

\*PERSONAL.BD6\*\*σ♥\*\*±û\*\*\*\*\*ENROLLED SENATE

BILL NO. 346

BY: SCHUELEIN of the SENATE

and

GRIESER of the HOUSE

AN ACT RELATING TO MOTOR VEHICLES, PUBLIC LANDS AND REVENUE AND TAXATION; AMENDING 47 O.S. 1981, SECTIONS 6-101 AND 6-115, AS LAST AMENDED BY SECTIONS 10 AND 22, CHAPTER 219, O.S.L. 1990, 6-117, AS LAST AMENDED BY SECTION 4, CHAPTER 349, O.S.L. 1989, SECTION 15, CHAPTER 179, O.S.L. 1985, AS LAST AMENDED BY SECTION 10, CHAPTER 298, O.S.L. 1990, SECTION 39, CHAPTER 179, O.S.L. 1985 (47 O.S. SUPP. 1990, SECTION 1136), AS LAST AMENDED BY SECTION 1 OF ENROLLED SENATE BILL NO. 11 OF THE 1ST SESSION OF THE 43RD OKLAHOMA LEGISLATURE AND SECTION 24, CHAPTER 290, O.S.L. 1988 (47 O.S. SUPP. 1990, SECTIONS 6-101, 6-115, 6-117, 1112 AND 1140.1), WHICH RELATE TO DRIVER'S LICENSES, VEHICLE REGISTRATIONS, SPECIAL LICENSE PLATES AND MOTOR LICENSE AGENTS; AMENDING 68 O.S. 1981, SECTION 217, AS LAST AMENDED BY SECTION 12, CHAPTER 339, O.S.L. 1990, 225, AS AMENDED BY SECTION 12, CHAPTER 249, O.S.L. 1989, 304, AS AMENDED BY SECTION 14, CHAPTER 47, O.S.L. 1988, SECTION 16, CHAPTER 345, O.S.L. 1985, 1212, AS LAST AMENDED BY SECTION 12, CHAPTER 356, O.S.L. 1985, 1352, AS LAST AMENDED BY SECTION 3, CHAPTER 167, O.S.L. 1989, 1354, AS LAST AMENDED BY SECTION 1, CHAPTER 280, O.S.L. 1990, 1357, AS LAST AMENDED BY SECTION 4 OF ENROLLED SENATE BILL NO. 1 OF THE 1ST EXTRAORDINARY SESSION OF THE 43RD OKLAHOMA LEGISLATURE, 1359, AS LAST AMENDED BY SECTION 1 OF ENROLLED HOUSE BILL NO. 1517 OF THE 1ST SESSION OF THE 43RD OKLAHOMA LEGISLATURE, 1363, AS LAST AMENDED BY SECTION 7, CHAPTER 167, O.S.L. 1989, SECTION 2, CHAPTER 174, O.S.L. 1990, 2358, AS LAST AMENDED BY SECTION 1 OF ENROLLED SENATE BILL NO. 476 OF THE 1ST SESSION OF THE 43RD OKLAHOMA LEGISLATURE, 2362, AS LAST AMENDED BY SECTION 6, CHAPTER 339, O.S.L. 1990, 2373, AS AMENDED BY SECTION 2, CHAPTER 15, O.S.L. 1985, 2385.1, AS AMENDED BY SECTION 7, CHAPTER 339, O.S.L. 1990, 2385.3, AS LAST AMENDED BY SECTION 9, CHAPTER 339, O.S.L. 1990, SECTION 3, CHAPTER 138, O.S.L. 1984, AS AMENDED BY SECTION 95, CHAPTER 179, O.S.L. 1985 AND SECTION 3, CHAPTER 176, O.S.L. 1989, AS AMENDED BY SECTION 9, CHAPTER 296, O.S.L. 1990 (68 O.S. SUPP. 1990, SECTIONS 217, 225, 304, 1101.1, 1212, 1352, 1354, 1363, 1503.1, 2362, 2373, 2385.1, 2385.3, 6002 AND 53003), WHICH RELATE TO UNIFORM TAX PROCEDURE, CIGARETTE TAXES, GROSS PRODUCTION TAXES, FRANCHISE TAXES, SALES TAXES,

COIN-OPERATED DEVICES, INCOME TAXES, AIRCRAFT EXCISE TAXES AND THE WASTE TIRE RECYCLING ACT; DELETING CERTAIN EXCEPTION; DELETING CERTAIN REIMBURSEMENT; MODIFYING EXPIRATION DATE OF CERTAIN DRIVER'S LICENSES; AUTHORIZING MOTOR LICENSE AGENT TO PREPARE AND FURNISH SUMMARY OF TRAFFIC RECORD; SPECIFYING AMOUNT AND APPORTIONMENT OF FEE THEREOF; MODIFYING INFORMATION REQUIRED TO BE FURNISHED WITH APPLICATION FOR VEHICLE REGISTRATION; CLARIFYING REFERENCES; MODIFYING CONDITIONS UNDER WHICH MOTOR LICENSE AGENT IS FURNISHED CAMERA BY DEPARTMENT OF PUBLIC SAFETY; MODIFYING CALCULATION OF CERTAIN FEE AND PROVIDING FOR CERTAIN REFUNDS; PROVIDING THAT COMMISSIONERS OF THE LAND OFFICE NOT RECOVER CERTAIN TAXES FROM CERTAIN PERSONS; SPECIFYING TAXES TO WHICH CERTAIN PENALTIES APPLY; REQUIRING TAXPAYER TO PAY INTEREST UNDER CERTAIN CIRCUMSTANCES; REQUIRING TAX COMMISSION TO REFUND TAXES PREVIOUSLY PAID AND INTEREST UNDER CERTAIN CIRCUMSTANCES; DELETING REQUIREMENT THAT CERTAIN LICENSE APPLICATIONS BE ACKNOWLEDGED BY NOTARY PUBLIC OR TAX COMMISSION AGENT; MODIFYING CERTAIN REFERENCES; MODIFYING CERTAIN NOTICE REQUIREMENT; MODIFYING DEFINITION; MODIFYING PROPERTY SUBJECT TO SALES TAX; MODIFYING CERTAIN EXEMPTIONS FROM SALES TAX; PROVIDING ADDITIONAL EXEMPTIONS UNDER CERTAIN CIRCUMSTANCES; DEFINING TERMS; MODIFYING CLASSIFICATION OF VENDORS; EXEMPTING CERTAIN VENDING DEVICES FROM CERTAIN PROVISIONS; SPECIFYING CIRCUMSTANCES UNDER WHICH CERTAIN EXPENSES DEDUCTIBLE FOR CERTAIN TAXPAYERS; CLARIFYING CERTAIN REFERENCE; MODIFYING DEFINITION; MODIFYING DATE BY WHICH CERTAIN INFORMATION MUST BE FURNISHED; MODIFYING AMOUNT OF CERTAIN TAXES AND FEES WHICH MUST BE REMITTED TO TAX COMMISSION; PROVIDING FOR CODIFICATION; PROVIDING FOR RECODIFICATION; PROVIDING EFFECTIVE DATES; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 47 O.S. 1981, Section 6-101, as last amended by Section 10, Chapter 219, O.S.L. 1990 (47 O.S. Supp. 1990, Section 6-101), is amended to read as follows:

Section 6-101. A. No person, except those hereinafter expressly exempted in Section 6-102 of this title, shall operate any motor vehicle upon a highway in this state unless such person has a valid Oklahoma license for the class of vehicle being operated under the provisions of this title. No person shall be permitted to possess more than one valid license at any time.

B. 1. No person shall operate a Class A commercial motor vehicle unless such person is eighteen (18) years of age or older and holds a valid Class A commercial license. Any person holding a valid Class A commercial license shall be permitted to operate motor vehicles in Classes A, B, C and D, except as provided for in paragraph 4 of this subsection;

2. No person shall operate a Class B commercial motor vehicle unless such person is eighteen (18) years of age or older and holds a valid Class B commercial license. Any person holding a valid Class B commercial license shall be permitted to operate motor vehicles in Classes B, C and D, except as provided for in paragraph 4 of this subsection;

3. No person shall operate a Class C commercial motor vehicle unless such person is eighteen (18) years of age or older and holds a valid Class C commercial license. Any person holding a valid Class C commercial license shall be permitted to operate motor vehicles in Classes C and D, except as provided for in paragraph 4 of this subsection;

4. No person under twenty-one (21) years of age shall be licensed to operate any motor vehicle which is required to be placarded for hazardous materials pursuant to 49 C.F.R., Part 172, subpart F; and

5. No person shall operate a Class D motor vehicle unless such person is sixteen (16) years of age or older and holds a valid Class D license, except as provided for in Section 6-105 of this title. Any person holding a valid Class D license shall be permitted to operate motor vehicles in Class D only.

C. No person shall operate a motorcycle, motor-driven cycle or a motorized bicycle without first having obtained a Class A, B, C or D license with a motorcycle endorsement.

D. Any person issued a classified driver's license pursuant to this section may exercise the privilege thereby granted upon all streets and highways in this state.

E. Except as otherwise may be provided for by law, any new applicant for an original classified license shall be required to successfully complete a written examination, vision examination and driving examination for a motorcycle as prescribed by the Department of Public Safety to be eligible for a motorcycle endorsement thereon.

F. Except as otherwise may be provided for by law, any holder of an Oklahoma commercial chauffeur, chauffeur or operator driver's license which is eligible for renewal who applies for a Class A, B, C or D license shall be required to successfully complete a written examination, vision examination and driving examination for a motorcycle as prescribed by the Department to be eligible for a motorcycle endorsement thereon; provided, however, the Department may waive all such examinations upon being furnished satisfactory proof that the applicant has regularly operated a motorcycle, motor-driven cycle or motorized bicycle for a minimum of two (2) years immediately preceding the application.

G. Any person eighteen (18) years of age or older may apply for a restricted Class A, B or C license. The Department, after the applicant has passed all parts of the examination for and has been issued a Class D license and has successfully passed all parts of the examination for a Class A, B or C license other than the driving test, may issue to the applicant a restricted driver's license which shall entitle the applicant having such license in his immediate possession to operate a Class A, B or C commercial motor vehicle upon the public highways solely for the purpose of behind-the-wheel training while accompanied by a licensed driver twenty-one (21) years of age or older holding a valid license for the class of vehicle being driven including any and all required endorsements.

This restricted driver's license shall be issued for the same period as all other licenses; provided, such restricted license may be suspended, revoked, canceled or denied at the discretion of the Department for violation of the restrictions, for failing to give

the required or correct information on the application or for violation of any traffic laws of this state pertaining to the operation of a motor vehicle. Except as otherwise provided, the holder of such restricted license who has been issued such restricted license for a minimum of thirty (30) days may have the restriction requiring an accompanying driver removed by satisfactorily completing a driver's examination; provided, the removal of such restriction shall not authorize the operation of a Class A, B or C commercial motor vehicle if such operation is otherwise prohibited by law. The Department shall cause such examination to be conducted not more than three times during the first six (6) months after date of issuance of said restricted license and not more than one time every three (3) months thereafter upon request of the holder thereof.

H. The fee charged for a successful examination shall be assessed in accordance with the following schedule:

Class A Commercial License	\$25.00
Class B Commercial License	\$15.00
Class C Commercial License	\$15.00
Class D License	\$ 4.00
Motorcycle Examination	\$ 4.00

Notwithstanding the provisions of Section 1104 of this title, all monies collected from the examination fees charged for Class A, B and C Commercial Licenses pursuant to the provisions of this subsection shall be deposited in the General Revenue Fund of this state.

I. In addition to any fee charged for a successful examination pursuant to the provisions of subsection H of this section, the fee charged for the issuance or renewal of an Oklahoma license shall be in accordance with the following schedule:

Class A Commercial License	\$35.00
Class B Commercial License	\$35.00
Class C Commercial License	\$25.00
Class D License	\$15.00

J. All original and renewal classified licenses shall expire four (4) years from the last day of the month in which the license was issued.

