



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

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October 25, 2017

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

RE: Taxability of Computer Service Sales
Opinion 20170708

Dear [REDACTED]:

You have requested a legal opinion concerning the sales tax liability of certain sales made by a computer service company. Your letter dated June 30, 2017, states:

[REDACTED] *has reviewed the Arkansas Gross Receipts Tax Rules, Compensating Use Tax Rules, and Special Excise Tax Rules. The company focused their attention to GR-25 and GR-39 respectively in relation to [REDACTED] practices and the established rules.*

[REDACTED] *requests a legal opinion on how each of the main practices performed within the company fits within the established rules.*

Services – Interpretation of NONTAXABLE sales and service

This document will discuss at length the following business activities performed by [REDACTED]. The activities below constitute the “bulk” of daily technical services performed.

- *Factory Restore*
- *Transfer User Data*
- *Password Reset*
- *Pickup / Delivery / Travel*
- *Remote Technical Support*
- *Showroom Diagnostics*
- *Field Service Call*
- *Electronic Software Purchases*
- *Offsite Backup Subscription Services*
- *Internet Hosting Service Subscription*
- *General Services*
- *Website Design and Ongoing Website Maintenance*

You have asked whether sales of certain computing service activities are subject to gross receipts tax in Arkansas?

Before addressing the specifics of your request, it is necessary to discuss several points that are applicable to this opinion as a whole. As a preliminary matter, sales and use tax is levied upon the gross proceeds or gross receipts derived from all sales of tangible personal property and certain enumerated services. Ark. Code Ann. §§ 26-52-301 (Repl. 2014) and 26-53-101 (Repl. 2014). When a sale of tangible personal property, or the performance of such an enumerated service, occurs in Arkansas, a taxable transaction occurs and tax should be collected and remitted. Arkansas Gross Receipts Tax Rule GR-5.

Arkansas sales tax applies to the services of alteration, replacement, and repair of electrical devices. Ark. Code Ann. § 26-52-301(3)(B) (Repl. 2014). Additionally, Ark. Code Ann. § 26-52-304(a)(2) (Repl. 2014) specifically provides that the repair and maintenance of computer equipment or hardware in any form is subject to Arkansas sales tax. Arkansas Gross Receipts Tax Rule GR-25.

Under Arkansas Gross Receipts Tax Rule GR-25(H)(1), technical support is not a specifically enumerated taxable service; therefore, as long as that transaction does not qualify as a taxable repair of computer equipment under GR-25(H), or the provision of tangible personal property, separately stated charges for technical support are not subject to Arkansas sales tax. Arkansas Gross Receipts Tax Rule GR-93. Also, it should be noted that any taxable and non-taxable service provided in the same contract, results in the entire contract being taxable unless the non-taxable services are stated separately on the invoice. Keeping these general principles in mind, I will now address your specific inquiries.

Factory Restore

Factory restore services are not taxable. The use of a customer supplied recovery media, or via a reserved partition of the hard drive, the service of restoring and/or re-installing the fundamental operating system software of a computer to its originally electronically conveyed state is not a taxable service.

Transfer User Data

██████ has three conditions for this service:

1. Transfer user data from hard drive to CD, DVD, external hard drive, or thumb drive;
2. Transfer user data from one customer supplied computer to another customer supplied computer or customer supplied storage media; and
3. Transfer user data to new computer purchased from ██████.

The first condition involves the transfer of the customer's data from a hard drive to a CD, DVD, external hard drive, or thumb drive. ██████ charges a flat rate of \$55.00 to transfer user data to a DVD provided the data to be transferred requires no more than three DVDs. The backup DVDs are given to the customer at no charge.

The sale of the transfer user data service in this scenario is nontaxable. However, [REDACTED] will be required to pay sales tax on any DVDs given to its customers free of charge. If the amount of the transfer user data exceeds the capacity of three DVDs, and a different form of media storage is essential to complete the transfer, the price will be the cost of the tangible property plus tax. As long as the nontaxable data transfer price is separately stated on the invoice, the transfer user data will remain nontaxable under the “true object” exclusion in Arkansas Gross Receipts Tax Rule GR-93-(D)(1)(a)(2).

The second condition is not taxable and concerns the transfer of user data from one customer supplied computer to another customer supplied computer, or supplied storage media.

The third condition involves the transfer of a customer’s user data to a new computer purchased from [REDACTED]. The purchase of a new computer from [REDACTED] includes the service of configuring, updating, and the transfer of user data. Additional line items may include the electronic download and install of third-party software without tangible media.

The purchase of the new computer is subject to tax. Sales tax is levied on the gross receipts or gross proceeds received from sales of computer hardware, and computer software. *See* GR-25(A). However, software that is delivered electronically by “load and leave” is not taxable. “Load and Leave” is defined in GR-25(B)(5) as delivery by use of a tangible storage media in which the tangible storage media is not physically transferred to the purchaser. The labor to install software and configure a new computer is not subject to the tax. The transfer of user data to the newly purchased computer is subject to tax because the user data does not meet the definition of software.

Password Reset

Password reset services are not taxable. The resetting of a customer’s password does not involve the provision of any software or hardware to the customer’s computer. Arkansas Gross Receipts Tax Rule GR-25(H)(1) provides that technical support is not a specifically enumerated taxable service; therefore, as long as that transaction does not qualify as a taxable repair of computer equipment under GR-25(H), or the provision of tangible personal property, separately stated charges for technical support are not subject to Arkansas sales tax.

