Gross Receipts regulation 1995-2
VENDING GOODS WHOLESALE TAX

These rules and regulations are promulgated for the enforcement and administration of Act 934 of 1995

A. DEFINITIONS

1. "Person" means any individual, partnership, corporation, limited liability corporation, association, organization, nonprofit corporation and any county, municipal or other subdivision of this State.
2. "Vending Device" means any machine or manual device which dispenses tangible personal property after a coin or other thing of value is inserted. The term "vending device" shall not include devices used exclusively for the purpose of selling cigarettes, newspapers, magazines or postage stamps.
3. "Permitted Vending Device Operator" or "PVDO" means any person who sells tangible personal property through vending devices, who elects to retain or obtain an Arkansas retail sales tax permit and who elects to pay the 5.5% vending goods wholesale tax on purchases or withdrawals from stock or goods sold through vending devices instead of paying sales tax to the supplier.
4. "Vending device goods" means tangible personal property sold through a vending device.
5. "Purchase price" means the final price reflected on the seller's invoice or other document evidencing sale of goods after deducting any manufacturer's rebates, seller discounts, or other credits which reduce the actual cost of the goods. "Purchase price" does not include soft drink taxes or other taxes collected by the seller if separately stated on the invoice.
6. "Director" means the Director of the Department of Finance and Administration or his authorized agents.
7. "Withdrawal from stock" means the action of taking from inventory vending device goods which are identified and intended for sale through a vending device located in Arkansas. A withdrawal from stock at the option of the vending device operator occurs upon one of the following acts:

(a) the removal from a warehouse or other established inventory in Arkansas of identified vending device goods intended for sale through a vending device in Arkansas; or,

(b) the delivery into an Arkansas vending device of identified vending device goods intended for sale through a vending device in Arkansas which goods have previously been removed from a warehouse or other established inventory either within or without Arkansas; or,

(c) The dispensing out of an Arkansas vending device of identified vending device goods which have previously been removed from a warehouse or other established inventory either within or without Arkansas.

B. OTHER VENDING DEVICE OPERATORS

A vending device operator which does not meet the requirements of a permitted vending device operator may not purchase vending device goods exempt from sales and use tax as a sale for resale. Purchases of these goods from an Arkansas seller are subject to state and local sales tax. Purchases of these goods from an out-of-state seller are subject to state and local use tax. Sales and use tax must be paid on all vending device goods purchases unless notification in writing to the Sales and Use Tax Section is made indicting an election to pay the wholesale vending tax. The election will be effective on the first day of the month following the month in which the notice is given.

EXAMPLE: Company B has a sales tax permit for its retail furniture sales and also operates vending machines in its stores. Company B has elected to pay sales and use tax on vending device goods rather than the wholesale vending tax. Company B must pay sales and use tax on all purchases. If Company B later decides to pay the wholesale vending tax, it must first notify the Sales and Use Tax Section in writing of its intent to change its election.

C. PERMITTED VENDING DEVICE OPERATORS – NON-MANUFACTURING

1. A permitted vending device operator (PVDO) who does not manufacture vending device goods may choose to pay the 5.5% vending goods wholesale tax (“the tax”) on the purchase price of vending device goods by either method (a) or method (b) described below:

(a) The tax shall be reported for the month in which the purchases are made. If the PVDO receives a manufacturer's rebate after the sale of goods as a cash payment, the PVDO may deduct the rebate amount from the total amount of goods subject to the tax in the month in which the rebate is received. The PVDO must maintain copies of the rebate checks. A PVDO who chooses this method for calculating tax must use this method on all purchases of vending device goods.

(b) The tax shall be reported for the month in which goods are withdrawn from inventory for placement in a vending device. The tax shall be based upon the actual purchase price of the withdrawn goods. If the PVDO receives a manufacturer's rebate after the sale of goods as a cash payment, the PVDO may deduct the rebate amount from the total purchase price of goods subject to the tax in the month in which the rebate is received. The PVDO must maintain copies of rebate checks. A PVDO who chooses this method for calculating tax must use this method on all purchases of vending device goods.

2. If due to the nature of a PVDO's main business operations, calculating the purchase price of a particular item sold through a vending device is impossible or overly burdensome, the PVDO may base the tax on the average purchase price of that item during the reporting month. If during the reporting month the PVDO withdraws a particular item and identical items were not purchased during the reporting month, then the tax on the withdrawn items will be based on the average purchase price of identical items purchased during the closest previous month to the reporting month. The PVDO may only average purchase prices of identical goods. Goods are identical if the have the same characteristics, such as brand, manufacturer, flavor, ingredients, weight, volume, or size.

