

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 2531, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Ford

Ford-JCR-FS-Req#3358
4/19/2016 4:35 PM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 2531

By: Caldwell, Denney, Kannady
and Wright of the House

6 and

7 Ford of the Senate

8
9 FLOOR SUBSTITUTE

10 [revenue and taxation - Oklahoma Retail Protection
11 Act of 2016 - certain collection of tax - use tax -
12 repealer - noncodification - effective date]

13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. NEW LAW A new section of law not to be
16 codified in the Oklahoma Statutes reads as follows:

17 This act shall be known and may be cited as the "Oklahoma Retail
18 Protection Act of 2016".

19 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1352, is
20 amended to read as follows:

21 Section 1352. As used in the Oklahoma Sales Tax Code:

22 1. "Bundled transaction" means the retail sale of two or more
23 products, except real property and services to real property, where
24 the products are otherwise distinct and identifiable, and the

1 products are sold for one nonitemized price. A "bundled
2 transaction" does not include the sale of any products in which the
3 sales price varies, or is negotiable, based on the selection by the
4 purchaser of the products included in the transaction. As used in
5 this paragraph:

6 a. "distinct and identifiable products" does not include:

- 7 (1) packaging such as containers, boxes, sacks, bags,
8 and bottles, or other materials such as wrapping,
9 labels, tags, and instruction guides, that
10 accompany the retail sale of the products and are
11 incidental or immaterial to the retail sale
12 thereof, including but not limited to, grocery
13 sacks, shoeboxes, dry cleaning garment bags and
14 express delivery envelopes and boxes,
- 15 (2) a product provided free of charge with the
16 required purchase of another product. A product
17 is provided free of charge if the sales price of
18 the product purchased does not vary depending on
19 the inclusion of the product provided free of
20 charge, or
- 21 (3) items included in the definition of gross
22 receipts or sales price, pursuant to this
23 section,
24

1 b. "one nonitemized price" does not include a price that
2 is separately identified by product on binding sales
3 or other supporting sales-related documentation made
4 available to the customer in paper or electronic form
5 including, but not limited to an invoice, bill of
6 sale, receipt, contract, service agreement, lease
7 agreement, periodic notice of rates and services, rate
8 card, or price list,

9 A transaction that otherwise meets the definition of a bundled
10 transaction shall not be considered a bundled transaction if it is:

11 (1) the retail sale of tangible personal property and
12 a service where the tangible personal property is
13 essential to the use of the service, and is
14 provided exclusively in connection with the
15 service, and the true object of the transaction
16 is the service,

17 (2) the retail sale of services where one service is
18 provided that is essential to the use or receipt
19 of a second service and the first service is
20 provided exclusively in connection with the
21 second service and the true object of the
22 transaction is the second service, ~~or~~

23 (3) a transaction that includes taxable products and
24 nontaxable products and the purchase price or

1 sales price of the taxable products is de
2 minimis. For purposes of this subdivision, "de
3 minimis" means the seller's purchase price or
4 sales price of taxable products is ten percent
5 (10%) or less of the total purchase price or
6 sales price of the bundled products. Sellers
7 shall use either the purchase price or the sales
8 price of the products to determine if the taxable
9 products are de minimis. Sellers may not use a
10 combination of the purchase price and sales price
11 of the products to determine if the taxable
12 products are de minimis. Sellers shall use the
13 full term of a service contract to determine if
14 the taxable products are de minimis, or

15 (4) the retail sale of exempt tangible personal
16 property and taxable tangible personal property
17 where:

18 (a) the transaction includes food and food
19 ingredients, drugs, durable medical
20 equipment, mobility enhancing equipment,
21 over-the-counter drugs, prosthetic devices
22 or medical supplies, and

23 (b) the seller's purchase price or sales price
24 of the taxable tangible personal property is

1 fifty percent (50%) or less of the total
2 purchase price or sales price of the bundled
3 tangible personal property. Sellers may not
4 use a combination of the purchase price and
5 sales price of the tangible personal
6 property when making the fifty percent (50%)
7 determination for a transaction;