K. Any person sixty-two (62) years of age or older during the calendar year of issuance or renewal of a Class D license or motorcycle endorsement shall be charged the following prorated fee:

Age 62	\$11.25
Age 63	\$ 7.50
Age 64	\$ 3.75
Age 65	-0-

L. The Oklahoma Department of Public Safety and the Oklahoma Tax Commission are authorized to promulgate rules and regulations for the issuance and for the renewal of driver's licenses authorized to be issued pursuant to the provisions of Sections 6-101 through 6-309 of this title. Applications for such licenses shall be handled by the motor license agents, provided that the Department of Public Safety is authorized to assume these duties in any county of this state. ~~Except for driver's licenses issued pursuant to subsection K of this section, each~~ Each motor license agent accepting applications for such drivers' licenses shall receive Two Dollars (\$2.00) to be deducted from the total collected for each license or renewal application accepted. The two-dollar fee received by the motor license agent shall be used for operating expenses. ~~The Oklahoma Tax Commission is hereby authorized to reimburse, from funds available to that agency, each motor license agent issuing a license pursuant to subsection K of this section, an amount not to~~

~~exceed One Dollar (\$1.00) for each license so issued. The Oklahoma Tax Commission shall develop procedures for claims for such reimbursement.~~

M. Notwithstanding the provisions of Section 1104 of this title and subsection L of this section and except as provided in subsection H of this section, the first Sixty Thousand Dollars (\$60,000.00) of all monies collected pursuant to this section shall be paid by the Oklahoma Tax Commission to the State Treasurer to be deposited each fiscal year under the provisions of this section to the credit of the Department of Public Safety Revolving Fund for the purpose of the Department of Public Safety Share the Road Program as that program pertains to the operation of commercial vehicles in this state with a gross vehicle weight rating of twenty-six thousand one (26,001) or more pounds. The next Five Hundred Thousand Dollars (\$500,000.00) of monies collected pursuant to this section shall be paid by the Oklahoma Tax Commission to the State Treasurer to be deposited each fiscal year under the provisions of this section to the credit of the Department of Public Safety Revolving Fund for the purpose of the Statewide Law Enforcement Communications System. All other monies collected in excess of Five Hundred Sixty Thousand Dollars (\$560,000.00) each fiscal year shall be apportioned as provided in Section 1104 of this title, except as provided in subsection L of this section.

N. The Commissioner of the Department of Public Safety is authorized to employ such additional personnel as shall be necessary to administer the provisions of Sections 6-101 through 6-309 of this title.

SECTION 2. AMENDATORY 47 O.S. 1981, Section 6-115, as last amended by Section 22, Chapter 219, O.S.L. 1990 (47 O.S. Supp. 1990, Section 6-115), is amended to read as follows:

Section 6-115. Every driver's license shall be issued for a period of four (4) years. The expiration date of the license shall be four (4) years from the last day of the month of issuance for an initial license, and shall be four (4) years from the last day of the month of expiration of the previous license for a renewed license. Every such driver's license shall be renewable upon application and payment of the required fee. All applicants for renewals of driver's licenses who have proven accident records or apparent physical defects may be required to take an examination as specified by the Commissioner of Public Safety.

SECTION 3. AMENDATORY 47 O.S. 1981, Section 6-117, as last amended by Section 4, Chapter 349, O.S.L. 1989 (47 O.S. Supp. 1990, Section 6-117), is amended to read as follows:

Section 6-117. (a) The Department of Public Safety shall file every application for a license received by it and shall maintain suitable indexes containing, in alphabetical order:

1. All applications denied and on each thereof note the reasons for such denial; and
2. All applications granted; and
3. The name of every licensee whose license has been suspended or revoked by the Department and after each such name note the reasons for such action.

(b) The Department shall also file all accident reports and abstracts of court records of convictions received by it pursuant to the laws of this state and maintain convenient records of such records and reports or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration

of the Department of Public Safety upon any application for license or renewal of license and at other suitable times.

(c) The Commissioner may cause any or all records kept by the Department of Public Safety to be photographed, microphotographed, photostated, or reproduced on film. Such film or reproducing material shall be of durable material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all detail.

(d) Such photostatic copy, photograph, microphotograph, or photographic film of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy thereof shall be deemed to be a transcript, exemplification, or certified copy of the original.

(e) If such photostatic copy, photograph, microphotograph, or reproductions on films shall be placed in conveniently accessible files and provisions made for preserving, examining, and using same, the Commissioner is empowered to authorize the disposal, archival storage, or destruction of such records or papers.

(f) Officers and employees of the Department designated by the Commissioner, for the purpose of administering the motor vehicle laws, are authorized to administer oaths and acknowledge signatures, and shall do so without fee.

(g) The Commissioner and such officers of the Department as he may designate are hereby authorized to prepare under the seal of the Department and deliver upon request a certified copy of any record of the Department, charging a fee of Three Dollars (\$3.00) per sheet, photograph, or any part of a sheet or photograph of any such document or similar document so certified. The certified copy shall be admissible in any proceeding in any court in like manner as the original thereof.

(h) The Department of Public Safety or any motor license agent upon request shall prepare and furnish a summary to any person of the traffic record of any person subject to the provisions of the motor vehicle laws of this state. Said summary shall include the enumeration of any motor vehicle accidents, reference to convictions for violations of motor vehicle laws, and any action taken against the person's privilege to operate a motor vehicle, as shown by the files of the Department for the three (3) years preceding the date of the request. For each summary furnished by the Department of Public Safety, the Department shall collect the sum of Five Dollars (\$5.00). For each summary furnished by a motor license agent, the agent shall collect the sum of Seven Dollars (\$7.00), Five Dollars (\$5.00) of which shall be apportioned to the Department and Two Dollars (\$2.00) of which shall be retained by the motor license agent.

(i) There is hereby created in the State Treasury a revolving fund for the Department of Public Safety to be designated the Department of Public Safety Revolving Fund. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all money received by the Department of Public Safety from sale of surplus property, insurance and other reimbursements for damaged property, for the services of highway patrol personnel as approved by the Department if such personnel are representing the Department or are in any uniform of the Department, turnpike enforcement, fees and costs paid by subscribers to the Oklahoma Law Enforcement Telecommunications Systems, refund of federal gasoline tax, court-ordered forfeitures, salvage vehicle inspection and certification fees, inspections fees provided for in subsection H of

Section 1111 of this title, reimbursements by state agencies for the use of Department of Public Safety airplanes, fees for meals from users of the Robert R. Lester Law Enforcement Training Academy facilities and federal funds unless otherwise provided by federal law or regulation. Except as provided for in subsection (j) of this section, all monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Public Safety for the operating expenses of the Department and for vehicles, equipment, personnel and other operating expenses for turnpike enforcement. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

(j) All monies accruing to the credit of the Department of Public Safety Revolving Fund from inspection fees provided for in subsection H of Section 1111 of this title shall be budgeted and expended solely for the purpose of inspections by the Department of Public Safety provided for in Section 1111 of this title and for contracting with local law enforcement agencies for conducting the inspections provided for in Section 1111 of this title.

(k) All monies received by the Commissioner of Public Safety, his officers and his employees shall be remitted to the State Treasurer to be credited to the General Revenue Fund in the State Treasury except as otherwise provided in this section.

SECTION 4. AMENDATORY Section 15, Chapter 179, O.S.L. 1985, as last amended by Section 10, Chapter 298, O.S.L. 1990 (47 O.S. Supp. 1990, Section 1112), is amended to read as follows:

Section 1112. Every owner of a vehicle possessing a certificate of title shall, before using the same in this state, make an application for the registration of such vehicle with a motor license agent. The application shall contain such information as shall be required by the Oklahoma Tax Commission. Every owner, when making application for registration, shall furnish the following information:

1. A full description of the vehicle including the manufacturer's serial or other identification number, the manufacturer's factory delivered price, total delivered price, any security interest upon said vehicle, an odometer reading of said vehicle when applicable, and the insurance security verification to said vehicle;
2. The correct name and address, the name of the city, county and state in which the person in whose name the vehicle is to be registered resides, the driver's license number of the owner if the owner has a driver's license or the Federal Employers Identification Number of the owner if such owner is not an individual, and such other information as may be prescribed by the Commission; and
3.
  - a. The name of the carrier of the owner's insurance policy for such vehicle,
  - b. The policy number of the owner's policy for such vehicle, if available, or the name of the agent or office where the existence of security may be verified, if other than the carrier,
  - c. The effective dates of the owner's policy for such vehicle, and
  - d. A statement of the existence of a nonuse affidavit if filed by the vehicle owner pursuant to the provisions of Section 7-607 of this title.

In every case where a vehicle has been registered upon an application containing any false statement of a fact required in this section to be shown in an application for the registration

thereof, the Commission shall give written notice of at least five (5) days to the owner of the vehicle, and shall require the owner to appear before it for the purpose of showing cause why said registration should not be canceled. Unless satisfactory explanation is given by the owner concerning such false statement, the Commission shall cancel the registration. The owner of the vehicle shall then be required to immediately reregister the vehicle and pay the required fees. The owner shall not be entitled to refund or credit for the fees paid for registration of the motor vehicle made under the application which contained any false statement of fact.

The Commission shall insert in said application forms appropriate notice to the applicant that any false statement of a fact required to be shown in such application for registration subjects the applicant to prosecution.

SECTION 5. AMENDATORY Section 39, Chapter 179, O.S.L. 1985 (47 O.S. Supp. 1990, Section 1136), as last amended by Section 1 of Enrolled Senate Bill No. 11 of the 1st Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1136. The Oklahoma Tax Commission is hereby authorized to design and issue appropriate official special license plates as provided by this section.

Special license plates shall not be transferred to any other person but shall be removed from the vehicle upon transfer of ownership and retained. The special license plate may then be used on another vehicle but only after such other vehicle has been registered for the current year with a motor license agent.

The Commission shall take applications by October 1 of each year for the following calendar year for special license plates and shall issue such plates to each applicant.

Special license plates shall be designed in such a manner as to identify the use and ownership of the vehicle. The special license plates provided by this section are as follows:

1. Political Subdivision Plates - such plates shall be designed for any vehicle owned by any political subdivision of this state and shall be registered for a nominal fee of One Dollar (\$1.00), after having obtained proper Oklahoma certificate of title. Such political subdivisions shall file an annual report with the Commission stating the agency where such vehicle is located. Such license plates shall be permanent in nature and designed in such a manner as to remain with the vehicle for the duration of the life span of the vehicle or until the title is transferred to an owner who is not a political subdivision;

2. Legislative License Plates - such plates shall be designed for persons elected to the Oklahoma Legislature and shall designate the house of the Legislature in which the legislator serves and his district number.

The fee for such plate shall be One Dollar (\$1.00) and shall be in addition to the regular plate issued to the member and the fees charged therefor;

3. Tax-Exempt or Nonprofit License Plates - such plates shall be designed for:

- (a) any motor bus, manufactured home, or mobile chapel and power unit owned and operated by a religious corporation or society of this state holding a valid exemption from taxation issued pursuant to Section 501(a) of the Internal Revenue Code ~~of 1954~~, 26 U.S.C., Section 501(a), and listed as an exempt organization in Section 501(c) (3) of the Internal Revenue Code ~~of 1954~~, as amended, 26 U.S.C., Section

501(c)(3), and that is used by the corporation or society solely for the furtherance of its religious functions,

- (b) any vehicle owned and operated only by nonprofit organizations devoted exclusively to youth programs including, but not limited to, the Girl Scouts and Boy Scouts of America,
- (c) any vehicle, except passenger automobiles, owned or operated by nonprofit organizations actually involved in programs for the employment of the handicapped and used exclusively in the transportation of goods or materials for such organization,
- (d) any vehicle owned and operated by a nonprofit organization that provides older persons transportation to and from medical, dental and religious services and relief from business and social isolation,
- (e) any vehicle owned and operated by a private nonprofit organization that:
  - (1) warehouses and distributes surplus foods to other nonprofit agencies and organizations, and
  - (2) holds a valid exemption from taxation issued pursuant to Section 501(c) of the Internal Revenue Code ~~of 1954~~, as amended, 26 U.S.C., Section 501(c), and listed as an exempt organization in Section 501(c)(3) of the Internal Revenue Code ~~of 1954~~, as amended, and
  - (3) uses such vehicle exclusively for the transportation of such surplus foods, or
- (f) any vehicle owned and operated by a fire department organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes.

The registration fee shall be One Dollar (\$1.00).

Any person claiming to be eligible for a tax-exempt or nonprofit license plate under the provisions of this paragraph must have the name of the tax-exempt or nonprofit organization prominently displayed upon the outside of the vehicle, except those vehicles registered pursuant to the provisions of subparagraph (b) of this paragraph, unless such display is prohibited by federal or state law or by state agency rules and regulations. No vehicle shall be licensed as a tax-exempt or nonprofit vehicle unless the vehicle has affixed on each side thereof, in letters not less than two (2) inches high and two (2) inches wide, the name of the tax-exempt or nonprofit organization or the insignia or other symbol of such organization which shall be of sufficient size, shape and color as to be readily legible during daylight hours from a distance of fifty (50) feet while the vehicle is not in motion;

4. Prisoner of War License Plates - such plates shall be designed for honorably discharged or present members of the United States Armed Forces and civilians who were former prisoners of war held by a foreign country and who can provide proper certification of that status. Such persons may apply for a prisoner of war license plate for no more than two vehicles with each vehicle having a rated carrying capacity of one (1) ton or less. The surviving spouse of any deceased former prisoner of war, if said spouse has not since remarried, may apply for a prisoner of war license plate for one vehicle with a rated carrying capacity of one (1) ton or less.

The registration fee shall be One Dollar (\$1.00);

5. National Guard License Plates - such plates shall be designed for active or retired members of the Oklahoma National Guard.

