



**Arkansas Sales & Use Tax 101**  
**A Basic Level Overview for**  
**CPAs**

September 23, 2022

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**Arkansas Society of Certified Public Accounts**  
**Annual Accounting & Auditing Conference**

# With You Today



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# With You Today



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# LIMITATION OF PURPOSE

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This document supports SALTA, PLLC's marketing of professional services, and is not written tax advice directed at the particular facts and circumstances of any person. We encourage you to contact us or an independent tax advisor to discuss your particular situation.

# LEARNING OBJECTIVES

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Gain a basic understanding of Arkansas sales and use taxes so that you can recognize important issues in order to properly advise your employer or your clients regarding sales and use tax matters

# AGENDA

- 1) Transactions on Which These Taxes are Imposed
- 2) Exemptions
- 3) Basis of The Tax & Local Tax
- 4) Contractors
- 5) Doing Business in Other States

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## Other excise taxes

- Tourism Tax - 2% on rentals and lodging associated with tourism.
- Short-term rental tax - 1% on rentals of tangible personal property for <30 days.
- Residential Moving Tax - (Happy Trails tax)
- Soft drink tax – applied on wholesale level
- Rental Vehicle Taxes
- Waste Tires and Battery Disposal Taxes



# Imposition

The Arkansas Gross Receipts Act (sales tax) **applies to sales of tangible personal property and certain services**. Ark. Code Ann. Sect. 26-52-104

# What types of sales are subject to sales and use taxes?

- Tangible personal property – by default
- Real property – not taxable
- Intangible property – not taxable – except digital downloaded products...
- Services – only on specified services

## Exclusions – Real & Intangible Property

- By default, sales of real property and intangible property are not taxable because no law imposes tax on these types of transactions generally. These transactions are **excluded** from taxation.
- In Arkansas, no sales of real or intangible property are taxed EXCEPT for “specified digital products”

# Digital Products

Since 2018, sales tax is imposed on sales of digital products, including:

- Digital audio, audio-works, and books
- Digital codes – means a code sold to download a digital good

# Services

- By default, sales of services are not taxable because no law imposes tax on these types of transactions generally. These transactions are **excluded** from taxation.
- However, Arkansas has imposed tax on numerous specific types of services.

## Services on which sales tax has been imposed:

- Accommodations/lodging – Air BNB, Kayak, VRBO, etc.

Accommodation intermediaries are required to collect tax on sales of overnight lodging.

- Armored car transport
- Boat storage and docking
- Body piercing, tattooing, and electrolysis services
- Cable television, video, and radio services
- Campground furnishing of camping or trailer spaces

## Services subject to sales tax:

- Cleaning and janitorial for buildings\*\*\*
- Cleaning of parking lots, gutters, and pools
- Dry cleaning & laundry
- Fishing guides
- Fur storage
- Initial installation, alteration, addition, cleaning, refinishing, replacement and repair of machinery and other objects\*\*\*
- Lawn Care & landscaping

## Services subject to sales tax:

- Locksmith services
- Motor vehicle parking & storage
- Pager services
- Pest control services
- Pet grooming and kennel services
- Photography
- Pool cleaning



## Services subject to sales tax:

- Printing
- Private clubs
- Security & alarm monitoring services
- Solid waste disposal
- Tanning Salon
- Telephone answering services
- Wrecker & towing

## \*\*\* Repair, Maintenance, and Installation ("Fixing") Services \*\*\*

When the type of maintenance type service listed in List A is performed on the types of objects in List B, the service is taxable:

- **List A (Type of Service)** - initial installation, alteration, addition, cleaning, refinishing, replacement and repair ...  
of the following items of tangible personal property:

# Repair, Maintenance, and Installation ("Fixing") Services

- **List B (Type of Object):**

**Mechanical:** motor vehicles, aircraft, farm machinery and farm implements, motors of all kinds, tires, batteries, boats, electrical appliances, and electrical devices, household appliances, television and radio, watches, clocks, engineering instruments, medical instruments and surgical instruments, *machinery of all kinds*, bicycles, office machines, office equipment, tin and sheet metal, mechanical tools and shop equipment

# Repair, Maintenance, and Installation ("Fixing") Services

## List B (Type of Object):

Other: furniture, flooring (including carpets, rugs, and other flooring), upholstery, jewelry, shoes

# Repair, Maintenance, and Installation ("Fixing") Services

EXCEPTION: Car washing (but not car detailing) was exempted from the taxation of services to motor vehicles based since 2021. (Instead, car wash operators pay a special tax on water usage.)

