

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR ENGROSSED

5 SENATE BILL NO. 744

By: Mazzei of the Senate

and

Dank of the House

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9 SUBCOMMITTEE RECOMMENDATION

10 An Act relating to streamlined sales and use tax;
11 requiring a purchaser of advertising and promotional
12 direct mail to provide a seller certain
13 documentation; limiting the liability of a seller of
14 advertising and promotional direct mail under
15 specified circumstances; directing how certain
16 advertising and promotional direct mail is sourced
17 for tax purposes under certain circumstances;
18 directing how other direct mail is to be sourced;
19 requiring a purchaser of other direct mail to provide
20 a seller certain documentation; limiting the
21 liability of a seller of other direct mail under
22 specified circumstances; directing how certain other
23 direct mail is sourced for tax purposes under certain
24 circumstances; defining terms; amending Section 14,
Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2010, Section
1365.1), which relates to sales and use tax returns;
expanding types of sellers permitted to use certain
format; deleting certain directive; prohibiting
Oklahoma Tax Commission from requiring certain
registered sellers to file a return and providing
exception thereto; repealing Section 22, Chapter 413,
O.S.L. 2003 (68 O.S. Supp. 2010, Section 1354.29),
which relates to procedures for remitting sales and
use tax for purchasers of direct mail; providing for
codification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 1354.29A of Title 68, unless
4 there is created a duplication in numbering, reads as follows:

5 A. Notwithstanding Section 1354.27 of Title 68 of the Oklahoma
6 Statutes, the following provisions shall apply to sales of
7 advertising and promotional direct mail:

8 1. A purchaser of advertising and promotional direct mail may
9 provide the seller with either:

- 10 a. a direct pay permit,
- 11 b. a certificate of exemption claiming direct mail or
12 other written statement approved, authorized or
13 accepted by the Oklahoma Tax Commission, or
- 14 c. information showing the jurisdictions to which the
15 advertising and promotional direct mail is to be
16 delivered to recipients;

17 2. If the purchaser provides the permit, certificate or
18 statement referred to in subparagraph a or b of paragraph 1 of this
19 subsection, the seller, in the absence of bad faith, is relieved of
20 all obligations to collect, pay, or remit any tax on any transaction
21 involving advertising and promotional direct mail to which the
22 permit, certificate or statement applies. The purchaser shall
23 source the sale to the jurisdictions to which the advertising and
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1 promotional direct mail is to be delivered to the recipients and
2 shall report and pay any applicable tax due;

3 3. If the purchaser provides the seller information showing the
4 jurisdictions to which the advertising and promotional direct mail
5 is to be delivered to recipients, the seller shall source the sale
6 to the jurisdictions to which the advertising and promotional direct
7 mail is to be delivered and shall collect and remit the applicable
8 tax. In the absence of bad faith, the seller is relieved of any
9 further obligation to collect any additional tax on the sale of
10 advertising and promotional direct mail where the seller has sourced
11 the sale according to the delivery information provided by the
12 purchaser; and

13 4. If the purchaser does not provide the seller with any of the
14 items listed in subparagraph a, b or c of paragraph 1 of this
15 subsection, the sale shall be sourced according to paragraph 5 of
16 subsection A of Section 1354.27 of Title 68 of the Oklahoma
17 Statutes.

18 B. Notwithstanding the provisions of Section 1354.27 of Title
19 68 of the Oklahoma Statutes, the following provisions apply to sales
20 of other direct mail:

21 1. Except as otherwise provided in this paragraph, sales of
22 other direct mail are sourced in accordance with paragraph 3 of
23 subsection A of Section 1354.27 of Title 68 of the Oklahoma
24 Statutes;

1 2. A purchaser of other direct mail may provide the seller with
2 either:

- 3 a. a direct pay permit, or
- 4 b. a certificate of exemption claiming direct mail or
5 other written statement approved, authorized or
6 accepted by the Oklahoma Tax Commission; and

7 3. If the purchaser provides the permit, certificate or
8 statement referred to in subparagraph a or b of paragraph 2 of this
9 subsection, the seller, in the absence of bad faith, is relieved of
10 all obligations to collect, pay or remit any tax on any transaction
11 involving other direct mail to which the permit, certificate or
12 statement apply. Notwithstanding paragraph 1 of this subsection,
13 the sale shall be sourced to the jurisdictions to which the other
14 direct mail is to be delivered to the recipients and the purchaser
15 shall report and pay applicable tax due.

