

OKLAHOMA STATE SENATE
GENERAL CONFERENCE COMMITTEE ON APPROPRIATIONS

Mr. President:

Date: 5-17-2012

Mr. Speaker:

The Conference Committee, to which was referred

SB 1436

By: Mazzei et al of the Senate and Dank et al of the House

Title: Franchise tax; repealing franchise tax levy. Effective date.

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

SENATE CONFEREES:

Ballenger _____

Branan [Signature]

Brinkley [Signature]

Burrage _____

Crain [Signature]

David [Signature]

Ford [Signature]

Griffin [Signature]

Halligan [Signature]

Ivester _____

Jolley _____

Justice [Signature]

Marlatt [Signature]

Mazzei [Signature]

McAffrey [Signature]

Newberry [Signature]

Nichols _____

Paddack _____

Stanislowski [Signature]

Sykes [Signature]

Wilson _____

Wyrick _____

HOUSE CONFEREES:

Conference Committee on Appropriations

ADOPTED & PASSED

Senate Action _____

Date MAY 22 2012

House Action _____

Date _____

HOUSE CONFEREES

Armes Don J. Armes Sears Earl Sears

Billy _____ Walker _____

Blackwell _____

Brown _____

Cox Douglas G. Cox M.P.

Dank David M. Dank

DeWitt Hale DeWitt

Denney Lee Denney

Dorman _____

Hoskin _____

Liebmann Amy Lieberman

Martin (Scott) Scott C. Martin

McPeak _____

Nelson Garrison Nelson

Peters _____

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 1436

6 By: Mazzei, Childers, David,
7 Ford, Halligan, Jolley,
8 Russell, Simpson, Treat,
9 Brinkley, Branan, Crain,
10 Allen, Sparks, Burrage,
11 Ivester, Wyrick, Paddack,
12 Garrison, Johnson
13 (Constance), McAffrey,
14 Adelson and Ellis of the
15 Senate

16 and

17 Dank, Pittman, Cox,
18 Mulready, Hall, Grau,
19 Cockroft, Sanders, Enns and
20 (Walker) of the House

21 CONFERENCE COMMITTEE SUBSTITUTE

22 An Act relating to the Oklahoma Business Activity Tax
23 Code; amending 68 O.S. 2011, Sections 1218, 1219,
24 1222, 1225 and 1228, which relate to the
implementation of the business activity tax;
extending time frame for implementation of certain
tax levy; clarifying in lieu of ad valorem tax
payments; modifying expiration date of the Oklahoma
Business Activity Tax Code; and providing an
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2011, Section 1218, is
amended to read as follows:

1 Section 1218. A. For tax years beginning on or after January
2 1, 2010, there is hereby levied on each person doing business in
3 this state an annual tax in the amount of Twenty-five Dollars
4 (\$25.00).

5 B. In addition to the tax levied in subsection A of this
6 section, there shall be levied a tax equal to one percent (1%) of
7 the net revenue derived from business activity that is allocated or
8 apportioned to Oklahoma.

9 C. Notwithstanding the provisions of subsection B of this
10 section for tax years 2010, 2011, ~~and 2012,~~ and 2013, corporations
11 and any other persons subject to the franchise tax levied under the
12 provisions of Sections 1203, 1204 or 1205 of ~~Title 68 of the~~
13 ~~Oklahoma Statutes~~ this title, the tax due under this section shall
14 be equal to the amount such person paid or was required to pay for
15 the taxable period ending prior to December 31, 2010.

16 D. Except as provided in subsections A and C of this section,
17 no person shall be required to remit the tax levied pursuant to
18 subsection B of this section for tax years 2010, 2011, ~~and 2012,~~ and
19 2013.

20 E. The tax hereby levied shall be payable annually as provided
21 in Section 7 1220 of this ~~act~~ title.

22 F. The tax so levied or imposed pursuant to this section, when
23 paid in full as provided in ~~this act~~ the Oklahoma Business Activity
24 Tax Code, shall be in lieu of any and all other taxes imposed by the

1 state, counties, cities, towns, townships, school districts, and
2 other municipalities or political subdivisions of the state on
3 intangible personal property of each such person, except for public
4 service corporations, railroads and air carriers.

