

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1807

By: Langmacher of the House

and

Wilkerson of the Senate

COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Tax Commission; amending 47 O.S. 1991, Section 1109, which relates to confidentiality of information; deleting authorization of the Oklahoma Tax Commission or motor license agents to furnish certain information; amending 59 O.S. 1991, Sections 1402, 1403, 1408, and 1411, as amended by Section 4, Chapter 89, O.S.L. 1996 (59 O.S. Supp. 1996, Section 1411), which relate to junk dealers; providing that junk dealers be required to obtain sales tax permit; deleting license requirement and procedures relating thereto for junk dealers; amending 68 O.S. 1991, Section 220, as amended by Section 10, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1996, Section 220), which relates to waiver or remission of interest or penalties; increasing amount of waiver or remission which may be approved without district court approval; amending 68 O.S. 1991, Section 234, which relates to lien for unpaid taxes, interest, and penalties; providing that certain complaints or pleadings shall include certain information; amending 68 O.S. 1991, Section 255, as amended by Section 2, Chapter 385, O.S.L. 1994 (68 O.S. Supp. 1996, Section 255), which relates to contracting with debt collection agencies to collect delinquent taxes; permitting the collection of certain delinquent taxes to be referred for collection; amending 68 O.S. 1991, Section 607.2, as amended by Section 2, Chapter 33, O.S.L. 1994 (68 O.S. Supp. 1996, Section 607.2), which relates to the Oklahoma Motor/Diesel Fuel Importer for Use Indemnity Fund; providing for certain claims to be made for tax liability of motor fuel distributor; providing definition; amending 68 O.S. 1991, Section 801, which relates to estate taxes; providing that certain information be contained in certain notice; amending 68 O.S. 1991, Section 1213, which relates to franchise tax; updating statutory reference; amending 68 O.S. 1991, Section 1358.1, as last amended by Section 1, Chapter 182, O.S.L. 1995 (68 O.S. Supp. 1996, Section 1358.1), which relates to agricultural exemptions; deleting reference to motor fuel tax exemption permit and the procedure relating thereto; deleting certain proof of eligibility for sales tax exemptions; amending 68 O.S. 1991, Section 1364, which relates to sales tax permits; providing for probationary sales tax permit; authorizing Oklahoma Tax Commission to refuse certain permit; providing for notice and hearing; prohibiting

probationary permit holders from using permit for obtaining certain license plate; amending Section 1, Chapter 126, O.S.L. 1996 (68 O.S. 1991, Section 1364.1), which relates to direct payment permits; providing limitation for direct payment permits; amending 68 O.S. 1991, Section 2103, which relates to excise vehicle tax; providing that exemption from vehicle excise tax shall not apply to certain vehicles; amending 68 O.S. 1991, Section 2357, as amended by Section 8, Chapter 289, O.S.L. 1996 (68 O.S. Supp. 1996, Section 2357), which relates to credits against income tax; providing that certain credit applies to certain nonresidents; amending 68 O.S. 1991, Section 2375, as last amended by Section 28, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1996, Section 2375), which relates to payment of tax; modifying due date of taxes for tax returns electronically filed; amending 68 O.S. 1991, Section 2385.13, as amended by Section 1, Chapter 42, O.S.L. 1996 (68 O.S. Supp. 1996, Section 2385.13), which relates to amount of estimated taxes; modifying penalty and interest for underestimating certain taxes and the procedure relating thereto; amending 68 O.S. 1991, Section 2810, which relates to ad valorem taxation and farm tractors; deleting requirement of county assessor to send certain certificate copy; amending 68 O.S. 1991, Section 6003, as last amended by Section 3, Chapter 344, O.S.L. 1996 (68 O.S. Supp. 1996, Section 6003), which relates to aircraft excise tax exemptions; modifying certain exemption; repealing 59 O.S. 1991, Section 1404, which relates to junk dealers; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 1109, is amended to read as follows:

Section 1109. A. All information contained in certificates of title, applications therefor, or registration certificates is hereby declared to be confidential information and shall not be copied by anyone or disclosed to anyone other than employees of the Oklahoma Tax Commission in the regular course of their employment, except as follows:

