

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 2531

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

4 and

5 Ford of the Senate

6
7 An Act relating to revenue and taxation; creating the
8 Oklahoma Retail Protection Act of 2016; amending 68
9 O.S. 2011, Sections 1352, 1354.2 and 1354.3, which
10 relate to sales tax; modifying definitions; adding
11 definitions; modifying application of tax; requiring
12 certain collection of tax; providing exceptions;
13 amending 68 O.S. 2011, Section 1401, which relates to
14 use tax; modifying definitions; repealing 68 O.S.
15 2011, Section 1354.1, which relates to sales tax;
16 providing for noncodification; and providing an
17 effective date.

18
19 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
20 entire bill and insert

21 "An Act relating to revenue and taxation; creating
22 the Oklahoma Retail Protection Act of 2016; amending
23 68 O.S. 2011, Sections 1352, which relates to sales
24 tax; providing short title; modifying definitions;
amending 68 O.S. 2011, Sections 1401, 1407.2 and
1407.3, which relate to use tax; modifying
definition; requiring certain retailers and vendors
to provide certain statement to customers and
specifying language thereof; modifying purpose and
scope of certain initiative; deleting certain
provisions relating to Retailer Compliance
Initiative; modifying purpose and scope of certain
outreach program; repealing 68 O.S. 2011, Sections
1354.1, 1354.2, 1354.3, 1354.4, 1354.5 and 1354.6,
which relate to sales tax; providing for
codification; providing for noncodification; and
providing an effective date.

1
2 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

10 1. "Bundled transaction" means the retail sale of two or more
11 products, except real property and services to real property, where
12 the products are otherwise distinct and identifiable, and the
13 products are sold for one nonitemized price. A "bundled
14 transaction" does not include the sale of any products in which the
15 sales price varies, or is negotiable, based on the selection by the
16 purchaser of the products included in the transaction. As used in
17 this paragraph:

18 a. "distinct and identifiable products" does not include:
19 (1) packaging such as containers, boxes, sacks, bags,
20 and bottles, or other materials such as wrapping,
21 labels, tags, and instruction guides, that
22 accompany the retail sale of the products and are
23 incidental or immaterial to the retail sale
24 thereof, including but not limited to, grocery

1 sacks, shoeboxes, dry cleaning garment bags and
2 express delivery envelopes and boxes,

3 (2) a product provided free of charge with the
4 required purchase of another product. A product
5 is provided free of charge if the sales price of
6 the product purchased does not vary depending on
7 the inclusion of the product provided free of
8 charge, or

9 (3) items included in the definition of gross
10 receipts or sales price, pursuant to this
11 section,

12 b. "one nonitemized price" does not include a price that
13 is separately identified by product on binding sales
14 or other supporting sales-related documentation made
15 available to the customer in paper or electronic form
16 including, but not limited to an invoice, bill of
17 sale, receipt, contract, service agreement, lease
18 agreement, periodic notice of rates and services, rate
19 card, or price list,

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

22 (1) the retail sale of tangible personal property and
23 a service where the tangible personal property is
24 essential to the use of the service, and is

1 provided exclusively in connection with the
2 service, and the true object of the transaction
3 is the service,

4 (2) the retail sale of services where one service is
5 provided that is essential to the use or receipt
6 of a second service and the first service is
7 provided exclusively in connection with the
8 second service and the true object of the
9 transaction is the second service, ~~or~~

10 (3) a transaction that includes taxable products and
11 nontaxable products and the purchase price or
12 sales price of the taxable products is de
13 minimis. For purposes of this subdivision, "de
14 minimis" means the seller's purchase price or
15 sales price of taxable products is ten percent
16 (10%) or less of the total purchase price or
17 sales price of the bundled products. Sellers
18 shall use either the purchase price or the sales
19 price of the products to determine if the taxable
20 products are de minimis. Sellers may not use a
21 combination of the purchase price and sales price
22 of the products to determine if the taxable
23 products are de minimis. Sellers shall use the
24

1 full term of a service contract to determine if
2 the taxable products are de minimis, or

3 (4) the retail sale of exempt tangible personal
4 property and taxable tangible personal property
5 where:

6 (a) the transaction includes food and food
7 ingredients, drugs, durable medical
8 equipment, mobility enhancing equipment,
9 over-the-counter drugs, prosthetic devices
10 or medical supplies, and

