



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.arkansas.gov/dfa>

August 20, 2020



RE: Gross Receipts and Short-Term Rental Tax – Peer-to-Peer Vehicle Rental Platform
Opinion No. 20190925



Your letter of September 19, 2019 requesting a legal opinion regarding the collection of gross receipts and short-term rental tax on behalf of [REDACTED] (“Requestor”) has been assigned to me for response. The Requestor owns and leases motor vehicles to its affiliates nationwide. The affiliates then re-lease the vehicles to consumers in their respective areas. The Requestor’s affiliate currently operates in the state of Arkansas.

Requestor has contemplated its affiliate engaging in a new business model, whereby the affiliate would operate an online car sharing platform (also referred to as a “peer-to-peer” model). You provide the following facts in your request:

[Requestor] is exploring the opportunity to create a peer-to-peer Car Rental Facilitation Company to allow private and commercial owners of motor vehicles to provide such vehicles to others through the Car Rental Facilitation Company’s peer-to-peer application-based car sharing Platform. The Car Rental Facilitation Company will allow owners of privately and commercially owned vehicles to list their vehicles for rent through the Car Rental Facilitation Company for a fee which allows the use of the vehicles for a limited period of time. The Platform is not intended to be used for long-term rentals, and vehicles on the Platform would not have been purchased for the purpose of making long-term rentals. It is contemplated that the Car Rental Facilitation Company will operate similar to existing companies like [REDACTED] ([REDACTED]), [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]). The Car Rental Facilitation Company will have its principal place of business outside of Arkansas.

Persons (or businesses supplying vehicles from multi-car fleets they may own) listing a vehicle with the Car Rental Facilitation Company (“Hosts”) via the Platform will set their own daily, weekly or monthly rate, with assistance from the Car Rental Facilitation Company. In some cases, a Host is an individual merely supplying his/he [sic] car to the Car Rental Facilitation Company. And, in other

instances, the Host is an individual or business owning a fleet of multiple cars supplying the vehicles. Persons wanting to rent a car (“Guests”) will do so through the Car Rental Facilitation Company’s website or mobile app. The Car Rental Facilitation Company reviews and approves all Hosts and Guests before a rental transaction may occur. The Host will generally deliver the car to the Guest and each party is bound by the terms and conditions as outlined by the Car Rental Facilitation Company.

The Car Rental Facilitation Company and/or the Hosts may additionally charge other fees depending upon options chosen by the Guest. The Car Rental Facilitation Company will maintain a payment platform to receive and process rental payments from Guests and then pay the net revenue to Hosts, minus the Car Rental Facilitation Company’s share. The Car Rental Facilitation Company will normally receive 10% to 35% of the rental charges for its share plus the fees for chosen options.

You have asked the following questions below regarding taxability of the new peer-to-peer rental model. These specific questions are set out in the analysis below.

Additionally, you provided information regarding the fees that might be added to the rental. You stated in subsequent correspondence that the Requestor may offer additional tangible personal property or services for an additional fee. The fees you described are set out in the analysis section below.

RESPONSE.

The Department will first set out the relevant law and then respond to your inquiries in the order presented in your requests.

Applicable Law

Pursuant to Ark. Code Ann. § 26-52-301 (Supp. 2019), the Arkansas gross receipts tax applies to all sales of tangible personal property, specified digital products, and certain enumerated services unless a specific exemption applies. A “sale” includes the lease or rental of tangible personal property. *See* Ark. Code Ann. § 26-52-103(26)(B)(i) (Supp. 2019).

Arkansas Code Annotated § 26-52-103(19)(A)(Supp. 2019) defines the terms “gross proceeds,” “gross receipts,” or “sales price” as the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any 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) Any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;
- (iv) Delivery charge;
- (v) Installation charge.

See also Arkansas Gross Receipts Tax Rule GR-3(H).

Arkansas Gross Receipts Tax Rule GR-20(B)(5) provides that a “periodic payment” includes all charges, fees, taxes, interest, penalties, late payments, or other amounts included in the lease agreement as due and payable by the lessee to the lessor on a monthly or other periodic basis as consideration for the lease of the motor vehicle.

Leases of Motor Vehicles.

