

9-24-10

A motion by Oklahoma to adopt the following as a substitute amendment for AM09002A02 relating to other taxes on communications services:

- A. A Member State shall not be required to comply with the provisions of this section in order to meet the requirements for Member State status under the Agreement. A Member State or a Non-member State may petition the Governing Board to have the Governing Board determine that it complies with the provisions of this Section.
- B. Except as specifically otherwise provided in subsection C of this section, the provisions of the Agreement and the Library of Definitions shall apply separately to each type of other tax on communications services in the same manner and to the same extent as such provisions and definitions apply to sales and use taxes.
1. The following factors should be considered in determining what taxes are considered “one type of tax” for purposes of this section.
 - a. Whether the taxes under consideration are imposed pursuant to separate statutes with distinct and separate authority.
 - b. Whether the taxes under consideration are adopted or authorized by separate votes of the people.
 - c. Whether the taxes under consideration are applied to the same base.
 - d. Whether the taxes under consideration are imposed on the same products or services.
 - e. Whether the taxes under consideration are expended for the same purpose.
 - f. Any other relevant factors.
 2. Examples of taxes to be considered as separate types of taxes are:
 - a. The 911 emergency wireless telephone fee imposed on subscribers of wireless telephone service by some counties pursuant to the authority granted by Section 2843.1 of title 63 of the Oklahoma Statutes and the voters of the counties imposing such fee shall be considered to be the same type of tax as the 911 emergency service fee imposed by some units of local government on each VoIP service user pursuant to the authority granted by Section 2853 of Title 63 of the Oklahoma Statutes and the voters of the affected unit of local government.

These two fees shall be considered a separate type of tax from the emergency telephone fee imposed on every billed service user of wireline telephone service by some units of local government pursuant to the authority granted by Section 2814 of Title 63 of the Oklahoma statutes and the voters of the affected unit of local government.

The prepaid wireless 911 fee imposed on consumers of prepaid wireless telecommunications service imposed by the state pursuant to Section 2843.2 of title 63 of the Oklahoma Statutes shall be considered a separate type of tax from the other fees described by this subparagraph.

b . . .

- C. The following are exceptions to the application of the Agreement and the Library of Definitions to each type of other tax on communications services.
1. When a provision of the Agreement or Library of Definitions, excluding Article III, is clearly not applicable to such taxes as determined by a three fourths vote of the Governing Board.
 2. In applying the requirements of Subsection (B) to other taxes on communications services, the following modifications shall apply:
 - a. The requirement in Section 301 for a member state to provide state level administration of sales and use taxes is modified to allow a designated agent to provide for the administration of each other tax on communications services.
 - b. The requirement of Section 318 for one uniform return for each state and all the taxing jurisdictions within the member state for sales and use taxes is modified to provide that there shall be one State-specific uniform return for each type of other tax on communications services.
 - c. The provisions of Section 308 for rate simplification for sales and use taxes are modified to require that each taxing jurisdiction shall have only one rate for each type of other tax on communications services. This means that every taxing jurisdiction in a state may have a separate rate for each type of other tax on communications services. In addition, a State may take into account all other taxes on communications services that are imposed on a similar product when applying the last sentence of Section 308A.
ALTERNATIVE VERSION OF c.
 - c. *The provisions of Section 308 for rate simplification for sales and use taxes are modified to require that each taxing jurisdiction within a member state shall have only one rate for each type of other tax on communications services. In addition, a member state may take into account all state and political subdivision taxes on communications services that are imposed on a similar product, except any taxes levied upon or measured by net income, capital stock, net worth, or property value, when applying the last sentence of Section 308(A).*
 - d. The requirement for tax base uniformity in Section 302 of the Agreement shall apply to each type of other tax on communications services within a state, but shall not be construed to require that the tax base for each type of other tax on communications services must be identical to the tax base for sales and use taxes imposed on communications services. In addition, if a state does not impose a particular type of tax on other communications services that is imposed by more than one locality in such state, Section 302 shall be constructed to require that all local taxes have the same tax base.
 - e. The requirement of Sections 302 and 401 for a centralized registration system for sales and use taxes is modified to permit a centralized, one-stop

registration system at the state-level for taxes administered solely within the state. Sellers shall also be allowed to register directly with localities.

- f. The provisions of Section 806 of the Agreement relating to joint audits are modified to provide for a single audit at the state level for each type of other tax on communications services within a state.
- g. The requirements for states to provide compensation to sellers shall be modified as follows: _____.

D. 1. For purposes of this section the term “other taxes on communications services” means any tax, charge or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for communications services, regardless of whether such tax, charge or fee is imposed on the vendor or customer or the service and regardless of the terminology used to describe the tax, charge, or fee. The term “other taxes on communications services” shall include any tax, charge or fee that is a payment obligation to a state enabled under subsection 254(f) of the communications Act of 1934.

