



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

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Via Email

██████████
████████████████████

RE: ██████████
Opinion Number 20200416

Dear ██████████,

Your request for an opinion from the Arkansas Department of Finance and Administration has been referred to me for response. Your inquiry states as follows:

I represent the client ██████████. He is a Marketplace seller – ██████████ only – and he is questioning if:

1. A sales tax license is still required?
2. Are ZERO returns to be filed?

Since ██████████ is collecting and remitting on my Client[']s behalf, some States do not require the Vendors to continue to also file zero returns and I just wanted confirmation.

Your request concerns the filing obligations of sellers whose sales consist entirely of transactions through marketplace facilitators. Your request contains two questions: (1) is a seller who transacts entirely as a marketplace seller required to obtain a sales tax license and (2) is such a seller required to file “zero” returns? I answer your questions below, except that my answer to your first question makes your second question moot.

RESPONSE

A seller who transacts entirely as a marketplace seller is not required to obtain a sales tax license.

Sales tax is levied upon the gross proceeds or gross receipts derived from all sales of tangible personal property, taxable services, digital code, or specified digital products. Ark. Code Ann. § 26-52-301 (Supp. 2019). When a taxable sale occurs in Arkansas, tax should be collected and remitted. Arkansas Gross Receipts Tax Rule GR-5. Ordinarily, sales taxes are paid by the seller of tangible personal property, specified digital products, or a digital code. Ark. Code Ann. § 26-52-508(a)(1) (Supp. 2019).

However, Act 822 of the 92nd General Assembly of Arkansas (“Act 822”) requires that marketplace facilitators collect sales tax on purchases made in Arkansas. Sections 17 and 19 of Act 822 require “marketplace facilitators” to collect sales and use tax on the sale of tangible personal property, taxable services, digital code, or specified digital products. Section 17 defines “marketplace facilitator” as follows:

[A] person that facilitates the sale of tangible personal property, taxable services, a digital code, a digital magazine, or specified digital products by listing or advertising tangible personal property, taxable services, a digital code, a digital magazine, or specified digital products for sale in a forum; and either directly or indirectly through an agreement or an 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.

Ark. Code Ann. § 26-52-103(36) (Supp. 2019). Section 17 defines “marketplace seller” as “a person that has an agreement with a marketplace facilitator under which the marketplace facilitator facilitates sales for the person.” *Id.* at (37).

Because the marketplace facilitator collects the tax on each of your client’s sales, your client would have not sales to report in any given month. Therefore, your client is not required to obtain a gross receipts tax permit or file the sales tax returns that are typically required of taxpayers who tangible personal property in this state.¹ However, if in the future your client wishes to engage in any transactions for which it would be responsible for collecting sales tax, your client must first receive an Arkansas gross receipts tax permit and then file all required sales tax reports.

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

¹ Arkansas Code Annotated § 26-52-201(a) (Supp. 2019) states that it is “unlawful for any taxpayer to transact business within this state prior to the issuance and receipt of an Arkansas gross receipts tax permit from the Secretary of the Department of Finance and Administration.” Upon application and receipt of a permit, the Taxpayer is required on or before the twentieth day of each month to file all sales tax reports required under Ark. Code Ann. § 26-52-501(b)(1) (Supp. 2019). However, while the Arkansas General Assembly has authorized the Secretary to establish certain special permits, *viz* Ark. Code Ann. § 26-52-201(e) (Supp. 2019), the Secretary has not established such a special permit. Because no special permit exists, a literal reading of Ark. Code Ann. § 26-52-201(a) (Supp. 2019) would result in permitholders reporting zero taxable sales for twelve consecutive months and their permit expiring by operation of law. *See* Ark. Code Ann. § 26-52-210(a)(1)(A). The Arkansas Supreme Court has held that “it does not engage in interpretations that defy common sense and produce absurd results.” *Green v. Mills*, 339 Ark. 200, 205, 4 S.W.3d 493, 496 (1999). Therefore, the Department does not require a business that operates entirely as a marketplace seller to obtain a gross receipts tax permit.

could result in a different opinion. You may rely on this letter opinion for a period of three years from the date of its issuance in accordance with Arkansas Gross Receipts Tax Rule GR-75.

Sincerely,

Chris McNeal
Revenue Legal Counsel