11 (b) the seller's purchase price or sales price
12 of the taxable tangible personal property is
13 fifty percent (50%) or less of the total
14 purchase price or sales price of the bundled
15 tangible personal property. Sellers may not
16 use a combination of the purchase price and
17 sales price of the tangible personal
18 property when making the fifty percent (50%)
19 determination for a transaction;

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

23 3. "Commission" or "Tax Commission" means the Oklahoma Tax
24 Commission;

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

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

7 6. "Consumer" or "user" means a person to whom a taxable sale
8 of tangible personal property is made or to whom a taxable service
9 is furnished. "Consumer" or "user" includes all contractors to whom
10 a taxable sale of materials, supplies, equipment, or other tangible
11 personal property is made or to whom a taxable service is furnished
12 to be used or consumed in the performance of any contract;

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

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

20 a. recognized in the official United States
21 Pharmacopoeia, official Homeopathic Pharmacopoeia of
22 the United States, or official National Formulary, and
23 supplement to any of them,
24

- 1 b. intended for use in the diagnosis, cure, mitigation,
2 treatment, or prevention of disease, or
3 c. intended to affect the structure or any function of
4 the body;

5 9. "Electronic" means relating to technology having electrical,
6 digital, magnetic, wireless, optical, electromagnetic, or similar
7 capabilities;

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

16 11. "Fair authority" means:

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

1 fair commonly understood to be a county, district or
2 state fair;

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

4 means the total amount of consideration, including
5 cash, credit, property and services, for which
6 personal property or services are sold, leased or
7 rented, valued in money, whether received in money or
8 otherwise, without any deduction for the following:

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

10 (2) the cost of materials used, labor or service
11 cost,

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

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

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

21 (6) credit for any trade-in.

22 b. Such term shall not include:

23 (1) discounts, including cash, term, or coupons that
24 are not reimbursed by a third party that are

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 purchaser7.

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

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

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

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

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

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

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 sale.

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
24 executive branch of this state, or any other state

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

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

22 15. "Manufacturing operation" means the designing,
23 manufacturing, compounding, processing, assembling, warehousing, or
24 preparing of articles for sale as tangible personal property. A

1 manufacturing operation begins at the point where the materials
2 enter the manufacturing site and ends at the point where a finished
3 product leaves the manufacturing site. "Manufacturing operation"
4 does not include administration, sales, distribution,
5 transportation, site construction, or site maintenance. Extractive
6 activities and field processes shall not be deemed to be a part of a
7 manufacturing operation even when performed by a person otherwise
8 engaged in manufacturing;

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

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

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

20 18. "Person" means any individual, company, partnership, joint
21 venture, joint agreement, association, mutual or otherwise, limited
22 liability company, corporation, estate, trust, business trust,
23 receiver or trustee appointed by any state or federal court or
24 otherwise, syndicate, this state, any county, city, municipality,

1 school district, any other political subdivision of the state, or
2 any group or combination acting as a unit, in the plural or singular
3 number;

4 19. "Prescription" means an order, formula or recipe issued in
5 any form of oral, written, electronic, or other means of
6 transmission by a duly licensed "practitioner" as defined in Section
7 1357.6 of this title;

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

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
24 amusement, or recreational or athletic events or for

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

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

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

15 23. "Sale for resale" means:

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

24

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

8 c. a sale of tangible goods and products within this
9 state if, simultaneously with the sale, the vendor
10 issues an export bill of lading, or other
11 documentation that the point of delivery of such goods
12 for use and consumption is in a foreign country and
13 not within the territorial confines of the United
14 States. If the vendor is not in the business of
15 shipping the tangible goods and products that are
16 purchased from the vendor, the buyer or purchaser of
17 the tangible goods and products is responsible for
18 providing an export bill of lading or other
19 documentation to the vendor from whom the tangible
20 goods and products were purchased showing that the
21 point of delivery of such goods for use and
22 consumption is a foreign country and not within the
23 territorial confines of the United States, or
24

1 d. a sales of any carrier access services, right of
2 access services, telecommunications services to be
3 resold, or telecommunications used in the subsequent
4 provision of, use as a component part of, or
5 integrated into, end-to-end telecommunications
6 service;

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

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

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

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

1 28. "Vendor" means:

2 a. any person making sales of tangible personal property
3 or services in this state, the gross receipts or gross
4 proceeds from which are taxed by the Oklahoma Sales
5 Tax Code,

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

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

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

1 transfer possession of, or otherwise make sales of the
2 property.