8 2. "Business" means any activity engaged in or caused to be
9 engaged in by any person with the object of gain, benefit, or
10 advantage, either direct or indirect;

11 3. "Commission" or "Tax Commission" means the Oklahoma Tax
12 Commission;

13 4. "Computer" means an electronic device that accepts
14 information in digital or similar form and manipulates it for a
15 result based on a sequence of instructions;

16 5. "Computer software" means a set of coded instructions
17 designed to cause a "computer" or automatic data processing
18 equipment to perform a task;

19 6. "Consumer" or "user" means a person to whom a taxable sale
20 of tangible personal property is made or to whom a taxable service
21 is furnished. "Consumer" or "user" includes all contractors to whom
22 a taxable sale of materials, supplies, equipment, or other tangible
23 personal property is made or to whom a taxable service is furnished
24 to be used or consumed in the performance of any contract;

1 7. "Contractor" means any person who performs any improvement
2 upon real property and who, as a necessary and incidental part of
3 performing such improvement, incorporates tangible personal property
4 belonging to or purchased by the person into the real property being
5 improved;

6 8. "Drug" means a compound, substance or preparation, and any
7 component of a compound, substance or preparation:

8 a. recognized in the official United States

9 Pharmacopoeia, official Homeopathic Pharmacopoeia of
10 the United States, or official National Formulary, and
11 supplement to any of them,

12 b. intended for use in the diagnosis, cure, mitigation,
13 treatment, or prevention of disease, or

14 c. intended to affect the structure or any function of
15 the body;

16 9. "Electronic" means relating to technology having electrical,
17 digital, magnetic, wireless, optical, electromagnetic, or similar
18 capabilities;

19 10. "Established place of business" means the location at which
20 any person regularly engages in, conducts, or operates a business in
21 a continuous manner for any length of time, that is open to the
22 public during the hours customary to such business, in which a stock
23 of merchandise for resale is maintained, and which is not exempted
24 by law from attachment, execution, or other species of forced sale

1 barring any satisfaction of any delinquent tax liability accrued
2 under the Oklahoma Sales Tax Code;

3 11. "Fair authority" means:

4 a. any county, municipality, school district, public
5 trust or any other political subdivision of this
6 state, or

7 b. any not-for-profit corporation acting pursuant to an
8 agency, operating or management agreement which has
9 been approved or authorized by the governing body of
10 any of the entities specified in subparagraph a of
11 this paragraph which conduct, operate or produce a
12 fair commonly understood to be a county, district or
13 state fair;

14 12. a. "Gross receipts", "gross proceeds" or "sales price"
15 means the total amount of consideration, including
16 cash, credit, property and services, for which
17 personal property or services are sold, leased or
18 rented, valued in money, whether received in money or
19 otherwise, without any deduction for the following:
20 (1) the seller's cost of the property sold,
21 (2) the cost of materials used, labor or service
22 cost,

23

24

- 1 (3) interest, losses, all costs of transportation to
2 the seller, all taxes imposed on the seller, and
3 any other expense of the seller,
4 (4) charges by the seller for any services necessary
5 to complete the sale, other than delivery and
6 installation charges,
7 (5) delivery charges and installation charges, unless
8 separately stated on the invoice, billing or
9 similar document given to the purchaser, and
10 (6) credit for any trade-in.

11 b. Such term shall not include:

- 12 (1) discounts, including cash, term, or coupons that
13 are not reimbursed by a third party that are
14 allowed by a seller and taken by a purchaser on a
15 sale,
16 (2) interest, financing, and carrying charges from
17 credit extended on the sale of personal property
18 or services, if the amount is separately stated
19 on the invoice, bill of sale or similar document
20 given to the purchaser, and
21 (3) any taxes legally imposed directly on the
22 consumer that are separately stated on the
23 invoice, bill of sale or similar document given
24 to the purchaser.

