

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2716

By: McPeak

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6 AS INTRODUCED

7 An Act relating to revenue and taxation; requiring
8 Attorney General to establish Unconstitutional
9 Interstate Taxation Prevention Unit; specifying
10 duties of Unit; requiring Unit to place special
11 emphasis on certain activity by revenue collection
12 agencies of other states; authorizing certain
13 communications; requiring Oklahoma Tax Commission to
14 provide assistance; authorizing franchise tax credit
15 to certain entities; specifying criteria; for receipt
16 of credit; providing for application based upon form
17 prescribed; requiring expedited consideration;
18 requiring final determinations; providing rights of
19 private entities inure to Unconstitutional Interstate
20 Taxation Prevention Unit; providing for information
21 to be provided to Unit; providing for codification;
22 and declaring an emergency.
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 291 of Title 68, unless there is
20 created a duplication in numbering, reads as follows:

21 A. The Attorney General shall establish a special division to
22 be known as the "Unconstitutional Interstate Taxation Prevention
23 Unit".
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1 B. The Unconstitutional Interstate Taxation Prevention Unit
2 shall file an action in the federal or state court having
3 jurisdiction or with the state administrative agency having
4 jurisdiction in order to prevent any state or local government
5 entity other than the State of Oklahoma or its political
6 subdivisions from enforcing or attempting to enforce or apply any
7 income, sales, use, excise, gross receipts, franchise or other state
8 or local tax in a manner inconsistent with the Due Process Clause or
9 the Commerce Clause of the United States Constitution.

10 C. The Unconstitutional Interstate Taxation Prevention Unit
11 shall place particular emphasis upon any attempt by the revenue
12 collection agency of another state to impose an income tax upon any
13 institution organized under Oklahoma law or having its principal
14 place of business within the State of Oklahoma, where the principal
15 basis for assessing such a tax appears to be efforts of collecting
16 debts owed to it from citizens of such other state or locality,
17 including use of the state's or locality's court system.

18 D. The Unconstitutional Interstate Taxation Prevention Unit
19 shall be authorized to communicate with the revenue enforcement
20 agency of any other state or local government organized pursuant to
21 the laws of another state and to issue cease and desist orders based
22 upon the requirements of the United States Supreme Court decision of
23 Complete Auto Transit v. Brady, 430 U.S. 274 (1977) and any other
24 decision by the United States Supreme Court interpreting and

1 applying the Due Process Clause or the Commerce Clause of the United
2 States Constitution.

3 E. The Oklahoma Tax Commission shall provide such assistance to
4 the Unconstitutional Interstate Taxation Prevention Unit as may be
5 required in order to perform the duties imposed pursuant to this
6 section.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1204.1 of Title 68, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Any entity that owes tax under Section 1203 or Section 1204
11 of Title 68 of the Oklahoma Statutes shall be entitled to a credit
12 against such tax liability if the following criteria are met:

13 1. The entity has been assessed any income, sales, use, excise,
14 gross receipts, franchise or other state or local tax by a foreign
15 state or locality within the United States;

16 2. Such assessment relates to operations conducted entirely or
17 principally within the State of Oklahoma for which the taxing
18 authority maintains that there is some nexus or connection to the
19 locality of the taxing authority;

20 3. The entity maintains a good-faith belief that such
21 assessment is inconsistent with the Due Process Clause or the
22 Commerce Clause of the United States Constitution;

23 4. Within the thirty (30) days of the later of (i) enactment of
24 this section or (ii) receiving its first notice of proposed

1 assessment from the taxing authority in question, the entity makes
2 application to the Unconstitutional Interstate Taxation Prevention
3 Unit of the proposed assessment, as described in subsection B of
4 this section; and

5 5. The Unconstitutional Interstate Taxation Prevention Unit
6 approves the application. The credit provided by this section shall
7 be available in the tax year that the tax is paid by the entity. To
8 the extent the taxpayer is not subject to tax to the full extent of
9 the credit, the taxpayer may file an amended return for up to five
10 (5) prior tax years and/or may carry the credit forward for up to
11 two (2) additional tax years.

12 B. 1. Any entity making application to the Unconstitutional
13 Interstate Taxation Prevention Unit as provided in subsection A of
14 this section shall to do so using a form created for that purpose by
15 such Unit. In the absence of such a form, the entity may apply for
16 a determination that this section is applicable in a manner that
17 adequately describes (i) the taxing authority that is attempting to
18 assess tax; (ii) the type of tax that is being assessed; (iii) any
19 documentation related to such tax assessment; (iv) a statement why
20 the entity believes that the assessed tax is inconsistent with the
21 Due Process Clause or the Commerce Clause of the United States
22 Constitution.

23 2. The Unconstitutional Interstate Taxation Prevention Unit
24 shall expedite consideration of any application submitted under

1 subsection A of this section, and in any event, shall make its final
2 determination within sixty (60) days of the submission of
3 application. Any application for which the Unconstitutional
4 Interstate Taxation Prevention Unit has not made a determination
5 within sixty (60) days shall be deemed approved;

6 3. For any application that is approved by the Unconstitutional
7 Interstate Taxation Prevention Unit, the Unconstitutional Interstate
8 Taxation Prevention Unit shall inure to all the rights and
9 privileges related to the assessed tax, including, the right to
10 oppose such tax assessment in whatever forum it deems appropriate.
11 The Unconstitutional Interstate Taxation Prevention Unit may require
12 any writing signed by the applicant it deems necessary as a
13 condition for approval of the application; and

14 4. The Unconstitutional Interstate Taxation Prevention Unit may
15 require the entity submitting an application to submit any
16 additional information it deems appropriate. Failure of an entity
17 to fully cooperate with any request by the Unconstitutional
18 Interstate Taxation Prevention Unit shall be sufficient reason to
19 deny an application.

20 SECTION 3. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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