Resolution

ENROLLED SENATE
JOINT
RESOLUTION NO. 61

By: Coffee of the Senate

and

Benge, McDaniel (Randy), Derby, Sullivan and Trebilcock of the House

A Joint Resolution relating to taxation of business and individuals; declaring legislative intent; creating Oklahoma Business Activity Tax Code; providing short title; providing purpose for Oklahoma Business Activity Tax Code; providing for apportionment and transmission of certain monies collected; defining terms; levying tax on certain persons doing business; levying tax on certain business activity; providing that tax due is equivalent to certain amounts paid during specified time period; limiting liability for remitting tax for specified time period; making tax payable according to specified schedule; providing that specified tax shall be in lieu of all other taxes imposed on intangible property subject to certain exclusion; providing that tax remitted during certain year is in lieu of ad valorem tax on intangible property for specified calendar years, subject to exception; disallowing refund during certain time period; prohibiting changes in certain methodology; enumerating circumstances under which a person is considered to be doing business in the state; providing an income tax credit for specified tax years equal to the amount of Business Activity Tax paid; providing schedule for payment of certain tax depending upon filing status; directing Oklahoma Tax Commission to amend certain tax return; requiring

certain electronic payment and filing; requiring certain statement under oath and prescribing contents thereof; providing for applicability of certain confidentiality provisions to Tax Commission and authorizing certain fee; requiring Tax Commission to promulgate rules relating to furnishing certain information; providing for discount against Business Activity Tax according to specified schedule of net revenue; suspending levy of tax for certain persons under specified circumstances; providing for specified penalty for failure to file certain reports and remit taxes; providing for apportionment of penalty; authorizing Tax Commission to take certain actions when failure to file or remit occurs; providing for forfeiture of right to do business under specified circumstances and resulting limitations; requiring certain procedures relating to notice of suspension and forfeiture; specifying time period when certain suspension and forfeiture becomes effective; providing conditions upon which suspended or forfeited charter or instrument of organization may be revived or reinstated; providing for reinstatement fee; authorizing forfeiture of the charter and right of any person attempting to transact business under specified conditions; defining terms and providing for application of such terms to certain time period; providing for status and treatment of business conducted by certain pass-through entities; specifying circumstances requiring the filing of consolidated returns and method of determining revenue under specified circumstances; providing for the tolling of time period for purposes of determining taxable income; providing for joint and several liability for members of combined group; requiring the filing of amended return under certain circumstances; tolling the statute of limitations if taxpayer fails to take certain required action; authorizing Tax Commission audit for purposes of administering Business Activity Tax Code; creating Task Force on Comprehensive Tax Reform; providing purpose, composition, terms of appointment, designation of quorum, reimbursement and staff

support for task force; requiring Tax Commission to compile data reported pursuant to Business Activity Tax Code during specified time period and make certain report before specified date; requiring task force to submit final report; providing for expiration of Business Activity Tax Code on certain date; declaring moratorium on duty to remit franchise tax and file certain reports or returns during certain time period; declaring moratorium on duty to remit certain certification fee during certain time period; amending 68 O.S. 2001, Section 2370, as amended by Section 10, Chapter 486, O.S.L. 2002 (68 O.S. Supp. 2009, Section 2370); clarifying liability of certain banks and credit unions to remit business activity tax in addition to privilege tax and franchise tax; updating references; amending 36 O.S. 2001, Section 624, as amended by Section 55, Chapter 197, O.S.L. 2003 (36 O.S. Supp. 2009, Section 624); providing that payment of insurance premium taxes and fees is in lieu of ad valorem taxes on intangible personal property; providing for codification; and providing for noncodification.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE 2ND SESSION OF THE 52ND OKLAHOMA LEGISLATURE:

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

It is the intent of the Legislature through the enactment of this measure to place a moratorium on the levy of the franchise tax under Sections 1203 through 1205 of Title 68 of the Oklahoma Statutes and to levy a tax in lieu of ad valorem taxes on intangible personal property of all persons doing business in this state, except public service corporations, air carriers, and railroads.

It is further the intent of the Legislature that the codification of the tax levied by and through the creation of the Oklahoma Business Activity Tax Code shall not be considered or construed to be a bill

for raising revenue under Section 33 of Article V of the Oklahoma Constitution.

It is the further intent of the Legislature that the provisions of the Oklahoma Business Activity Tax Code will expire and cease to have effect on tax years beginning after December 31, 2012, unless the Oklahoma Business Activity Tax Code is made permanent by the Legislature.

