



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

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Via Mail

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

RE: Sales & Use Tax – Medical Service Corporations
Opinion Number 20200507

[REDACTED]

Your letter on behalf of [REDACTED] has been assigned to me for response. Your letter asserts the following facts:

[REDACTED] is an Arkansas nonprofit corporation licensed and regulated as a “medical service corporation” by the Arkansas Insurance Commissioner under Title 23, Chapter 75 of the Arkansas Code. Please see attached Certificate of Authority from the Arkansas Insurance Department. In a letter dated November 1, 1989, a copy of which I have attached hereto, the Arkansas Department of Finance and Administration (the “*Department*”) confirmed that Arkansas Insurance Code 66-49 (now codified as Ark. Code Ann. § 23-75-120) exempts [REDACTED] from paying any sales or use tax. In a letter dated May 2, 2007, the Department again confirmed that [REDACTED], as a medical service corporation, was exempt from paying any sales and use tax; however, it raised the question as to whether the legislature intended for this exemption to exempt medical service corporations from paying gross receipts tax on their purchase. This letter is also attached hereto.

Thank you for your request for a legal opinion from the Arkansas Department of Finance and Administration. Our response to your inquiry is below.

RESPONSE

Your letter centers on the sales and use tax treatment of [REDACTED] as a medical service corporation. As explained more fully below, this letter provides the following conclusions:

- (1) Must [REDACTED] collect and remit sales tax when it sells property or services subject to gross receipts tax? Yes.
- (2) Are sales of property or taxable services to [REDACTED] exempt from gross receipts tax? Yes.

Sales and use tax is levied upon the gross proceeds or gross receipts derived from all sales of tangible personal property and certain enumerated services. Ark. Code Ann. §§ 26-52-301 (Supp. 2019) & 26-53-106 (Supp. 2019). When a sale of tangible personal property, or the performance of such an enumerated service, occurs in Arkansas, a taxable transaction occurs and tax should be collected and remitted. Arkansas Gross Receipts Tax Rule GR-5.

However, every corporation doing business pursuant to Title 23 Chapter 70 of the Arkansas Code is exempt from state, county, district, municipal, and school tax, including the taxes prescribed by the Arkansas Code, and excepting only tax on net direct written premiums under § 23-75-119 and § 26-57-601 *et seq.* and applicable fees prescribed by § 23-61-401 and other sections of the code, or the Insurance Commissioner's rules applicable to hospital and medical service corporations, and taxes on real and tangible personal property situated in this state. Ark. Code Ann. § 23-75-120(b) (Supp. 2019). Corporations doing business pursuant to Title 23 Chapter 70 of the Arkansas Code include hospital service corporations, medical service corporations, and hospital and medical service corporations, which are defined as "corporations organized under the laws of this state for the purpose of establishing, maintaining, and operating nonprofit hospital service or medical service plans, or combination of plans, whereby hospital, medical, and related services may be provided by hospitals, physicians, or others with which the corporations have contracted for the purposes, to such of the public as become subscribers to the corporations under contracts which entitle each subscriber to certain hospital or medical services or benefits, or both." Ark. Code Ann. § 23-75-101(a) (Repl. 2014). Such a hospital service corporation, medical service corporation, or hospital and medical service corporation may issue contracts to its subscribers only when the Insurance Commissioner has, by certificate of authority, authorized it to do so. Ark. Code Ann. § 23-75-107(a) (Supp. 2019).

The Arkansas Insurance Commissioner has given [REDACTED] a certificate of authority to do business as a medical services corporation. The certificate states that "THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in full compliance with all, and not in violation of any, of the applicable laws and lawful requirements made under authority of the laws of the State of Arkansas as long as such laws or requirements are in effect and applicable, and as such laws and requirements are, or may hereafter be changed or amended." Based on the language of the certificate and the language of the Code, the exemption set forth in Ark. Code Ann. § 23-75-120(b) (Supp. 2019) applies to [REDACTED] only to the extent that (1) [REDACTED] has received from the Arkansas Insurance Commissioner a certificate of authority to do business as a medical services corporation and (2) the Arkansas Insurance Commissioner has not found [REDACTED] out of compliance with any laws required of a medical services corporation.

As stated above, Arkansas law provides an exemption to a medical services corporation from all taxes except those specifically identified in Ark. Code Ann. § 23-75-120(b) (Supp. 2019). The exemption provided to medical services corporations is an entity-based exemption. *See* Arkansas Gross Receipts Rules GR-31(B) (setting forth an inexhaustive list of organizations exempt from sales and use tax). When an organization has been exempted from sales tax, sellers of tangible

personal property or taxable services need not collect the tax upon the gross receipts derived from the sales of tangible personal property or services to such specified organizations. Arkansas Gross Receipts Rules GR-31(A).

However, when an entity that benefits from an entity-based exemption (an “exempt entity”) makes its own sale of tangible personal property or taxable services, it acts only as an agent of the state in the collection of the sales tax that is due. *See* Ark. Code Ann. § 26-18-507(d) (Repl. 2012) (making a distinction between the party who bears the tax and the party who acts as an agent in collecting the tax). When an exempt entity performs the duty to collect, remit, and report the sale tax due, like any other seller of tangible personal property or taxable services, Ark. Code Ann. § 26-52-501; Arkansas Gross Receipts Rules GR-71(A), it has not itself borne the state tax in question. *See* Ark. Code Ann. § 26-18-507(d)(1) (Repl. 2012).

When the meaning of a state tax law is in controversy, the burden of establishing the proper construction of the statute shall be on the party claiming application of the tax or benefit of the tax exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(d) (Supp. 2019). If a well-founded doubt exists with respect to the meaning of a statute providing a tax exemption, the rule of strict construction shall require that the doubt be resolved against the exemption. *Id.* at (f)(2). The statute that exempts the gross receipts derived from a taxable sale to a medical services corporation from sales tax does not state that a medical services corporation is exempt from acting as an agent of the state in collection of the sales tax that is due when the medical services corporation makes its own taxable sale. Therefore, the statutory rules of construction require the doubt be resolved against exempting a medical services corporation from these requirements.

My 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 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