



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>

John H. Theis, Attorney at Law  
[john.theis@dfa.arkansas.gov](mailto:john.theis@dfa.arkansas.gov)

August 9, 2019

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Response Sent Via Email To: ██████████

Re: Legal Opinion No. 20190702

Dear ██████████,

This is in response to your email dated June 28, 2019 to Mr. Joel DiPippa, Senior Counsel with the Arkansas Department of Finance and Administration. Your email, requesting the issuance of a formal legal opinion, was forwarded to me for response.

**FACTS**

Your email presented the following information for consideration:

We are a Direct Mail Marketer located in ██████████ with printing facilities located in ██████████ as well. We have customers in your state that we create/print direct mail for which we mail to recipients located in your state. We use the U.S. Postal Service as a means of delivery for this type of mail. We have done research and found that as an out of state printer, mailing into your state, that direct mail is exempt from sales tax. I saw online a ruling that says direct mail is exempt. I am trying to find something detailed about direct mail to know for sure if we are exempt. We are looking to get confirmation of this, please provide any and all rulings regarding this.

Another type of printing we do that sends out to recipients are statements. An example of this would be a companies 401k statements mailed directly to their employees. Would this instance be sales tax exempt also?

In addition, we print for some of customer's materials that are mailed directly to their facilities located within ██████████. This can be a range of printed material from brochures, statement, literature, booklets, etc. We are looking to get an understanding on the taxability of these sales as well.

## APPLICABLE LAW

Arkansas law imposes state and local sales and use tax on the service of printing rather than on the sale of the printed material. *See* Ark. Code Ann. § 26-52-301(4). Accordingly, [REDACTED] activities are generally subject to sales and use tax as a printing service. When those services result in the production and distribution of direct mail for an Arkansas customer, those services will be subject to Arkansas sales and use tax.

Arkansas law was amended effective July 1, 2019 to require out-of-state sellers to collect and remit Arkansas sales and use tax regardless of whether the seller has a physical presence in Arkansas. *See* Ark. Acts 2019, No. 822. That law is codified at Ark. Code Ann. § 26-52-111 and states in relevant part:

A remote seller...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.

To the extent a remote seller is required to collect and remit Arkansas sales and use tax on taxable printing services, Ark. Code Ann. § 26-52-522 addresses how to source those transactions if the printing service results in the production and distribution of direct mail. The term “direct mail” is defined in Ark. Code Ann. § 26-52-103(13) to mean printed material delivered or distributed to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser and the cost of the items is not billed directly to the recipients.

The sourcing of printing services that result in the delivery or distribution of direct mail depending on whether the item of direct mail produced is “advertising and promotional direct mail” or “other direct mail.” The term “advertising and promotional direct mail” is defined in Ark. Code Ann. § 26-52-522(a)(1) to mean:

Direct mail in which the primary purpose is to attract attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business or organization.

The term “other direct mail” is defined in Ark. Code Ann. § 26-52-522(a)(4) to mean:

Any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing...

The term "other direct mail" includes direct mail such as invoices, bills, statements of account, legally required mailings such as privacy notices, tax reports, stockholder reports, and direct mail delivered to current or former employees, customers, or shareholders.

Under the sourcing guidelines in Ark. Code Ann. § 26-52-522(c), when the sale of a taxable printing service results in the production and distribution of advertising and promotional direct mail, the seller shall source the sale according to Ark. Code Ann. § 26-52-521(b)(3) to the location from which the service was provided. The only exceptions to this rule are when the purchaser claims a tax exemption for the transaction or the purchaser provides the seller with jurisdictional information sufficient for the seller to source the sale to the location where the printed materials are delivered or distributed to recipients. If jurisdictional information is provided, the service must be sourced to the jurisdictions where the direct mail is delivered.

Arkansas Code Annotated § 26-52-522(d) provides that when the sale of a taxable printing service results in the production and distribution of other direct mail, the seller shall source the sale according to Ark. Code Ann. § 26-52-521(b)(3), unless a tax exemption claim is made by the purchaser. This provision of state law sources the service to the location of the purchaser's address as shown in the business records of the seller when those records are maintained in the ordinary course of the seller's business.

### ANALYSIS

The first question you presented indicates that [REDACTED] creates and prints direct mail for an Arkansas customer and then mails the printed items to recipients in Arkansas. The information provided in your opinion request fails to indicate whether the items of direct mail addressed in this question comes within the definition of advertising and promotional direct mail or the definition of other direct mail.

To the extent the items of direct mail in question are advertising and promotional direct mail, Arkansas law provides that the sale is sourced to the location from which the service is provided unless the purchaser claims a tax exemption or provides jurisdictional information.

If jurisdictional information is not provided by the customer, [REDACTED] printing services associated with the creation and production of advertising and promotional direct mail should be sourced to [REDACTED] because that is the location from which the printing services are provided. If the customer provides jurisdictional information sufficient for [REDACTED] to source the printing services to the Arkansas state and local jurisdictions in which the printed materials are delivered or distributed, [REDACTED] should collect and remit the Arkansas state and local sales and use tax of the jurisdictions where the advertising and promotional direct mail is to be delivered, assuming

█ exceeds the thresholds in Ark. Code Ann. § 26-52-111. If █ does not exceed those thresholds, the duty to pay the appropriate Arkansas sales and use tax falls to your purchaser.

If the direct mail that is the subject of your first question falls within the definition of other direct mail, Arkansas law requires that Arkansas sales and use tax be paid based on the purchaser's address as found in the business records regularly maintained by █. If that address is in Arkansas, and █ exceeds the thresholds in Ark. Code Ann. § 26-52-111, █ should collect and remit the Arkansas state and local tax based on the purchaser's address. If █ does not exceed the thresholds in Ark. Code Ann. § 26-51-111, the duty to pay the appropriate Arkansas sales and use tax falls to your purchaser.

Your second question indicates that you produce and mail statements, such as 401K statements, to employees of your Arkansas customer. These statements clearly fall within the definition of other direct mail. Accordingly, Arkansas sales and use tax should be paid based on the purchaser's address as shown in █ business records. Again, this assumes █ Arkansas activities exceeds the thresholds in Ark. Code Ann. § 26-52-111. If not, the duty to pay the appropriate Arkansas tax falls to your purchaser.

Your final question indicates that you produce materials for Arkansas customers that are mailed directly from your █ facility to the customer's locations in █. You indicate that the items produced includes brochures, statements, literature, booklets, and other material. It is unclear whether the items referenced in this question are advertising and promotional direct mail or other direct mail. If the items are advertising and promotional direct mail, the rules described above in the response to your first question would apply. These sales would be sourced to the location where the taxable services were provided, unless jurisdictional information is provided. If jurisdictional information is provided by the purchaser, then Arkansas law provides that tax will be due based on where the advertising and promotional direct mail is to be delivered.

If the items that are the subject of your third question are other direct mail, then the Arkansas sales and use tax should be paid based on the purchaser's address as shown in █ regularly maintained business records. If that business address is in Arkansas, the Arkansas sales and use tax should be collected and remitted regardless of the fact that the items are delivered to a █ location.

If both advertising and promotional direct mail and other direct mail are combined into a single mailing, the sale is to be sourced in accordance with the rules describe above for other direct mail. Accordingly, Arkansas sales and use tax would be due based on the purchaser's address as reflected in █ regularly maintained business records.

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 change in the facts or law could result in a different opinion. Please be advised that this opinion may only be relied upon by the company and will only be binding upon the Department for three (3) years from the date of issuance. Arkansas Gross Receipts Rule GR-75.

Sincerely,

John H. Theis  
Revenue Legal Counsel