It is the further intent of the Legislature that the task force created in Section 15 of this act shall submit a final report to the Legislature with recommendations to amend and revise the Oklahoma Business Activity Tax Code for tax years beginning on or after January 1, 2013.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1215 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 16 of this act shall be known and may be cited as the "Oklahoma Business Activity Tax Code".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1216 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. It is hereby declared to be the purpose of the Oklahoma Business Activity Tax Code to establish a revenue-neutral mechanism to provide a more fair and simplified taxation of businesses and individuals in this state while maintaining revenue levels for support of general governmental functions of the State of Oklahoma.

B. All monies collected pursuant to the provisions of subsection A of Section 5 of this act shall be apportioned and distributed monthly in the same manner as provided in paragraph 1 of Section 2352 of Title 68 of the Oklahoma Statutes.

C. All monies collected pursuant to the provisions of subsections B and C of Section 5 of this act shall be transmitted monthly to the State Treasurer of the State of Oklahoma to be placed to the credit of the General Revenue Fund of the state, to be paid out only pursuant to direct appropriations of the Legislature.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1217 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Business Activity Tax Code:

1. "Business activity" means and includes:

a. the conducting of an active trade or business if:

(1) the activities being carried on by a person include one or more active operations that form a part of the process of attempting to earn income or profit, and

(2) the person performs active management and operational functions, and

b. activities performed by other persons, including independent contractors, to the extent the activities performed are on behalf of the person and constitute all or part of the person's trade or business. A person conducts an active trade or business if assets, including royalties, patents, trademarks, and other intangible assets, held by the person are used in the active trade or business of one or more related businesses. For purposes of this section:

(1) the ownership of a royalty interest or a working interest in mineral rights does not constitute conduct of an active trade or business,

(2) payment of compensation to employees or independent contractors for financial or legal services reasonably necessary for the operation of the entity does not constitute conduct of an active trade or business, and

(3) holding a seat on the board of directors of an entity does not by itself constitute conduct of an active trade or business;

2. "Charter" means a limited liability company's certificate of organization, a limited partnership's certificate of limited partnership, and the registration of a limited liability partnership;

3. "Doing business" means and includes each and every act, power or privilege exercised or enjoyed in this state, as an incident to, or by virtue of the powers and privileges acquired by individual persons or entities;

4. "Entity" means any person other than an individual;

5. "Internal Revenue Code" means the United States Internal Revenue Code, as the same may be amended or adopted from time to time applicable to the taxable year; and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time or from time to time applicable to the taxable year;

6. "Net revenue" means "total revenue" less all ordinary trade or business expenses other than interest, income taxes, depreciation and amortization. Deduction items allocated or apportioned to this state which are attributable to excluded revenues items shall not be deductible in arriving at net revenue;

7. "Person" means any natural person, firm, partnership, joint venture, association, limited liability company, corporation, state banking association, national banking association, credit union organized under the laws of this state, joint-stock company, business trust, estate, trust, and any other group or combination doing business as a unit;

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

9. "Tax year" means the calendar year on the basis of which a person is required to pay the tax levied or imposed under this act; and

10. "Total revenue" means all revenues reportable by a person on the federal income tax return filed by such person or if a

federal income tax return is not required to be filed by a person and such nonfiling person is not otherwise exempt from ad valorem taxes on such person's intangible personal property, such nonfiling person's total income revenues received or accrued, without deduction for the cost of property sold, materials used, labor performed, or other costs incurred, unless otherwise specifically provided herein. The following revenues shall be excluded from the definition of "total revenue":

a. interest, except interest from credit sales,

b. dividends and distributions received from corporations, and distributive or proportionate shares of total receipts and other income from a pass-through entity as defined under Section 2385.29 of Title 68 of the Oklahoma Statutes;

c. real estate rentals,

d. royalty interests or working interests in mineral rights,

e. net capital gains, as defined in Section 1222(11) of the Internal Revenue Code, included in the federal income tax return of a person, and

f. compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums, or employee expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code, or any similar employee reimbursement.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1218 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning on or after January 1, 2010, there is hereby levied on each person doing business in this state an annual tax in the amount of Twenty-five Dollars ($25.00).

B. In addition to the tax levied in subsection A of this section, there shall be levied a tax equal to one percent (1%) of the net revenue derived from business activity that is allocated or apportioned to Oklahoma.

C. Notwithstanding the provisions of subsection B of this section for tax years 2010, 2011, and 2012, corporations and any other persons subject to the franchise tax levied under the provisions of Sections 1203, 1204 or 1205 of Title 68 of the Oklahoma Statutes, the tax due under this section shall be equal to the amount such person paid or was required to pay for the taxable period ending prior to December 31, 2010.