The type of rental is defined by the contract entered by the lessee and lessor. According to Arkansas Gross Receipts Tax Rule GR-20(D)(4)(b):

Whether a rental of a motor vehicle is considered long-term or short-term is dependent on the written contract and period for which payment is initially due. If a vehicle is rented initially for fourteen (14) days with the rental contract reflecting a term of rental for fourteen (14) days and the customer subsequently decides to continue renting the vehicle for twenty-one (21) more days, the transaction is treated as two short-term rentals, not one long-term rental.

Arkansas Code Annotated § 26-63-302 (Supp. 2019) levies the “rental vehicle tax” of 10% upon the gross receipts or gross proceeds derived from the short-term rental of a motor vehicle. A “short term rental” means a contract to lease property for a term of less than thirty (30) days to a single consumer. *See* Arkansas Gross Receipts Tax Rule GR-20(B)(7).

Arkansas Code Annotated § 26-63-304 (Supp. 2019) levies the “long-term rental vehicle tax” of 1.5% on the gross receipts or gross proceeds of the entire monthly (or other periodic) payment for the long-term lease of a motor vehicle required to be licensed for use on the highway. *See also* Arkansas Gross Receipts Tax Rule GR-20(B)(2). The long-term rental tax came with the option to pay sales tax at registration or collect the long-term rental tax, but that option was repealed on October 1, 2013. The Department repealed the long-term rental tax entirely effective July 1, 2015.

Arkansas Code Annotated § 26-52-521 (Supp. 2019) requires sales to be sourced for local taxes as follows:

- ...
- (b) Excluding a lease or rental, the retail sale of a product or service shall be sourced as follows:
 - (1) If the product or service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;
 - (2) If the product or service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the

purchaser or the purchaser's designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee known to the seller;

(3) If subdivisions (b)(1) and (2) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(4) If subdivisions (b)(1)-(3) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available if the use of this address does not constitute bad faith; or

(5) If none of the previous rules of subdivisions (b)(1)-(4) of this section apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, the location will be determined by the address from which tangible personal property was shipped, from which the specified digital products or the digital code was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

...

Arkansas Code Annotated § 26-52-521 (Supp. 2019) goes on to explain that leases should be sourced as follows:

...

(c) The lease or rental of tangible personal property, specified digital products, or a digital code other than property identified in subsection (d) of this section or subsection (e) of this section shall be sourced as follows:

(1)(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section.

(B) Periodic payments made after the first payment are sourced to the primary property location for each period covered by the payment.

(C) The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business if use of this address does not constitute bad faith.

(D) The property location shall not be altered by intermittent use at different locations such as use of business property that accompanies employees on business trips and service calls;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section; and

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

...

Marketplace Facilitators.

On April 9, 2019, the 92nd General Assembly approved Act 822, which, among other things, requires the collection of sales taxes by certain remote sellers and marketplace facilitators. Arkansas Code Annotated § 26-52-103(40) (Supp. 2019), defines “remote seller” to mean “a person, other than a marketplace facilitator, that does not maintain a place of business in this state and that through a forum sells tangible personal property, taxable services, a digital code, or specified digital products, the sale or use of which is subject to the tax imposed by this chapter or the Arkansas [compensating use tax].” The Act defines “marketplace facilitator” to mean “a person that facilitates the sale of tangible personal property, taxable services, a digital code, a digital magazine, or specified digital products by: (A) Listing or advertising tangible personal property, taxable services, a digital code, a digital magazine, or specified digital products for sale in a forum; and (B) Either directly or indirectly through an agreement or 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[.]” *Id.* at § 26-52-103(36) (Supp. 2019). The Act defines “forum” to mean “a physical place or electronic location where sales occur” and includes, without limitation, a store, booth, publicly accessible internet website, catalog, or similar place or location. *Id.* at § 26-52-103(35) (Supp. 2019).

A remote seller or a marketplace facilitator who has aggregate sales exceeding established threshold levels is required to collect and remit Arkansas sales and use taxes. Ark. Code Ann. § 26-52-111 (Supp. 2019). Effective July 1, 2019, remote sellers or marketplace facilitators that have sales in the previous calendar year or in the current calendar year of tangible personal property, taxable services, digital codes, or specified digital products within Arkansas that exceed \$100,000 in sales or 200 separate sales transactions must collect and remit the tax. *Id.*

Act 822 does not impair the obligation of the individual or entity selling on the marketplace to collect and remit all state and local taxes on the sale if the marketplace does not meet the requirements set out in Act 822. *See* Ark. Code Ann. § 26-52-111(d)(2) (Supp. 2019).