1 c. Such term shall include consideration received by the
2 seller from third parties if:

3 (1) the seller actually receives consideration from a
4 party other than the purchaser and the
5 consideration is directly related to a price
6 reduction or discount on the sale,

7 (2) the seller has an obligation to pass the price
8 reduction or discount through to the purchaser,

9 (3) the amount of the consideration attributable to
10 the sale is fixed and determinable by the seller
11 at the time of the sale of the item to the
12 purchaser, and

13 (4) one of the following criteria is met:

14 (a) the purchaser presents a coupon, certificate
15 or other documentation to the seller to
16 claim a price reduction or discount where
17 the coupon, certificate or documentation is
18 authorized, distributed or granted by a
19 third party with the understanding that the
20 third party will reimburse any seller to
21 whom the coupon, certificate or
22 documentation is presented,

23 (b) the purchaser identifies himself or herself
24 to the seller as a member of a group or

1 organization entitled to a price reduction
2 or discount; provided, a "preferred
3 customer" card that is available to any
4 patron does not constitute membership in
5 such a group, or

6 (c) the price reduction or discount is
7 identified as a third-party price reduction
8 or discount on the invoice received by the
9 purchaser or on a coupon, certificate or
10 other documentation presented by the
11 purchaser;

12 13. a. "Maintaining a place of business in this state" means
13 and ~~includes having~~ shall be presumed to include:

14 (1) (a) utilizing or maintaining in this state,
15 directly or by subsidiary, an office,
16 distribution house, sales house, warehouse,
17 or other physical place of business, whether
18 owned or operated by the vendor or any other
19 person, other than a common carrier acting
20 in its capacity as such, or

21 (b) having agents operating in this state,
22 whether the place of business or agent
23 is within this state temporarily or
24 permanently or whether the person or

1 subsidiary agent is authorized to do
2 business within this state, and

3 (2) the presence of any person, other than a common
4 carrier acting in its capacity as such, that has
5 substantial nexus in this state and that:

6 (a) sells a similar line of products as the
7 vendor and does so under the same or a
8 similar business name,

9 (b) uses trademarks, service marks or trade
10 names in this state that are the same
11 or substantially similar to those used
12 by the vendor,

13 (c) delivers, installs, assembles or
14 performs maintenance services for the
15 vendor,

16 (d) facilitates the vendor's delivery of
17 property to customers in the state by
18 allowing the vendor's customers to pick
19 up property sold by the vendor at an
20 office, distribution facility,
21 warehouse, storage place or similar
22 place of business maintained by the
23 person in this state, or

1 (e) conducts any other activities in this state
2 that are significantly associated with the
3 vendor's ability to establish and maintain a
4 market in this state for the vendor's sale.

5 b. The presumptions in divisions (1) and (2) of
6 subparagraph a of this paragraph may be rebutted by
7 demonstrating that the person's activities in this
8 state are not significantly associated with the
9 vendor's ability to establish and maintain a market in
10 this state for the vendor's sales.

11 c. Any ruling, agreement or contract, whether written or
12 oral, express or implied, between a person and
13 executive branch of this state, or any other state
14 agency or department, stating, agreeing or ruling that
15 the person is not "maintaining a place of business in
16 this state" or is not required to collect sales and
17 use tax in this state despite the presence of a
18 warehouse, distribution center or fulfillment center
19 in this state that is owned or operated by the vendor
20 or an affiliated person of the vendor shall be null
21 and void unless it is specifically approved by a
22 majority vote of each house of the Oklahoma
23 Legislature;

1 14. "Manufacturing" means and includes the activity of
2 converting or conditioning tangible personal property by changing
3 the form, composition, or quality of character of some existing
4 material or materials, including natural resources, by procedures
5 commonly regarded by the average person as manufacturing,
6 compounding, processing or assembling, into a material or materials
7 with a different form or use. "Manufacturing" does not include
8 extractive industrial activities such as mining, quarrying, logging,
9 and drilling for oil, gas and water, nor oil and gas field
10 processes, such as natural pressure reduction, mechanical
11 separation, heating, cooling, dehydration and compression;