The fee for such plate shall be Two Dollars (\$2.00) and shall be in addition to all other registration fees provided by this act, Section 1101 et seq. of this title;

6. United States Armed Forces - such plates shall be designed for active, retired or reserve members of the United States Armed Forces, and shall identify which branch of service, and carry the emblem and name of either the Army, Navy, Air Force, Marines or Coast Guard, according to the branch of service to which the member belongs. Persons applying for such license plate must show proof of present or past military service by presenting a valid Uniformed Services Identity Card or the United States Department of Defense Form (DD) 214.

The fee for such plates shall be One Dollar (\$1.00) and shall be in addition to all other registration fees provided by this act;

7. Physically Disabled License Plates - such plates shall be designed for persons who are eligible for an insignia as a physically disabled person under the provisions of Section 15-112 of this title. It shall prominently display the international accessibility symbol, which is a stylized human figure in a wheelchair. Upon the death of such physically disabled person, said special license plate shall be returned to the Commission.

There shall be no fee for such plate in addition to the rate provided by this act for the registration of the vehicle.

Any person who is eligible for a physically disabled license plate and whose vehicle has had modifications because of the physical disability of the owner, may register the vehicle for a flat fee of Twenty-five Dollars (\$25.00). This fee shall be in lieu of all other registration fees provided by this act;

8. Disabled Veterans License Plates - such plates shall be designed for persons presenting proper certification from the United States Veteran's Administration or the Armed Forces of the United States certifying such veteran has a service-connected disability rating of fifty percent (50%) or more or that such veteran has been awarded a vehicle by the United States government or receives a grant from the United States Veteran's Administration for the purchase of an automobile due to a service-connected disability rating or due to the loss of use of a limb or an eye. Such persons may apply to the Commission for a disabled veterans license plate or to a motor license agent for a regular license plate for no more than two vehicles with each vehicle having a rated carrying capacity of one (1) ton or less. The surviving spouse of any deceased disabled veteran, if said spouse has not since remarried, may apply for a disabled veterans license plate for one vehicle with a rated carrying capacity of one (1) ton or less.

The registration fee shall be One Dollar (\$1.00);

9. Congressional Medal of Honor Recipient License Plates - such plates shall be designed for any resident of this state who has been awarded the Congressional Medal of Honor. Such persons may apply for a Congressional Medal of Honor recipient license plate for one vehicle with a rated carrying capacity of one (1) ton or less.

The fee for such plate shall be One Dollar (\$1.00);

10. Missing In Action License Plates - such plates shall be designed to honor members of the United States Armed Forces who are missing in action. The spouse of such missing person, if said spouse has not since remarried, and each parent of such missing person may apply for a missing in action license plate upon presenting proper certification that such person is missing in

action and that the person making said application is the unremarried spouse or the parent of such missing person. The spouse and each parent of such missing person may each apply for the missing in action license plate for one vehicle with a rated carrying capacity of one (1) ton or less.

The registration fee shall be One Dollar (\$1.00) and shall be in addition to the regular plate issued and the fees charged therefor;

11. Indian Tribal License Plates - such plates shall be designed for any vehicle of a native American Indian Tribal Association exempted in Sections 201 through 204 of Public Law 97-473 and used by the tribal association exclusively for the furtherance of its tribal functions.

The registration fee shall be One Dollar (\$1.00);

12. Personalized License Plates - such plates shall be designed and issued to any person in any combination of numbers or letters from one to a maximum of seven. Such plates may be issued for motorcycles in any combination of numbers or letters from one to a maximum of six. The personalized license plates shall be issued on a staggered system except for motorcycles.

On and after January 1, 1987, persons owning vehicles which are twenty-one (21) years and older are qualified to submit for approval by the Oklahoma Tax Commission or a motor license agent a vintage but expired official Oklahoma license plate which is twenty-one (21) years and older. Upon approval of such personalized plate, the owner shall be issued the annual registration decal which the Commission or agent shall direct to be affixed in close proximity to the mandatory vehicle inspection decal. The Tax Commission shall promulgate a rule which establishes appropriate criteria to be used in the implementation of this act.

The fee for such plate shall be Twelve Dollars (\$12.00) and shall be in addition to all other registration fees provided by this act. Two Dollars (\$2.00) of the personalized tag fee shall be deposited in the Oklahoma Tax Commission Reimbursement Fund to be used for the administration of this act;

13. Antique or Classic Vehicle Plates - such plates shall be designed and issued for any vehicle twenty-five (25) years of age or older, based upon the date of manufacture thereof and which travels on the highways of this state primarily incidental to historical or exhibition purposes only.

The registration fee shall be One Dollar (\$1.00) and, except as otherwise provided in this subparagraph, shall be in addition to all other registration fees provided by this act. Vehicles issued an antique vehicle license plate pursuant to the provisions of this subparagraph shall be exempt from the registration fee levied by paragraph 1 of subsection A of Section 1132 of this title;

14. Purple Heart Recipient License Plates - such plates shall be designed for any resident of this state who has been awarded the Purple Heart military decoration. Such persons may apply for a Purple Heart recipient license plate for one vehicle with a rated carrying capacity of one (1) ton or less.

The fee for such plate shall be One Dollar (\$1.00) and shall be in addition to all other registration fees required by the Oklahoma Vehicle License and Registration Act;

15. Pearl Harbor Survivor License Plates - such plates shall be designed for any resident of this state who can be verified by the United States Veteran's Administration or the Armed Forces of the United States as being:

- (a) a member of the United States Armed Forces on December 7, 1941,

- (b) stationed on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three (3) miles, and
- (c) a recipient of an honorable discharge from the United States Armed Forces.

Such person may apply for a Pearl Harbor Survivor license plate for one vehicle with a rated carrying capacity of one (1) ton or less.

The fee for such plate shall be One Dollar (\$1.00) and shall be in addition to all other registration fees required by the Oklahoma Vehicle License and Registration Act.

The Oklahoma Tax Commission shall design and make available to any person who is issued a Pearl Harbor Survivor License Plate a commemorative Pearl Harbor decal to commemorate the fiftieth anniversary of Pearl Harbor. Such decal shall include the language "Pearl Harbor 1941-1991" and shall be designed to be easily attached to a license plate. This decal shall be free of charge to those persons issued a Pearl Harbor Survivor License Plate;

16. Killed in Action License Plates - such plates shall be designed to honor members of the United States Armed Forces who were killed in action. The spouse of such deceased person, if said spouse has not remarried, may apply for a killed in action license plate upon presenting proper certification that such person was killed in action and that said person making the application is the unremarried spouse of such deceased person. The spouse may apply for a killed in action license plate for one vehicle with a rated carrying capacity of one (1) ton or less. The registration fee for such plate shall be One Dollar (\$1.00) and shall be in addition to all other fees required by the Oklahoma Vehicle Registration Act; and

17. University or College Supporter License Plates - such plates shall be designed and issued to any person wishing to demonstrate support to any state-supported university or college. The fee for such plate shall be Twenty-five Dollars (\$25.00) and shall be in addition to all other registration fees required by the Oklahoma Vehicle License and Registration Act, Section 1101 et seq. of this title. The twenty-five-dollar fee shall be apportioned pursuant to Section 1104.1 of this title.

Use of any vehicle possessing a special license plate for any purpose not specified in this section shall be grounds for revocation of the special license plate and registration certificate.

SECTION 6. AMENDATORY Section 24, Chapter 290, O.S.L. 1988 (47 O.S. Supp. 1990, Section 1140.1), is amended to read as follows:

Section 1140.1 A. Except as otherwise provided in this section, each motor license agent appointed after July 1, 1988, within a specific municipality shall be furnished a camera by the Department of Public Safety without charge if, based upon the number of driver's licenses issued during the preceding year, the total number of licenses issued shall average not less than one thousand two hundred (1,200) per year per camera within the municipality and not less than one thousand two hundred (1,200) per year per camera within the county; provided, each county shall have at least one motor license agent who shall be furnished a camera without charge.

B. Any motor license agent who has been furnished a camera without charge prior to July 1, 1988, shall continue to have such camera furnished without charge until a new motor license agent is appointed.

C. A motor license agent appointed after July 1, 1988, who is not entitled to be furnished a camera pursuant to the provisions of subsection A of this section may be furnished a camera upon signing an agreement with the Department of Public Safety to process a minimum of ~~three thousand (3,000)~~ one thousand two hundred (1,200) licenses per year or to pay the Department the sum of fifty cents (\$0.50) for each license under ~~three thousand (3,000)~~ one thousand two hundred (1,200) issued per year. For agreements entered into prior to the effective date of this act under which the payment was calculated based upon the difference between the number of licenses issued and three thousand (3,000), the payment shall be recalculated based upon the difference between the number of licenses issued and one thousand two hundred (1,200). The amount of the difference between the recalculated payment and any payment actually made by a motor license agent prior to the effective date of this act shall be refunded to the motor license agent.

D. For the purposes of this section, each motor license agent appointed after July 1, 1988, shall be considered a new agent, whether assets of another agency were inherited, purchased or otherwise acquired.

E. The furnishing of any camera shall be subject to availability from the vendor and, if limited, shall be allocated by priority according to subsections A, B and C of this section, in that order.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 294 of Title 64, unless there is created a duplication in numbering, reads as follows:

If any person responsible for paying oil and gas royalty to the Commissioners of the Land Office has paid, caused to be paid, pays or causes to be paid, to the Oklahoma Tax Commission, gross production tax pursuant to Section 1001 of Title 68 of the Oklahoma Statutes, petroleum excise tax pursuant to Section 1101 of Title 68 of the Oklahoma Statutes, excise tax on gas pursuant to Section 1102 of Title 68 of the Oklahoma Statutes, or conservation excise tax pursuant to Section 1108 of Title 68 of the Oklahoma Statutes, on said royalty, the Commissioners of the Land Office shall not recover from such person the taxes so paid.

SECTION 8. AMENDATORY 68 O.S. 1981, Section 217, as last amended by Section 12, Chapter 339, O.S.L. 1990 (68 O.S. Supp. 1990, Section 217), is amended to read as follows:

Section 217. (a) If any amount of tax imposed or levied by any state tax law, or any part of such amount, is not paid before such tax becomes delinquent, there shall be collected on the total delinquent tax interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

(b) Interest upon any amount of state tax determined as a deficiency, under the provisions of Section 221 of this ~~Code title~~, shall be assessed at the same time as the deficiency and shall be paid upon notice and demand of the Tax Commission at the rate of one and one-quarter percent (1 1/4%) per month from the date prescribed in the state tax law levying such tax for the payment thereof to the date the deficiency is assessed.

(c) If any tax due under state sales, use, tourism, mixed beverage gross receipts, waste tire, or motor fuel tax laws, or any part thereof, is not paid within fifteen (15) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid.

(d) If any tax due under any state tax law other than those specified in subsection (c) of this section, or any part thereof, is

not paid within thirty (30) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid.

(e) If any part of any deficiency, arbitrary or jeopardy assessment made by the Tax Commission, is based upon or occasioned by the taxpayer's negligence or by the failure or refusal of any taxpayer to file with the Tax Commission any report or return, as required by this ~~Code~~ title, or by any state tax law, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by letter, the said Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. For purposes of this subsection, "negligence" shall mean the consistent understatement of income, consistent understatement of receipts or a system of recordkeeping by the taxpayer that consistently results in an inaccurate reporting of tax liability.

(f) If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency, in addition to such deficiency, including interest as herein provided, shall be added, collected and paid.

(g) All penalties or interest imposed by this ~~Code~~ title, or any state tax law, shall be recoverable by the Tax Commission as a part of the tax with respect to which they are imposed, the penalties bearing interest as provided in this section for the tax, and all penalties and interest shall be apportioned as provided for the apportionment of the tax on which such penalties or interest are collected.

(h) Whenever an income tax refund is not paid to the taxpayer within ninety (90) days after the return is filed or due, whichever is later, with all documents as required by the Commission, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund, at the same rate specified for interest on delinquent tax payments. The payment of interest on refunds provided for by this section shall apply to tax year 1987 and subsequent tax years. The Tax Commission shall not be required to pay interest on an income tax refund which is applied, in whole or in part, to a prior year tax liability pursuant to Section 2385.17 of this title or upon an income tax refund applied, in whole or in part, to satisfy a debt owed to the Internal Revenue Service of the United States or to a state agency, including the Oklahoma Tax Commission, as provided by Section 205.2 of this title.

SECTION 9. AMENDATORY 68 O.S. 1981, Section 225, as amended by Section 12, Chapter 249, O.S.L. 1989 (68 O.S. Supp. 1990, Section 225), is amended to read as follows:

Section 225. (a) Any taxpayer aggrieved by any order, ruling, or finding of the Tax Commission directly affecting such taxpayer or aggrieved by a final order of the Tax Commission issued pursuant to subsection (g) of Section 221 of this title may appeal therefrom directly to the Supreme Court of Oklahoma. A taxpayer so desiring to appeal shall, within ten (10) days from the date of mailing to the taxpayer of any such order, ruling, or finding, file with the Tax Commission a written notice of his intention to appeal.

