

An Act

ENROLLED SENATE
BILL NO. 1436

By: Mazzei, Childers, David,
Ford, Halligan, Jolley,
Russell, Simpson, Treat,
Brinkley, Branan, Crain,
Allen, Sparks, Burrage,
Ivester, Wyrick, Paddack,
Garrison, Johnson
(Constance), McAffrey,
Adelson and Ellis of the
Senate

and

Dank, Pittman, Cox,
Mulready, Hall, Grau,
Cockroft, Sanders, Enns,
Walker and Jackson of the
House

An Act relating to the Oklahoma Business Activity Tax Code; amending 68 O.S. 2011, Sections 1218, 1219, 1222, 1225 and 1228, which relate to the implementation of the business activity tax; extending time frame for implementation of certain tax levy; clarifying in lieu of ad valorem tax payments; modifying expiration date of the Oklahoma Business Activity Tax Code; and providing an effective date.

SUBJECT: Oklahoma Business Activity Tax Code

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 1218, is amended to read as follows:

Section 1218. 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~~, and 2013, 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~~ this title, 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~~, and 2013.

E. The tax hereby levied shall be payable annually as provided in Section 7 1220 of this ~~act~~ title.

F. The tax so levied or imposed pursuant to this section, when paid in full as provided in ~~this act~~ the Oklahoma Business Activity Tax Code, 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~~ For the tax years beginning on or after January 1, 2011, ~~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~~ August 26, 2011. ~~Upon the~~

~~effective date of this act~~ On and after August 26, 2011, 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~~ this title,
- 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~~ the Oklahoma Business Activity Tax Code under the Constitution of the United States.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 1219, is amended to read as follows:

Section 1219. For taxable years beginning on or after January 1, 2010 and ending on or before December 31, ~~2012~~ 2013, there shall be allowed a credit against the tax levied by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title 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 1218~~ 5 1218 of this ~~act~~ title. 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 3. AMENDATORY 68 O.S. 2011, Section 1222, is amended to read as follows:

Section 1222. A. On and after January 1, ~~2013~~ 2014, there shall be allowed a discount against the tax levied in subsection B of Section ~~5 1218~~ 5 1218 of this ~~act~~ title 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 4. AMENDATORY 68 O.S. 2011, Section 1225, is amended to read as follows:

Section 1225. A. The provisions of this section shall apply to tax years beginning on or after January 1, ~~2013~~ 2014.

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~~ the Oklahoma Business Activity Tax Code 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~~ the Oklahoma Business Activity Tax Code; 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~~ the Oklahoma Business Activity Tax Code.

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~~ this title, 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~~ the Oklahoma Business Activity Tax Code.

3. For purposes of ~~this act~~ the Oklahoma Business Activity Tax Code, 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~~ the Oklahoma Business Activity Tax Code, 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 5. AMENDATORY 68 O.S. 2011, Section 1228, is amended to read as follows:

Section 1228. The Upon the certification by the State Election Board of the approval by the people of this state of the provisions of Enrolled Senate Joint Resolution No. 52 of the 2nd Session of the 53rd Oklahoma Legislature, the Oklahoma 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 6. This act shall become effective November 1, 2012.

Passed the Senate the 22nd day of May, 2012.

Anthony Sykes

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2012.

Paul Stahl

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 25th
day of May, 2012,
at 6:25 o'clock P.M.

By: *Jonis H. Reegen*

Approved by the Governor of the State of Oklahoma the 30th day of
May, 2012, at 11:21 o'clock A.M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
30th day of May, 2012,
at 1:59 o'clock P.M.

By: *Michelle R. Dargatzis*