3 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1401, is
4 amended to read as follows:

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

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

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

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

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

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

3 6. The term "sale" means and includes the transfer of either
4 the title or possession for a valuable consideration of tangible
5 personal property, regardless of the manner, method, instrumentality
6 or device by which such transfer is accomplished. The term "sale"
7 also includes the exchange, barter, lease, or rental of tangible
8 personal property where such exchange, barter, lease or rental
9 results in either the transfer of the title or the possession;

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

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

23 9. a. The term "retailer" means every person engaged in the
24 business of selling tangible personal property for use

1 within the meaning of the article; provided, however,
2 that when in the opinion of the Tax Commission it is
3 necessary for the efficient administration of this
4 article to regard any salesmen, representatives,
5 truckers, peddlers, or canvassers as the agents of the
6 dealers, distributors, supervisors, employers, or
7 persons under whom they operate or from whom they
8 obtain the tangible personal property sold by them,
9 irrespective of whether they are making sales on their
10 own behalf or on behalf of such dealers, distributors,
11 supervisors, employers, or persons, the Tax Commission
12 may so regard them and may regard the dealers,
13 distributors, supervisors, employers or persons as
14 retailers for purposes of this article.

15 ~~b. A retailer shall be deemed to be engaged in the~~
16 ~~business of selling tangible personal property for use~~
17 ~~in this state if:~~

18 ~~(1) both of the following conditions exist:~~

19 ~~(a) the retailer holds a substantial ownership~~
20 ~~interest in, or is owned in whole or in~~
21 ~~substantial part by, a retailer maintaining~~
22 ~~a place of business within this state, and~~

23 ~~(b) the retailer sells the same or a~~
24 ~~substantially similar line of products as~~

1 ~~the related Oklahoma retailer and does so~~
2 ~~under the same or a substantially similar~~
3 ~~business name, or the Oklahoma facilities or~~
4 ~~Oklahoma employees of the related Oklahoma~~
5 ~~retailer are used to advertise, promote or~~
6 ~~facilitate sales by the retailer to~~
7 ~~consumers, or~~

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

15 ~~c. For purposes of subparagraph b of this paragraph:~~

16 ~~(1) "substantial ownership interest" means an~~
17 ~~interest in an entity that is not less than the~~
18 ~~degree of ownership of equity interest in an~~
19 ~~entity that is specified by Section 78p of Title~~
20 ~~15 of the United States Code, or any successor to~~
21 ~~that statute, with respect to a person other than~~
22 ~~a director or officer,~~

1 ~~(2) "ownership" means and includes both direct~~
2 ~~ownership and indirect ownership through a~~
3 ~~parent, subsidiary or affiliate, and~~
4 ~~(3) the processing of orders electronically,~~
5 ~~including facsimile, telephone, the Internet or~~
6 ~~other electronic ordering process, does not~~
7 ~~relieve a retailer of responsibility for~~
8 ~~collection of the tax from the purchaser if the~~
9 ~~retailer is doing business in this state pursuant~~
10 ~~to this paragraph.~~

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

1 Code, and "component member" means "component member"
2 as defined in Section 1563(b) of the Internal Revenue
3 Code.

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

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

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1406.2 of Title 68, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Each retailer or vendor making sales of tangible personal
2 property from a place of business outside this state for use in this
3 state that is not required to collect use tax shall by February
4 first of each year, provide to each customer to whom tangible
5 personal property was delivered in this state, a statement of the
6 total sales made to the customer during the preceding calendar year.
7 The statement must contain language substantially similar to the
8 following:

9 "YOU MAY OWE OKLAHOMA USE TAX ON PURCHASES YOU MADE FROM US
10 DURING THE PREVIOUS TAX YEAR. THE AMOUNT OF TAX YOU MAY OWE
11 IS BASED ON THE TOTAL SALES PRICE OF [INSERT TOTAL SALES
12 PRICE] THAT MUST BE REPORTED AND PAID WHEN YOU FILE YOUR
13 OKLAHOMA INCOME TAX RETURN UNLESS YOU HAVE ALREADY PAID THE
14 TAX."

15 The statement must not contain any other information that
16 would indicate, imply or identify the class, type, description
17 or name of the products purchased. Any information that would
18 indicate, imply or identify the class, type, description or
19 name of the products purchased is strictly confidential.