(b) Within thirty (30) days from the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer desiring to appeal shall file in the office of the Clerk of the Supreme Court a petition in error specifying the grounds upon which such appeal is based. At the same time the taxpayer shall request that the Tax Commission prepare for filing with the Supreme Court, within thirty (30) days, the record of the appeal, certified to by the Secretary of the Tax Commission, and consisting of any

citations, findings, judgments, motions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings, and evidence as the appealing parties and the Tax Commission may agree to be sufficient to present fully to the Court the questions involved. Upon request of the taxpayer, the Tax Commission shall furnish him a copy of the proceedings had in connection with the matter complained of.

(c) As a condition precedent to the right of the taxpayer to prosecute such an appeal, and as a jurisdictional prerequisite of the Supreme Court to entertain such appeal, it is specifically provided that, if the appeal be from an order of the Tax Commission assessing a tax or an additional tax, penalties, and interest, the taxpayer shall pay to the Tax Commission the amounts assessed and interest accrued through the date of payment. If, upon a final determination of the appeal the order assessing such tax, penalties, and interest is reversed or modified and it is determined that said tax or part thereof was erroneously or illegally assessed, said amounts so paid by the taxpayer, together with the interest thereon at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

(d) If the appeal is from an order of the Tax Commission or a district court denying a refund of taxes previously paid and if upon final determination of the appeal, the order denying the refund is reversed or modified, said taxes previously paid, together with interest thereon from the date of the filing of the petition in error at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

(e) Such refunds and interest thereon shall be paid by the Tax Commission out of monies in the Tax Commission clearing account from subsequent collections from the same source as the original tax assessment, provided that in the event there are insufficient funds for refunds from subsequent collections from the same source, the refund shall be paid by the Tax Commission from monies appropriated by the Legislature to the special refund reserve account for such purposes as hereinafter provided. There is hereby created within the official depository of the State Treasury an agency special account for the Tax Commission for the purpose of making such refunds as may be required under this section, not otherwise provided. This account shall consist of monies appropriated by the Legislature for the purpose of making refunds under this section.

~~(e)~~ (f) In lieu of the cash payment provided for in subsection (c) of this section, the taxpayer may file with the Tax Commission a bond in double the amount of the tax, additional tax, penalties and interest so assessed, conditioned that he will faithfully and diligently prosecute such appeal to a final determination, and in the event the order of the Tax Commission be affirmed on appeal, will pay such tax, additional tax, penalties and interest, and costs so assessed against him.

~~(f)~~ (g) If the appeal be from an order, judgment, finding or ruling of the Tax Commission other than one assessing a tax and from which a right of appeal is not otherwise specifically provided for in this article, any aggrieved taxpayer may appeal from any such order, judgment, finding or ruling as provided in this section and may supersede the effect of such order, judgment, ruling or finding by filing with the Tax Commission a bond in an amount fixed by the Tax Commission payable to the State of Oklahoma conditioned that such appeal will faithfully and diligently be prosecuted to a final determination, and in the event the order, judgment, ruling or

finding of the Tax Commission be affirmed on appeal, that such person will immediately conform thereto.

~~(g)~~ (h) This section shall be construed to provide to the taxpayer a legal remedy by action at law in any case where a tax, or the method of collection or enforcement thereof, or any order, ruling, finding or judgment of the Tax Commission is complained of, or is sought to be enjoined in any action in any court of this state or the United States of America.

SECTION 10. AMENDATORY 68 O.S. 1981, Section 304, as amended by Section 14, Chapter 47, O.S.L. 1988 (68 O.S. Supp. 1990, Section 304), is amended to read as follows:

Section 304. (a) Every manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes in this state, as a condition of carrying on such business, shall annually secure from the Tax Commission a written license, and shall pay therefor an annual fee of Twenty-five Dollars (\$25.00). This license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Persons operating more than one place of business must secure a license for each place of business. Place of business shall be construed to include the place where orders are received, or where cigarettes are sold. If cigarettes are sold on or from any vehicle, the vehicle shall constitute a place of business and the regular license fee of Twenty-five Dollars (\$25.00) shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular Twenty-five Dollars (\$25.00) is paid, the annual fee for the license with respect to such vehicle shall be only Ten Dollars (\$10.00).

Provided, that no license for the sale of cigarettes or tobacco shall be issued to any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a place of business within the State of Oklahoma at which all products sold within this state are stocked, sold and delivered, and from which vehicles classed as a "place of business", as hereinabove defined, are loaded and operated, and where all records and accounts are kept, and necessary accounting procedures are performed; but these provisions shall not apply to manufacturers, wholesalers, warehousemen, jobbers or distributors having a place of business located in another state where such state does not require manufacturers, wholesalers, warehousemen, jobbers or distributors who have their place of business in Oklahoma to maintain a warehouse or place of business in such other state in order to secure a license to do business in such state.

Provided, further, that the Oklahoma Tax Commission shall not authorize the use of a stamp-metering device by any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a warehouse or wholesale establishment or place of business within the State of Oklahoma from which cigarettes are received, stocked and sold and where such metering device is kept and used; but the Tax Commission may, in its discretion, permit the use of such metering device by manufacturers, wholesalers, warehousemen, jobbers or distributors of cigarettes residing wholly within another state where such state permits a licensed Oklahoma resident, manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes the use of the metering device of such state without first requiring that such manufacturer, wholesaler, warehouseman, jobber or distributor establish a place of business in such other state. The provisions of this paragraph relating to metering devices shall not apply to states which do not require the affixing of tax stamps to packages of cigarettes before same are offered for sale in such states.

(b) Every retailer in this state, as a condition of carrying on such business, shall annually secure from the Tax Commission a license and shall pay therefor an annual fee of Ten Dollars (\$10.00). Such license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Every person operating under such license as a retailer and who owns or operates more than one place of business must secure a license for each place of business. Place of business shall be construed to include places where orders are received or where cigarettes are sold.

(c) Every distributing agent shall, as a condition of carrying on such business, pursuant to written application on a form prescribed by and in such detailed form as the Tax Commission may require, annually secure from the Tax Commission a license, and shall pay therefor an annual fee of One Hundred Dollars (\$100.00). An application shall be filed and a license obtained for each place of business owned or operated by a distributing agent. The license, which will be for the ensuing year, shall be consecutively numbered, nonassignable and nontransferable, and shall authorize the storing and distribution of unstamped cigarettes within this state when such distribution is made upon interstate orders only.

(d) (1) All wholesale, retail, and distributing agent's licenses shall be nonassignable and nontransferable from one person to another person. Such licenses may be transferred from one location to another location after an application has been filed with the Commission requesting such transfer and after the approval of the Commission.

(2) Wholesale, retail, and distributing agent's licenses shall be applied for on a form prescribed by the Commission ~~and must be properly acknowledged by a notary public or by an agent of the Commission.~~ Any person operating as a wholesaler, retailer, or distributing agent must at all times have an effective unexpired license which has been issued by the Commission. If any such person or licensee continues to operate as such on a license issued by the Commission which has expired, or operates without ever having obtained from the Commission such license, he shall, after becoming delinquent for a period in excess of fifteen (15) days pay to the Commission, in addition to the annual license fee, a penalty of twenty-five cents (\$0.25) per day on each delinquent license for each day so operated in excess of fifteen (15) days. The penalty provided for herein shall not exceed the annual license fee for such license. Cigarettes may not be sold through a vending machine and over a counter under one license. In the event a person desires to sell cigarettes over the counter and by means of a vending machine it will be necessary that a separate license be obtained for the sale of cigarettes at his counter and for the sale of cigarettes by means of the vending machine.

SECTION 11. AMENDATORY Section 16, Chapter 345, O.S.L. 1985 (68 O.S. Supp. 1990, Section 1101.1), is amended to read as follows:

Section 1101.1 The Oklahoma Tax Commission shall adopt rules and regulations which establish guidelines for the determination of property exempt from ad valorem taxation pursuant to the provisions of subsections ~~(g)~~ (j) and ~~(h)~~ (k) of Section 1001 of ~~Title 68 of the Oklahoma Statutes~~ this title. Said guidelines shall include, but are not limited to, the following:

1. "Producing leases" means:
  - a. wells which have had production during the previous calendar year which is subject to the gross production tax levied by Section 1001 of ~~Title 68 of the Oklahoma~~

~~Statutes~~ this title and which have not been abandoned or required to be plugged as required by law on or before January 1 of the year for which the assessment or valuation is made, or

- b. wells which have had production which is subject to the gross production tax levied by Section 1001 of ~~Title 68 of the Oklahoma Statutes~~ this title during at least one of the first three (3) months of the year for which the assessment or valuation is made;

2. "Payment of gross production tax" means payment of the tax levied by Section 1001 of ~~Title 68 of the Oklahoma Statutes~~ this title on production during the calendar year immediately prior to January 1 of the year for which the assessment or valuation is made or on production during at least one of the first three (3) months of the year for which the assessment or valuation is made; and

3. Property exempt from ad valorem tax pursuant to the provisions of subsections ~~(g)~~ (j) and ~~(h)~~ (k) of Section 1001 of ~~Title 68 of the Oklahoma Statutes~~ this title shall include, but is not limited to, lease production tanks, lease production meters, and lease disposal systems which are not for commercial purposes. Such exempt property shall remain exempt as long as the property is essential to the production of oil and gas in commercial quantities. The county assessor shall be notified when such property becomes nonexempt.

SECTION 12. AMENDATORY 68 O.S. 1981, Section 1212, as last amended by Section 12, Chapter 356, O.S.L. 1985 (68 O.S. Supp. 1990, Section 1212), is amended to read as follows:

Section 1212. (a) If the report herein required and the tax levied is not filed and paid within the time provided under subsection (c) of Section 1208 of this title, the Tax Commission shall levy and collect a penalty for such delinquency in the amount of ten percent (10%) of the tax due. Such penalty shall be collected and apportioned in the same manner as is the tax itself, and 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) Any person who attempts or purports to exercise any of the rights, privileges or powers of any such domestic corporation, association or organization, or who does or attempts to do any business in the state in behalf of any such foreign corporation, association or organization, without having first obtained a license therefor, as provided herein, or after any such license so obtained shall have been canceled, forfeited, or expired, shall be guilty of a misdemeanor.

(c) 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 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.

(d) Notice of such suspension and forfeiture shall be forwarded by ~~registered~~ 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.

(e) 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.

(f) 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.

SECTION 13. AMENDATORY 68 O.S. 1981, Section 1352, as last amended by Section 3, Chapter 167, O.S.L. 1989 (68 O.S. Supp. 1990, Section 1352), is amended to read as follows:

Section 1352. Definitions.

As used in this article:

(A) "Business" means any activity engaged in or caused to be engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect.

(B) "Commission" or "Tax Commission" means the Oklahoma Tax Commission.

(C) "Consumer" or "user" means a person to whom a taxable sale of tangible personal property is made or to whom a taxable service is furnished. "Consumer" or "user" includes all contractors to whom a taxable sale of materials, supplies, equipment, or other tangible

personal property is made or to whom a taxable service is furnished to be used or consumed in the performance of any contract.

(D) "Contractor" means any person who performs any improvement upon real property and who, as a necessary and incidental part of performing such improvement, incorporates tangible personal property belonging to or purchased by said person into the real property being improved.

(E) "Established place of business" means the location at which any person regularly engages in, conducts, or operates a business in a continuous manner for any length of time, that is open to the public during the hours customary to such business, in which a stock of merchandise for resale is maintained, and which is not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent tax liability accrued under this article.

(F) "Gross receipts" or "gross proceeds" means the total amount of consideration for the sale of any tangible personal property or service taxable under this article, whether the consideration is in money or otherwise. "Gross receipts" or "gross proceeds" shall include, but not be limited to:

- (1) Cash paid, and
- (2) Any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment, and
- (3) Any amount for which credit or a discount is allowed by the vendor, and
- (4) Any amount of deposit paid for transfer of possession, and
- (5) Any value of a trade-in or other property accepted by the vendor as consideration, except for used or trade-in parts excluding tires or batteries for a motor vehicle, bus, motorcycle, truck-tractor, trailer, semitrailer or implement of husbandry, as defined in Sections 1-105, 1-125, 1-134, 1-135, 1-162, 1-180 and 1-183 of Title 47 of the Oklahoma Statutes, if the used or trade-in parts are taken in trade as exchange on the sale of new or rebuilt parts.

There shall not be any deduction from the gross receipts or gross proceeds on account of cost of the property sold, labor service performed, interest paid, or losses, or of any expenses whatsoever, whether or not the tangible personal property sold was produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale.