D. Except as provided in subsections A and C of this section, no person shall be required to remit the tax levied pursuant to subsection B of this section for tax years 2010, 2011, and 2012.

E. The tax hereby levied shall be payable annually as provided in Section 7 of this act.

F. The tax so levied or imposed pursuant to this section, when paid in full as provided in this act, shall be in lieu of any and all other taxes imposed by the state, counties, cities, towns, townships, school districts, and other municipalities or political subdivisions of the state on intangible personal property of each such person, except for public service corporations, railroads and air carriers.

G. The tax remitted in 2011 shall also be in lieu of the ad valorem tax on intangible personal property of each such person, except for public service corporations, railroads and air carriers for the calendar years 2007, 2008, and 2009 in which the person was doing business in the state. No taxpayer shall be entitled to nor be allowed any refund of taxes paid upon intangible personal property prior to the effective date of this act. Upon the effective date of this act, there shall be no changes in the valuation methodology of personal property, and the valuation

methodology of personal property for the January 1, 2010, assessment year shall be maintained and preserved.

H. A person is doing business in this state if any one of the paragraphs in this subsection applies. The person:

1. Is domiciled in this state as an individual for business purposes or is domiciled in this state for corporate, commercial or other business purposes;

2. Owns or uses a part or all of its capital in this state;

3. Has at any time during the calendar year property in this state with an aggregate value of at least Fifty Thousand Dollars ($50,000.00). For the purpose of this subsection, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge;

4. Has during the calendar year payroll in this state of at least Fifty Thousand Dollars ($50,000.00). Payroll in this state includes all of the following:

a. any amount subject to withholding by the person under Section 2385.2 of Title 68 of the Oklahoma Statutes,

b. any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state, and

c. any amount the person pays for services performed in this state on its behalf by another;

5. Has during the calendar year sales in this state of at least Five Hundred Thousand Dollars ($500,000.00);

6. Has at any time during the calendar year within this state at least twenty-five percent (25%) of the person's total property, total payroll, or total sales; or

7. Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this act under the Constitution of the United States.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1219 of Title 68, unless there is created a duplication in numbering, reads as follows:

For taxable years beginning on or after January 1, 2010 and ending on or before December 31, 2012, there shall be allowed a credit against the tax levied by Section 2355 of Title 68 of the Oklahoma Statutes in the amount of Twenty-five Dollars ($25.00) of the Oklahoma Business Activity Tax paid; provided, no credit shall be allowed for any amount of tax paid pursuant to subsection C of Section 5 of this act. The credit may only be taken for the year in which the Business Activity Tax is levied and may only be taken if the Business Activity Tax is timely paid. The credit shall not be refundable and shall not carry forward.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1220 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The tax levied by the Oklahoma Business Activity Tax Code shall become due and payable as provided in this section.

B. For individuals, the tax shall be due and payable on the same dates as provided for the filing of individual income tax returns under the provisions of Section 2368 of Title 68 of the Oklahoma Statutes.

C. For all other persons, the tax shall be due and payable on or before the first day of July following the close of the taxable year and if not paid before the next ensuing September 15, the penalties provided in Section 11 of this act shall apply.

D. The Oklahoma Tax Commission is directed to amend its individual income tax returns for tax years beginning on or after January 1, 2010, as necessary to allow individuals to report and pay the Business Activity Tax on the individual income tax return.

E. For tax years beginning on or after January 1, 2013, all payments and reports required under this act shall be paid and filed under the Tax Commission's electronic funds transfer and electronic data interchange program.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1221 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other statement required by law, each and every person subject to the provisions of this act shall file with the Oklahoma Tax Commission a statement under oath of one of its principal officers, partners, members or other responsible party. The statement shall be in such form as the Tax Commission shall prescribe, including but not limited to the following:

1. The amount of total revenue allocated or apportioned to Oklahoma and the deductions provided in this act to arrive at net revenue;

2. Identification of the type of person for which the return is filed;

3. The North American Industry Classification System (NAICS) code for the business activity in which the person is engaged;

4. The location of the person's office or offices;

5. The names of its officers, members, partners or registered agents, if any, and the residence and post office address of each as the same appear of record on the last day of the tax year; and

6. Such further information as the Tax Commission may require to enable it to compute correctly and collect the tax herein levied. In addition to the information required on reports, the Tax Commission may request and the person must furnish any information deemed necessary for a correct computation of the tax levied herein.

