



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

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December 3, 2020

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

RE: Sales Tax – Office Furniture Sales and Services
Opinion No. 20200615

Dear [REDACTED]:

I am writing in response to your request for a legal opinion concerning whether your organization must collect and remit sales tax on various activities in which your business engages:

I have been speaking with [REDACTED] in your department and he gave me your contact info to get the rules for applying tax to labor, design fees, project management fees, product, freight, etc. on client invoices.

We are a commercial office furniture provider that can have different line items on invoices. We would be in the same group as [REDACTED].

We have:

1. New/used office furniture that we have sold.
2. Labor to install new/used office furniture we have sold.
3. Labor to install new/used office furniture another furniture dealer may have sold. We would invoice the selling dealer for the labor to install the furniture they sold their client.
4. Labor to move a client's current furniture from one location to new location, such as a move.
5. Labor to reconfigure a client's current furniture into a new design in their current location.
6. Design hours that we would charge a client for those services.
7. Project management hours to see an order through.

8. Our suppliers may have shipping/freight charges that we have to pay on our invoices that we want to pass on to the client. Is this taxable?

There could be any combination of the services above on a single invoice. Please help me to understand which situations are taxable, and which are not.

The open-ended nature of your request is not conducive to a binding legal opinion. The following opinion is limited to the specific scenarios described in your request.

RESPONSE

Your company's sales and installation of new and used office furniture are subject to gross receipts tax. Fees charged for the relocation of furniture are not taxable unless that relocation is a part of the replacement of existing furniture. Design charges are generally not taxable, but project management charges are taxable. Shipping and freight costs incurred by you and passed on to the customer through an increase in price or an additional fee are subject to tax. Any non-taxable product offered by your company that is sold as a bundled transaction with a taxable product would be subject to tax.

1. The sale of new and used office furniture is taxable.

The sale of new and used office furniture is taxable. Arkansas Gross Receipts tax, more commonly known as sales tax, levies a tax on the gross proceeds or receipts resulting from the sale of tangible personal property. Ark. Code Ann. § 26-52-301 (Supp. 2019). Tangible personal property is personal property that "can be seen, weighed, measured, felt, or touched" Ark. Code Ann. § 26-52-103(30) (Supp. 2019). Office furniture, whether new or used, is tangible personal property and subject to sales tax unless a specific exemption applies. Based on the information you provided, it appears that no exemption would apply to sales of new or used office furniture by your organization. You must collect and remit sales tax on the sale of new and used office furniture.

2. The installation of new and used office furniture is generally a taxable service.

The installation of new and used office furniture is generally a taxable service. Certain enumerated taxable services are subject to sales tax within the state. Arkansas imposes sales tax on the "initial installation, alteration, addition, cleaning, refinishing, replacement, and repair" of "furniture [and] . . . office machines and equipment." Ark. Code Ann. § 26-52-301(3)(B)(i) (Supp. 2019). Initial installation is defined as:

[T]he first time setting up for use or service of the tangible property by connecting, fastening, attaching, joining, securing, building in, mounting, or otherwise affixing the property in the required location, except when the installation is provided in connection with the construction or substantial modification of a building or other improvement or structure affixed to real estate.

Therefore, you must collect and remit sales tax to the Department for fees charged to customers for the installation of furniture or equipment where that installation meets the definition above. The taxability of each installation will require a fact intensive inquiry prior to deciding whether to collect and remit tax.

The third question in your inquiry asks about the taxability of installation by your company of furniture sold by another dealer. In a subsequent email you elaborated on that question by stating:

There are cases where another furniture dealer either out of state, or in the state, may have a client in our area. That dealer is considered the selling dealer since they sold the furniture to the client, and they would then hire my company as the installing dealer. We would receive, deliver, and install the new or used furniture the selling dealer has sold to the client. We would then in turn invoice the selling dealer for our installation services. The client who purchased the furniture would not see a bill from us since we invoiced the selling dealer. (The selling dealer will usually pass our cost of installation to the client in their billing).

