

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2532

By: Walke

AS INTRODUCED

An Act relating to revenue and taxation; defining terms; requiring certain entities to file income tax returns on a consolidated basis; providing criteria for qualification for requirement; providing certain exemptions; requiring certain calculations and determinations; clarifying certain liabilities; 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 2355.3 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The provisions of this section shall apply to tax years beginning on or after January 1, 2019.

B. As used in this section:

1. "Affiliated group" means a group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member entities;

1        2. "Combined group" means entities that are part of an  
2 affiliated group engaged in a unitary business and that are required  
3 to file a group report under this section;

4        3. "Consolidated group" means a group of two or more  
5 corporations treated as a single person for purposes of Oklahoma  
6 income taxation under the provisions of subsection C of this  
7 section;

8        4. "Controlling interest" means:

9            a. for a corporation, either more than fifty percent  
10                (50%), owned directly or indirectly, of the total  
11                combined voting power of all classes of stock of the  
12                corporation, or more than fifty percent (50%), owned  
13                directly or indirectly, of the beneficial ownership  
14                interest in the voting stock of the corporation,

15            b. for a partnership, association, trust or other entity  
16                other than a limited liability company, more than  
17                fifty percent (50%), owned directly or indirectly, of  
18                the capital, profits or beneficial interest in the  
19                partnership, association, trust or other entity, and

20            c. for a limited liability company, either more than  
21                fifty percent (50%), owned directly or indirectly, of  
22                the total membership interest of the limited liability  
23                company or more than fifty percent (50%), owned  
24                directly or indirectly, of the beneficial ownership

1 interest in the membership interest of the limited  
2 liability company;

3 5. "Reporting person" means a person in a consolidated group or  
4 combined group that is designated by that group to legally bind the  
5 group for all filings and tax liabilities and to receive all legal  
6 notices with respect to matters related to the Oklahoma Income Tax  
7 Act; and

8 6. "Unitary business" means a single economic enterprise that  
9 is made up either of separate parts of a single business entity, of  
10 multiple business entities that are related under Section 267 or  
11 1563 of the Internal Revenue Code, or of a commonly controlled group  
12 of business entities that are sufficiently interdependent,  
13 integrated and interrelated through their activities so as to  
14 provide a synergy and mutual benefit that produces a sharing or  
15 exchange of value among them and a significant flow of value to the  
16 separate parts. Two or more business entities are presumed to be a  
17 unitary business if the businesses have unity of ownership,  
18 operation and use as indicated by a centralized management or a  
19 centralized executive force; centralized purchasing, advertising or  
20 accounting; inter-entity sales or leases; inter-entity services,  
21 including administrative, employee benefits, human resources, legal,  
22 financial and cash management services; inter-entity debts; inter-  
23 entity use of proprietary materials; interlocking directorates; or  
24 interlocking inter-entity officers. In no event and under no

1 circumstances shall the preceding sentence be construed as exclusive  
2 of any and all other factors indicative of a unitary business. For  
3 purposes of this section, the term "unitary business" shall be  
4 broadly construed, to the extent permitted by the United States  
5 Constitution.

6 Any business conducted by a pass-through entity that is owned  
7 directly or indirectly by an entity shall be treated as conducted by  
8 the entity, to the extent of the entity's distributive share of the  
9 pass-through entity's income, regardless of the percentage of the  
10 entity's ownership interest. A business conducted directly or  
11 indirectly by one entity is unitary with that portion of a business  
12 conducted by another entity through its direct or indirect interest  
13 in a pass-through entity if there is a synergy and exchange and flow  
14 of value between the two parts of the business and the two entities  
15 are members of the same commonly controlled group.

16 C. 1. If two or more corporations file federal income tax  
17 returns on a consolidated basis, such corporations shall be required  
18 to file consolidated returns for purposes of determining their  
19 Oklahoma income tax liability.

20 2. Corporations, or any portion thereof, in such consolidated  
21 group which are also included in a combined group as part of a  
22 unitary business shall determine the combined group's total revenue  
23 and net revenue which shall be separately stated as an entity in the  
24

1 consolidated group's returns for purposes of determining their  
2 Oklahoma income tax liability.

3 3. Corporations, or any portion thereof, in such consolidated  
4 group which are not included in a combined group shall determine  
5 such corporation's total revenue and net revenue on a component-  
6 member-by-component-member basis in accordance with the provisions  
7 of the Oklahoma Income Tax Act.

8 4. The net revenue for business done in this state to determine  
9 the Oklahoma income tax liability for the consolidated group shall  
10 be the sum of each of the component member's and combined group's  
11 net revenue or net loss, if any, properly apportioned to this state.

12 D. 1. Except for entities that are members of a consolidated  
13 group under subsection C of this section, all entities that are part  
14 of an affiliated group engaged in a unitary business shall file a  
15 combined group report in lieu of individual reports based on the  
16 combined group's business. The combined group may not include an  
17 entity that conducts business outside the United States if eighty  
18 percent (80%) or more of the entity's property and payroll, as  
19 determined by factors under Section 2358 of Title 68 of the Oklahoma  
20 Statutes, are assigned to locations outside the United States. The  
21 combined group may not include an entity that conducts business  
22 outside the United States and has no property or payroll if eighty  
23 percent (80%) or more of the entity's total revenue is assigned to  
24 locations outside the United States.

1        2. The combined group is a single entity for purposes of the  
2 application of the tax levied under the Oklahoma Income Tax Act.

3        3. For purposes of the Oklahoma Income Tax Act, a combined  
4 group shall determine its total revenue by:

- 5            a. determining the total revenue of each of its members  
6                as if the member were a separate entity,
- 7            b. adding the total revenues of the members determined  
8                under subparagraph a of this paragraph together, and
- 9            c. subtracting, to the extent included under subparagraph  
10               a of this paragraph, items of total revenue received  
11               from another member of the combined group.

12        4. For purposes of the Oklahoma Income Tax Act, a combined  
13 group shall determine its allowable deduction for ordinary trade or  
14 business expenses to arrive at net revenue by:

- 15            a. determining the ordinary trade or business expenses  
16                other than interest, taxes, depreciation and  
17                amortization for each of its members as if the member  
18                were a separate entity,
- 19            b. adding the amounts of ordinary trade or business  
20                expenses determined under subparagraph a of this  
21                paragraph together, and
- 22            c. subtracting from the amount determined under  
23                subparagraph b of this paragraph any ordinary trade or  
24                business expenses paid from one member of the combined

1 group to another member of the combined group, but  
2 only to the extent the corresponding item of total  
3 revenue was subtracted under subparagraph c of  
4 paragraph 3 of this subsection.

5 5. Each entity that is part of a combined group report shall,  
6 for purposes of determining net revenue and apportionment, include  
7 its activities for the same period used by the combined group.

8 6. The members of a combined group shall be jointly and  
9 severally liable for the tax of the combined group. The members of  
10 a combined group shall be jointly and severally liable for the  
11 interest, penalties and costs associated with the combined report.

12 SECTION 2. This act shall become effective January 1, 2019.

13  
14 56-2-8200 JM 11/30/17  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24