



OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

2501 NORTH LINCOLN BLVD.
OKLAHOMA CITY, OK 73194-0001

THOMAS E. KEMP, JR., Chairman
JERRY JOHNSON, Vice-Chairman
CONSTANCE IRBY, Secretary-Member

October 13, 2009

Scott Peterson, *Executive Director*
Streamlined Sales Tax Governing Board, Inc.
4205 Hillsboro Pike, Suite 305
Nashville, TN 37215

Re: Oklahoma Response to 2009 Recertification Analysis

Dear Mr. Peterson:

Please accept the following response to the analysis conducted by the Streamlined Sales Tax staff for the 2009 recertification to the Streamlined Sales Tax Agreement. The points raised in the analysis are specifically provided below along with the state's response.

Issue #1

There is no provision for sourcing of ancillary services.

Oklahoma Response:

The state was unaware that this provision was omitted in the conforming legislation. An emergency amendment to Rule 710:65-18-85 was adopted by the Oklahoma Tax Commission on September 10, 2009. The emergency rule was approved by the Governor and became effective October 2, 2009. The rule specifically provides that ancillary services shall be sourced to the customer's place of primary use as required under Section 314 of the Agreement.

Issue #2

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". If these charges are imposed on the telecommunications provider and not the purchaser, this provision is not in compliance with the definition of "sales price."

Oklahoma Response:

Oklahoma's definition of "sales price" is found in Section 1352 of Title 68 (and is in compliance with the Agreement) and provides as follows:

means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (1) the seller's cost of the property sold,
 - (2) the cost of materials used, labor or service cost,
 - (3) interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller,
 - (4) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges,
 - (5) delivery charges and installation charges, unless separately stated on the invoice, billing or similar document given to the purchaser, and
 - (6) credit for any trade-in.
- b. Such term shall not include:
- (1) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale,
 - (2) interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser, and
 - (3) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser,
- c. Such term shall include consideration received by the seller from third parties if:
- (1) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale,
 - (2) the seller has an obligation to pass the price reduction or discount through to the purchaser,
 - (3) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser, and
 - (4) one of the following criteria is met:
 - (a) the purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a

- third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented,
- (b) the purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, a "preferred customer" card that is available to any patron does not constitute membership in such a group, or
 - (c) the price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

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.

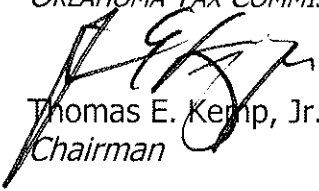
The charges for the funds listed are levied under Oklahoma law on telecommunications carriers and providers. The law also provides that the carriers or providers may, at their option, recover from their retail customers the amount of the charges paid by the carrier or provider. The law (outside the Sales 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".

Based upon the responses above, Oklahoma urges a report to the Governing Board that the state should be certified as in compliance with the Agreement.

Sincerely,

OKLAHOMA TAX COMMISSION


Thomas E. Kemp, Jr.
Chairman