

SB 1396

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THE STATE SENATE  
Monday, February 15, 2010

Senate Bill No. 1396  
As Amended

SENATE BILL NO. 1396 - By: Mazzei and Stanislawski of the Senate and  
Hickman of the House.

[ revenue and taxation - Streamlined Sales and Use Tax  
Administration Act - effective date ]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1354.15, as  
amended by Section 4, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2009,  
Section 1354.15), is amended to read as follows:

Section 1354.15 As used in the Streamlined Sales and Use Tax  
Administration Act:

1. "Agreement" means the Streamlined Sales and Use Tax  
Agreement;

2. "Certified automated system" means software certified  
jointly by the states that are signatories to the Agreement to  
calculate the tax imposed by each jurisdiction on a transaction,  
determine the amount of tax to remit to the appropriate state, and  
maintain a record of the transaction;

3. "Certified service provider" means an agent certified  
jointly by the states that are signatories to the Agreement to  
perform all of the seller's sales tax functions;

1           4. "Commission" or "Tax Commission" means the Oklahoma Tax  
2 Commission;

3           5. "Model 1 Seller" means a seller that has selected a  
4 certified service provider as its agent to perform all the seller's  
5 sales and use tax functions, other than the seller's obligation to  
6 remit tax on its own purchases;

7           6. "Model 2 Seller" means a seller that has selected a  
8 certified automated system to perform part of its sales and use tax  
9 functions but retains responsibility for remitting the tax;

10          7. "Model 3 Seller" means a seller that has sales in at least  
11 five states that are members of the Streamlined Sales and Use Tax  
12 Agreement, has total annual sales revenue of at least Five Hundred  
13 Million Dollars (\$500,000,000.00), has a proprietary system that  
14 calculates the amount of tax due each jurisdiction, and has entered  
15 into a performance agreement with the member states that establishes  
16 a tax performance standard for the seller. As used in this  
17 definition, a seller includes an affiliated group of sellers using  
18 the same proprietary system;

19          8. "Model 4 Seller" means a seller registered under the  
20 Agreement which is not a Model 1 Seller, Model 2 Seller or Model 3  
21 Seller;

1        9. "Person" means an individual, trust, estate, fiduciary,  
2 partnership, limited liability company, limited liability  
3 partnership, corporation, or any other legal entity;

4        ~~9.~~ 10. "Sales tax" means a tax levied by the state, by a county  
5 or by another entity under Section 1350 et seq. of this title or a  
6 sales tax levied by a municipality under Section 2701 of this title;

7        ~~10.~~ 11. "Seller" means any person making sales, leases or  
8 rentals of personal property or services;

9        ~~11.~~ 12. "State" means any state of the United States and the  
10 District of Columbia; and

11        ~~12.~~ 13. "Use tax" means a tax levied under Section 1401 et seq.  
12 of this title or a use tax levied by a county, municipality or other  
13 entity as provided by law.

14        SECTION 2.        AMENDATORY        Section 20, Chapter 413, O.S.L.  
15 2003, as last amended by Section 11, Chapter 378, O.S.L. 2008 (68  
16 O.S. Supp. 2009, Section 1354.27), is amended to read as follows:

17        Section 1354.27 A. The retail sale, excluding lease or rental,  
18 of a product shall be sourced as follows:

19        1. When the product is received by the purchaser at a business  
20 location of the seller, the sale is sourced to that business  
21 location;

22        2. When the product is not received by the purchaser at a  
23 business location of the seller, the sale is sourced to the location

1 where receipt by the purchaser, or the purchaser's donee, designated  
2 as such by the purchaser, occurs, including the location indicated  
3 by instructions for delivery to the purchaser or donee, known to the  
4 seller. Provided, this subsection shall not apply to florists ~~until~~  
5 ~~January 1, 2011. Prior to that date, all.~~ All sales by florists  
6 shall be sourced to its business location;

7 3. When the provisions of paragraphs 1 and 2 of this subsection  
8 do not apply, the sale is sourced to the location indicated by an  
9 address for the purchaser that is available from the business  
10 records of the seller that are maintained in the ordinary course of  
11 the seller's business when use of this address does not constitute  
12 bad faith;

13 4. When the provisions of paragraphs 1, 2 and 3 of this  
14 subsection do not apply, the sale is sourced to the location  
15 indicated by an address for the purchaser obtained during the  
16 consummation of the sale, including the address of a purchaser's  
17 payment instrument, if no other address is available, when use of  
18 this address does not constitute bad faith; and