B. The provisions of Section 205 of this title shall not be construed to prevent the Tax Commission from furnishing the names of officers, members, partners or registered agents of any person subject to tax under this act, and it may furnish certificates to show the compliance or noncompliance with the provisions of this act by any person, under such rules as the Tax Commission may adopt, and shall collect a fee of One Dollar ($1.00) for each certificate so furnished.

C. For tax years 2010, 2011, and 2012, the Tax Commission shall promulgate rules for the furnishing of information as required under this section. The Tax Commission shall make a good faith effort to prescribe a form that will enable persons to comply with this act based on the latest information available in a manner that will be the least burdensome on the person.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1222 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. On and after January 1, 2013, there shall be allowed a discount against the tax levied in subsection B of Section 5 of this act as provided herein:

1. For a person for which the net revenue from its business activity is equal to or less than Fifty Thousand Dollars ($50,000.00), the person is entitled to a discount of one hundred percent (100%) of the tax due from its net revenue;

2. For a person for which the net revenue from its business activity is greater than Fifty Thousand Dollars ($50,000.00) but is equal to or less than One Hundred Thousand Dollars ($100,000.00), the person is entitled to a discount of eighty percent (80%) of the tax due from its net revenue;

3. For a person for which the net revenue from its business activity is greater than One Hundred Thousand Dollars ($100,000.00) but is equal to or less than One Hundred Fifty Thousand Dollars ($150,000.00), the person is entitled to a discount of sixty percent (60%) of the tax due from its net revenue;

4. For a person for which the net revenue from its business activity is greater than One Hundred Fifty Thousand Dollars ($150,000.00) but is equal to or less than Two Hundred Thousand Dollars ($200,000.00), the person is entitled to a discount of forty percent (40%) of the tax due from its net revenue; and

5. For a person for which the net revenue from its business activity is greater than Two Hundred Thousand Dollars ($200,000.00) but is equal to or less than Two Hundred Fifty Thousand Dollars

($250,000.00), the person is entitled to a discount of twenty percent (20%) percent of the tax due from its net revenue.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1223 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Business Activity Tax shall not be levied for the taxable year during which the person begins doing business in this state. However, such person shall file a "no tax" report to comply with such regulations as shall be adopted by the Oklahoma Tax Commission.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1224 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If the report required pursuant to the provisions of Section 8 of this act is not filed and the tax levied pursuant to the provisions of Section 5 of this act is not paid within the time provided under Section 7 of this act, the Oklahoma Tax Commission shall levy and collect a penalty for such delinquency in the amount of ten percent (10%) of the tax due and delinquent. Such penalty shall be collected and apportioned in the same manner as is the tax itself. In such event, or if a form is not filed, as required in this act by a person, corporation, association or organization, the Tax Commission may enter an order directing the suspension of the charter or other instrument of organization, under which the corporation, association or organization may be organized, and the forfeiture of all corporate or other rights inuring thereunder. However, no such order of the Tax Commission shall be issued nor effective as to any corporation, association or organization the charter or certificate of authority of which is issued by the State Banking Board or State Banking Commissioner rather than the Secretary of State and the Tax Commission shall only notify the registered agents or managing officer of the corporation, association or organization and shall notify the State Banking Board or State Banking Commissioner of the amount of unpaid tax. The Commissioner shall require the payment of such tax, plus interest and penalty, if any, within a reasonable time.

B. Each trustee, director or officer of any such corporation, association or organization, whose right to do business within this

state shall be so forfeited, shall, as to any and all debts of such corporation, association or organization, which may be created or incurred with his or her knowledge, approval and consent, within this state after such forfeiture and before the reinstatement of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such trustees, directors, and officers of such corporation, association or organization were partners. Any corporation, association or organization whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this state, except in a suit to forfeit the charter of such corporation, association or organization. In any suit against such corporation, association or organization on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, association or organization unless its right to do business in this state shall be reinstated as provided herein. Every contract entered into by or in behalf of such corporation, association or organization, after such forfeiture as provided herein, is hereby declared to be voidable.

C. Notice of such suspension and forfeiture shall be forwarded by certified mail, return receipt requested, to the last-known address of the registered agent or managing officer of each corporation, association or organization, and the Tax Commission may cause notice of such suspension and forfeiture to be published in a newspaper of general circulation in the county in which the general business office of each such corporation, association or organization is located in this state.

D. The Tax Commission, shall immediately upon entering an order suspending and forfeiting any such charter or other instrument of organization, transmit the name of each such corporation, association or organization named therein to the Secretary of State or the county clerk of the county in which the instrument under which it may be organized is filed, and the Secretary of State or county clerk, as the case may be, shall immediately record the same and such record shall constitute notice to the public. The suspension and forfeiture herein provided for shall become effective immediately upon such record being made and the certificate of the Secretary of State or the county clerk shall be prima facie evidence of such suspension and forfeiture.

