

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 744

By: Mazzei of the Senate

and

Dank of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to streamlined sales and use tax;
12 requiring a purchaser of advertising and promotional
13 direct mail to provide a seller certain
14 documentation; limiting the liability of a seller of
15 advertising and promotional direct mail under
16 specified circumstances; directing how certain
17 advertising and promotional direct mail is sourced
18 for tax purposes under certain circumstances;
19 directing how other direct mail is to be sourced;
20 requiring a purchaser of other direct mail to provide
21 a seller certain documentation; limiting the
22 liability of a seller of other direct mail under
23 specified circumstances; directing how certain other
24 direct mail is sourced for tax purposes under certain
 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

1 use tax for purchasers of direct mail; providing for
2 codification; and providing an effective date.

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

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

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

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

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

20 2. If the purchaser provides the permit, certificate or
21 statement referred to in subparagraph a or b of paragraph 1 of this
22 subsection, the seller, in the absence of bad faith, is relieved of
23 all obligations to collect, pay, or remit any tax on any transaction

1 involving advertising and promotional direct mail to which the
2 permit, certificate or statement applies. The purchaser shall
3 source the sale to the jurisdictions to which the advertising and
4 promotional direct mail is to be delivered to the recipients and
5 shall report and pay any applicable tax due;

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

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

21 B. Notwithstanding the provisions of Section 1354.27 of Title
22 68 of the Oklahoma Statutes, the following provisions apply to sales
23 of other direct mail:

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

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

- 7 a. a direct pay permit, or
- 8 b. a certificate of exemption claiming direct mail or
9 other written statement approved, authorized or
10 accepted by the Oklahoma Tax Commission; and

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

20 C. For purposes of this section:

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

- 22 a. printed material that meets the definition of direct
23 mail, and

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1 b. where the primary purpose of which is to attract
2 public attention to a product, person, business or
3 organization, or to attempt to sell, popularize or
4 secure financial support for a product, person,
5 business or organization. As used in this subsection,
6 the word "product" means tangible personal property, a
7 product transferred electronically or a service;

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

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

22 a. transactional direct mail that contains personal
23 information specific to the addressee including, but
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1 not limited to, invoices, bills, statements of
2 account, payroll advices,

3 b. any legally required mailings including, but not
4 limited to, privacy notices, tax reports and
5 stockholder reports, and

6 c. other nonpromotional direct mail delivered to existing
7 or former shareholders, customers, employees, or
8 agents including, but not limited to, newsletters and
9 informational pieces.

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

13 D. 1.a. This section applies to a transaction characterized
14 under state law as the sale of services only if the
15 service is an integral part of the production and
16 distribution of printed material that meets the
17 definition of direct mail.

18 b. This section does not apply to any transaction that
19 includes the development of billing information or the
20 provision of any data processing service that is more
21 than incidental regardless of whether "advertising and
22 promotional direct mail" is included in the same
23 mailing.

1 2. If a transaction is a bundled transaction that includes
2 advertising and promotion direct mail, this section applies only if
3 the primary purpose of the transaction is the sale of products or
4 services that meet the definition of advertising and promotional
5 direct mail.

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

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

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

12 c. right to a refund of sales or use taxes overpaid to
13 any jurisdiction.

14 4. This section applies for purposes of uniformly sourcing
15 direct mail transactions taxable under Section 1354 of Title 68 of
16 the Oklahoma Statutes.

17 SECTION 2. AMENDATORY Section 14, Chapter 413, O.S.L.
18 2003 (68 O.S. Supp. 2010, Section 1365.1), is amended to read as
19 follows:

20 Section 1365.1 A. The Oklahoma Tax Commission shall allow ~~any~~
21 ~~Model 1, Model 2 or Model 3 seller, as defined in Section 1354.15 of~~
22 ~~Title 68 of the Oklahoma Statutes,~~ all sellers to submit ~~its~~ sales
23 and use tax returns in a simplified format. The Tax Commission

1 shall promulgate rules providing for the format in accordance with
2 the Streamlined Sales and Use Tax Agreement. The Tax Commission is
3 further authorized to promulgate rules requiring these sellers to
4 file additional informational returns. Provided, the informational
5 returns may not be required more frequently than every six (6)
6 months.

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

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

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

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

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

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

10 SECTION 3. REPEALER Section 22, Chapter 413, O.S.L. 2003
11 (68 O.S. Supp. 2010, Section 1354.29), is hereby repealed.

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

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14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
15 04-07-2011 - DO PASS, As Amended.

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