



Special Edition!

Oklahoma Adopts Emergency Rules to Implement Use Tax Notice Law

The Oklahoma Tax Commission has adopted and Governor Brad Henry has signed a set of emergency rules to implement HB 2359, the use tax notice law passed by the legislature at the end of May. The full text of the rules is available [here](#).

DMA worked with the Commission to communicate concerns with certain provisions and to explain potential compliance problems since the rules differ in some ways from the rules adopted earlier in the summer by Colorado to implement its use tax notice law. A rulemaking to set the permanent rules will likely commence next spring. The effective date for the rules is October 1, 2010. DMA explained to the Commission the likely significant hurdles companies would have in meeting that date, especially since the final approval came so close to the effective date. Note that although there are no enforcement provisions in the emergency rules, this may change with the adoption of the permanent rules in the spring and after the commission has had the opportunity to review compliance over the next few months.

Key provisions in the regulations include:

- The website and/or catalog notice must contain these five provisions:
 - The non-collecting retailer (a retailer that does not collect and remit Oklahoma sales and use tax) is not required and does not collect Oklahoma sales or use tax;
 - The purchase is subject to Oklahoma sales and use tax unless specifically exempt;
 - The purchase is not exempt merely because it was conducted over the Internet or remotely;
 - Oklahoma purchasers must report and then pay tax on purchases that were not taxed (additional information about the specific forms is also required); and
 - Consumers can find the necessary forms and instructions at the Oklahoma Tax Commission website.
- For websites, the required notice must occur “on a page necessary to facilitating the applicable transaction,” although a specific 21-word link to the complete notice can be included if it refers the consumer to the full required notice.
- Catalogs have a similar requirement except the full notice or reference to the full notice (using the 21-word link language plus the appropriate page number where the notice can be found) must be included on the order form.

- The “invoice” notice must be on the electronic order confirmation sent to the consumer. This notice can be done via a link as described above, unless no electronic order confirmation is provided, in which case the full text of the notice must appear “on the purchase order, bill, receipt, sales slip, order form, or packing statement.”
- For off-line catalog purchases, the full text of the notice must appear “on the purchase order, bill, receipt, sales slip, order form, or packing statement.”
- An exception for Internet purchases is provided if the retailer chooses to place the notice on the “check out” page of a website. Placing the notice on the “check out page” would then fulfill both the website and invoice notice requirements.
- A provision in the rules allows for consolidated notices if the retailer is required to provide a similar notice for another state. (Note: In reality the specificity of the Oklahoma notice would likely make crafting a generic notice impractical, if not impossible, since the Oklahoma notice requires using “Oklahoma” in two places.)
- Retailers are prohibited from “displaying or implying” that no tax is due on any Oklahoma purchase unless, the sale is actually exempt or the notice accompanies each such display of no tax being due. The rules provide the example that displaying “zero” or “0.00” next to a line designated as “Sales tax” would display or imply that no tax is due.
- The Oklahoma law and rules apply to online auction websites.
- De minimis retailers and online auction websites are defined as having less than \$100,000 in total gross sales in Oklahoma in the previous year and a reasonable expectation of the same in the current year.
- The effective date of the rules is set at October 1, 2010.
- There are no enforcement provisions in the emergency rules. However, this may change with the permanent rules.

Please contact [Ron Barnes](#), DMA’s vice president of state affairs, or [Jerry Cerasale](#), DMA’s senior vice president of government affairs, with any questions.