## Services and Rentals – Who is responsible for tax?

- Rental v. Service
  - Operators, tool supervisors and bare rentals
- Service provider
  - Consumer of materials used in process
  - Separately stated materials transferred to customer are taxable to customer, purchased for resale
  - Examples: plumber, auto or appliance repair

# Maintenance Contracts

- Taxable if the contract is to supply taxable services such as repair machinery
- Certain extended warranties on motor vehicles may not be taxable

## Defaults – Tangible Personal Property (“TPP”)

- By **default**, sales of TPP are taxable because the imposition statute states that sales of TPP are taxable
- Exceptions: a specific **exemption** must apply to a transaction for the sale to be tax free



## Example

- Furniture Inc. sells a desk. The sale is taxable, unless the purchaser provides a resale exemption certificate or some other exemption certificate – such as a non-taxable purchaser (Red Cross, Boy Scouts, etc.).

# Exemptions

## TYPES OF EXEMPTIONS

- Exemptions Items – the type of good or service
- Exempt Purchasers
- Exempt Sellers
- Exempt Usages – manufacturing, resale, agricultural, etc.

Exemptions will be covered in more detail later in this presentation

# Transactions between related entities

**Transaction based tax** - Imposed on transactions in which ownership of property is transferred

- Applies to **inter-company** sales or transfers
- Does not apply to intra-company transfers

# Transactions between related entities - Example

Acme Company has two legal entities: FabCo and ContractorCo.

Fabco builds components for large storage tanks and transfers them to ContractorCo

ContractorCo builds these components into large tanks at customer sites.

**QUESTION:** Are the transfers from Fabco to ContractorCo taxable? **ANSWER:** Yes.

## Withdrawals from stock:

- Taxable - normally
- Basis:
  - Donated goods to 501©(3), churches, public education and victims or emergency service workers in disaster area – **Zero**
  - Resellers & contractors: **Cost of materials purchased** (GR 18 and 21)
  - Manufacturers: **Sales price of finished goods**

## Withdrawals from stock:

- Free meals provided to employees of restaurants are taxable at the sales price; If provided at discounted charge, taxable at discounted price.
  - Examples: Superburger provides \$5 meal:
    - Free – taxable amount \$5
    - Discounted to \$1 – taxable amount \$1
  - Exception: excess food that had been prepared provided on an irregular basis

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# STATUTORY EXEMPTIONS

- Some items are exempt because of what they are – regardless of who sells, purchases, or how they are used
- No exemption certificates are required to exempt sales of statutorily exempt items

Examples: groceries (partial exemption), prescription drugs and prosthetic devices, gasoline on which fuel tax is paid; human tissue/blood; bullion, vehicles <\$4K



# PURCHASER EXEMPTIONS

- **Misconception:** All entities that are exempt from income taxes (for example 501©(3) organizations) are exempt from sales taxes

For example: churches, the State of Arkansas, and local governments are not exempt purchasers

- **However:** specific exemptions may apply to some state government transactions: Sales to the Highway & Transportation Department of sand or gravel used in road maintenance or construction

# Purchaser Exemptions

- An extensive list of exempt organizations have had exemptions granted by the legislature
- Purchases by organizations not specifically granted exemption are taxable.