Pickup / Delivery / Travel

Delivery charges are taxable if the item or service being delivered is taxable. You stated that [REDACTED] will sometimes charge a fee if the customer is unable to transport computer equipment to or from the repair center. Arkansas sales tax applies to the entire gross receipts of sales of tangible personal property or taxable services. *See* Ark. Code Ann. § 26-52-301 (Repl. 2014). Gross receipts include the entire consideration received from a buyer by a seller without deduction for delivery charges. *See* Ark. Code Ann. § 26-52-103(13) (Repl. 2014). Generally, delivery charges will be taxable if the item being delivered is taxable, but, if the item sold is exempt, then delivery charges are not taxable. Arkansas Gross Receipts Tax Rule GR-18. Delivery charge is defined in Ark. Code Ann. § 26-52-103(6)(A) (Repl. 2014) as a charge by a seller of tangible personal property or services for preparation and delivery to a location

designated by the purchaser of the tangible personal property or services, including without limitation transportation, shipping, postage, handling, crating, and packing.

Remote Technical Support

Remote technical support services are not taxable. According to your letter, the service of remote technical support involves logging onto a customer's computer through an internet connection. This does not involve the provision of any software or hardware to the customer's computer. Arkansas Gross Receipts Tax Rule GR-25(H)(1) provides that technical support is not a specifically enumerated taxable service; therefore, as long as that transaction does not qualify as a taxable repair of computer equipment under GR-25(H), or the provision of tangible personal property, separately stated charges for technical support are not subject to Arkansas sales tax.

Showroom Diagnostics

The taxability of showroom diagnostic services is dependent upon the nature of the service. Your letter states that [REDACTED] may charge a fee for showroom diagnostics when it can resolve an issue by troubleshooting the problem in the showroom while the customer waits. Your letter states that many times a solution can be made through a series of keystrokes and [REDACTED] may or may not charge a fee for this service. Whether to charge the fee is decided upon a case by case basis, which includes factors such as the amount of time spent on the issue, and the purpose.

If the service of showroom diagnostics does not involve the provision of any software or hardware to the customer's computer, the service would be nontaxable technical support services under GR-25(H)(1). However, if the troubleshooting or reconfiguration involves in any way the repair or maintenance of the hardware, then it is a taxable service.

Field Service Call

Your letter states that [REDACTED] charges its customers a minimum of one hour for a field service call and additional 15 minute charges after the first hour onsite. You state that during a field service call, two conditions may occur:

1. Resolution to the issue may be performed by a series of keystrokes on a computer or server; or
2. Computer hardware may be essential to complete a solution.

Field service calls that do not involve the provision of any software or hardware to the customer's computer are nontaxable technical support services under GR-25(H)(1). However, if during the field service call, [REDACTED] determines that it is essential to replace computer hardware to resolve the customer's problem, the product or replacement part is tangible personal property subject to the tax under GR-25(A). The field service call fee charged for the performance of the technical support service will remain nontaxable as a separate line item under GR-93(D)(1).

Electric Software Purchases

Electronic software purchases are not taxable. Customers purchasing computer software products from [REDACTED] are provided a “product key,” which is used to electronically download and install the product on their computer appliance. Sales of computer software delivered electronically or by “load and leave” is not taxable under GR-25(A). Shrink wrapped or retail box software products are tangible personal property subject to the tax.

Offsite Backup Subscription Services

Offsite backup subscription services are not taxable. Through annual subscriptions to [REDACTED], a software program is installed on the customer’s computer specifically to provide the offsite backup service. No tangible items are provided and [REDACTED] monitors the backup cycles for any issues in the backup process and addresses those issues if necessary. Online computer backup service is not one of the specifically enumerated taxable services under the statute or the gross receipts tax rules.

Internet Hosting Service Subscription

Internet hosting service subscriptions are not taxable. [REDACTED] partners with internet hosting reselling services to provide hosting for businesses, community, and government entities. The services provided essentially consist of:

1. Domain Name registration
2. Storage services
3. Email transport services
4. Initial Setup fees

In managing these services, no tangible items are transferred to the customer, and no downloaded program software is installed on the customer’s computer appliance. All configuration and setup is on behalf of the customer and is performed by [REDACTED] through the use of keystrokes within software provided by the reseller or organizations responsible for managing domain services.

General Services

Your letter states that general services include all other troubleshooting issues, and diagnostics toward both hardware and software related problems. Typical tasks performed under general services include:

1. Virus and Malware assessment and removal;
2. Operating System analysis, diagnostics and corrective actions for proper functionality;
3. Hardware analysis, diagnostics and corrections for proper functionality or replacement, and;
4. Third-party software analysis, diagnostics and corrective actions for proper functionality

The tasks listed appear to involve nontaxable “technical support” services under GR-25(H)(1). However, if during the performance of a nontaxable technical support service, █████ determines that a tangible item is necessary for service completion, then the tangible item should be separately invoiced as a taxable product under GR-93(D)(1)(a). If repair or replacement of tangible components of hardware for the computer appliance is the primary issue to be resolved at intake, i.e. laptop screen replacement, hard drive replacement, or motherboard replacement, then this would be subject to tax as a sale of both tangible personal property and a sale of a service.

Charges for software technical support and programming services are not taxable and should be separately stated on the invoices issued to your customers. *See* GR-25(E). However, if the service involved actually relates to the service of repairing or maintaining computer equipment by a technician, it will be a taxable service.

Website Design and Ongoing Website Maintenance

The service of designing and maintaining a website is not subject to sales tax. █████ provides the service of designing and deploying websites for its customers. This service involves custom programming to provide the functionality requested by the customer and is therefore nontaxable.

This 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 letter opinion may not be relied on if more than three (3) years old, but may be renewed on request. *See* Arkansas Gross Receipts Tax Rule GR-75.

Regards,

Lisa Ables
Revenue Legal Counsel