

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1301

By: Bice

4
5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; expressing
8 intent; amending 68 O.S. 2011, Section 1352, which
9 relates to sales tax; modifying definitions; amending
10 68 O.S. 2011, Sections 1354.2 and 1354.3, which
11 relate to sales tax; modifying application of tax;
12 updating reference; amending 68 O.S. 2011, Section
13 1401, which relates to use tax; modifying
14 definitions; repealing 68 O.S. 2011, Section 1354.1,
15 which relates to sales tax; providing for
16 noncodification; and providing an effective date.

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

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

20 It is the intent of the Oklahoma Legislature that, upon the
21 enactment of federal law through the Marketplace Fairness Act, the
22 Remote Transactions Parity Act, or other Congressional action, the
23 State will enforce the provisions of Sections 2 through 5 of this
24 act with respect to the sales and use tax levies on all sales of
tangible personal property and all storage, use or other consumption
of tangible personal property occurring within this state.

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

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

4 1. "Bundled transaction" means the retail sale of two or more
5 products, except real property and services to real property, where
6 the products are otherwise distinct and identifiable, and the
7 products are sold for one nonitemized price. A "bundled
8 transaction" does not include the sale of any products in which the
9 sales price varies, or is negotiable, based on the selection by the
10 purchaser of the products included in the transaction. As used in
11 this paragraph:

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

13 (1) packaging such as containers, boxes, sacks, bags,
14 and bottles, or other materials such as wrapping,
15 labels, tags, and instruction guides, that
16 accompany the retail sale of the products and are
17 incidental or immaterial to the retail sale
18 thereof, including but not limited to, grocery
19 sacks, shoeboxes, dry cleaning garment bags and
20 express delivery envelopes and boxes,

21 (2) a product provided free of charge with the
22 required purchase of another product. A product
23 is provided free of charge if the sales price of
24 the product purchased does not vary depending on

1 the inclusion of the product provided free of
2 charge, or

3 (3) items included in the definition of gross
4 receipts or sales price, pursuant to this
5 section,

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

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

16 (1) the retail sale of tangible personal property and
17 a service where the tangible personal property is
18 essential to the use of the service, and is
19 provided exclusively in connection with the
20 service, and the true object of the transaction
21 is the service,

22 (2) the retail sale of services where one service is
23 provided that is essential to the use or receipt
24 of a second service and the first service is

1 provided exclusively in connection with the
2 second service and the true object of the
3 transaction is the second service, or

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

20 (4) the retail sale of exempt tangible personal
21 property and taxable tangible personal property
22 where:

23 (a) the transaction includes food and food
24 ingredients, drugs, durable medical

1 equipment, mobility enhancing equipment,
2 over-the-counter drugs, prosthetic devices
3 or medical supplies, and

4 (b) the seller's purchase price or sales price
5 of the taxable tangible personal property is
6 fifty percent (50%) or less of the total
7 purchase price or sales price of the bundled
8 tangible personal property. Sellers may not
9 use a combination of the purchase price and
10 sales price of the tangible personal
11 property when making the fifty percent (50%)
12 determination for a transaction;

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

16 3. "Commission" or "Tax Commission" means the Oklahoma Tax
17 Commission;

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

21 5. "Computer software" means a set of coded instructions
22 designed to cause a "computer" or automatic data processing
23 equipment to perform a task;
24

1 6. "Consumer" or "user" means a person to whom a taxable sale
2 of tangible personal property is made or to whom a taxable service
3 is furnished. "Consumer" or "user" includes all contractors to whom
4 a taxable sale of materials, supplies, equipment, or other tangible
5 personal property is made or to whom a taxable service is furnished
6 to be used or consumed in the performance of any contract;

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

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

14 a. recognized in the official United States

15 Pharmacopoeia, official Homeopathic Pharmacopoeia of
16 the United States, or official National Formulary, and
17 supplement to any of them,

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

20 c. intended to affect the structure or any function of
21 the body;