5 G. ~~The~~ For the tax years beginning on or after January 1, 2011,
6 the tax remitted in 2011 shall also be in lieu of the ad valorem tax
7 on intangible personal property of each such person, except for
8 public service corporations, railroads and air carriers for the
9 calendar years 2007, 2008, and 2009 in which the person was doing
10 business in the state. No taxpayer shall be entitled to nor be
11 allowed any refund of taxes paid upon intangible personal property
12 prior to ~~the effective date of this act~~ August 26, 2011. ~~Upon the~~
13 ~~effective date of this act~~ On and after August 26, 2011, there shall
14 be no changes in the valuation methodology of personal property, and
15 the valuation methodology of personal property for the January 1,
16 2010, assessment year shall be maintained and preserved.

17 H. A person is doing business in this state if any one of the
18 paragraphs in this subsection applies. The person:

19 1. Is domiciled in this state as an individual for business
20 purposes or is domiciled in this state for corporate, commercial or
21 other business purposes;

22 2. Owns or uses a part or all of its capital in this state;

23 3. Has at any time during the calendar year property in this
24 state with an aggregate value of at least Fifty Thousand Dollars

1 (\$50,000.00). For the purpose of this subsection, owned property is
2 valued at original cost and rented property is valued at eight times
3 the net annual rental charge;

4 4. Has during the calendar year payroll in this state of at
5 least Fifty Thousand Dollars (\$50,000.00). Payroll in this state
6 includes all of the following:

7 a. any amount subject to withholding by the person under
8 Section 2385.2 of ~~Title 68 of the Oklahoma Statutes~~
9 this title,

10 b. any other amount the person pays as compensation to an
11 individual under the supervision or control of the
12 person for work done in this state, and

13 c. any amount the person pays for services performed in
14 this state on its behalf by another;

15 5. Has during the calendar year sales in this state of at least
16 Five Hundred Thousand Dollars (\$500,000.00);

17 6. Has at any time during the calendar year within this state
18 at least twenty-five percent (25%) of the person's total property,
19 total payroll, or total sales; or

20 7. Otherwise has nexus with this state to an extent that the
21 person can be required to remit the tax imposed under ~~this act~~ the
22 Oklahoma Business Activity Tax Code under the Constitution of the
23 United States.

1 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1219, is
2 amended to read as follows:

3 Section 1219. For taxable years beginning on or after January
4 1, 2010 and ending on or before December 31, ~~2012~~ 2013, there shall
5 be allowed a credit against the tax levied by Section 2355 of ~~Title~~
6 ~~68 of the Oklahoma Statutes~~ this title in the amount of Twenty-five
7 Dollars (\$25.00) of the Oklahoma Business Activity Tax paid;
8 provided, no credit shall be allowed for any amount of tax paid
9 pursuant to subsection C of Section ~~5~~ 1218 of this ~~act~~ title. The
10 credit may only be taken for the year in which the Business Activity
11 Tax is levied and may only be taken if the Business Activity Tax is
12 timely paid. The credit shall not be refundable and shall not carry
13 forward.

14 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1222, is
15 amended to read as follows:

16 Section 1222. A. On and after January 1, ~~2013~~ 2014, there
17 shall be allowed a discount against the tax levied in subsection B
18 of Section ~~5~~ 1218 of this ~~act~~ title as provided herein:

19 1. For a person for which the net revenue from its business
20 activity is equal to or less than Fifty Thousand Dollars
21 (\$50,000.00), the person is entitled to a discount of one hundred
22 percent (100%) of the tax due from its net revenue;

23 2. For a person for which the net revenue from its business
24 activity is greater than Fifty Thousand Dollars (\$50,000.00) but is

1 equal to or less than One Hundred Thousand Dollars (\$100,000.00),
2 the person is entitled to a discount of eighty percent (80%) of the
3 tax due from its net revenue;

4 3. For a person for which the net revenue from its business
5 activity is greater than One Hundred Thousand Dollars (\$100,000.00)
6 but is equal to or less than One Hundred Fifty Thousand Dollars
7 (\$150,000.00), the person is entitled to a discount of sixty percent
8 (60%) of the tax due from its net revenue;

