REGULATION 2004-1

ADDITIONAL SERVICES SUBJECT TO TAX BEGINNING JULY 1, 2004

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 administration, enforcement, and collection of the tax levied on certain services by Act 107 of the 2nd Extraordinary Session of 2003 ("Act").

Effective July 1, 2004, additional services will be subject to state and local gross receipts taxes. This regulation shall be effective on and after July 1, 2004.

This regulation is applicable to any taxpayer who performs the services that are subject to tax, including cities, towns, and counties.

Any taxpayer who performs the services but is not currently registered to collect and remit sales tax (i.e., does not currently have a sales tax permit) should apply for and obtain a sales tax permit prior to July 1, 2004. Permit application forms (Form ST-1) can be obtained from the Sales and Use Tax Section's Internet site at www.state.ar.us/salestax, a local Revenue Office, or by calling the Sales and Use Tax Section at 501-682-7104. The completed permit application form should be mailed to the address on the form, along with the $50.00 permit application fee. Applicants are encouraged to submit applications prior to May 1, 2004 to ensure processing and issuance of the permit prior to July 1, 2004.

Although the sales tax on each of the services in this regulation is effective July 1, 2004, some written contracts providing for these taxable services may be exempt if certain requirements are met. A preexisting fixed price, fixed term **written** contract entered into prior to July 1, 2004 that precludes rate increases during the term of the contract would require the taxpayer to absorb the tax due from July 1, 2004 to the end of the contract term. Accordingly, contracts that meet the following conditions are not subject to the tax until the contract is modified or renewed:

1. The contract is for a fixed period of time;
2. The contract cannot be terminated at will but may only be terminated for stated causes; and
3. The price for services is fixed by the contract, and the service provider is barred by the terms of the contract from increasing the price or including additional charges such as increased tax in its billings.

However, if the terms of the contract allow the service provider to pass the tax along to the customer, then the contract will be taxable. The exemption for fixed price, fixed term contracts does not apply to month-to-month contracts.

Any contract that provides for automatic renewal upon payment by the customer of the annual renewal fee at the same rate as provided in the original contract is not taxable until a renewal period that allows the service provider to adjust the renewal price.

Generally, providers of the services that become taxable on July 1, 2004, are required to accrue and remit the tax on the service for the month the customer is billed for the service. In some cases, the service providers will not be able to collect part, or all, of the amount billed to some of the customers. Service providers who anticipate that they may collect less than the amount billed may make application to the Director of the Department of Finance and Administration for permission to prepare returns and remit tax on a cash basis.

BORDER CITY EXEMPTION-TEXARKANA: The gross receipts or gross proceeds derived from sales of services in Texarkana, Arkansas, are exempt from the tax if sold in Texarkana, Arkansas, and if the services are exempt or not taxed in Texas. Sellers desiring to claim the border city exemption should contact the appropriate taxing authority in Texas to determine the tax status of the services in Texas and maintain proof of that status. Services are sold by a business in Texarkana if the services are performed within the City of Texarkana, Arkansas.

1. SERVICES SUBJECT TO TAX - WRECKER AND TOWING SERVICES.

A. The gross proceeds or gross receipts derived from wrecker and towing services are subject to state and local gross receipts taxes. The gross proceeds or gross receipts derived from wrecker and towing services include mileage fees and towing charges.

B. DEFINITIONS:

1. "Department" means the Department of Finance and Administration and its agents.

2. "Wrecker and towing services" means pushing, pulling, carrying or hoisting any motor vehicle, vehicle, trailer or semitrailer from an initial point of service to some other destination and includes the rendering, furnishing or performing of any service on a damaged, disabled, immovable, or non-operable motor vehicle, vehicle, trailer, or semitrailer. Wrecker and towing services include hook-up

fees charged for recovering a motor vehicle, vehicle, trailer or semitrailer from locations such as a ditch, pond, hole, or median, prior to towing. "Wrecker and towing services" does not include the transportation of motor vehicles to or from a new or used car dealership for the purpose of placing the vehicles into inventory for sale or returning the vehicles to an automobile auction for sale.

3. "Motor vehicle" means every vehicle subject to registration for use on the public roads and highways.

4. "Vehicle" means every device in, upon, or by which any person or property is, or may be, transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

5. "Trailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

6. "Semitrailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

C. LOCAL TAXES: For the purpose of determining the correct local gross receipts taxes to collect, the following guidelines shall apply:

1. If the motor vehicle, vehicle, trailer, or semitrailer is towed from the location where the vehicle is picked up and delivered to a destination in Arkansas, the local taxes at the point of delivery or destination should be applied.