1. To law enforcement officers in the regular course of their duties;
2. To other governmental agencies when required in their governmental functions;
3. To any motor vehicle manufacturer or his authorized representative for the purpose of meeting the requirements of the

recall provisions of Title 15 U.S.C. 1974; provided that said manufacturer or his representative shall, when requesting information pertaining to motor vehicles, furnish the Commission with an affidavit stating the purpose for which the information is to be used, and that the confidentiality of the information shall be protected, as set out above, and used only for the purpose stated; provided, further, that the Commission shall be authorized to review the use of and the measures employed to safeguard said information; and provided, further, that the manufacturer or his representative shall bear the cost incurred by the Commission in the production of the information requested. If the confidentiality provisions, as set out above, are violated, the provisions of subsection (d) of Section 205 of Title 68 of the Oklahoma Statutes, shall apply and the privilege of obtaining information shall be terminated. Any manufacturer or his representative violating the provisions of this subsection, upon conviction, shall be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00); and

4. To any person compiling and publishing motor vehicle statistics, provided that such statistics do not disclose the names and addresses of individuals. Such information shall be provided upon payment of a fee as determined by the Oklahoma Tax Commission.

~~B. Notwithstanding the foregoing, the Commission may, when requested for a particular vehicle, furnish desired information for the sum of One Dollar (\$1.00) per vehicle or make copies of certificates of title, applications therefor and registration certificates and sell the same for the fee hereinafter prescribed. Certified copies of any and all records held by the Commission relative to certificates of title and registration certificates issued under the laws of this state, duly certified by the Commission, may be received in evidence with the same effect as the original, when such original is not in the possession or under the control of the party desiring to use the same. For each certified copy furnished under this section, a fee of Two Dollars (\$2.00) per instrument shall be charged and collected by the~~

~~Commission. All such funds shall be deposited in the Oklahoma Tax Commission Revolving Fund.~~

~~C.~~ Notwithstanding the foregoing, the Commission may allow the release of information from its motor vehicle records upon magnetic tape consisting only of the following information:

1. The date of the certificate of title;
2. The certificate of title number;
3. The type of title issued for the vehicle;
4. The odometer reading from the certificate of title;
5. The year in which the vehicle was manufactured;
6. The vehicle identification number for the vehicle;
7. The make of the vehicle; and
8. The location in which the vehicle is registered.

The Commission shall allow the release of such information upon payment of a fee to be determined by the Commission. The information released as authorized by this subsection may only be used for purposes of detecting odometer rollback or odometer tampering, for determining the issuance in this state or any other state of salvage or rebuilt titles for vehicles or for determining whether a vehicle has been reported stolen in this state or any other state.

~~D. Notwithstanding the foregoing, any motor license agent, upon written request from a secured party for information contained in the certificate of title or registration certificate of a vehicle in which the secured party has an interest or upon written request from a vehicle owner for information contained in the certificate of title or registration certificate of such vehicle, may furnish such desired information for the sum of One Dollar (\$1.00) per vehicle.~~

~~E.~~ C. Notwithstanding the provisions of this section or of Section 205 of Title 68 of the Oklahoma Statutes, the Commission may inform a secured party that taxes and fees are delinquent with respect to a vehicle upon which the secured party has a perfected lien.

~~F.~~ D. The provisions of ~~subsections~~ subsection A ~~and B~~ of this section shall not apply to vehicles in excess of twenty-six

thousand (26,000) pounds, or to trailers or semitrailers which may be used in combination with such vehicles. The Oklahoma Tax Commission shall establish an appropriate fee to cover the cost of furnishing the requested data and shall issue specific rules and regulations for the dissemination of information that shall apply only to vehicles registered in Oklahoma with a gross vehicle weight in excess of twenty-six thousand (26,000) pounds, or the applicable trailers or semitrailers.

The release of such information shall be limited to Oklahoma incorporated and domiciled, nonprofit, tax exempt industry trade groups and organizations for the express purpose of making such data directly available to the heavy duty motor transportation industry.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 1402, is amended to read as follows:

Section 1402. ~~(a)~~ Any junk dealer being engaged in business when this act becomes effective shall, within thirty (30) days thereafter, and any other person, firm or corporation desiring to become a junk dealer shall prior to the commencement of business file a verified application and obtain a license sales tax permit as provided by Section 1364 of Title 68 of the Oklahoma Statutes from the Oklahoma Tax Commission. ~~Each junk dealer shall pay an annual license fee to the State of Oklahoma in the sum of Thirty-five Dollars (\$35.00).~~ Each junk dealer shall maintain at least one yard and, if such junk dealer maintains or desires to maintain more than one yard, ~~said~~ the junk dealer shall obtain, in addition to ~~his~~ the original license sales tax permit, a duplicate license sales tax permit for each additional yard. ~~An annual fee of Fifteen Dollars (\$15.00) shall be paid by the junk dealer for each duplicate license. Licensed junk dealers may, at any time after they have obtained an original license and before its expiration, obtain duplicate licenses for additional yards by payment to the Oklahoma Tax Commission of a fee of Fifteen Dollars (\$15.00) for each duplicate license. The application for license shall be on a form provided by and approved by the Oklahoma Tax Commission. Such form shall state the name of the junk dealer;~~

