

1 **SENATE FLOOR VERSION**

2 April 5, 2016

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 2531

6 By: Caldwell, Denney, Kannady
7 and Wright of the House

8 and

9 Ford of the Senate

10 **[revenue and taxation - Oklahoma Retail Protection
11 Act of 2016 - certain collection of tax - use tax -
12 repealer - noncodification - effective date]**

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

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

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

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

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

21 1. "Bundled transaction" means the retail sale of two or more
22 products, except real property and services to real property, where
23 the products are otherwise distinct and identifiable, and the
24 products are sold for one nonitemized price. A "bundled

1 transaction" does not include the sale of any products in which the
2 sales price varies, or is negotiable, based on the selection by the
3 purchaser of the products included in the transaction. As used in
4 this paragraph:

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

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

14 (2) a product provided free of charge with the
15 required purchase of another product. A product
16 is provided free of charge if the sales price of
17 the product purchased does not vary depending on
18 the inclusion of the product provided free of
19 charge, or

20 (3) items included in the definition of gross
21 receipts or sales price, pursuant to this
22 section,

23 b. "one nonitemized price" does not include a price that
24 is separately identified by product on binding sales

1 or other supporting sales-related documentation made
2 available to the customer in paper or electronic form
3 including, but not limited to an invoice, bill of
4 sale, receipt, contract, service agreement, lease
5 agreement, periodic notice of rates and services, rate
6 card, or price list,

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

9 (1) the retail sale of tangible personal property and
10 a service where the tangible personal property is
11 essential to the use of the service, and is
12 provided exclusively in connection with the
13 service, and the true object of the transaction
14 is the service,

15 (2) the retail sale of services where one service is
16 provided that is essential to the use or receipt
17 of a second service and the first service is
18 provided exclusively in connection with the
19 second service and the true object of the
20 transaction is the second service, ~~or~~

21 (3) a transaction that includes taxable products and
22 nontaxable products and the purchase price or
23 sales price of the taxable products is de
24 minimis. For purposes of this subdivision, "de

1 de minimis" means the seller's purchase price or
2 sales price of taxable products is ten percent
3 (10%) or less of the total purchase price or
4 sales price of the bundled products. Sellers
5 shall use either the purchase price or the sales
6 price of the products to determine if the taxable
7 products are de minimis. Sellers may not use a
8 combination of the purchase price and sales price
9 of the products to determine if the taxable
10 products are de minimis. Sellers shall use the
11 full term of a service contract to determine if
12 the taxable products are de minimis, or

13 (4) the retail sale of exempt tangible personal
14 property and taxable tangible personal property
15 where:

16 (a) the transaction includes food and food
17 ingredients, drugs, durable medical
18 equipment, mobility enhancing equipment,
19 over-the-counter drugs, prosthetic devices
20 or medical supplies, and

21 (b) the seller's purchase price or sales price
22 of the taxable tangible personal property is
23 fifty percent (50%) or less of the total
24 purchase price or sales price of the bundled

1 tangible personal property. Sellers may not
2 use a combination of the purchase price and
3 sales price of the tangible personal
4 property when making the fifty percent (50%)
5 determination for a transaction;

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

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

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

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

17 6. "Consumer" or "user" means a person to whom a taxable sale
18 of tangible personal property is made or to whom a taxable service
19 is furnished. "Consumer" or "user" includes all contractors to whom
20 a taxable sale of materials, supplies, equipment, or other tangible
21 personal property is made or to whom a taxable service is furnished
22 to be used or consumed in the performance of any contract;

23 7. "Contractor" means any person who performs any improvement
24 upon real property and who, as a necessary and incidental part of

1 performing such improvement, incorporates tangible personal property
2 belonging to or purchased by the person into the real property being
3 improved;

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

6 a. recognized in the official United States

7 Pharmacopoeia, official Homeopathic Pharmacopoeia of
8 the United States, or official National Formulary, and
9 supplement to any of them,

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

12 c. intended to affect the structure or any function of
13 the body;

