

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SUBCOMMITTEE RECOMMENDATION
FOR ENGROSSED

SENATE BILL NO. 1301

By: Bice of the Senate

and

Caldwell of the House

SUBCOMMITTEE RECOMMENDATION

An Act relating to revenue and taxation; providing for enforcement of specified provisions related to sales and use tax upon enactment of certain federal law; defining terms; providing for application of tax; levying specified tax amount on certain sales of property in this state by remote seller and property brought into this state for storage, use or consumption; providing for treatment of tax in specified manner; establishing specified requirements for remote sellers, with certain exception; providing for construction of act; requiring certain statement to be provided by certain retailers or vendors and specifying language thereof; repealing 68 O.S. 2011, Sections 1354.1, 1354.2, 1354.3, 1354.4, 1354.5 and 1354.6, which relate to levy of tax on out-of-state vendors; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354A of Title 68, unless there is created a duplication in numbering, reads as follows:

1 A. Upon the enactment of federal law through the Marketplace
2 Fairness Act, the Remote Transactions Parity Act, or other
3 Congressional action, the State shall enforce the provisions of
4 subsection B of this section with respect to the sales and use tax
5 levies on all sales of tangible personal property and all storage,
6 use or other consumption of tangible personal property occurring
7 within this state.

8 B. 1. For purposes of this subsection:

9 a. "remote sale" means a sale into a state in which the
10 seller is not required to pay, collect or remit sales
11 or use taxes to this state under the interpretation,
12 in effect on the effective date of this act, of the
13 Commerce Clause of the United States Constitution by
14 the United States Supreme Court, which prohibits
15 states from enforcing sales or use tax collection
16 obligations on out-of-state sellers unless the seller
17 has a substantial nexus with the state, and

18 b. "remote seller" means a seller that makes remote sales
19 in this state.

20 2. The sales and use tax levies of this state shall include all
21 sales of tangible personal property and all storage, use or other
22 consumption of tangible personal property occurring within this
23 state through the continuous, regular or systematic solicitation in
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1 the Oklahoma consumer market by remote sellers through the Internet,
2 mail order and catalog publications, as follows:

- 3 a. there is hereby levied upon all sales, not otherwise
4 exempt in the Oklahoma Sales Code, an excise tax of
5 four and one-half percent (4.5%) of the gross receipts
6 or gross proceeds of each sale of tangible personal
7 property in this state by a remote seller,
- 8 b. there is hereby levied an excise tax on the storage,
9 use, or other consumption, not otherwise exempt in the
10 Oklahoma Use Tax Code, of tangible personal property
11 purchased or brought into this state at the rate of
12 four and one-half percent (4.5%) of the purchase price
13 of such property,
- 14 c. the tax shall be collected, reported, remitted and
15 apportioned in the same manner as any other sales or
16 use tax levied by this state, and
- 17 d. remote sellers are required to collect, report and
18 remit sales and use taxes, as applicable, in
19 accordance with this act and the provisions of the
20 Sales Tax Code and Use Tax Code of this state.
21 Provided, the requirement to collect, report and remit
22 shall only apply if the remote seller has gross annual
23 receipts in total remote sales in the United States in
24 the preceding calendar year exceeding One Million

Dollars (\$1,000,000.00). For purposes of determining whether the threshold in this section is met, the gross annual receipts from remote sales of two or more persons shall be aggregated if:

- (1) such persons are related to the remote seller within the meaning of subsections (b) and (c) of Section 267 or Section 707(b)(1) of the Internal Revenue Code of 1986, or
- (2) such persons have one or more ownership relationships and such relationships were designed with a principal purpose of avoiding the application of this act.

3. This act shall not be construed to impose a tax in addition to the taxes levied in Sections 1354 and 1402 of Title 68 of the Oklahoma Statutes. Provided, it is the intent of the Oklahoma Legislature that this act constitutes an amendment to the levies in Sections 1354 and 1402 of Title 68 of the Oklahoma Statutes and a reenactment for the purpose of clarification of the levy of sales and use taxes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1406.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each retailer or vendor making sales of tangible personal property from a place of business outside this state for use in this

1 state that is not required to collect use tax shall by February 1 of
2 each year, provide to each customer to whom tangible personal
3 property was delivered in this state a statement of the total sales
4 made to the customer during the preceding calendar year. The
5 statement must contain language substantially similar to the
6 following:

7 "YOU MAY OWE OKLAHOMA USE TAX ON PURCHASES YOU MADE FROM US
8 DURING THE PREVIOUS TAX YEAR. THE AMOUNT OF TAX YOU MAY OWE
9 IS BASED ON THE TOTAL SALES PRICE OF [INSERT TOTAL SALES
10 PRICE] THAT MUST BE REPORTED AND PAID WHEN YOU FILE YOUR
11 OKLAHOMA INCOME TAX RETURN UNLESS YOU HAVE ALREADY PAID THE
12 TAX."

13 The statement must not contain any other information that would
14 indicate, imply or identify the class, type, description or name of
15 the products purchased. Any information that would indicate, imply
16 or identify the class, type, description or name of the products
17 purchased is considered strictly confidential.

18 B. The statement may be provided by first-class mail, email or
19 other electronic communication.

20 SECTION 3. REPEALER 68 O.S. 2011, Sections 1354.1,
21 1354.2, 1354.3, 1354.4, 1354.5 and 1354.6, are hereby repealed.

22 SECTION 4. This act shall become effective November 1, 2016.
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