



STATE OF ARKANSAS

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June 26, 2017



RE: Gross Receipts Tax – Taxability of Medical Marijuana Sales  
Opinion No. 20170525

Dear [REDACTED],

Your email of May 24, 2017 has been referred to me for response. Per your letter, you are seeking an opinion regarding the taxability of medical marijuana sales at medical marijuana dispensaries and cultivation facilities.

RESPONSE:

All sales of tangible personal property are subject to gross receipts tax, unless the items are specifically exempted by law. Ark. Code Ann. § 26-52-301(1)(Repl. 2014). Arkansas Code Annotated § 26-52-103(20)(A) (Repl. 2008) 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[.]” Sellers of tangible personal property are responsible for collecting and remitting any applicable sales, use and excise tax to the Department. *See* Ark. Code Ann. § 26-52-508 (Repl. 2014).

Arkansas Code Annotated § 26-52-401(12)(A) provides an exemption for the “[g]ross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the state if the sales within the state are made to persons to whom gross receipts tax permits have been issued as provided in § 26-52-202.” *See* GR-53.

Currently, the state sales tax rate on sales of tangible personal products is six and one half percent (6.5%) of the gross receipts or gross proceeds derived from the sale. *See* Ark. Code Ann § 26-52-301 and Arkansas Gross Receipts Rule GR-4. In addition, sales are subject to county and local sales tax rates, which vary by location throughout the state.<sup>1</sup>

Per Ark. Const. amend. XCVIII, § 17(a), the “sale of usable marijuana is subject to all state and local taxes at the same rate as other goods.” Additionally, the sale of usable marijuana is subject to the Arkansas Medical Marijuana Special Privilege Tax Act of 2017. *Id.* Arkansas Code

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<sup>1</sup> State, county, and city sales tax rates can be found by entering a physical address into the Department’s state tax lookup tool found at [http://www.arkansas.gov/dfa/excise\\_tax\\_v2/st\\_zip.html](http://www.arkansas.gov/dfa/excise_tax_v2/st_zip.html).

Annotated § 26-57-1504 provides that a “cultivation facility, dispensary, or other marijuana business shall collect and remit a special privilege tax of four percent (4%) from the gross receipts or gross proceeds derived from each sale of usable marijuana on forms and in a manner specified by the Director of the Department of Finance and Administration.” *See* Acts 2017, No. 1098, Section 2.

**Sales by Cultivation Facilities.** Cultivation facilities grow medical marijuana for sale to other cultivation facilities, dispensaries, processors, and distributors. Cultivation facilities may sell medical marijuana exempt from gross receipts tax to another cultivation facility, dispensary, processor, or distributor if the purchaser is regularly engaged in the business of reselling marijuana and holds a valid sales tax permit. However, the cultivation facility must collect and remit to the Department the 4% special privilege tax on the sale, regardless of whether the sale is for resale.

**Sales by Dispensaries.** Dispensaries primarily sell medical marijuana directly to eligible members of the public. Dispensaries must collect and remit the applicable state, county, and city sales tax and 4% special privilege tax on the sale of medical marijuana to eligible members of the public.

Dispensaries may sell medical marijuana to another dispensary, cultivation facility, processor, or distributor regularly engaged in the business of reselling marijuana and who holds a valid sales tax permit exempt from gross receipts tax. However, the dispensary must collect and remit to the Department the 4% special privilege tax on the sale, regardless of whether the sale is for resale.

This opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules and regulations. Any change in the facts or law could result in a different opinion. You may rely on this opinion for three years pursuant to Ark. Gross Receipts Tax Rules GR-75(B).

Sincerely,



Lauren Ballard, Attorney  
Revenue Legal Counsel