



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

REVENUE LEGAL COUNSEL

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February 3, 2020

[REDACTED]
[REDACTED]
[REDACTED]

Via Email to: [REDACTED]

Re: Legal Opinion No. 20190514

Dear [REDACTED]

This is in response to your email of May 9, 2019 to the Arkansas Department of Finance and Administration ("DFA") seeking the issuance of a legal opinion regarding various issues. Your email was forwarded to me for response. I apologize for the delay in responding to your inquiry.

Your letter explains that [REDACTED] ("Taxpayer") is a commercial general contracting construction company that does no business in Arkansas. You further explain that one of your current office employees is relocating to Arkansas. Taxpayer is considering the possibility of continuing to employ this person as a remote employee once she has moved to Arkansas. Based on those facts, you present the following questions:

Do we just need to file for a payroll tax withholding number, as well as for an unemployment tax number? Do we have to register with the state as a business in any other way? Does having that one remote employee make the company subject to income allocation to the state based on the payroll of that one employee?

RESPONSE

This response will be limited to those state taxes administered by DFA. Those taxes include the withholding tax, corporate income tax, and sales and use taxes. As further discussed below, with the possible exception of Arkansas use tax, Taxpayer is not required to register with DFA for purposes of the taxes collected by this agency.

Withholding Tax

Arkansas Code Annotated § 26-51-905(a)(1) provides that every employer making payments of wages to employees is required to deduct and withhold from their wages an amount as determined by Arkansas withholding tables. The term "Employer" is defined in Ark. Code Ann. § 26-51-902(6) as follows:

“Employer” means a person doing business in or deriving income from sources within this state who has control of the payment of wages to an individual for services performed, or a person who is the officer or agent of the person having control of the payment of wages;

The facts presented in your question indicate that Taxpayer is not doing business or deriving income from Arkansas sources. Accordingly, Taxpayer is not an “employer” for purposes of the income tax withholding requirement in Ark. Code Ann. § 26-51-905(a)(1).

The wages earned by your Arkansas employee will be subject to Arkansas income tax. Taxpayer may voluntarily register to withhold and remit Arkansas income tax from the wages of your Arkansas employee to ensure that employee has sufficient funds set aside to pay her Arkansas state income tax at the end of the year. Otherwise, your employee may wish to make estimated income tax payments to avoid the payment of all her Arkansas state income tax at the time she files her Arkansas return.

Corporate Income Tax

Arkansas Code Annotated § 26-51-205 requires corporations carrying on or doing business in Arkansas to pay Arkansas income tax on the net income derived from that activity. Your email indicates that Taxpayer does no business in Arkansas. Accordingly, the presence of Taxpayer’s employee in Arkansas will not create an Arkansas corporate income tax obligation since Taxpayer is not doing business in this state and will have no net income derived from Arkansas activity. Please be aware if Taxpayer does perform any Arkansas business activity in the future, a duty to file and pay Arkansas corporate income tax would arise.

Sales and Use Tax

Arkansas sales tax is due on all sales of tangible personal property and selected services within this state. Since Taxpayer has no business activity in Arkansas, no taxable sales will occur and there is no corresponding responsibility to register to collect and remit Arkansas sales tax.

Arkansas use tax is due on the purchase of items of tangible personal property and selected services for storage, use, distribution, or consumption in this state. Since Taxpayer does not sell tangible personal property or taxable services into Arkansas, Taxpayer is not required to register to collect and remit use tax on sales into this state. If Taxpayer purchases tangible personal property or taxable services from a vendor located outside Arkansas and that vendor fails to collect the Arkansas use tax, Taxpayer would be required to pay use tax directly to DFA. It is not necessary for Taxpayer to register at this point to remit use tax. Should Taxpayer become obligated to pay use tax in the future, you should contact the Sales and Use Tax Section of DFA for assistance in paying that tax.

Unemployment Tax and Other Registrations

DFA does not administer the Arkansas unemployment tax and is unable to respond to your question related to that issue. The Arkansas Department of Workforce Services administers the

Arkansas Unemployment Compensation Tax and can provide assistance. With regard to other registrations, the Arkansas Secretary of State and the Arkansas Contractor's Licensing Board should be able to assist you.

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. You may rely on this opinion for three (3) years pursuant to Gross Receipts Tax Rules GR-75(B).

Sincerely,

John Theis
Revenue Legal Counsel