14 9. "Electronic" means relating to technology having electrical,
15 digital, magnetic, wireless, optical, electromagnetic, or similar
16 capabilities;

17 10. "Established place of business" means the location at which
18 any person regularly engages in, conducts, or operates a business in
19 a continuous manner for any length of time, that is open to the
20 public during the hours customary to such business, in which a stock
21 of merchandise for resale is maintained, and which is not exempted
22 by law from attachment, execution, or other species of forced sale
23 barring any satisfaction of any delinquent tax liability accrued
24 under the Oklahoma Sales Tax Code;

1 11. "Fair authority" means:

2 a. any county, municipality, school district, public
3 trust or any other political subdivision of this
4 state, or

5 b. any not-for-profit corporation acting pursuant to an
6 agency, operating or management agreement which has
7 been approved or authorized by the governing body of
8 any of the entities specified in subparagraph a of
9 this paragraph which conduct, operate or produce a
10 fair commonly understood to be a county, district or
11 state fair;

12 12. a. "Gross receipts", "gross proceeds" or "sales price"

13 means the total amount of consideration, including
14 cash, credit, property and services, for which
15 personal property or services are sold, leased or
16 rented, valued in money, whether received in money or
17 otherwise, without any deduction for the following:

18 (1) the seller's cost of the property sold,

19 (2) the cost of materials used, labor or service
20 cost,

21 (3) interest, losses, all costs of transportation to
22 the seller, all taxes imposed on the seller, and
23 any other expense of the seller,
24

1 (4) charges by the seller for any services necessary
2 to complete the sale, other than delivery and
3 installation charges,

4 (5) delivery charges and installation charges, unless
5 separately stated on the invoice, billing or
6 similar document given to the purchaser, and

7 (6) credit for any trade-in.

8 b. Such term shall not include:

9 (1) discounts, including cash, term, or coupons that
10 are not reimbursed by a third party that are
11 allowed by a seller and taken by a purchaser on a
12 sale,

13 (2) interest, financing, and carrying charges from
14 credit extended on the sale of personal property
15 or services, if the amount is separately stated
16 on the invoice, bill of sale or similar document
17 given to the purchaser, and

18 (3) any taxes legally imposed directly on the
19 consumer that are separately stated on the
20 invoice, bill of sale or similar document given
21 to the purchaser⁷.

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

- 1 (1) the seller actually receives consideration from a
2 party other than the purchaser and the
3 consideration is directly related to a price
4 reduction or discount on the sale,
- 5 (2) the seller has an obligation to pass the price
6 reduction or discount through to the purchaser,
- 7 (3) the amount of the consideration attributable to
8 the sale is fixed and determinable by the seller
9 at the time of the sale of the item to the
10 purchaser, and
- 11 (4) one of the following criteria is met:
- 12 (a) the purchaser presents a coupon, certificate
13 or other documentation to the seller to
14 claim a price reduction or discount where
15 the coupon, certificate or documentation is
16 authorized, distributed or granted by a
17 third party with the understanding that the
18 third party will reimburse any seller to
19 whom the coupon, certificate or
20 documentation is presented,
- 21 (b) the purchaser identifies himself or herself
22 to the seller as a member of a group or
23 organization entitled to a price reduction
24 or discount; provided, a "preferred

1 customer" card that is available to any
2 patron does not constitute membership in
3 such a group, or

4 (c) the price reduction or discount is
5 identified as a third-party price reduction
6 or discount on the invoice received by the
7 purchaser or on a coupon, certificate or
8 other documentation presented by the
9 purchaser;

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

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

19 (b) having agents operating in this state,
20 whether the place of business or agent
21 is within this state temporarily or
22 permanently or whether the person or
23 subsidary agent is authorized to do
24 business within this state, and

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 trade
8 names in this state that are the same
9 or substantially similar to those used
10 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

1 vendor's ability to establish and maintain a
2 market in this state for the vendor's sale.