22 9. "Electronic" means relating to technology having electrical,
23 digital, magnetic, wireless, optical, electromagnetic, or similar
24 capabilities;

1 10. "Established place of business" means the location at which
2 any person regularly engages in, conducts, or operates a business in
3 a continuous manner for any length of time, that is open to the
4 public during the hours customary to such business, in which a stock
5 of merchandise for resale is maintained, and which is not exempted
6 by law from attachment, execution, or other species of forced sale
7 barring any satisfaction of any delinquent tax liability accrued
8 under the Oklahoma Sales Tax Code;

9 11. "Fair authority" means:

- 10 a. any county, municipality, school district, public
11 trust or any other political subdivision of this
12 state, or
- 13 b. any not-for-profit corporation acting pursuant to an
14 agency, operating or management agreement which has
15 been approved or authorized by the governing body of
16 any of the entities specified in subparagraph a of
17 this paragraph which conduct, operate or produce a
18 fair commonly understood to be a county, district or
19 state fair;

20 12. a. "Gross receipts", "gross proceeds" or "sales price"
21 means the total amount of consideration, including
22 cash, credit, property and services, for which
23 personal property or services are sold, leased or
24

1 rented, valued in money, whether received in money or
2 otherwise, without any deduction for the following:

- 3 (1) the seller's cost of the property sold,
- 4 (2) the cost of materials used, labor or service
5 cost,
- 6 (3) interest, losses, all costs of transportation to
7 the seller, all taxes imposed on the seller, and
8 any other expense of the seller,
- 9 (4) charges by the seller for any services necessary
10 to complete the sale, other than delivery and
11 installation charges,
- 12 (5) delivery charges and installation charges, unless
13 separately stated on the invoice, billing or
14 similar document given to the purchaser, and
- 15 (6) credit for any trade-in.

16 b. Such term shall not include:

- 17 (1) discounts, including cash, term, or coupons that
18 are not reimbursed by a third party that are
19 allowed by a seller and taken by a purchaser on a
20 sale,
- 21 (2) interest, financing, and carrying charges from
22 credit extended on the sale of personal property
23 or services, if the amount is separately stated
24

1 on the invoice, bill of sale or similar document
2 given to the purchaser, and

3 (3) any taxes legally imposed directly on the
4 consumer that are separately stated on the
5 invoice, bill of sale or similar document given
6 to the purchaser,

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

9 (1) the seller actually receives consideration from a
10 party other than the purchaser and the
11 consideration is directly related to a price
12 reduction or discount on the sale,

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

15 (3) the amount of the consideration attributable to
16 the sale is fixed and determinable by the seller
17 at the time of the sale of the item to the
18 purchaser, and

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

20 (a) the purchaser presents a coupon, certificate
21 or other documentation to the seller to
22 claim a price reduction or discount where
23 the coupon, certificate or documentation is
24 authorized, distributed or granted by a

1 third party with the understanding that the
2 third party will reimburse any seller to
3 whom the coupon, certificate or
4 documentation is presented,

5 (b) the purchaser identifies himself or herself
6 to the seller as a member of a group or
7 organization entitled to a price reduction
8 or discount; provided, a "preferred
9 customer" card that is available to any
10 patron does not constitute membership in
11 such a group, or

12 (c) the price reduction or discount is
13 identified as a third-party price reduction
14 or discount on the invoice received by the
15 purchaser or on a coupon, certificate or
16 other documentation presented by the
17 purchaser;

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

20 (1) utilizing or maintaining in this state, ~~directly~~
21 ~~or by subsidiary,~~ an office, distribution house,
22 sales house, warehouse, or other physical place
23 of business, whether owned or operated by the
24 vendor or any other person, other than a common

1 carrier acting in its capacity as such, or having
2 agents operating in this state, whether the place
3 of business or agent is within this state
4 temporarily or permanently or whether the person
5 or subsidiary agent is authorized to do business
6 within this state,

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

10 (a) sells a similar line of products as the
11 vendor and does so under the same or a
12 similar business name,

