



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

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VIA EMAIL



RE: Gross Receipts Tax – Cleaning Services During COVID-19 Pandemic
Opinion No. 20200327



Your letter of March 25, 2020 requesting a legal opinion regarding the taxability of certain cleaning services during the COVID-19 pandemic has been assigned to me for response. Your request specifically states:

In the context of COVID-19, it is unclear how far [the Department of Finance and Administration (“Department”)] will attempt to extend the cleaning and janitorial services tax to sterilization or decontamination services. There is a concept in Rule GR-9.4(E) that delineates nontaxable USDA-required food processing sanitizing from taxable “ordinary cleaning work.” Analogous reasoning may apply in the context of COVID-19 when the sterilization services exceed ordinary cleaning work. In Director’s Revision Decision nos. 16-348 and 16-349 (Oct. 17, 2016), however, [the Department] classified an ozone-based air-cleaning system as taxable. The service was characterized as “sterilization or disinfection services performed within the air and upon a building’s interior surfaces utilizing the ozone generators.”

In a subsequent correspondence, you also wrote:

There appear to be two principal approaches to disinfecting coronavirus:

- Wiping surfaces or spraying and wiping surfaces with disinfectant by hand; and
- Using an electrostatic sprayer/fogger with disinfectant to disinfect a space.

Are either or both of these taxable services when used to disinfect a business, home, or community space?

As I understand your request for legal opinion, you are asking whether cleaning services used in preventing the spread of COVID-19 are taxable cleaning services within the context of Ark. Code Ann. § 26-52-301(3)(D)(i)(b) or Gross Receipts Rule GR-9.4.

RESPONSE.

Yes, as more fully explained below, the services used to disinfect a business, home, or community space from COVID-19 are taxable cleaning services under Arkansas law.

Generally, the gross receipts derived from all sales of tangible personal property, specified digital products, digital code, and certain specifically enumerated taxable services within the State of Arkansas are subject to the Arkansas Gross Receipts (Sales) Tax. Ark. Code Ann. § 26-52-301 (Supp. 2019). Usually, the liability to collect sales tax on all taxable services is on the seller, unless the purchaser claims an exemption and the seller obtains the information required by the Department to substantiate the exemption. Ark. Code Ann. § 26-52-517 (Repl. 2019); *see also* Arkansas Gross Receipts Tax Rule GR-79.

Cleaning and janitorial work services are specifically enumerated taxable services under Arkansas law. Ark. Code Ann. § 26-52-301(3)(D)(i)(b) (Supp. 2019); *see also* GR-9.4. Under Arkansas Gross Receipts Tax Rule GR-9.4 (A), “cleaning services are defined as services to rid the interior or exterior of any building, dwelling, or other structure of dirt, impurities, or extraneous matter.” Moreover, Arkansas Gross Receipts Tax Rule GR-9.4(F) provides that:

Items that are used or consumed in performing cleaning or janitorial services may not be purchased tax exempt. This includes, but is not limited to, uniforms, **machines**, equipment cleansers, **disinfectants**, wax, rags, mops, brooms, and sponges. Such items are subject to state and local gross receipts or use tax when purchased for use by the services provider. (emphasis added).

However, there is an exception to the general rule under Arkansas Gross Receipts Rule GR-9.4(E), which provides that:

Services that are performed to clean and sanitize the production and packaging areas of food processing facilities to meet **specific standards prescribed and required** by the United States Department of Agriculture [“(USDA”)] exceed the scope of ordinary cleaning work provided in what is normally considered to be cleaning or janitorial services and are not taxable as cleaning or janitorial services. (emphasis added).

The approaches to disinfecting areas for COVID-19 mentioned in your request for legal opinion are “cleaning services” that are taxable under Arkansas law. The first approach mentioned in your request for legal opinion is “wiping surfaces or spraying and wiping surfaces with disinfectant by hand.” This approach is not unlike ordinary home or business cleaning or janitorial services, which often involve the use of disinfectant throughout a business or home. Whether or not the service is disinfecting for a virus like the flu or for COVID-19, the service’s purpose is “to rid the interior or exterior of any building, dwelling, or other structure of dirt, impurities, or extraneous matter.” Arkansas Gross Receipts Tax Rule GR-9.4(A). Thus, “wiping surfaces or spraying and wiping surfaces with disinfectant by hand” is a taxable cleaning service.

The same reasoning applies to the second approach mentioned in your request for legal opinion. That approach, “using an electrostatic sprayer/fogger with disinfectant to disinfect a space,” is also a cleaning service as defined under Arkansas Gross Receipts Tax Rule GR-9.4(A). The fact that the service uses equipment to disinfect a space is immaterial. Indeed, Arkansas Gross Receipts Tax Rule GR-9.4(F) specifically states that “machines” that are “used or consumed in performing cleaning or janitorial services may not be purchased tax exempt.” Therefore, “using an electrostatic sprayer/fogger with disinfectant to disinfect a space” is a taxable cleaning service.

In your request for legal opinion, you also mentioned that disinfecting services during the COVID-19 pandemic may be analogous to GR-9.4(E)’s exemption for services performed to clean or sanitize food processing facilities in accordance with specific USDA sanitization standards. However, that narrow exemption is unlike the services required for disinfecting a business, home, or community space for COVID-19. All tax exemptions must be strictly construed in limitation of the exemption. Ark. Code Ann. § 26-18-313(b) (Supp. 2019). The USDA, through administrative rulemaking procedures, has prescribed specific sanitization standards by which food processing facilities **must** comply.

In contrast, the Centers for Disease Control (“CDC”) have prescribed general **guidelines** for cleaning and disinfecting businesses, homes, and community spaces. *See* “Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes.” Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>. These guidelines have not gone through the same rulemaking procedures that the USDA’s sanitization standards have gone through, and there is no requirement that businesses, homes, or community spaces **must** abide by these guidelines. Thus, cleaning services within the context of the COVID-19 pandemic are not analogous to sanitization services required by the USDA for food processing facilities. Accordingly, services to disinfect businesses, homes, or community spaces for COVID-19 are “cleaning services” as defined by Arkansas Gross Receipts Tax Rule 9.4 and are subject to Arkansas sales tax.

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 law could result in a different opinion. As you have noted, because you did not identify a particular client when you requested this opinion, this opinion is not binding upon the Department. In accordance with Arkansas Gross Receipts Tax Rule GR-75, the Department is issuing this opinion for general information purposes only.

Regards,

Caroline Calvert
Revenue Legal Counsel