20 B. The statement may be provided by first class mail, email or
21 other electronic communication.

22 SECTION 5. AMENDATORY 68 O.S. 2011, Section 1407.2, is
23 amended to read as follows:

24

1 Section 1407.2. A. For the purpose of ~~encouraging the~~
2 ~~voluntary~~ registration, collection, and remittance of sales and use
3 taxes owed to this state pursuant to the Oklahoma Retail Protection
4 Act, the Oklahoma Tax Commission is hereby authorized and directed
5 to establish a ~~Retailer Compliance Initiative~~ an initiative for out-
6 of-state retailers, as provided in this section.

7 B. 1. The Tax Commission shall not seek payment of uncollected
8 use taxes from an out-of-state retailer who registers to collect and
9 remit applicable sales and use taxes on sales made to purchasers in
10 this state prior to registration under the ~~Retailer Compliance~~
11 ~~Initiative~~ initiative, provided that the retailer was not registered
12 in this state in the twelve-month period preceding the effective
13 date of this section.

14 2. The provisions of this subsection will preclude assessment
15 for uncollected sales and use taxes together with penalty or
16 interest for sales made during the period the retailer was not
17 registered in this state, provided registration occurs prior to ~~July~~
18 ~~1, 2011~~ May 1, 2017.

19 3. The relief provided herein shall not be available to a
20 retailer with respect to any matter or matters for which the
21 retailer received notice of the commencement of an audit and which
22 audit is not yet finally resolved including any related
23 administrative and judicial processes and is not available for use
24

1 taxes already paid or remitted to the state or taxes collected, but
2 not remitted, by the retailer.

3 4. The relief provided herein is fully effective, absent the
4 retailer's fraud or intentional misrepresentation of a material
5 fact, as long as the retailer continues registration and continues
6 collection and remittance of applicable use taxes for a period of at
7 least thirty-six (36) months. The statute of limitations applicable
8 to asserting a tax liability during this thirty-six-month period
9 shall be tolled.

10 5. The relief provided herein is applicable only to sales and
11 use taxes due from a retailer in its capacity as a retailer and not
12 to sales and use taxes due from a retailer in its capacity as a
13 buyer.

14 ~~C. The registration by an out-of-state retailer for the~~
15 ~~collection of use taxes under the Retailer Compliance Initiative~~
16 ~~shall not be used as a factor in determining whether the retailer~~
17 ~~has nexus with this state for any other taxes, including income~~
18 ~~taxes, at any time.~~

19 ~~D. Out-of-state retailers registering under the Retailer~~
20 ~~Compliance Initiative shall receive a discount for timely reporting~~
21 ~~and remitting use taxes as provided in Section 1354.31 of Title 68~~
22 ~~of the Oklahoma Statutes.~~

23

24

1 ~~E. No registration fee shall be charged against any voluntary~~
2 ~~out-of-state retailer that comes forward to register to collect and~~
3 ~~remit use taxes under the Retailer Compliance Initiative.~~

4 ~~F.~~ The Tax Commission shall promulgate rules detailing the
5 terms and other conditions of this program.

6 SECTION 6. AMENDATORY 68 O.S. 2011, Section 1407.3, is
7 amended to read as follows:

8 Section 1407.3. In an effort to improve compliance by Internet
9 and other out-of-state retailers maintaining a place of business in
10 this state for the collection of use tax on their sales to Oklahoma
11 residents, the Oklahoma Tax Commission shall implement an outreach
12 program ~~to Internet retailers.~~ The program shall include contacting
13 ~~Internet~~ retailers for a review of their business activities to
14 determine if such activities may require the registration and
15 collection of Oklahoma use taxes and the providing of information ~~to~~
16 ~~the out-of-state retailers about the Retailer Compliance Initiative~~
17 ~~to encourage registration in this state~~ regarding the provisions of
18 the Retail Protection Act of 2016.