~~the location of his principal yard; the location of all other yards maintained by him within the state; the name or style of the firm under which such business is being conducted; the names and addresses of persons interested in the business as principals, copartners, officers and directors, specifying as to each his capacity and title. Provided that any junk dealer who shall feel aggrieved by the action of the Oklahoma Tax Commission, that it has acted unreasonably or arbitrarily in refusing to grant a license or in suspending or revoking his license may appeal from the action of said Commission to the Supreme Court of the state for a review of any such alleged unreasonable and arbitrary action; and the decision of said Court shall be final and binding upon said Commission; provided that any such order of said Commission shall be binding upon any such junk dealer until reversed by said Court.~~

~~(b) A certificate of license shall be furnished by the Oklahoma Tax Commission to every person whose application to become a junk dealer has been filed and approved. Such certificate shall be nonassignable and shall designate the name and address of licensee, the location of the yard and the fact that he is authorized to engage in the business of a junk dealer to handle copper material and shall be signed by the Oklahoma Tax Commission. Each junk dealer shall keep such certificate of license in a prominent and conspicuous place in his yard. In the case of a junk dealer having more than one yard, a duplicate license shall be on display in a conspicuous and prominent place in each such yard.~~

~~(c) The license or duplicate license herein provided for shall be renewable on the first day of January of each year upon application to the Oklahoma Tax Commission and upon payment of the fees herein provided for.~~

SECTION 3. AMENDATORY 59 O.S. 1991, Section 1403, is amended to read as follows:

Section 1403. Any ~~license~~ sales tax permit, issued pursuant to Section ~~1402~~ 1364 of ~~this title~~ Title 68 of the Oklahoma Statutes to any junk dealer who violates any of the provisions of

Sections 1401 through this section and Section 1405 through 1408 of this title relating to the purchase of copper materials, may be canceled or suspended for a period not to exceed thirty (30) days by the Oklahoma Tax Commission. The Oklahoma Tax Commission may refuse the issuance of or extension or reinstatement of any license permit where the applicant or licensee shall have violated any provisions of this act or existing laws. ~~Provided that such~~ Such cancellation or refusal shall be mandatory as to any junk dealer having been convicted of three separate violations of this act. ~~Provided, further, that~~ However, before the Oklahoma Tax Commission may cancel or suspend any license permit or refuse the issuance, reinstatement or extension thereof, ~~said the~~ the Oklahoma Tax Commission shall give each licensee or applicant ten (10) days' notice of a hearing before ~~said the~~ the Oklahoma Tax Commission, granting such person an opportunity to show cause why such action should not be taken. ~~Provided, further, that upon~~ Upon notice given to any junk dealer by the Oklahoma Tax Commission of its intention to cancel or suspend any license permit or to refuse the issuance, reinstatement or extension thereof, the Oklahoma Tax Commission shall have the authority to enter its order suspending such license permit or prohibiting the applicant from doing business without a license permit pending the final hearing before it as ~~herein~~ provided for ~~and, after~~ in this section. After notice of ~~such the~~ the order of suspension or prohibition from doing business, it shall be unlawful for ~~such the~~ the junk dealer to further engage in the business of a junk dealer, as defined herein, and in the event any such person shall conduct or at any time continue such unlawful operation, after notice of suspension or prohibition from doing business, the Oklahoma Tax Commission may institute or cause to be brought against such person or persons proceedings for injunction in any court of competent jurisdiction to enjoin and restrain such person or persons from doing business pending the order of the Oklahoma Tax Commission. Upon cancellation of a license permit by the Oklahoma Tax Commission, no new license permit shall be issued to such dealer for a period of one (1) year from the date of cancellation. In all cases where proceedings are

brought for injunction under this act, no bond for injunction shall be required and in all such cases, after notice of suspension has been given, no further notice shall be required before the issuance of a temporary restraining order on any proceeding for injunction. If an appeal is taken from the order of the Oklahoma Tax Commission issued pursuant to this section, the junk dealer, in order to conduct business as a junk dealer pending outcome of the appeal, shall be required to post a bond in the amount of Five Thousand Dollars (\$5,000.00).

SECTION 4. AMENDATORY 59 O.S. 1991, Section 1408, is amended to read as follows:

Section 1408. ~~(a)~~ A. Anyone acting as a junk dealer without a ~~license permit~~, as required by Section ~~2~~ 1402 of this ~~act title~~, is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine of Fifty Dollars (\$50.00); provided that each day's operation without a license constitutes a separate offense.

