

ENROLLED HOUSE
BILL NO. 1239

By: McCorkell of the House

and

Fisher of the Senate

An Act relating to economic development; amending 68 O.S. 1991, Sections 303, as amended by Section 20, Chapter 350, O.S.L. 1992, 1004a, 1355, as last amended by Section 1, Chapter 54, O.S.L. 1994, 1356, as last amended by Section 1 of Enrolled House Bill No. 1015 of the 1st Session of the 45th Oklahoma Legislature, 1357, as last amended by Section 15, Chapter 278, O.S.L. 1994, 1358, as amended by Section 1, Chapter 70, O.S.L. 1992, 2358, as last amended by Section 1, Chapter 308, O.S.L. 1993, 2361, as amended by Section 26, Chapter 278, O.S.L. 1994, 2871, 2902, as last amended by Section 32, Chapter 278, O.S.L. 1994, Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 22, Chapter 322, O.S.L. 1994, 6001 and 6003, as last amended by Section 11, Chapter 363, O.S.L. 1994 (68 O.S. Supp. 1994, Sections 303, 1355, 1357, 1358, 2358, 2361, 2902, 3603 and 6003), which relate to various taxes; deleting reference to certain apportionments; modifying provision related to effect of payment of aircraft excise tax; modifying sales tax exemption for certain entity having contractual relationship with contractor or subcontractor; providing sales tax exemption for sale of certain aircraft and aircraft parts; defining terms; modifying term; providing sales tax exemption for sale of certain materials, supplies and equipment to holder of agricultural permit or certain other entities; requiring certification procedure; prescribing penalty for wrongful certification; providing exclusion from taxable income for certain lump-sum distributions; providing for manner of exclusion; authorizing Oklahoma Tax Commission to relieve certain taxpayer from liability for deficiency; prescribing standard for determination by Commission; providing exception to certain statute of limitations; providing for recovery of certain overpayment of tax; prescribing procedures related thereto; modifying establishments qualifying for ad valorem tax exemption; prescribing qualifications for exemption; prescribing procedure for qualification; limiting availability of exemption based on certain commencement of activity; modifying definition; specifying property exempt from taxation; adding definitions; modifying definition in Oklahoma Quality Jobs Program Act; imposing restrictions; providing certain

restriction inapplicable to entities meeting certain qualifications; modifying excise tax exemption; amending 74 O.S. 1991, Sections 5085.5 and 5085.7, which relate to the Oklahoma Capital Formation Act; modifying definition; prescribing authorized use of credits; providing for treatment of tax credits and prescribing requirements related thereto; requiring notification regarding transfer of tax credits; requiring study by Oklahoma Department of Commerce; specifying focus of study; requiring identification of certain subcontracting opportunities; requiring specific identification of manufacturers; authorizing use of certain information; providing for confidentiality of certain information; requiring completion of study by date certain; requiring preparation of report; requiring filing of report; abolishing the Capital Preservation and Economic Enhancement Fund; providing for fund transfer; making findings regarding housing needs of certain persons; creating the Oklahoma Housing Trust Fund; repealing Section 15, Chapter 350, O.S.L. 1992, as amended by Section 16, Chapter 305, O.S.L. 1993 (62 O.S. Supp. 1994, Section 57.314) and 62 O.S. 1991, Section 205, which relate to the Capital Preservation and Economic Enhancement Fund; providing for codification; providing for noncodification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 303, as amended by Section 20, Chapter 350, O.S.L. 1992 (68 O.S. Supp. 1994, Section 303), is amended to read as follows:

Section 303. The sale, gift, barter, or exchange of cigarettes, or the having possession of cigarettes for consumption, is hereby declared to be subject to taxation authorized by Section 12 of Article X of the Oklahoma Constitution, and it is the purpose and intention of the State of Oklahoma, and it is the purpose and intention of this article, to provide revenue for the expense of the state government. The revenues, including interest and penalties, collected under this article shall be paid monthly by the Tax Commission to the State Treasurer to be apportioned as follows: Of the amounts specified by law to be used for the payment and discharge of the interest on and the principal of the bonds issued pursuant to the provisions of Sections 57.31 through 57.43, 57.61 through 57.73, 57.81 through 57.92, 57.101 through 57.112 ~~and~~, 57.121 through 57.135 ~~and 57.300 through 57.313~~ of Title 62 of the Oklahoma Statutes ~~and Sections 1 through 15 of this act~~ or any other law providing for such payment and discharge, any amount in excess of the amount necessary for such payment and discharge shall be deposited in the General Revenue Fund of this state, to be paid out only on direct appropriations of the Legislature of the State of Oklahoma; ~~provided however, when the sum of such deposits to the General Revenue Fund for a given fiscal year is equal to the amount of such deposits for the previous fiscal year, any additional~~

~~amounts shall be deposited to the Capital Preservation and Economic Enhancement Fund.~~

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1004a, is amended to read as follows:

Section 1004a. A. An amount equal to the revenue including penalty and interest thereon derived from five percent (5%) of the gross value of the production of petroleum or other crude or mineral oil and natural gas and/or casinghead gas levied by Section 1001 of this title shall be apportioned monthly by the Oklahoma Tax Commission as provided by Section 1004 of this title.

B. All revenue derived from the remaining two percent (2%) of the seven percent (7%) levies imposed in Section 1001 of this title shall be deposited in the State Treasury to the credit of the General Revenue Fund of the state to be used for governmental functions and to be paid out only pursuant to direct appropriation by the Legislature.

~~C. Any revenue from the gross production tax levied on oil, asphalt or ores bearing uranium, lead, zinc, jack, gold, silver or copper or on natural gas and/or casinghead gas to be deposited to the General Revenue Fund pursuant to the provisions of subsection B of this section or paragraph 1 of Section 1004 of this title in excess of One Hundred Ninety Million Dollars (\$190,000,000.00) shall be deposited to the Capital Preservation and Economic Enhancement Fund.~~

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1355, as last amended by Section 1, Chapter 54, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1355), is amended to read as follows:

Section 1355. Exemptions - Subject to other tax.