12 15. "Manufacturing operation" means the designing,
13 manufacturing, compounding, processing, assembling, warehousing, or
14 preparing of articles for sale as tangible personal property. A
15 manufacturing operation begins at the point where the materials
16 enter the manufacturing site and ends at the point where a finished
17 product leaves the manufacturing site. "Manufacturing operation"
18 does not include administration, sales, distribution,
19 transportation, site construction, or site maintenance. Extractive
20 activities and field processes shall not be deemed to be a part of a
21 manufacturing operation even when performed by a person otherwise
22 engaged in manufacturing;

23 16. "Manufacturing site" means a location where a manufacturing
24 operation is conducted, including a location consisting of one or

1 more buildings or structures in an area owned, leased, or controlled
2 by a manufacturer;

3 17. "Over-the-counter drug" means a drug that contains a label
4 that identifies the product as a drug as required by 21 C.F.R.,
5 Section 201.66. The over-the-counter-drug label includes:

- 6 a. a "Drug Facts" panel, or
- 7 b. a statement of the "active ingredient(s)" with a list
8 of those ingredients contained in the compound,
9 substance or preparation;

10 18. "Person" means any individual, company, partnership, joint
11 venture, joint agreement, association, mutual or otherwise, limited
12 liability company, corporation, estate, trust, business trust,
13 receiver or trustee appointed by any state or federal court or
14 otherwise, syndicate, this state, any county, city, municipality,
15 school district, any other political subdivision of the state, or
16 any group or combination acting as a unit, in the plural or singular
17 number;

18 19. "Prescription" means an order, formula or recipe issued in
19 any form of oral, written, electronic, or other means of
20 transmission by a duly licensed "practitioner" as defined in Section
21 1357.6 of this title;

22 20. "Prewritten computer software" means "computer software",
23 including prewritten upgrades, which is not designed and developed
24 by the author or other creator to the specifications of a specific

1 purchaser. The combining of two or more prewritten computer
2 software programs or prewritten portions thereof does not cause the
3 combination to be other than prewritten computer software.
4 Prewritten software includes software designed and developed by the
5 author or other creator to the specifications of a specific
6 purchaser when it is sold to a person other than the purchaser.
7 Where a person modifies or enhances computer software of which the
8 person is not the author or creator, the person shall be deemed to
9 be the author or creator only of such person's modifications or
10 enhancements. Prewritten software or a prewritten portion thereof
11 that is modified or enhanced to any degree, where such modification
12 or enhancement is designed and developed to the specifications of a
13 specific purchaser, remains prewritten software; provided, however,
14 that where there is a reasonable, separately stated charge or an
15 invoice or other statement of the price given to the purchaser for
16 such modification or enhancement, such modification or enhancement
17 shall not constitute prewritten computer software;

18 21. "Repairman" means any person who performs any repair
19 service upon tangible personal property of the consumer, whether or
20 not the repairman, as a necessary and incidental part of performing
21 the service, incorporates tangible personal property belonging to or
22 purchased by the repairman into the tangible personal property being
23 repaired;

24

1 22. "Sale" means the transfer of either title or possession of
2 tangible personal property for a valuable consideration regardless
3 of the manner, method, instrumentality, or device by which the
4 transfer is accomplished in this state, or other transactions as
5 provided by this paragraph, including but not limited to:

6 a. the exchange, barter, lease, or rental of tangible
7 personal property resulting in the transfer of the
8 title to or possession of the property,

9 b. the disposition for consumption or use in any business
10 or by any person of all goods, wares, merchandise, or
11 property which has been purchased for resale,
12 manufacturing, or further processing,

13 c. the sale, gift, exchange, or other disposition of
14 admission, dues, or fees to clubs, places of
15 amusement, or recreational or athletic events or for
16 the privilege of having access to or the use of
17 amusement, recreational, athletic or entertainment
18 facilities,

19 d. the furnishing or rendering of services taxable under
20 the Oklahoma Sales Tax Code, and

21 e. any use of motor fuel or diesel fuel by a supplier, as
22 defined in Section 500.3 of this title, upon which
23 sales tax has not previously been paid, for purposes
24 other than to propel motor vehicles over the public

