



STATE OF ARKANSAS

**Department of Finance
and Administration**

REVENUE LEGAL COUNSEL

Post Office Box 1272, Room 2380
Little Rock, Arkansas 72203-1272
Phone: (501) 682-7030
Fax: (501) 682-7599
<http://www.dfa.arkansas.gov>

Chris McNeal, Attorney at Law

April 23, 2018



RE: Sales Taxability for [REDACTED] – Electronic Video Courses on an Online Portal
Opinion No. 20170814

Dear [REDACTED]:

Your letter dated August 14, 2017, requesting a legal opinion from the Arkansas Department of Finance and Administration has been referred to me for response. The specific inquiry and facts that you have provided as follows:

We are requesting a legal opinion for the correct collection of sales tax for the above company. The company is providing digital education and according to act 141 beginning on January 28, 2018 variations of this service will be taxable.

[REDACTED] is a complete customer service training program developed specifically for the healthcare field. Each employee will have access to an online portal. Employees will be able to download handouts to fill out, take notes during the video course and complete tests at the end of each class. Administrators will be able to monitor progress and test scores with their log in information. Everything is electronic.

RESPONSE

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 (Supp. 2017) and 26-53-106 (Supp. 2017). 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.

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You state that [REDACTED] sells electronic video courses that are accessible through an online portal. Such video courses are not tangible personal property. Further they are not an enumerated service subject to sales tax.

Finally, there is also a tax upon the gross receipts derived from the sale of specified digital products to an end user and with the right of permanent use or less than permanent use granted by the seller regardless of whether the use is conditioned on continued payment by the purchaser. Ark. Code Ann. § 26-52-301(1)(B) (Supp. 2017). The tax also applies to the sale of a subscription for digital audio-visual work and digital audio work to an end user that does not have the right of permanent use granted by the seller and the use is contingent on continued payments by the purchaser. *Id.* at (3)(C)((iii)(a). “Specified digital products” means the following when transferred electronically: digital audio works; digital audio-visual works; and digital books. Ark. Code Ann. §§ 26-52-103(29) (Supp. 2017). “Digital-audio works” means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. *Id.* at (9). “Digital audio-visual works” means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds. *Id.* at (10). “Digital books” means works that are generally recognized in the ordinary and usual sense as “books”. *Id.* at (11). “End user” means a person who purchases specified digital products or the code for specified digital products for his or her own use or for the purpose of giving away the product or code. *Id.* at (16)(A).

The electronic video courses are digital audio-visual works and, therefore, specified digital products. When a person purchases one of video courses, whether for themselves or for an employee, that person is an end user. Therefore, the sale of the video courses is the sale of specified digital products to an end user and is, therefore, subject to gross receipts tax.

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 Healthcare Transformed 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, I have enclosed a copy for your reference.

Sincerely,

Chris McNeal
Revenue Legal Counsel