There are hereby specifically exempted from the tax levied pursuant to the provisions of this article:

~~(A)~~ 1. Sale of gasoline, motor fuel, methanol, "M-85" which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol, compressed natural gas, liquefied natural gas, or liquefied petroleum gas on which the Motor Fuel Tax, Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special Fuels Tax levied in Article 5, 6, or 7 of this title has been, or will be paid;

~~(B)~~ 2. Sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in Article 21 of this title has been, or will be paid;

~~(C)~~ 3. Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax pursuant to the provisions of Articles 10 and 11 of this title. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas. This ~~subsection~~ paragraph shall not operate to increase or repeal the gross production tax levied by the laws of this state;

~~(D)~~ 4. Sale of aircraft on which the tax levied pursuant to the provisions of Sections 6001 through 6004 of this title has been, or will be paid or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title;

~~(E)~~ 5. Sales from coin-operated devices on which the fee imposed by Sections 1501 through 1513 of this title has been paid;

~~(F)~~ 6. Leases of twelve (12) months or more of motor vehicles in which the owners of the vehicles have paid the vehicle excise tax levied by Section 2103 of this title;

~~(G)~~ 7. Sales of charity game equipment on which a tax is levied pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of Title 3A of the Oklahoma Statutes; and

~~(H)~~ 8. Sales of cigarettes or tobacco products to:

~~1.~~ ~~A~~ a. a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 346 of this title or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid; ~~1~~ or

~~2.~~ ~~A~~ b. a federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied pursuant to the provisions of Section 349 or Section 426 of this title has been paid.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 1356, as last amended by Section 1 of Enrolled House Bill No. 1015 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

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

1. Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by this article, except as hereinafter provided;

2. Sales of property to agents appointed by or under contract with agencies or instrumentalities of the United States government if ownership and possession of such property transfers immediately to the United States government;

3. Sales of property to agents appointed by or under contract with a political subdivision of this state if the sale of such property is associated with the development of a qualified federal facility, as provided in the Oklahoma Federal Facilities Development Act, and if ownership and possession of such property transfers immediately to the political subdivision or the state;

4. Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority;

5. Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;

6. Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members and dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects;

7. Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or a similar business;

8. The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but are not limited to, athletic fields, athletic stadiums, field houses, amphitheaters and theaters. To be eligible for this sales tax exemption, the amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the college or university to effect the capital improvements hereinbefore described;

9. Sales of tangible personal property or services to the Council Organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire Girls shall be exempt from sales tax;

10. Sale of tangible personal property or services to any county, municipality, rural water district, public school district, the institutions of The Oklahoma State System of Higher Education and, the Grand River Dam Authority and the Oklahoma Municipal Power Authority, or to any person with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

11. Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by said institutions and operated for educational purposes.

Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify in writing, on the copy of the invoice or sales ticket the nature of the purchases, and violation of this act shall be a misdemeanor as set forth in paragraph 10 of this section;

12. Tuition and educational fees paid to private institutions of higher education and private elementary and secondary

institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3);

13. Sales of tangible personal property made by:
 - a. a public school,
 - b. a private school offering instruction for grade levels kindergarten through twelfth grade,

- c. a public school district,
- d. a public or private school board,
- e. a public or private school student group or organization,
- f. a parent-teacher association or organization, or
- g. public or private school personnel for purposes of raising funds for the benefit of a public or private school, public school district, public or private school board or public or private school student group or organization.

The exemption provided by this paragraph for sales made by a public or private school shall be limited to those public or private schools accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall include sale of admission tickets and concessions at athletic events;

14. Sales of tangible personal property by:

- a. local 4-H clubs,
- b. county, regional or state 4-H councils,
- c. county, regional or state 4-H committees,
- d. 4-H leader associations,
- e. county, regional or state 4-H foundations, and
- f. authorized 4-H camps and training centers.

The exemption provided by this paragraph shall be limited to sales for the purpose of raising funds for the benefit of such organizations. Sale of tangible personal property exempted by this paragraph shall include sale of admission tickets;

15. The first Seventy-five Thousand Dollars (\$75,000.00) each year from sale of tickets and concessions at athletic events by each organization exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(4);

16. Items or services which are subsequently given away by the Oklahoma Department of Tourism and Recreation as promotional items pursuant to Section 1834 of Title 74 of the Oklahoma Statutes;

17. Sales of tangible personal property or services to fire departments organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes which items are to be used for the purposes of the fire department. Any person making purchases on behalf of any such fire department shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such fire department and set out the name of such fire department. Any person who wrongfully or erroneously certifies that the purchases are for any such fire department or who otherwise violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days, or both;

18. Complimentary or free tickets for admission to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities which are issued through a box office or other entity which is operated by a state institution of higher education with institutional employees or by a municipality with municipal employees;

19. From the effective date of this act until December 31, 1995, sales of tangible personal property or services, except the service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house or tourist camp, to legislative organizations in connection with national meetings to be held in this state;

20. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property by fire departments organized pursuant to Titles 11, 18, or 19 of the Oklahoma Statutes for the purposes of raising funds for the benefit of the fire department. Fire departments selling tangible personal property for the purposes of raising funds shall be limited to no more than six (6) days each year to raise such funds in order to receive the exemption granted by this paragraph; and

21. Sales of tangible personal property or services to any Boys & Girls Clubs of America affiliate in this state which is not affiliated with the Salvation Army and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3).

SECTION 5. AMENDATORY 68 O.S. 1991, Section 1357, as last amended by Section 15, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1357), is amended to read as follows:

Section 1357. Exemption - General.

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

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;
2. 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;
3. 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 paragraph 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;
4. 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;
5. 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;

6. 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 1370.2 of this title, 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 1370.2 of this title, 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;

7. In addition to the exemptions authorized by Section 1357.6 of this title, 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;

8. 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;

9. 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;

10. 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;

11. Sales of food or food products to or by an organization which:

- a. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which provides and delivers prepared meals for home consumption to elderly or homebound persons as part of a program commonly known as "Meals on Wheels" or "Mobile Meals", or
- b. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which receives federal funding pursuant to the Older Americans Act of 1965, as amended, for the purpose of providing nutrition programs for the care and benefit of elderly persons;

12. Sales of tangible personal property or services to or by organizations which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which are primarily involved in the collection and distribution of food and other household products to other organizations which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), which facilitate the distribution of such products to the needy, except sales made in the course of business

for profit or savings, competing with other persons engaged in the same or similar business;

13. Sales of food, food products, or clothing to children's homes which are located on church-owned property and are operated by organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

14. 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 paragraph, "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 paragraph, 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);

15. Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in paragraph 13 of this section. For purposes of this paragraph, 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;

16. Sales of any interstate telecommunications services which:
- a. entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or
 - b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges; and

17. Sales of railroad track spikes manufactured and sold for use in this state in the construction or repair of railroad tracks, switches, sidings and turnouts; and

18. Sales of aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 1358, as amended by Section 1, Chapter 70, O.S.L. 1992 (68 O.S. Supp. 1994, Section 1358), is amended to read as follows:

Section 1358. Exemptions - Agriculture.