1 highways of this state. Motor fuel or diesel fuel
2 purchased outside the state and used for purposes
3 other than to propel motor vehicles over the public
4 highways of this state shall not constitute a sale
5 within the meaning of this paragraph;

6 23. "Sale for resale" means:

- 7 a. a sale of tangible personal property to any purchaser
8 who is purchasing tangible personal property for the
9 purpose of reselling it within the geographical limits
10 of the United States of America or its territories or
11 possessions, in the normal course of business either
12 in the form or condition in which it is purchased or
13 as an attachment to or integral part of other tangible
14 personal property,
- 15 b. a sale of tangible personal property to a purchaser
16 for the sole purpose of the renting or leasing, within
17 the geographical limits of the United States of
18 America or its territories or possessions, of the
19 tangible personal property to another person by the
20 purchaser, but not if incidental to the renting or
21 leasing of real estate,
- 22 c. a sale of tangible goods and products within this
23 state if, simultaneously with the sale, the vendor
24 issues an export bill of lading, or other

1 documentation that the point of delivery of such goods
2 for use and consumption is in a foreign country and
3 not within the territorial confines of the United
4 States. If the vendor is not in the business of
5 shipping the tangible goods and products that are
6 purchased from the vendor, the buyer or purchaser of
7 the tangible goods and products is responsible for
8 providing an export bill of lading or other
9 documentation to the vendor from whom the tangible
10 goods and products were purchased showing that the
11 point of delivery of such goods for use and
12 consumption is a foreign country and not within the
13 territorial confines of the United States, or

14 d. a sales of any carrier access services, right of
15 access services, telecommunications services to be
16 resold, or telecommunications used in the subsequent
17 provision of, use as a component part of, or
18 integrated into, end-to-end telecommunications
19 service;

20 24. "Tangible personal property" means personal property that
21 can be seen, weighed, measured, felt, or touched or that is in any
22 other manner perceptible to the senses. "Tangible personal
23 property" includes electricity, water, gas, steam and prewritten
24

1 computer software. This definition shall be applicable only for
2 purposes of the Oklahoma Sales Tax Code;

3 25. "Taxpayer" means any person liable to pay a tax imposed by
4 the Oklahoma Sales Tax Code;

5 26. "Tax period" or "taxable period" means the calendar period
6 or the taxpayer's fiscal period for which a taxpayer has obtained a
7 permit from the Tax Commission to use a fiscal period in lieu of a
8 calendar period;

9 27. "Tax remitter" means any person required to collect,
10 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
11 tax remitter who fails, for any reason, to collect, report, or remit
12 the tax shall be considered a taxpayer for purposes of assessment,
13 collection, and enforcement of the tax imposed by the Oklahoma Sales
14 Tax Code; and

15 28. "Vendor" means:

16 a. any person making sales of tangible personal property
17 or services in this state, the gross receipts or gross
18 proceeds from which are taxed by the Oklahoma Sales
19 Tax Code,

20 b. any person maintaining a place of business in this
21 state and making sales of tangible personal property
22 or services, whether at the place of business or
23 elsewhere, to persons within this state, the gross
24

1 receipts or gross proceeds from which are taxed by the
2 Oklahoma Sales Tax Code,

3 c. any person who solicits business by employees,
4 independent contractors, agents, or other
5 representatives ~~or by distribution of catalogs or~~
6 ~~other advertising matter~~ in this state, and thereby
7 makes sales to persons within this state of tangible
8 personal property or services, the gross receipts or
9 gross proceeds from which are taxed by the Oklahoma
10 Sales Tax Code, or

11 d. any person, pursuant to an agreement with the person
12 with an ownership interest in or title to tangible
13 personal property, who has been entrusted with the
14 possession of any such property and has the power to
15 designate who is to obtain title, to physically
16 transfer possession of, or otherwise make sales of the
17 property.

