

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 55th Legislature (2016)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2531

By: Caldwell

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to revenue and taxation; creating the
10 Oklahoma Retail Protection Act of 2016; amending 68
11 O.S. 2011, Sections 1352, 1354.2 and 1354.3, which
12 relate to sales tax; modifying definitions; adding
13 definitions; modifying application of tax; requiring
14 certain collection of tax; providing exceptions;
15 amending 68 O.S. 2011, Section 1401, which relates to
16 use tax; modifying definitions; repealing 68 O.S.
17 2011, Section 1354.1, which relates to sales tax;
18 providing for noncodification; and providing an
19 effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 second service and the true object of the
2 transaction is the second service, ~~or~~

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

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

22 (a) the transaction includes food and food
23 ingredients, drugs, durable medical
24 equipment, mobility enhancing equipment,

1 over-the-counter drugs, prosthetic devices
2 or medical supplies, and

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

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

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

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

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

23 6. "Consumer" or "user" means a person to whom a taxable sale
24 of tangible personal property is made or to whom a taxable service

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

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

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

12 a. recognized in the official United States

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

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

18 c. intended to affect the structure or any function of
19 the body;

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

23 10. "Established place of business" means the location at which
24 any person regularly engages in, conducts, or operates a business in

1 a continuous manner for any length of time, that is open to the
2 public during the hours customary to such business, in which a stock
3 of merchandise for resale is maintained, and which is not exempted
4 by law from attachment, execution, or other species of forced sale
5 barring any satisfaction of any delinquent tax liability accrued
6 under the Oklahoma Sales Tax Code;

7 11. "Fair authority" means:

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

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

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

b. Such term shall not include:

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

1 invoice, bill of sale or similar document given
2 to the purchaser~~7~~.

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

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

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

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

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

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

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

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

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

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

23 (b) having agents operating in this state,
24 whether the place of business or agent

1 is within this state temporarily or
2 permanently or whether the person or
3 ~~subsidiary agent~~ is authorized to do
4 business within this state, and

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

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

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

15 (c) delivers, installs, assembles or
16 performs maintenance services for the
17 vendor,

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

place of business maintained by the
person in this state, or

(e) 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 sale.

b. The presumptions in divisions (1) and (2) of
subparagraph a of this paragraph 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 market in
this state for the vendor's sales.

c. Any ruling, agreement or contract, whether written or
oral, express or implied, between a person and
executive branch of this state, or any other state
agency or department, stating, agreeing or ruling that
the person is not "maintaining a place of business in
this state" or is not required to collect sales and
use tax in this state despite the presence of a
warehouse, distribution center or fulfillment center
in this state that is owned or operated by the vendor
or an affiliated person of the vendor shall be null
and void unless it is specifically approved by a

1 majority vote of each house of the Oklahoma
2 Legislature.

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

22 14. "Manufacturing" means and includes the activity of
23 converting or conditioning tangible personal property by changing
24 the form, composition, or quality of character of some existing

1 material or materials, including natural resources, by procedures
2 commonly regarded by the average person as manufacturing,
3 compounding, processing or assembling, into a material or materials
4 with a different form or use. "Manufacturing" does not include
5 extractive industrial activities such as mining, quarrying, logging,
6 and drilling for oil, gas and water, nor oil and gas field
7 processes, such as natural pressure reduction, mechanical
8 separation, heating, cooling, dehydration and compression;

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

20 16. "Manufacturing site" means a location where a manufacturing
21 operation is conducted, including a location consisting of one or
22 more buildings or structures in an area owned, leased, or controlled
23 by a manufacturer;

1 17. "Marketplace provider" means any person or entity who
2 facilitates a retail sale by a retail vendor by:

3 a. listing or advertising tangible personal property or
4 services for sale in any forum, including a catalog or
5 Internet website, and

6 b. either directly or indirectly through agreements with
7 third parties, collects receipts from the customer and
8 transmits those receipts to the marketplace seller,
9 whether or not the marketplace provider deducts any
10 fees from the transmission of said receipts;

11 18. "Marketplace seller" means a seller, vendor or retailer
12 that has any sales facilitated by a marketplace provider;

13 19. "Over-the-counter drug" means a drug that contains a label
14 that identifies the product as a drug as required by 21 C.F.R.,
15 Section 201.66. The over-the-counter-drug label includes:

16 a. a "Drug Facts" panel, or

17 b. a statement of the "active ingredient(s)" with a list
18 of those ingredients contained in the compound,
19 substance or preparation;

20 ~~18.~~ 20. "Person" means any individual, company, partnership,
21 joint venture, joint agreement, association, mutual or otherwise,
22 limited liability company, corporation, estate, trust, business
23 trust, receiver or trustee appointed by any state or federal court
24 or otherwise, syndicate, this state, any county, city, municipality,

1 school district, any other political subdivision of the state, or
2 any group or combination acting as a unit, in the plural or singular
3 number;

4 ~~19.~~ 21. "Prescription" means an order, formula or recipe issued
5 in any form of oral, written, electronic, or other means of
6 transmission by a duly licensed "practitioner" as defined in Section
7 1357.6 of this title;

8 ~~20.~~ 22. "Prewritten computer software" means "computer
9 software", including prewritten upgrades, which is not designed and
10 developed by the author or other creator to the specifications of a
11 specific purchaser. The combining of two or more prewritten
12 computer software programs or prewritten portions thereof does not
13 cause the combination to be other than prewritten computer software.
14 Prewritten software includes software designed and developed by the
15 author or other creator to the specifications of a specific
16 purchaser when it is sold to a person other than the purchaser.
17 Where a person modifies or enhances computer software of which the
18 person is not the author or creator, the person shall be deemed to
19 be the author or creator only of such person's modifications or
20 enhancements. Prewritten software or a prewritten portion thereof
21 that is modified or enhanced to any degree, where such modification
22 or enhancement is designed and developed to the specifications of a
23 specific purchaser, remains prewritten software; provided, however,
24 that where there is a reasonable, separately stated charge or an

1 invoice or other statement of the price given to the purchaser for
2 such modification or enhancement, such modification or enhancement
3 shall not constitute prewritten computer software;

4 ~~21.~~ 23. "Repairman" means any person who performs any repair
5 service upon tangible personal property of the consumer, whether or
6 not the repairman, as a necessary and incidental part of performing
7 the service, incorporates tangible personal property belonging to or
8 purchased by the repairman into the tangible personal property being
9 repaired;

10 ~~22.~~ 24. "Sale" means the transfer of either title or possession
11 of tangible personal property for a valuable consideration
12 regardless of the manner, method, instrumentality, or device by
13 which the transfer is accomplished in this state, or other
14 transactions as provided by this paragraph, including but not
15 limited to:

- 16 a. the exchange, barter, lease, or rental of tangible
17 personal property resulting in the transfer of the
18 title to or possession of the property,
- 19 b. the disposition for consumption or use in any business
20 or by any person of all goods, wares, merchandise, or
21 property which has been purchased for resale,
22 manufacturing, or further processing,
- 23 c. the sale, gift, exchange, or other disposition of
24 admission, dues, or fees to clubs, places of

1 amusement, or recreational or athletic events or for
2 the privilege of having access to or the use of
3 amusement, recreational, athletic or entertainment
4 facilities,

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

7 e. any use of motor fuel or diesel fuel by a supplier, as
8 defined in Section 500.3 of this title, upon which
9 sales tax has not previously been paid, for purposes
10 other than to propel motor vehicles over the public
11 highways of this state. Motor fuel or diesel fuel
12 purchased outside the state and used for purposes
13 other than to propel motor vehicles over the public
14 highways of this state shall not constitute a sale
15 within the meaning of this paragraph;

16 ~~23.~~ 25. "Sale for resale" means:

17 a. a sale of tangible personal property to any purchaser
18 who is purchasing tangible personal property for the
19 purpose of reselling it within the geographical limits
20 of the United States of America or its territories or
21 possessions, in the normal course of business either
22 in the form or condition in which it is purchased or
23 as an attachment to or integral part of other tangible
24 personal property,

- 1 b. a sale of tangible personal property to a purchaser
2 for the sole purpose of the renting or leasing, within
3 the geographical limits of the United States of
4 America or its territories or possessions, of the
5 tangible personal property to another person by the
6 purchaser, but not if incidental to the renting or
7 leasing of real estate,
- 8 c. a sale of tangible goods and products within this
9 state if, simultaneously with the sale, the vendor
10 issues an export bill of lading, or other
11 documentation that the point of delivery of such goods
12 for use and consumption is in a foreign country and
13 not within the territorial confines of the United
14 States. If the vendor is not in the business of
15 shipping the tangible goods and products that are
16 purchased from the vendor, the buyer or purchaser of
17 the tangible goods and products is responsible for
18 providing an export bill of lading or other
19 documentation to the vendor from whom the tangible
20 goods and products were purchased showing that the
21 point of delivery of such goods for use and
22 consumption is a foreign country and not within the
23 territorial confines of the United States, or
24