19 SECTION 7. REPEALER 68 O.S. 2011, Sections 1354.1,
20 1354.2, 1354.3, 1354.4, 1354.5 and 1354.6, are hereby repealed.

21 SECTION 8. This act shall become effective November 1, 2016."
22
23
24

1 ENGROSSED HOUSE
2 BILL NO. 2531

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

3 and

4 Ford of the Senate
5
6

7 An Act relating to revenue and taxation; creating the
8 Oklahoma Retail Protection Act of 2016; amending 68
9 O.S. 2011, Sections 1352, 1354.2 and 1354.3, which
10 relate to sales tax; modifying definitions; adding
11 definitions; modifying application of tax; requiring
12 certain collection of tax; providing exceptions;
13 amending 68 O.S. 2011, Section 1401, which relates to
14 use tax; modifying definitions; repealing 68 O.S.
15 2011, Section 1354.1, which relates to sales tax;
16 providing for noncodification; and providing an
17 effective date.

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

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

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

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

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

1. "Bundled transaction" means the retail sale of two or more
products, except real property and services to real property, where

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

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

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

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

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

23 (3) a transaction that includes taxable products and
24 nontaxable products and the purchase price or

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

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

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

23 (b) the seller's purchase price or sales price
24 of the taxable tangible personal property is

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

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

11 3. "Commission" or "Tax Commission" means the Oklahoma Tax
12 Commission;

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

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

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

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

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

8 a. recognized in the official United States

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

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

14 c. intended to affect the structure or any function of
15 the body;

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

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

1 barring any satisfaction of any delinquent tax liability accrued
2 under the Oklahoma Sales Tax Code;

3 11. "Fair authority" means:

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

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

14 12. a. "Gross receipts", "gross proceeds" or "sales price"
15 means the total amount of consideration, including
16 cash, credit, property and services, for which
17 personal property or services are sold, leased or
18 rented, valued in money, whether received in money or
19 otherwise, without any deduction for the following:
20 (1) the seller's cost of the property sold,
21 (2) the cost of materials used, labor or service
22 cost,

23
24

- 1 (3) interest, losses, all costs of transportation to
2 the seller, all taxes imposed on the seller, and
3 any other expense of the seller,
4 (4) charges by the seller for any services necessary
5 to complete the sale, other than delivery and
6 installation charges,
7 (5) delivery charges and installation charges, unless
8 separately stated on the invoice, billing or
9 similar document given to the purchaser, and
10 (6) credit for any trade-in.

11 b. Such term shall not include:

- 12 (1) discounts, including cash, term, or coupons that
13 are not reimbursed by a third party that are
14 allowed by a seller and taken by a purchaser on a
15 sale,
16 (2) interest, financing, and carrying charges from
17 credit extended on the sale of personal property
18 or services, if the amount is separately stated
19 on the invoice, bill of sale or similar document
20 given to the purchaser, and
21 (3) any taxes legally imposed directly on the
22 consumer that are separately stated on the
23 invoice, bill of sale or similar document given
24 to the purchaser.

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

3 (1) the seller actually receives consideration from a
4 party other than the purchaser and the
5 consideration is directly related to a price
6 reduction or discount on the sale,

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

9 (3) the amount of the consideration attributable to
10 the sale is fixed and determinable by the seller
11 at the time of the sale of the item to the
12 purchaser, and

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

14 (a) the purchaser presents a coupon, certificate
15 or other documentation to the seller to
16 claim a price reduction or discount where
17 the coupon, certificate or documentation is
18 authorized, distributed or granted by a
19 third party with the understanding that the
20 third party will reimburse any seller to
21 whom the coupon, certificate or
22 documentation is presented,

23 (b) the purchaser identifies himself or herself
24 to the seller as a member of a group or

1 organization entitled to a price reduction
2 or discount; provided, a "preferred
3 customer" card that is available to any
4 patron does not constitute membership in
5 such a group, or

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

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

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

21 (b) having agents operating in this state,
22 whether the place of business or agent
23 is within this state temporarily or
24 permanently or whether the person or

1 subsidiary agent is authorized to do
2 business within this state, and

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

6 (a) sells a similar line of products as the
7 vendor and does so under the same or a
8 similar business name,

9 (b) uses trademarks, service marks or trade
10 names in this state that are the same
11 or substantially similar to those used
12 by the vendor,

13 (c) delivers, installs, assembles or
14 performs maintenance services for the
15 vendor,

16 (d) facilitates the vendor's delivery of
17 property to customers in the state by
18 allowing the vendor's customers to pick
19 up property sold by the vendor at an
20 office, distribution facility,
21 warehouse, storage place or similar
22 place of business maintained by the
23 person in this state, or

24

1 (e) conducts any other activities in this state
2 that are significantly associated with the
3 vendor's ability to establish and maintain a
4 market in this state for the vendor's sale.