# Exempt Entities – organizations that can make purchases on exempt basis – GR 31:

1. The Boy's Clubs of America or any local council or organization thereof;
2. The Girl's Clubs of America or any local council or organization thereof;
3. The Poets' Roundtable of Arkansas;
4. The Boy Scouts of America or any of the Scout Councils located in Arkansas;
5. The Girl Scouts of the United States of America or any of the Scout Councils located in Arkansas;
6. U. S. Governmental agencies;
7. 4-H Clubs and FFA Clubs located in Arkansas;
8. The Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation and the Arkansas Future Farmers of America Association;
9. Orphans' homes or children' homes located in Arkansas which are not operated for profit and which are operated by a church, religious organization or other benevolent, charitable association;
10. Public Housing Authorities organized pursuant to Ark. Code Ann. § 14-169-201 et seq.;
11. Regional Water Distribution Districts organized pursuant to Ark. Code Ann. § 14-116-101 et seq.;
12. The Arkansas Country Music Hall of Fame Board;
13. The American Red Cross;
14. Humane Societies not operated for a profit and organized under Ark. Code Ann. § 20-19-101 et seq. for the prevention of cruelty to animals.
15. The rental or lease of specialized equipment used in the filming of a motion picture which qualifies for the tax incentives provided by Ark. Code Ann. § 26-4-201 et seq.
16. Fort Smith Clearing House, Ark. Code Ann. § 26-52-424;
17. Habitat for Humanity, Ark. Code Ann. § 26-52-401 (31);
18. Heifer Project International, Inc., Ark. Code Ann. § 26-52-401 (34);
19. The Salvation Army, Ark. Code Ann. § 26-52-401 (33);
20. The value of goods withdrawn from inventory and donated to the National Guard, emergency services workers, or volunteers providing disaster relief services in a county which is declared a disaster area by the Governor pursuant to Ark. Code Ann. § 26-52-401 (38);
21. Sales made by the canteen at Camp Robinson to active and retired members of the armed forces and full-time employees of the Arkansas Military Department are exempt under Ark. Code Ann. § 12-63-406. If sales are made to other purchasers, they are subject to gross receipts tax.
22. The Arkansas Symphony Orchestra, Inc. pursuant to Ark. Code Ann. § 26-52-401 (37);
23. Regional Airport Authorities organized pursuant to Ark. Code Ann. § 14-362-121.

# SELLER EXEMPTIONS

- The exempt status of non-profit organizations pertaining to purchases and sales is **not** identical
- In general, sales by charitable organizations are not subject to sales tax if
  - they are not-for-profit, and
  - they do not compete with for-profit organizations

# USAGE EXEMPTIONS

- Resale
- Manufacturing
- Pollution Control
- Agricultural
- Medical: prosthetics and prescription drugs
- Others...

# Resale exemption

- This exemption applies to goods that are resold, including packaging materials.
- Vendors – IMPORTANT – Collect and maintain valid exemption certificates!!!

# MANUFACTURING EXEMPTION

- Machinery & equipment – including:
  - molds, frames, cavities, and forms ...;
  - dies, tools, and devices attached to or a part of a unit of machinery ...;
  - components of a mold or die
  - includes saw blades and drill bits

## Machinery & equipment – including:

- testing equipment (Q.A.)
- controls and measurement equipment
- machinery and equipment that produces steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process
- Catalysts, chemicals, reagents, and solutions used in manufacturing or to reduce pollution.

( Sec. 26-52-401 (35), A.C.A.; Reg. GR-55.1)



# Machinery & equipment that is NOT exempt:

- not “used directly” such as:
  - machinery or tools used in repairing machinery
  - HVAC generally except special situations
- hand tools
- equipment used solely before or after the manufacturing process
- R&D equipment

## QUALIFICATIONS for exemption (Sec. 26-52-402, A.C.A.):

- Exemption begins at the initial stage where the raw material is first acted upon
- Exemption ends at the completion of the finished article of commerce
- Machinery & equipment must be “directly used”
- Predominant or exclusive usage is NOT required

