



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

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August 11, 2020

[REDACTED]

RE: Sales Tax - Sale of extended warranty to out-of-state resident
Opinion No. 20200601

Dear [REDACTED]:

I am writing in response to your May 27, 2020 request for a revenue legal opinion:

I work with [REDACTED] company located in [REDACTED] Arkansas. We are a construction and forestry [REDACTED] equipment dealer. About two years ago we sold a new [REDACTED] dozer to a customer that lives in [REDACTED] and also has a farm [t]here.

I also sold with the new machine some extended warranty. The customer provided me his tax exempt certificate from [REDACTED] (ag/timber exemption card). We delivered the machine to [REDACTED] to his farm exempting the entire sale from tax (Based on point of delivery). Fast forward two years later the customer is wanting to purchase additional extended warranty for this same serial number machine. Customer & machine are still located in [REDACTED]. My question is:

Is the selling of additional warranty to this machine taxable or tax exempt?

RESPONSE

If the buyer purchases the extended warranty in Arkansas, the sale would be subject to Arkansas sales tax. However, if the buyer purchases the extended warranty out of state, then the sale would be exempt from Arkansas sales tax.

Discussion

The Arkansas Gross Receipts (Sales) Tax is generally applicable to the sale of tangible personal property and certain enumerated services. Ark. Code Ann. § 26-52-301 (Supp. 2019). The tax is computed based on the total value of consideration paid for the taxable property or service. *Id.*; *see also* Ark. Code Ann. § 26-52-103(19) (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 the tax should be collected and remitted. Arkansas Gross Receipts Tax Rule GR-5. A “sale” means any transaction resulting in the transfer of either the title or possession, for ... valuable consideration, of tangible personal property or taxable services regardless of the manner, method, instrumentality, or device by which such transfer is accomplished. Arkansas Gross Receipts Tax Rule GR-3(M)(1). Sales tax applies to the gross receipts derived from the sale of contracts, including service contracts, maintenance agreements, and extended warranties, that provide in whole or in part for the future performance of or payment for services that are subject to gross receipts tax. Ark. Code Ann. § 26-52-301(7)(A) (Supp. 2019); Arkansas Gross Receipts Tax Rule GR-9(D)(1).

Arkansas is a destination-sourcing state. Pursuant to Ark. Code Ann. § 26-52-521 (Supp. 2019), retail sales of tangible personal property and services are sourced according to a hierarchy of rules. *See* Ark. Code Ann. § 26-52-521 (Supp. 2017); Arkansas Gross Receipts Tax Rule GR-76. Generally, if a purchaser receives a product or service at a business location of the seller, the sale is sourced to that business location. *Id.* at § 26-52-521(b)(1). If the purchaser does not receive the product or service at the business location of the seller, then the sale is sourced for sales and use tax purposes to the location where receipt by the purchaser occurs, including the location indicated by instructions for delivery to the purchaser known to the seller. *Id.* at § 26-52-521(b)(2). If neither situation applies, then the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith. *Id.* at § 26-52-521(b)(3).

The sale of an extended warranty includes the sale of the future performance of services that are subject to sales tax.¹ *See* Ark. Code Ann. § 26-52-301(7)(A) (Supp. 2019); Arkansas Gross Receipts Tax Rule GR-9(D)(1). In the situation that you have described, if the buyer purchases the extended warranty in Arkansas, then the transaction would be subject to Arkansas sales tax. However, if the buyer purchases the extended warranty from your business while out of state (for example, online or over the phone), then the transaction would not be subject to Arkansas sales and use tax because the sale is sourced to the location of the buyer as described above. Under that set of facts, the customer's order would be sourced to the location where the customer received the extended warranty and would not be subject to Arkansas gross receipts tax.

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.

¹ The service of initial installation, alteration, addition, cleaning, refinishing, replacement, and repair of farm machinery and implements is subject to sales tax. Ark. Code Ann. § 26-52-301(3)(b)(i)(c) (Supp. 2019).



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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.

Sincerely,

Brad Young, Attorney
Revenue Legal Counsel