

# OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION  
RICK MILLER, DIRECTOR

PHONE (405) 521-3133  
FACSIMILE (405) 522-0063

September 16, 2013

Re: LR-11-120

Dear

I am writing in response to your request for clarification of the sales taxability of telecommunications nonrecurring charges and for the sales tax treatment of telecommunications charges for WATS (Wide Area Telephone Services) and 800-# services, especially such charges when interstate in nature. Set forth verbatim are the questions posed and our responses thereto.

## QUESTION

Enacted Oklahoma Senate Bill 1076 (2007), which conformed taxation of telecommunications services to the SSTP, deleted the previously existing exemption for interstate WATS and replaced it with an exemption for interstate "800" number services. Did this legislation intend to remove the exemption for interstate WATS in favor of a more narrow and limited exemption for only "800" number services (in which case interstate WATS remained, "unexempted" and thus taxable), or did it simply delete the reference to WATS because, under the SSTP, WATS is included within the definition of (exempt) "800" number services?

## RESPONSE

Prior to a 2007 amendment<sup>1</sup> Section 1357 of Title 68 provided a sales tax exemption for sales of wide area telecommunication services (WATS) as follows:

<sup>1</sup> Pursuant to Senate Bill 1076, Laws 2007, c 155 § 9.

There are hereby specifically exempted from the tax levied by the Oklahoma Sales Tax Code:

\* \* \*

(18) Sales of any interstate telecommunications services which:

- (a) entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber.

Effective November 1, 2007,<sup>2</sup> Section 1357 of Title 68 was amended as follows:

There are hereby specifically exempted from the tax levied by the Oklahoma Sales Tax Code:

\* \* \*

(18) Sales of the following telecommunications services:

- (a) Interstate and International "800 service". "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877" and "888" toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

The current version of paragraph (18)(a) of Section 1357 of Title 68 is identical to the one effective November 1, 2007.

As a general rule, exemption statutes are to be strictly construed against exemption. *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 563 P.2d 641 (Okla. 1977). The language of an exemption statute may not be construed so as to give it an effect which is not intended. *Protest of Hyde*, 188 Okla. 413, 110 P. 2d 292 (1941). The intent or purpose of a statutory provision is to be determined primarily from the language of the statute. *Hess v. Excise Board of McCurtain County*, 698 P.2d 930 (Okla. 1985). Therefore, to the extent the "WATS" services about which you inquire do not fall within the specific provisions of Section 1357(18)(a) of Title 68, the sale of these services would be subject to sales tax in Oklahoma.

## QUESTION

As a separate (or perhaps slightly related) question, we're confronting an apparent conflict in Oklahoma statutes between 68 Okla. St. § 1354.A.5, which explicitly imposes the Sales Tax upon "telecommunications nonrecurring charges," and 68 Okla. St. § 1357.18g, which seems to explicitly exempt the very same charges. Is there something we're missing, or not seeing, here?

---

<sup>2</sup> See Note 1, *supra*.

## RESPONSE

Installation of telecommunications service (such as wiring or equipment) is not taxable as a telecommunications service but is taxable as a telecommunications nonrecurring charge which means "an amount billed for the installation, connection, change or initiation of telecommunications services received by a customer." 68 O.S. § 1354(A)(5). Certain telecommunications nonrecurring charges which include the installation, connection, change or initiation of telecommunication services which are not associated with a retail consumer sale are exempted from the sales tax levy pursuant to 68 O.S. § 1357(18)(g).

Therefore, any labor charges falling within Section 1354(A)(5) of Title 68 which are not exempted by Section 1357(18)(g) are subject to sales tax.

This response applies only to the circumstances discussed in your request of November 3, 2011. Pursuant to Oklahoma Administrative Code 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



Brenda J. Sullivan  
Tax Policy Analyst