13 (b) uses trademarks, service marks, or
14 trade names in this state that are the
15 same or substantially similar to those
16 used by the vendor,

17 (c) delivers, installs, assembles, or
18 performs maintenance services for the
19 vendor,

20 (d) facilitates the vendor's delivery of
21 property to customers in the state by
22 allowing the vendor's customers to pick
23 up property sold by the vendor at an
24 office, distribution facility,

1 warehouse, storage place, or similar
2 place of business maintained by the
3 person in this state, or

4 (e) conducts any other activities in this state
5 that are significantly associated with the
6 vendor's ability to establish and maintain a
7 market in this state for the vendor's sale,
8 and

9 (3) the presence in this state of any affiliated
10 person that has substantial nexus with this
11 state.

12 b. The presumptions in divisions (1) through (3) of
13 subparagraph a of this paragraph may be rebutted by
14 demonstrating that the person's activities in this
15 state are not significantly associated with the
16 vendor's ability to establish and maintain a market in
17 this state for the vendor's sales.

18 c. Any ruling, agreement or contract, whether written or
19 oral, express or implied, between a person and
20 executive branch of this state, or any other state
21 agency or department, stating, agreeing, or ruling
22 that the person is not "maintaining a place of
23 business in this state" or is not required to collect
24 sales and use tax in this state despite the presence

1 of a warehouse, distribution center, or fulfillment
2 center in this state that is owned or operated by the
3 vendor or an affiliated person of the vendor shall be
4 null and void unless it is specifically approved by a
5 majority vote of each house of the Oklahoma
6 Legislature.

7 d. If any person sells or leases tangible personal
8 property or services to the state, a state department,
9 a state agency, or an agent thereof, that person and
10 any affiliated person shall, as a prerequisite for any
11 such sale or lease, register with the department as a
12 "vendor" and comply with all legal requirements
13 imposed on a dealer, including the requirement to
14 collect and remit sales or use tax on all taxable
15 sales of tangible personal property and services to
16 customers in the state. For purposes of this
17 paragraph and division (3) of subparagraph (a) of this
18 paragraph, an "affiliated person" means any person
19 that is a member of the same "controlled group of
20 corporations" as defined in Section 1563(a) of the
21 Internal Revenue Code as the vendor or any other
22 entity that, notwithstanding its form of organization,
23 bears the same ownership relationship to the vendor as
24 a corporation that is a member of the same "controlled

1 group of corporations" as defined in Section 1563(a)
2 of the Internal Revenue Code;

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

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

1 16. "Manufacturing site" means a location where a manufacturing
2 operation is conducted, including a location consisting of one or
3 more buildings or structures in an area owned, leased, or controlled
4 by a manufacturer;

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

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

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

20 19. "Prescription" means an order, formula or recipe issued in
21 any form of oral, written, electronic, or other means of
22 transmission by a duly licensed "practitioner" as defined in Section
23 1357.6 of this title;

1 20. "Prewritten computer software" means "computer software",
2 including prewritten upgrades, which is not designed and developed
3 by the author or other creator to the specifications of a specific
4 purchaser. The combining of two or more prewritten computer
5 software programs or prewritten portions thereof does not cause the
6 combination to be other than prewritten computer software.

7 Prewritten software includes software designed and developed by the
8 author or other creator to the specifications of a specific
9 purchaser when it is sold to a person other than the purchaser.