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

~~24.~~ 26. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam and prewritten computer software. This definition shall be applicable only for purposes of the Oklahoma Sales Tax Code;

~~25.~~ 27. "Taxpayer" means any person liable to pay a tax imposed by the Oklahoma Sales Tax Code;

~~26.~~ 28. "Tax period" or "taxable period" means the calendar period or the taxpayer's fiscal period for which a taxpayer has obtained a permit from the Tax Commission to use a fiscal period in lieu of a calendar period;

~~27.~~ 29. "Tax remitter" means any person required to collect, report, or remit the tax imposed by the Oklahoma Sales Tax Code. A tax remitter who fails, for any reason, to collect, report, or remit the tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by the Oklahoma Sales Tax Code; and

1 ~~28.~~ 30. "Vendor" means:

- 2 a. any person making sales of tangible personal property
3 or services in this state, the gross receipts or gross
4 proceeds from which are taxed by the Oklahoma Sales
5 Tax Code,
- 6 b. any person maintaining a place of business in this
7 state and making sales of tangible personal property
8 or services, whether at the place of business or
9 elsewhere, to persons within this state, the gross
10 receipts or gross proceeds from which are taxed by the
11 Oklahoma Sales Tax Code,
- 12 c. any person who solicits business by employees,
13 independent contractors, agents, or other
14 representatives ~~or by distribution of catalogs or~~
15 ~~other advertising matter~~ in this state, and thereby
16 makes sales to persons within this state of tangible
17 personal property or services, the gross receipts or
18 gross proceeds from which are taxed by the Oklahoma
19 Sales Tax Code, or
- 20 d. any person, pursuant to an agreement with the person
21 with an ownership interest in or title to tangible
22 personal property, who has been entrusted with the
23 possession of any such property and has the power to
24 designate who is to obtain title, to physically

1 transfer possession of, or otherwise make sales of the
2 property.

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

5 Section 1354.2 ~~(A)~~ A. There is hereby levied upon all sales,
6 not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax
7 of four and one-half percent (4.5%) of the gross receipts or gross
8 proceeds of each sale of tangible personal property to the consumer-
9 user in this state by an out-of-state vendor ~~who engages in business~~
10 ~~in this state through the continuous, regular or systematic~~
11 ~~solicitation of retail sales by advertisement in the newspapers or~~
12 ~~radio or television media operating within Oklahoma~~ that maintains a
13 place of business in this state or is a marketplace provider as
14 provided in subsection G of this section. The tax shall be
15 collected, reported, and remitted or paid in accordance with the
16 Oklahoma Sales Tax Code.

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

20 ~~(C)~~ C. Any advertisement soliciting sales to the Oklahoma
21 consumer, subject to this section, to be published or broadcasted by
22 newspapers or radio or television media operating in this state,
23 shall contain a notice that the sale is subject to Oklahoma sales or
24 use tax and shall include the sales tax permit number issued the

1 advertising vendor by the Oklahoma Tax Commission. It shall be the
2 duty of the vendor to provide such notice in advertisements referred
3 to herein. No penalty as a result of this act shall lie against any
4 newspaper, broadcaster or other Oklahoma advertising media.

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

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

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

16 G. A marketplace provider is required to collect and remit the
17 tax levied by this section on any sales, subject to such tax,
18 facilitated by the marketplace provider to customers in this state;
19 however, no marketplace provider shall be required to collect or
20 remit such tax on a sale from a marketplace seller to a customer in
21 this state if the marketplace seller either provides a copy of the
22 seller's registration to collect the tax levied by this section to
23 the marketplace provider before the marketplace provider facilitates
24 such sale, or the marketplace seller appears on a list published by

1 the Tax Commission of entities registered to collect the tax levied
2 by this section.

