



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

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March 14, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Gross Receipts/Compensating Use Tax— [REDACTED]  
Opinion 20160205

Dear [REDACTED]:

This letter is in response to your request for a Revenue Legal Counsel Opinion by letter dated January 28, 2016. Specifically, your letter requested information regarding the proper gross receipts/sales and compensating use tax treatment concerning the landscape contracting activities of your employer, [REDACTED] (“Taxpayer”).

Taxpayer currently holds a valid Arkansas Sales and Use Tax Permit. From your letter, it is my understanding that Taxpayer is a landscaping contractor that is based in Arkansas. The majority of Taxpayer’s work is obtained through bidding processes. Taxpayer does most of its landscaping work as a subcontractor for construction companies that are the general contractor which have hired Taxpayer. Some of Taxpayer’s landscaping work is performed in Arkansas, but the majority of Taxpayer’s work is performed outside of the State of Arkansas.<sup>1</sup>

Taxpayer performs such services as constructing retaining walls and “pavers”, which is essentially constructing patios, sidewalks, walkways, and similar such landscaping structures using pre-made molds. Taxpayer also performs irrigation work and more general landscaping work, such as planting trees and shrubs, spreading topsoil, laying sod, and spreading hydro seed. Some of the products used to complete a landscaping job are purchased and shipped directly to the job site, whether inside or outside of Arkansas, and sometimes the products used are taken from Taxpayer’s inventory at its Arkansas location to the job site. While Taxpayer does perform landscaping services and makes some purchases of product in Arkansas, the majority of Taxpayer’s landscaping services are performed outside of Arkansas and, similarly, most of Taxpayer’s purchases of product to fulfill landscaping contracts are made outside of Arkansas and shipped directly to the job site.

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<sup>1</sup> In your letter, you initially requested guidance as to the proper reporting requirements regarding gross receipts and compensating use tax in the various states in which Taxpayer does business. As per our subsequent communications, though there may be some similarities or uniformity of gross receipts and compensating use tax law from state to state, such laws of each state are different in at least some respects. Accordingly, this letter will only address the proper gross receipts and compensating use tax reporting requirements in Arkansas. It is recommended that Taxpayer contact each state in which it does business to determine its proper gross receipts and compensating use tax obligations in each such state.

As stated above, you have requested guidance regarding the proper gross receipts/sales and compensating use tax reporting requirements relating to Taxpayer’s business activities. Concerning the applicability of Arkansas gross receipts/sales and compensating use tax, Arkansas law specifically provides as follows:

(a)(1) **This section applies for purposes of determining a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product or service.**

(2) This section does not affect the obligation of a purchaser or lessee to remit tax on the use of the product or service to the taxing jurisdictions of that use and does not apply to the sales or use taxes levied on the retail sale excluding lease or rental, of motor vehicles, trailers, or semitrailers that require licensing.

(b) Excluding a lease or rental, **the retail sale of a product or service shall be sourced as follows:**

(1) If the product or service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(2) **If the product or service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's designated donee occurs,** including the location indicated by instructions for delivery to the purchaser or donee known to the seller[.]

....

(f) As used in subsection (b) of this section:

(1) **“Receive” and “receipt” mean:**

**(A) Taking possession of tangible personal property; or**

**(B) Making first use of services; and**

(2) “Receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser.

....

(h) This section shall apply to all state and local taxes administered by the Department of Finance and Administration.

Ark. Code Ann. § 26-52-521 (Repl. 2014) (emphasis added).

The Arkansas Gross Receipts Tax Rules also address the issue of when transactions occur within the state and when the transactions do not. Specifically, relevant to the present factual scenario, those Rules provide as follows:

A. The Arkansas gross receipts tax is a tax imposed on the sale of tangible personal property and not the property itself. Thus, when a sale of tangible personal property occurs in Arkansas, a taxable event has occurred and the tax should be collected and remitted.

....

