

Oklahoma Response to Second Report on 2010 Annual Recertification

- There is no provision for relief from liability if a state has a rate change take effect in less than 30 days.

Oklahoma has no specific provision in its statute for relief in the case of a rate change as provided under Section 304. However, the Oklahoma Constitution (Art. 5, §33) provides that no revenue raising measure (which would include a sales/use tax rate increase) shall pass except by a passage of 3/4 majority of the Legislature and shall not be effective until 90 days after approval by the Legislature and acted on by the Governor.

- The taxability matrix shows dental prosthesis with a prescription as taxable. The definition in the statute excludes eyeglasses, contact lenses and hearing aids, but not dental prosthesis.

Oklahoma agrees that the taxability matrix filed is incorrect. The matrix is being corrected in compliance with the definition of prosthetic device in statute. Rules will be promulgated in the future to specifically list dental prosthesis as an exempt prosthetic device.

- The sourcing statutes require that prepaid wireless calling service be sourced to the location associated with the mobile telephone number under paragraph 5. The use of the mobile telephone number is optional in the SSUTA.

Oklahoma has chosen the option of sourcing prepaid telecommunications service associated with the mobile telephone number.

Section 314(C)(3) provides:

A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of prepaid wireless calling service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.

The relevant statutes are provided below:

Section 1354.30(D)(3) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Section 1354.27 of this title. Provided, in the case of a sale of a prepaid wireless calling service, the provisions of paragraph 5 of subsection A of Section 1354.27 of this title shall apply; and

Section 1354.27(A)(5) When none of the previous rules of paragraphs 1, 2, 3 and 4 of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by

the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold. In the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location will be that which is associated with the mobile telephone number.

- The rules for exemption administration require “good faith.” Good faith requires that the seller strictly comply with the statutory requirements. Does this mean obtaining the required information, within 90 days of the sale, and the seller doesn’t fraudulently fail to collect the tax, etc.?

The “good faith” provisions of Oklahoma Sales Tax Rule 710:65-7-6 includes all the information in the questions above and specifically provides as follows (in compliance with Section 317):

(b) **When vendor or certified service provider may be relieved of liability.** A vendor or certified service provider shall be relieved of any liability for the tax and of the duty to collect imposed by Section 1361 of Title 68 of the Oklahoma Statutes if the vendor, in good faith, timely accepts from a consumer, properly completed documentation certified by the Oklahoma Tax Commission that such consumer is exempt from the taxes levied by the Oklahoma Sales Tax Code.

(c) **General requirements.** Three requirements must be met before the vendor or certified service provider is relieved of liability.

(1) **Vendor or certified service provider good faith.** Good faith requires that the vendor strictly comply with statutory requirements.

(2) **Timely acceptance from a consumer.** Timely acceptance from a consumer requires that documentation be in the possession of the vendor within ninety (90) days subsequent to the date of sale. In the case of continued sales to the same purchaser, the vendor must have, on file, a sales tax permit, card, or exemption letter for each renewal interval. If no renewal interval is provided by statute, the renewal period will be deemed three (3) years, except in the case of entities with specific statutory exemptions who have established eligibility as set out in 710:65-7-15 and 710:65-7-17 through 710:65-7-19.

(3) **Properly completed documentation certified by the Oklahoma Tax Commission.** Examples of properly completed documentation certified by the Oklahoma Tax Commission are described in 710:65-7-8 through 710:65-7-15 and 710:65-7-17 through 710:65-7-19.

(d) **When vendor or certified service provider may not be relieved of liability.** Relief from liability for the tax and of the duty to collect imposed by Section 1361 of Title 68 shall not apply to:

(1) a seller or certified service provider who fraudulently fails to collect tax;

(2) a seller who solicits purchasers to participate in the unlawful claim of an exemption;
or

(3) a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when:

(A) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and

(B) the Tax Commission provides an exemption certificate that clearly and affirmatively

indicates that the claimed exemption is not available in this state.

- The rule for telecommunications services excludes from taxation “Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund”. This is an issue from the 2009 that the Governing Board has referred to SLAC.

The following exemption is found in Section 1357 of Title 68:

(18) Sales of the following telecommunications services:

f. Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund.

The charges for the funds listed are levied under Oklahoma law on telecommunications carriers and providers. The law also provides that the carriers or providers may, at their option, recover from their retail customers the amount of the charges paid by the carrier or provider. The law (outside the Sales Tax Code) provides that these “charges” to the customer are not to be subject to state or local taxes or franchise fees.

These regulatory assessment charges do not fall within any of the categories of costs or other charges that are prohibited deductions from the sales price. The charges are line item charges that are separate from the charge for telecommunication services. Oklahoma agrees that a telecommunication vendor could not deduct from its charge for telecommunication services the cost of taxes or other levies paid. However, that is not applicable to the current charges at issue. These charges are specifically provided statutory allowable charges separate from the services provided that are exempt from the levy of sales tax. Oklahoma disagrees with an analysis that it is not in compliance with the definition of “sales price”.