E. After the issuance of such order of suspension and forfeiture by the Tax Commission, the charter or other instrument of organization may only be revived and reinstated upon the payment of the accrued fees and penalties and a reinstatement fee in the amount of Fifteen Dollars ($15.00), and a showing by the corporation, association or organization of a full compliance with the laws of this state. Such payment of accrued fees and penalties must be made prior to the expiration of the time provided in such charter or other instrument of organization for the life of such corporation, association or organization.

F. The Tax Commission may, for the same reasons and using the same procedures as provided in this section for the forfeiture of the corporate privileges of a corporation, forfeit the charter and right of any person to transact business in this state. The provisions of this section that apply to the forfeiture and revival of corporate privileges apply to the forfeiture and revival of the charter and person's right to transact business in this state.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1225 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The provisions of this section shall apply to tax years beginning on or after January 1, 2013.

B. As used in this section:

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

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

3. "Consolidated group" means a group of two or more corporations treated as a single person for purposes of this act under the provisions of subsection C of this section;

4. "Controlling interest" means:

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

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

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

5. "Reporting person" means a person in a consolidated group or combined group that is designated by that group to legally bind the group for all filings and tax liabilities and to receive all legal notices with respect to matters under this act; and

6. "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity, of multiple business entities that are related under Section 267 or 1563 of the Internal Revenue Code, or of a commonly controlled group of business entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. Two or more business entities are presumed to be a unitary business if the businesses have unity of ownership, operation, and use as indicated by a centralized management or a centralized executive force; centralized purchasing, advertising, or accounting; inter-entity sales or leases; inter-entity services, including administrative, employee benefits, human resources, legal, financial, and cash management services; inter-entity debts; inter-

entity use of proprietary materials; interlocking directorates; or interlocking inter-entity officers. In no event and under no circumstances shall the preceding sentence be construed as exclusive of any and all other factors indicative of a unitary business. For purposes of this section, the term "unitary business" shall be broadly construed, to the extent permitted by the U.S. Constitution.

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

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

2. Corporations, or any portion thereof, in such consolidated group which are also included in a combined group as part of a unitary business shall determine the combined group's total revenue and net revenue which shall be separately stated as an entity in the consolidated group's returns for purposes of determining their Oklahoma business activity tax liability.

3. Corporations, or any portion thereof, in such consolidated group which are not included in a combined group shall determine such corporation's total revenue and net revenue on a component member by component member basis in accordance with the provisions of this act.

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

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

2. The combined group is a single entity for purposes of the application of the tax levied under this act.

3. For purposes of this act, a combined group shall determine its total revenue by:

a. determining the total revenue of each of its members as if the member were a separate entity;

b. adding the total revenues of the members determined under subparagraph a of this paragraph together; and

c. subtracting, to the extent included under subparagraph a of this paragraph, items of total revenue received from another member of the combined group.

4. For purposes of this act, a combined group shall determine its deduction for ordinary trade or business expenses to arrive at net revenue by:

a. determining the ordinary trade or business expenses other than interest, taxes, depreciation and amortization for each of its members as if the member were a separate entity;

b. adding the amounts of ordinary trade or business expenses determined under subparagraph a of this paragraph together; and

c. subtracting from the amount determined under subparagraph b of this paragraph any ordinary trade or business expenses paid from one member of the combined group to another member of the combined group, but only to the extent the corresponding item of total revenue was subtracted under subparagraph c of paragraph 3 of this subsection.

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

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

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1226 of Title 68, unless there is created a duplication in numbering, reads as follows:

In determining the manner that a person's net revenue is apportioned to this state for purposes of the amount of tax levied under Section 5 of this act, three factors shall be determined by utilizing the total revenue as defined in this act as one factor and the property factor and payroll factor as determined in accordance with the procedures provided in Section 2358 of Title 68 of the Oklahoma Statutes. The numerator of the fraction for the total revenue factor is the entity's total revenue from business activities done in this state, as determined under this act, and the denominator of which is the entity's total revenue from its entire business activities done both in this state and outside this state, as determined under this act. A person's net revenue is apportioned to this state by multiplying the person's net revenue from the entire business done in all locations by the sum of eighty percent (80%) of the total revenue factor and ten percent (10%) of each of the property factor and the payroll factor.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1227 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The period of time prescribed in Section 223 of Title 68 of the Oklahoma Statutes, in which the procedures for the assessment of the Business Activity Tax may be commenced by the Oklahoma Tax Commission, shall be tolled and extended until the amount of taxable income for any year of a person under the Internal Revenue Code has been finally determined under applicable federal law and for the additional period of time hereinafter provided in this subsection.