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

~~(A)~~ 1. Sales of agricultural products produced in this state by the producer thereof directly to the consumer or user when such articles are sold at or from a farm and not from some other place of business, as follows:

- ~~(1)~~ ~~Farm~~ a. farm, orchard or garden products~~;~~ and
- ~~(2)~~ ~~Dairy~~ b. dairy products sold by a ~~dairyman~~ dairy producer or farmer who owns all the cows from which the dairy products offered for sale are produced; ~~and~~

~~(3)~~ ~~The provided,~~ the provisions of this ~~subsection~~ paragraph shall not be construed as exempting sales by florists, ~~nurserymen~~ nursery operators or chicken hatcheries, or sales of dairy products by any other business except as set out herein;

~~(B)~~ 2. Livestock, including cattle, horses, mules or other domestic or draft animals, sold by the producer by private treaty or at a special livestock sale;

~~(C)~~ 3. Sale of baby chicks, turkey poults and starter pullets used in the commercial production of chickens, turkeys and eggs, provided that the purchaser certifies, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the pullets will be used primarily for egg production;

~~(D)~~ 4. Sale of salt, grains, tankage, oyster shells, mineral supplements, limestone and other generally recognized animal feeds for the following purposes and subject to the following limitations:

- ~~(1)~~ ~~Feed~~ a. feed which is fed to poultry and livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, poultry, milk or meat for human consumption~~;~~ and
- ~~(2)~~ ~~Feed~~ b. feed purchased in Oklahoma for the purpose of being fed to and which is fed by the purchaser to horses, mules or other domestic or draft animals used directly in the producing and marketing of agricultural products~~;~~ and
- ~~(3)~~ ~~Any~~ c. any stock tonics, water purifying products, stock sprays, disinfectants or other such agricultural supplies~~;~~ and

~~(4)~~ Poultry shall not be construed to include any fowl other than domestic fowl kept and raised for the market or production of eggs; ~~(5)~~ Livestock shall not be construed to include any pet animals such as dogs, cats, birds or such other fur-bearing animals~~;~~ and ~~(6)~~ This exemption shall only be granted and extended where the purchaser of feed that is to be used and in fact is used for a purpose that would bring about an exemption hereunder executes an invoice or sales ticket in duplicate on a form to be prescribed by the Tax Commission. The purchaser may demand and receive a copy of the invoice or sales ticket and the vendor shall retain a copy;

~~(E)~~ 5. Sales of items to be and in fact used in the production of agricultural products. Sale of the following items shall be subject to the following limitations:

- ~~(1)~~ ~~Sales~~ a. sales of agricultural fertilizer to any person regularly engaged, for profit, in the business of farming or ranching~~;~~ and
- ~~(2)~~ ~~Sales~~ b. sales of agricultural fertilizer to any person engaged in the business of applying

such materials on a contract or custom basis to land owned or leased and operated by persons regularly engaged, for profit, in the business of farming or ranching. In addition to providing the vendor proof of eligibility as provided in Section 1358.1 of this title, the purchaser shall provide the name or names of such owner or lessee and operator and the location of the lands on which said materials are to be applied to each such land~~+~~.

~~(3)~~ Sales c. sales of agricultural fertilizer, pharmaceuticals and biologicals to persons engaged in the business of applying such materials on a contract or custom basis shall not be considered to be sales to contractors under this article, and said sales shall not be considered to be taxable sales within the meaning of the Oklahoma Sales Tax Code. As used in this section, "agricultural fertilizer", "pharmaceuticals" and "biologicals" mean any substance sold and used for soil enrichment or soil corrective purposes or for promoting the growth and productivity of plants or animals~~+~~.

~~(4)~~ Sales d. sales of agricultural seed or plants to any person regularly engaged, for profit, in the business of farming or ranching. This section shall not be construed as exempting from sales tax, seed which is packaged and sold for use in noncommercial flower and vegetable gardens~~+~~, and

~~(5)~~ Sales e. sales of agricultural chemical pesticides to any person regularly engaged, for profit, in the business of farming or ranching. For the purposes of this ~~act~~ subparagraph, "agricultural chemical pesticides" shall include any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insect, snail, slug, rodent, bird, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man, or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant~~+~~.

~~(6)~~ ~~This~~ The exemption provided in this paragraph shall only be granted and extended to the purchaser where the items are to be used and in fact are used in the production of agricultural products;

~~(F)~~ 6. Sale of farm machinery, repair parts thereto or fuel, oil, lubricants and other substances used for operation and maintenance of the farm machinery to be used directly on a farm or ranch in the production, cultivation, planting, sowing, harvesting, processing, spraying, preservation or irrigation of any livestock, poultry, agricultural or dairy products produced from such lands. The exemption specified in this paragraph shall apply to such farm

machinery, repair parts or fuel, oil, lubricants and other substances used by persons engaged in the business of custom production, cultivation, planting, sowing, harvesting, processing, spraying, preservation, or irrigation of any livestock, poultry, agricultural, or dairy products for farmers or ranchers. The exemption provided for herein shall not apply to motor vehicles; and

~~(C)~~ 7. Sales of supplies, machinery and equipment to persons regularly engaged in the business of raising evergreen trees for retail sale in which such trees are cut down on the premises by the consumer purchasing such tree. This exemption shall only be granted and extended when the items in fact are used in the raising of such evergreen trees; and

8. Sales of materials, supplies and equipment to an agricultural permit holder or to any person with whom the permit holder has contracted to construct facilities which are or which will be used directly in the production of any livestock, including, but not limited to, facilities used in the production and storage of feed for livestock owned by the permit holder. Any person making purchases on behalf of the agricultural permit holder shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such permit holder and set out the name and permit number of such holder. Any person who wrongfully or erroneously certifies that purchases are for an agricultural permit holder or who otherwise violates this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of an amount equal to double the amount of sales tax involved or imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 2358, as last amended by Section 1, Chapter 308, O.S.L. 1993 (68 O.S. Supp. 1994, Section 2358), 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, 26 U.S.C., Section 172, as modified by the Oklahoma Income Tax Act, Section 2351 et seq. of this title, 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; provided, for net operating losses incurred for tax years beginning after December 31, 1992, and before December 31, 1993, the loss carryback shall be for a period of three (3) years; for tax years beginning after December 31, 1993, and before December 31, 1994, the carryback period shall be two (2) years; for tax years beginning after December 31, 1994, and before December 31, 1995, the carryback period shall be one (1) year; and for tax years beginning after December 31, 1995, no net operating loss carryback shall be allowable. For tax years beginning after December 31, 1992, the net operating loss carryforward shall not exceed fifteen (15) years.

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.

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, 26 U.S.C., Section 1361 et seq., 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, 26 U.S.C., Section 168, 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, 26 U.S.C., Section 1 et seq., 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 transferor 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 and 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.
 - d. For taxable years beginning after December 31, 1990, and beginning before January 1, 1992, there shall be allowed a one-time additional exemption of Four Hundred Dollars (\$400.00) for each taxpayer or spouse who is a member of the National Guard or any reserve unit of the Armed Forces of the United States and who was at any time during such taxable year deployed in active service during a time of war or conflict with an enemy of the United States.

