



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

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Re: Gross Receipts Tax – Taxability of Photography Services
Opinion No. 20200806

Dear ██████████,

Your request for a legal opinion has been referred to me for a response. I apologize for the delay in my reply. In your letter, you state:

I'm starting a sole proprietorship here in ██████████ Arkansas; it's a photography business run from home. I've been reading through the Doing Business in Arkansas booklet and searching online. I know I don't have to register the business with the State, but I'm having difficulty understanding if my sole proprietorship needs to file anything with the Department of Finance and Administration. Would you be able to help me with this? The business is just offering a photography service (specializing in weddings, engagements, etc.) and handing over digital copies of the photos- no physical items are being sold.

Your request states that you are starting a home-based photography business in ██████████, Arkansas. You have asked whether you need to file anything with the Department of Finance and Administration?

PERMIT REQUIRED

Yes. To the extent you will be performing taxable services in this state, you must contact the Department's Sales & Use Tax Section to obtain an Arkansas gross receipts ("sales") tax permit. The application will require you to provide your FEIN or your social security number and you will be provided with a sales tax permit number under which you will report your sales taxes each month. Arkansas Code Annotated § 26-52-201 governs sales tax permits and provides as follows:

- (a) It shall be unlawful for any taxpayer to transact business within this state prior to issuance and receipt of an Arkansas gross receipts tax permit from the Secretary of the Department of Finance and Administration.

- (b) A separate permit for each business location must be obtained from the secretary.
- (c) This permit shall be in addition to all other permits required by this Code.
- (d) Any taxpayer who engages in business without a permit, or after a permit has been suspended, shall be subject to the provisions and sanctions set forth in the Arkansas Tax Procedure Act, § 26-18-101 et seq.
- (e) The secretary is authorized to establish types and classifications of Arkansas gross receipts tax permits, including without limitation special permits for taxpayers whose principal line of business does not include the retail selling of tangible personal property, specified digital products, or a digital code or the performing of taxable services.

Ark. Code Ann. § 26-52-201 (Supp. 2019).

PHOTOGRAPHY SERVICES

Arkansas gross receipts (“sales”) tax must be collected and remitted on all sales of tangible personal property and certain enumerated services within the State of Arkansas unless a specific exemption applies. Ark. Code Ann. § 26-52-301 (Supp. 2019); Ark. Code Ann. § 26-52-101 *et seq.* The service of providing “photography of all kinds” is subject to Arkansas sales tax. Ark. Code Ann. § 26-52-301(4) (Supp. 2019). Arkansas Gross Receipts Tax Rule GR-10(D) was promulgated to clarify and implement the Arkansas Gross Receipts Tax Act of 1941, and provides:

D. The tax applies to the service of photography of all kinds. State and local sales tax apply to photography services based on where the customer receives the service. The photography service, including the sitting, is received when the customer views the product of the service (i.e. proofs, pictures, etc.).

Example 1: A Fayetteville photographer is hired to photograph the senior pictures of a Eureka Springs student. The photographer takes the pictures in Eureka Springs, but the pictures are picked up at the photographer's studio in Fayetteville. Arkansas state sales tax, as well as the City of Fayetteville and Washington County sales tax will apply because the customer receives the product in Fayetteville. (If the photographer charged a separate sitting fee, then Arkansas state, City of Fayetteville, and Washington County sales tax will also apply to the sitting fee.)

Example 2: A Fayetteville photographer is hired to photograph the senior pictures of a Eureka Springs student. The photographer takes the pictures in Eureka Springs, and makes the proofs available for viewing on its website. The applicable local tax is the first of the following locations known by the photographer: the address of the customer, the billing address of the customer, or the address of the photographer.

Example 3: A Conway photographer is hired to videotape a wedding in Little Rock and the wedding dance in Vilonia. The videotape is mailed to the customer's home in Mayflower. Arkansas state sales tax, as well as the City of Mayflower and Faulkner County sales tax will apply.

Example 4: A Fayetteville photographer is hired by a Bentonville resident to photograph pictures in Texas. The photographer takes the pictures in Texas, and per his customer's instruction, mails the proofs to Little Rock. Arkansas state sales tax, as well as the City of Little Rock and Pulaski County sales tax will apply.

Arkansas Gross Receipts Tax Rule GR-10(D) (Emphasis added).

Based upon the information contained in your letter, it appears that you will be providing photography services to your customers. If so, sales tax will be due on the services sold by your business to Arkansas based customers. Under the provisions of Ark. Code Ann. §26-52-301(4), the service of “photography of all kinds” is subject to Arkansas sales tax. *See also* Arkansas Gross Receipts Tax Rule GR-10.

It should also be noted that “photography of all kinds” is a service subject to tax as opposed to a taxable sale of tangible personal property. How the photographs are delivered to the customer is irrelevant to the taxability of the service.

Under Arkansas Gross Receipts Tax Rule GR-75, 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 changes in the facts or law could result in a different opinion. Because you did not ask for an opinion concerning a specific sales transaction, the aforementioned information is provided for general purposes only and will not be binding upon the Department. You may seek a supplemental opinion should you desire guidance in any topic not addressed within this opinion or if you have additional questions after reading this opinion. *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.

Sincerely,

David G. Scott, CFA, Attorney
Revenue Legal Counsel