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February 23, 2016

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1301

By: Bice

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[ revenue and taxation - sales tax - use tax -  
repealer - noncodification - effective date ]
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

Upon the enactment of federal law through the Marketplace Fairness Act, the Remote Transactions Parity Act, or other Congressional action, the State will enforce the provisions of Sections 2 through 5 of this 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.

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

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

1. "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where

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

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

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

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

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

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

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

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

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

6. "Consumer" or "user" means a person to whom a taxable sale of tangible personal property is made or to whom a taxable service is furnished. "Consumer" or "user" includes all contractors to whom a taxable sale of materials, supplies, equipment, or other tangible personal property is made or to whom a taxable service is furnished 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,

- 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) utilizing or maintaining in this state, ~~directly~~
15 ~~or by subsidiary,~~ an office, distribution house,
16 sales house, warehouse, or other physical place
17 of business, ~~whether owned or operated by the~~
18 vendor or any other person, other than a common
19 carrier acting in its capacity as such, or having
20 agents operating in this state, whether the place
21 of business or agent is within this state
22 temporarily or permanently or whether the person
23 or ~~subsidiary~~ agent is authorized to do business
24 within this state,

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

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

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

11 (c) delivers, installs, assembles, or
12 performs maintenance services for the
13 vendor,

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

22 (e) conducts any other activities in this state
23 that are significantly associated with the
24 vendor's ability to establish and maintain a

1 market in this state for the vendor's sale,
2 and

3 (3) the presence in this state of any affiliated
4 person that has substantial nexus with this
5 state.

6 b. The presumptions in divisions (1) through (3) of
7 subparagraph a of this paragraph may be rebutted by
8 demonstrating that the person's activities in this
9 state are not significantly associated with the
10 vendor's ability to establish and maintain a market in
11 this state for the vendor's sales.

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

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

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

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

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

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

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

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

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

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

20 20. "Prewritten computer software" means "computer software",
21 including prewritten upgrades, which is not designed and developed
22 by the author or other creator to the specifications of a specific
23 purchaser. The combining of two or more prewritten computer
24 software programs or prewritten portions thereof does not cause the

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

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

22 22. "Sale" means the transfer of either title or possession of
23 tangible personal property for a valuable consideration regardless
24 of the manner, method, instrumentality, or device by which the

1 transfer is accomplished in this state, or other transactions as
2 provided by this paragraph, including but not limited to:

3 a. the exchange, barter, lease, or rental of tangible
4 personal property resulting in the transfer of the
5 title to or possession of the property,

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

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

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

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

1 highways of this state shall not constitute a sale
2 within the meaning of this paragraph;

3 23. "Sale for resale" means:

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

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

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

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

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

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

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

11 28. "Vendor" means:

- 12 a. any person making sales of tangible personal property
13 or services in this state, the gross receipts or gross
14 proceeds from which are taxed by the Oklahoma Sales
15 Tax Code,
16 b. any person maintaining a place of business in this
17 state and making sales of tangible personal property
18 or services, whether at the place of business or
19 elsewhere, to persons within this state, the gross
20 receipts or gross proceeds from which are taxed by the
21 Oklahoma Sales Tax Code,
22 c. any person who solicits business by employees,
23 independent contractors, agents, or other
24 representatives ~~or by distribution of catalogs or~~

1 ~~other advertising matter~~ in this state, and thereby
2 makes sales to persons within this state of tangible
3 personal property or services, the gross receipts or
4 gross proceeds from which are taxed by the Oklahoma
5 Sales Tax Code, or

6 d. any person, pursuant to an agreement with the person
7 with an ownership interest in or title to tangible
8 personal property, who has been entrusted with the
9 possession of any such property and has the power to
10 designate who is to obtain title, to physically
11 transfer possession of, or otherwise make sales of the
12 property.

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

15 Section 1354.2. ~~(A)~~ A. There is hereby levied upon all sales,
16 not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax
17 of four and one-half percent (4.5%) of the gross receipts or gross
18 proceeds of each sale of tangible personal property to the consumer-
19 user in this state by an out-of-state vendor ~~who engages in business~~
20 ~~in this state through the continuous, regular or systematic~~
21 ~~solicitation of retail sales by advertisement in the newspapers or~~
22 ~~radio or television media operating within Oklahoma~~ that maintains a
23 place of business in this state. The tax shall be collected,
24

1 reported, and remitted or paid in accordance with the Oklahoma Sales
2 Tax Code.

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

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

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

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

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

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

6 Section 1354.3. ~~(A)~~ A. There is hereby levied upon all sales,
7 not otherwise exempted in the Oklahoma Sales Tax Code, Sections 1350
8 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title, or the
9 Oklahoma Use Tax Code, Sections 1401 et seq. of ~~Title 68 of the~~
10 ~~Oklahoma Statutes~~ this title, an excise tax of four and one-half
11 percent (4.5%) of the gross receipts or gross proceeds of each sale
12 or use of tangible personal property to or by a consumer-user in
13 this state purchased from an out-of-state vendor ~~who engages in~~
14 ~~business in this state through the continuous, regular or systematic~~
15 ~~solicitation of retail sales by advertisement through mail order or~~
16 ~~catalog publications~~ that maintains a place of business in this
17 state. The tax shall be collected, reported and remitted or paid
18 and apportioned in the same manner as any other sales or use tax
19 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 SECTION 5. AMENDATORY 68 O.S. 2011, Section 1401, is
2 amended to read as follows:

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

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

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

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

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

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

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

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

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

21 9. a. The term "retailer" means every person engaged in the
22 business of selling tangible personal property for use
23 within the meaning of the article; provided, however,
24 that when in the opinion of the Tax Commission it is

1 necessary for the efficient administration of this
2 article to regard any salesmen, representatives,
3 truckers, peddlers, or canvassers as the agents of the
4 dealers, distributors, supervisors, employers, or
5 persons under whom they operate or from whom they
6 obtain the tangible personal property sold by them,
7 irrespective of whether they are making sales on their
8 own behalf or on behalf of such dealers, distributors,
9 supervisors, employers, or persons, the Tax Commission
10 may so regard them and may regard the dealers,
11 distributors, supervisors, employers or persons as
12 retailers for purposes of this article.

13 b. A retailer shall be deemed to be engaged in the
14 business of selling tangible personal property for use
15 in this state if:

16 (1) both of the following conditions exist:

17 (a) the retailer holds a substantial ownership
18 interest in, or is owned in whole or in
19 substantial part by, a retailer maintaining
20 a place of business within this state, and

21 (b) the retailer sells the same or a
22 substantially similar line of products as
23 the related Oklahoma retailer and does so
24 under the same or a substantially similar

1 business name, or the Oklahoma facilities or
2 Oklahoma employees of the related Oklahoma
3 retailer are used to advertise, promote or
4 facilitate sales by the retailer to
5 consumers, or

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

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

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

21 (2) "ownership" means and includes both direct
22 ownership and indirect ownership through a
23 parent, subsidiary or affiliate, and
24

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

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

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

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

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

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

22 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
23 February 23, 2016 - DO PASS AS AMENDED
24