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, 26 U.S.C., Section 86.

11. For taxable years beginning after December 31, 1994, lump-sum distributions from employer plans of deferred compensation, which are not qualified plans within the meaning of Section 401(a) of the Internal Revenue Code, 26 U.S.C., Section 401(a), and which are deposited in and accounted for within a separate bank account or brokerage account in a financial institution within this state, shall be excluded from taxable income in the same manner as a qualifying rollover contribution to an individual retirement account within the meaning of Section 408 of the Internal Revenue Code, 26 U.S.C., Section 408. Amounts withdrawn from such bank or brokerage account, including any earnings thereon, shall be included in taxable income when withdrawn in the same manner as withdrawals from individual retirement accounts within the meaning of Section 408 of the Internal Revenue Code.

SECTION 8. AMENDATORY 68 O.S. 1991, Section 2361, as amended by Section 26, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 2361), is amended to read as follows:

Section 2361. Married taxpayers shall file joint or separate returns in accordance with the manner in which they file returns to the federal government, or in the event of an adjustment thereto by the federal government, as finally ascertained to be proper under the Internal Revenue Code; except that: where either is a resident and the other is a nonresident, they shall not be entitled to file joint Oklahoma income tax returns, but if a joint return was filed with the federal government, then the adjusted gross income as returned to the federal government, or in the event of an adjustment thereto by the federal government as finally ascertained under the Internal Revenue Code, shall be allocated between the husband and wife. The foregoing exception shall not apply if the nonresident is an active duty service member whose income is not subject to Oklahoma income tax by virtue of the Soldier's and Sailor's Civil Relief Act or if both have net income and they desire to file a joint Oklahoma return and elect to have their Oklahoma income determined and taxed on the basis of a joint Oklahoma return as if both were residents.

If a joint return has been made under this section for a tax year and taking into account all the facts and circumstances, the Tax Commission determines that it is inequitable to hold one of the spouses liable for the deficiency in tax for such tax year, then such spouse shall be relieved of liability for tax, including interest and penalties, for such tax year to the extent that such deficiency is determined to be the liability of the other spouse.

SECTION 9. AMENDATORY 68 O.S. 1991, Section 2871, is amended to read as follows:

Section 2871. A. After delivery of the tax rolls to the county treasurer of any county, no correction or alteration as to any item contained therein as of such date of delivery shall ever be made, except by the county treasurer and on authority of a proper certificate authorized by law or pursuant to order or decree of court in determination of a tax protest or other proper case.

B. A board of tax roll corrections, hereby created, consisting of the chairman of the board of county commissioners as chairman, the chairman of the county equalization board as vice-chairman, the

county clerk as nonvoting member and secretary, and the county assessor, a majority of whom shall constitute a quorum, is hereby authorized to hear and determine allegations of error, mistake or difference as to any item or items so contained in said tax rolls, in any instances hereinafter enumerated, on application of any person or persons whose interest may in any manner be affected thereby, or by his agent or attorney, verified by affidavit and showing that the complainant was not at fault through his own failure to fulfill any duty enjoined upon him by law, or upon discovery by the county treasurer or assessor before the tax has been paid or attempted to be paid and disclosure by statement of fact in writing signed by said treasurer or assessor and verified by the assessor or treasurer as the case may be; but such right shall not be available to anyone attempting to acquire, or who has acquired, the lien of the county for such tax, whether by purchase, assignment, deed or otherwise. In counties with two (2) county boards of equalization, the chairman of each such board shall serve, in alternating years, as the vice-chairman of the board of tax roll corrections. When a complaint is pending before the board of tax roll corrections such taxes, as may be owed by the protesting taxpayer, shall not become due until thirty (30) days after the decision of the board of tax roll corrections. When a complaint is filed on a tax account which has been delinquent for more than one (1) year, and upon showing that the tax is delinquent, the complaint shall be dismissed, with prejudice.

C. If, upon such hearing, it appears that:

1. Any personal or real property has been assessed to any person, firm, or corporation not owning or claiming to own the same; or
2. Property exempt from taxation has been assessed; or
3. Exemption deductions allowed by law have not been taken into account; or
4. The same property, whether real or personal, has been assessed more than once for the taxes of the same year; or
5. Property, whether real or personal, has been assessed in the county for the taxes of a year to which the same was not subject; or
6. The county board of equalization has, after delivery of the tax rolls, made a finding of fact under authority of law that, after January 1 of any year and before May 1 of the same year, improvements to real estate or other property assessed have been destroyed by fire, or that the value of land has been impaired, damaged or destroyed by floods or overflow of streams, and has made and entered an adjustment to assessments previously made and entered; or
7. Lands or lots have in any manner been erroneously described; or
8. Any valuation or valuations assessed and entered are at variance with the valuation finally equalized; or
9. Any valuation or valuations returned for assessment and not increased by the county assessor have been entered on the assessment rolls for equalization at variance with the value returned, or in the event of increase by either the county assessor or the county board of equalization and no notice thereof was sent (offer of proof of failure to receive notice may not be heard); or
10. Any valuation assessed and entered included, in whole or in part, as of the date of assessment under the law relating thereto, any property that had no taxable situs in the county, did not exist or had been erroneously placed; or
11. Any property subject to taxation as of January 1 of any year was thereafter acquired by conveyance of title, including tax

title, by the county, or any city, town or school district therein;
or

12. An error resulted from inclusion in the total of levies computed against the valuation entered, a tax levy or levies certified and final for none or part of which such property was liable in fact and the same be self-evident on recomputation, and involve no question of law; or

13. As to personal tax, if there has been an error in the name of the person assessed, or, as to real property, the record owner at the time of assessment desires that his name be entered in lieu of whatever other name may have been entered as "owner" upon the roll;
or

14. There has been any error in the tax extended against the valuation entered, whether by erroneous computation or otherwise; or

15. There has been any error in transcribing from the county assessor's permanent survey record to the assessment rolls either as to area or value of lands or lots or as to improvements thereon; or

16. The county treasurer has, of his own volition, restored to the tax rolls any tax or assessment where the entry upon the tax rolls shows the same theretofore to have been stricken or reduced by certificate issued by constituted authority, except where restored by specific court order or in conformity to general decree of the Supreme Court of Oklahoma invalidating in mass all such certificates of a class certain, and except if the owner of such property demand its restoration and make payment, in which instance the county treasurer shall require that he sign on the face of his receipt a statement that he "paid voluntarily without demand, request or duress"; or

17. Any personal property assessment and personal tax charge has been entered upon the assessment and tax rolls except upon proper return of assessment by the taxpayer or increase thereof with due notice, or as a delinquent assessment made by the county assessor or his deputies in detail either on view or reliable information; then, in the event any of the grounds stated in this subsection are present, it shall be the duty of the board of tax roll corrections to make and the secretary to enter its findings of fact and to correct such error, if such exists, by issuing its order, in words and figures, to accomplish such:

- a. If such error increases the amount of tax charged, the county clerk shall issue a certificate of error to the county assessor ordering him to certify such correction and/or increase to the county treasurer for entry on the tax rolls.
- b. If such error does not increase the amount of tax charged, the county clerk shall issue a certificate of error to the county treasurer if the tax be not paid, stating the amount or other effect of such order, and it shall be the duty of such county treasurer to make and enter such correction upon his tax rolls and, if there be a decrease to the amount of tax charged, to enter a credit, in lieu of cash, for the amount of decrease of tax shown in such certificate.