(G) "Maintaining a place of business in this state" means and includes having or maintaining in this state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other physical place of business, or having agents operating in this state, whether the place of business or agent is within this state temporarily or permanently or whether the person or subsidiary is authorized to do business within this state.

(H) "Manufacturing" means and includes every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties which it has when transferred by the manufacturer to another.

(I) "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any

other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number.

(J) "Point of sale" means, for purposes of administration of any municipal or county sales tax levied in this state, the physical location at which a sale of tangible personal property or services taxable under this article is made in the course of the vendor's business, to be determined by one of the following:

- (1) If the consumer identifies tangible personal property or services and pays the sale price, in cash or otherwise, at a place of business maintained by the vendor, the point of sale shall be the location of such place of business, regardless of the place of delivery;
- (2) If a consumer, from a location outside the jurisdiction in which the vendor is engaged in business, orders or requests, by mail or telephonic or telegraphic device, to buy tangible personal property or services, the point of sale shall be the place of delivery, regardless of the manner of transportation;
- (3) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, the point of sale shall be the place where the solicited offer to buy was accepted or approved by the vendor if the consumer does not have a right to accept or reject delivery;
- (4) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, and the consumer has a right to accept or reject delivery, the point of sale shall be the place of delivery;
- ~~(5) If the sale is of a subscription to a newspaper or periodical, the point of sale shall be the principal place of business in this state of the newspaper or periodical; or~~
- ~~(6)~~ (5) If the sale is of motor fuel or diesel fuel by a Group Five vendor, the point of sale shall be the location in the state at which the Group Five vendor withdrew the motor fuel or diesel fuel from the primary fuel storage facility of such vendor.

(K) "Repairman" means any person who performs any repair service upon tangible personal property of the consumer, whether or not said repairman, as a necessary and incidental part of performing the service, incorporates tangible personal property belonging to or purchased by said repairman into the tangible personal property being repaired.

(L) "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this subsection, including but not limited to:

- (1) The exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property;
- (2) The disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing;

- (3) The sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement, or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities;
  - (4) The furnishing or rendering of services taxable under this article; and
  - (5) Any use of motor fuel or diesel fuel by a licensed distributor, as defined in Section 501 of this title, upon which sales tax has not previously been paid, for purposes other than to propel motor vehicles over the public highways of this state. Motor fuel or diesel fuel purchased outside the state and used for purposes other than to propel motor vehicles over the public highways of this state shall not constitute a sale within the meaning of this paragraph.
- (M) "Sale for resale" means:
- (1) A sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it within the geographical limits of the United States of America or its territories or possessions, in the normal course of business either in the form or condition in which it is purchased or as an attachment to or integral part of other tangible personal property; or
  - (2) A sale of tangible personal property to a purchaser for the sole purpose of the renting or leasing, within the geographical limits of the United States of America or its territories or possessions, of the tangible personal property to another person by the purchaser, but not if incidental to the renting or leasing of real estate; or
  - (3) A sale of tangible goods and products within this state if, simultaneously with the sale, the vendor issues an export bill of lading, or other documentation that the point of delivery of such goods for use and consumption is in a foreign country and not within the territorial confines of the United States.
- (N) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses.
- (O) "Taxpayer" means any person liable to pay a tax imposed by this article.
- (P) "Tax period" or "taxable period" means the calendar period or the taxpayer's fiscal period for which a taxpayer has obtained a permit from the Tax Commission to use a fiscal period in lieu of a calendar period.
- (Q) "Tax remitter" means any person required to collect, report, or remit the tax imposed by this article. A tax remitter who fails, for any reason, to collect, report, or remit said tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by this article.
- (R) "Vendor" means:
- (1) Any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by this article; or
  - (2) Any person maintaining a place of business in this state and making sales of tangible personal property

or services, whether at the place of business or elsewhere, to persons within this state, the gross receipts or gross proceeds from which are taxed by this article; or

- (3) Any person who solicits business by employees, independent contractors, agents, or other representatives or by distribution of catalogs or other advertising matter, and thereby makes sales to persons within this state of tangible personal property or services, the gross receipts or gross proceeds from which are taxed by this article.

SECTION 14. AMENDATORY 68 O.S. 1981, Section 1354, as last amended by Section 1, Chapter 280, O.S.L. 1990 (68 O.S. Supp. 1990, Section 1354), is amended to read as follows:

Section 1354. Tax Levy - Rate - Sales subject to tax.

1. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

(A) Tangible personal property, except newspapers and periodicals;

(B) Natural or artificial gas, electricity, ice, steam, or any other utility or public service, except water, sewage and refuse and those specifically exempt pursuant to the provisions of Section 1357 of this title;

(C) Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation companies, taxicab companies, pullman car companies, airlines, and other means of transportation for hire;

(D) Service by telephone or telegraph companies to subscribers or users, including transmission of messages, whether local or long distance, and all services and rental charges in connection with transmission of any message;

(E) Printing or printed matter of all types, kinds, or character and, except for services of printing, copying or photocopying performed by a privately owned scientific and educational library sustained by monthly or annual dues paid by members sharing the use of such services with students interested in the study of geology, petroleum engineering or related subjects, any service of printing or overprinting, including the copying of information by mimeograph, multigraph, or by otherwise duplicating written or printed matter in any manner, or the production of microfiche containing information ~~on~~ from magnetic tapes or other media furnished by customers;

(F) Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp;

(G) Service of furnishing storage or parking privileges by auto hotels or parking lots;

(H) Computer hardware, software, coding sheets, cards ~~or~~, magnetic tapes or other media on which prewritten programs have been coded, punched, or otherwise recorded, including the gross receipts from the licensing of software programs;

(I) Foods, confections, and all drinks sold or dispensed by hotels, restaurants, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;

(J) Advertising of all kinds, types, and characters, including any and all devices used for advertising purposes and the servicing of any advertising devices except those specifically exempt pursuant to the provisions of Section 1357 of this title;

(K) Dues or fees to clubs including free or complimentary dues or fees which have a value equivalent to the charge that would have otherwise been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

(L) Tickets for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities, including free or complimentary admissions which have a value equivalent to the charge that would have otherwise been made;

(M) Charges made for the privilege of entering or engaging in any kind of activity, such as tennis, racquetball, or handball, when spectators are charged no admission fee;

(N) Charges made for the privilege of using items for amusement, sports, entertainment, or recreational activity, such as trampolines or golf carts;

(O) The rental of equipment for amusement, sports, entertainment, or other recreational activities, such as bowling shoes, skates, golf carts, or other sports or athletic equipment;

(P) The gross receipts from sales from any vending machine without any deduction for rental to locate the vending machine on the premises of a person who is not the owner or any other deductions therefrom;

(Q) The gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the vendor to launder, clean, repair, or otherwise service the rented or leased property on a regular basis, without any deduction for the cost of the service rendered. If the rental or lease charge is based on the retail value of the property at the time of making the rental or lease agreement and the expected life of the property, and the rental or lease charge is separately stated from the service cost in the statement, bill, or invoice delivered to the consumer, the cost of services rendered shall be deducted from the gross receipts or gross proceeds;

~~(R) Any licensing agreement, rental, lease, or other device or instrument whereby rights to possess or exhibit motion pictures or filmed performances or rights to receive images, pictures, or performances for telecast by any method are transferred. Persons regularly engaged in the business of exhibiting motion pictures for which the sale of tickets or admissions is taxed pursuant to the provisions of this section shall not be deemed to be consumers or users in respect to the licensing or exhibiting of copyrighted motion picture features, shorts, cartoons, and scenes from copyrighted features, and the sale or licensing of such films shall not be considered a sale within the purview of the Oklahoma Sales Tax Code;~~

~~(S)~~ Flowers, plants, shrubs, trees, and other floral items, whether or not produced by the vendor, sold by persons engaged in florist or nursery business in this state, including all orders taken by an Oklahoma business for delivery in another state. All orders taken outside this state for delivery within this state shall not be subject to the taxes levied in this section;

~~(T)~~ (S) Tangible personal property sold to persons, peddlers, solicitors, or other salesmen, for resale when there is likelihood that this state will lose tax revenue due to the difficulty of enforcing the provisions of the Oklahoma Sales Tax Code because of:

- (1) the operation of the business;
- (2) the nature of the business;
- (3) the turnover of independent contractors;

- (4) the lack of place of business in which to display a permit or keep records;
- (5) lack of adequate records;
- (6) the fact that the persons are minors or transients;
- (7) the fact that the persons are engaged in service businesses; or
- (8) any other reasonable reason;

~~(U)~~ (T) Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale; however, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection;

~~(V)~~ (U) Any taxable services and tangible personal property sold to persons who are primarily engaged in selling their services, such as repairmen, hereby declared to be sales to consumers or users.

2. All solicitations or advertisements in print or electronic media by Group Three vendors, for the sale of tangible property to be delivered within this state, shall contain a notice that the sale is subject to Oklahoma sales tax, unless the sale is exempt from such taxation.

SECTION 15. AMENDATORY 68 O.S. 1981, Section 1357, as last amended by Section 4 of Enrolled Senate Bill No. 1 of the 1st Extraordinary Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1357. Exemption - General.

There are hereby specifically exempted from the tax levied by this article:

(A) Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

(B) Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;

(C) Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in this article. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase

items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salesmen who do not have an established place of business and a sales tax permit. The exemption provided by this subsection shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by this article. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

(D) Sales of advertising space in newspapers and periodicals and billboard advertising service, and any advertising through the electronic media, including radio, television and cable television;

(E) Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that he is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

(F) Sale of natural or artificial gas and electricity when sold exclusively for residential use after December 31, 1980. Provided, nothing herein shall be construed as limiting or prohibiting cities and towns, and counties levying a tax pursuant to the provisions of Section 5 of Enrolled House Bill No. 1001 of the 1st Extraordinary Session of the 43rd Oklahoma Legislature, from levying and collecting taxes on the sale of natural or artificial gas and electricity. Provided further, any sales tax levied by a city or town, or a county levying a tax pursuant to the provisions of Section 5 of Enrolled House Bill No. 1001 of the 1st Extraordinary Session of the 43rd Oklahoma Legislature, on natural or artificial gas and electricity shall be in effect regardless of ordinance or contractual provisions referring to previously imposed state sales tax on such items;

(G) ~~Sales~~ In addition to the exemptions authorized by Section 16 of this act, sales of medicines or drugs prescribed for the treatment of human beings by a person licensed to prescribe the medicines or drugs. Provided, this exemption shall not apply to proprietary or patent medicines as defined by Section 353.1 of Title 59 of the Oklahoma Statutes;

(H) Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

(I) Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

(J) Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the State of Oklahoma in the federal food stamp program;

(K) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment to a new or expanding business. In order to qualify for the exemption provided for by this subsection, the sale of said items shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00). For purposes of this subsection, qualified purchaser means any new or expanding business which adds at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission. Only sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment made within thirty-six (36) months of the effective date of this act shall be eligible for the exemption provided by this subsection;

(L) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this subsection, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this subsection, the cost of said items purchased by the qualified aircraft maintenance or manufacturing facility shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00);

(M) Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in subsection (L) of this section. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of such a facility shall be considered sales made to a qualified aircraft maintenance or manufacturing facility; and

(N) Effective July 1, 1993, and thereafter, sales of repair machinery, repair equipment and repair parts, and fuel, oil, lubricants and other substances used for the operation and maintenance of such repair machinery, repair equipment and repair parts, all of which are to be used directly within a nongovernmental aircraft maintenance facility which is primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis and:

1. Which has been certified by the Oklahoma Employment Security Commission as employing at least two thousand (2,000) full-time-equivalent employees; or

2. Whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees and which is

owned or leased by an aircraft manufacturing facility which employs at least two thousand (2,000) full-time-equivalent employees in this state as certified by the Oklahoma Employment Security Commission.

Provided, the provisions of this subsection shall be null and void unless and until there are two (2) or more such facilities located in this state.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1357.4 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Effective July 1, 1992, there are hereby exempted from the tax levied by this article, Section 1351 et seq. of Title 68 of the Oklahoma Statutes, sales of drugs or medicine for the treatment of human beings, medical appliances, medical devices and other medical equipment including but not limited to prosthetic devices, as defined in subsection C of this section, and durable medical equipment, as defined in subsection D of this section, when administered or distributed by a practitioner, as defined in subsection B of this section, who is authorized by law to administer or distribute such items or when purchased or leased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner who is authorized by law to prescribe such items and when the cost of such items is reimbursable to the practitioner, supplier or the individual under the Medicare or Medicaid Program.

B. The term "practitioner" means a physician, osteopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law.

C. The term "prosthetic device" means a device which replaces a missing part or function of the human body and shall include any supplies physically connected to such device.

D. The term "durable medical equipment" means equipment which:

1. Can withstand repeated use;
2. Is primarily and customarily used to serve a medical purpose;

3. Generally is not useful to a person in the absence of illness or injury; and

4. Is appropriate for use in the home.

SECTION 17. AMENDATORY 68 O.S. 1981, Section 1359, as last amended by Section 1 of Enrolled House Bill No. 1517 of the 1st Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1359. Exemptions. Manufacturers.

