



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

**Assistant Commissioner of Revenue
POLICY AND LEGAL**

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April 22, 2024

[REDACTED]
[REDACTED]
[REDACTED]
VIA EMAIL ONLY: [REDACTED]

RE: Gross Receipts Tax – Taxability of Admission Prices for Sightseeing Tours
Opinion Number 20211202

[REDACTED]:

I am responding to your request for an opinion on behalf of [REDACTED] (“Taxpayer”). In your email, you stated:

Based on the federal law for per head tax on our passengers, do we need to stop charging sales tax per passenger in our aircraft? It appears that once an aircraft enters into air commerce that it is not subject to state taxes. . . . Please provide guidance on this for me.

LAW

The Arkansas Gross Receipts Tax, also referred to as the “sales tax,” is generally applicable to the sale of tangible personal property and certain enumerated services. *See* Ark. Code Ann. § 26-52-301(1) and (3) (Supp. 2023). Sales tax also applies to the gross receipts derived from sales of “tickets or admissions to places of amusement or to athletic, entertainment, or recreational events, or fees for access to or the use of amusement, entertainment, athletic, or recreational facilities.” *See* Ark. Code Ann. § 26-52-301(5) (Supp. 2023).

In addition to sales tax, a tourism tax is imposed on the admission price to a tourist attraction. *See* Ark. Code Ann. § 26-63-402(4) (Repl. 2020). A tourist attraction is defined to include a local sightseeing tour and a helicopter tour. *See* Ark. Code Ann. § 26-63-401(3)(A) (Repl. 2020). The admission prices for the sightseeing tours sold by the Taxpayer are subject to sales tax and tourism tax under Ark. Code Ann. § 26-52-301(5) (Supp. 2023) and Ark. Code Ann. § 26-63-402(4) (Repl. 2020).

In some situations, federal law prevents a state from imposing a gross receipts tax or a tourism tax on the transportation of an individual traveling in air commerce. 49 U.S.C. § 40116 provides, in pertinent part, as follows:

(b) Prohibitions.--Except as provided in subsection (c) of this section and section 40117 of this title, a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title may not levy or collect a tax, fee, head charge, or other charge on --

- (1) an individual traveling in air commerce;
- (2) the transportation of an individual traveling in air commerce;
- (3) the sale of air transportation; or
- (4) the gross receipts from that air commerce or transportation.

(c) Aircraft taking off or landing in State.-- A State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight.

RESPONSE

Since the Taxpayer operates out of an airport in Arkansas, the Taxpayer is correctly charging tax on admission prices for sightseeing tours since its aircraft (helicopters and airplanes) take off and land in Arkansas as part of the flight. *See* 49 U.S.C. § 40116(c). Federal law does not preempt the imposition of gross receipts tax or tourism tax on the admission prices for Taxpayer's sightseeing tours over northwest Arkansas.

This opinion is based 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.

A copy of the Arkansas Gross Receipts Tax Rules referenced in this letter are available online at http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf.

Sincerely,



Paul Gehring
Assistant Commissioner of Revenue
Policy and Legal