18 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1401, is
19 amended to read as follows:

20 Section 1401. The following words, terms and phrases when used
21 in this article shall have the meanings respectively given to them
22 in this section:

23 1. The term "person" shall mean and include any individual,
24 company, partnership, joint venture, joint agreement, association

1 (mutual or otherwise), limited liability company, corporation,
2 estate, trust, business trust, receiver, or trustee appointed by the
3 state or federal court, syndicate, this state, any county, city,
4 municipality, or other political subdivision or agency of the state,
5 or group or combination acting as a unit in the plural or singular
6 number;

7 2. The term "Tax Commission" means the Oklahoma Tax Commission;

8 3. The term "purchase price" applies to the measure subject to
9 the tax levied under Section 1402 of this title and has the same
10 meaning as "gross receipts" or "gross proceeds" or "sales price" as
11 defined in Section 1352 of this title;

12 4. The term "taxpayer" means any person liable to pay a tax
13 hereunder, or charged with the collection and remission thereof, or
14 to make a report for the purpose of claiming any exemptions in
15 payment of any tax levied by this article;

16 5. The term "purchase at retail" means and includes all
17 purchases except purchases made for the purpose of resale;

18 6. The term "sale" means and includes the transfer of either
19 the title or possession for a valuable consideration of tangible
20 personal property, regardless of the manner, method, instrumentality
21 or device by which such transfer is accomplished. The term "sale"
22 also includes the exchange, barter, lease, or rental of tangible
23 personal property where such exchange, barter, lease or rental
24 results in either the transfer of the title or the possession;

1 7. The term "purchase" means and includes any method whereby a
2 transferee receives from a transferor either the title or
3 possession, for a valuable consideration, of tangible personal
4 property, regardless of the manner, method, instrumentality or
5 device by which such transfer is accomplished. The term "purchase"
6 also includes the exchange, barter, lease or rental of tangible
7 personal property where such exchange, barter, lease or rental
8 results in either the transfer of the title or the possession to the
9 transferee;

10 8. The term "use" means and includes the exercise of any right
11 or power over tangible personal property incident to the ownership
12 or possession of that property, except that it shall not include the
13 sale of that property in the regular course of business;

14 9. a. The term "retailer" means every person engaged in the
15 business of selling tangible personal property for use
16 within the meaning of the article; provided, however,
17 that when in the opinion of the Tax Commission it is
18 necessary for the efficient administration of this
19 article to regard any salesmen, representatives,
20 truckers, peddlers, or canvassers as the agents of the
21 dealers, distributors, supervisors, employers, or
22 persons under whom they operate or from whom they
23 obtain the tangible personal property sold by them,
24 irrespective of whether they are making sales on their

1 own behalf or on behalf of such dealers, distributors,
2 supervisors, employers, or persons, the Tax Commission
3 may so regard them and may regard the dealers,
4 distributors, supervisors, employers or persons as
5 retailers for purposes of this article.

6 ~~b. A retailer shall be deemed to be engaged in the~~
7 ~~business of selling tangible personal property for use~~
8 ~~in this state if:~~

9 ~~(1) both of the following conditions exist:~~

10 ~~(a) the retailer holds a substantial ownership~~
11 ~~interest in, or is owned in whole or in~~
12 ~~substantial part by, a retailer maintaining~~
13 ~~a place of business within this state, and~~

14 ~~(b) the retailer sells the same or a~~
15 ~~substantially similar line of products as~~
16 ~~the related Oklahoma retailer and does so~~
17 ~~under the same or a substantially similar~~
18 ~~business name, or the Oklahoma facilities or~~
19 ~~Oklahoma employees of the related Oklahoma~~
20 ~~retailer are used to advertise, promote or~~
21 ~~facilitate sales by the retailer to~~
22 ~~consumers, or~~

23 ~~(2) the retailer holds a substantial ownership~~
24 ~~interest in, or is owned in whole or in~~

1 ~~substantial part by, a business that maintains a~~
2 ~~distribution house, sales house, warehouse or~~
3 ~~similar place of business in Oklahoma that~~
4 ~~delivers property sold by the retailer to~~
5 ~~consumers.~~

6 ~~e. For purposes of subparagraph b of this paragraph:~~

7 ~~(1) "substantial ownership interest" means an~~
8 ~~interest in an entity that is not less than the~~
9 ~~degree of ownership of equity interest in an~~
10 ~~entity that is specified by Section 78p of Title~~
11 ~~15 of the United States Code, or any successor to~~
12 ~~that statute, with respect to a person other than~~
13 ~~a director or officer,~~