EXAMPLE A: A PVDO operates a grocery store as well as vending devices. In July, the PVDO removes from inventory Diet Coke and Snickers candy bars for sale through the vending devices. The PVDO elects to pay the tax on the withdrawal of inventory. The PVDO purchases Diet Cokes during the months June and July at varying unit prices. The PVDO purchased Snickers bars in June but not July. THE PVDO may calculate the tax for July on withdrawn Diet Coke using the average purchase price for such goods during July. The PVDO may calculate the tax for July on withdrawn Snickers bars using the average purchase price for such goods during June.

3. A PVDO may deduct the purchase price of stale goods from taxable purchases or withdrawals for the month in which the goods were discarded or returned to the vendor. Adequate records must be maintained to establish this deduction.
4. A PVDO may not calculate the tax based on the gross receipts or proceeds derived from the sale of goods through a vending device.

D. PERMITTED VENDING DEVICE OPERATORS – MANUFACTURERS

1. A PVDO which manufactures some or all of the goods placed in vending devices for sale shall calculate the tax based on the price that it would sell the manufactured goods to another vending device operator ("wholesale price"). A PVDO which does not have a fixed wholesale price shall calculate the wholesale price based on either: 1) the average price that it sold identical goods to wholesale customers during the reporting month, or 2) the lowest price that it sold identical goods to a wholesale vending customer purchasing a similar volume of goods. "Similar volume" means within 10% of the volume of goods withdrawn for sale by the PDVO for sale through a vending device.

   EXAMPLE A: A PVDO manufactures soft drinks and sells the soft drinks to numerous customers during the reporting month. The PVDO also sells the soft drinks through its own vending devices. The unit price of the soft drinks sold to customers varies because of volume discounts, rebates or other factors. The PVDO chooses to pay tax on the withdrawal of goods during the reporting month. The PVDO should base the tax on the average unit price for which the soft drinks were sold to PVDO's customers during the reporting month.

   EXAMPLE B: A PVDO Manufactures sandwiches and sells the sandwiches through vending devices, to other retailers, and over-the-counter. The PVDO also purchase ready-made goods for sale through vending devices and has elected to pay on the purchase price of these goods. When calculating the tax on the sandwiches, the PVDO may base the tax on the average wholesale price that it would sell the sandwiches to other retailers during the reporting period based on cost of the ingredients, labor, and other costs.

EXAMPLE C: A PVDO manufactures sandwiches solely for sale through vending devices. The PVDO should calculate the tax on the sandwiches based on the average cost of manufacturing the goods including cost of ingredients, labor, and other factors, such as utilities, insurance, and other overhead costs, which relate direct to the manufacture of sandwiches and which would be taken into consideration in determining a wholesale price if the PVDO were to sell to another retailer.

E. IDENTIFYING LABEL. Every vending device operator shall affix to each vending device operated by him a label, decal, tag, sticker, or other object which contains the name and unique identification number of the operator. The Sales and Use Tax Section of the Revenue Division will issue the identification numbers which will not be identical to the sales tax account number of the operator. The failure of a vending device to be properly labeled shall constitute a presumption that the vending device operator is not paying gross receipts or vending wholesale tax on his purchases or withdrawals of vending device goods. The director shall seal any vending device subject to this presumption in such a manner as to prevent further sales through the device and shall assess and collect from the vending device operator a penalty of $50 per vending device. The presumption shall be overcome if the vending device operator affixes a label to the vending device and establishes to the director's satisfaction that he has paid gross receipts or vending wholesale tax on purchases or withdrawals of vending device goods.

F. REPORTING. The tax must be reported each month on the Arkansas Sales and Use Tax Report. The report is due on the 20th of the month following the month in which taxable purchases or withdrawals occur. Failure to timely report or pay the tax will result in the assessment of interest and penalties in accordance with the Arkansas Tax Procedure Act (Ark. Code Ann § 26-18-101, et seq.)

G. RECORD KEEPING

1. **Non- Manufacturing PVDO –** Non-manufacturing PVDO's must maintain all invoices reflecting the purchase of vending device goods. PVDO's opting to pay tax on the basis of withdrawal from inventory must maintain accurate records which reflect each item withdrawn or sale through an Arkansas vending device. PVDO's using the averaging method described in paragraph B (2) must maintain records to substantiate the average purchase price used in calculating tax on each type of vending good.
2. **Manufacturing PVDO -** Manufacturing PVDO's must maintain records substantiating manufactured goods withdrawn from inventory for sale through an Arkansas vending device. PVDO's must also maintain sales records to substantiate the average wholesale price of vending goods sold to other vending device operators or the lowest price for a similar volume wholesale customer. PVDO's who do not sell manufacturing vending device goods must maintain records to substantiate the cost of the manufacturing the goods.

Signed this 6th day of November 1995

Richard A. Weiss	Timothy J. Leathers
Director, Department of	Commissioner of Revenue
Finance and Administration	