2. If the motor vehicle, vehicle, trailer, or semitrailer is towed from the location where the vehicle is picked up and delivered to a destination outside of Arkansas, the local taxes at the initial point of service should be applied.

3. If only wrecker services are provided and the motor vehicle, vehicle, trailer, or semitrailer is not towed from its location to another destination, the local taxes at the place where the motor vehicle, vehicle, trailer, or semitrailer is located should be applied.

4. Examples:

a. J. T.'s car breaks down in Cabot, Arkansas. J.T. hires a towing service to tow the car into Little Rock, Pulaski County, Arkansas for repairs. The City of Little Rock and Pulaski County have a sales tax. The place of destination determines what tax is due. The Arkansas state sales tax, the Little Rock city sales tax and the Pulaski County sales tax apply.

b. J.T.'s car breaks down in Ft. Smith, Arkansas. J.T. hires a towing service to tow the car into Oklahoma for repairs. The towing service performed in Arkansas is a taxable towing service. Towing services performed outside of Arkansas are not subject to Arkansas state sales tax or Arkansas local sales tax. If the towing charges for the Arkansas and Oklahoma towing are included on one invoice, the entire invoice amount will be subject to tax, unless the towing company separately states the Arkansas towing charge and the Oklahoma towing charge. If the charges are separately stated, only the Arkansas towing charges are taxable. Since J.T's car was delivered to a destination outside of Arkansas, and the initial point of service was Ft. Smith, the Fort Smith city sales tax and the Sebastian County sales tax should apply.

c. J.T.'s car breaks down in Oklahoma, and J.T. hires a towing service to tow the car into Ft. Smith, Arkansas for repairs. If the Arkansas towing charges are separately stated from the Oklahoma towing charges, only the Arkansas towing charges are taxable. If the charges are not separately stated, the entire charge is subject to tax. Since J.T's car was delivered to a destination in Arkansas, the Fort Smith city sales tax and the Sebastian County sales tax should apply.

d. J.T. is traveling to his home in Texarkana, Texas and drives his car into a ditch in Little Rock, Arkansas where it becomes stuck in the mud. J.T hires a wrecker service to pull his car from the ditch. J.T.'s car is not damaged, so it is not necessary to tow the car to a destination for repairs. The City of Little Rock and Pulaski County have a sales tax. The point of service determines what tax is due. The Arkansas state sales tax, the Little Rock city sales tax and the Pulaski County sales tax apply.

D. PERSONS RESPONSIBLE FOR COLLECTING AND REMITTING THE TAX: The tax shall be collected and remitted by the seller of the wrecker or towing services. Wrecker and towing services may be purchased exempt as sales for resale by a person holding a retail permit and

performing taxable repairs on a towed motor vehicle, vehicle, trailer, or semitrailer, if the charge for the wrecker and towing services and the applicable taxes are collected from the ultimate consumer by the person performing the repairs.

Example: ABC Towing Company has a contract to tow motor vehicles to XYZ Repair Shop for repairs. XYZ Repair Shop holds a retail permit and charges its customer for repairs, the wrecker and towing services, and the applicable taxes. XYZ Repair Shop is entitled to claim the sale for resale exemption on the wrecker and towing services it purchased from ABC Towing Company since it is collecting the sales tax for the wrecker and towing services from its customer.

E. AUTOMOBILE CLUBS OR INSURANCE COVERAGE: If wrecker and towing services are provided through an automobile club or association, motor club or similar organization, or an insurance company, the taxable charge is the amount invoiced to the club, association, or insurance company for the services plus the amount of any applicable deductible. The charge for an automobile club contract or insurance policy that provides for towing is not subject to tax.

Example: XYZ Insurance Company pays JT's Wrecker Service $30.00 toward the tow of a motor vehicle on behalf of John Doe. John Doe pays JT's Wrecker Service an additional amount of $20.00 as a deductible. JT's Wrecker Service should remit tax on the entire $50.00. XYZ Insurance Company does not collect tax on the premium paid by John Doe for insurance that provides for towing.

2. SERVICES SUBJECT TO TAX – COLLECTION AND DISPOSAL OF SOLID WASTE.

A. The gross proceeds or gross receipts derived from the collection and disposal of solid waste are subject to state and local gross receipts taxes. Tax should be collected on the entire gross receipts derived from the fee charged for collection and disposal of solid waste, without any deduction for costs, fees, labor services performed, interest, losses, or any expenses whatsoever. Fees paid by a service provider to the state, a city, county, or other governmental subdivision, which are passed on to the customer are part of the gross receipts for the collection and disposal of solid waste.

B. DEFINITIONS:

1. "Department" means the Department of Finance and Administration and its agents.

