

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

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

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

1 (3) items included in the definition of gross
2 receipts or sales price, pursuant to this
3 section,

4 b. "one nonitemized price" does not include a price that
5 is separately identified by product on binding sales
6 or other supporting sales-related documentation made
7 available to the customer in paper or electronic form
8 including, but not limited to an invoice, bill of
9 sale, receipt, contract, service agreement, lease
10 agreement, periodic notice of rates and services, rate
11 card, or price list,

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

14 (1) the retail sale of tangible personal property and
15 a service where the tangible personal property is
16 essential to the use of the service, and is
17 provided exclusively in connection with the
18 service, and the true object of the transaction
19 is the service,

20 (2) the retail sale of services where one service is
21 provided that is essential to the use or receipt
22 of a second service and the first service is
23 provided exclusively in connection with the

1 second service and the true object of the
2 transaction is the second service, or

3 (3) a transaction that includes taxable products and
4 nontaxable products and the purchase price or
5 sales price of the taxable products is de
6 minimis. For purposes of this subdivision, "de
7 minimis" means the seller's purchase price or
8 sales price of taxable products is ten percent
9 (10%) or less of the total purchase price or
10 sales price of the bundled products. Sellers
11 shall use either the purchase price or the sales
12 price of the products to determine if the taxable
13 products are de minimis. Sellers may not use a
14 combination of the purchase price and sales price
15 of the products to determine if the taxable
16 products are de minimis. Sellers shall use the
17 full term of a service contract to determine if
18 the taxable products are de minimis, or

19 (4) the retail sale of exempt tangible personal
20 property and taxable tangible personal property
21 where:

22 (a) the transaction includes food and food
23 ingredients, drugs, durable medical

1 equipment, mobility enhancing equipment,
2 over-the-counter drugs, prosthetic devices
3 or medical supplies, and

4 (b) the seller's purchase price or sales price
5 of the taxable tangible personal property is
6 fifty percent (50%) or less of the total
7 purchase price or sales price of the bundled
8 tangible personal property. Sellers may not
9 use a combination of the purchase price and
10 sales price of the tangible personal
11 property when making the fifty percent (50%)
12 determination for a transaction;

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

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

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

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

1 6. "Consumer" or "user" means a person to whom a taxable sale
2 of tangible personal property is made or to whom a taxable service
3 is furnished. "Consumer" or "user" includes all contractors to whom
4 a taxable sale of materials, supplies, equipment, or other tangible
5 personal property is made or to whom a taxable service is furnished
6 to be used or consumed in the performance of any contract;

7 7. "Contractor" means any person who performs any improvement
8 upon real property and who, as a necessary and incidental part of
9 performing such improvement, incorporates tangible personal property
10 belonging to or purchased by the person into the real property being
11 improved;

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

- 14 a. recognized in the official United States
15 Pharmacopoeia, official Homeopathic Pharmacopoeia of
16 the United States, or official National Formulary, and
17 supplement to any of them,
- 18 b. intended for use in the diagnosis, cure, mitigation,
19 treatment, or prevention of disease, or
- 20 c. intended to affect the structure or any function of
21 the body;
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1 9. "Electronic" means relating to technology having electrical,
2 digital, magnetic, wireless, optical, electromagnetic, or similar
3 capabilities;

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

12 11. "Fair authority" means:

- 13 a. any county, municipality, school district, public
14 trust or any other political subdivision of this
15 state, or
- 16 b. any not-for-profit corporation acting pursuant to an
17 agency, operating or management agreement which has
18 been approved or authorized by the governing body of
19 any of the entities specified in subparagraph a of
20 this paragraph which conduct, operate or produce a
21 fair commonly understood to be a county, district or
22 state fair;

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

2 means the total amount of consideration, including

3 cash, credit, property and services, for which

4 personal property or services are sold, leased or

5 rented, valued in money, whether received in money or

6 otherwise, without any deduction for the following:

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

8 (2) the cost of materials used, labor or service
9 cost,

10 (3) interest, losses, all costs of transportation to
11 the seller, all taxes imposed on the seller, and
12 any other expense of the seller,

13 (4) charges by the seller for any services necessary
14 to complete the sale, other than delivery and
15 installation charges,

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

19 (6) credit for any trade-in.