- 2. Examples of other taxes on communications services include:
 - a. 911 emergency fees where the fee is a fixed charge on each customer or is measured by the gross amounts charged on each customer;
 - b. universal service fees where the fee is a fixed charge for each customer or is measured by the gross amounts charged to a customer;
 - c. communications gross receipts tax and utility user tax where the charge is measured as a percentage of the gross amounts charged for service to a customer;
 - d. Washington Utilities and Transportation Commission Fee;
 - e. Washington Telephone assistance excise tax;
 - f. Washington telecommunications relay service excise tax; and
 - g. Washington enhanced 911 excise taxes.
- 3. Examples of taxes not included within the definition of “other taxes on communications service include:
 - a. . . .
 - b. . . .

E. For purposes of this section, the term “other taxes on communications services” does not apply to:

- 1. any tax, charge or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of communications services.
Examples include:
 - a. generally imposed state income taxes.
 - b. . . .
- 2. any tax, charge or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis.
Examples include

- a. (*Ohio gross receipts tax*)
- b. . .

3. any tax, charge or fee that represents compensation for a communications service provider's use of public rights of way or other public property, generally considered as franchise or right of way fee.

Examples include the following when they represent compensation for the use of public rights of way or other public property.

- a. The Texas municipal access line fee pursuant to Texas Local Govt. Code Ann. ch. 283 (Vernon 2005 and Supp. 2010) and the definition of access line as determined by the Public Utility Commission of Texas in its "Order Adopting amendments to Section 26.465 As Approved At The February 13, 2003 Public Hearing," issued March 5, 2003 in Project No. 26412.";
- b. An annual inspection fee and service charge levied by a municipality on every person operating a telephone business in the municipality for the expense incurred and services rendered incident to the exercise of the municipality's police power, supervision, police regulation and police control of the construction of lines and equipment of the telephone business in the municipality when such fee is computed on gross annual revenue from business within the municipality.
- c. The fee for a certificate, license or permit issued by a municipality for the operation of a cable television system.

ALTERNATIVE VERSION OF 3

Except for the purpose of applying subsection (C)(2)(c), any tax, charge or fee that is imposed on providers of communications services that use the public rights of way or other public property and that represents compensation for such use, but only if such tax, charge or fee is levied by the taxing jurisdiction as a fixed charge for each customer, or if such tax, charge or fee is measured by gross amounts charged for telecommunications services or video programming services.

4. any generally applicable business and occupations tax that is imposed by a State, is applied to gross receipts or gross proceeds, is the legal liability of the seller of communications services and that statutorily allows the seller of communications services to elect to use the sourcing method required under the Agreement.

ALTERNATIVE #1 VERSION OF 4.

Except for the purpose of applying subsection (C)(2)(c), any generally applicable business and occupations tax that is imposed by any taxing jurisdiction within a member state, is applied to gross receipts or gross proceeds, is the legal liability of the seller of communications services and that statutorily allows the seller of communications services to elect to use the sourcing method required under the Agreement and the member state provides and maintains a single statewide database containing a taxability matrix for communications services, applicable rates, and jurisdictional boundaries for each such tax.

ALTERNATIVE VERSION #2 OF 4

Any business and occupation tax or utility tax that is imposed by a local taxing jurisdiction, is applied to gross receipts, gross proceeds, gross operating revenue, or similar measure, is the legal liability of the seller of communications services, and is not imposed on a transactional basis.

(Still working on 4.)

Examples include

- a . . .
- b . . .

5. A state tax expressly levied on taxable margin.

Examples include

a. Texas Franchise Tax

F. The term `communications services' includes the following:

1. Telecommunications services as defined in Part II of the Library of Definitions; or
2. Video programming services - the offering, transmission, conveyance or routing of radio and television audio and video programming services for purchase by subscribers or customers, regardless of the medium, technology or method of display, including the furnishing of transmission, conveyance and routing of such services by the video programming distributor. This clause (ii) shall include, but not be limited to, "cable service" as defined in 47 U.S.C. § 522(6), interactive on-demand service as defined in 47 U.S.C. § 522(12), the provision of "video programming" by a "multichannel video program distributor" as defined in 47 U.S.C. § 522(20), (13), and the distribution of audio and video programming by providers of "commercial mobile radio service" as defined in 47 C.F.R. § 20.3, when such services are offered for purchase by subscribers or customers of such service; and
3. Ancillary services as defined in Part II of the Library of Definitions.

G. 1. Definition of terms in this section, except to the extent such term is defined in part II of the Library of Definitions shall not be used to restrict or affect the taxation or exemption from taxation of any product pursuant to Section 316 or 327 of the Agreement.

2. A member state that has local jurisdictions that levy a sales or use tax on communications services shall not have more than one rate per local jurisdiction for sales or use taxes on communications services.

H. The following taxes, if in effect on the date of adoption of this Section, will not be subject to the provisions of this section.

1. . . .
2. . . .

I. The following taxes, if in effect on the date of adoption of this Section, shall be considered as separate types of taxes.

1. 911 fees imposed on users of different types of communications services when such fees are separately imposed by local jurisdictions and are authorized by separate statutes or other sources of legal authority
- 2 . . .