



STATE OF ARKANSAS
**Department of Finance
and Administration**

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VIA EMAIL

[REDACTED]

RE: Sales and Use Tax – Telecommunications Software License Renewals
Opinion No. 20191230

[REDACTED],

Your letter of December 19, 2019 requesting a legal opinion regarding the taxability of a software license renewal on behalf of [REDACTED] ("Requestor") has been assigned to me for response. Your request specifically states:

I was told by DF&A to contact you regarding paying sales tax for software license renewal that is charged by [REDACTED] [(REDACTED)]. According to this vendor, we should pay sales tax for the license renewal because their company is a telecommunication service provider, and according to the tax law in Arkansas, telecommunication services are taxable if the service provider has a large presence within the state. Do you know whether this is correct?

In another communication, you stated that the functions of [REDACTED] are the following:

[REDACTED] is an online video/go-to-meeting type solution that allows [Requestor] to have virtual meetings and trainings from multiple locations in a [REDACTED] meeting. It has video and audio, and the ability to record meetings. You can use the website or call in to the meetings if you cannot get to a computer.

RESPONSE.

It is correct that Requestor should pay sales tax for the software license renewal from the Company. As more fully explained below, the Company is a telecommunication service provider and should therefore charge sales tax for their provided services.

In Arkansas, there is a sales tax levied upon the gross proceeds or gross receipts derived from all sales of tangible personal property, certain specified digital products, and certain enumerated

services. Ark. Code Ann. § 26-52-301 (Supp. 2019). Arkansas sales tax does apply to telecommunications and related services. *See* Ark. Code Ann. § 26-52-315 (Supp. 2019). *See also* Arkansas Gross Receipts Tax Rule GR-7.

Arkansas Code Annotated § 26-52-315(a) provides:

The gross receipts or gross proceeds derived from the sale of the following are subject to the gross receipts tax levied by this chapter:

- (1) Any intrastate, interstate, and international telecommunications service that is sourced in this state in accordance with subsection (d) of this section;
- (2) Any ancillary service; and
- (3) Any installation, maintenance, or repair service of telecommunication equipment.

Arkansas Code Annotated § 26-52-315(e)(19)(A) defines “telecommunications service” as the following:

- (19)(A) “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point or between or among points.
- (B) “Telecommunications service” includes the transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

See also GR-7(A)(8). A “telecommunications service” does **not** include the following:

- (i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when the purchaser’s primary purpose for the underlying transaction is the processed data or information;
- (ii) Installation or maintenance of wiring or equipment on a customer’s premises;
- (iii) Tangible personal property;
- (iv) Advertising, including without limitation directory advertising;
- (v) Billing and collection services provided to third parties;
- (vi) Internet access service;
- (vii) Radio and television audio and video programming services
- (viii) Ancillary services;
- (ix) A digital product delivered electronically, including without limitation software, music, video, reading material, or a ring tone;
- (x) Specified digital products; or
- (xi) A digital code.

Ark. Code Ann. § 26-52-315(e)(19)(C) (Supp. 2019); *see also* GR-7(A)(8)(b).

Based on our previous communications, [REDACTED] is a telecommunications service provider and is therefore subject to Arkansas sales tax. [REDACTED] is an online tool that connects users virtually for meetings, trainings, and other communications. [REDACTED] provides audio, video, and recording capabilities for users in different locations via the internet. In other words, [REDACTED] provides an online telecommunications service for its users. Therefore, the service that [REDACTED] provides is taxable as a “telecommunications service” because it is an “electronic transmission, conveyance, or routing of voice, data, audio, and video signals to a point or between or among point.” Ark. Code Ann. § 26-52-315(e)(19)(A) (Supp. 2019); *see also* GR-7(A)(8)(a).

Under Arkansas law, the licensing of software downloaded through a modem or by other electronic means is not subject to sales tax if charges for the licensing are separately stated on the invoice or billing statement from charges for any tangible personal property. GR-25(F). It is not immediately clear from your request for legal opinion how the charges are stated on the [REDACTED] invoice. However, it is clear that the true object of the purchase of the [REDACTED] “software license renewal” is to purchase the use of the telecommunications service itself. Thus, the purchase of the software license renewal is essentially the purchase of the service that [REDACTED] provides on an annual basis. Requestor is therefore paying for the annual use of a telecommunications service, which is subject to Arkansas sales tax as explained above. *See* Ark. Code Ann. § 26-52-315(e)(19)(A); *see also* GR-7(A)(8)(a).

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,

Caroline Calvert
Revenue Legal Counsel