D. If, prior to such hearing by the board, as provided by this section, the tax has been paid, no certificate shall issue; but if less than one (1) year shall have elapsed after the payment of the tax and before the filing of such application for correction of error, and after such hearing the findings of fact disclose that less tax was due to have been paid than was paid, then the person who paid the tax, or his heirs, successors, or assigns, may execute a cash voucher claim setting forth facts and findings, verify it,

and file it with the county clerk, who shall thereupon deliver such claim to the county treasurer for designation of the fund from which the claim must be paid and approval of the claim as to availability of funds by the county treasurer. If taxes have been paid under protest, the county treasurer must designate the refund to be paid from such protest fund. If taxes have been paid but not paid under protest and if there are funds available in current collections of the taxing unit which received the taxes paid, then the county treasurer must designate the refund to be paid from such current collections of such taxing unit. The county clerk shall thereupon issue his cash voucher against the appropriate fund of the county, directing the county treasurer to pay to such person the amount so found to be erroneous. The word "person" as used in this subsection shall comprehend the person, firm, or corporation who paid such tax and the heirs, assigns or successors, as the case may be. No such claim for refund shall be allowed and paid unless the same be filed within six (6) months after the effective date of the order of correction.

E. If there be any error in the taxes collected from any person, the overpayment or duplicate payment of any such taxes collected in error may be recovered by the taxpayer, and the county treasurer may make such payment from the resale property fund of the county if funds are not available as stated in subsection D of this section.

F. Beginning January 1, 1987, notwithstanding the one-year limitations period for filing a claim for refund as provided in subsection D of this section, if there be any error in taxes collected from any person on property constitutionally exempt under Section 6B of Article X of the Oklahoma Constitution, by the county treasurer in counties with a population in excess of five hundred thousand (500,000) persons, according to the latest Federal Decennial Census, to the extent that such county has been reimbursed from the Ad Valorem Reimbursement Fund provided by Section 193 of Title 62 of the Oklahoma Statutes, the overpayment or duplicate payment of any such taxes collected in error may be recovered by the taxpayer in equal annual installments over a five-year period and the county treasurer may make such payment from the resale property fund of the county if funds are not available as stated in subsection D of this section.

G. Both the taxpayer and the county assessor shall have the right of appeal from any order of the board of tax roll corrections to the district court of the same county. In case of appeal the trial in the district court shall be de novo.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 2902, as last amended by Section 32, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 2902), is amended to read as follows:

Section 2902. A. A qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Constitution of the State of Oklahoma.

B. For purposes of this section, the following definitions shall apply:

1. "Manufacturing facilities" shall mean facilities engaged in the mechanical or chemical transformation of materials or substances into new products and shall include:

- a. establishments as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest revision,
- b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,
- c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372 and 7373 of the SIC Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and such other information as required by the Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer, ~~or~~
- d. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which employ at least one hundred (100) full-time-equivalent employees, as certified by the Employment Security Commission. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and such other information as required by the Commission. The exemption provided for in this subparagraph shall apply only to an establishment for which construction of the facility has commenced prior to October 1, 1993, or
- e. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which employ at least three hundred (300) full-time-equivalent employees, as certified by the Employment Security Commission. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and providing such other information as required by the Commission. The exemption provided for in this

subparagraph shall apply only to an establishment for which construction of the facility has commenced after the effective date of this act but prior to December 1, 1997.

Provided, eating and drinking places, as well as other retail establishments, shall not qualify as manufacturing facilities for purposes of this section, nor shall centrally assessed properties.

2. For tax years beginning after December 31, 1992, "manufacturing facilities" shall mean those facilities as defined in paragraph 1 of this subsection for which the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars (\$250,000.00) or more;

3. "Facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process; provided, for establishments specified in subparagraph e of paragraph 1 of this subsection, the terms "facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process, including but not limited to, fork lifts and fork lifts support equipment, conveyor systems and components, pallet jacks, storage or order filling racking, inventory control computers and other computer systems used in the distribution process, bar code readers, motorized vehicles for moving trailers and all other tangible personal property used in handling the items being distributed; and

4. "Research and development" shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity.

C. For applications for a five-year exemption submitted on or before December 31, 1993, the exemption herein provided for shall apply to new or acquired manufacturing facilities as defined by Section 6B of Article X of the Oklahoma Constitution and to the expansion of existing facilities on the same site. Any exemption as to expansions of existing facilities shall be limited to the increase in ad valorem taxes directly attributable to the expansion. Provided further, any exemption as to equipment used in the manufacturing process for manufacturing facilities which qualify pursuant to subparagraph b of paragraph 1 of subsection B of this section shall be granted only if such equipment results in a net increase in the number of full-time-equivalent employees of the facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. Calculation of the number of new employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit.

D. For applications for a five-year exemption submitted after December 31, 1993, the following provisions shall apply:

1. A manufacturing concern shall be entitled to the exemption herein provided for each new manufacturing facility constructed, each existing manufacturing facility acquired and the expansion of existing manufacturing facilities on the same site, as such terms are defined by Section 6B of Article X of the Oklahoma Constitution and by this section;

2. No manufacturing concern shall receive more than one five-year exemption for any one manufacturing facility unless the expansion which qualifies the manufacturing facility for an

additional five-year exemption meets the requirements of paragraph 4 of this subsection, provided the employment level established for any previous exemption is maintained;

3. Any exemption as to the expansion of an existing manufacturing facility shall be limited to the increase in ad valorem taxes directly attributable to the expansion;

4. Except as provided in paragraph 5 of this subsection, any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:

- a. the construction, acquisition or expansion results in a net increase of fifteen (15) or more full-time-equivalent employees of said manufacturing facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year, and
- b. the facility offers, or will offer within one hundred eighty (180) days of the date of employment, a basic health benefits plan to the full-time-equivalent employees of the facility, which is determined by the Department of Commerce to consist of the elements specified in subparagraph b of paragraph 1 of subsection A of Section 3603 of this title or elements substantially equivalent thereto.