2. "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from residential, industrial, commercial, mining, medical, agricultural, and restaurant operations, and community activities. Solid waste includes yard waste. "Solid waste" does not include solid or dissolved materials in domestic sewage, or low-level radioactive waste as defined by the Interstate Low-Level Radioactive Waste Compact codified at Ark. Code Ann. § 8-8-201 et seq. "Solid waste" does not include recyclable material as defined in Ark. Code Ann. §§ 8-9-104 and 8-6-702 that has been separated from the solid waste stream for subsequent use in its present or reprocessed form. Recyclable materials are removed from the solid waste stream at the point where the materials are separated, identified, collected, or sorted for reuse or reprocessing. "Solid waste" shall not include waste tires.

3. "Domestic sewage" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the excrementitious or other discharge from the bodies of humans or animals, together with such groundwater infiltration and surface water as may be present.

4. "Disposal" means the final disposition of solid waste by means of landfilling, incinerating, composting, dumping, abandoning, or other similar method. For purposes of this regulation, solid waste disposal does not include the management of hazardous waste in accordance with the provisions of Ark. Code Ann. § 8-7-201 et seq. Hazardous waste management includes the incineration of solid waste which has become commingled with hazardous waste as part of the treatment of hazardous waste.

C. EXEMPTIONS FROM TAX: Sewer services are not subject to the tax. Septic tank cleaning is not subject to the tax.

D. PERSONS RESPONSIBLE FOR COLLECTING AND REMITTING THE TAX:

1. The tax shall be collected and remitted by the seller of the collection or disposal services. Disposal services ("tipping fees") may be purchased exempt as sales for resale by a person holding a retail

permit and performing taxable collection of waste services, if the taxes are included in the charges billed by the person or entity collecting the waste.

2. A fee collected by a city, county, or town from its residents for the collection and disposal of solid waste is subject to tax. The disposal fees paid by the city or county to the landfill or other disposal site are exempt as a sale for resale, provided the city, town, or county collects and remits the applicable tax to the state. A city, town, or county that collects the tax from its residents and contracts with a person or entity for the collection and disposal of solid waste does not pay tax on either the contract amount paid to the contractor or the disposal fee at the landfill or other disposal site.

   EXAMPLE 1: City X collects a fee of $15 per month from its residents for collection and disposal of solid waste. City X should collect tax from its residents on the $15 fee. City X is not required to pay sales tax on any fee charged to City X when it delivers the waste to the landfill. City X is entitled to claim the sale-for-resale exemption for these landfill charges.

   EXAMPLE 2: City X collects a fee of $15 per month from its residents for collection and disposal of solid waste. City X contracts with Contractor to pick up the solid waste and deliver it to the landfill. City X pays Contractor a fee of $12.50 per month per resident. City X should collect tax from its residents on the $15 fee. City X should not pay tax on the $12.50 fee paid to Contractor. Contractor should not pay tax on the disposal fee paid to the landfill.

3. A city, county, or town that provides waste collection and disposal services with funds from tax revenues does not collect tax from its residents for the collection or disposal of solid waste. However, the city, county, or town must pay tax on the tipping (disposal) fees (if the city, county, or town disposes of the waste) or on the amount paid to a contractor who collects and disposes of the waste.

   EXAMPLE 1: County Y levied a tax that is dedicated to provide funds for collection and disposal of solid waste of its residents. County Y collects the solid waste from its residents and delivers it to the landfill. County Y should pay tax on the disposal fees to the landfill.

EXAMPLE 2: County Z levied a tax that is dedicated to provide funds for collection and disposal of solid waste of its residents. County Z contracts with Contractor to pick up the solid waste and deliver it to the landfill. County Z pays Contractor a fee of $12.50 per month per resident. Contractor should collect tax from County Z on the $12.50 fee paid to the Contractor. The disposal fees at the landfill are exempt as a sale for resale.

E. LOCAL TAXES: For the purpose of determining the correct local gross receipts taxes to collect, the following guidelines shall apply:

1. The local taxes at the point of collection should be applied unless the only service rendered is the taxable service of disposal of solid waste.