3 b. The presumptions in divisions (1) and (2) of
4 subparagraph a of this paragraph may be rebutted by
5 demonstrating that the person's activities in this
6 state are not significantly associated with the
7 vendor's ability to establish and maintain a market in
8 this state for the vendor's sales.

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

22 d. If any person sells or leases tangible personal
23 property or services to the state, a state department,
24 a state agency or an agent thereof, that person and

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

17 14. "Manufacturing" means and includes the activity of
18 converting or conditioning tangible personal property by changing
19 the form, composition, or quality of character of some existing
20 material or materials, including natural resources, by procedures
21 commonly regarded by the average person as manufacturing,
22 compounding, processing or assembling, into a material or materials
23 with a different form or use. "Manufacturing" does not include
24 extractive industrial activities such as mining, quarrying, logging,

1 and drilling for oil, gas and water, nor oil and gas field
2 processes, such as natural pressure reduction, mechanical
3 separation, heating, cooling, dehydration and compression;

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

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

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

21 a. listing or advertising tangible personal property or
22 services for sale in any forum, including a catalog or
23 Internet website, and

24

1 b. either directly or indirectly through agreements with
2 third parties, collects receipts from the customer and
3 transmits those receipts to the marketplace seller,
4 whether or not the marketplace provider deducts any
5 fees from the transmission of said receipts;

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

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

- 11 a. a "Drug Facts" panel, or
12 b. a statement of the "active ingredient(s)" with a list
13 of those ingredients contained in the compound,
14 substance or preparation;

15 ~~18.~~ 20. "Person" means any individual, company, partnership,
16 joint venture, joint agreement, association, mutual or otherwise,
17 limited liability company, corporation, estate, trust, business
18 trust, receiver or trustee appointed by any state or federal court
19 or otherwise, syndicate, this state, any county, city, municipality,
20 school district, any other political subdivision of the state, or
21 any group or combination acting as a unit, in the plural or singular
22 number;

23 ~~19.~~ 21. "Prescription" means an order, formula or recipe issued
24 in any form of oral, written, electronic, or other means of

1 transmission by a duly licensed "practitioner" as defined in Section
2 1357.6 of this title;

3 ~~20.~~ 22. "Prewritten computer software" means "computer
4 software", including prewritten upgrades, which is not designed and
5 developed by the author or other creator to the specifications of a
6 specific purchaser. The combining of two or more prewritten
7 computer software programs or prewritten portions thereof does not
8 cause the combination to be other than prewritten computer software.
9 Prewritten software includes software designed and developed by the
10 author or other creator to the specifications of a specific
11 purchaser when it is sold to a person other than the purchaser.
12 Where a person modifies or enhances computer software of which the
13 person is not the author or creator, the person shall be deemed to
14 be the author or creator only of such person's modifications or
15 enhancements. Prewritten software or a prewritten portion thereof
16 that is modified or enhanced to any degree, where such modification
17 or enhancement is designed and developed to the specifications of a
18 specific purchaser, remains prewritten software; provided, however,
19 that where there is a reasonable, separately stated charge or an
20 invoice or other statement of the price given to the purchaser for
21 such modification or enhancement, such modification or enhancement
22 shall not constitute prewritten computer software;

23 ~~21.~~ 23. "Repairman" means any person who performs any repair
24 service upon tangible personal property of the consumer, whether or

1 not the repairman, as a necessary and incidental part of performing
2 the service, incorporates tangible personal property belonging to or
3 purchased by the repairman into the tangible personal property being
4 repaired;

5 ~~22.~~ 24. "Sale" means the transfer of either title or possession
6 of tangible personal property for a valuable consideration
7 regardless of the manner, method, instrumentality, or device by
8 which the transfer is accomplished in this state, or other
9 transactions as provided by this paragraph, including but not
10 limited to:

- 11 a. the exchange, barter, lease, or rental of tangible
12 personal property resulting in the transfer of the
13 title to or possession of the property,
- 14 b. the disposition for consumption or use in any business
15 or by any person of all goods, wares, merchandise, or
16 property which has been purchased for resale,
17 manufacturing, or further processing,
- 18 c. the sale, gift, exchange, or other disposition of
19 admission, dues, or fees to clubs, places of
20 amusement, or recreational or athletic events or for
21 the privilege of having access to or the use of
22 amusement, recreational, athletic or entertainment
23 facilities,

24

- 1 d. the furnishing or rendering of services taxable under
2 the Oklahoma Sales Tax Code, and
- 3 e. any use of motor fuel or diesel fuel by a supplier, as
4 defined in Section 500.3 of this title, upon which
5 sales tax has not previously been paid, for purposes
6 other than to propel motor vehicles over the public
7 highways of this state. Motor fuel or diesel fuel
8 purchased outside the state and used for purposes
9 other than to propel motor vehicles over the public
10 highways of this state shall not constitute a sale
11 within the meaning of this paragraph;

12 ~~23.~~ 25. "Sale for resale" means:

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

1 tangible personal property to another person by the
2 purchaser, but not if incidental to the renting or
3 leasing of real estate,

4 c. a sale of tangible goods and products within this
5 state if, simultaneously with the sale, the vendor
6 issues an export bill of lading, or other
7 documentation that the point of delivery of such goods
8 for use and consumption is in a foreign country and
9 not within the territorial confines of the United
10 States. If the vendor is not in the business of
11 shipping the tangible goods and products that are
12 purchased from the vendor, the buyer or purchaser of
13 the tangible goods and products is responsible for
14 providing an export bill of lading or other
15 documentation to the vendor from whom the tangible
16 goods and products were purchased showing that the
17 point of delivery of such goods for use and
18 consumption is a foreign country and not within the
19 territorial confines of the United States, or

20 d. a sales of any carrier access services, right of
21 access services, telecommunications services to be
22 resold, or telecommunications used in the subsequent
23 provision of, use as a component part of, or
24

1 integrated into, end-to-end telecommunications
2 service;

3 ~~24.~~ 26. "Tangible personal property" means personal property
4 that can be seen, weighed, measured, felt, or touched or that is in
5 any other manner perceptible to the senses. "Tangible personal
6 property" includes electricity, water, gas, steam and prewritten
7 computer software. This definition shall be applicable only for
8 purposes of the Oklahoma Sales Tax Code;

9 ~~25.~~ 27. "Taxpayer" means any person liable to pay a tax imposed
10 by the Oklahoma Sales Tax Code;

11 ~~26.~~ 28. "Tax period" or "taxable period" means the calendar
12 period or the taxpayer's fiscal period for which a taxpayer has
13 obtained a permit from the Tax Commission to use a fiscal period in
14 lieu of a calendar period;

15 ~~27.~~ 29. "Tax remitter" means any person required to collect,
16 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
17 tax remitter who fails, for any reason, to collect, report, or remit
18 the tax shall be considered a taxpayer for purposes of assessment,
19 collection, and enforcement of the tax imposed by the Oklahoma Sales
20 Tax Code; and

21 ~~28.~~ 30. "Vendor" means:

- 22 a. any person making sales of tangible personal property
23 or services in this state, the gross receipts or gross
24

1 proceeds from which are taxed by the Oklahoma Sales
2 Tax Code,

3 b. any person maintaining a place of business in this
4 state and making sales of tangible personal property
5 or services, whether at the place of business or
6 elsewhere, to persons within this state, the gross
7 receipts or gross proceeds from which are taxed by the
8 Oklahoma Sales Tax Code,

9 c. any person who solicits business by employees,
10 independent contractors, agents, or other
11 representatives ~~or by distribution of catalogs or~~
12 ~~other advertising matter~~ in this state, and thereby
13 makes sales to persons within this state of tangible
14 personal property or services, the gross receipts or
15 gross proceeds from which are taxed by the Oklahoma
16 Sales Tax Code, or

17 d. any person, pursuant to an agreement with the person
18 with an ownership interest in or title to tangible
19 personal property, who has been entrusted with the
20 possession of any such property and has the power to
21 designate who is to obtain title, to physically
22 transfer possession of, or otherwise make sales of the
23 property.

