

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2925

By: Dunnington

4  
5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2011, Sections 1352, 1354.2 and 1354.3, which  
9 relate to sales tax; modifying definitions; modifying  
10 application of tax; amending 68 O.S. 2011, Section  
11 1401, which relates to use tax; modifying  
12 definitions; repealing 68 O.S. 2011, Section 1354.1,  
13 which relates to sales tax; and providing an  
14 effective date.

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

16 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1352, is  
17 amended to read as follows:

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

19 1. "Bundled transaction" means the retail sale of two or more  
20 products, except real property and services to real property, where  
21 the products are otherwise distinct and identifiable, and the  
22 products are sold for one nonitemized price. A "bundled  
23 transaction" does not include the sale of any products in which the  
24 sales price varies, or is negotiable, based on the selection by the

1 purchaser of the products included in the transaction. As used in  
2 this paragraph:

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

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

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

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

21 b. "one nonitemized price" does not include a price that  
22 is separately identified by product on binding sales  
23 or other supporting sales-related documentation made  
24 available to the customer in paper or electronic form

1 including, but not limited to an invoice, bill of  
2 sale, receipt, contract, service agreement, lease  
3 agreement, periodic notice of rates and services, rate  
4 card, or price list,

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

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

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

19 (3) a transaction that includes taxable products and  
20 nontaxable products and the purchase price or  
21 sales price of the taxable products is de  
22 minimis. For purposes of this subdivision, "de  
23 minimis" means the seller's purchase price or  
24 sales price of taxable products is ten percent

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

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

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

19 (b) the seller's purchase price or sales price  
20 of the taxable tangible personal property is  
21 fifty percent (50%) or less of the total  
22 purchase price or sales price of the bundled  
23 tangible personal property. Sellers may not  
24 use a combination of the purchase price and

1 sales price of the tangible personal  
2 property when making the fifty percent (50%)  
3 determination for a transaction;

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

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

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

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

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

21 7. "Contractor" means any person who performs any improvement  
22 upon real property and who, as a necessary and incidental part of  
23 performing such improvement, incorporates tangible personal property  
24

1 belonging to or purchased by the person into the real property being  
2 improved;

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

5 a. recognized in the official United States  
6 Pharmacopoeia, official Homeopathic Pharmacopoeia of  
7 the United States, or official National Formulary, and  
8 supplement to any of them,

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

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

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

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

24 11. "Fair authority" means:

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

- 11 12. a. "Gross receipts", "gross proceeds" or "sales price"  
12 means the total amount of consideration, including  
13 cash, credit, property and services, for which  
14 personal property or services are sold, leased or  
15 rented, valued in money, whether received in money or  
16 otherwise, without any deduction for the following:
- 17 (1) the seller's cost of the property sold,
  - 18 (2) the cost of materials used, labor or service  
19 cost,
  - 20 (3) interest, losses, all costs of transportation to  
21 the seller, all taxes imposed on the seller, and  
22 any other expense of the seller,
- 23  
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 purchaser.

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

24



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

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

22 a. a "Drug Facts" panel, or  
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1           b.    a statement of the "active ingredient(s)" with a list  
2                   of those ingredients contained in the compound,  
3                   substance or preparation;

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

12           19.  "Prescription" means an order, formula or recipe issued in  
13 any form of oral, written, electronic, or other means of  
14 transmission by a duly licensed "practitioner" as defined in Section  
15 1357.6 of this title;

16           20.  "Prewritten computer software" means "computer software",  
17 including prewritten upgrades, which is not designed and developed  
18 by the author or other creator to the specifications of a specific  
19 purchaser.  The combining of two or more prewritten computer  
20 software programs or prewritten portions thereof does not cause the  
21 combination to be other than prewritten computer software.  
22 Prewritten software includes software designed and developed by the  
23 author or other creator to the specifications of a specific  
24 purchaser when it is sold to a person other than the purchaser.

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

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

18 22. "Sale" means the transfer of either title or possession of  
19 tangible personal property for a valuable consideration regardless  
20 of the manner, method, instrumentality, or device by which the  
21 transfer is accomplished in this state, or other transactions as  
22 provided by this paragraph, including but not limited to:

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- 1 a. the exchange, barter, lease, or rental of tangible  
2 personal property resulting in the transfer of the  
3 title to or possession of the property,
- 4 b. the disposition for consumption or use in any business  
5 or by any person of all goods, wares, merchandise, or  
6 property which has been purchased for resale,  
7 manufacturing, or further processing,
- 8 c. the sale, gift, exchange, or other disposition of  
9 admission, dues, or fees to clubs, places of  
10 amusement, or recreational or athletic events or for  
11 the privilege of having access to or the use of  
12 amusement, recreational, athletic or entertainment  
13 facilities,
- 14 d. the furnishing or rendering of services taxable under  
15 the Oklahoma Sales Tax Code, and
- 16 e. any use of motor fuel or diesel fuel by a supplier, as  
17 defined in Section 500.3 of this title, upon which  
18 sales tax has not previously been paid, for purposes  
19 other than to propel motor vehicles over the public  
20 highways of this state. Motor fuel or diesel fuel  
21 purchased outside the state and used for purposes  
22 other than to propel motor vehicles over the public  
23 highways of this state shall not constitute a sale  
24 within the meaning of this paragraph;

1 23. "Sale for resale" means:

2 a. a sale of tangible personal property to any purchaser  
3 who is purchasing tangible personal property for the  
4 purpose of reselling it within the geographical limits  
5 of the United States of America or its territories or  
6 possessions, in the normal course of business either  
7 in the form or condition in which it is purchased or  
8 as an attachment to or integral part of other tangible  
9 personal property,

10 b. a sale of tangible personal property to a purchaser  
11 for the sole purpose of the renting or leasing, within  
12 the geographical limits of the United States of  
13 America or its territories or possessions, of the  
14 tangible personal property to another person by the  
15 purchaser, but not if incidental to the renting or  
16 leasing of real estate,

17 c. a sale of tangible goods and products within this  
18 state if, simultaneously with the sale, the vendor  
19 issues an export bill of lading, or other  
20 documentation that the point of delivery of such goods  
21 for use and consumption is in a foreign country and  
22 not within the territorial confines of the United  
23 States. If the vendor is not in the business of  
24 shipping the tangible goods and products that are

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

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

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

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

23 26. "Tax period" or "taxable period" means the calendar period  
24 or the taxpayer's fiscal period for which a taxpayer has obtained a

1 permit from the Tax Commission to use a fiscal period in lieu of a  
2 calendar period;

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

9 28. "Vendor" means:

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

1 personal property or services, the gross receipts or  
2 gross proceeds from which are taxed by the Oklahoma  
3 Sales Tax Code, or

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

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

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

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

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

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

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

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

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1 SECTION 3. 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~~ that maintains a place of  
14 business in this state. The tax shall be collected, reported and  
15 remitted or paid and apportioned in the same manner as any other  
16 sales or use tax levied by this state.

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

21 SECTION 4. AMENDATORY 68 O.S. 2011, Section 1401, is  
22 amended to read as follows:

23  
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1 Section 1401. The following words, terms and phrases when used  
2 in this article shall have the meanings respectively given to them  
3 in this section:

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

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

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

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

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

23 6. The term "sale" means and includes the transfer of either  
24 the title or possession for a valuable consideration of tangible



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

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

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

19 9. a. The term "retailer" means every person engaged in the  
20 business of selling tangible personal property for use  
21 within the meaning of the article; provided, however,  
22 that when in the opinion of the Tax Commission it is  
23 necessary for the efficient administration of this  
24 article to regard any salesmen, representatives,

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

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

14 (1) both of the following conditions exist:

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

19 (b) the retailer sells the same or a  
20 substantially similar line of products as  
21 the related Oklahoma retailer and does so  
22 under the same or a substantially similar  
23 business name, or the Oklahoma facilities or  
24 Oklahoma employees of the related Oklahoma

1 retailer are used to advertise, promote or  
2 facilitate sales by the retailer to  
3 consumers, or

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

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

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

19 (2) "ownership" means and includes both direct  
20 ownership and indirect ownership through a  
21 parent, subsidiary or affiliate, and

22 (3) the processing of orders electronically,  
23 including facsimile, telephone, the Internet or  
24 other electronic ordering process, does not

1           relieve a retailer of responsibility for  
2           collection of the tax from the purchaser if the  
3           retailer is doing business in this state pursuant  
4           to this paragraph.

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

22          e. Any retailer making sales of tangible personal  
23          property to purchasers in this state by mail,  
24          telephone, the Internet or other media which has a

1 contractual relationship with an entity to provide and  
2 perform installation or maintenance services for the  
3 retailer's purchasers within this state shall be  
4 included within the definition of "retailer" under the  
5 provisions of subparagraph a of this paragraph; and

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

16 SECTION 5. REPEALER 68 O.S. 2011, Section 1354.1, is  
17 hereby repealed.

18 SECTION 6. This act shall become effective November 1, 2016.

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20 55-2-7903 JM 01/19/16  
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