For purposes of this section, calculation of the number of new employees shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The manufacturing concern shall submit an affidavit to the Oklahoma Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the number of full-time-equivalent employees as required by this paragraph and that such employees are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the number of full-time-equivalent employees or has not met any other qualification specified in this paragraph, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the county treasurer, who shall cause such amount to be remitted to the Oklahoma Tax Commission for deposit to the Ad Valorem Reimbursement Fund; and

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment costs of the construction, acquisition or expansion of the manufacturing facility is Seventy-five Million Dollars (\$75,000,000.00) or more and the manufacturing facility retains employment of two thousand five hundred (2,500) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if employment of two thousand five hundred (2,500) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and

"expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product.

E. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. Said application shall be on a form or forms prescribed by the Oklahoma Tax Commission, and shall be filed before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for said year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1st of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Oklahoma Tax Commission pursuant to said provisions.

F. Said application shall be examined by the county assessor and approved or rejected by him in the same manner as provided by law for approval or rejection of claims for homestead exemptions. The taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later than June 15, except as provided in Section 2902.1 of this title, of the year in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission.

G. Nothing herein shall in any manner affect, alter or impair any law relating to the assessment of property, and all property, real or personal, which may be entitled to exemption hereunder shall be valued and assessed as is other like property and as provided by law. The valuation and assessment of property for which an exemption is granted hereunder shall be performed by the Oklahoma Tax Commission.

H. The Oklahoma Tax Commission shall have the authority and duty to prescribe forms and to promulgate rules and regulations as may be necessary to carry out and administer the terms and provisions of this section.

SECTION 11. AMENDATORY Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 22, Chapter 322, O.S.L. 1994 (68 O.S. Supp. 1994, Section 3603), is amended to read as follows:

Section 3603. A. As used in this act:

1. a. "Basic industry" means manufacturing, as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest version; administrative and auxiliary services that are assigned a one-digit auxiliary code in the SIC Manual, and are described therein as Central Administrative Offices, which means central centers that influence the environment in which data processing, customer

service, credit accounting, telemarketing, claims processing and other administrative functions are accomplished; Research, Development and Testing Laboratories; warehouses which serve as distribution centers for retail or wholesale businesses, if seventy-five percent (75%) of the inventory processed through such warehouse is shipped out-of-state; or the following, if an establishment classified therein has or will have within one (1) year sales of at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of this section, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government:

- (1) motor freight transportation and warehousing, as defined or classified under Major Group 42 of the SIC Manual, latest version,
- (2) transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version,
- (3) arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version,
- (4) arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version,
- (5) insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version,
- (6) mailing, reproduction, commercial art and photography and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version,
- (7) services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version,
- (8) miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version,
- (9) personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version,
- (10) computer programming, data processing and other computer-related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version,
- (11) miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version,
- (12) medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version, and
- (13) engineering and management services, as defined or classified under Major Group 87 of the SIC Manual, latest version.

- b. An establishment described in subparagraph a of this paragraph shall not be considered to be engaged in a basic industry unless it offers, or will offer within

one hundred eighty (180) days of the date it receives the first incentive payment pursuant to the provisions of this act, a basic health benefits plan to the individuals it employs in new direct jobs in this state which is determined by the Oklahoma Department of Commerce to consist of the following elements or elements substantially equivalent thereto:

- (1) not less than fifty percent (50%) of the premium shall be paid by the employer,
- (2) coverage for basic hospital care,
- (3) coverage for physician care,
- (4) coverage for mental health care,
- (5) coverage for substance abuse treatment,
- (6) coverage for prescription drugs, and
- (7) coverage for prenatal care;

2. "New direct job" means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of this act which did not exist in this state prior to the date of approval by the Department of Commerce of the application of the establishment pursuant to the provisions of Section 3604 of this title;

3. "Estimated direct state benefits" means the tax revenues projected by the Department of Commerce to accrue to the state as a result of new direct jobs;

4. "Estimated direct state costs" means the costs projected by the Department of Commerce to accrue to the state as a result of new direct jobs. Such costs shall include but not be limited to:

- a. the costs of education of new state resident children,
- b. the costs of public health, public safety and transportation services to be provided to new state residents,
- c. the costs of other state services to be provided to new state residents, and
- d. the costs of other state services;

5. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

6. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided:

- a. except as otherwise provided in this paragraph, the net benefit rate may be variable and shall not exceed five percent (5%)
- b. the net benefit rate shall not exceed six percent (6%) in connection with an establishment which is owned and operated by an entity which has been awarded a United States Department of Defense contract for which:
 - (1) bids were solicited and accepted by the United States Department of Defense from facilities located outside this state,
 - (2) the term is or is renewable for not less than twenty (20) years, and
 - (3) the average annual salary, excluding benefits which are not subject to Oklahoma income taxes, for new direct jobs created as a direct result of the awarding of the contract is projected by the Department of Commerce to equal or exceed Forty Thousand Dollars (\$40,000.00) within three (3) years of the date of the first incentive payment, and
- c. in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits;

7. "Gross payroll" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs; and

8. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political subdivision of the State of Oklahoma; or trust authority; provided, distinct, identifiable subunits of such entities may be determined to be an establishment, for all purposes of this act, by the Oklahoma Department of Commerce subject to the following conditions:

- (1) the entity must have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and the subunit must also have or will have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00),
- (2) the subunit is engaged in an activity or service or produces a product which is demonstratively independent and separate from the entity's other activities, services or products and could be conducted or produced in the absence of any other activity, service or production of the entity,
- (3) has an accounting system capable of tracking or facilitating an audit of the subunit's payroll, expenses, revenue and production. Limited interunit overlap of administrative and purchasing functions shall not disqualify a subunit from consideration as an establishment by the Oklahoma Department of Commerce,
- (4) the entity has not previously had a subunit determined to be an establishment pursuant to this section; provided, the restriction set forth in this division shall not apply to subunits which qualify pursuant to the provisions of subparagraph b of paragraph 6 of this subsection, and
- (5) it is determined by the Department of Commerce that the entity will have a probable net gain in total employment within the incentive period.

b. The Oklahoma Department of Commerce may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The Department of Commerce shall promulgate rules to determine whether a subunit of an entity achieves a net gain in total employment. The Department shall establish criteria for determining the period of time within which such gain must be demonstrated and a method for determining net gain in total employment.