9 4. For a person for which the net revenue from its business
10 activity is greater than One Hundred Fifty Thousand Dollars
11 (\$150,000.00) but is equal to or less than Two Hundred Thousand
12 Dollars (\$200,000.00), the person is entitled to a discount of forty
13 percent (40%) of the tax due from its net revenue; and

14 5. For a person for which the net revenue from its business
15 activity is greater than Two Hundred Thousand Dollars (\$200,000.00)
16 but is equal to or less than Two Hundred Fifty Thousand Dollars
17 (\$250,000.00), the person is entitled to a discount of twenty
18 percent (20%) percent of the tax due from its net revenue.

19 SECTION 4. AMENDATORY 68 O.S. 2011, Section 1225, is
20 amended to read as follows:

21 Section 1225. A. The provisions of this section shall apply to
22 tax years beginning on or after January 1, ~~2013~~ 2014.

23 B. As used in this section:
24

1 1. "Affiliated group" means a group of one or more entities in
2 which a controlling interest is owned by a common owner or owners,
3 either corporate or noncorporate, or by one or more of the member
4 entities;

5 2. "Combined group" means entities that are part of an
6 affiliated group engaged in a unitary business and that are required
7 to file a group report under this section;

8 3. "Consolidated group" means a group of two or more
9 corporations treated as a single person for purposes of ~~this act~~ the
10 Oklahoma Business Activity Tax Code under the provisions of
11 subsection C of this section;

12 4. "Controlling interest" means:

13 a. for a corporation, either more than fifty percent
14 (50%), owned directly or indirectly, of the total
15 combined voting power of all classes of stock of the
16 corporation, or more than fifty percent (50%), owned
17 directly or indirectly, of the beneficial ownership
18 interest in the voting stock of the corporation,

19 b. for a partnership, association, trust, or other entity
20 other than a limited liability company, more than
21 fifty percent (50%), owned directly or indirectly, of
22 the capital, profits, or beneficial interest in the
23 partnership, association, trust, or other entity, and
24

1 c. for a limited liability company, either more than
2 fifty percent (50%), owned directly or indirectly, of
3 the total membership interest of the limited liability
4 company or more than fifty percent (50%), owned
5 directly or indirectly, of the beneficial ownership
6 interest in the membership interest of the limited
7 liability company;

8 5. "Reporting person" means a person in a consolidated group or
9 combined group that is designated by that group to legally bind the
10 group for all filings and tax liabilities and to receive all legal
11 notices with respect to matters under ~~this act~~ the Oklahoma Business
12 Activity Tax Code; and

13 6. "Unitary business" means a single economic enterprise that
14 is made up either of separate parts of a single business entity, of
15 multiple business entities that are related under Section 267 or
16 1563 of the Internal Revenue Code, or of a commonly controlled group
17 of business entities that are sufficiently interdependent,
18 integrated, and interrelated through their activities so as to
19 provide a synergy and mutual benefit that produces a sharing or
20 exchange of value among them and a significant flow of value to the
21 separate parts. Two or more business entities are presumed to be a
22 unitary business if the businesses have unity of ownership,
23 operation, and use as indicated by a centralized management or a
24 centralized executive force; centralized purchasing, advertising, or

1 accounting; inter-entity sales or leases; inter-entity services,
2 including administrative, employee benefits, human resources, legal,
3 financial, and cash management services; inter-entity debts; inter-
4 entity use of proprietary materials; interlocking directorates; or
5 interlocking inter-entity officers. In no event and under no
6 circumstances shall the preceding sentence be construed as exclusive
7 of any and all other factors indicative of a unitary business. For
8 purposes of this section, the term "unitary business" shall be
9 broadly construed, to the extent permitted by the U.S. Constitution.

10 Any business conducted by a pass-through entity that is owned
11 directly or indirectly by an entity shall be treated as conducted by
12 the entity, to the extent of the entity's distributive share of the
13 pass-through entity's income, regardless of the percentage of the
14 entity's ownership interest. A business conducted directly or
15 indirectly by one entity is unitary with that portion of a business
16 conducted by another entity through its direct or indirect interest
17 in a pass-through entity if there is a synergy and exchange and flow
18 of value between the two parts of the business and the two entities
19 are members of the same commonly controlled group.

