

1 **SENATE FLOOR VERSION**

2 February 22, 2011

3 As Amended

4 SENATE BILL NO. 744

By: Mazzei of the Senate

and

Dank of the House

6
7
8 [streamlined sales and use tax - requiring a
9 purchaser of advertising and promotional direct mail
10 to provide documentation - limiting liability -
directing the sourcing of direct mail - sales and use
tax returns - codification - effective date]

11
12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

22 a. a direct pay permit,

- 1 b. a certificate of exemption claiming direct mail or
2 other written statement approved, authorized or
3 accepted by the Oklahoma Tax Commission, or
4 c. information showing the jurisdictions to which the
5 advertising and promotional direct mail is to be
6 delivered to recipients.

7 2. If the purchaser provides the permit, certificate or
8 statement referred to in subparagraph a or b of paragraph 1 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 advertising and promotional direct mail to which the
12 permit, certificate or statement applies. The purchaser shall
13 source the sale to the jurisdictions to which the advertising and
14 promotional direct mail is to be delivered to the recipients and
15 shall report and pay any applicable tax due.

16 3. If the purchaser provides the seller information showing the
17 jurisdictions to which the advertising and promotional direct mail
18 is to be delivered to recipients, the seller shall source the sale
19 to the jurisdictions to which the advertising and promotional direct
20 mail is to be delivered and shall collect and remit the applicable
21 tax. In the absence of bad faith, the seller is relieved of any
22 further obligation to collect any additional tax on the sale of
23 advertising and promotional direct mail where the seller has sourced
24

1 the sale according to the delivery information provided by the
2 purchaser.

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

8 B. Notwithstanding the provisions of Section 1354.27 of Title
9 68 of the Oklahoma Statutes, the following provisions apply to sales
10 of other direct mail:

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

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

- 17 a. a direct pay permit, or
18 b. a certificate of exemption claiming direct mail or
19 other written statement approved, authorized or
20 accepted by the Oklahoma Tax Commission.

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

1 involving other direct mail to which the permit, certificate or
2 statement apply. Notwithstanding paragraph 1 of this subsection,
3 the sale shall be sourced to the jurisdictions to which the other
4 direct mail is to be delivered to the recipients and the purchaser
5 shall report and pay applicable tax due.

6 C. For purposes of this section:

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

8 a. printed material that meets the definition of direct
9 mail, and

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

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

1 not include multiple items of printed material delivered to a single
2 address.

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

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

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

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

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

21 D. 1. a. this section applies to a transaction
22 characterized under state law as the sale of services
23 only if the service is an integral part of the

24

1 production and distribution of printed material that
2 meets the definition of direct mail.

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

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

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

- 15 a. obligation for sales or use tax to any state to which
16 the direct mail is delivered,
17 b. right under local, state, federal or constitutional
18 law, to a credit for sales or use taxes legally due
19 and paid to other jurisdictions, or
20 c. right to a refund of sales or use taxes overpaid to
21 any jurisdiction.

22 4. This section applies for purposes of uniformly sourcing
23 direct mail transactions taxable under Section 1354 of Title 68 of
24 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.

18 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-15-11 - DO PASS,
19 As Amended and Coauthored.

20
21
22
23
24