

1 ENGROSSED SENATE  
2 BILL NO. 744

By: Mazzei of the Senate

and

Dank of the House

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7 [ streamlined sales and use tax - requiring a  
8 purchaser of advertising and promotional direct mail  
9 to provide documentation - limiting liability -  
directing the sourcing of direct mail - sales and use  
tax returns - codification - effective date ]

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

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

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

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

21 a. a direct pay permit,

22 b. a certificate of exemption claiming direct mail or  
23 other written statement approved, authorized or  
24 accepted by the Oklahoma Tax Commission, or

1           c.    information showing the jurisdictions to which the  
2                    advertising and promotional direct mail is to be  
3                    delivered to recipients.

4           2.    If the purchaser provides the permit, certificate or  
5           statement referred to in subparagraph a or b of paragraph 1 of this  
6           subsection, the seller, in the absence of bad faith, is relieved of  
7           all obligations to collect, pay, or remit any tax on any transaction  
8           involving advertising and promotional direct mail to which the  
9           permit, certificate or statement applies. The purchaser shall  
10          source the sale to the jurisdictions to which the advertising and  
11          promotional direct mail is to be delivered to the recipients and  
12          shall report and pay any applicable tax due.

13          3.    If the purchaser provides the seller information showing the  
14          jurisdictions to which the advertising and promotional direct mail  
15          is to be delivered to recipients, the seller shall source the sale  
16          to the jurisdictions to which the advertising and promotional direct  
17          mail is to be delivered and shall collect and remit the applicable  
18          tax. In the absence of bad faith, the seller is relieved of any  
19          further obligation to collect any additional tax on the sale of  
20          advertising and promotional direct mail where the seller has sourced  
21          the sale according to the delivery information provided by the  
22          purchaser.

23          4.    If the purchaser does not provide the seller with any of the  
24          items listed in subparagraph a, b or c of paragraph 1 of this

1 subsection, the sale shall be sourced according to paragraph 5 of  
2 subsection A of Section 1354.27 of Title 68 of the Oklahoma  
3 Statutes.

4 B. Notwithstanding the provisions of Section 1354.27 of Title  
5 68 of the Oklahoma Statutes, the following provisions apply to sales  
6 of other direct mail:

7 1. Except as otherwise provided in this paragraph, sales of  
8 other direct mail are sourced in accordance with paragraph 3 of  
9 subsection A of Section 1354.27 of Title 68 of the Oklahoma  
10 Statutes.

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

- 13 a. a direct pay permit, or
- 14 b. a certificate of exemption claiming direct mail or  
15 other written statement approved, authorized or  
16 accepted by the Oklahoma Tax Commission.

17 3. If the purchaser provides the permit, certificate or  
18 statement referred to in subparagraph a or b of paragraph 2 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 other direct mail to which the permit, certificate or  
22 statement apply. Notwithstanding paragraph 1 of this subsection,  
23 the sale shall be sourced to the jurisdictions to which the other  
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1 direct mail is to be delivered to the recipients and the purchaser  
2 shall report and pay applicable tax due.

3 C. For purposes of this section:

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

5 a. printed material that meets the definition of direct  
6 mail, and

7 b. where the primary purpose of which is to attract  
8 public attention to a product, person, business or  
9 organization, or to attempt to sell, popularize or  
10 secure financial support for a product, person,  
11 business or organization. As used in this subsection,  
12 the word "product" means tangible personal property, a  
13 product transferred electronically or a service.

14 2. "Direct mail" means printed material delivered or  
15 distributed by United States mail or other delivery service to a  
16 mass audience or to addressees on a mailing list provided by the  
17 purchaser or at the direction of the purchaser when the cost of the  
18 items are not billed directly to the recipients. "Direct mail"  
19 shall include tangible personal property supplied directly or  
20 indirectly by the purchaser to the direct mail seller for inclusion  
21 in the package containing the printed material. "Direct mail" shall  
22 not include multiple items of printed material delivered to a single  
23 address.

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

5           a. transactional direct mail that contains personal  
6 information specific to the addressee including, but  
7 not limited to, invoices, bills, statements of  
8 account, payroll advices,

9           b. any legally required mailings including, but not  
10 limited to, privacy notices, tax reports and  
11 stockholder reports, and

12           c. other non-promotional direct mail delivered to  
13 existing or former shareholders, customers, employees,  
14 or agents including, but not limited to, newsletters  
15 and informational pieces.

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

19           D. 1. a. this section applies to a transaction  
20 characterized under state law as the sale of services  
21 only if the service is an integral part of the  
22 production and distribution of printed material that  
23 meets the definition of direct mail.

1           b.    this section does not apply to any transaction that  
2                   includes the development of billing information or the  
3                   provision of any data processing service that is more  
4                   than incidental regardless of whether "advertising and  
5                   promotional direct mail" is included in the same  
6                   mailing.

7           2.    If a transaction is a bundled transaction that includes  
8 advertising and promotion direct mail, this section applies only if  
9 the primary purpose of the transaction is the sale of products or  
10 services that meet the definition of advertising and promotional  
11 direct mail.

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

13               a.    obligation for sales or use tax to any state to which  
14                   the direct mail is delivered,

15               b.    right under local, state, federal or constitutional  
16                   law, to a credit for sales or use taxes legally due  
17                   and paid to other jurisdictions, or

18               c.    right to a refund of sales or use taxes overpaid to  
19                   any jurisdiction.

20           4.    This section applies for purposes of uniformly sourcing  
21 direct mail transactions taxable under Section 1354 of Title 68 of  
22 the Oklahoma Statutes.

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

4 Section 1365.1 A. The Oklahoma Tax Commission shall allow any  
5 ~~Model 1, Model 2 or Model 3 seller, as defined in Section 1354.15 of~~  
6 ~~Title 68 of the Oklahoma Statutes,~~ all sellers to submit its sales  
7 and use tax returns in a simplified format. The Tax Commission  
8 shall promulgate rules providing for the format in accordance with  
9 the Streamlined Sales and Use Tax Agreement. The Tax Commission is  
10 further authorized to promulgate rules requiring these sellers to  
11 file additional informational returns. Provided, the informational  
12 returns may not be required more frequently than every six (6)  
13 months.

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

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

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

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

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

6           D. The Tax Commission shall ~~participate with other states which~~  
7 ~~are members of the Agreement in developing a more uniform sales and~~  
8 ~~use tax return that, when completed, would be available to all~~  
9 ~~sellers~~ not require the filing of a return from a seller that is  
10 registered under the Agreement which has indicated at the time of  
11 registration that it anticipates making no sales which would be  
12 sourced to this state. Upon making any taxable sales into this  
13 state, a seller shall lose such exemption and shall file a return in  
14 the month following such sale.

15           SECTION 3.           REPEALER           Section 22, Chapter 413, O.S.L. 2003  
16 (68 O.S. Supp. 2010, Section 1354.29), is hereby repealed.

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

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1 Passed the Senate the 28th day of February, 2011.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2011.

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9 Presiding Officer of the House  
of Representatives