

**SUMMARY OF PROPOSAL #14**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Sales Tax Exemption for Sales of Fuel Packaging Materials and Machinery and Equipment Used in the Business of Processing Hazardous and Non-Hazardous Waste into Fuel Products.**

**Summary of Proposal for Consideration**

To repeal the sales tax exemption on the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products under Arkansas Code § 26-52-401(36), effective for tax years beginning on or after January 1, 2019.

**Fiscal Analysis**

Repeal of exemption may result in an estimated \$32,782 per year increase to General Revenue based upon FY11, as provided by the Department of Finance and Administration's "Sales and Use Tax Revenue Impact of Exemptions" presentation to the Arkansas Tax Reform and Legislative Task Force on March 19, 2018.

**Legal Analysis**

***Background***

Arkansas currently has a sales tax exemption on the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products.

ACT 1683 of 2001 created the sales tax exemption on the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products, and has not been amended since.

The sales tax exemption on the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products was created in direct response to the Arkansas Supreme Court decision, Rineco Chemicals, Inc. v. Barclay, 40 S.W.3d 257 (2001). In this case, the Court held that sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products did not fall under the sales tax exemption for machinery equipment used directly in manufacturing. Id. at 263. The Court held that the purchased machinery and equipment was not involved in the production or manufacture of an article of commerce and not subject to the machinery sales tax exemption. Id.

***Potential Legal Issues***

None.

### *Other States*

- Iowa: Sales tax exemption on the sale or rental of industrial machinery, equipment, computers, replacement parts, and materials used to construct such items, if they are directly and primarily used in processing by a manufacturer, or to maintain the integrity or environmental conditions of the items, or to research and develop new products or processes and on the sale or rental of industrial machinery, equipment, computers, replacement parts, and materials used to construct such items, if they are used in recycling or reprocessing of waste products; awaiting further guidance from Iowa to determine if the sales exemption applies to the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products. (IA St. § 423.3)
- Louisiana: Sales tax exemption on machinery and equipment used directly in manufacturing, including machinery and equipment used by an industrial manufacturing plant to generate electric power for self-consumption or cogeneration to be included in the definition of “machinery and equipment” for purposes of the sales tax exclusions for manufacturing and agricultural machinery and equipment; awaiting further guidance from Louisiana to determine if the sales exemption applies to the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products. (LA St. §47:301)
- Mississippi: Sales tax exemption on the sale of machinery or tools or repair parts, fuel or supplies used directly in manufacturing; sales tax exemption on the sale of equipment, devices, machinery or systems used or acquired to prevent, control, monitor or reduce air, water or groundwater pollution, or solid or hazardous waste as required by federal or state law or regulation. The Mississippi Department of Revenue stated the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products may apply to this sales tax exemption, if the equipment is used in a manufacturing framework and classified as a pollution control device that is required by either federal or state law to reduce or control pollution. (MS St. § 27-65-101)
- Missouri: According to the Missouri Department of Revenue, the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products may be exempt from sales tax under Missouri’s sales tax exemption for machinery and equipment used by a material recovery processing plant. However, the Missouri Department of Revenue stated that a letter ruling with specific information from a business seeking such a sales tax exemption would be necessary to make a definitive determination. (MO St. § 144.030)
- Oklahoma: Sales tax exemption on the sale of machinery and equipment used directly in the manufacturing process, including the activity of converting or conditioning tangible personal property by changing the form, composition, or

quality of character of some existing material or materials, including natural resources, by procedures commonly regarded by the average person as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use; the Oklahoma Tax Commission was unable to determine whether the sales exemption applies to the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products, the Oklahoma Tax Commission would need to evaluate a tax exemption application and make its determination based upon the specific facts of the case. (OK St. 68 § 1359)

- Tennessee: According to the Tennessee Department of Revenue, the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products may be exempt from sales tax, if the products qualify as industrial machinery under Tennessee's industrial machinery sales tax exemption. (TN St. § 67-6-102)
- Texas: Sales tax exemption machinery and equipment used directly in the manufacturing process, includes certain chemicals used during the manufacturing operation; wrapping and packaging materials, and according to the Texas Comptroller, the sales exemption applies to the sale of fuel packaging materials and machinery and equipment, including analytical equipment and chemicals, used in the business of processing hazardous and non-hazardous waste into fuel products. (TX St. § 151.318)