



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

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June 24, 2016

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

RE: Use Tax – Photography Services Purchased by Advertising Agency
Opinion 20160402

Dear [REDACTED]

You have requested a legal opinion on behalf of [REDACTED] concerning use tax liability for the purchase of video production services from an out of state vendor. Your letter of March 31, 2015, including a copy of the vendor's invoice, states in part as follows:

We are requesting a legal opinion regarding our use tax liability for an invoice we received on behalf of our client. The vendor, [REDACTED], created a video which was uploaded to various social media websites. The client is licensed to use it across their brand websites, retail partner websites and [REDACTED] pages through 12/31/17. There was not a tangible product shipped into Arkansas but it was delivered electronically to the various websites. The client, [REDACTED], has an office in [REDACTED]. We have attached copies of the vendor invoice for your review. Our permit number is [REDACTED]

When we contacted your office, [REDACTED] recommended the following:

- *Accrue and remit the use tax to D F & A*
- *Request a legal opinion for the attached invoice*
- *If the opinion determines this is a non-taxable event, we can request a refund of the taxes remitted*

[REDACTED] is an Arkansas based advertising agency providing advertising services to its clients. Based on the facts presented in your letter, it appears that an Arkansas based company, [REDACTED] parent company to [REDACTED], hired [REDACTED] to provide certain advertising services. Although your letter does not provide details as to what such advertising services were to include, it is clear that the production of a video featuring [REDACTED] was part of the service. You stated that [REDACTED] planned to use the video across its websites and retail partners, brand websites, and [REDACTED] pages through December 31, 2017. [REDACTED] outsourced the production of the video to an out of state vendor, [REDACTED]. You stated that no tangible product was ever shipped into the State of Arkansas because [REDACTED] delivered the video's content to various media websites electronically. [REDACTED] then sent a sales invoice to [REDACTED] for video production services in the amount of \$20,000.00 on behalf of

█████'s client, █████. █████ wants to know if it is liable for Arkansas use tax on the sales invoice received from █████.

The "Arkansas Gross Receipts" tax, also referred to as "sales and use tax" is generally applicable to the sale of tangible personal property and certain enumerated services. *See* Ark. Code Ann. § 26-52-301 (Repl. 2014). Gross receipts tax is computed based on the total value of consideration paid for the taxable property or service. *See* Ark. Code Ann. § 26-52-103(13)(A) (Repl. 2014). There is a specific exemption for the sale of "advertising services" in Arkansas Gross Receipts Tax Rule GR-46(B)(1). Specifically, sales of advertising services are exempt from Arkansas gross receipts tax to the extent the services are performed by an "advertising agency" that provides comprehensive professional advertising services. *See* GR-46(A)(1). It should be noted that it is the advertising service itself to an advertising agency's client that is subject to the exemption. "Advertising agencies" must pay gross receipts tax on all tangible personal property or taxable services that it uses in the process of providing advertising services. *See* GR-46(B)(2).

First, there is no doubt that █████ is an advertising agency subject to tax exemption on its sales of advertising services. The sole question presented here is whether █████ is liable for Arkansas use tax for the purchase of video production services performed by an out of state vendor. Arkansas Gross Receipts Rule GR-46 provides, in part, as follows:

- GR-46. NON-TAXABLE ADVERTISING SERVICES:**
[...]
B. 1. Advertising services shall not be subject to gross receipts tax.
 2. **Advertising agencies must pay the Arkansas gross receipts or use tax on all property and taxable services which they purchase** or consume in providing advertising services.
 [Emphasis added].
[...]

Is █████ subject to Arkansas use tax for the video production services performed by █████?

Yes. The service of "photography of all kinds" is subject to Arkansas sales and use tax. More generally, video productions are covered by Ark. Code Ann. § 26-52-301(4) (Repl. 2014) and Ark. Gross Receipts Tax Rule GR-23 "Radio, Video and Televisions Tapes and Films." Arkansas Gross Receipts Rule GR-23 states, "Retail sales of radio, video and television tapes and films containing commercial or other messages, including CDs, DVDs, and any digital image media, are subject to the tax." *See also* GR-10(D). The service of video production provided by █████ to █████ is taxable in Arkansas.

Further, the Arkansas use tax levies an excise tax on the privilege of storing, using, distributing, or consuming tangible personal property or taxable services in this State. Ark. Code Ann. § 26-53-106 (Repl. 2014). Sales of services are sourced to the State of Arkansas if the customer takes receipt of the service within the State of Arkansas. Ark. Code Ann. § 26-52-521 (Repl. 2014). This tax is imposed upon a purchaser and must be remitted by the purchaser, unless a

vendor collects and remits the tax on the purchaser's behalf. Ark. Code Ann. § 26-53-123 (Repl. 2014). A vendor must collect and remit Arkansas use tax on the purchaser's behalf if it has sufficient nexus with the State of Arkansas. Ark. Code Ann. § 26-53-124 (Repl. 2014). Sales tax exemptions are applied uniformly with use tax exemptions. Ark. Code Ann. § 26-53-112 (Repl. 2014).

██████ hired ██████, an out of state vendor, to perform a taxable service for distribution within the State of Arkansas. Therefore, unless ██████ paid the tax to DFA on ██████'s behalf, ██████ is required to pay Arkansas use tax on the gross receipts derived from the purchase of such service. *See generally* Ark. Code Ann. § 26-53-101 *et seq.* (Repl. 2014). Please note that it is the service of video production that is subject to use tax as opposed to the purchase of tangible personal property. Arkansas is a destination-sourcing state, therefore, the service of video production is sourced to the billing or physical address of the purchaser as they have subsequent control over the digital product. As such, the issue of electronic delivery by ██████ to the various websites is irrelevant to the question of taxability of the service. Ark. Code Ann. § 26-52-521. *See also* Arkansas Gross Receipts Tax Rule GR-76, a copy of which is enclosed.

This opinion is based upon my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any changes in the facts or law could result in a different opinion. Please be advised that this opinion may only be relied upon by the company and will only be binding upon the Department for three (3) years from the date of issuance. *See* Arkansas Gross Receipts Tax Rule GR-75, a copy of which is enclosed.

Sincerely,

Lisa Ables, Attorney
Revenue Legal Counsel

Enclosures