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

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

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

20 14. "Manufacturing" means and includes the activity of
21 converting or conditioning tangible personal property by changing
22 the form, composition, or quality of character of some existing
23 material or materials, including natural resources, by procedures
24 commonly regarded by the average person as manufacturing,

1 compounding, processing or assembling, into a material or materials
2 with a different form or use. "Manufacturing" does not include
3 extractive industrial activities such as mining, quarrying, logging,
4 and drilling for oil, gas and water, nor oil and gas field
5 processes, such as natural pressure reduction, mechanical
6 separation, heating, cooling, dehydration and compression;

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

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

22 17. "Marketplace provider" means any person or entity who
23 facilitates a retail sale by a retail vendor by:
24

1 a. listing or advertising tangible personal property or
2 services for sale in any forum, including a catalog or
3 Internet website, and

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

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

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

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

18 ~~18.~~ 20. "Person" means any individual, company, partnership,
19 joint venture, joint agreement, association, mutual or otherwise,
20 limited liability company, corporation, estate, trust, business
21 trust, receiver or trustee appointed by any state or federal court
22 or otherwise, syndicate, this state, any county, city, municipality,
23 school district, any other political subdivision of the state, or

1 any group or combination acting as a unit, in the plural or singular
2 number;

3 ~~19.~~ 21. "Prescription" means an order, formula or recipe issued
4 in 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.~~ 22. "Prewritten computer software" means "computer
8 software", including prewritten upgrades, which is not designed and
9 developed by the author or other creator to the specifications of a
10 specific purchaser. The combining of two or more prewritten
11 computer software programs or prewritten portions thereof does not
12 cause the 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
24 invoice or other statement of the price given to the purchaser for

1 such modification or enhancement, such modification or enhancement
2 shall not constitute prewritten computer software;

3 ~~21.~~ 23. "Repairman" means any person who performs any repair
4 service upon tangible personal property of the consumer, whether or
5 not the repairman, as a necessary and incidental part of performing
6 the service, incorporates tangible personal property belonging to or
7 purchased by the repairman into the tangible personal property being
8 repaired;

9 ~~22.~~ 24. "Sale" means the transfer of either title or possession
10 of tangible personal property for a valuable consideration
11 regardless of the manner, method, instrumentality, or device by
12 which the transfer is accomplished in this state, or other
13 transactions as provided by this paragraph, including but not
14 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
24 amusement, or recreational or athletic events or for

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

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

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

15 ~~23.~~ 25. "Sale for resale" means:

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

24

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

8 c. a sale of tangible goods and products within this
9 state if, simultaneously with the sale, the vendor
10 issues an export bill of lading, or other
11 documentation that the point of delivery of such goods
12 for use and consumption is in a foreign country and
13 not within the territorial confines of the United
14 States. If the vendor is not in the business of
15 shipping the tangible goods and products that are
16 purchased from the vendor, the buyer or purchaser of
17 the tangible goods and products is responsible for
18 providing an export bill of lading or other
19 documentation to the vendor from whom the tangible
20 goods and products were purchased showing that the
21 point of delivery of such goods for use and
22 consumption is a foreign country and not within the
23 territorial confines of the United States, or
24

1 d. a sales of any carrier access services, right of
2 access services, telecommunications services to be
3 resold, or telecommunications used in the subsequent
4 provision of, use as a component part of, or
5 integrated into, end-to-end telecommunications
6 service;

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

13 ~~25.~~ 27. "Taxpayer" means any person liable to pay a tax imposed
14 by the Oklahoma Sales Tax Code;

15 ~~26.~~ 28. "Tax period" or "taxable period" means the calendar
16 period or the taxpayer's fiscal period for which a taxpayer has
17 obtained a permit from the Tax Commission to use a fiscal period in
18 lieu of a calendar period;

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

1 ~~28.~~ 30. "Vendor" means:

- 2 a. any person making sales of tangible personal property
3 or services in this state, the gross receipts or gross
4 proceeds from which are taxed by the Oklahoma Sales
5 Tax Code,
- 6 b. any person maintaining a place of business in this
7 state and making sales of tangible personal property
8 or services, whether at the place of business or
9 elsewhere, to persons within this state, the gross
10 receipts or gross proceeds from which are taxed by the
11 Oklahoma Sales Tax Code,
- 12 c. any person who solicits business by employees,
13 independent contractors, agents, or other
14 representatives ~~or by distribution of catalogs or~~
15 ~~other advertising matter~~ in this state, and thereby
16 makes sales to persons within this state of tangible
17 personal property or services, the gross receipts or
18 gross proceeds from which are taxed by the Oklahoma
19 Sales Tax Code, or
- 20 d. any person, pursuant to an agreement with the person
21 with an ownership interest in or title to tangible
22 personal property, who has been entrusted with the
23 possession of any such property and has the power to
24 designate who is to obtain title, to physically

1 transfer possession of, or otherwise make sales of the
2 property.

