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August 28, 2023

VIA EMAIL ONLY



RE: Sales Tax – Residential Elevators
Opinion Number 20180830



I am responding to your request for a revenue legal opinion which provided:

We understand that there is a Tax Exemption for Medical necessity. Stair lifts and other lifting devices are common in this Exemption to my understanding. Is a residential elevator also an Exempt item with a Doctor's Prescription? Under New Construction or existing home applications?

RESPONSE

The sale of a residential elevator is subject to sales and use tax, even if a physician has prescribed the elevator. The service of installing an elevator in an existing home or building is also subject to sales and use tax. However, the service of first-time installation of an elevator into a newly constructed or substantially modified building is not subject to sales and use tax.

Discussion

The Arkansas Gross Receipts (Sales) Tax is generally applicable to the sale of tangible personal property and certain enumerated services. Ark. Code Ann. § 26-52-301 (Supp. 2021). The tax is computed based on the total value of consideration paid for the taxable property or service. *Id.*; see also Ark. Code Ann. § 26-52-103(19) (Supp. 2021). When a sale of tangible personal property or the performance of such an enumerated service occurs in Arkansas, a taxable transaction occurs, and the tax should be collected and remitted. Arkansas Gross Receipts Tax Rule GR-5. A “sale” means any transaction resulting in the transfer of either the title or possession, for ... valuable consideration, of tangible personal property or taxable services regardless of the manner, method, instrumentality, or device by which such transfer is accomplished. Arkansas Gross Receipts Tax Rule GR-3(M)(1).

Arkansas Compensating (Use) Tax is due on the purchase of any tangible personal property that is purchased out of state and brought into Arkansas for use, storage, consumption, or distribution. Ark. Code Ann. § 26-53-106 (Supp. 2021). “Use,” with respect to tangible personal property, means the exercise of any right or power over tangible personal property incident to the ownership or control of that tangible personal property. Ark. Code Ann. § 26-53-102(29)(A) (Repl. 2020). The compensating use tax is assessed when the transportation of the property has come to rest or when the property has become commingled with the general mass of property in the state. Ark. Code Ann. § 26-53-106(b) (Supp. 2021); *see also Martin v. Riverside Furniture Corp.*, 292 Ark. 399, 401-02, 730 S.W.2d 483, 485 (1987). Once the transportation has ceased or the property is commingled, the property is no longer in the stream of interstate commerce and is subject to the compensating use tax. *See Martin*, 292 Ark. at 402, 730 S.W.2d at 485; *see also Skelton v. Federal Express Corp.*, 259 Ark. 127, 131, 531 S.W.2d 941, 944 (1976). There is a presumption that tangible personal property shipped, mailed, expressed, transported, or brought to this state by a purchaser was purchased from a vendor for storage, use, distribution, or consumption in this state. Ark. Code Ann. § 26-53-106(d)(2) (Supp. 2021).

Tax Exemption for the Sale of Durable Medical Equipment and Mobility Enhancing Equipment

The Arkansas Code provides a tax exemption for the rental, sale, or repair of durable medical equipment and mobility enhancing equipment prescribed by a physician. Ark. Code Ann. § 26-52-433(a) (Repl. 2020); *see also* Arkansas Gross Receipts Tax Rule GR-38.2. For an item of tangible personal property to qualify as “durable medical equipment,” the item must be primarily and customarily used to serve a medical purpose and must generally not be useful to a person in the absence of illness or injury. Ark. Code Ann. § 26-52-433(b)(2)(A) (Repl. 2020). For an item to qualify as “mobility enhancing equipment,” the item may not generally be used by a person with normal mobility. *Id.* at § 26-52-322(b)(3).

The sale of a home elevator is a sale of tangible personal property that is subject to Arkansas sales and use tax, regardless of whether a physician has prescribed the elevator. Because a home elevator is not primarily and customarily used to serve a medical purpose and generally is still useful to a person in the absence of illness or injury, the sale of an elevator is not exempt as a sale of “durable medical equipment.” *Id.* at § 26-52-433(b)(2)(A). Because an elevator is an item that may be generally used by a person with normal mobility, the sale of an elevator is likewise not exempt as a sale of “mobility enhancing equipment.” *Id.* at § 26-52-433(b)(3).

Sales Tax on the Service of Installing Electrical Devices and Machinery

The initial installation of motors of all kinds, electrical appliances and devices, and machinery of all kinds is taxable. Ark. Code Ann. § 26-52-301(3)(B)(i) (Supp. 2021); Arkansas Gross Receipts Tax Rule GR-9.17(A). “Initial installation” means the first time setting up for use or service of the tangible property by connecting, fastening, attaching, joining, securing, building in, mounting, or otherwise affixing the property in the required location, except when the installation is provided in connection with the construction or substantial modification of a building or other improvement or structure affixed to real estate. Arkansas Gross Receipts Tax Rule GR-9.17(B). The Arkansas

Gross Receipts Tax Rules specifically provide that the replacement or repair of elevators is a taxable service. Arkansas Gross Receipts Tax Rule GR-21(c)(4). However, the first-time installation of mechanical or electrical equipment into a newly constructed or substantially modified building or other improvement to real estate is not a taxable service. *Id.* at GR-21(B)(2).

Because an elevator is an electrical device and is a piece of machinery, the service of initial installation of an elevator in an existing home is subject to Arkansas sales and use tax. *See* Ark. Code Ann. § 26-52-301(3)(B)(i) (Supp. 2021); Arkansas Gross Receipts Tax Rule GR-9.17(A). However, the service of installing an elevator for the first time into a newly constructed or substantially modified building or other improvement to real estate would not be subject to sales and use tax. *See* Arkansas Gross Receipts Tax Rule GR-21(B)(2).

I have based this opinion on 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. Only the requestor may rely on this opinion, and, pursuant to Arkansas Gross Receipts Tax Rule GR-75(B), this opinion will only be binding on the Department for three (3) years from the date of issuance.

A copy of the Arkansas Gross Receipts Tax Rules referenced in this letter is available online at http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf.

Sincerely,

Paul M. Gehring
Assistant Commissioner of Revenue
Policy and Legal