2. Examples:
   a. XYZ Company collects garbage from residents and businesses in Little Rock, Pulaski County, Arkansas. XYZ Company dumps the garbage in the Pulaski County Landfill, which is located outside of the city limits of Little Rock, Arkansas. XYZ Company charges its customers in Little Rock, Pulaski County, Arkansas for the collection and disposal services. The City of Little Rock and Pulaski County have a sales tax. The place of collection determines what tax is due. Accordingly, the Arkansas state sales tax, the Little Rock sales tax, and the Pulaski County sales tax apply. XYZ Company holds a retail permit and purchases the disposal services from the Pulaski County Landfill exempt from tax as a sale for resale.

   b. J.T. lives in Little Rock, Pulaski County, Arkansas. The City of Little Rock and Pulaski County have a sales tax. J.T. delivers and dumps some garbage in the Pulaski County Landfill, which is located outside of the city limits of Little Rock, Arkansas. J.T. must pay sales tax on the landfill disposal charges. The place of disposal determines what tax is due. Accordingly, the Arkansas state sales tax and the Pulaski County sales tax apply (no Little Rock tax is due).

3. SERVICES SUBJECT TO TAX—CLEANING PARKING LOTS AND GUTTERS.

A. The services of cleaning parking lots and gutters are subject to the gross receipts tax.

B. The tax applies to the service of cleaning, sweeping, or pressure washing parking lots. Cleaning up trash from a parking lot is taxable. Snow removal is taxable. The tax applies to the service of cleaning gutters that are located at the edge of a roof or at the edge of a street or road.

C. Pavement patching, asphalt repair, sealing, grading, installing wheelstops, and sandblasting to prepare for resurfacing are not taxable services.

D. A "parking lot" means an area used for the parking of motor vehicles and includes parking garages and parking decks. This term includes areas that may not generally be used for the parking of motor vehicles when they are used as parking lots during special events.

4. SERVICES SUBJECT TO TAX – DRY CLEANING AND LAUNDRY SERVICES; INDUSTRIAL LAUNDRY SERVICES.

A. The gross proceeds or gross receipts derived from the sale of the following services are subject to sales tax: dry cleaning services, laundry services, and industrial laundry services. These services shall be defined as follows:

1. "Dry cleaning services" shall mean the cleaning of leather, cloth or fabric with any and all nonaqueous dry cleaning solvents, including the ironing, pressing, folding, or starching of dry cleaned leather, cloth or fabric.

2. "Laundry services" shall mean the washing of cloth or fabric with water, including the ironing, pressing, folding or starching of washed cloth or fabric.

3. "Industrial laundry services" shall mean the washing of cloth or fabric with water, including the ironing, pressing, folding or starching of washed cloth or fabric, by laundry businesses that service commercial accounts.

4. "Cloth or fabric" shall include, but not be limited to, items such as clothing, garments, uniforms, wedding dresses, linens, draperies, tablecloths, rugs, towels and products that consist at least partially of cloth or fabric, such as door mats with a rubber base.

B. The gross proceeds or gross receipts attributable to the following services are not subject to sales tax provided they are itemized and separately stated on the invoice provided to the customer: repairs, alterations, and the treatment of cloth or fabric with chemicals that provide waterproofing or protection from staining or soiling. However, if these services are provided along with taxable dry cleaning or laundry services and are not itemized and separately stated on the invoice to the customer, the total gross proceeds or gross receipts charged to the customer will be subject to sales tax.

C. The gross proceeds or gross receipts derived from self-service, coin operated clothing washing and drying machines or self-service, coin operated dry cleaning machines are not subject to sales tax.

D. Any hotel; motel; nursing, retirement, or convalescence facility; or other provider of accommodations that bills its guests or residents a specific charge for dry cleaning or laundry services must collect tax on the gross proceeds or gross receipts for the dry cleaning or laundry services. However, the gross proceeds or gross receipts derived by a charitable, non-profit nursing, retirement or convalescence facility from dry cleaning or laundry services provided by such facility to its residents are not subject to tax.

E. Long-term rentals of uniforms, linens, towels, mats and similar items are not subject to the tax on the service of industrial laundry. The purchaser of the items for long-term rental must elect to pay the tax at the time of the purchase of the items or collect tax on subsequent long-term rentals of the property. See Arkansas Gross Receipts Regulation GR-20.

5. SERVICES SUBJECT TO TAX – FURNISHING CAMPING OR TRAILER SPACES.

A. The service of furnishing camping or trailer spaces at public or privately-owned campgrounds on less than a month-to-month basis is subject to gross receipts tax. This tax is levied in addition to the tourism gross receipts tax levied in Ark. Code Ann. § 26-52-1001 et seq.

B. Camping or trailer spaces rented for thirty (30) days or more are not subject to the tax. This exception applies only if the operator of the campground maintains a lease or other documentation evidencing the period of the space rental. A guest registration card verifiable by a

billing document is acceptable documentation if it reflects that the space was rented for a minimum of thirty (30) days. A customer is required to pay tax for the space rental even if the customer rents the space for a period that extends beyond thirty days if the customer is billed on less than a monthly basis.