20 b. Such term shall not include:

21 (1) discounts, including cash, term, or coupons that
22 are not reimbursed by a third party that are
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1 allowed by a seller and taken by a purchaser on a
2 sale,

3 (2) interest, financing, and carrying charges from
4 credit extended on the sale of personal property
5 or services, if the amount is separately stated
6 on the invoice, bill of sale or similar document
7 given to the purchaser, and

8 (3) any taxes legally imposed directly on the
9 consumer that are separately stated on the
10 invoice, bill of sale or similar document given
11 to the purchaser,

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

14 (1) the seller actually receives consideration from a
15 party other than the purchaser and the
16 consideration is directly related to a price
17 reduction or discount on the sale,

18 (2) the seller has an obligation to pass the price
19 reduction or discount through to the purchaser,

20 (3) the amount of the consideration attributable to
21 the sale is fixed and determinable by the seller
22 at the time of the sale of the item to the
23 purchaser, and

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1 (4) one of the following criteria is met:

2 (a) the purchaser presents a coupon, certificate
3 or other documentation to the seller to
4 claim a price reduction or discount where
5 the coupon, certificate or documentation is
6 authorized, distributed or granted by a
7 third party with the understanding that the
8 third party will reimburse any seller to
9 whom the coupon, certificate or
10 documentation is presented,

11 (b) the purchaser identifies himself or herself
12 to the seller as a member of a group or
13 organization entitled to a price reduction
14 or discount; provided, a "preferred
15 customer" card that is available to any
16 patron does not constitute membership in
17 such a group, or

18 (c) the price reduction or discount is
19 identified as a third-party price reduction
20 or discount on the invoice received by the
21 purchaser or on a coupon, certificate or
22 other documentation presented by the
23 purchaser;

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

3 (1) utilizing or maintaining in this state, ~~directly~~
4 ~~or by subsidiary,~~ an office, distribution house,
5 sales house, warehouse, or other physical place
6 of business, whether owned or operated by the
7 vendor or any other person, other than a common
8 carrier acting in its capacity as such, or having
9 agents operating in this state, whether the place
10 of business or agent is within this state
11 temporarily or permanently or whether the person
12 or ~~subsidiary~~ agent is authorized to do business
13 within this state, and

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

17 (a) sells a similar line of products as the
18 vendor and does so under the same or a
19 similar business name,

20 (b) uses trademarks, service marks, or
21 trade names in this state that are the
22 same or substantially similar to those
23 used by the vendor,

1 (c) delivers, installs, assembles, or
2 performs maintenance services for the
3 vendor,

4 (d) facilitates the vendor's delivery of
5 property to customers in the state by
6 allowing the vendor's customers to pick
7 up property sold by the vendor at an
8 office, distribution facility,
9 warehouse, storage place, or similar
10 place of business maintained by the
11 person in this state, or

12 (e) conducts any other activities in this state
13 that are significantly associated with the
14 vendor's ability to establish and maintain a
15 market in this state for the vendor's sales.

16 b. The presumptions in divisions (1) and (2) of
17 subparagraph a of this paragraph may be rebutted by
18 demonstrating that the person's activities in this
19 state are not significantly associated with the
20 vendor's ability to establish and maintain a market in
21 this state for the vendor's sales.

22 c. Any ruling, agreement or contract, whether written or
23 oral, express or implied, between a person and this

1 state's executive branch, or any other state agency or
2 department, stating, agreeing, or ruling that the
3 person is not "maintaining a place of business in this
4 state" or is not required to collect sales and use tax
5 in this state despite the presence of a warehouse,
6 distribution center, or fulfillment center in this
7 state that is owned or operated by the vendor or an
8 affiliated person of the vendor shall be null and void
9 unless it is specifically approved by a majority vote
10 of each house of the Oklahoma Legislature.

