

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1396

By: Mazzei

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 1354.15, as amended by Section 4,
9 Chapter 413, O.S.L. 2003 and Section 20, Chapter 413,
10 O.S.L. 2003, as last amended by Section 11, Chapter
11 378, O.S.L. 2008 (68 O.S. Supp. 2009, Sections
12 1354.15 and 1354.27), which relate to the Streamlined
13 Sales and Use Tax Administration Act; defining term;
14 modifying application of sourcing provision; and
15 providing an effective date.

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

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

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

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

24 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,

1 determine the amount of tax to remit to the appropriate state, and
2 maintain a record of the transaction;

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

6 4. "Commission" or "Tax Commission" means the Oklahoma Tax
7 Commission;

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

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

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

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

4 9. "Person" means an individual, trust, estate, fiduciary,
5 partnership, limited liability company, limited liability
6 partnership, corporation, or any other legal entity;

7 ~~9.~~ 10. "Sales tax" means a tax levied by the state, by a county
8 or by another entity under Section 1350 et seq. of this title or a
9 sales tax levied by a municipality under Section 2701 of this title;

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

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

14 ~~12.~~ 13. "Use tax" means a tax levied under Section 1401 et seq.
15 of this title or a use tax levied by a county, municipality or other
16 entity as provided by law.

17 SECTION 2. AMENDATORY Section 20, Chapter 413, O.S.L.
18 2003, as last amended by Section 11, Chapter 378, O.S.L. 2008 (68
19 O.S. Supp. 2009, Section 1354.27), is amended to read as follows:

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

22 1. When the product is received by the purchaser at a business
23 location of the seller, the sale is sourced to that business
24 location;

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

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

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

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

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

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

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

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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.

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

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

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

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

12 a. registered through the International Registration
13 Plan, and

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

19 3. Aircraft that are operated by air carriers authorized and
20 certificated by the United States Department of Transportation or
21 another federal or a foreign authority to engage in the carriage of
22 persons or property in interstate or foreign commerce; and

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

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

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

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

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

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