B. If, in such final determination, the amount of taxable income for any year of a person under the Internal Revenue Code is changed or corrected from the amounts included in the federal return of the person for such year and such change or correction affects the Oklahoma net revenue of the person for such year, the person, within one (1) year after such final determination of the corrected taxable income, shall file an amended return under this act reporting the corrected Oklahoma net revenue, and the Tax Commission shall make assessment or refund within two (2) years from the date the return required by this paragraph is filed and not thereafter, unless a waiver is agreed to and signed by the Tax Commission and the person.

C. In the event of failure by a person to comply with the provisions of subsection B of this section, the statute of limitations shall be tolled for a period of time equal to the time between the date the amended return under this section is required until such return is actually furnished.

D. In administering the provisions of this section, the Tax Commission shall have the authority to audit each and every item of revenue, deduction, credit or any other matter related to the return where such items or matters relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government even if such items or matters were not affected by revisions made in such final determination. Where such items or matters do not relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, the Tax Commission shall be bound by the revisions made in such final determination.

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

A. There is hereby created the Task Force on Comprehensive Tax Reform. The purpose of the task force is to recommend amendments to the Business Activity Tax Code, to review the different types of tax imposed on businesses and individuals in this state and to develop recommendations and proposed legislation to provide increased simplification and fairness in the tax structure of the state. Such review shall include, but not be limited to, ad valorem taxation of personal property, ad valorem assessment methodologies of wireless telecommunications companies, replacement of the corporate income tax, franchise tax or bank privilege tax levied under Section 2370 of Title 68 of the Oklahoma Statutes, and reduction of the individual income tax.

B. The Task Force on Comprehensive Tax Reform shall be composed of the following twenty-one (21) members:

1. The chair and vice-chair of the House Revenue and Taxation Subcommittee of the Appropriations and Budget Committee;

2. The chair and vice-chair of the Senate Finance Committee;

3. The director of the Office of State Finance;

4. One member to be appointed by the chair of the Oklahoma Tax Commission;

5. Members appointed by the Speaker of the House of Representatives as follows:

a. one member of the House of Representatives,

b. one member representing the banking industry in Oklahoma,

c. one member representing a statewide organization of businesses, and

d. one member who is a Technology Center school district superintendent or board member;

6. Members appointed by the President Pro Tempore of the Senate as follows:

a. one member of the Senate,

b. one member representing the insurance industry in Oklahoma,

c. one member representing the energy industry in Oklahoma, and

d. one member who is an elementary or independent school district superintendent or board member; and

7. Members appointed by the Governor as follows:

a. one member at large,

b. two members representing small business in Oklahoma,

c. one member representing a statewide organization of businesses,

d. one member representing the energy industry in Oklahoma,

e. one member representing the technology industry in Oklahoma, and

f. one member who is an elected county assessor.

C. The co-chairs of the task force shall be the members who are the chairs of the Revenue and Taxation Subcommittee of the Appropriations and Budget Committee and the Finance Committee of the State Senate.

D. Each appointment of an appointing authority shall be made for a term of one (1) year from the date of appointment. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments.

E. A majority of the members of the task force shall constitute a quorum for the transaction of business. Each member shall be entitled to one vote on the task force. Any official action of the task force must have a majority of the votes of the members present.

F. Each member of the task force shall serve without compensation, except that each legislative member of the task force shall receive reimbursement for travel expenses in accordance with Section 456 of title 74 of the Oklahoma Statutes.

G. Staff support for the task force shall be provided by the Senate and the House of Representatives. The Oklahoma Tax Commission shall provide information and assistance to the task force as needed.

H. The Oklahoma Tax Commission is directed to compile data reported pursuant to the Business Activity Tax Code. Such data shall include, but not be limited to, types of entities reporting, total revenue reported, excluded sources of revenue, deductions from total revenue, and net revenue reported. The Tax Commission shall compile this data for all reports received pursuant to the Business Activity Tax Code and report to the task force, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor, on or before October 1, 2011.

I. The task force shall submit a final report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before January 1, 2012, regarding the findings and recommendations of the task force.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1228 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Business Activity Tax Code shall expire and cease to have the force and effect of law for tax years beginning after December 31, 2012.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1212.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provision of law, there is hereby declared a moratorium on any and all requirements to pay or remit any and all taxes due or which would have been due pursuant to the provisions of Sections 1201 through 1212 of Title 68 of the Oklahoma Statutes for the taxable periods beginning July 1, 2010, and ending before July 1, 2013.

