

OKLAHOMA TAX COMMISSION

FISCAL IMPACT STATEMENT AND/OR ADMINISTRATIVE IMPACT STATEMENT SECOND REGULAR SESSION, FIFTY-FIFTH OKLAHOMA LEGISLATURE

DATE OF IMPACT STATEMENT: March 29, 2016

BILL NUMBER: HB 2531 **STATUS AND DATE OF BILL:** Engrossed Bill 03/10/2016

AUTHORS: House Caldwell, et. al. Senate Ford

TAX TYPE (S): Sales Tax **SUBJECT:** Administrative

PROPOSAL: Amendatory

The measure amends certain provisions in the Sales and Use Tax Codes. See attachment for detailed bill description.

EFFECTIVE DATE: November 1, 2016

REVENUE IMPACT:

Insert dollar amount (plus or minus) of the expected change in state revenues due to this proposed legislation.

FY 17: None

FY 18: None

ADMINISTRATIVE IMPACT:

Insert the estimated cost or savings to the Tax Commission due to this proposed legislation.

FY 17: None

<u>Mar. 29, 2016</u>	<u>Rick Miller</u>	<u>msm</u>
DATE	DIVISION DIRECTOR	
<u>3-30-16</u>	<u>Reece Womack</u>	
DATE	REECE WOMACK, ECONOMIST	
<u>3/30/16</u>	<u>Dan Cook</u>	
DATE	FOR THE COMMISSION	

Section 1

Creates the Oklahoma Retail Protection Act of 2016.

Section 2

Amends Section 1352(13) of Title 68 modifying the definition of "maintaining a place of business in this state" to attribute sales tax nexus to those persons utilizing or maintaining an office, distribution house, sales house, warehouse or other physical place of business, whether owned or operated by the vendor or any other person, other than a common carrier acting in its capacity as such. Further the measure expands the definition to include the presence of any person, other than a common carrier acting in its capacity as such, that has substantial nexus in the state and that (1) sells a similar line of products as the vendor and does so under the same or a similar name; (2) uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those of the vendor; (3) delivers, installs, assembles or performs maintenance services for the vendor; (4) facilitates the vendor's delivery of property to customers by allowing the vendor's customers to pick up property sold by the vendor at an office, distribution facility, warehouse, storage place or other place maintained by the person in this state; or (5) 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 sales. Also the measure provides that these presumptions outlined above 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 sales market in this state.

Declares as null and void, unless approved by a majority vote of each house of the Oklahoma legislature, any agreement between a person and this state's executive branch, or any other state agency/department ruling that the person is not maintaining a place of business in this state or is not required to collect sales and use tax collection despite the presence of a warehouse, distribution center, or fulfillment center in this state owned or operated by the vendor or an affiliated person¹.

Any person selling or leasing tangible personal property or services to the state, a state department, state agency, or agent thereof as a prerequisite to the sale or lease is required along with any affiliated person to register with the department as a vendor and comply with all legal requirements imposed on a dealer, including the requirement to collect and remit sales or use tax on all taxable sale of tangible personal property and services to customers in the state. It modifies the definition of vendor removing those persons who solicit business by distribution of catalogs or other advertising matter. It also adds definitions of marketplace provider² and marketplace seller³.

Section 3

Amends Section 1354.2 of Title 68 providing for the application of the 4.5 percent excise tax on the gross receipts on property sold to the consumer-user in the state by marketplace provider that maintains a place of business in this state striking the language referring to vendors who engage in

¹ Affiliated person means any person that is a member of the same controlled group of corporations as defined in Section 1563(a) of the Internal Revenue Code as the vendor or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the vendor as a corporation that is a member of the same 'controlled group of corporations' as defined in Section 1563(a) of the Internal Revenue Code.

² "Marketplace provider" means any person or entity who facilitates a retail sale by a retail vendor by listing or advertising tangible personal property or services for sale in any forum, including a catalog or Internet website, and either directly or indirectly through agreements with third parties, collects receipts from the customer and transmits those receipts to the marketplace seller, whether or not the marketplace provider deducts any fees from the transmission of said receipts.

³ "Marketplace seller" means a seller, vendor or retailer that has any sales facilitated by a marketplace provider.

business in this state through the continuous, regular or systematic solicitation of retail sales by advertisement in the newspapers or radio or television media operating within Oklahoma. It also requires marketplace provider to collect and remit sales tax on any taxable sales facilitated by the marketplace provider to customer in this state except when the marketplace seller either provides a copy of the seller's registration to collect sales tax to the marketplace provider before the marketplace provider facilitates the sales, or the marketplace seller appears on a list published by the Tax Commission of entities registered to collect sales tax.

Section 4

Amends Section 1354.3 of Title 68 providing for application of the 4.5 percent excise tax on the gross receipts of each sale or use of tangible personal property to or by a consumer-user in the state purchased from a marketplace provider that maintains a place of business in the state striking the language referencing out-of-state vendors who engage in business in this state through the continuous, regular or systematic solicitation of retail sales by advertisement through mail order or catalog publications.

Section 5

Amends Section 1401(10) of Title 68 providing that the phrase "maintaining a place of business within the state" for purposes of the Use Tax Code shall have the same meaning as provided in Section 1352 of Title 68.

Section 6

Repeals Section 1354.1 of Title 68.