10 Where a person modifies or enhances computer software of which the
11 person is not the author or creator, the person shall be deemed to
12 be the author or creator only of such person's modifications or
13 enhancements. Prewritten software or a prewritten portion thereof
14 that is modified or enhanced to any degree, where such modification
15 or enhancement is designed and developed to the specifications of a
16 specific purchaser, remains prewritten software; provided, however,
17 that where there is a reasonable, separately stated charge or an
18 invoice or other statement of the price given to the purchaser for
19 such modification or enhancement, such modification or enhancement
20 shall not constitute prewritten computer software;

21 21. "Repairman" means any person who performs any repair
22 service upon tangible personal property of the consumer, whether or
23 not the repairman, as a necessary and incidental part of performing
24 the service, incorporates tangible personal property belonging to or

1 purchased by the repairman into the tangible personal property being
2 repaired;

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

- 8 a. the exchange, barter, lease, or rental of tangible
9 personal property resulting in the transfer of the
10 title to or possession of the property,
- 11 b. the disposition for consumption or use in any business
12 or by any person of all goods, wares, merchandise, or
13 property which has been purchased for resale,
14 manufacturing, or further processing,
- 15 c. the sale, gift, exchange, or other disposition of
16 admission, dues, or fees to clubs, places of
17 amusement, or recreational or athletic events or for
18 the privilege of having access to or the use of
19 amusement, recreational, athletic or entertainment
20 facilities,
- 21 d. the furnishing or rendering of services taxable under
22 the Oklahoma Sales Tax Code, and
- 23 e. any use of motor fuel or diesel fuel by a supplier, as
24 defined in Section 500.3 of this title, upon which

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

8 23. "Sale for resale" means:

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

- 1 c. a sale of tangible goods and products within this
2 state if, simultaneously with the sale, the vendor
3 issues an export bill of lading, or other
4 documentation that the point of delivery of such goods
5 for use and consumption is in a foreign country and
6 not within the territorial confines of the United
7 States. If the vendor is not in the business of
8 shipping the tangible goods and products that are
9 purchased from the vendor, the buyer or purchaser of
10 the tangible goods and products is responsible for
11 providing an export bill of lading or other
12 documentation to the vendor from whom the tangible
13 goods and products were purchased showing that the
14 point of delivery of such goods for use and
15 consumption is a foreign country and not within the
16 territorial confines of the United States, or
- 17 d. a sales of any carrier access services, right of
18 access services, telecommunications services to be
19 resold, or telecommunications used in the subsequent
20 provision of, use as a component part of, or
21 integrated into, end-to-end telecommunications
22 service;

23 24. "Tangible personal property" means personal property that
24 can be seen, weighed, measured, felt, or touched or that is in any

1 other manner perceptible to the senses. "Tangible personal
2 property" includes electricity, water, gas, steam and prewritten
3 computer software. This definition shall be applicable only for
4 purposes of the Oklahoma Sales Tax Code;

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

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

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

17 28. "Vendor" means:

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

22 b. any person maintaining a place of business in this
23 state and making sales of tangible personal property
24 or services, whether at the place of business or

1 elsewhere, to persons within this state, the gross
2 receipts or gross proceeds from which are taxed by the
3 Oklahoma Sales Tax Code,

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

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

19 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1354.2, is
20 amended to read as follows:

21 Section 1354.2. ~~(A)~~ A. There is hereby levied upon all sales,
22 not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax
23 of four and one-half percent (4.5%) of the gross receipts or gross
24 proceeds of each sale of tangible personal property to the consumer-

1 user in this state by an out-of-state vendor ~~who engages in business~~
2 ~~in this state through the continuous, regular or systematic~~
3 ~~solicitation of retail sales by advertisement in the newspapers or~~
4 ~~radio or television media operating within Oklahoma~~ that maintains a
5 place of business in this state. The tax shall be collected,
6 reported, and remitted or paid in accordance with the Oklahoma Sales
7 Tax Code.

8 ~~(B)~~ B. For purposes of administration of the sales tax laws, a
9 sale occurs within this state if delivery or transfer of possession
10 of the tangible personal property occurs within this state.

11 ~~(C)~~ C. Any advertisement soliciting sales to the Oklahoma
12 consumer, subject to this section, to be published or broadcasted by
13 newspapers or radio or television media operating in this state,
14 shall contain a notice that the sale is subject to Oklahoma sales or
15 use tax and shall include the sales tax permit number issued the
16 advertising vendor by the Oklahoma Tax Commission. It shall be the
17 duty of the vendor to provide such notice in advertisements referred
18 to herein. No penalty as a result of this act shall lie against any
19 newspaper, broadcaster or other Oklahoma advertising media.