C. The tax levied by this section applies to the furnishing of spaces in campgrounds owned or operated by:
   1. The State of Arkansas, its agencies or political subdivisions; and
   2. Cities, counties, or their political subdivisions.

D. The tax levied by this section does not apply to spaces furnished by federal campgrounds. In the event property owned by the federal government is leased to a non-federal entity and the non-federal entity uses such property for the furnishing of camping or trailer spaces, (e.g., the U.S. Army Corps of Engineers leases property to the Arkansas Game and Fish Commission (AGFC) and the AGFC furnishes camping or trailer spaces), then tax must be collected by the non-federal entity on the gross receipts received by the non-federal entity for furnishing camping or trailer spaces.

E. Any charges for water, electrical or sewer hookups are an integral part of the charge for the use of the space and are included in the amount subject to tax.

6. SERVICES SUBJECT TO TAX - LOCKSMITH SERVICES.

A. The gross receipts or gross proceeds derived from charges for locksmith services are subject to gross receipts tax.

B. For purposes of this regulation, "locksmith services" means repairing, replacing, servicing, or installing locks and locking devices, whether the locks and locking devices are:
   1. Incorporated into real property;
   2. Incorporated into tangible personal property; or
   3. Locks separate and apart from other property.

C. "Locksmith services" also includes unlocking locks or locking devices for another person.

D. "Locksmith services" shall not include the initial installation of locks in new construction.

E. EXAMPLES. The following examples are intended to illustrate how the tax is applied to certain charges for locksmith services. All examples provided herein are based upon the specific statement of facts set forth in the example. Any change in the facts could result in a different conclusion. In no case are these examples intended to limit the application of tax to other transactions.

1. Example 1: A contractor or locksmith installs the initial locks in a newly constructed commercial or residential building. The contractor or locksmith should pay tax on the cost of the locks. The charge for the service of installing the locks is not subject to tax.

2. Example 2: A motorist locks his keys inside his automobile. The charge for unlocking the door to the automobile is subject to tax.

3. Example 3: Charges for the unlocking of, repair to, or service to padlocks or combination locks that are not incorporated into real property are subject to tax.

4. Example 4: Repairing or replacing a lock or locks in an existing home or building is subject to tax.

7. SERVICES SUBJECT TO TAX - MINI WAREHOUSE AND SELF-STORAGE RENTAL SERVICES.

A. DEFINITIONS:

1. "Department" means the Department of Finance and Administration and its agents.

2. "Mini warehouse and self-storage" rental service means providing a secured area such as a building, a room in a building, locker, compartment, container, or a secured area within a building for the purpose of storing tangible personal property in which the consumer customarily stores and removes the consumer's tangible personal property on a self-service basis. This term includes, but is not limited to, storage lockers or storage units in apartment complexes (if the locker or unit is utilized at the option of a tenant upon payment of a fee in addition to the apartment rental), amusement parks, water parks, recreational facilities, and other public locations where lockers are rented for self-storage.

3. For the purpose of this regulation, mini warehouse and self-storage rental services shall not include:

   a. General warehousing and storage, where the warehouse is engaged in the operation of receiving, handling, and storing property for others using the warehouse's staff and equipment, and does not allow the consumer of the service separate access to the storage area used to hold the property; and

   b. Storage incidental to the lease of real property used for purposes other than the storage of tangible personal property.

      1. Example: A taxpayer is doing business at a location that provides significant storage space for excess inventory or supplies. The taxpayer is not purchasing mini warehouse and self-storage rental services.

      2. Example: Tenant B leases an apartment. The apartment complex offers storage facilities, separate and distinct from the residential living space, to its residents as an amenity (i.e., Tenant B is not required to pay an additional fee beyond his regular rental amount for the use of the facility). Sales tax is not due on any portion of the amount paid by Tenant B for the lease.

B. ADMINISTRATION:

1. The gross proceeds or gross receipts derived from mini warehouse and self-storage services are subject to state and local gross receipts taxes.

2. The total amount charged for providing mini warehouse and self-storage services is subject to tax. Charges associated with the cost of self-storage such as locks or keys are part of the taxable purchase price. Charges that the facility incurs as a result of a tenant who fails to pay including, but not limited to, auction fees and cut-lock fees are not part of the taxable purchase price. A security deposit is not part of the taxable purchase price unless it is converted into a rental payment.

8. SERVICES SUBJECT TO TAX - BODY PIERCING, TATTOOING, AND ELECTROLYSIS.

A. GENERAL INFORMATION

The gross receipts or gross proceeds derived from sales of the services of body piercing, tattooing and electrolysis are subject to the Arkansas Gross Receipts Tax.

B. DEFINITIONS:

1. "Body piercing" means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration.