14 ~~(2) "ownership" means and includes both direct~~
15 ~~ownership and indirect ownership through a~~
16 ~~parent, subsidiary or affiliate, and~~

17 ~~(3) the processing of orders electronically,~~
18 ~~including facsimile, telephone, the Internet or~~
19 ~~other electronic ordering process, does not~~
20 ~~relieve a retailer of responsibility for~~
21 ~~collection of the tax from the purchaser if the~~
22 ~~retailer is doing business in this state pursuant~~
23 ~~to this paragraph.~~

1 ~~d. Any retailer that is part of a controlled group of~~
2 ~~corporations, and that controlled group of~~
3 ~~corporations has a component member that is a retailer~~
4 ~~engaged in business in this state as described in~~
5 ~~subparagraph b of this paragraph, shall be presumed to~~
6 ~~be a retailer engaged in business in this state. This~~
7 ~~presumption may be rebutted by evidence that during~~
8 ~~the calendar year at issue the component member that~~
9 ~~is a retailer engaged in business in this state did~~
10 ~~not engage in any of the activities described in this~~
11 ~~subparagraph on behalf of the retailer. For purposes~~
12 ~~of this subparagraph, "controlled group of~~
13 ~~corporations" means "controlled group of corporations"~~
14 ~~as defined in Section 1563(a) of the Internal Revenue~~
15 ~~Code, and "component member" means "component member"~~
16 ~~as defined in Section 1563(b) of the Internal Revenue~~
17 ~~Code.~~

18 ~~e. Any retailer making sales of tangible personal~~
19 ~~property to purchasers in this state by mail,~~
20 ~~telephone, the Internet or other media which has a~~
21 ~~contractual relationship with an entity to provide and~~
22 ~~perform installation or maintenance services for the~~
23 ~~retailer's purchasers within this state shall be~~
24

1 ~~included within the definition of "retailer" under the~~
2 ~~provisions of subparagraph a of this paragraph; and~~

3 10. The phrase "maintaining a place of business within the
4 state" ~~includes any person having or maintaining in the state,~~
5 ~~directly or by subsidiary, an office, distribution house, sales~~
6 ~~house, warehouse, or other place of business. It also includes any~~
7 ~~person having agents operating in the state under authority of the~~
8 ~~retailer or subsidiary, whether the place of business or agent is~~
9 ~~within the state permanently or temporarily, or whether the person~~
10 ~~or subsidiary is authorized to do business within the state is~~
11 immaterial shall have the same meaning as provided in Section 1352
12 of this title.

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1406.2 of Title 68, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Each retailer or vendor making sales of tangible personal
17 property from a place of business outside this state for use in this
18 state that is not required to collect use tax shall by February
19 first of each year, provide to each customer to whom tangible
20 personal property was delivered in this state, a statement of the
21 total sales made to the customer during the preceding calendar year.
22 The statement must contain language substantially similar to the
23 following:
24

1 "YOU MAY OWE OKLAHOMA USE TAX ON PURCHASES YOU MADE FROM US
2 DURING THE PREVIOUS TAX YEAR. THE AMOUNT OF TAX YOU MAY OWE
3 IS BASED ON THE TOTAL SALES PRICE OF [INSERT TOTAL SALES
4 PRICE] THAT MUST BE REPORTED AND PAID WHEN YOU FILE YOUR
5 OKLAHOMA INCOME TAX RETURN UNLESS YOU HAVE ALREADY PAID THE
6 TAX."

7 The statement must not contain any other information that
8 would indicate, imply or identify the class, type, description
9 or name of the products purchased. Any information that would
10 indicate, imply or identify the class, type, description or
11 name of the products purchased is strictly confidential.

