



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

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VIA MAIL

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RE: Sales Tax – Specified Digital Products
Opinion Number 20180921

Dear ██████████,

Your letter 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 are as follows:

I have just taken over accounting for ██████████. They have several digital offerings that I am concerned we should have paid sales tax on and upcoming digital items that we should charge tax on but the person in your sales tax department wasn't certain if we are required to charge tax on them. Can you please give me an opinion as to which of the following items we should charge sales tax on?

Digital planner – customer will download and print at home.
Educational video courses on time management
Digital worksheets – customer will download and print at home

RESPONSE

As I explain below, the gross proceeds derived from the sale of a digital planner and an educational video course are subject to sales tax. However, whether the gross proceeds derived from the sale of a digital worksheet are subject to sales tax will have to be made on a case-by-case basis.

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. 2019) and 26-53-106 (Supp. 2019). 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.

Sales tax is due 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 (Supp. 2019). 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. 2019). “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). “End user” does not include a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons. *Id.* at (16)(B).

Having explained these standards, I will now turn to the specific products you listed in your request.

Digital Planner

A customer who downloads and prints a digital planner does so for their own use and, therefore, is an end user. Further, a planner, like any book, is a written work that consists of pages that are physically bound together in a consecutive succession and order that is essential to its purpose. In the case of a digital planner, the consecutive succession and order are units of time. Likewise, a planner in digital form is a written work that consists of pages that are digitally bound together in a consecutive succession and order that is essential to its purpose. Therefore, a digital planner is a work that is generally recognized in the ordinary and usual sense as a book, and the gross proceeds derived from the sale of a digital planner are subject to sales tax.

Educational Video Courses on Time Management

A customer who downloads an educational video course on time management does so for their own use and, therefore, is an end user. Video courses consist of a series of related images that, when shown in succession, impart an impression of motion. Further, sounds accompany the impressions of motion. Therefore, educational video courses are digital audio-visual works, and the gross proceeds derived from the sale of an educational video course are subject to sales tax.

Digital Worksheets

A customer who downloads and prints a digital planner does so for their own use and, therefore, is an end user. A worksheet is a written work. However, a worksheet does not necessarily consist of pages that are bound together in a consecutive succession and order that is essential to its purpose. Therefore, when a worksheet is downloaded in digital form, the question of whether it is a digital book depends on whether the worksheet consists of pages that are digitally bound together in a consecutive succession and order that is essential to its purpose. If the succession and order of the digital worksheet's pages is not essential to the overall purpose of the worksheet, the worksheet is not a digital book and the gross proceeds derived from the sale of which are not subject to sales tax.

Bundled Transactions

Finally, two of the transactions you describe are subject to tax and one of the transactions you describe may in some cases not be subject to tax. Except as otherwise provided by law, sales tax must be collected on the sales price of a bundled transaction if any product included in the bundled transaction would be taxable if sold separately. Arkansas Gross Receipts Tax Rules GR-93(A). A bundled transaction is the retail sale of two or more products where the products are otherwise distinct and identifiable and the products are sold for one non-itemized price. Ark. Code Ann. § 26-52-103(2)(A) (Supp. 2019); Arkansas Gross Receipts Tax Rules GR-93(C). However, if you itemize the price in the receipt or invoice, tax is due on the gross proceeds only of the itemized portion that is otherwise subject to tax.

My 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. You may rely on this letter opinion for a period of three years from the date of its issuance in accordance with Arkansas Gross Receipts Tax Rule GR-75.

Sincerely,

Chris McNeal
Revenue Legal Counsel