B. The Incentive Approval Committee is hereby created and shall consist of the Director of State Finance, the Director of the Department of Commerce and one member of the Oklahoma Tax Commission appointed by the Tax Commission. It shall be the duty of the Committee to determine, upon initial application on a form approved by the Committee, if an establishment is engaged in a basic industry as defined in divisions (1) through (13) of subparagraph a of paragraph 1 of subsection A of this section.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 6001, is amended to read as follows:

Section 6001. ~~For the purpose of this act~~ As used in Section 6001 et seq. of this title:

~~(A) The term "aircraft"~~ 1. "Aircraft" means and includes every self-propelled plane, airplane, helicopter, or balloon or sailplane manufactured by mass production or individually constructed or assembled, used, or designed for navigation or flight in the air or airspace, and subject to registration with the Federal Aviation Administration;

2. "Commercial airline" means an air carrier, foreign air carrier or intrastate air carrier, as defined by Section 40102 of Title 49 of the United States Code, 49 U.S.C., Section 40102, and operating pursuant to Part 121 or 129 of Title 14 of the Code of Federal Regulations, 14 CFR, Part 121 or 129, or conducting scheduled services pursuant to Section 135.2 of Subpart A, Part 135 thereof;

~~(B) 3. "Purchase price is defined as"~~ means the total amount paid for the aircraft whether paid in money or otherwise. "Purchase price" is further defined as the fair market value when no current purchase is involved; and

4. "Use" means and includes the operation or basing of an aircraft on or from any airport in this state for a period of thirty (30) days or more. For purposes of this article, the term "use" does not include aircraft which are intended for exclusive use in another state, but which are stored in this state pending shipment to such other state, or aircraft which are retained in this state solely for fabrication, repair, testing, alteration, modification, refurbishing or maintenance, nor does the term "use" include aircraft which are operating within this state pursuant to the terms of a lease, the lease value of which is subject to the provisions of the Oklahoma Sales Tax Code, Section 1350 et seq. of this title.

SECTION 13. AMENDATORY 68 O.S. 1991, Section 6003, as last amended by Section 11, Chapter 363, O.S.L. 1994 (68 O.S. Supp. 1994, Section 6003), is amended to read as follows:

Section 6003. The following aircraft shall be exempt from provisions of this article:

1. Aircraft manufactured under an F.A.A. approved certificate and which are owned and in the physical possession of the manufacturer of said aircraft. Said aircraft shall have an aircraft exemption license as provided for in Section 254 of Title 3 of the Oklahoma Statutes;

2. Aircraft owned by dealers and in the dealer's inventory, not including aircraft that are used personally or for business. Said aircraft shall have an aircraft exemption license as provided for in Section 254 of Title 3 of the Oklahoma Statutes;

3. Aircraft of the federal government, any agency thereof, any territory or possession, any state government, agency, or political subdivision thereof;

4. Aircraft transferred from one corporation or limited liability company to another corporation or limited liability company pursuant to reorganization of the corporation or limited liability company. For the purpose of this section the term reorganization means a statutory merger, consolidation, or acquisition;

5. Aircraft purchased ~~outside this state and brought into the state to be~~ or used by commercial airlines as defined by paragraph 4 of Section 6001 of this title;

6. Aircraft transferred in connection with the dissolution or liquidation of a corporation or limited liability company and only if included in a payment in kind to the shareholders or members;

7. Aircraft transferred to a corporation for the purpose of organizing such corporation. However, the former owners of the aircraft must have control of the corporation in proportion to their interest in the aircraft prior to the transfer;

8. Aircraft transferred to a partnership or limited liability company when the organization of the partnership or limited liability company is by the former owners of the aircraft. However, the former owners of the aircraft must have control of the partnership in proportion to their interest in the aircraft prior to the transfer;

9. Aircraft transferred from a partnership or limited liability company to the members of the partnership or limited liability company and if made in payment in kind in the dissolution of the partnership;

10. Aircraft transferred or conveyed to a partner of a partnership or shareholder or member of a limited liability company or other person who after such sale owns a joint interest in the aircraft and on which the sales or use tax levied pursuant to the provisions of this title or the excise tax levied pursuant to the provisions of Section 6002 of this title have previously been paid on the aircraft;

11. Aircraft on which a tax levied pursuant to the provisions of the laws of another state, equal to or in excess of the excise tax levied by Section 6002 of this title, has been paid by the person using the aircraft in this state. Aircraft on which a tax levied pursuant to the laws of another state, in an amount less than the excise tax levied by Section 6002 of this title, has been paid by the person using the aircraft in this state shall be subject to the levy of the excise tax at a rate equal to the difference between the rate of tax levied by Section 6002 of this title and the rate of tax levied by the other state;

12. Aircraft when legal ownership of such aircraft is obtained by the applicant for a certificate of title by inheritance;

13. Aircraft when legal ownership of such aircraft is obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided for by law;

14. Aircraft which is transferred between husband and wife or parent and child where no valuable consideration is given;

15. Aircraft which is purchased by a resident of this state and used exclusively in this state for agricultural spraying purposes; provided, if such aircraft is sold, leased or used outside this state or for a purpose other than agricultural spraying at any time within three (3) years from the date of purchase, the excise tax levied pursuant to the provisions of Section 6002 of this title shall be due and payable. For purposes of this subsection, "agricultural spraying" means the aerial application of any substance sold and used for soil enrichment or soil corrective purposes or for promoting the growth and productivity of plants and animals;

16. Aircraft manufactured in the State of Oklahoma with a selling price in excess of Five Million Dollars (\$5,000,000.00);

17. Aircraft which have a selling price in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and which are transferred to a purchaser who is not a resident of this state for immediate transfer out of state; and

18. Aircraft which is transferred without consideration between an individual and an express trust which that individual or the spouse, child or parent of that individual has a right to revoke.

SECTION 14. AMENDATORY 74 O.S. 1991, Section 5085.5, is amended to read as follows:

Section 5085.5 For purposes of this act:

1. "Board" means the Oklahoma Capital Investment Board;
2. "Director" means any person who is a member of the Board;
3. "Equity capital" means capital invested in common or preferred stock, royalty rights, limited partnership interests, and any other securities or rights that evidence ownership in private businesses;
4. "Investor group" means any individual, corporation, partnership or other lawfully organized entity;
5. "Near-equity capital" means capital invested in unsecured, undersecured, subordinated or convertible loans or debt securities;
6. "Persons" means individuals, corporations, partnerships or other lawfully organized entities;
7. "Put option" means a right or privilege to sell an amount of a particular security or class of securities during a time period ending on the expiration date of the option; and
8. "Tax credits" means tax credits available against liabilities imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes and issued or transferred pursuant to this act.

