



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

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April 16, 2018



RE: Sales Tax
Opinion No. 20180219

Dear 

This is in response to your letter dated, February 12, 2018, seeking the issuance of a legal opinion from the Arkansas Department of Finance and Administration (DFA).

In your letter regarding the “taxable service” of notifying people placed in a fiduciary situation of death of the individual customer, you provide the following background information:

Our business is an internet business with its headquarters here in Arkansas that provides a service of notifying people put in a fiduciary situation (Personal Representative or Trustee) of the fact of death of the individual customer. Information from our customer will also be relayed upon notification of death. This will be in the form of emails sent to the fiduciary or their family which will contain information sought to be supplied only after death. Is this a taxable service?

RESPONSE:

No, as described herein, Arkansas Code Annotated § 26-52-301 provides that Arkansas gross receipts tax is levied upon all sales of tangible personal property and certain enumerated services unless a specific exemption applies. Arkansas Code Annotated § 26-52-103(21)(A) defines tangible personal property as personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. It does not appear that your product is taxable under that definition because there is no physical product that can be seen, weighed, measured, felt, or touched. Regarding digital products and services, GR-25 specifies the service of designing or creating software is not a taxable service. However, the sale of computer software is subject to sales tax if the software is conveyed from the seller to the buyer on any form of tangible medium (for example, a disc). On the other hand, if the seller conveys

the software to the buyer electronically, no sales tax is due since no tangible property has exchanged hands. Hosting an Internet web site is also not a taxable service.

As I understand your inquiry, your company hosts a website which allows an individual, for a monthly fee, to upload and store information they would like to be disseminated to a third-party upon confirmation of their death by the United States Social Security Administration. Your only income from the site is from the annual fee. If that is correct, then you are providing a non-taxable service. You are not required to collect sales tax on the annual fee. Last, a data hosting service, such as you describe is not a specifically enumerated taxable service, and, thus not subject to Arkansas sales tax. For these reasons, your product is not subject to gross receipts tax.

This opinion is based upon my understanding of the facts as set forth in your letter, as current Arkansas law, rules and regulations govern those facts. Any change in the facts or law could result in a different opinion. You may rely on this opinion for three years pursuant to Arkansas Gross Receipts Tax Rules GR-75(B).

Sincerely,

Michelle Bridges-Bell
Attorney
Office of Revenue Legal Counsel