C. INTERSTATE SALES.

1. Delivery from Arkansas. **When tangible personal property is sold by a seller that is engaged in an established business, or sells in an established manner within Arkansas, and the contract of sale or order requires the seller to deliver the property by common carrier, contract carrier, U.S. Postal Service, or in the seller's own conveyance to a point outside Arkansas for consumption or use, the transaction is interstate and not subject to Arkansas gross receipts tax.**

D. DROP SHIPMENTS. A drop shipment is a sales transaction involving three parties - two sellers and one consumer. The first seller sells property to the second seller, who sells to the consumer; however, the first seller delivers the property directly to the consumer. The taxability of drop shipments depends on the location of the second seller and the consumer. The location of the first seller is irrelevant because the sale from the first seller to the second seller is an exempt sale for resale.

....

E. SERVICES.

1. Services Performed in Arkansas. When taxable services are performed in Arkansas and the customer takes receipt of the service in Arkansas, the transaction is subject to Arkansas gross receipts tax. **However, if taxable services are performed in Arkansas, but the customer takes receipt of the service outside of Arkansas, then no Arkansas gross receipts tax is due.**

Arkansas Gross Receipts Tax Rule GR-5 (emphasis added). Similarly, those Rules address the sourcing of transactions as follows:

A. Sales transactions shall be sourced in accordance with this rule, unless otherwise provided.

B. APPLICABILITY.

1. Products. The sourcing provisions of this rule apply regardless of the characterization of a product as tangible personal property or a service.

2. Sellers. The provisions of this rule only apply to determine a seller's obligation to pay or collect and remit sales or use tax with respect to the seller's retail sale of a product.

3. Purchasers. The provisions of this rule do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdiction of that use.

C. RECEIVE AND RECEIPT. For the purposes of this rule, "receive" and "receipt" mean taking possession of tangible personal property or making first use of services. Receive and receipt do not include possession by a shipping company on behalf of the purchaser.

D. RETAIL SALES - EXCLUDING LEASES AND RENTALS.

1. **Except as otherwise provided, a retail sale is sourced as follows:**

....

b. **Delivery to a specified address. When the purchaser does not receive the tangible personal property or service at the business location of**

**the seller, the sale is sourced to the location of receipt by the purchaser** (or the purchaser's donee, designated as such by the purchaser), including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

Arkansas Gross Receipts Tax Rule GR-76 (emphasis added).<sup>2</sup>

This quoted statutory and regulatory law provides guidance regarding the proper gross receipts and compensating use tax treatment to a majority of Taxpayer's business. First, any landscaping services performed by Taxpayer on property located outside of the State of Arkansas will not be subject to Arkansas gross receipts/sales or compensating use tax. Based upon the facts provided, the majority of Taxpayer's landscaping activities takes place outside of the State of Arkansas and will not be subject to Arkansas gross receipts tax.

Similarly, based upon the quoted law, the sale of products or services to end consumers taking first receipt of tangible personal property or making first use of services outside of Arkansas shall not be subject to Arkansas gross receipts tax. Based upon the facts presented, Taxpayer often makes purchases of product, both inside and outside of Arkansas, to fulfill its contracts that are delivered directly to job sites located outside of the State of Arkansas. Taxpayer's purchases of materials that are shipped directly to job sites located outside of Arkansas, where first receipt is taken, will not be subject to Arkansas gross receipts tax.

Taxpayer also has some remaining activities that need to be addressed. First, Taxpayer does perform some landscaping work inside the State of Arkansas. Second, Taxpayer often faces the scenario where Taxpayer ships product from its inventory located within this State to job sites, both inside and outside of Arkansas.

