BILL SUMMARY
1st Session of the 54th Legislature

Bill No.:	**HB 1363**
Version:	**CS**
Request Number:	**7337**
Author:	**Rep. Sears**
Date:	**3/6/2013**
Impact:	**Tax Commission: Potential Revenue Changes Unknown**

Research Analysis

The Committee Substitute for HB1363 modifies the definition of *maintaining a place of business in this state* by including language related to the presence of persons other than common carriers that have substantial nexus in Oklahoma. This language includes persons delivering, installing, assembling or performing maintenance services for a vendor, as well as persons conducting other activities in Oklahoma that are significantly associated with the vendor's ability to establish and maintain a sales market in Oklahoma. The definition of *maintaining a place of business in this state* also includes persons using trademarks, service marks, or trade names in Oklahoma that are the same or substantially similar to those used by a vendor, as well as those that facilitate a vendor's delivery of property to Oklahoma customers by allowing the pickup of goods at an office, distribution facility, warehouse, storage place, or other similar place in the state. For any contract, agreement or ruling between any agency or branch of state government to exempt persons from the definition and the requirement to collect sales tax, the measure requires the arrangement to be approved by a majority vote in each house of the Oklahoma Legislature.

The measure also repeals a provision of Title 68, which states the legislative intent for the taxes levied by the Oklahoma Sales Tax Code.

Prepared By: Quyen Do

Fiscal Analysis

Amends Section 1352(13) of Title 68 modifying the definition of "maintaining a place of business in this state" to attribute sales tax nexus to those persons utilizing or maintaining an office, distribution house, sales house, warehouse or other physical place of business, whether owned or operated by the vendor or any other person, other than a common carrier acting in its capacity as such. Further the measure expands the definition to include the presence of any person, other than a common carrier acting in its capacity as such, that has substantial nexus in the state and that (1) sells a similar line of products as the vendor and does so under the same or a similar name; (2) uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those of the vendor; (3) delivers, installs, assembles or performs maintenance services for the vendor; (4) facilitates the vendor's delivery of property to customers by allowing the vendor's customers to pick up property sold by the vendor at an office, distribution facility, warehouse, storage place or other place maintained by the person in this state; or (5) conducts any other activities in this state that are significantly associated with the vendor's ability to establish and maintain a market in this state for the vendor's sales. Also, the measure provides that these presumptions outlined above may be rebutted by demonstrating that the person's activities in this state are not significantly associated with the vendor's ability to establish and maintain a sales market in this state.

Declares as null and void, unless approved by a majority vote of each house of the Oklahoma legislature, any agreement between a person and this state's executive branch, or any other state agency/department ruling that the person is not maintaining a place of business in this state or is not required to collect sales and use tax collection despite the presence of a warehouse, distribution center, or fulfillment center in this state owned or operated by the vendor or an affiliated person[1].

Any person selling or leasing tangible personal property or services to the state, a state department, state agency, or agent thereof as a prerequisite to the sale or lease is required along with any affiliated person to register with the department as a vendor and comply with all legal requirements imposed on a dealer, including the requirement to collect and remit sales or use tax on all taxable sale of tangible personal property and services to customers in the state. It modifies the definition of vendor removing those persons who solicit business by distribution of catalogs or other advertising matter.

Amends Section 1354.2 of Title 68 providing for the application of the 4.5 percent excise tax on the gross receipts on property sold to the consumer-user in the state by an out-of-state vendor that maintains a place of business in the state striking the language referring to vendors who engage in business in this state through the continuous, regular or systematic solicitation of retail sales by advertisement in the newspapers or radio or television media operating within Oklahoma.

Amends Section 1354.3 of Title 68 providing for application of the 4.5 percent excise tax on the gross receipts of each sale or use of tangible personal property to or by a consumer-user in the state purchased from an out-of-state vendor that maintains a place of business in the state striking the language referencing out-of-state vendors who engage in business in this state through the continuous, regular or systematic solicitation of retail sales by advertisement through mail order or catalog publications.

Amends Section 1401(10) of Title 68 providing that the phrase "maintaining a place of business within the state" for purposes of the Use Tax Code shall have the same meaning as provided in Section 1352 of Title 68.

Any increase in state sales and use tax collections resulting from the outlined proposals is unknown.

[1] Affiliated person means any person that is a member of the same controlled group of corporations as defined in Section 1563(a) of the Internal Revenue Code as the vendor or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the vendor as a corporation that is a member of the same 'controlled group of corporations' as defined in Section 1563(a) of the Internal Revenue Code.

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Other Considerations

None.

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