



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

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March 18, 2020

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Opinion No. 20200222

Dear [REDACTED]

This is in response to your letter dated January 30, 2020, requesting the issuance of a legal opinion from the Arkansas Department of Finance and Administration (“DFA”) regarding the rebate of local taxes. Your letter was assigned to me for response.

Your letter presented the following facts:

We have a large job in [REDACTED], Arkansas and we're trying to confirm whether or not we are eligible to claim local tax rebates on our cost of construction expenses. The instructions provided with the rebate claim form ET-179A (attached), read that expenses may be claimed that are considered business expense deductions or depreciation deductions for federal income tax purposes.

You asked that a legal opinion be issued clarifying the application of the local tax rebate with respect to a qualified business and to the cost of construction expenses associated with an owner contract. Specifically, you asked whether a general contractor is a qualified business and whether the cost of construction in excess of the \$2,500 single transaction threshold is eligible for the rebate.

As more fully explained below, a general contractor would be eligible for a local tax rebate on “qualifying purchases” on each “single transaction” in excess of the \$2,500 threshold, as those terms are defined by Arkansas Code Annotated § 26-52-523(a)(1) and (2) (Supp. 2019).

**LAW:**

Prior to January 1, 2008, Arkansas law provide a cap on the amount of local sales taxes collected on a single transaction. This local tax cap was accomplished by the vendor collecting the local sales or use tax only on the first \$2,500 of the purchase price of a single transaction. That local tax cap administered by the vendor was repealed by the 2007 Arkansas General Assembly and replaced with a rebate administered by this agency.

Arkansas Gross Receipts Tax Rule GR-92 was promulgated by this agency to administer the local tax rebate enacted by Ark. Code Ann. § 26-52-523. Rule GR-92 states:

A. DEFINITIONS.

1. “Qualifying purchase” means a purchase of tangible personal property or a taxable service:
  - a. For which the purchaser may take a business expense deduction pursuant to 26 U.S.C. § 162, as in effect on January 1, 2007;
  - b. For which the purchaser may take a depreciation deduction pursuant to 26 U.S.C. § 167, as in effect on January 1, 2007;
  - c. By an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007; or
  - d. By a state, or any county, city, municipality, school district, state-supported college or university, or any other political subdivision of a state, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not one (1) of the entities enumerated in this subdivision.
2. “Single transaction” means any sale of tangible personal property or a taxable service reflected on a single invoice, receipt, or statement for which an aggregate sales or use tax amount has been reported and remitted to the state for a single local taxing jurisdiction.

B. GENERALLY.

1. A purchaser that pays any municipal sales or use tax in excess of the tax due on the first \$2,500.00 of gross receipts or gross proceeds from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of municipal sales or use tax paid on each single transaction.
2. A purchaser that pays any county sales or use tax in excess of the tax due on the first \$2,500.00 of gross receipts or gross proceeds from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of county sales or use tax paid on each single transaction.
3. Except as provided in Subdivision (B)(4), the rebate applies to any local sales or use tax collected by the Director pursuant to any state tax law authorizing a county or municipality to levy a sales or use tax.

4. The rebate does not apply to local sales tax levied in accordance with Ark. Code Ann. §§ 26-52-303 or 26-75-502.

B. CLAIMS FOR CREDIT OR REBATE.

1. . . . .

2. File a Claim. A purchaser that qualifies for a rebate but is not required to file a sales or use tax return as provided in GR-92(C)(1) may file a claim for a credit or rebate with the Director.

a. In order to request a refund of the local sales and use tax for qualifying purchases, the purchaser should complete the Claim for Local Cap Rebate Form Number ET-179A and the supplemental schedule Form Number ET-179B, if needed. The form requires the following:

- (1) A listing of the invoices on which the local tax has been paid to the seller;
- (2) A determination of the amount of refund owed to the purchaser; and
- (3) Photocopies of the invoices for which the refund is being requested.

b. The completed form and copies of the invoices should be mailed to DFA Local Tax Rebate Unit, P.O. Box 3566, Little Rock, AR 72203.

c. The form may be obtained by contacting the Sales and Use Tax Section by telephone at (501) 682-7105 or may be downloaded from the Department's website at: [www.state.ar.us/salestax](http://www.state.ar.us/salestax) and selecting Sales and Use Tax Forms.