16 C. For purposes of this section:

17 1. "Advertising and promotional direct mail" means:

- 18 a. printed material that meets the definition of direct
19 mail, and
- 20 b. where the primary purpose of which is to attract
21 public attention to a product, person, business or
22 organization, or to attempt to sell, popularize or
23 secure financial support for a product, person,
24 business or organization. As used in this subsection,

1 the word "product" means tangible personal property, a
2 product transferred electronically or a service;

3 2. "Direct mail" means printed material delivered or
4 distributed by United States mail or other delivery service to a
5 mass audience or to addressees on a mailing list provided by the
6 purchaser or at the direction of the purchaser when the cost of the
7 items are not billed directly to the recipients. "Direct mail"
8 shall include tangible personal property supplied directly or
9 indirectly by the purchaser to the direct mail seller for inclusion
10 in the package containing the printed material. "Direct mail" shall
11 not include multiple items of printed material delivered to a single
12 address; and

13 3. "Other direct mail" means any direct mail that is not
14 "advertising and promotional direct mail" regardless of whether
15 "advertising and promotional direct mail" is included in the same
16 mailing. The term includes, but is not limited to:

- 17 a. transactional direct mail that contains personal
18 information specific to the addressee including, but
19 not limited to, invoices, bills, statements of
20 account, payroll advices,
21 b. any legally required mailings including, but not
22 limited to, privacy notices, tax reports and
23 stockholder reports, and
24

1 c. other nonpromotional direct mail delivered to existing
2 or former shareholders, customers, employees, or
3 agents including, but not limited to, newsletters and
4 informational pieces.

5 "Other direct mail" does not include the development of billing
6 information or the provision of any data processing service that is
7 more than incidental.

8 D. 1.a. This section applies to a transaction characterized
9 under state law as the sale of services only if the
10 service is an integral part of the production and
11 distribution of printed material that meets the
12 definition of direct mail.

13 b. This section does not apply to any transaction that
14 includes the development of billing information or the
15 provision of any data processing service that is more
16 than incidental regardless of whether "advertising and
17 promotional direct mail" is included in the same
18 mailing.

19 2. If a transaction is a bundled transaction that includes
20 advertising and promotion direct mail, this section applies only if
21 the primary purpose of the transaction is the sale of products or
22 services that meet the definition of advertising and promotional
23 direct mail.

24 3. Nothing in this section shall limit any purchaser's:

- 1 a. obligation for sales or use tax to any state to which
2 the direct mail is delivered,
3 b. right under local, state, federal or constitutional
4 law, to a credit for sales or use taxes legally due
5 and paid to other jurisdictions, or
6 c. right to a refund of sales or use taxes overpaid to
7 any jurisdiction.

8 4. This section applies for purposes of uniformly sourcing
9 direct mail transactions taxable under Section 1354 of Title 68 of
10 the Oklahoma Statutes.

11 SECTION 2. AMENDATORY Section 14, Chapter 413, O.S.L.
12 2003 (68 O.S. Supp. 2010, Section 1365.1), is amended to read as
13 follows:

14 Section 1365.1 A. The Oklahoma Tax Commission shall allow ~~any~~
15 ~~Model 1, Model 2 or Model 3 seller, as defined in Section 1354.15 of~~
16 ~~Title 68 of the Oklahoma Statutes,~~ all sellers to submit ~~its~~ sales
17 and use tax returns in a simplified format. The Tax Commission
18 shall promulgate rules providing for the format in accordance with
19 the Streamlined Sales and Use Tax Agreement. The Tax Commission is
20 further authorized to promulgate rules requiring these sellers to
21 file additional informational returns. Provided, the informational
22 returns may not be required more frequently than every six (6)
23 months.
24

1 B. All remittances from sellers under Models 1, 2 and 3 shall
2 be remitted electronically.

3 C. Any seller that is registered under the Agreement, which
4 does not have a legal requirement to register in this state, and is
5 not a Model 1, Model 2 or Model 3 seller, shall submit its sales and
6 use tax returns as follows:

7 1. Upon registration, the Tax Commission shall provide to the
8 seller the returns required by this state;

9 2. The seller shall file a return within one year of the month
10 of initial registration, and on an annual basis in succeeding years;
11 and

12 3. In addition to the returns required in paragraph 2 of this
13 subsection, a seller shall submit returns in the month following any
14 month in which the seller has accumulated state and local tax funds
15 for the state in the amount of One Thousand Dollars (\$1,000.00) or
16 more.

17 D. The Tax Commission shall ~~participate with other states which~~
18 ~~are members of the Agreement in developing a more uniform sales and~~
19 ~~use tax return that, when completed, would be available to all~~
20 ~~sellers~~ not require the filing of a return from a seller that is
21 registered under the Agreement which has indicated at the time of
22 registration that it anticipates making no sales which would be
23 sourced to this state. Upon making any taxable sales into this
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1 state, a seller shall lose such exemption and shall file a return in
2 the month following such sale.

3 SECTION 3. REPEALER Section 22, Chapter 413, O.S.L. 2003
4 (68 O.S. Supp. 2010, Section 1354.29), is hereby repealed.

5 SECTION 4. This act shall become effective November 1, 2011.

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