



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

**REVENUE LEGAL COUNSEL**

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August 3, 2020

[REDACTED]

RE: Sales Tax - Manufactured homes  
Opinion No. 20200501

Dear [REDACTED]:

I am writing in response to your April 30, 2020 request for a revenue legal opinion:

[REDACTED] is requesting a Legal Opinion from your office, that we can provide to the various Arkansas Revenue offices, showing that as an out-of-state Manufactured Home Dealer, we are required by Arkansas Statute to collect Sales/Excise tax from our customer(s) and pay said tax to the Department of Finance & Administration in Little Rock, and further, that the ET-1 form (Arkansas Excise Tax Return) with our Account I.D. number on it is proof that said sales tax has been paid on the new manufactured home for which we are requesting a title on behalf of our customer(s). Any other information you might find in your research of this matter, that you think will be helpful would be appreciated.

When we contact a Revenue Office to get a mailing address and to let them know we are needing a title change, we send the following: the MSO, which has been us, a copy of the ET-1 Form, showing Sales Tax has been paid, and a check for their fees. Since the customer knows we are doing the title work, is it necessary to also send the Power of Attorney that you provided to us?

**RESPONSE**

[REDACTED] must collect compensating use tax on the sale of new manufactured homes to Arkansas customers and must provide its customers with a receipt that displays the amount of tax collected. You may report and remit the tax to the Arkansas Department of Finance and Administration using Form ET-1. The Arkansas purchaser of the manufactured home must register the manufactured home with the Arkansas Office of Motor Vehicle for the purpose of receiving a certificate of title.

## Discussion

Arkansas Gross Receipts Tax, also referred to as Sales Tax, is generally applicable to the sale of tangible personal property and certain specifically enumerated taxable services. *See generally* Ark. Code Ann. §§ 26-52-301 *et seq.* (Supp. 2019); *see also* 2008-3 Arkansas Gross Receipts Tax Rules. The tax is computed based on the total value of compensation paid for the taxable property or service. Ark. Code Ann. § 26-52-103(19) (Supp. 2019); *see also* Arkansas Gross Receipt Tax Rule GR-3(H). When a sale of tangible personal property or the performance of such an enumerated service occurs in Arkansas, a taxable transaction occurs, and the tax should be collected and remitted. Arkansas Gross Receipts Tax Rule GR-5.

Arkansas Compensating (Use) Tax is due on the purchase of any tangible personal property that is purchased out of state and brought into Arkansas for use, storage, consumption, or distribution. Ark. Code Ann. § 26-53-106 (Supp. 2019). “Use,” with respect to tangible personal property, means the exercise of any right or power over tangible personal property incident to the ownership or control of that tangible personal property. Ark. Code Ann. § 26-53-102(30)(A) (Supp. 2019). The compensating use tax is assessed when the transportation of the property has come to rest or when the property has become commingled with the general mass of property in the state. Ark. Code Ann. § 26-53-106(b) (Supp. 2019); *see also Martin v. Riverside Furniture Corp.*, 292 Ark. 399, 401-02, 730 S.W.2d 483, 485 (1987). Once the transportation has ceased or the property is commingled, the property is no longer in the stream of interstate commerce and is subject to the compensating use tax. *See Martin*, 292 Ark. at 402, 730 S.W.2d at 485; *see also Skelton v. Federal Express Corp.*, 259 Ark. 127, 131, 531 S.W.2d 941, 94 (1976). There is a presumption that tangible personal property shipped, mailed, expressed, transported, or brought to this state by a purchaser was purchased from a vendor for storage, use, distribution, or consumption in this state. Ark. Code Ann. § 26-53-106(d)(2) (Supp. 2019).

### ***Duty to Collect and Remit Use Tax***

You have stated that your business is an out-of-state seller of manufactured homes. Manufactured homes are tangible personal property that are subject to Arkansas compensating use tax. Every out-of-state seller making a sale of tangible personal property for the purpose of storage, use, distribution, or consumption in Arkansas must collect the tax from the purchaser and give a receipt for the tangible personal property. Ark. Code Ann. § 26-53-124(a)(1)(A) (Supp. 2019). The required amount of the tax collected by the vendor from the purchaser shall be displayed separately upon the check, sales slip, bill, receipt, or other evidence of sale. *Id.* at § 26-53-124(a)(2). Therefore, you must collect the sales and use tax from a customer who purchases a manufactured home that will be transported to Arkansas, and you must provide a receipt or other evidence of sale that displays the Arkansas sales tax collected.

Every vendor selling tangible personal property for storage, use, distribution, or consumption in Arkansas must file with the Department on or before the twentieth day of each month a sales and use tax return for the preceding monthly period. Ark. Code Ann. § 26-53-125(a)(2) (Supp. 2019). The return must be accompanied by remittance of the amount of tax required to be collected by

the vendor. *Id.* at § 26-53-125(3). You may continue to use DFA Form ET-1 to report the collection of Arkansas compensating use tax.

### ***Transfer of Title***

Next, you ask about the procedure for transferring title of a new manufactured home in Arkansas. Arkansas Code Annotated § 27-14-1602(a) (Supp. 2019) provides: “An owner of a manufactured home or a mobile home shall register the manufactured home or mobile home with the Office of Motor Vehicle for the purpose of receiving a certificate of title to the manufactured home or the mobile home or for any other purpose.” In 2017, the General Assembly amended the statute to provide that this registration requirement does not apply to “[a] manufactured home or mobile home held for sale or resale by a licensed retailer ... or other holder in due course.” *Id.* at § 27-14-1602(a)(2)(B).


Under the plain language of the statute, the *owner* of the new manufactured home – under the facts you describe, the Arkansas purchaser – must register the manufactured home and obtaining the certificate of title in the owner’s name. You as the retailer are not responsible for registration and titling in Arkansas.

### ***Power of Attorney***

Finally, you ask about the necessity of a Power of Attorney form. The records and files of the Secretary of the Department of Finance and Administration concerning the administration of any state tax law are confidential and privileged unless an exception applies. Ark. Code Ann. § 26-18-313(a)(2)(A)(i) (Supp. 2019). The Department may not divulge or disclose information that is confidential and privileged under the statute. *Id.* at § 26-18-313(a)(2)(A)(ii). One exception that applies is the disclosure to the taxpayer’s authorized agent, at the taxpayer's request, of information that the Department has concerning that taxpayer. *Id.* at § 26-18-313(b)(5). A taxpayer may designate an authorized agent and the specific taxpayer information that the taxpayer authorizes the Department to release regarding that taxpayer by naming a person with a Power of Attorney on a form approved by the Department.

Under the facts that you have described, you would need an executed Power of Attorney to obtain information from the Department to obtain information about a specific customer. A Power of Attorney is not necessary for you to report tax on Form ET-1.

I have based this opinion 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. Only the requestor may rely on this opinion, and, pursuant to Arkansas Gross Receipts Tax Rule GR-75(B), this opinion only will be binding on the Department for three (3) years from the date of issuance.



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A copy of the Arkansas Gross Receipts Tax Rules referenced in this letter is available online at [http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008\\_3.pdf](http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf).

Sincerely,

Brad Young, Attorney  
Revenue Legal Counsel