of all invoices included as part of the refund request, arranged in chronological order from the oldest invoice to the most recent.
3. If your claim for refund includes sales tax paid to more than one vendor, you must attach a separate Section 2 and a separate Section 3 for each vendor. Summarize your total refund claim in Section 1.
4. Each separate seller must Complete Section 2 of this packet (Column 12) and Section 3.
5. Any additional documentation that will assist DFA in verifying your request for a refund.

Note: All requests for refund must include adequate documentation to prove entitlement to the requested refund. Lack of adequate documentation will result in disallowance of the refund.

SECTION 1 – CLAIM INFORMATION (To Be Used by all Claimants)			
<i>PLEASE PRINT OR TYPE</i>			
Claimant's Name			Federal I.D. Number (FEIN)
Address			Social Security Number
City	State	Zip	Claimant's Sales/Use Tax Permit
Telephone Number Area Code () -	Best time to Call (Weekday, Daytime Hours)		
This refund is for Sales/Use tax paid during the period _____ to _____			
INDICATE THE TOTAL AMOUNT OF REFUND YOU ARE REQUESTING \$ _____			
Under penalties of law, I declare that the amount of sales or use tax for which I am submitting this claim for refund has NOT been refunded or credited to me by the Department or the seller to whom the tax was previously paid. I will immediately send payment for any such duplicate refund to the Arkansas Department of Finance & Administration; PO Box 1272, Little Rock, AR 72203-1272.			
Print Your Name			Title
Signature of Claimant or Authorized Representative			Date

- ❖ If your claim results from a vendor assignment and includes a refund of sales/use tax paid to more than one vendor, you must attach a separate Section 2 and a separate Section 3 for each vendor and summarize your total refund claim in Section 1. Each Separate vendor must complete Column 12 of Section 2 and Section 3.

Please Mail your Request for Refund to:

Arkansas Department of Finance and Administration
Sales Tax Refund Request
P.O. Box 8054 Room 1340
Little Rock, Arkansas 72203-8054

Questions:

Telephone: 501-682-7130
Fax: 501-682-7667
Website: www.state.ar.us/salestax

Specific Instructions Claim for Refund Section 2

This form is to be submitted in electronic format (Excel) unless the listing is less than 25 lines. If listing is less than 25 lines, the form may be submitted in paper format. This form can be located at: <http://www.state.ar.us/salestax>

If "paperless" invoice system exists between vendor and claimant, documents containing the information as requested in Columns 1 - 12 may be substituted.

Column 1: The date that appears on the invoice.

Column 2: Vendor name

Column 3: Invoice number that appears on the invoice.

Column 4: A brief description of the goods and/or services listed on the invoice.

Column 5: A detailed explanation of the item/service **and** what exemption is being claimed. Reference to an Arkansas code section or regulation is not a sufficient explanation. The explanation should include sufficient factual information to fully describe the basis for the refund claim. If more room is needed, attach a separate sheet containing the explanation.

Column 6: The amount of the purchase for which a refund is being requested. If a refund is being requested on only a portion of the invoice, then only that portion should be listed here. If a discount was taken when the invoice was paid, only the amount actually paid may be refunded.

Column 7: The amount of state tax applicable to column 6.

Column 8: The amount of county tax (if any) applicable to column 6.

Column 9: The amount of city tax (if any) applicable to column 6.

Column 10: County Name (if applicable)

Column 11: City Name (if applicable)

Column 12: Month and Year of excise tax report on which tax was reported and paid. This column is to be completed by the purchaser if the request is for tax paid directly by the purchaser to the state. This column is to be completed by the vendor if the refund claim is being filed by the vendor or by the purchaser following an assignment of the refund claim by the vendor.

Refund Requests containing incomplete information or missing invoices will be denied and returned to Claimant.

