



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.arkansas.gov/dfa>

January 13, 2016

██████████
██
██████████
██████████
██

RE: Gross Receipts Tax – Bundled Dashboard and Personal Website Services
Opinion No. 20151103

██████████:

This letter is in response to your correspondence of October 29, 2015 requesting a legal opinion from the Department of Finance and Administration (the “Department”). According to your request, ██████████ (“██████”) is a multi-level marketer physically located in ██████████, ██████████. ████████ sells nutritional, dietary, and skin care products through a network of independent distributors. ████████ charges sales tax based upon the address where products are shipped and based upon full suggested retail price. ████████ files one consolidated state sales/excise tax return in lieu of having each independent distributor file separate returns.

Your letter noted that customers receive complimentary copies of your quarterly ██████████ magazine. Based on varying promotions, customers may be eligible to receive percentage discounts off the retail prices of products they purchase. Customers are not required to pay annual fees.

On the other hand, distributors are required to renew annually. Distributors earn percentage discounts off the retail prices of products based on the distributor’s volume of products purchased. The renewal fee charged is \$25 in order for a distributor to maintain “active” status. Active distributors also receive ██████████ magazines quarterly and maintain their wholesale discounts on products purchased. Active distributors are also eligible to receive distributor business support services and access to the ██████████ website.

Distributors may purchase a dashboard and personal website, sold bundled only. The ██████████ distributor dashboard service provides immediate access to information on all activity on the distributorship with online tools to track, manage, and grow the business. The personal websites allow the distributors to give ██████████ presentations via mobile devices. In addition, the personal websites enable distributors to add customers and downline distributors to their own shopping cart and online sponsoring.

You requested a binding opinion on the taxability of ██████████’s renewal, dashboard and personal website fees.

Generally, Arkansas gross receipts (sales) tax is levied on all sales of tangible personal property, unless an exemption applies. Ark. Code Ann. § 26-52-301(1) (Repl. 2014). Further, in cases where a sale involves both taxable and non-taxable transactions, the items must be separately stated or the entire charge is subject to Arkansas sales tax. *Weiss v. Best Enterprises, Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996). Pursuant to Arkansas Supreme Court decisions beginning with *Ferguson v. Cook*, 215 Ark. 373, 220 S.W.2d 808 (1949), all consideration received for services that were necessary to the completion of the transaction is part of the gross proceeds for the transaction, and the court will not separate commingled taxable and non-taxable sales and services. See *Ragland v. Miller Trane Service Agency, Inc.*, 274 Ark. 227, 623 S.W.2d 520 (1981). When taxable and non-taxable services form distinct transactions, the two charges may be separately stated. However, if a non-taxable service is necessary to complete a taxable service, the fee for the non-taxable service is a necessary charge to the completion of the taxable transaction. As such, the entire charge for both services is subject to Arkansas sales tax.

Sales of computer software, including prewritten computer software, are taxable as sales of tangible personal property. Ark. Code Ann. § 26-52-304 (Repl. 2014). Computer software does not include software that is delivered electronically or by load and leave. *Id.* “Delivered electronically” means delivered to the purchaser by means other than tangible storage media. *Id.* “Load and leave” means delivery to the purchaser by use of a tangible storage media in which the tangible storage media is not physically transferred to the purchaser. *Id.*

Accordingly, if software is downloaded onto your distributors’ computers or other devices to enable access to the distributors’ activities or presentations, but is never provided to the distributors in any tangible form (such as disks or flash drives), then the software provided by downloading from [REDACTED]’s server is not taxable. Merely allowing access to online servers is not an enumerated taxable service within the State of Arkansas. Consequently, in these scenarios Arkansas sales tax does not apply, regardless whether the services are bundled together or separately stated.

Fees charged for reports that are accessible online are not subject to sales tax as long as the reports are not printed and sold to the purchaser. However, fees charged for paper copies of records constitute sales of tangible personal property that are subject to sales tax in Arkansas. See Ark. Code Ann. § 26-52-103; see also *Holbrook v. Healthport, Inc.*, 2014 Ark. 146, 432 S.W.3d 593 (Ark. 2014).

The Arkansas Gross Receipts Tax Rules cited in this opinion may be viewed on the DFA’s website at http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf.

A letter opinion may not be relied on if more than three (3) years old, but may be renewed on request.

RE: Opinion No. 20151103
January 13, 2016
Page 3 of 3

This opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules and regulations. Any change in the facts or law could result in a different opinion.

Sincerely,

Paul Gehring, Chief Counsel
Office of Revenue Legal Counsel