



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

REVENUE LEGAL COUNSEL

P.O. Box 1272 – Room 2380
Little Rock, Arkansas 72203
Phone: (501) 682-7030
Fax: (501) 682-7599
www.arkansas.gov/dfa

May 19, 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Gross Receipts Tax – Taxability of Charging Stations for Electric Motor Vehicles
Opinion No. 20190622

Dear [REDACTED]

Your request for a legal opinion concerning the taxability of providing electrical charging stations for electric motor vehicles has been referred to me for reply. In your letter, you state:

The above company, [REDACTED] [the Taxpayer] is requesting a ruling from the state of Arkansas on the applicability of the Arkansas sales tax to the following transactions taking place in the state.

[The Taxpayer] owns and operates electric vehicle charging stations. Customers pay for charging time, plus a \$1.00 session fee. Additional charges apply for 'idling,' which is leaving the vehicle connected to the charger after the charge is complete (not including a 10-minute grace period). The service is not sold by kWh ("kilowatt/hour") at this time. Currently, no resale exemptions are being taken by the company on the purchase of electricity from the utility company.

In the future, subject to utility regulatory approval, the company may begin to charge by kWh instead of for charging time.

[The Taxpayer] would like the Arkansas Dept. of Finance and Administration to consider the taxability of both types of billing methods; by time and by kWh, and instruct the company on how to treat these for sales tax purposes.

Following a general discussion of Arkansas Gross Receipts Tax, each scenario will be discussed in turn.

ARKANAS GROSS RECEIPTS ("SALES") TAX GENERALLY

Arkansas sales tax must be collected and remitted on all sales of tangible personal property within the State of Arkansas unless a specific exemption applies. *See* Ark. Code Ann. § 26-52-

301 (Supp. 2019). “Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses.” *See* Ark. Code

Ann. § 26-52-103(30)(A) (Supp. 2019); *see also* Arkansas Gross Receipts Tax Rule GR-3(Q). This definition specifically includes electricity as tangible personal property. *See* Ark. Code Ann. § 26-52-103 (30)(B). A “sale” is defined as the transfer of title or possession of tangible personal property, specified digital property, specified digital products, or a digital code regardless of the manner, method, instrumentality, or device by which the transfer is accomplished. *See* Ark. Code Ann. § 26-52-103(26)(A). Arkansas Code Annotated § 26-52-103 further provides, in pertinent part, as follows:

(19)(A) “Gross receipts,” “gross proceeds”, or “sales price” means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property, specified digital products, a digital code, or services are sold . . . valued in money, whether received in money or otherwise, without deduction for the following:

- (i) The seller’s cost of the property sold;
- (ii) The 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;
- (iii) A charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;

* * *

Additionally, when a transaction consists of two or more items that are otherwise distinct and identifiable and the items are sold for one non-itemized price, the transaction is classified as a bundled transaction. GR-93(C). Sales tax must be collected on the entire sales price of a bundled transaction if any product included in the bundled transaction would be taxable if sold separately. GR-93(A).

TAXABILITY OF THE SALE OF ELECTRICITY BASED ON THE AMOUNT OF TIME CONNECTED TO A CHARGING STATION

Based on the facts stated in your letter, the Taxpayer currently charges its customers for the electricity they purchase based on the amount of time spent using the charging stations, plus a one (\$1.00) dollar session fee and idling fees for time spent connected to the charging station after the vehicle is fully charged. The Taxpayer is not taking any resale exemptions on the electricity purchased from the utility company.

The General Assembly has granted an exemption from sales tax for tangible personal property purchased for resale under Ark. Code Ann. § 26-52-401(12) (Supp. 2019) if the retailer obtains a “resale certificate” under Ark. Code Ann. § 26-52-202 (Supp. 2019) and the Department’s rules, so long as the retailer produces the resale certificate to the wholesaler. Ark. Code Ann. §§ 26-52-401(12)(A); 26-52-202 (Supp. 2019); GR-53; GR-79(F). Upon presentation of the resale certificate for an item that qualifies as a sale-for-resale purchase, the wholesaler is exempt from tax liability on that purchase. The retailer remains liable on any item purchased without paying

tax under a resale certificate if the item is not in fact resold. Ark. Code Ann. § 26-52-517(a) & (b)(1) (Supp. 2019). The retailer still must account for, collect, and remit tax on the sale to the end consumer.

As noted above, electricity is tangible personal property, the sale of which is generally subject to sales tax at the retail level. There is no mechanism under the law by which a seller may be granted an exemption from collecting sales tax on the retail sale merely because the retailer has chosen to forego the available wholesale tax exemption on purchases for resale. *See* Ark. Code Ann. § 26-52-508 (Supp. 2019); GR-71(A) (sales tax “must be collected by the seller ... in all cases except those where the tax is to be paid directly to the state by the purchaser”). Accordingly, the Taxpayer will be expected to collect and remit all applicable state, county, and local taxes required by law from the end consumer on any sales of tangible personal property.

SESSION AND IDLING FEES

If the Taxpayer is required to provide the session and idling fees as part of the sale of electricity, then those fees would be taxable as part of the gross receipts of the sale. *See Belvedere Sand & Gravel Company v. Heath*, 259 Ark. 767 (1976) (delivery charges were part of the gross receipts from a contract for sale of rock or sand that required the seller to deliver the product to the purchaser).

SALES OF ELECTRICITY BASED ON kWh

You state in your letter that at some time in the future the Taxpayer may begin charging by kWh rather than charging by time, subject to regulatory approval. Absent any current regulatory framework under which the Taxpayer might change its billing practices, I cannot provide a detailed answer to this question.

Generally speaking, the method of billing would not create a distinction that would affect the taxability of the transactions. Whether, or not, the Taxpayer utilizes the sale-for-resale exemption, the analysis would be the same for selling electricity by kWh as sales of electricity based on the amount of time a customer is plugged in to the charging station.

In accordance with Arkansas Gross Receipts Tax Rule GR-75, this opinion is based upon 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. This opinion will not be binding upon the Department for any topic not specifically addressed herein. You may seek a supplemental opinion should you desire guidance in any topic not addressed within this opinion or if you have additional questions after reading this opinion. Please be advised that this opinion may only be relied upon by the specific and identified requestor, and will only be binding upon the Department for three (3) years from the date of issuance. *See* Arkansas Gross Receipts Tax Rule GR-75.

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,

David G. Scott, CFA, Attorney
Revenue Legal Counsel