11 d. If any person sells or leases tangible personal
12 property or services to the state, a state department,
13 a state agency, or an agent thereof, that person and
14 any affiliated person shall, as a prerequisite for any
15 such sale or lease, register with the department as a
16 "vendor" and comply with all legal requirements
17 imposed on a dealer, including the requirement to
18 collect and remit sales or use tax on all taxable
19 sales of tangible personal property and services to
20 customers in the state. For purposes of this
21 paragraph, an "affiliated person" means any person
22 that is a member of the same "controlled group of
23 corporations" as defined in Section 1563(a) of the

1 Internal Revenue Code as the vendor or any other
2 entity that, notwithstanding its form of organization,
3 bears the same ownership relationship to the vendor as
4 a corporation that is a member of the same "controlled
5 group of corporations" as defined in Section 1563(a)
6 of the Internal Revenue Code;

7 14. "Manufacturing" means and includes the activity of
8 converting or conditioning tangible personal property by changing
9 the form, composition, or quality of character of some existing
10 material or materials, including natural resources, by procedures
11 commonly regarded by the average person as manufacturing,
12 compounding, processing or assembling, into a material or materials
13 with a different form or use. "Manufacturing" does not include
14 extractive industrial activities such as mining, quarrying, logging,
15 and drilling for oil, gas and water, nor oil and gas field
16 processes, such as natural pressure reduction, mechanical
17 separation, heating, cooling, dehydration and compression;

18 15. "Manufacturing operation" means the designing,
19 manufacturing, compounding, processing, assembling, warehousing, or
20 preparing of articles for sale as tangible personal property. A
21 manufacturing operation begins at the point where the materials
22 enter the manufacturing site and ends at the point where a finished
23 product leaves the manufacturing site. "Manufacturing operation"

1 does not include administration, sales, distribution,
2 transportation, site construction, or site maintenance. Extractive
3 activities and field processes shall not be deemed to be a part of a
4 manufacturing operation even when performed by a person otherwise
5 engaged in manufacturing;

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

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

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

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

3 19. "Prescription" means an order, formula or recipe issued in
4 any form of oral, written, electronic, or other means of
5 transmission by a duly licensed "practitioner" as defined in Section
6 1357.6 of this title;

7 20. "Prewritten computer software" means "computer software",
8 including prewritten upgrades, which is not designed and developed
9 by the author or other creator to the specifications of a specific
10 purchaser. The combining of two or more prewritten computer
11 software programs or prewritten portions thereof does not cause the
12 combination to be other than prewritten computer software.

13 Prewritten software includes software designed and developed by the
14 author or other creator to the specifications of a specific
15 purchaser when it is sold to a person other than the purchaser.

16 Where a person modifies or enhances computer software of which the
17 person is not the author or creator, the person shall be deemed to
18 be the author or creator only of such person's modifications or
19 enhancements. Prewritten software or a prewritten portion thereof
20 that is modified or enhanced to any degree, where such modification
21 or enhancement is designed and developed to the specifications of a
22 specific purchaser, remains prewritten software; provided, however,
23 that where there is a reasonable, separately stated charge or an

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1 invoice or other statement of the price given to the purchaser for
2 such modification or enhancement, such modification or enhancement
3 shall not constitute prewritten computer software;

4 21. "Repairman" means any person who performs any repair
5 service upon tangible personal property of the consumer, whether or
6 not the repairman, as a necessary and incidental part of performing
7 the service, incorporates tangible personal property belonging to or
8 purchased by the repairman into the tangible personal property being
9 repaired;

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

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

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1 amusement, or recreational or athletic events or for
2 the privilege of having access to or the use of
3 amusement, recreational, athletic or entertainment
4 facilities,