Analysis

You have requested guidance on the taxability of Requestor’s new peer-to-peer model for car rentals. In general response to your inquiry, the Requestor would be considered a marketplace facilitator under the fact scenario presented above and pursuant to Act 822 of 2019.

Taxes Due on Marketplace Motor Vehicle Leases.

The Department provides the following response regarding the vehicle rental:

1. *For the purposes of [the Gross Receipts Tax] and [the Rental Vehicle Tax], would Arkansas consider the [Requestor] to be (a) the Car Rental Facilitation Company or (b) the Host? Does it make any difference whether the Host is a*

single individual supplying a personal car, or an individual or business supplying a fleet of cars to the Car Rental Facilitation Company?

If the transaction does not involve a vehicle supplied by the Requestor, the Requestor would be considered a Marketplace Facilitator under the above-described fact scenario. For the purposes of the collection requirement of marketplace facilitators, it is immaterial whether the Host is an individual or a business.

- 2. As noted above, the Car Rental Facilitation Company will have its principal place of business outside the state of Arkansas. If the Car Rental Facilitation Company is the Seller, is it a remote seller or marketplace facilitator that must register for an Arkansas Sales Tax Permit?*

As noted above, the marketplace facilitator would need to register and collect/remit tax under Act 822, so long as it meets the threshold requirement. A determination of the seller's identity is irrelevant to this inquiry.

- 3. If the Host is the Seller, is it required to register for an Arkansas Sales Tax Permit, including, if relevant, as a remote seller?*

You represent the Car Rental Facilitation Company. As such, the Department can only give binding advice as to the sales tax collection requirements of that entity. The Department declines to opine as to the tax collection obligations of the Host. However, if the marketplace facilitator meets the threshold requirements, it is responsible for collecting and remitting applicable taxes on sales that occur on its forum.

- 4. Where a person listing a vehicle with the Car Rental Facilitation Company paid [Gross Receipts Tax] at the time of purchase of their vehicle, and where such vehicle was purchased for personal use but would now be made available for rental purposes under the Platform (either short-term rental, long-term rental, or both), are such rentals exempt from [Gross Receipts Tax]?*

...

Again, the Department will not opine on the obligation of Hosts who list a vehicle on the marketplace. However, the Department does generally note that the option to pay gross receipts tax at purchase only excused the collection of the long-term rental tax. That option was repealed in October 2013 and the long-term rental tax was repealed in July 2015.

- 5. Is the Car Rental Facilitation Company required to collect and remit the [Gross Receipts Tax] (and when applicable the [Rental Vehicle Tax]) on the total amount of consideration for a rental paid by a Guest?*

The Car Rental Facilitation Company must collect gross receipts tax and rental vehicle tax on the total consideration for the rental of the vehicle, assuming it has met the threshold requirements of Act 822.

6. *Is the Host required to collect and remit the [Gross Receipts Tax] (and when applicable, the [Rental Vehicle Tax]) on the total amount of consideration for the rental paid by a Guest?*

Ordinarily, the lessor is required to collect and remit the gross receipts tax and rental vehicle tax. However, if the Host leases the vehicle through a marketplace facilitator, the marketplace facilitator (if it has met the requirements of Act 822) would be responsible for collecting and remitting the gross receipts and rental vehicle tax.

7. *If a Host is required to collect and remit the [Gross Receipts Tax] (and when applicable, the [Rental Vehicle Tax]) for a rental but fails to collect and/or remit the same, is the Car Rental Facilitation Company liable to the State of Arkansas for the amount the Host failed to collect and/or remit?*

Pursuant to Ark. Code Ann. § 26-52-111 (Supp. 2019), the Car Rental Facilitation Company is required to collect and remit the tax. Because you do not represent the Host in this inquiry, the Department declines to opine on the sales tax collection requirements obligations of the Host.

