



STATE OF ARKANSAS

**Department of Finance
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RE: All Terrain Vehicle Sales Tax Opinion
Opinion No. 20161101

Dear [REDACTED],

Your October 7, 2016 letter to the Department of Finance and Administration (DFA), Revenue Legal Counsel, requesting a legal opinion has been referred to me for a response. In your letter, you state:

We know that if we trade for an ATV and do not give sales tax credit for the trade, and charge full tax on the new purchase that we can re-sell the trade without charging tax. Does it matter if the trade has a title? What if it has never been registered with the state and has a MSO (manufacturer's certificate of origin) [sic]? Is the sale of the trade in tax exempt regardless of the paperwork?

This may be a Motor Vehicle question. If we take a trade that has the MSO, or no paperwork at all, are we required to provide the new owner a title? Or can we sell just on a bill of sale?

We know that if the customers come to our store and purchase an off road machine, we are to charge them sales tax at the local rate. Assuming that we list an off road unit on the internet and an out of state buyer purchases this off road unit, is sales tax charged if we deliver the unit? What if a third party picks up from us and delivers to the out of state customer, should any tax be collected?

Is the sale of the trade-in tax exempt regardless of the paperwork?

To answer your question as to whether a trade-in ATV may be sold exempt from tax, regardless of paperwork, the answer is yes. However, as discussed below, the purchaser is required to provide the previous title upon registration, and a bill of sale, alone, will be insufficient.

Arkansas Code Annotated § 26-52-301 levies a tax on all sales of tangible property and certain enumerated services. Tax due on the sale of three and four-wheel, all-terrain cycles, and motorized bicycles shall be collected by the seller on the full purchase price without regard to trade-in unless the provisions of Gross Receipts Tax Rule GR-50 apply. *See* GR-12(A)(4).

As you referenced, an exception applies to collecting tax on the sale of ATVs received as a trade-in on the purchase of a new ATV. Arkansas Gross Receipts Tax Rule GR-50(A) states the following:

Gross receipts or gross proceeds derived from the sale of secondhand and used tangible personal property will be exempt only if both of the following conditions listed below are met:

1. Used property was traded-in to and accepted by the seller of tangible personal property as part of the purchase price of newly acquired tangible personal property. It is necessary that the gross receipts tax be collected and paid on the total consideration for the sale of the newly acquired tangible personal property in order to qualify for the exemption unless the sale of the newly acquired tangible personal property was otherwise exempt under other provisions of the Arkansas Gross Receipts Act; and
2.
 - a. Arkansas gross receipts tax was collected and paid on the total amount of consideration for the sale of the newly acquired tangible personal property without any deduction or credit for the value of the used tangible personal property; or,
 - b. The new personal property was originally exempt from tax under the provisions of the Arkansas Gross Receipts Act.

If both of the above conditions are met, the resale of a trade-in is tax exempt, regardless of the paperwork. However, for the purchaser to register the used ATV, as described below, he or she will be required to provide the previous title.

Are we required to provide the new owner a title? Or can we sell just on a bill of sale?

ATV dealers are required to provide new owners of used ATVs with a previous title properly assigned to the new owner. A bill of sale is insufficient because the purchaser will not be able to register the ATV with DFA as required by Ark. Code Ann. § 27-20-202 without a proper title.

Arkansas Code Annotated § 27-20-202(a) states that “all owners of three-wheeled, four-wheeled, or six-wheeled all-terrain vehicles that are not otherwise required to be registered by law shall register them with the Director of the Department of Finance and Administration within thirty (30) calendar days of acquiring them.” Further, Ark. Code Ann. § 27-20-202(b)(1) states that “the owners shall offer proof of ownership satisfactory to the Department of Finance and Administration.”

To establish proof of ownership, DFA requires that applications for title and registration include either a Manufacturer's Certificate of Origin ("MCO") (for new ATVs) or a previous title properly assigned to the person applying for title and registration (for used ATVs). Purchasers of used ATVs who do not submit a valid title will not be allowed to title and register their ATVs with DFA, as required. When purchasing a used ATV from a dealer, the dealer must provide a valid title assignment, i.e., a bill of sale is insufficient.

Is sales tax charged to out-of-state customer if delivered?

Sales of ATVs to purchasers in other states are not subject to sales tax when delivered out of state. This situation is addressed by Gross Receipts Tax Rule GR-5(C), which states,

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.

Local tax collection is subject to the "sourcing rules" set forth in Ark. Code Ann. § 26-52-521. Under this method, retail sales of tangible personal property and services will be sourced in accordance with the rules below. 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. GR-76.

(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;

(3) If subdivisions (1) and (2) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(4) If subdivisions (1)-(3) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available if the use of this address does not constitute bad faith; or

(5) If none of the previous rules of subdivisions (1)-(4) of this section apply, including the circumstance in which the seller is without sufficient information to

apply the previous rules, the location will be determined by the address from which tangible personal property was shipped or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

Ark. Code Ann. § 26-52-521(b).

Therefore, sales of ATVs are sourced to the point of delivery by the customer. ATVs delivered by your business to purchasers out-of-state are not subject to Arkansas Gross Receipts Tax. Conversely, ATVs purchased by out-of-state customers who come to your business location in Arkansas to take delivery are subject to tax. Whether delivery by a “third party” to an out-of-state purchaser is taxable depends on the nature of the third party. If the third party is a common carrier or contract carrier, including a shipping company arranged by the customer, the sale is not subject to Arkansas Gross Receipts Tax. However, if the customer arranges delivery in a method other than those described above (e.g. sending a friend to pick up the ATV), the situs of the sale is at your business location and is subject to 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