



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

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July 6, 2020

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

VIA EMAIL: [REDACTED]

RE: Sales Tax and Delivery Services
Opinion No. 20200227

Dear [REDACTED]:

Your email of February 24, 2020 requesting a legal opinion regarding the collection of gross receipts tax on behalf of [REDACTED] and [REDACTED] has been assigned to me for response. Specifically, you have asked for the Department of Finance and Administration (the “Department”) to reissue a July 6, 2012 opinion (Opinion No. 20120601) concerning the taxability of [REDACTED]’s delivery charges for hauling crushed rock sold by [REDACTED]

Arkansas Gross Receipts Tax Rule GR-75(B) provides:

Legal opinions may not be relied upon if more than three (3) years old, but may be renewed on request. The effect of legal opinions may change at any time as a result of legislative action, court interpretation and changes in these rules without actual notice to any holder of a legal opinion.

More than three years have passed since the issuance of the Department’s July 6, 2012 opinion letter to [REDACTED], and no request for renewal was made prior to the expiration of that date. Accordingly, the letter opinion is no longer valid.

Your most recent request poses the following questions:

Contractor A buys material from [REDACTED] in County Y and [REDACTED] hauls material to contractor in County Z. [REDACTED] bills Contractor A for material and [REDACTED] bills Contractor A for freight. Who pays what sales tax? State, county, local tax?

You have not indicated a change in the facts provided in your prior opinion request which stated:

██████████ owns and operates a quarry in ██████████ County, Arkansas and primarily sells crushed limestone. ██████████, which has common ownership with the owners of ██████████, is strictly a trucking business and hauls crushed rock for ██████████'s purchasers. ██████████ and ██████████ are separate Arkansas corporate entities although they do have common ownership.

Response.

As a preliminary matter, Arkansas Gross Receipts Tax, commonly referred to as “sales tax,” generally applies to all sales of tangible personal property and certain enumerated services unless otherwise exempted. See Ark. Code Ann. § 26-52-301 (Supp. 2019).¹ When a sale of tangible personal property, or the performance of such an enumerated service, occurs in Arkansas, a taxable transaction has occurred, and tax should be collected and remitted. Arkansas Gross Receipts Tax Rule GR-5. Persons engaged in the business of selling tangible personal property and taxable services are required by law to collect sales tax on their sales and remit the tax collected to the Arkansas Department of Finance and Administration (“DFA”). The tax is computed based on the total value of consideration paid for the taxable property or service. Ark. Code Ann. § 26-52- 301. *See also* Ark. Code Ann. § 26-52-103(19) (Supp. 2019).

Generally, delivery charges are taxable if the item or service being delivered is taxable. Arkansas Gross Receipts Tax Rule GR-18. Delivery charge is defined in Ark. Code Ann. § 26-52-103(6)(A) (Repl. 2014) as a charge by a seller of tangible personal property or services for preparation and delivery to a location designated by the purchaser of the tangible personal property or services, including without limitation transportation, shipping, postage, handling, crating, and packing.

Arkansas Gross Receipts Tax Rule GR-18(A) provides that:

Delivery charges are part of the gross receipts or gross proceeds on which the tax must be collected and remitted *unless* the charges are billed directly to the purchaser by a carrier other than the seller. Delivery fees and transportation fees are treated the same for tax purposes. [Emphasis added.]

██████████
While ██████████ and ██████████ have common owners, they are separate and distinct corporate entities. Since ██████████ is not the seller of the crushed rock, ██████████'s charge to the purchasers of the rock for delivery services is not subject to sales tax. *See* Arkansas Gross Receipts Tax Receipts Rule GR-18.

██████████
██████████ holds an Arkansas sales tax permit and should collect and remit state and local taxes for all taxable sales of crushed rock.

¹ Arkansas Code Annotated § 26-52-103(30)(A) (Supp. 2019) defines “tangible personal property” as “personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses.”

Sales tax is computed based on the total value of consideration paid for the taxable property or services. Ark. Code Ann. § 26-52-103(19)(A) (Supp. 2019). *See also* Arkansas Gross Receipts Tax Rule GR-3(H). Currently the state sales tax rate is 6.5%. Ark. Code Ann. §§ 26-52-301 (Supp. 2019) and 26-52-302 (Supp. 2019). Local tax rates may also apply. Ark. Code Ann. §§ 26-74-212 (Repl. 2008) and 26-75-207 (Supp. 2019). Sales are sourced to the location of the purchaser's receipt of the tangible personal property. Local sales taxes should be calculated based on the location of the purchaser's receipt of the crushed rock. Ark. Code Ann. § 26-52-521 (Supp. 2019). *See also* Arkansas Gross Receipts Tax Rule GR-76(D).

Local tax rates vary throughout Arkansas. The current city and county tax rates can be found on the Arkansas DFA website:

<http://www.dfa.arkansas.gov/offices/exciseTax/salesanduse/Documents/cityCountyTaxTable.pdf>

It is important to note that city and county tax rates are subject to change. A tool for calculating the applicable tax rates can be found at:

<https://www.dfa.arkansas.gov/sales-and-use-tax-section-local-tax-lookup-tools>

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