There are hereby specifically exempted from the tax levied by this article:

(A) Goods, wares, merchandise, and property purchased for the purpose of being used or consumed in the process of manufacturing, compounding, processing, assembling, or preparing for sale a finished article and such goods, wares, merchandise, or property become integral parts of the manufactured, compounded, processed, assembled, or prepared products or are consumed in the process of manufacturing, compounding, processing, assembling, or preparing products for resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

(B) Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by Section 529 of this title;

(C) Sale of machinery and equipment purchased and used by persons establishing new manufacturing plants in Oklahoma, and machinery and equipment purchased or equipment built on site and used by persons in the operation of manufacturing plants already established in Oklahoma. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

(D) Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers, except returnable soft drink bottles and the cartons, crates, pallets, and containers used to transport returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this Code. And, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not necessary or absolutely essential to the sale of the sold merchandise;

(E) Sales of or transfers of title to or possession of any containers, after June 30, 1987, used or to be used more than once and which are ordinarily known as returnable containers and which do or will contain beverages defined by paragraphs 4 and 14 of Section 506 of Title 37 of the Oklahoma Statutes, or water for human consumption and the cartons, crates, pallets, and containers used to transport such returnable containers;

(F) Sale of tangible personal property manufactured in Oklahoma when sold by the manufacturer to a person who transports it to another state for immediate and exclusive use in some other state;

(G) Machinery, equipment, fuels and chemicals incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of controlled industrial waste at treatment facilities specifically permitted pursuant to the Controlled Industrial Waste Disposal Act, Section 1-2001 et seq. of Title 63 of the Oklahoma Statutes, and operated at the place of waste generation, or facilities approved by the State Department of Health for the cleanup of a site of contamination. The term controlled industrial waste may include low-level radioactive waste for the purpose of this subsection;

(H) Sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to a qualified manufacturer. For the purposes of this subsection, "qualified manufacturer" means any enterprise whose total cost of construction material for a new or expanded facility exceeds the sum of Five Million Dollars (\$5,000,000.00) and at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, are added as a direct result of the new or expanded facility. Provided however, where the total cost of

construction material for a new or expanded facility exceeds Ten Million Dollars (\$10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this subsection exceeds the sum of Fifty Million Dollars (\$50,000,000.00) the required number of new full-time-equivalent employees under this subsection shall be reduced to seventy-five (75) new employees. The employment requirement of this subsection can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a manufacturing facility that is related to or supported by the new or expanded manufacturing facility so long as both facilities are owned by one person or business entity. For purposes of this section "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code, except that up to ten percent (10%) of the square feet of such building may be devoted to office space used to provide clerical support for the manufacturing operation. Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this subsection;

(I) Sales of tangible personal property purchased and used by a licensed radio or television station in broadcasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. This exemption begins with the equipment used in producing live programming or the electronic equipment directly behind the satellite receiving dish or antenna, and ends with the transmission of the broadcast signal from the broadcast antenna system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations; and

(J) Sales of tangible personal property purchased or used by a licensed cable television operator in cablecasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a cablecast signal or is such that the failure of the machinery or equipment to operate would cause cablecasting to cease. This exemption begins with the equipment used in producing local programming or the electronic equipment behind the satellite receiving dish, microwave tower or antenna, and ends with the transmission of the signal from the cablecast head-end system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations.

SECTION 18. AMENDATORY 68 O.S. 1981, Section 1363, as last amended by Section 7, Chapter 167, O.S.L. 1989 (68 O.S. Supp. 1990, Section 1363), is amended to read as follows:

Section 1363. Classification of vendors.

For the purpose of this article, all vendors are classified into five groups:

(1) Group One, vendors who are regularly and continuously engaged in a business at an established place of business and make sales subject to this article;

(2) Group Two, vendors who occasionally make sales or become subject to this article;

(3) Group Three, ~~vendors who are engaged in a business in this state, and make sales incidental to said business which are subject to this article, or~~ vendors who are transient persons, firms or corporations and make seasonal sales or in any manner become subject to this article, or vendors, either within or without this state, who make sales, subject to this article, through peddlers, solicitors or other salesmen who do not have established places of business in this state;

(4) Group Four, vendors who continuously, regularly or systematically engage in retail sales to the Oklahoma consumer by solicitation through display of products by advertisement in newspapers, or radio or television media located in this state and make sales subject to this article; or vendors who continuously, regularly or systematically engage in retail sales to the consumer within Oklahoma by solicitation by advertisement through mail order or catalog publications; and

(5) Group Five, vendors who hold a valid distributor's license pursuant to Section 510 of this title remitting sales tax based upon the use of motor fuel or diesel fuel as a sale defined pursuant to Section 1352 of this title.

SECTION 19. AMENDATORY Section 2, Chapter 174, O.S.L. 1990 (68 O.S. Supp. 1990, Section 1503.1), is amended to read as follows:

Section 1503.1 The following coin-operated vending devices shall be exempt from the provisions of this article, Section 1501 et seq. of this title:

1. All coin-operated vending devices owned by and located in a public or private school, a church, or a governmental entity;

2. All coin-operated vending devices which dispense only newspapers or periodicals; ~~and~~

3. All coin-operated vending devices which dispense only postage stamps; and

4. All coin-operated vending devices installed on federal military bases.

SECTION 20. AMENDATORY 68 O.S. 1981, Section 2358, as last amended by Section 1 of Enrolled Senate Bill No. 476 of the 1st Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 2358. For all tax years beginning after December 31, 1981, taxable income and adjusted gross income shall be adjusted to arrive at Oklahoma taxable income and Oklahoma adjusted gross income as required by this section.

A. The taxable income of any taxpayer shall be adjusted to arrive at Oklahoma taxable income for corporations and Oklahoma adjusted gross income for individuals, as follows:

1. There shall be added interest income on obligations of any state or political subdivision thereto which is not otherwise exempted pursuant to other laws of this state, to the extent that said interest is not included in taxable income and adjusted gross income.

2. There shall be deducted amounts included in such income that the state is prohibited from taxing because of the provisions of the Federal Constitution, the State Constitution, federal laws or laws of Oklahoma.

3. The amount of any federal net operating loss deduction shall be adjusted as follows:

a. For carryovers and carrybacks to taxable years beginning before January 1, 1981, the amount of any net operating loss deduction allowed to a taxpayer for federal income tax purposes shall be reduced to an

amount which is the same portion thereof as the loss from sources within this state, as determined pursuant to this section and Section 2362 of this title, for the taxable year in which such loss is sustained is of the total loss for such year;

- b. For carryovers and carrybacks to taxable years beginning after December 31, 1980, the amount of any net operating loss deduction allowed for the taxable year shall be an amount equal to the aggregate of the Oklahoma net operating loss carryovers and carrybacks to such year. Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal Revenue Code as modified by the Oklahoma Income Tax Act and shall be allowed without regard to the existence of a federal net operating loss. The years to which such losses may be carried shall be determined by reference to Section 172 of the Internal Revenue Code, except that losses which are not actually utilized shall not reduce the carryover.

4. Items of the following nature shall be allocated as indicated. Allowable deductions attributable to items separately allocable in subparagraphs a, b and c of this paragraph, whether or not such items of income were actually received, shall be allocated on the same basis as those items:

- a. Income from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property;
- b. Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer, except that:
  - (1) where such property has acquired a nonunitary business or commercial situs apart from the domicile of the taxpayer such income shall be allocated in accordance with such business or commercial situs; a resident trust or resident estate shall be treated as having a separate commercial or business situs insofar as undistributed income is concerned, but shall not be treated as having a separate commercial or business situs insofar as distributed income is concerned,
  - (2) income from such property which is required to be allocated pursuant to the provisions of paragraph 5 of this subsection shall be allocated as herein provided;
- c. Net income or loss from a business activity which is not a part of business carried on within or without the state of a unitary character shall be separately allocated to the state in which such activity is conducted;
- d. In the case of a manufacturing or processing enterprise the business of which in Oklahoma consists solely of marketing its products by:
  - (1) sales having a situs without this state, shipped directly to a point from without the state to a

- purchaser within the state, commonly known as interstate sales,
- (2) sales of the product stored in public warehouses within the state pursuant to "in transit" tariffs, as prescribed and allowed by the Interstate Commerce Commission, to a purchaser within the state,
  - (3) sales of the product stored in public warehouses within the state where the shipment to such warehouses is not covered by "in transit" tariffs, as prescribed and allowed by the Interstate Commerce Commission, to a purchaser within or without the state;

The Oklahoma net income shall, at the option of the taxpayer, be that portion of the total net income of the taxpayer for federal income tax purposes derived from the manufacture and/or processing and sales everywhere as determined by the ratio of the sales defined in this section made to the purchaser within the state to the total sales everywhere. The term public warehouse as used in this subparagraph means a licensed public warehouse, the principal business of which is warehousing merchandise for the public;

- e. In the case of insurance companies, Oklahoma taxable income shall be taxable income of the taxpayer for federal tax purposes, as adjusted for the adjustments provided pursuant to the provisions of paragraphs 1 and 2 of this subsection, apportioned as follows:
  - (1) except as otherwise provided by division (2) of this subparagraph, taxable income of an insurance company for a taxable year shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance on property or risks in this state, and the denominator of which is the direct premiums written for insurance on property or risks everywhere. For purposes of this subsection, the term direct premiums written means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Oklahoma Insurance Commissioner in the form approved by the National Association of Insurance Commissioners, or such other form as may be prescribed in lieu thereof,
  - (2) if the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the taxable income of such company shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the sum of (a) direct premiums written for insurance on property or risks in this state, plus (b) premiums written for reinsurance accepted in respect of property or risks in this state, and the denominator of which is the sum of (c) direct premiums written for insurance on property or risks everywhere, plus (d) premiums written for reinsurance accepted in respect of property or risks everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in

respect of property or risks in this state, whether or not otherwise determinable, may at the election of the company be determined on the basis of the proportion which premiums written for insurance accepted from companies commercially domiciled in Oklahoma bears to premiums written for reinsurance accepted from all sources, or alternatively in the proportion which the sum of the direct premiums written for insurance on property or risks in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.

- f. In the case of a commercial airline that operates an aircraft maintenance facility in this state, as described in subsection (N) of Section 1357 of this title, as amended by Section 4 of this act, for tax years beginning after December 31, 1993, the Oklahoma taxable income of the enterprise shall be, at the option of the taxpayer, determined by multiplying the federal taxable income of the taxpayer, as adjusted by the provisions of this section, by a fraction; provided, the provisions of this subparagraph shall be null and void unless and until there are two (2) or more such facilities located in this state. The numerator of the fraction shall be the air miles traveled in the State of Oklahoma and the denominator shall be the total air miles traveled. "Air miles traveled in the State of Oklahoma" shall mean the number of miles completed from the point where an aircraft leaves a landing area, terminal, airport or heliport in the State of Oklahoma to the point where it crosses the border of this state and the number of miles computed from the point where an aircraft crosses the border of this state to the point where it comes to rest at a landing area, terminal, airport or heliport in the State of Oklahoma.

5. The net income or loss remaining after the separate allocation in paragraph 4 of this subsection, being that which is derived from a unitary business enterprise, shall be apportioned to this state on the basis of the arithmetical average of three factors consisting of property, payroll and sales or gross revenue enumerated as subparagraphs a, b and c of this paragraph. Net income or loss as used in this paragraph includes that derived from patent or copyright royalties, purchase discounts, and interest on accounts receivable relating to or arising from a business activity, the income from which is apportioned pursuant to this subsection, including the sale or other disposition of such property and any other property used in the unitary enterprise. Deductions used in computing such net income or loss shall not include taxes based on or measured by income.

- a. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property everywhere owned or rented and used during the tax period.

- (1) Property, the income from which is separately allocated in paragraph 4 of this subsection, shall not be included in determining this fraction. The numerator of the fraction shall include a portion of the investment in transportation and other equipment having no fixed situs, such as rolling stock, buses, trucks and trailers, including machinery and equipment carried thereon, airplanes, salesmen's automobiles and other similar equipment, in the proportion that miles traveled in Oklahoma by such equipment bears to total miles traveled,
  - (2) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals,
  - (3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Tax Commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property;
- b. The payroll factor is a fraction, the numerator of which is the total compensation for services rendered in the state during the tax period, and the denominator of which is the total compensation for services rendered everywhere during the tax period. Compensation as used in this subsection means those paid-for services to the extent related to the unitary business but does not include officers' salaries, wages and other compensation.
- (1) In the case of a transportation enterprise, the numerator of the fraction shall include a portion of such expenditure in connection with employees operating equipment over a fixed route, such as trainmen, airline pilots, or bus drivers, in this state only a part of the time, in the proportion that mileage traveled in Oklahoma bears to total mileage traveled by such employees,
  - (2) In any case the numerator of the fraction shall include a portion of such expenditures in connection with itinerant employees, such as traveling salesmen, in this state only a part of the time, in the proportion that time spent in Oklahoma bears to total time spent in furtherance of the enterprise by such employees;
- c. The sales factor is a fraction, the numerator of which is the total sales or gross revenue of the taxpayer in this state during the tax period, and the denominator of which is the total sales or gross revenue of the taxpayer everywhere during the tax period. Sales as used in this subsection does not include sales or gross revenue which are separately allocated in paragraph 4 of this subsection.
- (1) Sales of tangible personal property have a situs in this state if the property is delivered or shipped to a purchaser other than the United

States Government, within this state regardless of the FOB point or other conditions of the sale; or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (a) the purchaser is the United States Government or (b) the taxpayer is not doing business in the state of the destination of the shipment.