8. *If both the Car Rental Facilitation Company and a Host are liable to collect and remit the [Gross Receipts Tax] and the [Rental Vehicle Tax], how is the [Gross Receipts Tax] and the [Rental Vehicle Tax] to be collected and remitted?*

Because you do not represent the Host in this inquiry, the Department declines to opine on the sales tax collection requirements obligations of the Host. Please see previous responses regarding the obligation of the marketplace facilitator.

9. *What penalties apply where a person or entity required to collect and/or remit [Gross Receipts Tax] and the [Rental Vehicle Tax] fails to so collect and/or remit same?*

...

Civil penalties under the Arkansas Tax Procedure Act are governed by Ark. Code Ann. § 26-18-208 (Supp. 2019) and are dependent upon the type of failure. In addition to the civil penalties, criminal penalties are authorized by Ark. Code Ann. § 26-18-201 through -207 (Repl. 2012).

Please note, however, that the Department is not authorized to prosecute violations of Arkansas criminal laws. Instead, law enforcement and prosecuting attorneys have this authority.

Local Sourcing Issues.

In addition to your inquiries regarding marketplace motor vehicle leases, you asked:

10. *With regard to the calculation of any applicable county and/or municipality tax, since the rental transaction is completed online via either the Car Rental*

Facilitation Company's website or app is the applicable county or municipality tax calculated by reference to the place of business or home address of the Guest (the point of delivery), or some other place (e.g., the place of business or home address of the Host)?

The answer to this inquiry will be dependent upon the facts surrounding the sale. The sale will be sourced to where the customer takes receipt of the vehicle. If the customer takes receipt of the vehicle at the Host's address (whether residential or commercial), then the sale should be sourced to that address. If the customer takes receipt of the vehicle at the customer's home, then the sale should be sourced to the customer's home.

If the lease is for more than one periodic payment, then the first periodic payment will be sourced as described above. Any local tax on subsequent periods will be sourced to the actual location of the vehicle.

Taxes Due on Additional Fees.

In a subsequent communication, you requested specific guidance on fees that are being contemplated by the Requestor as optional for leases made through the marketplace. The taxability of each is addressed in the order presented:

- a. *Airport Access "Concession" Fees – I understand that this is a local government tax upon leases of airport rental locations ...*

The Department has consistently held that any fixed costs, such as airport concession fees and facilities, that are passed along to every renter of a motor vehicle is included in the "gross receipts" for the rental of the motor vehicle. As such, this fee would be subject to the same taxes as are imposed on the vehicle.

- b. *Airport Consolidated Facility Fees - I understand that this is a local government tax upon rentals completed at airports ...*

The Airport Consolidated Facility fees are included in the "gross receipts" for the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

- c. *Vehicle license fee – this is used to recover the costs associated with licensing the vehicle. ...*

The vehicle license fee is included in the "gross receipts" for the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

- d. *Ancillary products like GPS, child safety seat, satellite radio. ...*

While the GPS and child safety seat units are separate items of tangible personal property and might not ordinarily be considered part of the gross receipts if separately stated, both are tangible personal property that would be subject to sales tax and, if leased for a period of less than thirty

(30) days, the short-term rental tax for tangible personal property pursuant to Ark. Code Ann. § 26-63-301 (Repl. 2008). *See also* Arkansas Gross Receipts Tax Rule GR-20(E).

Satellite radio is an option that is activated in the vehicle at the customer's election. It is not a separate item of tangible personal property. As such, it would be included in the "gross receipts" for the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

e. *Underage renter fee (this may apply to those under 25 or 26, for example) ...*

Underage renter fees would be considered part of the "gross receipts" of the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

f. *GARS fee – this is the Government Administrative Rate Supplement – This is a special fee that applies to federal workers traveling on federal business. ...*

There is nothing inherently tax exempt about the Government Administrative Rate Supplement Fee. The taxability of this fee will be dependent upon how the rental is completed. Arkansas Gross Receipts Tax Rule GR-47 provides that sales to the United States Government are exempt from tax, however, sales to United States Government employees who pay for the articles purchased with their own funds are not exempt Arkansas Gross Receipts Tax Rule GR-47.1 provides the following with respect to purchases made with credit cards:

A. Sales tax is not due on credit card purchases which are direct-billed to and paid for by the federal government. Sales tax is due on credit card transactions where the purchases are billed to and paid for by federal employees, who are then reimbursed by the federal government. The following information is designed to assist you in determining whether or not tax applies to transactions paid for with GSA SmartPay®2 charge cards. [...]

