

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1562

By: Mazzei

4
5
6 AS INTRODUCED

7 An Act relating to income tax; defining terms and
8 providing for application of such terms to certain
9 time period; providing for status and treatment of
10 business conducted by certain pass-through entities;
11 specifying circumstances requiring the filing of
12 consolidated returns and method of determining
13 revenue under specified circumstances; providing for
14 the tolling of time period for purposes of
15 determining taxable income; providing for joint and
16 several liability for members of combined group;
17 repealing 68 O.S. 2001, Section 2367, which relates
18 to consolidated income tax returns; providing for
19 codification; and providing an effective date.

20
21
22
23
24
25 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

26 SECTION 1. NEW LAW A new section of law to be codified
27 in the Oklahoma Statutes as Section 2367.1 of Title 68, unless there
28 is created a duplication in numbering, reads as follows:

29 A. As used in this section:

30 1. "Affiliated group" means a group of one or more entities in
31 which a controlling interest is owned by a common owner or owners,
32 either corporate or noncorporate, or by one or more of the member
33 entities;
34

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

4 3. "Consolidated group" means a group of two or more
5 corporations treated as a single entity for purposes of this section
6 under the provisions of subsection C of this section;

7 4. "Controlling interest" means:

8 a. for a corporation, either more than fifty percent
9 (50%), owned directly or indirectly, of the total
10 combined voting power of all classes of stock of the
11 corporation, or more than fifty percent (50%), owned
12 directly or indirectly, of the beneficial ownership
13 interest in the voting stock of the corporation,

14 b. for a partnership, association, trust, or other entity
15 other than a limited liability company, more than
16 fifty percent (50%), owned directly or indirectly, of
17 the capital, profits, or beneficial interest in the
18 partnership, association, trust, or other entity, and

19 c. for a limited liability company, either more than
20 fifty percent (50%), owned directly or indirectly, of
21 the total membership interest of the limited liability
22 company or more than fifty percent (50%), owned
23 directly or indirectly, of the beneficial ownership
24

1 interest in the membership interest of the limited
2 liability company;

3 5. "Reporting person" means a person in a consolidated group or
4 combined group that is designated by that group to legally bind the
5 group for all filings and tax liabilities and to receive all legal
6 notices with respect to matters under this section; and

7 6. "Unitary business" means a single economic enterprise that
8 is made up either of separate parts of a single business entity, of
9 multiple business entities that are related under Section 267 or
10 1563 of the Internal Revenue Code, or of a commonly controlled group
11 of business entities that are sufficiently interdependent,
12 integrated, and interrelated through their activities so as to
13 provide a synergy and mutual benefit that produces a sharing or
14 exchange of value among them and a significant flow of value to the
15 separate parts. Two or more business entities are presumed to be a
16 unitary business if the businesses have unity of ownership,
17 operation, and use as indicated by a centralized management or a
18 centralized executive force; centralized purchasing, advertising, or
19 accounting; inter-entity sales or leases; inter-entity services,
20 including administrative, employee benefits, human resources, legal,
21 financial, and cash management services; inter-entity debts; inter-
22 entity use of proprietary materials; interlocking directorates; or
23 interlocking inter-entity officers. In no event and under no
24 circumstances shall the preceding sentence be construed as exclusive

1 of any and all other factors indicative of a unitary business. For
2 purposes of this section, the term "unitary business" shall be
3 broadly construed, to the extent permitted by the U.S. Constitution.

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

14 C. 1. If two or more corporations file federal income tax
15 returns on a consolidated basis the corporations shall be required
16 to file consolidated returns for purposes of determining their
17 Oklahoma income tax liability.

18 2. Corporations, or any portion thereof, in the consolidated
19 group which are also included in a combined group as part of a
20 unitary business shall determine the combined group's total taxable
21 income which shall be separately stated as an entity in the
22 consolidated group's returns for purposes of determining their
23 Oklahoma income tax liability.

1 3. Corporations, or any portion thereof, in a consolidated
2 group which are not included in a combined group shall determine the
3 corporation's total taxable income on a component member by
4 component member basis in accordance with the provisions of the
5 Oklahoma Income Tax Act.

6 4. The taxable income for business done in this state to
7 determine the Oklahoma income tax liability for the consolidated
8 group shall be the sum of each of the component member's and
9 combined group's taxable income, if any, properly apportioned to
10 this state.

11 D. 1. Except for entities that are a member of a consolidated
12 group under subsection C of this section, all entities that are part
13 of an affiliated group engaged in a unitary business shall file a
14 combined group report in lieu of individual reports based on the
15 combined group's business. The combined group may not include an
16 entity that conducts business outside the United States if eighty
17 percent (80%) or more of the entity's property and payroll, as
18 determined by factors under Section 2358 of Title 68 of the Oklahoma
19 Statutes, are assigned to locations outside the United States. The
20 combined group may not include an entity that conducts business
21 outside the United States and has no property or payroll if eighty
22 percent (80%) or more of the entity's total income is assigned to
23 locations outside the United States.

24

1 2. The combined group is a single entity for purposes of the
2 application of the tax levied under the Oklahoma Income Tax Act.

3 3. For purposes of this section, a combined group shall
4 determine its total taxable income by:

5 a. determining the total taxable income of each of its
6 members as if the member were a separate entity,

7 b. adding the total taxable income of the members
8 determined under subparagraph a of this paragraph
9 together, and

10 c. subtracting, to the extent included under subparagraph
11 a of this paragraph, items of total taxable income
12 received from another member of the combined group.

13 4. For purposes of this section, a combined group shall
14 determine its deduction for ordinary trade or business expenses to
15 arrive at taxable income by:

16 a. determining the ordinary trade or business expenses
17 other than interest, taxes, depreciation and
18 amortization for each of its members as if the member
19 were a separate entity,

20 b. adding the amounts of ordinary trade or business
21 expenses determined under subparagraph a of this
22 paragraph together, and

23 c. subtracting from the amount determined under
24 subparagraph b of this paragraph any ordinary trade or

1 business expenses paid from one member of the combined
2 group to another member of the combined group, but
3 only to the extent the corresponding item of total
4 taxable income was subtracted under subparagraph c of
5 paragraph 3 of this subsection.

6 5. Each entity that is part of a combined group report shall,
7 for purposes of determining net taxable income and apportionment,
8 include its activities for the same period used by the combined
9 group.

10 6. The members of a combined group shall be jointly and
11 severally liable for the tax of the combined group. The members of
12 a combined group shall be jointly and severally liable for the
13 interest, penalties, and costs associated with the combined report.

14 E. The provisions of this section shall apply to tax years
15 beginning on or after January 1, 2013.

16 SECTION 2. REPEALER 68 O.S. 2011, Section 2367, is
17 hereby repealed.

18 SECTION 3. This act shall become effective January 1, 2013.

19
20 53-2-2745 JCR 1/18/2012 8:06:54 PM
21
22
23
24