
INTEROFFICE MEMORANDUM

TO: COMPLIANCE REVIEW AND INTERPRETATIONS COMMITTEE
FROM: TONY MASTIN, OKLAHOMA TAX COMMISSION
SUBJECT: RESPONSE TO BAC COMPLIANCE SUBCOMMITTEE REPORT
DATE: 10/3/2011
CC: SCOTT PETERSON, SSUTA EXECUTIVE DIRECTOR

The following response is submitted by the State of Oklahoma in response to the report filed by the Business Advisory Council (BAC) Compliance Subcommittee identifying the following concerns with Oklahoma's compliance with the Streamlined Sales and Use Tax Agreement (Agreement):

Sales Price Definition & Installation Charges - The "sales price" definition allows a state to toggle the taxability of installation charges on or off as part of the state's "sales price" definition. This toggle is only applicable to separately stated installation charges on an invoice. Oklahoma separately imposes a sales tax on the installation of telecommunications equipment (see OAC 710:65-19-329) outside of its "sales price" definition (see 68 O.S. § 1352(12)). While the limitations in § 327 of the SSUTA do not generally apply to definitions in Part I of the Library of Definitions (e.g., where the "sales price" definition is located), § 327 of the SSUTA also begins with the following qualifier: "Except as provided in Sections 316 and 332 and the Library of Definitions." This introductory clause prohibits a state from using a definition inconsistent with its intended application. The toggle for installation charges under paragraph (E) of the "sales price" definition does not allow Oklahoma to exclude installation services from its "sales price" definition and at the same time still tax installation charges for telecommunications equipment as a separate service.

Oklahoma disagrees with the characterization that Oklahoma is using a definition inconsistent with its intended application and the BAC Subcommittee's interpretation of the Agreement.

The definition of "sales price" in the Agreement specifically provides that a state may exclude from its definition separately stated "installation charges". The Agreement further provides that a state may exclude separately stated "telecommunication nonrecurring charges". Telecommunication nonrecurring charges are a defined term in the Agreement and include installation charges of telecommunication services.

The Agreement specifically allows a state to exclude general installation charges but not telecommunication service installation charges along with other telecommunication

nonrecurring charges. Further a state is allowed to exclude telecommunication nonrecurring charges but not general installation charges. Not only is it not prohibited from treating these charges differently, the Agreement specifically allows the different treatment. In furtherance of this argument, it is noted that the Taxability Matrix provides not one but two different “toggles” to the definition of sales price. The Matrix provides one toggle for installation charges and another for telecommunication nonrecurring charges.

Oklahoma does not provide for an exclusion of telecommunication nonrecurring charges. Therefore, these charges are included within the sales price. Oklahoma does provide an exclusion for separately stated installation charges as specifically allowed in the definition of “sales price”.

Oklahoma’s levy of sales tax on telecommunication nonrecurring charges does not violate the Agreement. As stated above, the charges are included within its definition of sales price. It is also levied on the nonrecurring charges even if there is no sale of telecommunication services.

No provision in the Agreement exists that prohibits a state from levying sales and use taxes on a defined term in the Agreement. In contrast, the Agreement specifically provides in Section 103 that the Agreement “shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service.” The taxing authority of each state is to be preserved under the Agreement.

The limitation on a state’s taxing authority that does exist in the Agreement is also found in Section 103. It provides that “if a member state chooses to tax an item or exempt an item from tax, that state shall adhere to the provisions concerning definitions as set out in Article III of this Agreement”.

Oklahoma chose to levy its tax on telecommunication nonrecurring charges. The term is a defined term in the Agreement and Oklahoma treats all charges within the term equally. Therefore, its levy on telecommunication nonrecurring charges is compliant with Section 103 of the Agreement.

For the reasons stated above, Oklahoma urges the Committee to find that Oklahoma is not out of compliance as urged by the BAC Compliance Subcommittee. It is Oklahoma’s position that it is in substantial compliance with the Agreement.