12 B. The statement may be provided by first class mail, email or
13 other electronic communication.

14 SECTION 5. AMENDATORY 68 O.S. 2011, Section 1407.2, is
15 amended to read as follows:

16 Section 1407.2. A. For the purpose of ~~encouraging the~~
17 ~~voluntary~~ registration, collection, and remittance of sales and use
18 taxes owed to this state pursuant to the Oklahoma Retail Protection
19 Act, the Oklahoma Tax Commission is hereby authorized and directed
20 to establish a ~~Retailer Compliance Initiative~~ an initiative for out-
21 of-state retailers, as provided in this section.

22 B. 1. The Tax Commission shall not seek payment of uncollected
23 use taxes from an out-of-state retailer who registers to collect and
24 remit applicable sales and use taxes on sales made to purchasers in

1 this state prior to registration under the ~~Retailer Compliance~~
2 ~~Initiative~~ initiative, provided that the retailer was not registered
3 in this state in the twelve-month period preceding the effective
4 date of this section.

5 2. The provisions of this subsection will preclude assessment
6 for uncollected sales and use taxes together with penalty or
7 interest for sales made during the period the retailer was not
8 registered in this state, provided registration occurs prior to ~~July~~
9 ~~1, 2011~~ May 1, 2017.

10 3. The relief provided herein shall not be available to a
11 retailer with respect to any matter or matters for which the
12 retailer received notice of the commencement of an audit and which
13 audit is not yet finally resolved including any related
14 administrative and judicial processes and is not available for use
15 taxes already paid or remitted to the state or taxes collected, but
16 not remitted, by the retailer.

17 4. The relief provided herein is fully effective, absent the
18 retailer's fraud or intentional misrepresentation of a material
19 fact, as long as the retailer continues registration and continues
20 collection and remittance of applicable use taxes for a period of at
21 least thirty-six (36) months. The statute of limitations applicable
22 to asserting a tax liability during this thirty-six-month period
23 shall be tolled.

24

1 5. The relief provided herein is applicable only to sales and
2 use taxes due from a retailer in its capacity as a retailer and not
3 to sales and use taxes due from a retailer in its capacity as a
4 buyer.

5 ~~C. The registration by an out-of-state retailer for the~~
6 ~~collection of use taxes under the Retailer Compliance Initiative~~
7 ~~shall not be used as a factor in determining whether the retailer~~
8 ~~has nexus with this state for any other taxes, including income~~
9 ~~taxes, at any time.~~

10 ~~D. Out-of-state retailers registering under the Retailer~~
11 ~~Compliance Initiative shall receive a discount for timely reporting~~
12 ~~and remitting use taxes as provided in Section 1354.31 of Title 68~~
13 ~~of the Oklahoma Statutes.~~

14 ~~E. No registration fee shall be charged against any voluntary~~
15 ~~out-of-state retailer that comes forward to register to collect and~~
16 ~~remit use taxes under the Retailer Compliance Initiative.~~

17 ~~F.~~ The Tax Commission shall promulgate rules detailing the
18 terms and other conditions of this program.

19 SECTION 6. AMENDATORY 68 O.S. 2011, Section 1407.3, is
20 amended to read as follows:

21 Section 1407.3. In an effort to improve compliance by Internet
22 and other out-of-state retailers maintaining a place of business in
23 this state for the collection of use tax on their sales to Oklahoma
24 residents, the Oklahoma Tax Commission shall implement an outreach

1 program ~~to Internet retailers~~. The program shall include contacting
2 ~~Internet~~ retailers for a review of their business activities to
3 determine if such activities may require the registration and
4 collection of Oklahoma use taxes and the providing of information ~~to~~
5 ~~the out-of-state retailers about the Retailer Compliance Initiative~~
6 ~~to encourage registration in this state~~ regarding the provisions of
7 the Retail Protection Act of 2016.

8 SECTION 7. REPEALER 68 O.S. 2011, Sections 1354.1,
9 1354.2, 1354.3, 1354.4, 1354.5 and 1354.6, are hereby repealed.

10 SECTION 8. This act shall become effective November 1, 2016.

11
12 55-2-3358 JCR 4/19/2016 4:35:19 PM
13
14
15
16
17
18
19
20
21
22
23
24