



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

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February 2, 2016

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

Re: Opinion No. 20150602

Dear [REDACTED]:

Your email to the Department of Finance and Administration (DFA), Revenue Legal Counsel, requesting a legal opinion has been referred to me for a response. I apologize for the delay in responding to your request. You have requested a legal opinion on behalf of your employer, [REDACTED], (hereinafter "Taxpayer"). Your email of June 23, 2015 provided as follows:

[REDACTED] is in the process of updating Sales Tax system to [REDACTED] software. We have Arkansas taxable/nontaxable discrepancies on the below items:

The items are presumed taxable as indicated in ARKANSAS RULES GROSS RECEIPTS TAX RULES or because no exemption found. Can you please reply via email indicating you agree the below items are taxable.

- 1) PARTS/TANKS-Tank Installation: Installation of tanks purchased from [REDACTED] [REDACTED] INITIAL INSTALLATION GR-9.17 & INSTALLATION CHARGES GR-18(C); GR-9; GR-7
- 2) PARTS/TANKS-Tote/Equipment Deposit: Tote/Equip deposit expect to return (not rental) GR-3. DEFINITIONS Section: H. GROSS RECEIPTS/PROCEEDS – SALES PRICE; Paragraph: 2(c)
- 3) GENERATOR-Services Contract: Services Contract is data analysis. No maintenance of a customer's generator On-site data analysis of customer fuel usage. GR-9. SERVICES SUBJECT TO TAX – TAXABLE SERVICES:
- 4) LUBES/OIL-Restocking: Restocking fee for returned product Cannot find anything pertaining to restocking Lubes/Oils product. Because no exemption found would the Fee consider taxable?

5) FUELS – Fuel Delivery Agreement: Truck and Driver rental <30 consecutive days. Rental/Lease with Operator (Renting a truck and driver to our customer and billing them by the hour for the use of our equipment and an operator. The customer is in charge of directing the delivery as the delivery to a location is designated by the purchaser) GR-20. LEASES AND RENTAL: G. RENTAL OF TANGIBLE PERSONAL PROPERTY WITH OPERATOR.

6) COMPANY DIVISION WIDE – Dry Run: Freight Delivery charge – no delivery actually made due to an unexpected circumstance

7) COMPANY DIVISION WIDE – Pump Out: Freight charge for pumping out and/or retrieving product (generally fuel) GR-18. WHAT CONSTITUTES GROSS RECEIPTS GR-3. DEFINITIONS: For purposes of these rules, unless otherwise required by their context, the following definitions apply: SECTION: H GROSS RECEIPTS/PROCEEDS – SALES PRICE; Paragraph: 2(c)

8) COMPANY DIVISION WIDE – Fuel Analysis: Services – Chemical analysis Fuel

9) COMPANY DIVISION WIDE – Oil Analysis: Services – Chemical analysis of Oil GR-9. SERVICES SUBJECT TO TAX – TAXABLE SERVICES

Thanks in advance,

██████████  
██████████

In order to provide a definitive legal opinion regarding your request, I would need additional information. I have contacted you several times over the past couple of months and provided you with a list of additional questions. To date, I have not received that information. In order to avoid any further delay, I will respond to your request based on the information contained in your initial request. Because insufficient information was provided to fully respond to your request, this opinion will be released for general information purposes and will not be binding upon DFA. In the event sufficient information is provided to DFA, the taxpayer may request a supplemental opinion.

Ark. Code Ann. § 26-52-301 (Repl. 2014) provides that Arkansas gross receipts tax is levied upon all sales of tangible personal property and certain enumerated services unless a specific exemption applies. Arkansas Code Annotated § 26-52-103(21)(A) (Repl. 2014) defines tangible personal property as personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.

