



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

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██████████  
*Via email only:* ██████████

RE: Gross Receipts Tax - Advertising  
Opinion 20200522

Dear ██████████

You have requested a legal opinion on behalf of ██████████ concerning the sales tax liability for the sale of advertising space on grocery store checkout dividers.

In an email dated May 20, 2020, you stated that your business owns dividers used at grocery stores to separate customer orders on the conveyor belt in the checkout line. Your business sells advertising space on these dividers to third parties. Based upon these facts, you have asked whether the sale of advertising space on grocery store checkout dividers is subject to Arkansas sales tax?

**RESPONSE**

Yes, as explained more fully below, the sale of advertising space on grocery store checkout dividers is taxable in Arkansas. The Arkansas Gross Receipts tax, commonly referred to as “sales tax” generally applies to all sales of tangible personal property and certain enumerated services unless a specific exemption applies. *See* Ark. Code Ann. § 26-52-301 (Supp. 2019). The Arkansas Tax Code defines the term “sale” to include lease or rental of tangible personal property. *See* Ark. Code Ann. § 26-52-103(26)(B)(i) (Supp. 2019); *see also* Arkansas Gross Receipts Tax Rule GR-20(A). 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.” *See also* Ark. Code Ann. § 26-53-102(25)(A) (Supp. 2019) *and* Arkansas Gross Receipts Tax Rule GR-3(Q). Grocery store checkout dividers are tangible personal property. Accordingly, the space on the dividers qualifies as tangible personal property. The sale or lease of that space would be subject to sales tax unless an exemption applies.

***a. NON-TAXABLE ADVERTISING SERVICES***

As explained more fully below, the sale of advertising space on the grocery store dividers is not subject to the advertising services exemption. Arkansas Gross Receipts Tax Rule GR-46(B)(1) provides a specific exemption for the sale of “advertising services” in Arkansas. Specifically, sales of advertising services are exempt from Arkansas gross receipts tax to the extent the services are performed by a “full service” advertising agency that offers a broad spectrum of advertising

services from conception of a concept through the placement and publication of produced ads. *See* Arkansas Gross Receipts Tax Rule GR-46(A)(1). By the definition given of an advertising agency in Arkansas Gross Receipts Tax Rule GR-46(A)(1) – the term “advertising agency” means a business which provides comprehensive, professional advertising services including, but not limited to, artwork, concepting, designing and any other creative services necessary to create, plan and implement an advertising scheme.

Based upon the information provided, [REDACTED] sells advertising space on grocery store dividers to third parties. You have not provided facts to demonstrate that your company qualifies as a “full service” advertising agency offering comprehensive, professional advertising services to its customers for purposes of creating and implementing an advertising scheme. Accordingly, [REDACTED] does not qualify for the advertising services exemption.

***b. EXEMPTIONS FROM TAX – NEWSPAPER, PUBLICATIONS, AND BILLBOARDS***

The sales of the following types of advertising space are exempted from sales tax under Ark. Code. Ann. § 26-52-401(13) (Supp. 2019):

- A. In newspapers and publications;
- B. Through billboard advertising; or
- C. On a public transit bus.

Arkansas Gross Receipts Tax Rule GR-48(A)(1) defines the term “newspaper” to mean a publication in sheet form containing reports of current events and articles of general interest to the public, published regularly in short intervals such as daily, weekly, or biweekly, and intended for general circulation. The term “billboard advertising services” is defined as any and all services rendered in connection with the rental or lease of advertising space on a structure which is affixed to the land for the purposes of posting advertising messages. *Id.* at (A)(4).

A grocery store checkout divider is not “a means of publication in sheet form containing reports of current events and articles of general interest to the public” so it would not be considered a newspaper. The checkout divider is not affixed to land, instead, it sits freely on the conveyor belt, thus, it cannot be considered a billboard. Finally, it is clear that the checkout divider is not a public transit bus. As there are no applicable exemptions, the sale of advertising space on the grocery store checkout dividers is taxable in Arkansas.

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 relied upon by the Taxpayer and will only be binding upon the Department for three (3) years from the date of issuance. *See* Arkansas Gross Receipts Tax Rule GR-75.

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,

Nina Samuel Carter  
Office of Revenue Legal Counsel