Landscaping services performed in Arkansas, whether performed on residential or non-residential property, are subject to Arkansas gross receipts tax. *See* Ark. Code Ann. § 26-52-301(3)(D)(i)(f) (Repl. 2014). The Arkansas Gross Receipts Tax Rules provide as follows:

- A. **Any person engaged in the business of providing lawn care of nonresidential property or landscaping services of both residential and nonresidential property is required to collect and remit sales tax on the gross receipts derived from these services.** The business is required to obtain a sales tax permit. **All materials that remain in or on the customer's property should be purchased tax exempt as a sale for resale. Examples are fertilizer, weed killer, grass seed, sod, plants, trees, or shrubs. Materials used or consumed by the business may not be purchased exempt. Examples are gasoline, oil, cleaning materials, uniforms, tools, mowers or other equipment used or consumed by the business.**
- B. **The business will collect state and local sales tax on the total consideration for landscaping services or nonresidential lawn care, whether**

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<sup>2</sup> Sourcing taxation based upon the location where the end consumer takes first receipt of tangible personal property and makes first use of specifically enumerated taxable services is commonly referred to as "destination based sourcing".

**provided as part of a general contract for building construction or as a separate agreement with the landowner. The business will collect the tax from the party with whom it contracts for the service, including general contractors, on the total contract cost including the cost of plant materials.** A business which has its own nursery is not required to report tax on plant material withdrawn from stock, but will collect tax on the sale of the material to its customers.

Arkansas Gross Receipts Tax Rule GR-9.2(A)-(B) (emphasis added).

By statute, “landscaping” is defined as follows:

- (ii) As used in subdivision (3)(D)(i) of this section:
  - (a) “Landscaping” means the installation, preservation, or enhancement of ground covering by planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants[.]

Ark. Code Ann. § 26-52-301(3)(D)(ii)(a) (Repl. 2014). The Arkansas Gross Receipts Tax Rules provide the following broader definition of “landscaping”:

**1. "Landscaping" means the installation, preservation or enhancement of ground covering by planting trees, bushes, shrubbery, grass, flowers and other types of decorative plants. "Landscaping" does not include site preparation, cutting and filling, leveling, tree trimming or tree removal, or clearing a site of bushes and trees. "Landscaping" does include sodding, seeding and planting, as well as installing items such as landscape timbers, edging, planters, or similar items. Landscaping performed on highway easements and right-of-ways is taxable. Landscaping is taxable whether it is done for decorative purposes or non-decorative purposes such as erosion or sediment control.**

Arkansas Gross Receipts Tax Rule GR-9.2(C)(1) (emphasis added). Accordingly, Taxpayer must collect Arkansas gross receipts/sales tax, on both materials and labor, on all landscaping activities performed within this State.

As your letter recognizes, Taxpayer is a landscaping contractor. Arkansas law defines a “contractor” as follows:

- (5) “Contractor” means 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[.]

Ark. Code Ann. § 26-52-103(5) (Repl. 2014); *see also* Arkansas Gross Receipts Tax Rule GR-21(A)(3). As was previously noted, Taxpayer holds a valid Arkansas Sales and Use Tax

Permit. Concerning purchases by a Permitted business, the Arkansas Gross Receipts Tax Rules provide as follows:

**Permitted Business. A business holding a sales tax permit should purchase all materials used in its construction, repair, and retail business exempt from sales tax as sales for resale. Any materials used in the performance of non-taxable services are not taxed to the customer; however, the business must self-assess, report, and pay sales tax as a withdrawal from inventory (stock) on the purchase price of the materials. Tax is due at the time the goods are withdrawn from stock. (See GR-18.) The business must collect sales tax from its customers on retail sales of materials. Sales tax on materials used in performing taxable services is to be collected from the customer along with the labor charges.**

Arkansas Gross Receipts Tax Rule GR-21(D)(1) (emphasis added). Accordingly, when Taxpayer performs taxable landscaping services in Arkansas, Taxpayer must collect Arkansas gross receipts/sales tax on both the labor and materials used to fulfill the contract.

This opinion is based on my understanding of the facts as set out in your inquiry as current Arkansas laws, rules, and regulations govern those facts. Any change in the facts or law could result in a different opinion. Otherwise, this Opinion shall be binding for three (3) years and can be renewed upon request.

Please do not hesitate to contact me in the event you have any questions regarding this Opinion. Your time and attention to this matter are greatly appreciated.

Sincerely,

Tim E. Howell, Attorney at Law  
Revenue Legal Counsel