20 ~~(D)~~ D. Any out-of-state vendor required to collect, report and
21 remit or pay sales or use tax in accordance with this act shall be
22 entitled to the discount allowed other vendors pursuant to the
23 Oklahoma Sales Tax Code.

1 ~~(E)~~ E. Any out-of-state vendor doing business in this state
2 subject to this act shall be subject to all the civil and criminal
3 penalties and liabilities imposed by the Oklahoma Sales Tax Code on
4 vendors within the state.

5 ~~(F)~~ F. All sales or use tax revenues collected pursuant to this
6 act shall be apportioned in the same manner as other sales or use
7 tax revenues.

8 SECTION 4. AMENDATORY 68 O.S. 2011, Section 1354.3, is
9 amended to read as follows:

10 Section 1354.3. ~~(A)~~ A. There is hereby levied upon all sales,
11 not otherwise exempted in the Oklahoma Sales Tax Code, Sections 1350
12 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title, or the
13 Oklahoma Use Tax Code, Sections 1401 et seq. of ~~Title 68 of the~~
14 ~~Oklahoma Statutes~~ this title, an excise tax of four and one-half
15 percent (4.5%) of the gross receipts or gross proceeds of each sale
16 or use of tangible personal property to or by a consumer-user in
17 this state purchased from an out-of-state vendor ~~who engages in~~
18 ~~business in this state through the continuous, regular or systematic~~
19 ~~solicitation of retail sales by advertisement through mail order or~~
20 ~~catalog publications~~ that maintains a place of business in this
21 state. The tax shall be collected, reported and remitted or paid
22 and apportioned in the same manner as any other sales or use tax
23 levied by this state.
24

1 ~~(B)~~ B. Any out-of-state vendor required to collect, report or
2 remit or pay sales or use tax in accordance with this act shall be
3 entitled to the discount allowed other vendors required to collect
4 and report Oklahoma sales or use tax.

5 SECTION 5. AMENDATORY 68 O.S. 2011, Section 1401, is
6 amended to read as follows:

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

10 1. The term "person" shall mean and include any individual,
11 company, partnership, joint venture, joint agreement, association
12 (mutual or otherwise), limited liability company, corporation,
13 estate, trust, business trust, receiver, or trustee appointed by the
14 state or federal court, syndicate, this state, any county, city,
15 municipality, or other political subdivision or agency of the state,
16 or group or combination acting as a unit in the plural or singular
17 number;

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

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

23 4. The term "taxpayer" means any person liable to pay a tax
24 hereunder, or charged with the collection and remission thereof, or

1 to make a report for the purpose of claiming any exemptions in
2 payment of any tax levied by this article;

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

5 6. The term "sale" means and includes the transfer of either
6 the title or possession for a valuable consideration of tangible
7 personal property, regardless of the manner, method, instrumentality
8 or device by which such transfer is accomplished. The term "sale"
9 also includes the exchange, barter, lease, or rental of tangible
10 personal property where such exchange, barter, lease or rental
11 results in either the transfer of the title or the possession;

12 7. The term "purchase" means and includes any method whereby a
13 transferee receives from a transferor either the title or
14 possession, for a valuable consideration, of tangible personal
15 property, regardless of the manner, method, instrumentality or
16 device by which such transfer is accomplished. The term "purchase"
17 also includes the exchange, barter, lease or rental of tangible
18 personal property where such exchange, barter, lease or rental
19 results in either the transfer of the title or the possession to the
20 transferee;

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

1 9. a. The term "retailer" means every person engaged in the
2 business of selling tangible personal property for use
3 within the meaning of the article; provided, however,
4 that when in the opinion of the Tax Commission it is
5 necessary for the efficient administration of this
6 article to regard any salesmen, representatives,
7 truckers, peddlers, or canvassers as the agents of the
8 dealers, distributors, supervisors, employers, or
9 persons under whom they operate or from whom they
10 obtain the tangible personal property sold by them,
11 irrespective of whether they are making sales on their
12 own behalf or on behalf of such dealers, distributors,
13 supervisors, employers, or persons, the Tax Commission
14 may so regard them and may regard the dealers,
15 distributors, supervisors, employers or persons as
16 retailers for purposes of this article.

