OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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October 29, 2007

Fax:

Re: Sales taxability of termination penalties; Our File No. LR-07-179

Dear

I am writing in response to your inquiry regarding the sales taxability of early termination penalties associated with cellular telephone service contracts. The questions posed in your inquiry and the response thereto are set forth below:

> If a consumer is contractually obligated to pay an early termination penalty (ETP) if they terminate service prior to the expiration of their service agreement with their cellular carrier, would such a penalty be subject to the sales tax in Oklahoma?
>
> Also, would the ETP be subject to the sales tax if it was related to the consumer's purchase of a below-cost cellular phone bundled with their service? In other words, if the ETP represented a reimbursement to the provider of their costs of providing the phone (not the service) to the customer (service provider acquired the phone for $200, sold to consumer for $50, the ETP is $200 - $50 = $150), would sales tax be applied to the penalty?

Telecommunication services are subject to sales tax pursuant to Section 1354(a)(4) of Title 68. Included in that general levy is the imposition of sales tax on mobile telecommunication service. All charges associated with the provision of telecommunication services are taxable unless specifically excluded from the levy or exempted by statute. Neither applies to taxation of termination penalties. Therefore, penalty charges for termination of cellular telephone service, imposed under the referenced circumstances are subject to sales tax.

This response applies only to the circumstances discussed in your request of October 12, 2007. Pursuant to Commission Rule 710:1-3-73(e), this Letter ruling may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

Christy J. Caesar
Tax Policy Analyst