2. "Tattooing" means any method of placing designs, letters, scrolls, figures, symbols, or any other marks upon or under the skin by introducing pigments or by the production of scars to form indelible marks with the aid of needles or other instruments, including permanent cosmetics.

3. "Electrolysis" means the destruction or permanent removal of hair from the human body by the use of an electric needle, or by the use of any other kinds of devices or appliances, from the human body.

C. EXEMPTIONS; ITEMS NOT EXEMPT

1. The service of removing hair as part of a medical procedure by or under the direction of a licensed physician, including the removal of hair with the use of a laser, shall be exempt from the gross receipts tax.

2. Studs, rings, or other jewelry used in body piercing may be purchased by the seller of body piercing services exempt from the gross receipts tax or use tax for resale.

3. Needles and other equipment used to create tattoos, perform piercings, or perform electrolysis services are consumable goods and are subject to state and local gross receipts tax or use tax when purchased for use by the service provider.

9. SERVICES SUBJECT TO TAX – SECURITY AND ALARM MONITORING SERVICES.

A. The gross proceeds or gross receipts derived from security and alarm monitoring services are subject to state and local gross receipts taxes.

B. DEFINITIONS:

1. "Security services" means video monitoring and security guard services utilized for the purpose of providing safety or security for property or persons without regard to the identity of the person or persons providing the services.

2. "Alarm monitoring services" means services that use devices located at a residence, place of business, or other fixed premises to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency. Alarm monitoring services do not include a service that uses a medical monitoring device attached to an individual for the automatic monitoring of an ongoing medical condition.

C. EXEMPTIONS FROM TAX: Security services provided by an employee, or a temporary or leased employee as defined by Ark. Code Ann. § 26-52-301(3)(C)(vii), of the business utilizing the services are not subject to the tax. OnStar, Lojack, and similar services that provide security as a part of a more extensive package of services are not taxable, unless the services provided in addition to security services are also taxable services.

D. PERSONS RESPONSIBLE FOR COLLECTING AND REMITTING THE TAX: The tax shall be collected and remitted by the seller (the person or entity billing the consumer) of the security or alarm monitoring services. The installation of a security alarm is not a taxable service; however, if a fee for monitoring is charged and the installation fee is not separately stated on the invoice, the entire amount of the invoice is subject to tax.

E. LOCAL TAXES: For the purpose of determining the correct local gross receipts taxes to collect, the local taxes at the location of the residence, place of business, or other fixed premises where the services are rendered shall be applied.

10. SERVICES SUBJECT TO TAX - INITIAL INSTALLATION.

A. The initial installation of any of the following is taxable, unless one of the exemptions listed below, applies:

1. Motor vehicles
2. Aircraft
3. Farm machinery and implements
4. Motors of all kinds
5. Tires and batteries
6. Boats
7. Electrical appliances and devices
8. Furniture
9. Rugs
10. Flooring
11. Upholstery
12. Household appliances
13. Televisions and radios
14. Jewelry
15. Watches and clocks
16. Engineering instruments
17. Medical and surgical instruments
18. Machinery of all kinds
19. Bicycles
20. Offices machines and equipment
21. Shoes
22. Tin and sheetmetal
23. Mechanical tools
24. Shop equipment

B. DEFINITIONS

1. "Initial installation" shall mean the first time setting up for use or service of the tangible property by connecting, fastening, attaching, joining, securing, building in, mounting, or otherwise affixing the property in the required location, except when the installation is provided in connection with the construction or substantial modification of a building or other improvement or structure affixed to real estate. "Initial installation" does not include delivery of an electrical appliance or household appliance, even if the delivery person plugs in the appliance for the owner.

2. "Electrical appliances and devices" include items commonly understood to be appliances that have electrical components and items such as electrical signs, transformers or other items installed on electrical utility power lines, cell phone towers, and computer hardware.

3. "Flooring" shall mean tile, hardwood, vinyl, carpet, a finished surface applied to concrete or other subfloor, or any other floor covering that overlays the subfloor of a structure to provide a finished surface for the floor, including decorative finishes.

4. "Household appliances" shall mean, for purposes of this regulation, any household appliance that requires installation, including dishwashers, disposals, and any other household appliance that is not an electrical appliance or device such as a hot water heater. For purposes of this regulation, "household appliances" does not include items that are not required to be installed, such as toasters, mixers, blenders, can openers, food processors, and other items that are considered to be small household appliances that do not require installation.

C. EXEMPTIONS.

1. INITIAL INSTALLATION OF EXEMPT PROPERTY. The service of initial installation of any property that may be purchased exempt from tax is not taxable.