17 b. A retailer shall be deemed to be engaged in the
18 business of selling tangible personal property for use
19 in this state if:

20 (1) both of the following conditions exist:

21 (a) the retailer holds a substantial ownership
22 interest in, or is owned in whole or in
23 substantial part by, a retailer maintaining
24 a place of business within this state, and

1 (b) the retailer sells the same or a
2 substantially similar line of products as
3 the related Oklahoma retailer and does so
4 under the same or a substantially similar
5 business name, or the Oklahoma facilities or
6 Oklahoma employees of the related Oklahoma
7 retailer are used to advertise, promote or
8 facilitate sales by the retailer to
9 consumers, or

10 (2) the retailer holds a substantial ownership
11 interest in, or is owned in whole or in
12 substantial part by, a business that maintains a
13 distribution house, sales house, warehouse or
14 similar place of business in Oklahoma that
15 delivers property sold by the retailer to
16 consumers.

17 c. For purposes of subparagraph b of this paragraph:

18 (1) "substantial ownership interest" means an
19 interest in an entity that is not less than the
20 degree of ownership of equity interest in an
21 entity that is specified by Section 78p of Title
22 15 of the United States Code, or any successor to
23 that statute, with respect to a person other than
24 a director or officer,

1 (2) "ownership" means and includes both direct
2 ownership and indirect ownership through a
3 parent, subsidiary or affiliate, and

4 (3) the processing of orders electronically,
5 including facsimile, telephone, the Internet or
6 other electronic ordering process, does not
7 relieve a retailer of responsibility for
8 collection of the tax from the purchaser if the
9 retailer is doing business in this state pursuant
10 to this paragraph.

11 d. Any retailer that is part of a controlled group of
12 corporations, and that controlled group of
13 corporations has a component member that is a retailer
14 engaged in business in this state as described in
15 subparagraph b of this paragraph, shall be presumed to
16 be a retailer engaged in business in this state. This
17 presumption may be rebutted by evidence that during
18 the calendar year at issue the component member that
19 is a retailer engaged in business in this state did
20 not engage in any of the activities described in this
21 subparagraph on behalf of the retailer. For purposes
22 of this subparagraph, "controlled group of
23 corporations" means "controlled group of corporations"
24 as defined in Section 1563(a) of the Internal Revenue

1 Code, and "component member" means "component member"
2 as defined in Section 1563(b) of the Internal Revenue
3 Code.

4 e. Any retailer making sales of tangible personal
5 property to purchasers in this state by mail,
6 telephone, the Internet or other media which has a
7 contractual relationship with an entity to provide and
8 perform installation or maintenance services for the
9 retailer's purchasers within this state shall be
10 included within the definition of "retailer" under the
11 provisions of subparagraph a of this paragraph; and

12 10. The phrase "maintaining a place of business within the
13 state" ~~includes any person having or maintaining in the state,~~
14 ~~directly or by subsidiary, an office, distribution house, sales~~
15 ~~house, warehouse, or other place of business. It also includes any~~
16 ~~person having agents operating in the state under authority of the~~
17 ~~retailer or subsidiary, whether the place of business or agent is~~
18 ~~within the state permanently or temporarily, or whether the person~~
19 ~~or subsidiary is authorized to do business within the state is~~
20 ~~immaterial~~ shall have the same meaning as provided in Section 1352
21 of this title.

22 SECTION 6. REPEALER 68 O.S. 2011, Section 1354.1, is
23 hereby repealed.
24

1 SECTION 7. This act shall become effective November 1, 2016.

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