# Statute

- Sec. 26-52-402, A.C.A.:
  - Directly usage requires that machinery or equipment must cause a recognizable and measurable mechanical, chemical, electrical, or electronic action to take place as a necessary and integral part of manufacturing, the absence of which would cause the manufacturing operation to cease. "Directly" does not mean that the machinery and equipment must come into direct physical contact with any of the materials that become necessary and integral parts of the finished product. (also see Reg. GR-55)

# Utilities

- Utilities – state (not local) exemption all but 1.125% (increased from 0.625 – Act 915 2021)
  - Usage must be >50% used in manufacturing
  - Must apply to DF&A for exemption approval
  - If exempt portion claimed is <100%, must compute the full tax on the non-exempt portion
  - Provide certification to the utility provider
  - Refundable for refund for period in SOL
  - Now includes coal (Act 915 2021)

# Repairs

- Repairs – fully exempt following a phase in that was completed July 1, 2022.

# Manufacturing exemption - Printers

- Act 880 of 2021 clarified that printers qualify as manufacturers
  - Printing equipment treated as manufacturing equipment
  - Materials purchased for incorporation into finished product qualify for resale exemption

# Pollution Control Exemption

- Includes:
  - Machinery and equipment
  - Repair parts
  - Chemicals
  - The regulation states that the equipment must be required by the US EPA or AR DEQ

# Agricultural Exemption

- Complete machinery used in agricultural production (includes timber harvesting) is exempt
- Repairs are not exempted
- Water used in poultry production



# Oil & Gas and Mining Exemption

- GR 57 – Exempt – new wells or deepened wells:
  - Drilling rigs, centrifuges, shakers used in drilling process; downhole tubulars, pumps, etc.
  - Wellhead equipment (“Christmas tree”)
  - Auxiliary equipment: compressors or generators; separators, dehydrators – (excluding storage tanks)
  - Drilling mud and proppants
  - Labor to drill, recomplete (change zones), or re-drill (deeper)

# Oil & Gas and Mining Exemption

- GR 66/57.G (Pollution Control) - Exempt:
  - Surface casing and concrete used to enclose the casing, down hole casing, injection tubing, and well bottom packer;
  - Brine disposal well, including the inline pipeline pumps and wellhead booster pumps, valves and pipes used to transport the brine to a brine disposal well; and
  - Pit liners.

- **Workovers and Repairs:**

AR: GR 57 – says that these are taxable, but since the exemption for oil and gas wells is based on the manufacturing exemption, we believe that this regulation does not accurately apply to what is essentially repaired of manufacturing equipment.

- **Taxable:**

- Storage tanks
- Water used by service providers
- Piping after separator for oil, or after discharge from compressor at gathering location for gas

# Exemptions – Car Wash Operations

- Exempt: Sale of car wash services and ancillary services when provided through an “automatic car wash”, a “car wash tunnel” or a “self-service bay”
- Exempt: Goods and services purchased by car washes for use in an automatic car wash, a car wash tunnel, or a self-service bay or as part of an ancillary service
- Taxable: Levied on car wash operators based on water consumed by “Car Wash Tunnels” and “Automatic Car Washes”. This tax does not apply to water consumed in self-service bays

# Occasional Sale Exemption

- GR-49
  - A. The gross receipts derived from **isolated sales** not made by an established business or in an established manner are exempt from the tax
  - B. “**Isolated sale**” means the one-time **sale** of an item, or group of items not made by an established business of any kind or character

- Exemptions: Headscratcher:

GR-34.B

- Gross receipts derived from the sale of **new automobiles** to a **veteran** of the United States Armed Services **who is blind** as the result of a service connected injury shall be exempt ...