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

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

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

1 C. A marketplace provider is required to collect and remit the
2 tax levied by this section on any sales, subject to such tax,
3 facilitated by the marketplace provider to customers in this state;
4 however, no marketplace provider shall be required to collect or
5 remit such tax on a sale from a marketplace seller to a customer in
6 this state if the marketplace seller either provides a copy of the
7 seller's registration to collect the tax levied by this section to
8 the marketplace provider before the marketplace provider facilitates
9 such sale, or the marketplace seller appears on a list published by
10 the Tax Commission of entities registered to collect the tax levied
11 by this section.

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

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

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

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

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

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

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

12 6. The term "sale" means and includes the transfer of either
13 the title or possession for a valuable consideration of tangible
14 personal property, regardless of the manner, method, instrumentality
15 or device by which such transfer is accomplished. The term "sale"
16 also includes the exchange, barter, lease, or rental of tangible
17 personal property where such exchange, barter, lease or rental
18 results in either the transfer of the title or the possession;

19 7. The term "purchase" means and includes any method whereby a
20 transferee receives from a transferor either the title or
21 possession, for a valuable consideration, of tangible personal
22 property, regardless of the manner, method, instrumentality or
23 device by which such transfer is accomplished. The term "purchase"
24 also includes the exchange, barter, lease or rental of tangible

1 personal property where such exchange, barter, lease or rental
2 results in either the transfer of the title or the possession to the
3 transferee;

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

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

1 b. A retailer shall be deemed to be engaged in the
2 business of selling tangible personal property for use
3 in this state if:

4 (1) both of the following conditions exist:

5 (a) the retailer holds a substantial ownership
6 interest in, or is owned in whole or in
7 substantial part by, a retailer maintaining
8 a place of business within this state, and

9 (b) the retailer sells the same or a
10 substantially similar line of products as
11 the related Oklahoma retailer and does so
12 under the same or a substantially similar
13 business name, or the Oklahoma facilities or
14 Oklahoma employees of the related Oklahoma
15 retailer are used to advertise, promote or
16 facilitate sales by the retailer to
17 consumers, or

18 (2) the retailer holds a substantial ownership
19 interest in, or is owned in whole or in
20 substantial part by, a business that maintains a
21 distribution house, sales house, warehouse or
22 similar place of business in Oklahoma that
23 delivers property sold by the retailer to
24 consumers.

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

2 (1) "substantial ownership interest" means an
3 interest in an entity that is not less than the
4 degree of ownership of equity interest in an
5 entity that is specified by Section 78p of Title
6 15 of the United States Code, or any successor to
7 that statute, with respect to a person other than
8 a director or officer,

9 (2) "ownership" means and includes both direct
10 ownership and indirect ownership through a
11 parent, subsidiary or affiliate, and

12 (3) the processing of orders electronically,
13 including facsimile, telephone, the Internet or
14 other electronic ordering process, does not
15 relieve a retailer of responsibility for
16 collection of the tax from the purchaser if the
17 retailer is doing business in this state pursuant
18 to this paragraph.

19 d. Any retailer that is part of a controlled group of
20 corporations, and that controlled group of
21 corporations has a component member that is a retailer
22 engaged in business in this state as described in
23 subparagraph b of this paragraph, shall be presumed to
24 be a retailer engaged in business in this state. This

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

12 e. Any retailer making sales of tangible personal
13 property to purchasers in this state by mail,
14 telephone, the Internet or other media which has a
15 contractual relationship with an entity to provide and
16 perform installation or maintenance services for the
17 retailer's purchasers within this state shall be
18 included within the definition of "retailer" under the
19 provisions of subparagraph a of this paragraph; and

20 10. The phrase "maintaining a place of business within the
21 state" ~~includes any person having or maintaining in the state,~~
22 ~~directly or by subsidiary, an office, distribution house, sales~~
23 ~~house, warehouse, or other place of business. It also includes any~~
24 ~~person having agents operating in the state under authority of the~~

1 ~~retailer or subsidiary, whether the place of business or agent is~~
2 ~~within the state permanently or temporarily, or whether the person~~
3 ~~or subsidiary is authorized to do business within the state is~~
4 ~~immaterial~~ shall have the same meaning as provided in Section 1352
5 of this title.

6 SECTION 6. REPEALER 68 O.S. 2011, Section 1354.1, is
7 hereby repealed.

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

9
10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
11 02/24/2016 - DO PASS, As Amended and Coauthored.
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