19 5. When none of the previous rules of paragraphs 1, 2, 3 and 4  
20 of this subsection apply, including the circumstance in which the  
21 seller is without sufficient information to apply the previous  
22 rules, then the location will be determined by the address from  
23 which tangible personal property was shipped, from which the digital

1 good or the computer software delivered electronically was first  
2 available for transmission by the seller, or from which the service  
3 was provided, disregarding for these purposes any location that  
4 merely provided the digital transfer of the product sold. In the  
5 case of a sale of mobile telecommunications service that is a  
6 prepaid telecommunications service, the location will be that which  
7 is associated with the mobile telephone number.

8 B. The lease or rental of tangible personal property, other  
9 than property identified in subsection C or D of this section, shall  
10 be sourced as follows:

11 1. For a lease or rental that requires recurring periodic  
12 payments, the first periodic payment is sourced the same as a retail  
13 sale in accordance with the provisions of subsection A of this  
14 section. Periodic payments made subsequent to the first payment are  
15 sourced to the primary property location for each period covered by  
16 the payment. The primary property location shall be as indicated by  
17 an address for the property provided by the lessee that is available  
18 to the lessor from its records maintained in the ordinary course of  
19 business, when use of this address does not constitute bad faith.  
20 The property location shall not be altered by intermittent use at  
21 different locations, such as use of business property that  
22 accompanies employees on business trips and service calls; and

1           2. For a lease or rental that does not require recurring  
2 periodic payments, the payment is sourced the same as a retail sale  
3 in accordance with the provisions of subsection A of this section.

4           This subsection does not affect the imposition or computation of  
5 sales or use tax on leases or rentals based on a lump sum or  
6 accelerated basis, or on the acquisition of property for lease.

7           C. The lease or rental of motor vehicles, trailers,  
8 semitrailers, or aircraft that do not qualify as transportation  
9 equipment, as defined in subsection D of this section, shall be  
10 sourced as follows:

11           1. For a lease or rental that requires recurring periodic  
12 payments, each periodic payment is sourced to the primary property  
13 location. The primary property location shall be as indicated by an  
14 address for the property provided by the lessee that is available to  
15 the lessor from its records maintained in the ordinary course of  
16 business, when use of this address does not constitute bad faith.  
17 This location shall not be altered by intermittent use at different  
18 locations; and

19           2. For a lease or rental that does not require recurring  
20 periodic payments, the payment is sourced the same as a retail sale  
21 in accordance with the provisions of subsection A of this section.

1 This subsection does not affect the imposition or computation of  
2 sales or use tax on leases or rentals based on a lump sum or  
3 accelerated basis, or on the acquisition of property for lease.

4 D. The retail sale, including lease or rental, of  
5 transportation equipment shall be sourced the same as a retail sale  
6 in accordance with the provisions of subsection A of this section,  
7 notwithstanding the exclusion of lease or rental in subsection A of  
8 this section. "Transportation equipment" means any of the  
9 following:

10 1. Locomotives and railcars that are utilized for the carriage  
11 of persons or property in interstate commerce;

12 2. Trucks and truck-tractors with a Gross Vehicle Weight Rating  
13 (GVWR) of ten thousand one (10,001) pounds or greater, trailers,  
14 semitrailers, or passenger buses that are:

15 a. registered through the International Registration  
16 Plan, and

17 b. operated under authority of a carrier authorized and  
18 certificated by the United States Department of  
19 Transportation or another federal authority to engage  
20 in the carriage of persons or property in interstate  
21 commerce;

22 3. Aircraft that are operated by air carriers authorized and  
23 certificated by the United States Department of Transportation or

1 another federal or a foreign authority to engage in the carriage of  
2 persons or property in interstate or foreign commerce; and

3 4. Containers designed for use on and component parts attached  
4 or secured on the items set forth in paragraphs 1, 2 and 3 of this  
5 subsection.

6 E. For the purposes of this section, the terms "receive" and  
7 "receipt" mean:

- 8 1. Taking possession of tangible personal property;
- 9 2. Making first use of services; or
- 10 3. Taking possession or making first use of digital goods,  
11 whichever comes first.

12 The terms "receive" and "receipt" do not include possession by a  
13 shipping company on behalf of the purchaser.

14 SECTION 3. This act shall become effective November 1, 2010.

15 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-9-10 - DO PASS,  
16 As Amended and Coauthored.