



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

July 21, 2020

[REDACTED]
VIA EMAIL ONLY: [REDACTED]

RE: Sales Tax Refund
Opinion No. 20190721

Dear [REDACTED]:

Your email of June 17, 2019 requesting a legal opinion from the Department of Finance and Administration (the “Department”) has been assigned to me for response. Please accept my apologies for the delay in this response. Your request contained the following facts and questions that are relevant to this response:

We are a computer store in [REDACTED], Arkansas. In reference to the email below explaining our situation. In short, we have been requested by [REDACTED] to furnish them with the forms to verify we are resellers for tax exemption. We have done so but we need to re-coop the tax charged until we are approved for tax exemption. Our CPA has given us instructions in how to legally submit the form and we have come to a road block. There is a form that [REDACTED] must sign off on every month to get paid back the sales tax. We do not know how to obtain this signature from the “Claim Form” that we must submit to [REDACTED]. We have been instructed to get in touch with you for help.

RESPONSE

Arkansas gross receipts (sales) tax is levied upon sales of tangible personal property. See Ark. Code Ann. § 26-52-301(1) (Supp. 2019). Tangible personal property is defined as “property that can be seen, weighted, measured, felt, or touched or that is in any other manner perceptible to the senses.” Ark. Code Ann. § 26-52-103(21) (Supp. 2019). As a general rule, sales tax is required to be collected and remitted by the seller of tangible personal property. Ark. Code Ann. §§ 26-52-508 (Supp. 2019) and 26-52-517 (Supp. 2019). However, there are exceptions to this rule. First, sales tax is due from the purchaser where the purchaser has entered into an agreement with this agency to self-accrue and remit sales tax directly to this agency (i.e. the purchaser holds a direct pay permit and has informed the seller that it will self-accrue and remit the tax to the state). Ark. Code Ann. § 26-52-509 (Supp. 2019). Second, tax is due from the purchaser where the purchaser has claimed entitlement to exemption by providing the seller with an exemption certificate or other documentation identifying the purchaser and claiming entitlement to exemption. Ark. Code Ann. § 26-52-517 (Supp. 2019).

In this instance, the seller, [REDACTED], collected sales tax on your purchases, filed a return and paid the collected tax to the Department. You subsequently provided [REDACTED] with an exemption certificate or other documentation claiming your purchases are exempt from Arkansas sales tax as required in Ark. Code Ann. § 26-52-517 (Supp. 2019). [REDACTED] continued to collect tax until you are “approved for tax exemption.” You are seeking a refund of the sales tax paid on the exempt items purchased from [REDACTED].

The provisions of Ark. Code Ann. § 26-18-507(a) (Supp. 2019) generally provide that any taxpayer who has paid state tax in excess of the amount of tax lawfully due shall be issued a refund of the tax. A “taxpayer” is defined in Ark. Code Ann. § 26-18-104(16)(D) (Supp. 2019) as a person who filed a return and paid a reported tax due to the State of Arkansas. For sales tax, the customer is not the “taxpayer”, because the customer is not liable to report and remit the tax. Because [REDACTED] is the person who collected the tax, filed a return, and paid a reported the tax due they are the “taxpayer” and the right to a refund belongs to them.

However, Arkansas Gross Receipts Tax Rule GR-81.1 provides two methods for the customer to obtain a refund of erroneously paid sales tax. You may either request [REDACTED] refund of the erroneously paid tax to you or request [REDACTED] assign its right to refund to you. If [REDACTED] assigns its right to refund to you, you may make a direct claim for refund from the Department. This is known as a “vendor assignment claim.” *See* Arkansas Gross Receipts Tax Rule GR-81.1(G)(1). The form you are referencing in your request is probably Arkansas Department of Finance and Administration Form 2004-6. If you wish to make a “vendor assignment claim”, you must submit this form which requires the vendor ([REDACTED]) to complete Column 12 of Section 2 and Section 3 of the form. A copy of this form can be found on the Department’s website at:

<https://www.dfa.arkansas.gov/excise-tax/sales-and-use-tax/sales-and-use-tax-forms/>

Arkansas Gross Receipts Tax Rule GR-81.1 sets out the specific requirements for a vendor assignment refund claim. Without the completed refund claim form, the Department is unable to issue a refund to you unless [REDACTED] provides the information required in Arkansas Gross Tax Receipts Rule GR-81.1(G)(2)(c) as set out above. The vendor must certify that the customer paid the subject tax to the vendor and that the vendor remitted the tax to the state.

Please keep in mind that there are time limitations that might preclude issuance of a refund. Arkansas Gross Receipts Tax Rule GR-81.1(E) states:

The statute of limitations that applies to tax refund is found at Ark. Code Ann. § 26-8-306. Refund claims are within the statute of limitations if they are filed within three (3) years from the date the return was filed or two (2) years from the date the tax was paid, whichever is later.

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 binding upon DFA for three (3) years from the date of issuance. *See* Arkansas Gross Receipts Tax Rule GR-75.

The Gross Receipts Rules cited in this opinion may be viewed on DFA's website at http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf.

Sincerely,

Susan M. Fowler
Revenue Legal Counsel

SMF/ss