- (2) In the case of a railroad or interurban railway enterprise, the numerator of the fraction shall not be less than the allocation of revenues to this state as shown in its annual report to the Oklahoma Corporation Commission.
- (3) In the case of an airline, truck or bus enterprise or freight car, tank car, refrigerator car or other railroad equipment enterprise, the numerator of the fraction shall include a portion of revenue from interstate transportation in the proportion that interstate mileage traveled in Oklahoma bears to total interstate mileage traveled.
- (4) In the case of an oil, gasoline or gas pipeline enterprise, the numerator of the fraction shall be either the total of traffic units of the enterprise within Oklahoma or the revenue allocated to Oklahoma based upon miles moved, at the option of the taxpayer, and the denominator of which shall be the total of traffic units of the enterprise or the revenue of the enterprise everywhere as appropriate to the numerator. A "traffic unit" is hereby defined as the transportation for a distance of one (1) mile of one (1) barrel of oil, one (1) gallon of gasoline or one thousand (1,000) cubic feet of natural or casinghead gas, as the case may be.
- (5) In the case of a telephone or telegraph or other communication enterprise, the numerator of the fraction shall include that portion of the interstate revenue as is allocated pursuant to the accounting procedures prescribed by the Federal Communications Commission; provided that in respect to each corporation or business entity required by the Federal Communications Commission to keep its books and records in accordance with a uniform system of accounts prescribed by such Commission, the intrastate net income shall be determined separately in the manner provided by such uniform system of accounts and only the interstate income shall be subject to allocation pursuant to the provisions of this subsection. Provided, further, that the gross revenue factors shall be those as are determined pursuant to the accounting procedures prescribed by the Federal Communications Commission.

In any case where the use of the arithmetical average of three factors prescribed in this paragraph attributes to Oklahoma a portion of net income of the enterprise out of all appropriate proportion to the property owned and/or business transacted within this state, because of the fact that one or more of the factors so prescribed are not employed to any appreciable extent

in furtherance of the enterprise; or because one or more factors not so prescribed are employed to a considerable extent in furtherance of the enterprise; or because of other reasons, the Tax Commission is empowered to permit, after a showing by taxpayer that an excessive portion of net income has been attributed to Oklahoma, or require, when in its judgment an insufficient portion of net income has been attributed to Oklahoma, the elimination, substitution, or use of additional factors, or reduction or increase in the weight of such prescribed factors.

Provided, however, that any such variance from such prescribed factors which has the effect of increasing the portion of net income attributable to Oklahoma must not be inherently arbitrary, and application of the recomputed final arithmetical average ratio to the net income of the enterprise must attribute to Oklahoma only a reasonable portion thereof.

B. The taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income, except those corporations electing treatment as provided in subchapter S of the Internal Revenue Code and Section 2365 of this title, deductions pursuant to the provisions of the Accelerated Cost Recovery System as defined and allowed in the Economic Recovery Tax Act of 1981, Public Law 97-34, for depreciation of assets placed into service after December 31, 1981, shall not be allowed in calculating Oklahoma taxable income. Such corporations shall be allowed a deduction for depreciation of assets placed into service after December 31, 1981, in accordance with provisions of the Internal Revenue Code in effect immediately prior to the enactment of the Accelerated Cost Recovery System. The Oklahoma tax basis for all such assets placed into service after December 31, 1981, calculated in this section shall be retained and utilized for all Oklahoma income tax purposes through the final disposition of said assets.

Notwithstanding any other provisions of the Oklahoma Income Tax Act, Sections 2351 et seq. of this title or of the Internal Revenue Code to the contrary, this subsection shall control calculation of depreciation of assets placed into service after December 31, 1981, and before January 1, 1983.

For assets placed in service and held by a corporation in which accelerated cost recovery system was previously disallowed, an adjustment to taxable income is required in the first taxable year beginning after December 31, 1982, to reconcile the basis of said assets to the basis allowed in the Internal Revenue Code. The purpose of this adjustment is to equalize the basis and allowance for depreciation accounts between that reported to the Internal Revenue Service and that reported to Oklahoma.

C. 1. For taxable years beginning after December 31, 1987, the taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income for transfers of technology to qualified small businesses located in Oklahoma. Such transfer corporation shall be allowed an exemption from taxable income of an amount equal to the amount of royalty payment received as a result of such transfer; provided, however, said amount shall not exceed ten percent (10%) of the amount of gross proceeds received by such transferor corporation as a result of the technology transfer. Such exemption shall be allowed for a period not to exceed ten (10) years from the date of receipt of the first royalty payment accruing from such transfer. No exemption may be claimed for transfers of technology to qualified small businesses made prior to January 1, 1988.

2. For purposes of this subsection:

- a. "Qualified small business" means an entity, whether organized as a corporation, partnership, or proprietorship, organized for profit with its principal place of business located within this state and which meets the following criteria:
  - (1) Capitalization of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00),
  - (2) Having at least fifty percent (50%) of its employees or assets located in Oklahoma at the time of the transfer, and
  - (3) Not a subsidiary or affiliate of the transferor corporation;
- b. "Technology" means a proprietary process, formula, pattern, device or compilation of scientific or technical information which is not in the public domain;
- c. "Transferor corporation" means a corporation which is the exclusive and undisputed owner of the technology at the time the transfer is made; and
- d. "Gross proceeds" means the total amount of consideration for the transfer of technology, whether the consideration is in money or otherwise.

D. The Oklahoma adjusted gross income of any individual taxpayers shall be further adjusted as follows to arrive at Oklahoma taxable income:

- 1.
  - a. In the case of individuals, there shall be added or deducted, as the case may be, the difference necessary to allow personal exemptions of One Thousand Dollars (\$1,000.00) in lieu of the personal exemptions allowed by the Internal Revenue Code.
  - b. There shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is blind at the close of the tax year. For purposes of this subparagraph, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200, but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.
  - c. For taxable years beginning after December 31, 1987, there shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following filing status may claim this exemption if the federal adjusted gross income does not exceed:
    - (1) Twenty-five Thousand Dollars (\$25,000.00) if married and filing jointly;
    - (2) Twelve Thousand Five Hundred Dollars (\$12,500.00) if married and filing separately;
    - (3) Fifteen Thousand Dollars (\$15,000.00) if single; and
    - (4) Nineteen Thousand Dollars (\$19,000.00) if a qualifying head of household.

2. In the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction

in lieu of the standard deduction allowed by the Internal Revenue Code, in an amount equal to the larger of fifteen percent (15%) of the Oklahoma adjusted gross income or One Thousand Dollars (\$1,000.00), but not to exceed Two Thousand Dollars (\$2,000.00), except that in the case of a married individual filing a separate return such deduction shall be the larger of fifteen percent (15%) of such Oklahoma adjusted gross income or Five Hundred Dollars (\$500.00), but not to exceed the maximum amount of One Thousand Dollars (\$1,000.00).

3. In the case of resident individuals having adjusted gross income from sources both within and without the state, the itemized or standard deductions and personal exemptions shall be reduced to an amount which is the same portion of the total thereof as Oklahoma adjusted gross income is of adjusted gross income. To the extent itemized deductions include allowable moving expense, proration of moving expense shall not be required or permitted but allowable moving expense shall be fully deductible for those taxpayers moving within or into Oklahoma and no part of moving expense shall be deductible for those taxpayers moving without or out of Oklahoma. All other itemized or standard deductions and personal exemptions shall be subject to proration as provided by law.

4. A resident individual with a physical disability constituting a substantial handicap to employment may deduct from Oklahoma adjusted gross income such expenditures to modify a motor vehicle, home or workplace as are necessary to compensate for his handicap. A veteran certified by the Veterans Administration of the federal government as having a service-connected disability shall be conclusively presumed to be an individual with a physical disability constituting a substantial handicap to employment. The Oklahoma Tax Commission shall promulgate rules containing a list of combinations of common disabilities and modifications which may be presumed to qualify for this deduction. The Commission shall prescribe necessary requirements for verification.

5. In any taxable year the first One Thousand Five Hundred Dollars (\$1,500.00) received by any person from the United States as salary or compensation in any form, other than retirement benefits, as a member of any component of the Armed Forces of the United States shall be deducted from taxable income. Whenever the filing of a timely income tax return by a member of the Armed Forces of the United States is made impracticable or impossible of accomplishment by reason of:

- a. absence from the United States, which term includes only the states and the District of Columbia;
- b. absence from the State of Oklahoma while on active duty; or
- c. confinement in a hospital within the United States for treatment of wounds, injuries or disease;

the time for filing a return and paying an income tax shall be and is hereby extended without incurring liability for interest or penalties, to the fifteenth day of the third month following the month in which:

- (1) Such individual shall return to the United States if the extension is granted pursuant to subparagraph (a) of this paragraph, return to the State of Oklahoma if the extension is granted pursuant to subparagraph (b) of this paragraph or be discharged from such hospital if the extension is granted pursuant to subparagraph (c) of this paragraph; or

- (2) An executor, administrator, or conservator of the estate of the taxpayer is appointed, whichever event occurs the earliest.

Provided, that the Tax Commission may, in its discretion, grant any member of the Armed Forces of the United States an extension of time for filing of income tax returns and payment of income tax without incurring liabilities for interest or penalties. Such extension may be granted only when in the judgment of the Tax Commission a good cause exists therefor and may be for a period in excess of six (6) months. A record of every such extension granted, and the reason therefor, shall be kept.

6. The salary or any other form of compensation, received from the United States by a member of any component of the Armed Forces of the United States, shall be deducted from taxable income during the time in which the person is detained by the enemy in a conflict, is a prisoner of war or is missing in action and not deceased.

7. Notwithstanding anything in the Internal Revenue Code or in the Oklahoma Income Tax Act to the contrary, it is expressly provided that, in the case of resident individuals, amounts received as dividends or distributions of earnings from savings and loan associations or credit unions located in Oklahoma, and interest received on savings accounts and time deposits from such sources or from state and national banks or trust companies located in Oklahoma, shall qualify as dividends for the purpose of the dividend exclusion, and taxable income shall be adjusted accordingly to arrive at Oklahoma taxable income; provided, however, that the dividend, distribution of earnings and/or interest exclusion provided for hereinabove shall not be cumulative to the maximum dividend exclusion allowed by the Internal Revenue Code. Any dividend exclusion already allowed by said Code and reflected in the taxpayer's Oklahoma taxable income together with exclusion allowed herein shall not exceed the total of One Hundred Dollars (\$100.00) per individual or Two Hundred Dollars (\$200.00) per couple filing a joint return.

8.
  - a. An individual taxpayer, whether resident or nonresident, may deduct an amount equal to the federal income taxes paid by said taxpayer during the taxable year.
  - b. Federal taxes as described in subparagraph a of this paragraph shall be deductible by any individual taxpayer, whether resident or nonresident, only to the extent they relate to income subject to taxation pursuant to the provisions of the Oklahoma Income Tax Act. The maximum amount allowable in the preceding paragraph shall be prorated on the ratio of the Oklahoma adjusted gross income to federal adjusted gross income.
  - c. For the purpose of this paragraph, federal income taxes paid shall mean federal income taxes, surtaxes imposed on incomes or excess profits taxes, as though the taxpayer was on the accrual basis.
  - d. The provisions of this paragraph shall apply to all taxable years ending after December 31, 1978.

9. Retirement benefits not to exceed Five Thousand Five Hundred Dollars (\$5,500.00), which are received by an individual from the civil service of the United States, any component of the Armed Forces of the United States, the Oklahoma Public Employees Retirement System, the Teachers' Retirement System of Oklahoma, the Oklahoma Law Enforcement Retirement System, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police

Pension and Retirement System, the employee retirement systems created by counties pursuant to Sections 951 et seq. of Title 19 of the Oklahoma Statutes, the Uniform Retirement System for Justices and Judges, the Oklahoma Wildlife Conservation Department Retirement Fund, the Oklahoma Employment Security Commission Retirement Plan, or the employee retirement systems created by municipalities pursuant to Sections 48-101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt from taxable income.