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# Basis of The Tax

Bundling – Omelette principal

Basis subject to sales tax includes:

- The total cost of the item ...
- Includes freight and installation
- Credit for trade-ins does not reduce the taxable basis.
- Manufacturer's coupons and rebates do not reduce the taxable basis
- Services – includes expense reimbursements



Basis subject to sales tax excludes:

- Discounts, including prompt payment discount
- Interest/finances charges
- Any tax separately stated on the invoice

# Local Tax

- Rebates of local tax are available to business purchasers where the taxable amount per a single invoice  $> \$2,500$ 
  - Purchaser is not required to be registered
  - Rebates can be maximized ...
  - 1 year SOL
  - Rebates are claimed by filing with the DF&A or ATAP

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# Contractors are Consumers

- Contractors – are deemed to be consumers of materials purchased:
  - Contractors are treated as consumers of the TPP that they either incorporate into real property or consume during construction. As such, they must pay tax on the materials they use. Their billings are not taxable.
  - Consumers use tax may be due on **equipment brought into the state**

## Contractors – Pass Through Exemptions

- Normally, the exempt status of customers DO NOT pass through to contractors in AR
- Contracts performed for the US Government do NOT allow contractor to purchase materials tax free  
Contractors must pay tax on materials used in these projects.
- The manufacturing exemption does pass through to contractors

# Contractors – Huge Difference Between States

- LA, MO & OK – contractor pays tax on materials, no tax on sales
- OK – numerous pass-through exemptions
- TX – residential v. commercial; separated v/ lump-sum; new v. remodeling; 501.c.3 exemption passes through
- MS – Contractor tax on general; purchases tax free w “MPC”
- KS – Contractor pays tax on materials; charges tax on remodeling ; 501.c.3 exemption passes through

## Contractors – Multi-role

Contractors sometimes “wear multiple hats” – functioning as a contractors, retailers, fabricators or service providers.

Examples:

- Fencing contractors who also sell fencing materials over the counter = retailer
- HVAC contractors who fabricate ductwork and sell it to other parties = fabricator/retailer
- Contractors who repair electrically powered appliances (furnaces, elevators, etc.) = taxable service provider

## Contractors: Providing Taxable Services

- Contractors: providing taxable services(see GR 9.17.B,C, and D)
  - Initial installation, replacement or repair of
    - mechanical equipment
    - flooring – hard flooring and flooring covers
  - Includes the initial installation of mechanical units in an existing building



## Exemptions to taxable services

- New building or substantially modified building
- Service pertaining to manufacturing equipment
- Installing passive/non-mechanical components like ductwork or structural components

## Contractors: who also provide taxable services

- If both taxable and nontaxable services are provided, the nontaxable charges must be separately stated on the invoice. Otherwise, the entire charge will be taxable.
- The resale exemption could apply
- Sales to exempt entities can be exempted

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## Nexus – Traditional Basis

- Traditionally: Prior to the US Supreme Court Wayfair ruling in 2018, nexus required that the taxpayer have at least more than a minimal amount of **physical presence** in a state.

# Physical Nexus

- Factors creating nexus include payroll or property located in a state.
- Temporary presence in a state constitutes nexus.
- True regardless of employee versus contract worker

# Monitoring Physical Nexus

- Sellers need to be aware of changes in business that could create nexus:
  - Sales activities into additional states
  - Deliveries in company vehicles
  - Repairs or installations
  - Employees in additional states
  - Inventory or facilities in additional states

# Economic Nexus

- Because of the Supreme Court *Wayfair* decision in 2018 nexus can now be established based on values of sales into states
- States now can impose their sales tax laws on vendors who have no physical presence in their state
- The effect of this change extends far beyond large e-commerce sellers

## Current Status

- All states imposing sales tax impose economic nexus law
- Most states have established an annual sales threshold of \$100,000 (5 states are higher: TX is \$500K)
- The measurement of “sales” varies by state



# Monitoring Economic Nexus

- Check sales by state on a regular basis to monitor approaching thresholds

## Nexus and Locally Administered Taxes

- Nexus also applies to “home-ruled” jurisdictions separately in AL, AK, CO, and LA
- For the home-ruled jurisdictions, nexus exists in each specific location based on presence in that jurisdiction
- AK Note: jurisdictions have established a mechanism to establish economic nexus

# QUESTIONS

Thanks for your attendance today.

You are welcome to call anytime we can help.

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