. . . . .

D. INTEREST. No interest will accrue or be paid on an amount subject to a claim for a credit or rebate.

E. Claims for credit or rebate pursuant to Ark. Code Ann. § 26-52-523 and this rule are governed by the Arkansas Tax Procedure Act, § 26-18-101, et seq.

**ANALYSIS:**

Neither state law nor Gross Receipts Tax Rule GR-92 define the term “qualified business” for purposes of the local tax rebate. Instead, the term “qualifying purchase” is defined. You explained that your company is acting as a general contractor on an Arkansas project. In determining whether the local tax rebate is available to purchases by your company it is necessary to determine whether the purchase in question comes within the definition of a “qualifying purchase”.

As seen above, the term “qualifying purchase” includes any purchase by your company that could be deducted or depreciated on your federal income tax return. If the general contractor makes purchases that could not be either deducted or depreciated on its income tax return, the local tax rebate is not available. A disqualified purchase would include purchases of a personal nature.

The local tax rebate is not limited to specific types of businesses. A business, as well as certain charitable organizations and governmental entities, may claim the rebate for qualifying purchases.

Although not indicated in Rule GR-92(A)(1), a qualifying purchase can also include purchases of specified digital products and a digital code. Those terms are defined in Ark. Code Ann. § 26-52-103 (Supp. 2019) to mean:

(12) “Digital code” means a code that:

- (A) Provides a purchaser with a right to obtain one (1) or more specified digital products; and
- (B) May be obtained by any means, including email or tangible means, regardless of its designation as a song code, video code, or book code;

(29) “Specified digital products” means the following when transferred electronically:

- (A) Digital audio works;
- (B) Digital audio-visual works; and
- (C) Digital books;

If you have additional questions regarding purchases of digital code or specified digital products, please contact us for further guidance.

Separate rebate claim procedures are provided depending on whether the purchaser entitled to the rebate must file Arkansas sales tax reports and remit tax collected from their customers. For purposes of this opinion response, it is assumed that your company does not hold an Arkansas sales tax permit and is not required to regularly report, and remit sales taxes collected from its customers.

The local cap rebate is limited to the tax paid in excess of the first \$2,500 of gross receipts for a qualifying purchase. That rebate must be claimed using DFA Form ET-179A. That form can be

found at: <https://www.dfa.arkansas.gov/excise-tax/sales-and-use-tax/sales-and-use-tax-forms/>  
Please note that the instructions to form ET-179A requires that invoices for which the rebate is sought must be billed to the legal name or DBA name which DFA has on file for the Taxpayer claiming the rebate. Consequently, the rebate is available only for purchases made by your company. Rebates for purchases made by a subcontractor working for the general contractor must be requested by the subcontractor.

Next you ask whether the cost of construction in excess of the \$2,500 single transaction threshold is eligible for the local tax rebate. The local tax rebate applies to a “single transaction” which is defined to be the sale reflected on a single invoice, receipt, or statement and for which an aggregate sales or use tax amount has been reported. The local tax cap will be applied to each single invoice reflecting a sale to the general contractor. If every purchase invoiced to the general contractor is for an amount less than \$2,500, no local tax rebate would be available even though the total of all purchases made by the general contractor for the project exceeded \$2,500.

Please be aware that Ark. Code Ann. § 26-52-523 limits the time period for which a rebate claim may be filed. Under that provision of state law, the rebate claim must be filed within 1 year of the date of the qualifying purchase.

This opinion is based on my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any changes in the facts or the law could result in a different opinion.

Sincerely,

John Theis, Attorney  
Revenue Legal Counsel