B. Notwithstanding any other provision of law, there is hereby declared a moratorium on requirements to file any and all reports or returns due or which would have been due pursuant to the provisions of Sections 1201 through 1212 of Title 68 of the Oklahoma Statutes for the taxable periods beginning July 1, 2010, and ending before July 1, 2013.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1142.2 of Title 18, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, the payment of the tax levied pursuant to subsection A of Section 5 of this act for the years 2011, 2012, and 2013 by any person doing business in this state who is not subject to the franchise tax levied under the provisions of Sections 1203, 1204, and 1205 of Title 68 of the Oklahoma Statutes shall be considered as a credit against the total amount such person is required to pay or remit annually for certification or registration fees pursuant to the provisions of Section 2055.2 of Title 18 or Section 311.1 of Title 54 of the Oklahoma Statutes. In no event shall the credit be refunded.

The Oklahoma Tax Commission and the Secretary of State shall adopt a procedure to verify that a person claims a maximum of one credit per year pursuant to this section.

SECTION 19. AMENDATORY 68 O.S. 2001, Section 2370, as amended by Section 10, Chapter 486, O.S.L. 2002 (68 O.S. Supp. 2009, Section 2370), is amended to read as follows:

Section 2370. A. For taxable years beginning after December 31, 1989, for the privilege of doing business within this state, every state banking association, national banking association and credit union organized under the laws of this state, located or doing business within the limits of the State of Oklahoma shall

annually pay to this state a privilege tax at the rate of six percent (6%) of the amount of the taxable income as provided in this section.

B. 1. The privilege tax levied by this section shall be in addition to the Business Activity Tax levied in Section 5 of this act and the franchise tax levied in Article 12 of this title and in lieu of the tax levied by Section 2355 of this title and in lieu of all taxes levied by the State of Oklahoma, or any subdivision thereof, upon the shares of stock or personal property of any banking association or credit union subject to taxation under this section.

2. Nothing in this section shall be construed to exempt the real property of any banking associations or credit unions from taxation to the same extent, according to its value, as other real property is taxed. Nothing herein shall be construed to exempt an association from payment of any fee or tax authorized or levied pursuant to the banking laws.

3. Personal property which is subject to a lease agreement between a bank or credit union, as lessor, and a nonbanking business entity or individual, as lessee, is not exempt from personal property ad valorem taxation. Provided further, that it shall be the duty of the lessee of such personal property to return sworn lists or schedules of their taxable property within each county to the county assessor of such county as provided in Sections 2433 and 2434 of this title.

C. Any tax levied under this section shall accrue on the last day of the taxable year and be payable as provided in Section 2375 of this title. The accrual of such tax for the first taxable year to which this act applies, shall apply notwithstanding the prior accrual of a tax in the same taxable year based upon the net income of the next preceding taxable year; provided, however, any additional deduction enuring to the benefit of the taxpayer shall be deducted in accordance with the optional transitional deduction procedures in Section 2354 of this title.

D. The basis of the tax shall be United States taxable income as defined in paragraph 10 of Section 2353 of this title and any

adjustments thereto under the provisions of Section 2358 of this title with the following adjustments:

1. There shall be deducted all interest income on obligations of the United States government and agencies thereof not otherwise exempted and all interest income on obligations of the State of Oklahoma or political subdivisions thereof, including public trust authorities, not otherwise exempted under the laws of this state; and

2. Expense deductions claimed in arriving at taxable income under paragraph 10 of Section 2353 of this title shall be reduced by an amount equal to fifty percent (50%) of excluded interest income on obligations of the United States government or agencies thereof and obligations of the State of Oklahoma or political subdivisions thereof.

E. There shall be allowed a credit against the tax levied in subsection A of this section in an amount equal to the amount of taxable income received by a participating financial institution as defined in Section ~~2~~ 90.2 of ~~this act~~ Title 62 of the Oklahoma Statutes pursuant to a loan made under the Rural Economic Development Loan Act. Such credit shall be limited each year to five percent (5%) of the amount of annual payroll certified by the Oklahoma Rural Economic Development Loan Program Review Board pursuant to the provisions of paragraph 3 of subsection B of Section ~~4~~ 90.4 of ~~this act~~ Title 62 of the Oklahoma Statutes with respect to the loan made by the participating financial institution and may be claimed for any number of years necessary until the amount of total credits claimed is equal to the total amount of taxable income received by the participating financial institution pursuant to the loan. Any credit allowed but not used in a taxable year may be carried forward for a period not to exceed five (5) taxable years. In no event shall a credit allowed pursuant to the provisions of this subsection be transferable or refundable.