I will attempt to address the items above in turn:

Installation of Tanks purchased from Taxpayer:

In order to provide a definitive opinion to this item, information is needed as to the specific location of the tank(s) installation; namely, whether it is affixed to real property or a motor

vehicle and whether it is moveable or free standing? However, as provided above, the sale of tangible personal property is taxable. Pursuant to Ark. Code Ann. § 26-52-301 (Repl. 2014) the service of initial installation, alteration, addition, cleaning, refinishing, replacement and repair of the following items of tangible personal property are subject to the tax: motor vehicles, aircraft, farm machinery and farm implements, motors of all kinds, tires, batteries, boats, electrical appliances, and electrical devices, furniture, rugs including carpets, flooring, upholstery, household appliances, television and radio, jewelry, watches, clocks, engineering instruments, medical instruments and surgical instruments, machinery of all kinds, bicycles, office machines, office equipment, shoes, tin and sheet metal, mechanical tools and shop equipment. See Gross Receipts Rule GR-9. You do not specify whether or not the installation is included as part of the sale or invoiced separately. However, sales tax must be collected on the sales price of a bundled transaction if any product included in the bundled transaction would be taxable if sold separately. See Gross Receipts Rule GR-93. Accordingly, if installation is included in the cost of the tank, the total transaction is taxable.

#### Equipment Deposit:

The taxability of a security deposit depends on how and if it is used. The scenario you present is the loaning of a “tote/equipment” where the security deposit is required as an incentive to return the equipment. I am unable to discern whether the failure to return the equipment results in a forfeiture of the security deposit, however it is implied that security deposit would be retained. A security deposit would not be taxable unless it is converted into a rental payment or payment for the value of equipment not returned. Failure to return the loaned equipment would result in a transfer of title to the equipment and the transaction would become a taxable sale. See Gross Receipts Rule GR-3.

#### Generator Services Contract:

You state that the generator services contract is for data analysis and no maintenance of a customer’s generator is performed; an onsite analysis of a customer’s fuel usage is produced. Arkansas Code Annotated § 26-52-301(7)(A) (Repl. 2014) and GR 9(D) provides that “contracts, including service contracts, maintenance agreements and extended warranties, which in whole or in part provide for the future performance of or payment for services which are subject to gross receipts tax.” In order to provide a definitive opinion under § 26-52-301(7)(A), more information is needed; namely, a copy of the service contract as well as additional information regarding the data analysis and the meaning of “onsite analysis fuel.”

#### Restocking Fees:

In Arkansas, sales tax is imposed on the sale of tangible personal property and certain specified services. Restocking is considered a service that is not taxable within the State of Arkansas. Therefore, restocking fees charged to your customers are not subject to sales tax.

#### Fuel Delivery Agreement:

You inquired as to the taxability of a Truck Rental/Lease with Operator (<30 consecutive days). You provided a scenario wherein your customer rents a truck and driver by the hour.

You stated that the customer is in charge of directing the delivery because the delivery location is designated by the purchaser.

If tangible personal property is rented with an operator's services included, the rental of the property and operator service is a non-taxable service, provided that the service alone would have been exempt from tax. See Ark. Code Ann. § 26-52-103(15)(B)(iii)(a). If, however, the property alone is rented, then the sales and rental tax shall apply. See Gross Receipts Rule GR-20(G).

**Dry Run Freight Delivery Charge:**

In this scenario, the customer is charged with a “dry run” delivery charge after the failed delivery attempt due to an unexpected circumstance. I am unclear as to what a “dry run” delivery consists of and would need additional information to respond to this item.

**Pump-Out Charge:**

In Arkansas, sales tax is imposed on the sale of tangible personal property and certain specified services. Although I would assume “pumping out” to be a service, I am unclear as to the service being performed.

**Fuel Analysis Services:**

In Arkansas, sales tax is imposed on the sale of tangible personal property and certain specified services. Although I would assume “fuel analysis” to be a service, I am unclear as to the service being performed.

**Oil Analysis Services:**

In Arkansas, sales tax is imposed on the sale of tangible personal property and certain specified services. Although I would assume “oil analysis” to be a service, I am unclear as to the service being performed.

This opinion is based upon my understanding of the facts as set forth in your letter, as current Arkansas law, rules and regulations govern those facts. Any change in the facts or law could result in a different opinion. Please be advised that this opinion may only be relied upon by [REDACTED], and will only be binding upon the Department for three (3) years from the date of issuance.

See Arkansas Gross Receipts Tax Rule GR-75, which can be printed or down loaded from the Department’s website at:  
[www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008\\_3.pdf](http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf)rules.

Sincerely,

Lisa Ables  
Revenue Legal Counsel