



STATE OF ARKANSAS

Department of Finance
and Administration

REVENUE LEGAL COUNSEL

Post Office Box 1272, Room 2380
Little Rock, Arkansas 72203-1272
Phone: (501) 682-7030
Fax: (501) 682-7599
<http://www.dfa.arkansas.gov>

September 9, 2019

VIA EMAIL

[REDACTED]
[REDACTED]

RE: Gross Receipts Tax – Remote Seller and Marketplace Facilitator Thresholds
Opinion No. 20190511

Dear [REDACTED],

Your email of May 8, 2019 requesting a legal opinion regarding remote seller and marketplace facilitator thresholds has been assigned to me for response. Your request specifically states:

I contacted the telephone number listed on the AR remote seller website, 501-682-7104. I inquired if a company who sells over \$100,000 in a month, in natural gas in the state has to register to report exempt sales. I was informed this has not yet been determined and was provided your email address to have you address. The sales are exempt due to either being resale or the purchaser has issued us their AR direct pay permit.

I guess another way to look at this is, does AR require business located in AR to be registered if all they have is exempt sales?

RESPONSE.

The threshold to collect and remit tax for a remote seller under Act 822 of 2019 is based on taxable sales, but the remote seller should retain suitable records if making sales into the state that are exempt from tax.

Generally, the entire gross receipts of all sales of tangible personal property, specified digital products, digital code, and certain specifically enumerated taxable services within the State of Arkansas are subject to the Arkansas Gross Receipts (Sales) Tax. Ark. Code Ann. § 26-52-301 (Supp. 2017). Liability to collect sales tax on all taxable services is on the seller, unless the purchaser claims an exemption and the seller obtains the information required by the Director to substantiate the exemption. Ark. Code Ann. § 26-52-517 (Repl. 2017); *see also* Arkansas Gross Receipts Tax Rule GR-79.

Sections 17 and 18 of Act 822 of the 92nd General Assembly of Arkansas (“Act 822”) require certain remote sellers and marketplace facilitators to collect sales and use tax on the sale of tangible personal property, taxable services, digital code, or specified digital products. Sections

17 through 19 of Act 822 of the 92nd General Assembly of Arkansas will become effective via an emergency clause contained in Section 28 on July 1, 2019. Pursuant to those sections:

- (a) A remote seller or a marketplace facilitator that sells or facilitates the sale of tangible personal property, taxable services, a digital code, or specified digital products for delivery into Arkansas shall collect and remit the applicable sales tax levied under this chapter or the applicable compensating use tax levied under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., if in the previous calendar year or in the current calendar year, the remote seller or the marketplace facilitator had aggregate sales of tangible personal property, taxable services, digital codes, or specified digital products subject to Arkansas sales or use tax within this state or delivered to locations within this state exceeding:
- (1) One hundred thousand dollars (\$100,000); or
 - (2) Two hundred (200) transactions.

Id. at § 19.

When interpreting statutory language, the Arkansas Supreme Court has stated as follows:

The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003). We construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000). When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Weiss v. McFadden*, *supra*. When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject. *Id.*

Macsteel, Parnell Consultants v. Ar. Ok. Gas Corp., 363 Ark. 22, 210 S.W.3d 878 (2005); *see also* Ops. Att'y Gen. 2005-072 & 2004-339. The court has also held that “it does not engage in interpretations that defy common sense and produce absurd results,” and that “in construing statutes . . . we look to the language under discussion in the context of the statute as a whole.” *Green v. Mills*, 339 Ark. 200, 205, 4 S.W.3d (1999) (citing *Haase v. Starnes*, 323 Ark. 262, 915 S.W.2d 675 (1996)); *see also* *Steward v. McDonald*, 330 Ark. 837, 958 S.W.2d 297 (1997); *Burcham v. City of Van Buren*, 330 Ark. 451, 954 S.W.2d 266 (1997); and *Cloverleaf Express v. Fouts*, 91 Ark. App 4, 207 S.W.3d 576 (2005).

The language of Act 822 requires that the thresholds of one hundred thousand dollars (\$100,000) or two hundred (200) transactions be for the sales “**subject to Arkansas sales or use tax[.]**” *See* Acts 2019, No. 822, §§ 17 & 19. The plain and ordinary meaning of the statutory language is that the threshold is met by **sales of taxable goods, services, or specified digital products** rather

than the sale of goods or services that are exempt from the Arkansas Gross Receipts or Compensating Use Tax.¹

The Department is continuing to evaluate the impact of Act 822 and further guidance or clarifications may be the subject of Departmental rulemaking. The rulemaking process includes an opportunity for public comment and the Department would invite you to contribute to that process so that it might have valuable feedback from the corporate community pursuant to the Arkansas Administrative Procedures Act of Ark. Code Ann. § 25-15-201, *et seq.* (Repl. 2014).

I also encourage you to visit the Department's website for additional information about remote sellers and marketplace facilitators at <https://www.dfa.arkansas.gov/excise-tax/sales-and-use-tax/remote-sellers/>. This site provides guidance on frequently asked questions, along with information about Arkansas's simplified registration process for remote sellers.

This opinion is based 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 the law could result in a different opinion. You are requesting an opinion from the Department on behalf of an unnamed entity. Please be aware that, pursuant to Rule GR-75, this opinion may not be relied upon by any person and is not binding upon the Department because this opinion is neither addressed to a specific entity nor is such entity specifically described in your request letter.

Regards,

Lauren Ballard, Attorney
Revenue Legal Counsel

¹ As noted above, the liability for the tax does not shift unless the Taxpayer, or vendor, collects the information required for the purchaser claiming the exemption. Ark. Code Ann. § 26-52-517 (Repl. 2017); *see also* Arkansas Gross Receipts Tax Rule GR-79. The Arkansas Tax Procedure Act also requires that "suitable records" be maintained by a Taxpayer "to determine the amount of tax due or to prove the accuracy of any return." Ark. Code Ann. § 26-18-506(a) (Repl. 2012).