Installation of furniture is generally a taxable service. Your company must collect tax from the consumer of those services and remit that tax to the state of Arkansas. Here, the third-party furniture dealer contracts with your company to provide furniture installation services for its customer. The third-party furniture dealer remits payment to your company. There is no contract between your company and the purchaser, and no money is collected by your company from the purchaser. The third-party furniture seller is the consumer of the furniture installation services and should be charged sales tax by your company on all taxable services which it consumes. *See Ark. Code Ann. § 26-52-103(4) (Supp. 2019) (defining consumer).*

3. Charges for moving furniture to another location are not taxable where the relocation is not part of the replacement of the furniture.

Charges for moving furniture to another location are not taxable where the relocation is not part of the replacement of furniture. The relocation of furniture or equipment is not a taxable service under Arkansas law. One situation in which it would be taxable is where the relocation was part of the replacement of furniture, office equipment, or office machines. Ark. Code Ann. § 26-52-301(3)(B)(i) (Supp. 2019). An item that is replaced is removed in favor of another item. Therefore, the relocation of furniture or office equipment would be a taxable service where it is part of the process of replacing the furniture or office equipment to be relocated. Again, taxability of any specific transaction will need to be evaluated on a case by case basis. The same analysis would apply whether the furniture was being relocated to a new location or within the same location.

4. Design charges are generally not taxable.

Design charges are generally not taxable. The service of designing furniture layouts is not among the services expressly designated taxable by Arkansas law. Therefore, standing alone, it is not a taxable service. Where the design services are provided with the purchase of office furniture for no separate, identifiable charge, those services would become taxable because “gross receipts” or “sales price” means:

the total amount of consideration, including cash, credit, property, and services, for which tangible personal property, specified digital products, a digital code, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without a deduction for the following:

...

(iii) A charge by the seller for any service necessary to complete the sale . . .

Ark. Code Ann. § 26-52-103(19) (Supp. 2019). Sales tax must be collected on the entire “gross receipts” or “sales price” derived from the sale of the goods or services.

5. Project management services are taxable.

Project management services are taxable. In a subsequent email you stated that “project management” is “services that one of our team members would provide for a client that would involve checking a furniture order for accuracy, placing in order entry, following up on lead times from the manufacturers, coordinating the installation, supervising the installation, and following up on any punch list items until the project is complete.”

Although you will find no section of the Arkansas Code designating “project management hours” as a taxable service, the services you have described are nonetheless taxable. These services all appear to be services necessary to complete the sale of office furniture and installation or design services. Instead of being a stand-alone set of services, these functions are necessary to complete your company’s sale of its other products. Essentially, these services are indistinguishable from the installation or sale of new or used furniture. Pursuant to Ark. Code Ann. § 26-52-103(19) (Supp. 2019) (quoted above), these services are taxable.

6. Shipping and/or freight charges are taxable as part of the sales price of the taxable furniture sales.

Shipping and freight charges are taxable as part of the sale price of taxable furniture sales. Arkansas Code Annotated § 26-52-103(19) (Supp. 2019) prohibits deducting delivery fees from the taxable sales price. Further, Arkansas Gross Receipts Rule GR-18 provides “[d]elivery charges are part of the gross receipts or gross proceeds on which the tax must be collected and remitted unless the charges are billed directly to the purchaser by a carrier other than the seller.”

Passing these fees on to your customer through either an increase in the price of the product or an additional fee would result in your customer being liable for sales tax on the increased price or the additional fee.

7. How items appear on your invoices will impact the taxability of an item or service.

Any of the services not generally subject to tax may nevertheless be taxable if they are part of a bundled transaction. A bundled transaction is the retail sale of two or more products in which: (1) the products are otherwise distinct and identifiable; and (2) the products are sold for one non-itemized price. Ark. Code Ann. § 26-52-103(2)(A) (Supp. 2019); Arkansas Gross Receipts Tax Rule GR-93(C). Except as otherwise provided by statute or rule, a seller must collect sales tax on the sales price of a bundled transaction if *any* product included in the bundled transaction would be taxable if sold separately. Arkansas Gross Receipts Tax Rules GR-93(A) (emphasis added). Therefore, if your invoice itemizes the price of distinct and identifiable products or services, the transaction is not a bundled transaction and tax would be assessed only on the product or service that would independently be subject to tax.

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

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,

Keith K. Linder, Attorney
Revenue Legal Counsel