

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Department of Finance and Administration

Department Revenue Services

Contact Lauren Ballard E-mail Lauren.Ballard@dfa.arkansas.gov Phone 501 682-7030

Statutory Authority for Promulgating Rules Ark. code Ann. 26-18-301 and 26-51-423(a)(3)

Rule Title: ET-9 Automatic Car Wash, Car Wash Tunnels and Self-Service Bays

Intended Effective Date  
(Check One)

Emergency (ACA 25-15-204)

10 Days After Filing (ACA 25-15-204)

Other \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Legal Notice Published .....

Final Date for Public Comment .....

Reviewed by Legislative Council .....

Adopted by State Agency .....

Date

5/20/20

7/7/20

08/28/20

08/19/20

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

David Rector, CPA

David.Rector@dfa.arkansas.gov

9/9/20

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

David Rector, CPA

Signature

501 682-7752

Phone Number

David.Rector@dfa.arkansas.gov

E-mail Address

Problems Resolution Officer

Title

09/09/20

Date

## ET-9: AUTOMATIC CAR WASH, CAR WASH TUNNELS, AND SELF-SERVICE BAYS RULES.

### A. DEFINITIONS.

1. “Ancillary service” means a service provided by a car wash operator in conjunction with the sale of a service through an automatic car wash, a car wash tunnel, or a self-service bay that involves the cleaning of interior or exterior, or both, of a motor vehicle.

a. “Ancillary service” includes without limitation:

- (1) Hand prepping any portion of a motor vehicle;
- (2) Vacuuming;
- (3) Hand drying any portion of a motor vehicle;
- (4) Waxing any portion of a motor vehicle;
- (5) Hand cleaning any portion of a motor vehicle; and
- (6) Applying a protective or shine coat to any portion of a motor vehicle.

2. “Automatic car wash” means a car wash bay that provides a full automated car wash using mechanical equipment that cleans the motor vehicle while the motor vehicle remains stationary.

3. “Car wash operator” means a person that operates one (1) or more automatic car washes, car wash tunnels, self-service bays, or any combination of automatic car washes, car wash tunnels, self-service bays.

4. “Car wash tunnel” means a car wash bay that provides a fully automated car wash in which the motor vehicle is moved through a tunnel by a conveyor system.

5. “Public water system” means a water system subject to regulation under the Safe Drinking Water Act, 42 U.S.C. § 300f, as existing on January 1, 2019, which is owned by a municipal corporation, a governmental corporation, or a nonprofit corporation, including without limitation:

- a. A municipality;
- b. A public facilities board;
- c. A public water authority;
- d. A water association;
- e. A regional water distribution district;
- f. A rural development authority;
- g. A sanitation authority;
- h. An improvement district;
- i. A regional wastewater treatment district; or
- j. A consolidated waterworks.

6. “Self-service bay” means a car wash bay that allows a person to manually wash a motor vehicle using equipment and supplies provided by the car wash operator.

### B. SALES BY CAR WASH OPERATORS.

1. Sales of tangible personal property, specified digital products, or a digital code by a car wash operator for use in an automatic car wash, a car wash tunnel, or a self-service bay or as part of an ancillary service that involves the cleaning of the interior or exterior, or both, of a motor vehicle is exempt from gross receipts and compensating use tax.

a. Examples.

Example 1: The sale of the following items of tangible personal property by a car wash operator for use in an automatic car wash, a car wash tunnel, or a self-service bay are exempt: vehicle polish, tire shine, cleaning wipes, window cleaner, wheel cleaner, fabric cleaner, leather cleaner, paper towels, sponges, and drying towels.

Example 2: The sale of the following items of tangible personal property by a car wash operator are taxable: auto parts and accessories, tires, audio and video components or systems, radiator fluid, transmission fluid, power steering fluid, brake fluid, washer fluid, and motor oil.

2. Sales of ancillary services that involve the cleaning of the interior or exterior, or both, of a motor vehicle by a car wash operator are exempt from gross receipts and compensating use tax.

a. Examples.

Example 1: The sale of the service of vacuuming out a vehicle, when sold in connection with a car wash through an automatic car wash, a car wash tunnel, or a self-service bay and by a car wash operator, is not taxable.