   EXAMPLE: Machinery and equipment that meets the requirements for exemption as machinery and equipment used directly in manufacturing may be purchased exempt from tax. The labor to install machinery that qualifies for exemption as manufacturing machinery is not taxable.

2. INITIAL INSTALLATION IN NEW CONSTRUCTION. The service of initial installation of flooring, motors, electrical appliances or devices, household appliances, or machinery in a newly constructed or substantially modified building or other improvement or structure affixed to real estate is not taxable. Individuals or businesses that provide labor to install flooring, motors, electrical appliances or devices, household appliances, or machinery in new construction are acting as contractors and are not providing taxable services. The contractor should either pay tax to the supplier on the materials and equipment used in the installation, or self-assess tax as a withdrawal from inventory (stock) on the purchase price of all materials.

3. INITIAL INSTALLATION OF NONMECHANICAL, PASSIVE, OR MANUALLY OPERATED COMPONENTS. The law in effect prior to July 1, 2004 regarding the initial installation of nonmechanical, passive, or manually operated components that become part of real

estate after installation has not changed. The initial installation of such nonmechanical components is not taxable.

D. INITIAL INSTALLATION IN EXISTING BUILDING TAXABLE. Heating and air contractors, electricians, plumbers, or others who install flooring, motors, electrical appliances or devices, household appliances, or machinery for the first time (initial installation) in an existing building should collect tax on the labor charged to install the mechanical or electrical components. Any materials or parts installed are taxable to the customer. The labor to install ductwork and other nonmechanical, passive, or manually operated components that become part of the real estate is not taxable. If both taxable and nontaxable services are provided, the nontaxable charges must be separately stated on the invoice. Otherwise, the entire charge will be taxable.

E. REPAIRS AND REPLACEMENTS. The repair or replacement of flooring is taxable. The law in effect prior to July 1, 2004 regarding repair and replacement of motors, electrical appliances or devices, household appliances, or machinery has not changed. Any business or individual should continue to collect and remit tax on taxable repair and replacement services. See Arkansas Gross Receipts Regulation GR-21(E)(1)(b) – (d).

F. PURCHASE OF MATERIALS. A business holding a sales tax permit should purchase all materials used in its construction, repair, and retail business exempt from sales tax as sales for resale. Any materials used in the performance of non-taxable services, including initial installation in new construction, are not taxed to the customer; however, the business must self-assess, report, and pay sales tax as a withdrawal from inventory (stock) on the purchase price of the materials. The business must collect sales tax from its customers on retail sales of materials. Sales tax on materials used in performing taxable services is to be collected from the customer along with the labor charges. A business that is not required to hold a sales tax permit must pay tax on all purchases of materials.

11. SERVICES SUBJECT TO TAX – BOAT STORAGE AND DOCKING.

A. Boat storage and docking fees are subject to gross receipts tax. The tax applies to the storage or dockage of all boats of all types and size, regardless of whether the storage or dockage is in-water or off-water.

B. All fees and charges associated with boat storage or dockage are included in the amount subject to tax. This includes, but is not limited to: space or slip rental fees; fees for putting the boat in or out of the water; and winterization fees, including charges for shrink wrapping or installing a cover.

12. SERVICES SUBJECT TO TAX - PET GROOMING AND KENNEL SERVICES.

A. DEFINITIONS:

1. "Kennel Service" means an establishment, other than a pound or animal shelter, where animals, not owned by the proprietor, are kept, sheltered, fed, and watered in return for consideration, profit, or compensation. This term shall include all boarding activities for varying periods of time and does not require an overnight stay. This term shall not include:
   a. Individuals who temporarily, and not in the normal course of business, board or care for animals owned by other individuals;
   b. Breeding services;
   c. Boarding as part of medical or veterinary treatment, observation or care of an animal; or
   d. Horse stables.

2. "Grooming" consists of any act performed to maintain or improve the appearance of a pet and includes, but is not limited to, washing, combing, hair cutting, and nail clipping. This term shall not include services such as teeth cleaning and dental work, flea dipping, treatments for skin disease, or similar procedures.

3. A "pet" is any animal that has been tamed or gentled. The term "pet" does not include:
   a. Dogs trained to aid the handicapped or elderly;
   b. Dogs used in law enforcement;
   c. Greyhounds that are used in greyhound racing meets pursuant to Ark. Code Ann. § 23-111-101, et seq.; or
   d. Livestock such as cattle, horses, mules, sheep, or hogs.

B. ADMINISTRATION:

1. The gross proceeds or gross receipts derived from pet grooming and kennel services are subject to state and local gross receipts taxes. Gross receipts paid to any person who is not a veterinarian

for the grooming of any dog or cat will be presumed to be gross receipts from the service of pet grooming and subject to tax.

