



STATE OF ARKANSAS

**Department of Finance
and Administration**

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[REDACTED]
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RE: Chimney Cleaning Service Sales Tax Exemption Determination
Opinion No. 20160105

Dear [REDACTED]:

Your letter to the Department of Finance and Administration (“DFA”), Revenue Legal Counsel, requesting a legal opinion has been referred to me for a response. You have asked whether the service of “cleaning and repairing chimneys is taxable or if it is a contractor situation and only the materials are taxable.”

The service of chimney cleaning and repair is not a taxable service. Similarly, the initial installation or repair of any tangible personal property, including chimney caps or pipes, is not subject to sales tax. However, as discussed further below, while you are not required to collect tax from your customers for the sale of service or materials used in that service, you must pay sales tax when you purchase the materials, either when you initially purchase them or as they are consumed in the course of your business, as a sale for resale.

Arkansas Code Annotated § 26-52-301 imposes an excise tax on the gross receipts or gross proceeds (“gross receipts”) derived from the sale of tangible personal property and certain enumerated services. *See also* Arkansas Gross Receipts Tax Rule GR-3(M). A sale is defined as “any transaction resulting in the transfer of either the title or possession, for a valuable consideration, of tangible personal property or taxable services regardless of the manner, method, instrumentality, or device by which such transfer is accomplished.” *Id.* The term “sale” includes the exchange, barter, lease, or rental of tangible personal property or taxable services. *Id.* All sales of tangible personal property are taxed unless an exemption applies while services are only taxed if specifically enumerated. *See* Ark. Code Ann. § 26-52-301.

Chimney Cleaning Service:

Under Ark. Code Ann. § 26-52-301(3)(D)(i)(b) and Arkansas Gross Receipts Tax Rule GR-21(C)(1), the services of cleaning and janitorial work are specifically enumerated as taxable.

However, Ark. Code Ann. § 26-52-301(3)(B)(viii)(a) provides that gross receipts tax shall not be levied on “the initial, alteration, addition, cleaning, refinishing, replacement, or repair of a nonmechanical, passive, or manually operated components of buildings or other improvements or structures affixed to real estate...” The Department has determined that chimney cleaning falls outside the scope of cleaning services that the General Assembly intended to tax. Therefore, the service of chimney cleaning is not subject to state or local Arkansas sales tax.

Chimney Repair Service:

The repair, replacement, alteration or addition to nonmechanical, passive components of buildings or structures affixed to real estate is not taxable. *See* Ark. Code Ann. § 26-52-301(3)(B)(viii)(a). You should not collect sales tax from your customers for the performance of the service of chimney repair.

Contractor Services:

A contractor is any person who contracts or undertakes to construct, manage, or supervise the construction, erection, alteration or repair of any building or other improvement or structure affixed to real estate, including any of their component parts. Arkansas Gross Receipts Tax Rule GR-21(A)(3). A contractor is deemed to be the consumer or user of all tangible personal property used or consumed by the contractor in providing nontaxable services. Ark. Code Ann. § 26-52-301(3)(B)(viii)(b). Thus, by you acting as a contractor, the services of chimney cleaning and repair are not taxable to your customers, but you are required to pay sales tax when you initially purchase the materials.

Sales of Materials with No Service Provided:

In your request, you mention that you “rarely” sell chimney caps and/or pipes, and that the “large majority” of your jobs are labor only. As previously discussed, the labor-only services described above should not be taxed to your customers. Further, if in the performance of your contractor work, you replace or install new chimney caps and/or pipes, tax should not be collected from your customers. However, if you were to sell any tangible personal property, including materials, chimney caps, pipes, etc., to customers, but not perform any service, then this would qualify as the sale of tangible personal property and would therefore be subject to sales tax.

This opinion is based upon my understanding of the facts as set forth in your letter, as currently Arkansas law, rules and regulations govern those facts. Any change in the facts or law could result in a different opinion.

Sincerely,

David W. Parker, Attorney at Law
Revenue Legal Counsel