



STATE OF ARKANSAS
**Department of Finance
and Administration**

REVENUE LEGAL COUNSEL

Post Office Box 1272, Room 2380
Little Rock, Arkansas 72203-1272
Phone: (501) 682-7030
Fax: (501) 682-7599
<http://www.state.ar.us/dfa>

August 12, 2008

Mr. Greg Yielding, Executive Director
Arkansas Rice Growers Association
P. O. Box 95266
North Little Rock, AR 72190

Dear Mr. Yielding:

This is in response to your recent request for an opinion as to whether an assessment made under the Arkansas Rice Research and Promotion Act of 1979 (Ark. Code Ann. § 2-20-501 et seq.) constitutes a tax or a fee. Ark. Code Ann. § 26-18-104(13) defines the term "state tax" as "...any tax, or any fee for a license, permit or registration which is payable to, collected by, or administered by the Revenue Division, Department of Finance and Administration... ." The rice assessment under the Act is collected by the Department of Finance and Administration [Ark. Code Ann. § 2-20-507(b)]. Therefore, the rice assessment constitutes a "state tax" as defined by the Arkansas Code.

Arkansas Supreme Court case law also provides guidance with regard to the distinction between a tax and a fee. In the case of *Barnhart vs. City of Fayetteville*, 321 Ark 197, 900 S.W. 2d 539 (1995), the Supreme Court stated that "a governmental levy of a fee, in order not to be denominated a tax by the courts, must be fair and reasonable and bear a reasonable relationship to the benefits conferred on those receiving the services." (321 Ark. at 205, citations omitted) The court also stated that a fee is related to the services provided to the one paying the fee, while a tax bears no such relation to the services provided.

Applying this test, the Rice Promotion Assessment is akin to a tax, as opposed to a fee. The assessment collected from the buyer is used in part to pay for market development and promotion. The assessment collected from the producer is likewise used for rice extension and rice research. The rice buyer does not receive greater market development and promotion services depending on the amount of assessment paid. Likewise, a rice producer does not receive greater rice extension or research services based on the amount paid under the assessment. The services provided to either the rice buyer or the rice producer bear no relationship to the

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amount of assessment paid by either party. Consequently, the assessment paid under the Rice Research and Promotion Act is a "state tax" under Arkansas Law.

Thank you for your consideration. If you have any questions, please call me at (501) 682-7037.

Sincerely,



William E. Keadle, Attorney
Revenue Legal Counsel

cc: John H. Theis, Assistant Commissioner
Policy and Legal

Martha Hunt, Chief Counsel
Revenue Legal Counsel

Tom Atchley, Administrator
Office of Excise Tax Administration