- a. The tax credits issued or transferred pursuant to the Oklahoma Capital Formation Act, upon election by the purchaser at utilization, will be treated as a payment or prepayment in lieu of tax imposed under Section 2355 of Title 68 of the Oklahoma Statutes;
- b. Tax credits utilized pursuant to subparagraph a of this paragraph shall be treated and may be claimed as a payment of tax or estimated tax for the purposes of and as defined in Sections 2375, 2385.9 and 2385.13 of Title 68 of the Oklahoma Statutes. Such tax credits are further subject to the system developed in conjunction with the Oklahoma Tax Commission as required by subsection C of Section 5085.7 of this title for registration and verification of the tax credits. Taxpayers may rely upon the provisions of the registration and verification system developed pursuant to Section 5085.7 of this title.

SECTION 15. AMENDATORY 74 O.S. 1991, Section 5085.7, is amended to read as follows:

Section 5085.7 A. The State of Oklahoma hereby issues tax credits that may be used to reduce the tax liability of a person, firm or corporation if such liability is imposed pursuant to the provisions of Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes. Provided, tax credits against liabilities imposed pursuant to Section 624 of Title 36 of the Oklahoma Statutes shall be limited to the amount that would otherwise be collected and allocated to the General Revenue Fund of the State Treasury. Tax credits issued and transferred to the Oklahoma Development Finance Authority pursuant to the provisions of this section and prior to the effective date of this act are hereby transferred to the Oklahoma Capital Investment Board, created pursuant to the provisions of this act. The total amount of tax credits that are hereby issued, or are transferred pursuant to this section to the Board, is Fifty Million Dollars (\$50,000,000.00). The credits shall be freely transferable to

subsequent transferees; however, no such tax credit shall be exercisable before July 1, 1990, nor after July 1, 2015. The Board shall not transfer tax credits except in conjunction with a legitimate call on a Board guarantee. The Board shall immediately notify the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor in writing if any tax credit is transferred in conjunction with a legitimate call on a Board guarantee; provided, the Board shall not be required to make such notification for transfers to subsequent transferees.

B. The Oklahoma Capital Investment Board shall determine the amount of individual tax credits to be transferred pursuant to this act and may negotiate for sale of such credits subject only to the limits imposed by this act. The Board shall ensure that no more than Ten Million Dollars (\$10,000,000.00) in tax credits has been transferred which may be claimed and used to reduce the tax otherwise imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes for any one (1) fiscal year. The Board shall clearly indicate upon the face of the certificate or other document transferring the tax credit the principal amount of the tax credit and the taxable year or years for which the credit may be claimed. Any original sale of tax credits by the Board shall be by competitive bidding unless the sale is for full-face value.

C. The Board shall, in conjunction with the Oklahoma Tax Commission, develop a system for registration of any tax credits issued or transferred pursuant to this act and a system of certificates that permits verification that any tax credit claimed upon a tax return is validly issued, properly taken in the year of claim and that any transfers of the tax credit are made in accordance with the requirements of this act.

D. The Board may pay a fee in connection with the purchase by the Board of an option or other agreement pursuant to which a transfer of tax credits authorized by this act may be made.

E. The Board shall have the power to make any contract, execute any document, charge reasonable fees for services rendered, perform any act or enter into any financial or other transaction necessary in order to carry out its mission. The Board may employ such persons as may be required for the proper implementation of this act, the management of its assets, or the performance of any function authorized or required by this act or necessary for the accomplishment of any such function. Such persons shall be selected by the Board based upon outstanding knowledge and leadership in the field for which the person performs services for the Board.

SECTION 16. A. The Oklahoma Department of Commerce shall conduct a study to determine the potential ability for persons, firms, companies and corporations doing business in Oklahoma to provide goods or services or both to other persons, firms, companies and corporations which conduct business in the state.

B. The study shall focus upon the extent to which the Oklahoma business community could provide opportunities for the residents of the state and business entities domiciled within the state to become subcontractors of persons and firms within the Oklahoma business community, especially in situations involving an activity that is performed by a subcontractor doing business primarily outside the state. The Department of Commerce shall give appropriate consideration to economic efficiencies which could be achieved whether by time, cost or quality or any combination of those factors in identification of possible subcontracting opportunities for persons, firms, companies or corporations doing business primarily within the state. The Department shall place particular emphasis on

subcontracting opportunities for persons or business entities located in rural areas, areas of high unemployment or both such areas.

C. The Oklahoma Department of Commerce shall identify, to the extent possible, all business entities engaged in manufacturing as described in Division D of the Standard Industrial Classification Manual within the state and identify, to the extent possible, the potential for those manufacturers to have essential services performed or goods supplied by persons, firms, companies or corporations already doing business and based principally within the state on a subcontracting basis.

D. The Oklahoma Department of Commerce shall be authorized to use information in the possession of any state agency, board, commission, department or other entity to the extent authorized by laws governing the confidentiality of the information requested in order to conduct the study required by this section.

E. The study shall be completed not later than December 31, 1995. The Department of Commerce shall prepare a report with specific recommendations for methods to assist persons, firms, companies and corporations doing business in the state to supply goods or services or goods and services for manufacturing or other business activities on a subcontracting basis.

F. Copies of the report shall be filed not later than January 31, 1996, with the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

SECTION 17. The Capital Preservation and Economic Enhancement Fund is hereby abolished. Any monies remaining in such fund on November 15, 1995, are hereby transferred to the General Revenue Fund.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2901.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Legislature finds that current economic conditions, federal housing policies and declining resources at the federal, state, and local level adversely affect the ability of low-income and very low-income persons to obtain safe, decent and affordable housing.

B. The Legislature declares that it is therefore in the public interest to provide for a continuously renewable resource known as a housing trust fund from private monies and federal grants to assist low-income and very low-income citizens in meeting their basic housing needs, and that the needs of very low-income citizens should be given priority.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2901.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created the "Oklahoma Housing Trust Fund" to be administered by the Oklahoma Housing Finance Agency. The fund shall be a continuing fund, not subject to fiscal year limitations.

SECTION 20. REPEALER Section 15, Chapter 350, O.S.L. 1992, as amended by Section 16, Chapter 305, O.S.L. 1993 (62 O.S. Supp. 1994, Section 57.314), and 62 O.S. 1991, Section 205, are hereby repealed.

SECTION 21. NONCODIFICATION The provisions of Sections 16 and 17 of this act shall not be codified in the Oklahoma Statutes.

SECTION 22. Sections 1, 2, 17 and 20 of this act shall become effective July 1, 1995.

SECTION 23. Sections 18 and 19 of this act shall become effective November 1, 1995.

SECTION 24. 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 House of Representatives the 25th day of May, 1995.

Speaker of the House of
Representatives

Passed the Senate the 25th day of May, 1995.

President of the Senate