



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

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

Re: Gross Receipts Tax – Contractor and Subcontractor Obligations
Opinion 20160606

Dear [REDACTED],

This letter is in reference to your request of June 27, 2016 for a legal opinion from the Department. Your letter poses a number of inquiries regarding the requirement to collect gross receipts tax by contractors and subcontractors, both local and out of state. You identify yourself only as “a business owner” and identify your business as “[REDACTED].” Your letter did not specify whether you were seeking guidance on behalf of your company or on behalf of a client. The Department attempted to obtain further information and clarification on your specific facts and issues by transmitting a letter to you on July 6, 2016 by facsimile transmission. To date, you have not responded to same. Please note that, due to a lack of pertinent information, the Department will only be able to offer general guidance to you regarding these issues and cannot provide an opinion specific or binding to your situation or upon the Department.

Generally Applicable Law

A contractor is defined as “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). Sales of services and tangible personal property, including materials, supplies, and equipment, made to contractors who use them in the performance of any contract are declared to be sales to consumers or users and not sales for resale. Ark. Code Ann. § 26-52-307 (Repl. 2014). Arkansas Gross Receipts Rule GR-21 similarly explains:

“Consumer” or “user” means the person to whom the taxable sale is made or to whom the taxable services are furnished. All contractors are deemed to be consumers or users of all tangible personal property including materials, supplies, and equipment used or consumed by them in performing any contract, and the sales of all such property to contractors are taxable sales. The contractor must pay tax at the time of purchase or pay tax at the time the materials are withdrawn from stock for use in the performance of the contract. A contractor cannot rely on the direct pay permit of the other party to the contract for payment of the tax on the construction materials.

First, it is important to note that contractors do not collect tax from their customers unless the contractor performs a taxable service. Pursuant to Arkansas law, services performed on non-mechanical components or fixtures affixed to real estate are considered non-taxable contractor services. *See generally*, Ark. Code Ann. § 26-52-301(3)(B)(viii)(Repl. 2014); *see also* Arkansas Gross Receipts Tax Rule GR-21. Accordingly, the labor performed by the contractor and subcontractor in your scenario may or may not trigger the need to collect sales tax.

A subcontractor is normally treated as a contractor to the general contractor provided the subcontractor qualifies as a contractor under Arkansas Gross Receipts Tax Rule GR-21. The subcontractor, acting as a contractor, is the party responsible for payment of sales or use tax on all tangible personal property purchased or manufactured for use in the performance of the contract. If the subcontractor performs taxable services in the course of completing a contract, the subcontractor should collect state and local sales tax from the general contractor and remit the tax on the materials and services unless the general contractor certifies to the subcontractor that he is reselling the services to the customer.

Because your initial request did not provide sufficient information, the Department cannot address the specific inquiries contained in your letter. However, if you contact the Department and provide the requisite information, the Department can revise this letter opinion to address your questions.

Unidentified Taxpayer Disclosure

Please note that you have not identified the exact taxpayer in your opinion request, therefore, be aware of Arkansas Gross Receipts Tax Rule GR-75, which provides that a letter opinion may only be relied on by a seller if it is addressed to him or is tendered by a customer to whom it is addressed. Requests for letter opinions must specifically describe the person claiming an exemption and set forth all material facts relevant to the questioned sale or transaction. In order to receive a binding opinion you must submit a request specifically identifying the person claiming an exemption, and specifically detailing the factual circumstances.

Sincerely,

Lauren Ballard
Revenue Legal Counsel