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

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

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

18 ~~(C)~~ C. Any advertisement soliciting sales to the Oklahoma
19 consumer, subject to this section, to be published or broadcasted by
20 newspapers or radio or television media operating in this state,
21 shall contain a notice that the sale is subject to Oklahoma sales or
22 use tax and shall include the sales tax permit number issued the
23 advertising vendor by the Oklahoma Tax Commission. It shall be the
24 duty of the vendor to provide such notice in advertisements referred

1 to herein. No penalty as a result of this act shall lie against any
2 newspaper, broadcaster or other Oklahoma advertising media.

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

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

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

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

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

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

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

22 C. A marketplace provider is required to collect and remit the
23 tax levied by this section on any sales, subject to such tax,
24 facilitated by the marketplace provider to customers in this state;

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

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

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

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

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

23 3. The term "purchase price" applies to the measure subject to
24 the tax levied under Section 1402 of this title and has the same

1 meaning as "gross receipts" or "gross proceeds" or "sales price" as
2 defined in Section 1352 of this title;

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

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

9 6. The term "sale" means and includes the transfer of either
10 the title or possession for a valuable consideration of tangible
11 personal property, regardless of the manner, method, instrumentality
12 or device by which such transfer is accomplished. The term "sale"
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;

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

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

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

21 b. A retailer shall be deemed to be engaged in the
22 business of selling tangible personal property for use
23 in this state if:

24 (1) both of the following conditions exist:

1 (a) the retailer holds a substantial ownership
2 interest in, or is owned in whole or in
3 substantial part by, a retailer maintaining
4 a place of business within this state, and
5 (b) the retailer sells the same or a
6 substantially similar line of products as
7 the related Oklahoma retailer and does so
8 under the same or a substantially similar
9 business name, or the Oklahoma facilities or
10 Oklahoma employees of the related Oklahoma
11 retailer are used to advertise, promote or
12 facilitate sales by the retailer to
13 consumers, or

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

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

22 (1) "substantial ownership interest" means an
23 interest in an entity that is not less than the
24 degree of ownership of equity interest in an

1 entity that is specified by Section 78p of Title
2 15 of the United States Code, or any successor to
3 that statute, with respect to a person other than
4 a director or officer,

5 (2) "ownership" means and includes both direct
6 ownership and indirect ownership through a
7 parent, subsidiary or affiliate, and

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

15 d. Any retailer that is part of a controlled group of
16 corporations, and that controlled group of
17 corporations has a component member that is a retailer
18 engaged in business in this state as described in
19 subparagraph b of this paragraph, shall be presumed to
20 be a retailer engaged in business in this state. This
21 presumption may be rebutted by evidence that during
22 the calendar year at issue the component member that
23 is a retailer engaged in business in this state did
24 not engage in any of the activities described in this

1 subparagraph on behalf of the retailer. For purposes
2 of this subparagraph, "controlled group of
3 corporations" means "controlled group of corporations"
4 as defined in Section 1563(a) of the Internal Revenue
5 Code, and "component member" means "component member"
6 as defined in Section 1563(b) of the Internal Revenue
7 Code.

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

16 10. The phrase "maintaining a place of business within the
17 state" ~~includes any person having or maintaining in the state,~~
18 ~~directly or by subsidiary, an office, distribution house, sales~~
19 ~~house, warehouse, or other place of business. It also includes any~~
20 ~~person having agents operating in the state under authority of the~~
21 ~~retailer or subsidiary, whether the place of business or agent is~~
22 ~~within the state permanently or temporarily, or whether the person~~
23 ~~or subsidiary is authorized to do business within the state is~~

1 ~~immaterial~~ shall have the same meaning as provided in Section 1352
2 of this title.

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

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

6 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
7 April 5, 2016 - DO PASS AS AMENDED
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