~~(b)~~ B. Any junk dealer failing to maintain records, as required by Section ~~6~~ 1406 of this ~~act title~~, and any junk dealer failing to hold copper material, as required by Section ~~7~~ 1407 of this ~~act title~~, is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine of Five Hundred Dollars (\$500.00).

~~(c)~~ C. Any person who knowingly gives false information with respect to the information required in Section ~~6~~ 1406 of this ~~act title~~ is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine not to exceed Five Hundred Dollars (\$500.00).

~~(d)~~ D. Each conviction of a junk dealer for violation of any provision of this act shall be reported to the Oklahoma Tax Commission by the clerk of the court rendering such verdict.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 1411, as amended by Section 4, Chapter 89, O.S.L. 1996 (59 O.S. Supp. 1996, Section 1411), is amended to read as follows:

Section 1411. Any ~~license permit~~, issued pursuant to Section ~~1402~~ 1364 of ~~this title~~ Title 68 of the Oklahoma Statutes to any junk dealer who violates any of the provisions of Section 1410 of this title relating to purchases of aluminum material, may be canceled or suspended for a period not to exceed thirty (30) days

by the Oklahoma Tax Commission. The Oklahoma Tax Commission may refuse the issuance of or extension or reinstatement of any ~~license~~ permit where the applicant or licensee has violated any of the provisions of Section 1410 of this title or existing laws. Before the Oklahoma Tax Commission may cancel or suspend any ~~license~~ permit or refuse the issuance, reinstatement or extension of a ~~license~~ permit, the Oklahoma Tax Commission shall give each licensee or applicant ten (10) days' notice of a hearing before the Oklahoma Tax Commission, granting the person an opportunity to show cause why such action should not be taken. Upon notice given to any junk dealer by the Oklahoma Tax Commission of its intention to cancel or suspend any ~~license~~ permit or to refuse the issuance, reinstatement or extension of a ~~license~~ permit, the Oklahoma Tax Commission may enter its order suspending such ~~license~~ permit or prohibiting the applicant from doing business without a ~~license~~ permit pending the final hearing before it as provided for in this section and, after notice of such order of suspension or prohibition from doing business, it shall be unlawful for such junk dealer to further engage in the business of a junk dealer. If any such person shall conduct or at any time continue such unlawful operation, after notice of suspension or prohibition from doing business, the Oklahoma Tax Commission may institute or cause to be brought against such person or persons proceedings for injunction in any court of competent jurisdiction to enjoin and restrain such person or persons from doing business pending the order of the Oklahoma Tax Commission. Upon cancellation of a license by the Oklahoma Tax Commission, no new license shall be issued to such dealer for a period of one (1) year from the date of the cancellation. In all cases where proceedings are brought for injunction pursuant to this section, no bond for injunction shall be required and in all such cases, after notice of suspension has been given, no further notice shall be required before the issuance of a temporary restraining order on any proceeding for injunction. If an appeal is taken from the order of the Oklahoma Tax Commission issued pursuant to this section, the junk dealer, in order to conduct business as a junk dealer

pending the outcome of the appeal, shall be required to post a bond in the amount of Five Thousand Dollars (\$5,000.00).

SECTION 6. AMENDATORY 68 O.S. 1991, Section 220, as amended by Section 10, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1996, Section 220), is amended to read as follows:

Section 220. ~~(a)~~ A. The interest or penalty or any portion thereof ordinarily accruing by reason of a taxpayer's failure to file a report or return or failure to file a report or return in the correct form as required by any state tax law or by this Code or to pay a state tax within the statutory period allowed for its payment may be waived or remitted by the Tax Commission or its designee provided the taxpayer's failure to file a report or return or to pay the tax is satisfactorily explained to the Tax Commission or such designee, or provided such failure has resulted from a mistake by the taxpayer of either the law or the facts subjecting him to such tax, or inability to pay such interest or penalty resulting from insolvency.

~~(b)~~ B. The waiver or remission of all or any part of any such interest or penalties in excess of ~~One Thousand Five Hundred Dollars (\$1,500.00)~~ Five Thousand Dollars (\$5,000.00) shall not become effective unless approved by one of the judges of the district court of Oklahoma County after a full hearing thereon.

