



STATE OF ARKANSAS

**Department of Finance
and Administration**

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September 19, 2018

VIA U.S. MAIL

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

**RE: Sales Tax – Chemical Spraying
Opinion Number 20180713-S**

Dear [REDACTED],

The Arkansas Department of Finance and Administration (DFA) recently issued Legal Opinion No. 20180713 to you on behalf of an unnamed client. After reviewing that opinion response, you sent a follow-up email dated August 14, 2018, inquiring about the application of Arkansas sales and use tax law to additional activities conducted by the client. This letter is issued as a supplement to legal opinion No. 20180713 and in response to the questions presented in your email as follows:

1. Right of Way Brush Spraying. One of the services my client provides in other states is keeping right of ways clear of vegetation. Examples include oil and gas pipelines and utility right of ways. The Brush Spraying aspect of this service is where they treat woody trees and shrubs (typically along the perimeter of the right of way) with a chemical spray that retards growth or eliminates the plant entirely. By doing this, the right of way remains clear of encroaching vegetation - which allows proper access and safety monitoring of the right of way by its owner. Similar to your previous conclusion on bare ground treatment, this feels a little different than a normal landscaping or lawn service, but we would like to confirm it with your team.
2. Right of Way mowing. Similar to Brush Spraying mentioned above, my client also provides mowing services for right of way owners. Does the nature of this service as a right of way safety requirement rather than an aesthetic maintenance service make it fall outside of the scope of "Lawn Care" and thus non-taxable?

RESPONSE

As more fully explained below, spraying a right of way to clear away vegetation is not a taxable service; however, the service of mowing a right of way is a taxable lawn care service.

The Arkansas sales tax is imposed on a variety of services. More specifically, Ark. Code Ann. § 26-52-301(3)(D)(i) provides that the services of lawn care and landscaping are subject to sales tax. The terms

“lawn care” and “landscaping”, as well as the term “residential”, are further defined in Ark. Code Ann. § 26-52-301(3)(D)(ii) as follows:

- (ii) As used in subdivision (3)(D)(i) of this section:
 - (a) “Landscaping” means the installation, preservation, or enhancement of ground covering by planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants;
 - (b) “Lawn care” means the maintenance, preservation, or enhancement of ground covering of nonresidential property and does not include planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants;
 - (c) “Residential” means a single-family residence used solely as the principal place of residence of the owner;

Arkansas Gross Receipts Tax Rule GR-9.2 was promulgated by DFA to assist in the administration of the sales tax on lawn care and landscaping. That rule provides as follows:

A. Any person engaged in the business of providing lawn care of nonresidential property or landscaping services of both residential and nonresidential property is required to collect and remit sales tax on the gross receipts derived from these services. The business is required to obtain a sales tax permit. All materials that remain in or on the customer’s property should be purchased tax exempt as a sale for resale. Examples are fertilizer, weed killer, grass seeds, sod, plants, tree, or shrubs. Materials used or consumed by the business may not be purchased exempt. Examples are gasoline, oil, cleaning materials, uniforms, tools, mowers, or other equipment used or consumed by the business.

B. The business will collect state and local sales tax on the total consideration for landscaping services or nonresidential lawn care, whether provided as part of a general contract for building construction or as a separate agreement with the landowner. The business will collect the tax from the party with whom it contracts for the service, including general contractors, on the total contract cost including the cost of plant materials. A business which has its own nursery is not required to report tax on plant material withdrawn from stock but will collect tax on the sale of the material to its customers.

C. DEFINITIONS

1. “Landscaping” means the installation, preservation, or enhancement of ground covering by planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants. “Landscaping” does not include site preparation, cutting and filling, leveling, tree trimming or tree removal, or clearing a site of bushes and trees. “Landscaping” does include sodding, seeding and planting, as well as installing items such as landscape timbers, edging, planters, or similar items. “Landscaping” performed on highway easements and rights-of-way is taxable. “Landscaping” is taxable whether it is done for decorative purposes or non-decorative purposes such as erosion or sediment control.

2. “Lawn care” means the maintenance, preservation, or enhancement of ground covering of nonresidential property and does not include planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants. “Lawn care” includes the following: mowing or raking the yard, chemical spraying, fertilizing, weed control or weed-eating, maintaining the ground cover in beds by adding additional rock, gravel, tree bark or in other places in the area to be maintained, and general lawn maintenance. Tree trimming or tree removal is not lawn care.

3. “Residential” means a single-family residence used solely as the principal place of residence of the owner or occupant. Apartment buildings, condominiums, and duplexes are nonresidential property for purposes of this exemption. A single-family dwelling leased to the occupant is residential property for purposes of this exemption.

A review of your client’s activities, in light of the law and rule cited above, reveals that your client’s services involving the application of chemical spray to retard growth or eliminate growing vegetation does not come within the definition of “landscaping”. “Landscaping” includes the installation, preservation, or enhancement of ground covering. The chemical spraying services provided by your client to clear vegetation do not install, preserve, or enhance ground covering. Accordingly, those services fall outside the scope of taxable landscape activities.

The mowing services provided by your client are subject to sales tax. The fact that those services are performed for safety purposes rather than for aesthetic maintenance does not affect the taxability of those services. Arkansas law provides that “lawn care” subject to sales tax includes the maintenance of ground covering on nonresidential properties regardless of the reason those services are being performed. Consequently, your client should obtain a sales tax permit from the Sales and Use Tax Division of the Arkansas Department of Finance and Administration and should collect and remit sales tax on any mowing services it provides.

As mentioned in Legal Opinion No. 20180813, you sought this opinion on behalf of an anonymous client. Please be aware that Arkansas Gross Receipts Tax Rule GR-75, provides that a letter opinion may only be relied upon by a seller if it is addressed to him or her or is tendered by a customer to whom it is addressed. Requests for letter opinions must specifically describe the person claiming an exemption and set forth all material facts relevant to the questioned sale or transaction. To receive a binding opinion, you must submit a request specifically describing the person claiming an exemption, and specifically detailing that person’s factual circumstances. A letter opinion may not be relied on if more than three (3) years old but may be renewed on request.

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.

Sincerely,

John H. Theis
Revenue Legal Counsel