SECTION 20. AMENDATORY 36 O.S. 2001, Section 624, as amended by Section 55, Chapter 197, O.S.L. 2003 (36 O.S. Supp. 2009, Section 624), is amended to read as follows:

Section 624. A. Every insurance company, copartnership, insurance association, interinsurance exchange, person, insurer,

nonprofit hospital service and medical indemnity corporation, or health maintenance organization, doing business in this state in the execution or exchange of contracts of insurance, indemnity or health maintenance services, or as an insurance company of any nature or character whatsoever, hereinafter referred to in this article as an insurance company, or company, shall, annually, on or before the first day of March, report under oath of the president or secretary or other chief officer of such company to the Insurance Commissioner, the total amount of direct written premiums, membership, application, policy and/or registration fees charged during the preceding calendar year, or since the last return of such direct written premiums, membership, application, policy and/or registration fees was made by such company, from insurance of every kind upon persons or on the lives of persons resident in this state, or upon real and personal property located within this state, and/or upon any other risks insured within this state, provided, that with respect to the tax payable annually, considerations received for annuity contracts and payments received by a health maintenance organization from the Secretary of Health and Human Services pursuant to a contract issued under the provisions of 42 U.S.C., Section 1395mm(g) shall no longer be deemed to be premiums for insurance and shall no longer be subject to the tax imposed by this section. Every such company shall, at the same time, pay to the Insurance Commissioner:

1. An annual license fee as prescribed by Section 321 of this title; and

2. An annual tax on all of the direct written premiums after all returned premiums are deducted, and on all membership, application, policy and/or registration fees, installment and/or finance fees or charges collected thereby, for the privileges of having written, continued and/or serviced insurance on lives, property and/or other risks in this state and of having made and serviced investments therein during the then expiring license year except premiums or fees paid by any county, city, town or school district funds or by their duly constituted authorities performing a public service organized pursuant to Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, or Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes. Provided, no deduction shall be made from premiums for dividends paid to policyholders. The rate of taxation for all entities subject to the tax shall be two and

twenty-five one-hundredths percent (2.25%). If any insurance company or other entity liable for the taxes levied pursuant to the provisions of this section fails to remit such taxes in a timely manner, it shall remain liable therefor together with interest thereon at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

B. For all insurance companies or other entities taxed pursuant to this section, the annual license fee and tax and all required membership, application, policy, registration, and agent appointment fees shall be in lieu of all other state taxes or fees, except those taxes and fees provided for in the Insurance Code, and the taxes and fees of any subdivision or municipality of the state, except ad valorem taxes and the tax required to be paid pursuant to Section 50001 of Title 68 of the Oklahoma Statutes. Provided, such license fee, tax and membership, application, policy, registration, and appointment fees shall be in lieu of any and all ad valorem taxes levied on intangible personal property. Any company, except health maintenance organizations, failing to make such returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of the taxes and fees and interest, the sum of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater; and the company so failing or neglecting for sixty (60) days shall thereafter be debarred from transacting any business of insurance in this state until the taxes, fees and penalties are fully paid, and the Insurance Commissioner shall revoke the license or certificate of authority granted to the agent or agents of that company to transact business in this state. Provided, that when any such insurance company, copartnership, insurance association, interinsurance exchange, person, insurer, or nonprofit hospital service and indemnity corporation, applies for the first time for a license to do business in Oklahoma, it shall, at the time of making such application, pay a license fee as prescribed by Section 1425 of this title, and, on or before the first day of March, following, pay the premium tax, membership, application, policy, registration, and agent appointment fees, as hereinbefore provided. Such license fee, tax and membership, application, policy, registration, and appointment fees shall be in lieu of all other state taxes or fees, except those taxes and fees provided for in the Insurance Code, and

the taxes and fees of any subdivision or municipality of the state, except ad valorem taxes and the tax required to be paid pursuant to Section 50001 of Title 68 of the Oklahoma Statutes.

C. Any health maintenance organization failing to file premium tax returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of the taxes, the sum of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater. Any health maintenance organization failing or neglecting to pay the tax and penalty shall be debarred from operating in this state and the Insurance Commissioner shall revoke the license of the health maintenance organization, until such taxes and penalties are fully paid.

Passed the Senate the 20th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 24th day of May, 2010, at 1:13 o'clock P M.

By: [signature]

Approved by the Governor of the State of Oklahoma the 10th day of June, 2010, at 4:25 o'clock P M.

[signature]

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 11th day of June, 2010, at 4:18 o'clock P M.

By: [signature]