



STATE OF ARKANSAS

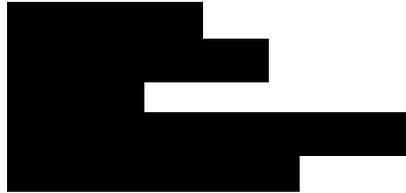
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May 7, 2018



RE: Arkansas Gross Receipts Tax
Bundled Transaction Software Support Agreement
Opinion Number 20170703

Dear [REDACTED]:

Your request for a letter opinion has been referred to me for a response. In your correspondence, you state as follows:

Attached is a sample [REDACTED] agreement for your review. These service agreements offer software support, as listed in the agreement, at a flat monthly fee. All software is downloaded electronically. Most of the services are performed remotely by [REDACTED] personnel. Pursuant to Arkansas GR-25.H.1, charges for technical support for software are not subject to tax.

The [REDACTED] agreements also include the installation of Personal Computer hardware, if the Personal Computer has been purchased from [REDACTED]. This service is included (bundled) in the price of the agreement. Under Arkansas GR-25.D., installation of a computer or any hardware is a taxable service. In this case, the cost of the installation services is under 10% of the total [REDACTED] agreement price. In Arkansas GR-93.D.2., if a taxable product included in a transaction is de minimis (defined as 10% or less of the total purchase price), the bundled transaction is not taxable.

[REDACTED] wants to confirm that you agree that the bundled service agreement, as attached, is not subject to sales tax, since the taxable component is de minimis.

The [REDACTED] agreement states in relevant part as follows:

[REDACTED] will provide the following services:

- Manage and monitor tape backups

- Manage and monitor anti-virus for servers and workstations.
- Manage Server and Workstation patch levels.
- Manage network directory structure, implement changes and additions as necessary or requested
- Implement software updates and install new application software as necessary
- Implement and maintain software and/or operating system service packs as required
- Implement and maintain network security
- Manage network user login accounts and electronic mail accounts
- Provide specification and recommendation of new network hardware
- Workstation hardware and software management
- General network troubleshooting/problem resolution
- Consulting services as necessary or requested
- Electronically monitor the health of the client's system 24x7. Monitored devices/services included in the pricing under fees:
 - LRCC-HV
 - LRCC-DC
 - LRCC-EMDS
 - SRVLPI
 - LRCC-DC2
 - LRCC-RD5
 - LRCC-DATA
 - WEBSENSE
- Event log monitoring.
- Remote and onsite remediation of managed devices.
- Remote and onsite support for end users, 85 M-F.
- Monitor and manage internet connection.
- Manage network security.
- Manage network user login accounts and electronic mail accounts.
- Annual CIO Review – Current and Desired State
- Priority Service
- Helpdesk access

The [REDACTED] agreement states further in relevant part as follows:

Exclusions:

- Installs, Moves, adds, and Changes (IMAC's) (sic)
 - PC installation will be included if the PC's (sic) are purchased from [REDACTED].

The [REDACTED] agreement states further in relevant part as follows:

Fees:

A. The Contract Price shall be due and payable as follows:

- Monthly, on the first day of the month \$4,100
- B. Out of Scope Services:
- Client will be billed at the reduced rate of \$167/hour for a Consultant (list \$190), \$153/hour for a Senior Level Engineer (list \$165).
 - Other engineers will be billed at their then current rate.

RESPONSE:

The service of initial installation, alteration, addition, cleaning, refinishing, replacement, and repair of electronic devices is a service subject to gross receipts tax. Ark. Code Ann. § 26-52-301(3)(B)(1)(i)(g) (Supp. 2017). Services performed on computers, including initial installation of the computer or any of its hardware, are taxable services. Arkansas Gross Receipts Tax Rules GR-25(D). Separately stated charges for technical support for software are not subject to tax. Arkansas Gross Receipts Tax Rules GR-25(H)(1).

A bundled transaction is the retail sale of two or more products where the products are otherwise distinct and identifiable and the products are sold for one non-itemized price. Ark. Code Ann. § 26-52-103(2)(A) (Supp. 2017); Arkansas Gross Receipts Tax Rules GR-93(C). Except as otherwise provided, sales tax must be collected on the sales price of a bundled transaction if any product included in the bundled transaction would be taxable if sold separately. Arkansas Gross Receipts Tax Rules GR-93(A).

A transaction that otherwise meets the definition of a bundled transaction as defined above is not considered a bundled transaction if one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service, and the true object of the transaction is the second service. Arkansas Gross Receipts Tax Rules GR-93(D)(1)(b). Further, a transaction that otherwise meets the definition of a bundled transaction as defined above is not considered a bundled transaction if the taxable product in a transaction is de minimis. Arkansas Gross Receipts Tax Rules GR-93(D)(2). Sellers of a bundled transaction that includes multiple services may use the true object exclusion or the de minimis exclusion. Arkansas Gross Receipts Tax Rules GR-93(D)(2)(d).

The transaction you have described includes software support services, which are not taxable, and the installation of a computer hardware, which is taxable. Further, these services are distinct and identifiable. Therefore, the transaction is a bundled transaction unless one of the two exclusions apply. I discuss and apply the two exclusions below.

a. True Object Exclusion

A transaction that otherwise meets the definition of a bundled transaction as defined above is not considered a bundled transaction if one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service, and the true object of the transaction is the second service. Arkansas Gross Receipts Tax Rules GR-93(D)(1)(b).

The [REDACTED] Statement of Work that you have provided sets forth services of software support and the installation of computer hardware. However, there is nothing in the agreement to demonstrate that the installation of computer hardware is provided exclusively in connection with the service of software support. For this reason, I cannot say that the transaction described in the agreement is subject to the true object exclusion.

b. De Minimis Exclusion

De minimis means the seller's purchase price or sales price of the taxable product is ten percent (10%) or less of the total purchase price or sales price of the products. Arkansas Gross Receipts Tax Rules GR-93(D)(2)(a). A seller may use either the purchase price or the sales price of the products to determine if the price of the taxable products is de minimis, but a seller may not use a combination of the purchase price and sales price of the products to determine if the price of the taxable products is de minimis. Arkansas Gross Receipts Tax Rules GR-93(D)(2)(b). A seller must use the full term of a service contract to determine if the taxable products in the transaction are de minimis. Arkansas Gross Receipts Tax Rules GR-93(D)(2)(c). For the purpose of determining whether services in the transaction are de minimis, the price of the services shall not be prorated based on the term of the service contract. *Id.*

The [REDACTED] Statement of Work that you have provided does not set for the purchase price or sales price of the taxable product. For this reason, I cannot say that the transaction described in the agreement is subject to the de minimis exclusion.

CONCLUSION:

The [REDACTED] Statement of Work that you have provided sets forth a bundled transaction and does not set forth entitlement to the true object exclusion or the de minimus exclusion.

My opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules and regulations. Any change in the facts or law could result in a different opinion. A legal opinion may only be relied upon by a seller if it is addressed to him or is tendered by a customer to whom it is addressed and only to the extent that all material facts relative to the sale or transaction in question are contemplated by the legal opinion request and the legal opinion. GR-75(A). Requests for legal opinions must specifically describe the person claiming an exemption. *Id.* You may rely on this opinion for three years pursuant to Ark. Gross Receipts Tax Rules GR-75(B).

Sincerely,

Chris McNeal, Attorney
Office of Revenue Legal Counsel