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

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

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

20 ~~(C)~~ C. Any advertisement soliciting sales to the Oklahoma
21 consumer, subject to this section, to be published or broadcasted by
22 newspapers or radio or television media operating in this state,
23 shall contain a notice that the sale is subject to Oklahoma sales or
24 use tax and shall include the sales tax permit number issued the

1 advertising vendor by the Oklahoma Tax Commission. It shall be the
2 duty of the vendor to provide such notice in advertisements referred
3 to herein. No penalty as a result of this act shall lie against any
4 newspaper, broadcaster or other Oklahoma advertising media.

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

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

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

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

1 the Tax Commission of entities registered to collect the tax levied
2 by this section.

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

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

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

24

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

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

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

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

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

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

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

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

12 6. The term "sale" means and includes the transfer of either
13 the title or possession for a valuable consideration of tangible
14 personal property, regardless of the manner, method, instrumentality
15 or device by which such transfer is accomplished. The term "sale"
16 also includes the exchange, barter, lease, or rental of tangible
17 personal property where such exchange, barter, lease or rental
18 results in either the transfer of the title or the possession;

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

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

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

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

24

1 b. A retailer shall be deemed to be engaged in the
2 business of selling tangible personal property for use
3 in this state if:

4 (1) both of the following conditions exist:

5 (a) the retailer holds a substantial ownership
6 interest in, or is owned in whole or in
7 substantial part by, a retailer maintaining
8 a place of business within this state, and

9 (b) the retailer sells the same or a
10 substantially similar line of products as
11 the related Oklahoma retailer and does so
12 under the same or a substantially similar
13 business name, or the Oklahoma facilities or
14 Oklahoma employees of the related Oklahoma
15 retailer are used to advertise, promote or
16 facilitate sales by the retailer to
17 consumers, or

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

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

2 (1) "substantial ownership interest" means an
3 interest in an entity that is not less than the
4 degree of ownership of equity interest in an
5 entity that is specified by Section 78p of Title
6 15 of the United States Code, or any successor to
7 that statute, with respect to a person other than
8 a director or officer,

9 (2) "ownership" means and includes both direct
10 ownership and indirect ownership through a
11 parent, subsidiary or affiliate, and

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

19 d. Any retailer that is part of a controlled group of
20 corporations, and that controlled group of
21 corporations has a component member that is a retailer
22 engaged in business in this state as described in
23 subparagraph b of this paragraph, shall be presumed to
24 be a retailer engaged in business in this state. This

1 presumption may be rebutted by evidence that during
2 the calendar year at issue the component member that
3 is a retailer engaged in business in this state did
4 not engage in any of the activities described in this
5 subparagraph on behalf of the retailer. For purposes
6 of this subparagraph, "controlled group of
7 corporations" means "controlled group of corporations"
8 as defined in Section 1563(a) of the Internal Revenue
9 Code, and "component member" means "component member"
10 as defined in Section 1563(b) of the Internal Revenue
11 Code.

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

20 10. The phrase "maintaining a place of business within the
21 state" ~~includes any person having or maintaining in the state,~~
22 ~~directly or by subsidiary, an office, distribution house, sales~~
23 ~~house, warehouse, or other place of business. It also includes any~~
24 ~~person having agents operating in the state under authority of the~~

1 ~~retailer or subsidiary, whether the place of business or agent is~~
2 ~~within the state permanently or temporarily, or whether the person~~
3 ~~or subsidiary is authorized to do business within the state is~~
4 ~~immaterial~~ shall have the same meaning as provided in Section 1352
5 of this title.

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

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

9 Passed the House of Representatives the 10th day of March, 2016.

11 _____
12 Presiding Officer of the House
13 of Representatives

14 Passed the Senate the ___ day of _____, 2016.

15 _____
16 Presiding Officer of the Senate

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