



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

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September 11, 2018

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RE: Gross Receipts Tax – Remittance of Tax
 Opinion No. 20180801

██████████,

This letter is in response to your correspondence on July 30, 2018, requesting a legal opinion from the Department of Finance and Administration (DFA), Revenue Legal Counsel. Your request for a legal opinion stated:

We have two ██████████ apartments. We used to pay the lodging and tourism tax ourselves, but then they took over that responsibility in January of 17, I believe. I think we paid 6.5 percent plus the 2 percent tourism tax, and I don't believe there was a ██████████ local, if I remember correctly.

Two questions:

- 1) I don't think we're required to pay tax on the cleaning fee. I need to re-locate the statute for confirmation unless you can point me to it more quickly.
- 2) How can I find out what ██████████ is remitting on our short-term rentals? I think they are over-charging.
- 3) So I guess three questions, to include: How much SHOULD be paid for the short-term ██████████ rentals?

RESPONSE

Generally, Arkansas state sales tax, Ark. Code Ann. § 26-52-301 (Repl. 2014) levies a tax on the “gross receipts or gross proceeds” derived from ‘sales’ of tangible personal property unless an exemption applies. Rentals of tangible personal property are included within the definition of “sales” under Ark. Code Ann. § 26-52-103(15). The Arkansas sales tax applies to the entire gross receipts for the transaction. Ark. Code Ann. § 26-52-301. Gross receipts are defined as the total

amount of consideration for which tangible personal property or services are sold, leased, or rented, without any deduction for the following: seller's cost of the property sold; cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller; any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge; delivery charge; installation charge or Credit for any trade-in. Ark. Code Ann. § 26-52-103(13).; *See also* Arkansas Gross Receipts Tax Rule GR-3(H)(2). The service of furnishing rooms, suites, condominiums, townhouses, rental houses or other accommodations to transient guests by hotels, motels, apartment hotels, lodging houses, tourist camps, hunting lodges, tourist courts, bed and breakfast properties, property management companies or any other provider of accommodations to transient guests is subject to gross receipts tax. *See* GR-8(A) and Ark. Code Ann. § 26-52-301(3)(A)(i) (Repl. 2014). "Transient guests" are defined as those who rent accommodations other than their regular place of abode on less than a month-to-month basis. *See* GR-8(B)(1) and Ark. Code Ann. § 26-52-301(3)(A)(ii) (Repl. 2014).

Arkansas Gross Receipts Rule GR-8, which interprets Ark. Code Ann. § 26-52-301 and is generally applicable to § 26-63-402 (Tourism Tax), states:

GR-8. SERVICES SUBJECT TO TAX-LODGING:

A. The service of furnishing rooms, suites, condominiums, townhouses, rental houses or other accommodations to transient guests by hotels, motels, apartment hotels, lodging houses, tourist camps, hunting lodges, tourist courts, bed and breakfast properties, property management companies or any other provider of accommodations to transient guests is subject to gross receipts tax.

B. 1. "Transient guests" are defined as those who rent accommodations other than their regular place of abode on less than a month-to-month basis.

In addition, the two percent (2%) Arkansas tourism tax is levied upon the gross receipts or gross proceeds derived from certain sales and services, including furnishing various lodgings to transient guests, camping fees at campgrounds, rentals of various watercraft and related equipment, and admission prices to tourist attractions. *See* Arkansas Special Excise Tax Rule ET-4(E) and Ark. Code Ann. § 26-63-402(1)(A)(ii) (Repl. 2008). Further, each city and county may levy their own local gross receipts ("sales") tax. It is important to note that city and county tax rates are subject to change¹. Arkansas Code Ann. § 26-75-602 (Supp. 2015) permits certain cities to levy an additional tax on the gross receipts or gross proceeds on sales of prepared foods and from renting accommodations for sleeping, meeting, or party room facilities for profit in the city for periods of less than 30 days. This is the "Advertising and Promotion Tax", which is commonly known as the "hamburger tax" is also collected by the city in the same manner and at the same time as the state sales tax; and the rules, regulations, forms of notice, assessment procedures and the enforcement of the tax under the Arkansas Gross Receipts Act shall, so far as practicable, be applicable with respect to the enforcement and collection of the hotel and restaurant tax. However, specific determinations as to whether the sale of certain items will be subject to the "hamburger tax" must

¹ The current city and county tax rates can be found on the Arkansas DFA website at: <http://www.dfa.arkansas.gov/offices/exciseTax/salesanduse/Documents/cityCountyTaxTable.pdf>

be requested from the city tax officials in which the sales will be made. This tax is not administered by the Department of Finance and Administration. *See* Ark. Code Ann. § 26-75-603 (b)(3) (Repl. 2008). Therefore, DFA cannot opine on its application. Accordingly, your rental of overnight accommodations at your personal property to transient guests is subject to Arkansas gross receipts (“sales”) tax, city and county sales tax, possibly a City Advertising and Promotion tax and the Arkansas tourism tax unless a specific exemption applies.

In your opinion request you also asked about the taxability of cleaning services. Arkansas Code Annotated § 26-52-301 (3)(D)(i)(b) levies the Arkansas state and local sales tax on the service of providing “cleaning and janitorial work.” These services are generally subject to sales tax regardless of the nature of the customer for whom those services are provided. The provider of cleaning and janitorial services is required to remit the state and local sales tax to DFA on the gross receipts derived from those services and is required by law to collect that tax from the purchaser of those cleaning and janitorial services. Ark. Code Ann. § 26-52-508(c).

Regarding your specific concerns, ██████ entered into a voluntary collection agreement with the State of Arkansas. As a result, beginning ██████, ██████ began collecting all applicable Arkansas occupancy taxes on behalf of its hosts. Previously, hosts were responsible for collecting and remitting taxes on all short-term lodging in Arkansas. By using their platform to book guests, you are obligated to the terms of their contract. Further questions regarding the terms of the ██████ VCA should be addressed to ██████. Hosts will still be required to collect and remit all applicable taxes on any short-term rentals booked through *other* methods or platforms. Each Host is also responsible for collecting and remitting applicable taxes prior to ██████.

The applicable taxes on the renting or providing occupancy of accommodations that are collected by the Arkansas Department of Finance and Administration are summarized here for convenience.

- **Arkansas Gross Receipts Tax**: 6.5% of the listing price including any *cleaning fee* for reservations 29 nights and shorter.
- **Arkansas Tourism Tax**: 2% of the listing price including any *cleaning fee* for reservations 29 nights and shorter.
- **Local Sales and Use Tax**: The local sales and use tax rates vary by city and county. The rate is typically 0.5%-3.5% of the listing price including any cleaning fee for reservations 29 nights and shorter.

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,

Michelle Bridges-Bell, Attorney
Office of Revenue Legal Counsel