



STATE OF ARKANSAS

**Department of Finance  
and Administration**

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November 4, 2021

**VIA EMAIL**



RE: Sales Tax – Act 822 Marketplace Facilitators  
Opinion Number 20190703



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:

I represent a small company, [REDACTED], which maintains an online marketplace where government agency sellers, such as towns and school districts, list and sell surplus items to interested buyers. [REDACTED] does not own or possess these listed items[, n]or does it take orders, as opposed to granting agencies access to list their own items, set their own terms, and set their own prices.

I was given your email address to seek a legal opinion on the implications of the recent marketplace facilitator regulations that may affect [REDACTED].

I am first trying to ascertain whether [REDACTED] falls under Arkansas's new marketplace facilitator regulations where the sellers are all government entities selling surplus personal property. My specific questions include:

- (1) Is there a statutory reference for these regulations, so that I could research further?
- (2) Do Arkansas government bodies need to collect sales tax? If not does a marketplace facilitator working with a government agency seller still need to collect sales tax?
- (3) A marketplace facilitator is defined as (A) Listing or advertising property in a forum and (B) either directly or indirectly collecting payments. In our case, sometime[s] we collect payments. In others, the government agency collects payments. Where we are not a marketplace facilitator in the latter case, how do we calculate the \$100,000 limit?

- (4) If the regulations apply to [REDACTED], how would [REDACTED] seek additional time to come into compliance with these new regulations?

## RESPONSES

My responses to each of your questions is below. Act 822 of the 92<sup>nd</sup> General Assembly of Arkansas (“Act 822”) provides the authority to require that marketplace facilitators collect sales tax on purchases made in Arkansas.

### **Question 1: Is there a statutory reference for these regulations, so that I could research further?**

Yes. Sections 17 and 19 of Act 822 require “marketplace facilitators” to collect sales and use tax on the sale of tangible personal property, taxable services, digital code, or specified digital products. Section 17 defines “marketplace facilitator” as follows:

[A] person that facilitates the sale of tangible personal property, taxable services, a digital code, a digital magazine, or specified digital products by listing or advertising tangible personal property, taxable services, a digital code, a digital magazine, or specified digital products for sale in a forum; and either directly or indirectly through an agreement or an arrangement with a third party, collecting payment from a purchaser and transmitting the payment to the person selling the tangible personal property, taxable services, a digital code, or specified digital products, regardless of whether the person receives compensation or other consideration in exchange for the person's services in collecting and transmitting the payment.

Ark. Code Ann. § 26-52-103(36) (Repl. 2020). Section 19 sets forth the threshold criteria applicable to marketplace facilitators as follows:

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 sales tax 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. . . .

A sale made through a marketplace facilitator is a sale of the marketplace facilitator for purposes of determining whether a person satisfies the [threshold criteria]; and

is not a sale of the marketplace seller for purposes of determining whether a person satisfies the [threshold] criteria.

Ark. Code Ann. § 26-52-111(a)-(b) (Repl. 2020).

**Question 2: Do Arkansas government bodies need to collect sales tax? If not, does a marketplace facilitator working with a government agency seller still need to collect sales tax?**

Because you are not an Arkansas government body, my answer is limited to your obligations when your company acts as a marketplace facilitator for a marketplace seller that is a government agency. Section 17 of Act 822 defines a “marketplace seller” as a person that has an agreement with a marketplace facilitator under which the marketplace facilitator that facilitates sales for the person. “Person” includes any legal entity or political subdivision. Arkansas Gross Receipts Tax Rules GR-3(J). Therefore, when [REDACTED] acts as a marketplace facilitator by facilitating a taxable sale on behalf of a government body that is the marketplace seller, [REDACTED] must collect and remit the sales tax.

**Question 3: In our case, sometimes we collect payments. In others, the government agency collects payments. Where we are not a marketplace facilitator in the latter case, how do we calculate the \$100,000 limit?**

For purposes of calculating the threshold criteria under Act 822, when [REDACTED] does not directly or indirectly collect payment from the purchaser and transmit the payment to the marketplace seller, [REDACTED] does not act as a marketplace facilitator. Such transactions then are not counted for purposes of calculating the threshold criteria under Act 822.

**Question 4: If the regulations apply to [REDACTED], how would [REDACTED] seek additional time to come into compliance with these new regulations?**

There is no additional time to come into compliance with Act 822. The requirement of certain marketplace facilitators to collect and remit sales tax became effective on July 1, 2019. Specifically, if during the 2019 calendar year or during the previous calendar year, [REDACTED] as a marketplace facilitator had aggregate sales subject to Arkansas sales or use tax within this state or delivered to locations within this state exceeding one hundred thousand dollars or two hundred transactions, then [REDACTED] needed to begin collecting and remitting sales tax on all taxable sales that it facilitated as a marketplace facilitator starting on July 1, 2019. Act 822 does not provide for additional time to come into compliance with this requirement.

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

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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-usetax/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, 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,



Michelle L. Baker  
Revenue Legal Counsel