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

7 e. any use of motor fuel or diesel fuel by a supplier, as
8 defined in Section 500.3 of this title, upon which
9 sales tax has not previously been paid, for purposes
10 other than to propel motor vehicles over the public
11 highways of this state. Motor fuel or diesel fuel
12 purchased outside the state and used for purposes
13 other than to propel motor vehicles over the public
14 highways of this state shall not constitute a sale
15 within the meaning of this paragraph;

16 23. "Sale for resale" means:

17 a. a sale of tangible personal property to any purchaser
18 who is purchasing tangible personal property for the
19 purpose of reselling it within the geographical limits
20 of the United States of America or its territories or
21 possessions, in the normal course of business either
22 in the form or condition in which it is purchased or
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1 as an attachment to or integral part of other tangible
2 personal property,

3 b. a sale of tangible personal property to a purchaser
4 for the sole purpose of the renting or leasing, within
5 the geographical limits of the United States of
6 America or its territories or possessions, of the
7 tangible personal property to another person by the
8 purchaser, but not if incidental to the renting or
9 leasing of real estate,

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

1 consumption is a foreign country and not within the
2 territorial confines of the United States, or
3 d. a sales of any carrier access services, right of
4 access services, telecommunications services to be
5 resold, or telecommunications used in the subsequent
6 provision of, use as a component part of, or
7 integrated into, end-to-end telecommunications
8 service;

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

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

17 26. "Tax period" or "taxable period" means the calendar period
18 or the taxpayer's fiscal period for which a taxpayer has obtained a
19 permit from the Tax Commission to use a fiscal period in lieu of a
20 calendar period;

21 27. "Tax remitter" means any person required to collect,
22 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
23 tax remitter who fails, for any reason, to collect, report, or remit

1 the tax shall be considered a taxpayer for purposes of assessment,
2 collection, and enforcement of the tax imposed by the Oklahoma Sales
3 Tax Code; and

4 28. "Vendor" means:

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

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

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

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

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

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

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

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

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

21 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1354.3, is
22 amended to read as follows:
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1 Section 1354.3 ~~(A)~~ A. There is hereby levied upon all sales,
2 not otherwise exempted in the Oklahoma Sales Tax Code, Sections 1350
3 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title, or the
4 Oklahoma Use Tax Code, Sections 1401 et seq. of ~~Title 68 of the~~
5 ~~Oklahoma Statutes~~ this title, an excise tax of four and one-half
6 percent (4.5%) of the gross receipts or gross proceeds of each sale
7 or use of tangible personal property to or by a consumer-user in
8 this state purchased from an out-of-state vendor ~~who engages in~~
9 ~~business in this state through the continuous, regular or systematic~~
10 ~~solicitation of retail sales by advertisement through mail order or~~
11 ~~catalog publications~~ that maintains a place of business in this
12 state. The tax shall be collected, reported and remitted or paid
13 and apportioned in the same manner as any other sales or use tax
14 levied by this state.

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

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

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

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

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

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

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

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

20 6. The term "sale" means and includes the transfer of either
21 the title or possession for a valuable consideration of tangible
22 personal property, regardless of the manner, method, instrumentality
23 or device by which such transfer is accomplished. The term "sale"

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1 also includes the exchange, barter, lease, or rental of tangible
2 personal property where such exchange, barter, lease or rental
3 results in either the transfer of the title or the possession;

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

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

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

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

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

13 (1) both of the following conditions exist:

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

18 (b) the retailer sells the same or a
19 substantially similar line of products as
20 the related Oklahoma retailer and does so
21 under the same or a substantially similar
22 business name, or the Oklahoma facilities or
23 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
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1 other electronic ordering process, does not
2 relieve a retailer of responsibility for
3 collection of the tax from the purchaser if the
4 retailer is doing business in this state pursuant
5 to this paragraph.

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

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

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

19 SECTION 5. REPEALER 68 O.S. 2011, Section 1354.1, is
20 hereby repealed.

21 SECTION 6. This act shall become effective July 1, 2012.

22 SECTION 7. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3

4 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
5 02/23/2012 - DO PASS, As Coauthored.

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