2. Grooming performed for veterinary purposes shall not be taxable if it is an integral part of the nontaxable service of veterinary care. If grooming is done for both veterinary and cosmetic reasons, the primary purpose for the treatment will determine if tax should be collected. It will be presumed that grooming activities such as washing, trimming, and cutting are for cosmetic purposes unless it can be shown that the treatment was primarily done for veterinary purposes. In situations where the charge for the cosmetic treatment and the veterinary-related treatment can be invoiced separately, tax should be collected only on the cosmetic portion of the billing. Taxable grooming services (those performed for cosmetic rather than medical reasons) are taxable even if they are billed by a veterinarian or veterinary clinic.

3. Persons or firms providing taxable grooming services are the consumers of supplies and equipment that is used or consumed by them in rendering their services and should pay tax on the purchase of these items.

4. Persons or firms providing pet grooming services, which the purchaser claims as an exempt transaction, should have the purchaser certify in writing: (a) that the animal fits within one of the categories enumerated in subsection (A)(3)(a) – (d) of this regulation and is not a pet, or (b) that the transaction is exempt for other reasons as provided by Arkansas law. If the seller of pet grooming services accepts a certification in good faith, then the seller shall not be liable for tax on the gross receipts from the sale of such services. A seller accepts a certification in good faith if he has no actual knowledge at the time of the sale that the animal in question is a pet. Actual knowledge may be implied from a previous course of dealing, knowledge of the purchaser's business, knowledge of the purchaser's use of the animal, or other facts and circumstances that should cause a reasonable person to refuse to accept the certification.

13. SERVICES SUBJECT TO TAX-PEST CONTROL SERVICES.

A. SERVICES SUBJECT TO THE TAX. Arkansas state and local gross receipts (sales) tax shall apply to the gross proceeds derived from the performance of pest control services. Tax should be collected on the

entire gross receipts derived from the fee charged for the performance of pest control services, without any deduction for costs, fees, labor services performed, interest, losses, or any expenses whatsoever. Fees paid by a service provider to the state, a city, county, or other governmental subdivision, which are passed on to the customer are part of the gross receipts for providing pest control services.

B. DEFINITIONS:

1. "Pest" means:
   a. Any insect, rodent, nematode, or fungus; or
   b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which is injurious to health or the environment.

2. "Pest control service" means any person who for compensation gives advice or engages in work, including inspection, to prevent, control, or repel pests as defined herein. Such services shall include, but shall not be limited to, the prevention, control or repelling of arthropods, mammals, birds, reptiles, wood-damaging or wood-destroying insects, wood-damaging or wood-destroying fungi, any organisms that may invade or infest homes, other buildings, or similar structures and their adjacent grounds as well as arthropods, mammals, birds, reptiles and plant diseases that may invade, infest, or infect shade trees, shrubs, lawns and turf;

C. PERSONS RESPONSIBLE FOR COLLECTING AND REMITTING THE TAX. The tax shall be collected and remitted by the seller of the pest control services on the total gross receipts received by a pest control service provider, including any amounts received for service contracts, termite contracts, pest control contracts, or any other contract that provides for inspection, prevention, control, or repelling of pests.

D. SERVICES EXEMPT FROM THE TAX. The tax shall not apply to sales of pest control services performed in the agricultural production of food or fiber as a business (including the pest control treatment of livestock and poultry) or the agricultural production of grass sod or nursery products as a business.

1. "Agricultural Purposes" means any purpose directly connected with the operation of any farm, including poultry and fish farms, ranches, orchards or any other operation by which products are grown on the land in sufficient quantity to constitute a commercial

operation. In addition, the term "agricultural purposes" also means the production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location.

2. The exemption is not intended to cover the sale of pesticides for use in private family vegetable gardens or in protecting ornamental plants used for landscape purposes.

3. The tax on pest control services is not intended to apply to the performance of either commercial or residential weed control services. However, weed control services may be taxable as a lawn care service.

E. CHEMICALS AND BUILDING MATERIALS. Chemicals applied to the customer's premises and used for the treatment, control, or repelling of pests may be purchased tax free as a sale-for-resale by the pest control service provider. Building materials that are incorporated into the customer's premises in the course of repairing damage caused by termites may be purchased tax free as a sale-for-resale by the pest control service provider. All items purchased for use or consumption in providing pest control services are subject to tax.

These regulations shall be effective on and after July 1, 2004.

Promulgated this _____ day of June, 2004.

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Richard A. Weiss, Director Arkansas Department of Finance and Administration	Tim Leathers, Deputy Director and Commissioner of Revenue