10. In taxable years beginning after December 31, 1984, Social Security benefits received by an individual shall be exempt from taxable income, to the extent such benefits are included in the federal adjusted gross income pursuant to the provisions of Section 86 of the Internal Revenue Code.

SECTION 21. AMENDATORY 68 O.S. 1981, Section 2362, as last amended by Section 6, Chapter 339, O.S.L. 1990 (68 O.S. Supp. 1990, Section 2362), is amended to read as follows:

Section 2362. The Oklahoma taxable income of a nonresident individual and a nonresident trust and a nonresident estate shall be the same as if he were a resident individual or resident trust or resident estate with the following modifications:

1. Taxable income or adjusted gross income, as reported or reportable to the federal government, or, in the event of adjustment thereto by the federal government, as finally ascertained under the Internal Revenue Code, 26 U.S.C., Section 1 et seq., shall be excludable unless such income, gain, loss or deduction is attributable to:

- a. the ownership of any interest in real or tangible personal property in this state;
- b. a business, trade, profession or occupation carried on in this state or compensation for services performed in this state;
- c. a business, trade, profession or occupation carried on or compensation for services performed partly within and partly without this state to the extent allocable and apportionable to Oklahoma as determined under Section 2358 of this title;
- d. the distributive share of the Oklahoma part of partnership income, gains, losses or deductions;
- e. the distributive share of the Oklahoma part of estate or trust income, gains, losses or deductions;
- f. income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property to the extent that such income is from property employed in a trade, business, profession or occupation carried on in Oklahoma. A nonresident individual, nonresident trust or nonresident estate, other than a dealer holding property primarily for sale to customers in the ordinary course of his or its trade or business, shall not be deemed to carry on a business, trade, profession or occupation in Oklahoma solely by reason of the purchase and sale of property for his or its own account;
- g. the distributive share of the Oklahoma taxable income or loss of a corporation defined in subchapter S of the Internal Revenue Code, 26 U.S.C., Section 1361 et seq.; or
- h. income received from all sources of wagering, games of chance or any other winnings from sources within this

state. Proceeds which are not money shall be taken into account at their fair market value.

2. If a nonresident individual uses the standard deduction, it shall be reduced to an amount which is the same portion of the total thereof as Oklahoma adjusted gross income is of federal adjusted gross income.

3. If a nonresident individual itemizes his deductions, such deductions shall be reduced to an amount which is the same portion of the total thereof as Oklahoma adjusted gross income is of federal adjusted gross income.

4. The personal exemptions of a nonresident shall be reduced to an amount which is the same portion of the total thereof as Oklahoma adjusted gross income is of federal adjusted gross income.

5. To the extent itemized deductions include allowable moving expense, proration of moving expense shall not be required or permitted but allowable moving expense shall be fully deductible for those taxpayers moving within or into Oklahoma and no part of moving expense shall be deductible for those taxpayers moving without or out of Oklahoma. All other itemized or standard deductions and personal exemptions shall be subject to proration as provided by law.

SECTION 22. AMENDATORY 68 O.S. 1981, Section 2373, as amended by Section 2, Chapter 15, O.S.L. 1985 (68 O.S. Supp. 1990, Section 2373), is amended to read as follows:

Section 2373. If, upon any revision or adjustment, including overpayment or illegal payment on account of income derived from tax-exempt Indian land, any refund is found to be due any taxpayer, it shall be paid out of the "Income Tax Withholding Refund Account", created by Section 2385.16 of this title, in the same manner as refunds are paid pursuant to said section.

The information filed, reflecting the revision or adjustment, shall constitute the claim for refund.

Except as provided in subsection (H) of Section 2375 ~~G.~~ of this title, the amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim, or, if no claim was filed, then during the three (3) years immediately preceding the allowance of the refund; provided, however, this three-year limitation shall not apply to the amount of refunds payable upon claims filed by the United States on behalf of its Indian wards or former Indian wards, to recover taxes illegally collected from tax-exempt lands.

Provided, further, that where the Tax Commission and the taxpayer have signed a consent, as provided by law, extending the period during which the tax may be assessed, the period during which the taxpayer may file a claim for refund or during which an allowance for a refund may be made, is automatically extended to the final date fixed by such consent plus thirty (30) days.

SECTION 23. AMENDATORY 68 O.S. 1981, Section 2385.1, as amended by Section 7, Chapter 339, O.S.L. 1990 (68 O.S. Supp. 1990, Section 2385.1), is amended to read as follows:

Section 2385.1 When used in the remaining sections of this article, the following terms shall, unless the context otherwise requires, have the following meanings:

(a) The term "Tax Commission" shall mean the Oklahoma Tax Commission;

(b) The term "employer" shall mean any person (including any individual, fiduciary, estate, trust, partnership or corporation) transacting business in or deriving any income from sources within the State of Oklahoma for whom an individual performs or performed any service, of whatever nature, as the employee of such person,

except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" shall mean the person having control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any corporation, individual, estate, trust, or organization which is exempt from taxation under this article. The term "employer" shall not include those nonresident employers who have no office, warehouse, or place of business in Oklahoma and whose transactions are limited to the solicitation of orders for merchandise, which orders are filled from a point without the state and delivered directly from said point to the purchaser in Oklahoma;

(c) The term "employee" shall mean any "resident individual," as defined by Section ~~2302~~ 2353 of this title, performing services for an employer, either within or without, or both within and without, the State of Oklahoma, and every other individual performing services within the State of Oklahoma, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of a corporation and an officer, employee, or elected official of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing;

(d) The term "taxpayer" is as defined by Section ~~2302(g)~~ 2353 of this title, other than estates;

(e) The term "wages" shall mean all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid:

- (1) for services paid to an employee in connection with farming activities where the amount paid is ~~Two Hundred Dollars (\$200.00)~~ Nine Hundred Dollars (\$900.00) or less monthly; or
- (2) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or
- (3) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is Two Hundred Dollars (\$200.00) or more; or
- (4) for services performed in the state by a person who is not a "resident individual," whose income in any calendar quarter is not more than Three Hundred Dollars (\$300.00); or
- (5) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; and

(f) The term "winnings subject to withholding" shall have the same meaning as used in the Internal Revenue Code, 26 U.S.C., Section 1 et seq., and shall apply to transactions in this state.

SECTION 24. AMENDATORY 68 O.S. 1981, Section 2385.3, as last amended by Section 9, Chapter 339, O.S.L. 1990 (68 O.S. Supp. 1990, Section 2385.3), is amended to read as follows:

Section 2385.3 (a) Every employer required to deduct and withhold taxes under Section 2385.2 of this title shall, for the quarterly period beginning July 1, 1961, and for each quarterly

period thereafter, on or before the fifteenth day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment; and such return shall be in such form as the Tax Commission shall prescribe; except that where the amounts withheld are more than Five Hundred Dollars (\$500.00) per quarter, the employer withholding such amounts shall for each monthly period beginning July 1, 1968, and for each monthly period thereafter, on or before the fifteenth day of each succeeding month pay over to the Commission the amounts so withheld, and shall file a return monthly, as hereinabove provided, together with the payment of any balance withheld but not included in the previous payments during that quarter for all quarterly or monthly periods beginning before the effective date of this act, Section 2385.1 et seq. of this title, withholding income tax shall be reported and remitted to the Tax Commission pursuant to the provisions of this section.

(b) Every employer required under Section 2385.2 of this title to deduct and withhold a tax from the wages paid an employee shall, as to the total wages paid to each employee during the calendar year, furnish to such employee, on or before ~~February 15~~ January 31 of the succeeding year, a written statement showing the name of the employer, the name of the employee and his social security account number, if any, the total amount of wages subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. If an employee's employment is terminated before the close of a calendar year, said written statement must be furnished within thirty (30) days of the date of which the last payment of wages is made.

(c) If the Tax Commission, in any case, has justifiable reason to believe that the collection of the tax provided for in Section 2385.2 of this title is in jeopardy, the Tax Commission may require the employer to file a return and pay the tax at any time.

(d) Every employer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma. The term "employer" as used in this subsection and in Section 2385.6 of this title includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer or employee of a corporation, or a member is under a duty to act for a corporation or partnership to withhold and remit withholding taxes in accordance with this section and Section 2385.2 of this title. Any sum or sums withheld in accordance with the provisions of Section 2385.2 of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the employer shall have a fiduciary duty to the State of Oklahoma in regard to such sums and shall be subject to the trust laws of this state. Any employer who fails to pay to the Tax Commission any sums required to be withheld by such employer, after such sums have been withheld from the wages of employees, and appropriates the tax held in trust to his own use, or to the use of any person not entitled thereto, without authority of law shall be guilty of embezzlement.

(e) If any employer fails to withhold the tax required to be withheld by Section 2385.2 of this title and thereafter the income tax is paid by the employee, the tax so required to be withheld shall not be collected from the employer but such employer shall not be relieved from the liability for penalties or interest otherwise applicable because of such failure to withhold the tax.

(f) Every person making payments of winnings subject to withholding shall, for each monthly period, on or before the fifteenth day of the month following the payment of such winnings

pay over to the Commission the amounts so withheld, and shall file a return, in a form as prescribed by the Commission.

(g) Every person making payments of winnings subject to withholding shall furnish to each recipient on or before ~~February 15~~ January 31 of the succeeding year a written statement in a form as prescribed by the Commission. Every person making such reports shall also furnish a copy of such report to the Commission in a manner and at a time as shall be prescribed by the Commission.

SECTION 25. AMENDATORY Section 3, Chapter 138, O.S.L. 1984, as amended by Section 95, Chapter 179, O.S.L. 1985 (68 O.S. Supp. 1990, Section 6002), is amended to read as follows:

Section 6002. Beginning on and after July 1, 1984, there shall be levied an excise tax of three and one-fourth percent (3 1/4%) of the purchase price of each aircraft that is to be registered with the Federal Aviation Administration, upon the transfer of legal ownership of any such aircraft or the use of any such aircraft within this state. The excise tax levied pursuant to the provisions of Sections 6001 through 6004 of this title is in lieu of all other taxes on the transfer or the first registration in this state on aircraft, including optional equipment and accessories attached thereto at the time of sale and sold as a part thereof, except annual aircraft registration fees. The tax hereby levied shall be due at the time of the transfer of legal ownership or first registration in this state, and shall be collected by the Oklahoma Tax Commission at the time of the issuance of a certificate of registration for any such aircraft. The excise tax levied pursuant to the provisions of this section shall be delinquent from and after the twentieth day after the legal ownership or possession of any aircraft is obtained. Any person failing or refusing to pay the tax provided for in this section on or before the date of delinquency shall pay, in addition to the tax, a penalty of ten percent (10%) on the total amount of tax due. Interest shall be collected on the total delinquent tax at the rate of ~~one and one-half percent (1 1/2%)~~ one and one-fourth percent (1 1/4%) per month from the date of the delinquency until said tax is paid.

SECTION 26. AMENDATORY Section 3, Chapter 176, O.S.L. 1989, as amended by Section 9, Chapter 296, O.S.L. 1990 (68 O.S. Supp. 1990, Section 53003), is amended to read as follows:

Section 53003. A. At the time any new tire for use on automobiles or on light trucks with a laden weight of ten thousand (10,000) pounds or less is sold by a wholesale or retail dealer not for resale, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire unless the purchaser in such sale is a political subdivision or any agency, public trust, or instrumentality thereof.

B. The wholesaler or retailer shall remit such fee to the Oklahoma Tax Commission in the same manner as provided by Section 1365 of ~~Title 68 of the Oklahoma Statutes~~ this title. At the time of filing any report as required by the Oklahoma Tax Commission, the wholesaler or retail dealer shall remit therewith to the Tax Commission, except as otherwise provided by this section, ~~ninety-seven and one-half percent (97 1/2%)~~ ninety-seven and three-quarters percent (97.75%) of the fee due pursuant to this section. Failure to remit such fee at the time of filing the returns shall cause said fee to become delinquent. If said fee becomes delinquent the wholesaler or retail dealer forfeits his claim to the discount authorized by this section and shall remit to the Tax Commission one hundred percent (100%) of the amount of the fee due plus any penalty due.

C. For the purpose of this section, "new tire" means an originally manufactured tire and shall not include any remanufactured, recapped or otherwise restored tire.

D. The provisions of this section shall expire on December 31, 1999.

SECTION 27. RECODIFICATION Section 16, Chapter 345, O.S.L. 1985 (68 O.S. Supp. 1990, Section 1101.1), as amended by Section 5 of this act, is hereby recodified as Section 1001.1 of Title 68 of the Oklahoma Statutes.

SECTION 28. Section 3 of this act shall become effective July 1, 1992.

SECTION 29. Sections 20, 21 and 23 of this act shall become effective January 1, 1992.

SECTION 30. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 23d day of May, 1991.

President of the Senate

Passed the House of Representatives the 29th day of May, 1991.

Speaker of the House of Representatives