



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

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November 23, 2022

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RE: Request for Revision
In the Matter of ██████████
Docket Nos: 20-235 & 20-236

██████████:

You requested a revision of the hearing officer's January 8, 2020 administrative decision. You timely filed the request on January 17, 2020. This letter constitutes the final decision of the Arkansas Department of Finance and Administration ("Department") under Ark. Code Ann. § 26-18-405 (Repl. 2020). Upon review of the revision request letter, the administrative decision, and the documentation contained in the file, I am sustaining the administrative decision in full.

FACTS

The factual findings of the hearing officer are adopted for the purposes of this response. The Taxpayer serves primarily as an approved contractor for ██████████. Its status as approved contractor allows it to, among other things, perform waste disposal and commercial lawn care services for ██████████. The Department conducted a sales tax audit for the period of June 1, 2013 through December 31, 2018. While the Taxpayer held a sales tax permit with the Department, at the time of the audit, it had never filed a monthly sales tax report or remitted any sales tax.

Upon review of the Taxpayer's records, including a waste disposal contract between the Taxpayer and ██████████, the Department determined that the Taxpayer was selling the service of solid waste disposal to ██████████, but not collecting or remitting tax. Tax was assessed on the Taxpayer's gross receipts for those services. The Taxpayer also received payments from ██████████ for commercial lawn care services. It did not collect or remit sales tax in connection with the sale of the lawn care services. Instead of performing those services itself, the Taxpayer hired a third party to perform the commercial lawn care services. The third party charged some sales tax to the Taxpayer and remitted that sales tax to the Department. Because the Taxpayer charged ██████████ more for the services than it paid the third party, a portion of the fee charged to ██████████ for lawn care services remained untaxed. The Department assessed sales tax on the Taxpayer's gross receipts for those services. The Taxpayer was given credit for all sales tax charged and remitted by the third party.

The Taxpayer timely protested the assessment and requested a hearing. The basis of its protest was its contention that it did not provide taxable services. Specifically, the Taxpayer protested that: (1) it did not provide taxable waste disposal services but instead provided a transportation service; (2) it did not provide taxable lawn care services and was only the supervisor of the lawn care services; and (3) the third party who provided the lawn care services remitted tax to the Department.

The Office of Hearings and Appeals held a hearing on November 6, 2019. The hearing officer issued a decision sustaining the Department's assessment. The hearing officer determined that: (1) the Department correctly assessed tax on the total gross proceeds paid to the Taxpayer for the taxable service of disposal of solid waste and (2) the Department correctly assessed tax on the gross proceeds received by the Taxpayer for the taxable service of commercial lawn care.

ANALYSIS

The Taxpayer timely requested a revision of the administrative decision issued on January 8, 2020. No new or additional facts were provided with the Taxpayer's request.

The Arkansas Tax Procedure Act provides that the Department bears the burden of proving that the tax law applies to a service sought to be taxed, and a taxpayer bears the burden of proving entitlement to a tax exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(d) (Repl. 2020). Statutes imposing a tax or providing a tax exemption, deduction, or credit must be reasonably and strictly construed in limitation of their application, giving the words their plain and ordinary meaning. *Id.* at § 26-18-313(a), (b), and (e). If a well-founded doubt exists with respect to the meaning of a statute imposing a tax or providing a tax exemption, deduction, or credit, the doubt must be resolved against the application of the tax, exemption, deduction, or credit. *Id.* at § 26-18-313(f)(2). When a tax statute is unambiguous, it is not necessary to refer to the Department's rules in order to construe the statute. *American Honda Motor Co., Inc. v. Walther*, 2020 Ark. 349, at 5, 610 S.W.3d 633. Instead, a court will construe the statute just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.*

I. Collection and Disposal of Solid Waste

The service of collecting and disposing of solid waste, including "food waste," is expressly taxable. Ark. Code Ann. § 26-52-316(a)(2) (Repl. 2020); Arkansas Gross Receipts Tax Rule GR-9.6. Here, the Taxpayer would park its trailers at a door at the [REDACTED] factory and wait for someone to load the trailer with food waste. Once the trailer was loaded, the Taxpayer would contact the landfill and let them know that it was going to be delivering food waste. The Taxpayer would haul the food waste to the landfill where it was disposed of by landfill personnel. The Taxpayer would pay the fees levied by the landfill. Taxpayer was paid over \$2,000 per truckload to collect the solid waste and deliver it for disposal. The amount of compensation received by the Taxpayer increased over time as landfill fees increased. The hearing officer properly concluded that the Taxpayer was providing the taxable service of collecting and disposing of solid waste.

The Taxpayer's contention that "there was no contract between the taxpayer and [REDACTED] for the collection and disposal of solid waste" is not persuasive. The taxability of waste collection and disposal services is not contingent on the existence of a signed, written contract.

II. Commercial Lawn Care

The services of lawn care and landscaping are subject to sales tax. Ark. Code Ann. § 26-52-301(3)(D)(i)(f) (Repl. 2020); Arkansas Gross Receipts Tax Rule GR-9.2. The Taxpayer had an agreement with [REDACTED] whereby [REDACTED] paid the Taxpayer \$4,925 per month to mow its commercial facilities. This constitutes the sale of taxable commercial lawn care and landscaping services by the Taxpayer. *Id.*; Arkansas Gross Receipts Tax Rule GR-3(M) (defining sale as "any transaction resulting in the transfer of either the title or possession, for a valuable consideration, of tangible personal property or taxable services regardless of the manner, method, instrumentality, or device by which such transfer is accomplished"). The fact that the Taxpayer decided to hire a third party to perform the mowing is irrelevant to determining the taxability of the transaction between the Taxpayer and [REDACTED].

The third party collected tax from the Taxpayer on the amount it charged the Taxpayer to perform the service. Credit was given to the Taxpayer for all amounts collected and remitted by the third party. The practical effect of that credit is that the Taxpayer was assessed tax on the difference between the amount paid to it by [REDACTED] and the amount it paid the third party to carry out its responsibilities. The assessment on that portion of the Taxpayer's gross receipts in connection with the lawn care and landscaping services was proper.

The hearing officer considered the facts and evidence in this matter and correctly applied Arkansas law in concluding that the Taxpayer provided taxable waste disposal and commercial lawn care services. The hearing officer properly sustained the assessment of additional sales tax and interest against the Taxpayer, and the facts and law discussed herein allow for no other conclusion.

CONCLUSION

For the reasons set forth above, I am sustaining the administrative decision and affirming the assessment. This concludes the Taxpayer's administrative remedies under the Arkansas Tax Procedure Act. The Taxpayer may seek relief from this decision according to the procedure set forth in Ark. Code Ann. § 26-18-406 (Repl. 2020).

Sincerely,

Charles S. Collins
Commissioner of Revenue