VIA EMAIL

RE: Sales Tax – Act 822 Threshold
   Opinion Number 20190629

Dear [Redacted],

Your email 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:

Do we need to include the marketplace facilitator sales when calculating the 200 transactions threshold? For example, we had 321 total sales in year 2018. 303 out of the 321 sales were [through a] marketplace facilitator. Our online store only had 18 sales. When we calculate the 200[-]transaction threshold, do we use 321 (which includes the marketplace facilitator sales + our online store sale[s]) or 18 (which is our online store sale[s] only)? Please advise.

RESPONSE

As explained below, the eighteen sales you made through your online store count towards the threshold, and the three hundred and three sales you made through a marketplace facilitator do not count towards the threshold.

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. 2017) and 26-53-106 (Supp. 2017). 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 became effective 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. Section 19 further states:

A sale made through a marketplace facilitator [i]s a sale of the marketplace facilitator for purposes of determining whether a person satisfies the criteria stated in subsection (a) of this section; and [i]s not a sale of the marketplace seller for purposes of determining whether a person satisfies the criteria stated in subsection (a) of this section.

Therefore, for purposes of calculating the economic threshold under Act 822, the three hundred and three sales you made through a marketplace facilitator are sales of the marketplace facilitator and the remaining eighteen sales would be calculated as your sales if they were 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.

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.

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