20 C. 1. If two or more corporations file federal income tax
21 returns on a consolidated basis such corporations shall be required
22 to file consolidated returns for purposes of determining their
23 Oklahoma business activity tax liability.

24

1 2. Corporations, or any portion thereof, in such consolidated
2 group which are also included in a combined group as part of a
3 unitary business shall determine the combined group's total revenue
4 and net revenue which shall be separately stated as an entity in the
5 consolidated group's returns for purposes of determining their
6 Oklahoma business activity tax liability.

7 3. Corporations, or any portion thereof, in such consolidated
8 group which are not included in a combined group shall determine
9 such corporation's total revenue and net revenue on a component
10 member by component member basis in accordance with the provisions
11 of ~~this act~~ the Oklahoma Business Activity Tax Code.

12 4. The net revenue for business done in this state to determine
13 the Oklahoma business activity tax liability for the consolidated
14 group shall be the sum of each of the component member's and
15 combined group's net revenue or net loss, if any, properly
16 apportioned to this state.

17 D. 1. Except for entities that are a member of a consolidated
18 group under subsection C of this section, all entities that are part
19 of an affiliated group engaged in a unitary business shall file a
20 combined group report in lieu of individual reports based on the
21 combined group's business. The combined group may not include an
22 entity that conducts business outside the United States if eighty
23 percent (80%) or more of the entity's property and payroll, as
24 determined by factors under Section 2358 of ~~Title 68 of the Oklahoma~~

1 ~~Statutes~~ this title, are assigned to locations outside the United
2 States. The combined group may not include an entity that conducts
3 business outside the United States and has no property or payroll if
4 eighty percent (80%) or more of the entity's total revenue is
5 assigned to locations outside the United States.

6 2. The combined group is a single entity for purposes of the
7 application of the tax levied under ~~this act~~ the Oklahoma Business
8 Activity Tax Code.

9 3. For purposes of ~~this act~~ the Oklahoma Business Activity Tax
10 Code, a combined group shall determine its total revenue by:

- 11 a. determining the total revenue of each of its members
12 as if the member were a separate entity;
- 13 b. adding the total revenues of the members determined
14 under subparagraph a of this paragraph together; and
- 15 c. subtracting, to the extent included under subparagraph
16 a of this paragraph, items of total revenue received
17 from another member of the combined group.

18 4. For purposes of ~~this act~~ the Oklahoma Business Activity Tax
19 Code, a combined group shall determine its deduction for ordinary
20 trade or business expenses to arrive at net revenue by:

- 21 a. determining the ordinary trade or business expenses
22 other than interest, taxes, depreciation and
23 amortization for each of its members as if the member
24 were a separate entity;

1 b. adding the amounts of ordinary trade or business
2 expenses determined under subparagraph a of this
3 paragraph together; and

4 c. subtracting from the amount determined under
5 subparagraph b of this paragraph any ordinary trade or
6 business expenses paid from one member of the combined
7 group to another member of the combined group, but
8 only to the extent the corresponding item of total
9 revenue was subtracted under subparagraph c of
10 paragraph 3 of this subsection.

11 5. Each entity that is part of a combined group report shall,
12 for purposes of determining net revenue and apportionment, include
13 its activities for the same period used by the combined group.

14 6. The members of a combined group shall be jointly and
15 severally liable for the tax of the combined group. The members of
16 a combined group shall be jointly and severally liable for the
17 interest, penalties, and costs associated with the combined report.

18 SECTION 5. AMENDATORY 68 O.S. 2011, Section 1228, is
19 amended to read as follows:

20 Section 1228. ~~The~~ Upon the certification by the State Election
21 Board of the approval by the people of this state of the provisions
22 of Enrolled Senate Joint Resolution No. 52 of the 2nd Session of the
23 53rd Oklahoma Legislature, the Oklahoma Business Activity Tax Code

1 shall expire and cease to have the force and effect of law for tax
2 years beginning after December 31, 2012.

3 SECTION 6. This act shall become effective November 1, 2012.

4
5 53-2-3512 JCR 5/22/2012 12:29:50 PM

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24