Accordingly, if the rental is made by the federal government or is paid for directly by federal funds (through specific charge cards identified in Gross Receipts Tax Rule GR-47.1), Arkansas lacks the right to levy any state or local sales tax on the rental or any fees considered part of the gross receipts added thereon. If the rental is made by a federal employee, but not paid for directly by the federal government, Arkansas sales and use tax would apply to the gross receipts.

g. *Time and Miles – this is the standard daily rental rate. ...*

The standard daily rental rate would be considered part of the "gross receipts" of the rental of the motor vehicle and subject to the gross receipts tax and, if applicable, rental vehicle tax.

h. *Verified Carbon Offsets –this is a voluntary program in which the renter agrees to have a paperless transaction and pays an extra fee in order to offset the rental vehicle's carbon footprint. ...*

The verified carbon offset fee would be considered part of the "gross receipts" of the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

- i. *Roadside assistance – This is a separate optional fee offered in connection with a rental contract. Renters receive 24/7 roadside assistance, including replacement of lost keys, flat tire services, tow services, etc. ...*

The roadside assistance fee would be considered part of the “gross receipts” of the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

- j. *Optional damage waiver – a separate fee that waives a customer’s damage responsibility for all or part of the cost of damage to or loss or theft of the vehicle or any part or accessory and related costs, regardless of fault or negligence, up to a stated amount. ...*

The optional damage waiver would be considered part of the “gross receipts” of the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

- k. *Deductibles – payments made by a customer when vehicle damage has occurred, and are equal to the amount of the customer’s auto insurance deductible. This applies against the cost of repair. The payment would be transferred to a separate damage recovery unit, which works with the customer’s insurance company to repair the rental vehicle. ...*

The deductible is not part of the “gross receipts” of the rental of the motor vehicle, if separately stated. It would not be subject to the taxes identified above.

- l. *Drop fees – drop fees are fees charged where a customer plans to or unexpectedly does return a rental car to a place different than where it was picked up. ...*

The drop fee charge would be considered part of the “gross receipts” of the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

- m. *Excess mileage – mileage beyond that permitted in the contract. ...*

The excess mileage charge would be considered part of the “gross receipts” of the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

- n. *Detail fees/Car Wash Fees – these may apply when a customer returns a vehicle which requires more than ordinary cleaning. ...*

Fees to detail or provide additional cleaning for motor vehicles would not be considered part of the gross receipts of the rental, if separately stated. However, cleaning of motor vehicles is subject to the gross receipts tax pursuant to Ark. Code Ann. § 26-52-301(3)(B)(i) (Supp. 2019).

- o. *Fuel surcharges – these apply when a vehicle is returned with less fuel than it had at origination. The amount of the surcharge is determined by applying National Association of Attorneys General guidance. ...*

The fuel surcharges would be considered part of the “gross receipts” of the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

- p. *Late charges – late charges may be charged if all charges owed are not paid within 30 days of the end of the rental period. ...*

Because late charges are a punitive measure and not imposed as part of the gross receipts, gross receipts tax would not apply to the charges, if separately stated.

- q. *Tollpass Convenience Charges – this charge is a rental fee for a customer’s use of the vehicle’s Tollpass. ...*

Arkansas does not issue a Tollpass, however, as described, the use of a Tollpass would be considered part of the “gross receipts” of the rental of the motor vehicle and subject to the same taxes as are imposed on the vehicle.

- r. *Parking Ticket Service Fees – this is a separate fee that may be imposed for parking tickets issued against the vehicle during the rental period. The service fee and rental fee would be imposed by a separate citations unit. ...*

Because parking ticket service fees are a punitive measure and not imposed as part of the gross receipts, gross receipts tax would not apply to the charges, if separately stated.

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 opinion for three years pursuant to Ark. Gross Receipts Tax Rules GR-75(B).

Regards,

Lauren Ballard
Revenue Legal Counsel