Example 2: The sale of an oil change service, tire change service, repair service, or maintenance service, even when sold in connection with a sale of a car wash through an automatic car wash, a car wash tunnel, or a self-service bay and by a car wash operator, is taxable.

### C. SALES TO CAR WASH OPERATORS.

1. Sales of tangible personal property, specified digital products, or a digital code to a car wash operator for use in an automatic car wash, a car wash tunnel, or a self-service bay or as part of an ancillary service are exempt from gross receipts and compensating use tax.

2. Sales of services to car wash operators are exempt from gross receipts and compensating use tax.

3. Examples of sales exempt from gross receipts and compensating use tax under this rule include, but are not limited to:

a. Car washing machinery and equipment installed in the car wash tunnel, automatic car wash, or self-service bay;

b. Car washing chemicals, including without limitation soap, detergent, wax, polish, and tire shine, used in the car wash tunnel, automatic car wash, or self-service bay; and

c. Water and electricity used in the car wash tunnel, automatic car wash, or self-service bay.

### D. WATER USAGE FEE.

1. In lieu of remitting gross receipts or compensating use tax on the transactions identified in ET-9(B) and (C), a car wash operator shall remit a fee based upon water usage to the Department by the twentieth day of each month.

a. Car Wash Tunnels – the monthly fee due shall be calculated as follows:

(1) Multiply by eight-tenths (0.8) the total aggregate number of gallons of water the car wash operator used during the preceding month for all of the car wash operator's car wash tunnels; then multiply by four-tenths of one cent (0.4¢).

b. Automatic Car Wash - the monthly fee due shall be calculated as follows:

(2) Multiply by eight-tenths (0.8) the total aggregate number of gallons of water the car wash operator used during the preceding month for all of the car wash operator's automatic car washes; then multiply by two-tenths of one cent (0.2¢).

2. The most accurate way to calculate the water usage fee is for car wash tunnels and automatic car washes to have dedicated water meters that measure the total aggregate number of gallons of water the car wash operator used during the preceding month for all of the car wash operator's car wash tunnels and automatic car washes.

#### E. REGISTRATION REQUIREMENTS.

1. A car wash operator that is required to pay the car wash fee under § 26-57-1603 shall register electronically with the Department before an automatic car wash or a car wash tunnel is made available for commercial use.

2. The monthly fee shall be reported and remitted electronically on the form provided by the Department for that purpose.

#### F. BUNDLED TRANSACTION.

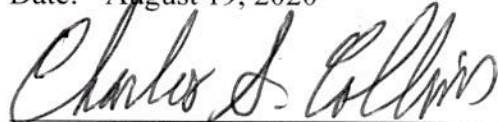
1. If any tangible personal property or service exempted by this rule is sold in conjunction with the sale of taxable tangible personal property or services for a non-itemized price, the bundled transaction rule will apply. *See* Ark. Code Ann. § 26-52-103 *and* Arkansas Gross Receipts Rule GR-93.

Source: Arkansas Code Annotated § 26-52-301(3)(B)(i)(a) (Supp. 2019), § 26-52-401(41)(A) (Supp. 2019), § 26-57-1601 through -1605 (Supp. 2019).



Larry W. Walther, Secretary  
Arkansas Department of Finance and Administration

Date: August 19, 2020



Charlie S. Collins, Commissioner of Revenue  
Arkansas Department of Finance and Administration

Date: August 19, 2020

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Finance and Administration  
**DIVISION** Revenue  
**PERSON COMPLETING THIS STATEMENT** Paul Gehring  
**TELEPHONE NO.** (501) 682-7030 **FAX NO.** (501) 682-7599 **EMAIL:** paul.gehring@dfa.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Automatic Car Wash, Car Wash Tunnel, and Self-Service Bay Rules

1. Does this proposed, amended, or repealed rule have a financial impact? Yes  No
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes  No
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes  No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;
  
- b) The reason for adoption of the more costly rule;
  
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
  
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_ \$ 0.00

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_ \$ 0.00

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_ \$ 0.00

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_ \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

This rule does not impose any additional cost outside of the original impacts of Act 822 of 2019.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

This rule does not impose any additional cost outside of the original impacts of Act 822 of 2019.

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?  
Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.