The application for the approval of such waiver or remission shall be filed in the office of the court clerk of ~~said~~ the court at least twenty (20) days prior to the entry of the order of the judge finally approving or disapproving the waiver or remission. The order so entered shall be a final order of the district court of ~~said~~ the county.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 234, is amended to read as follows:

Section 234. ~~(a)~~ A. All taxes, interest and penalties imposed by the provisions of this article, or any state tax law, are hereby declared to constitute a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person owing the tax, whether such property is employed by such

person in the prosecution of business, or is in the hands of an assignee, trustee or receiver for the benefit of creditors, from the date said taxes are due and payable under the provisions of the state tax laws levying such taxes. ~~Said~~ The lien shall be in addition to any lien accrued by the filing of a tax warrant or tax certificate as provided by Sections 230 and 231 of this Code. ~~Said~~ The lien shall be prior, superior and paramount to all other liens, claims, or encumbrances on ~~said~~ the property of whatsoever kind or character, except those of any bona fide mortgagee, pledgee, judgment creditor, or purchaser, whose right shall have attached prior to the date of the filing and indexing in the office of the county clerk in the county in which the property is located, of the notice of the lien of the state under a tax certificate, as provided by Section 230 of this Code, or under a tax warrant as provided by Section 231 of this Code, and who have filed or recorded said mortgages and conveyances in the office of the county clerk of the county in which the property is located. Such taxes, penalties and interest shall at all times, constitute a prior, superior and paramount claim as against the claims of unsecured creditors. The ~~said~~ lien of the state shall continue until the amount of the tax and penalty due and owing, and interest subsequently accruing thereon, is paid.

~~(b)~~ B. In any action affecting the title to real estate or the ownership or right to possession of personal property, the State of Oklahoma may be made a party defendant, for the purpose of determining its lien upon the property involved therein only in cases where notice of the lien of the state has been filed and indexed as provided in Sections 230 and 231 of this Code; and, in any such action, service of summons upon the Oklahoma Tax Commission, by serving any member thereof, shall be sufficient service and binding upon the State of Oklahoma. In all such actions or suits, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and the identifying number evidencing the lien.

SECTION 8. AMENDATORY 68 O.S. 1991, Section 255, as amended by Section 2, Chapter 385, O.S.L. 1994 (68 O.S. Supp. 1996, Section 255), is amended to read as follows:

Section 255. A. In order to facilitate and expedite the collection of taxes more than six (6) months overdue from any taxpayer, the Oklahoma Tax Commission may enter into a contract with a debt collection agency doing business in the State of Oklahoma or in any other state for the collection of such delinquent taxes in addition to all other taxes accrued or accruing, including penalties and interest thereon, from ~~such nonresident~~ the taxpayer or. The Tax Commission may also enter into a contract with a person doing business in the State of Oklahoma or in any other state for the purpose of identifying and locating the assets of such delinquent taxpayer. Such contracts authorized by this section shall be subject to the provisions of the Oklahoma Central Purchasing Act.

B. Prior to entering into such a contract with a debt collection agency, the Tax Commission shall require that the debt collection agency file a bond in the amount of One Hundred Thousand Dollars (\$100,000.00). ~~Said~~ The bond shall be a bond from a surety company chartered or authorized to do business in this state, cash bond, certificates of deposits, certificates of savings or U.S. Treasury bonds, as the Tax Commission may deem necessary to guarantee compliance with the terms of the contract.

C. Each contract entered into by the Tax Commission with a debt collection agency, pursuant to the provisions of this section, shall specify that fees for services rendered, reimbursements or other remuneration shall be based on the total amount of delinquent taxes, including accrued penalties and interest, which is actually collected. No costs shall be reimbursed unless authorized in ~~said~~ the contract. Each contract entered into between the Tax Commission and a debt collection agency shall provide for the payment of fees for such services, reimbursements or other remuneration not in excess of twenty percent (20%) of the total amount of delinquent taxes, penalty and interest actually collected.

D. Each contract entered into by the Tax Commission with a person for the purpose of identifying and locating assets of delinquent taxpayers shall specify the amount of money to be paid for the performance of such services. No costs shall be reimbursed unless authorized in ~~said~~ the contract.

E. All such funds collected by a debt collection agency, including the fees for collection services as provided for in such contract, shall be remitted to the Tax Commission within five (5) days from the date of collection from a taxpayer. The Tax Commission shall pay from such remitted fees the amount of fees such debt collecting agency is entitled to for services performed pursuant to the provisions of such contract. All assets of such delinquent taxpayers which are identified and located shall be reported to the Tax Commission within five (5) days from the date of identification and location. Forms to be used for such remittances and reports shall be prescribed by the Tax Commission.

F. A debt collection agency entering into a contract with the Tax Commission or a person entering into a contract with the Tax Commission for asset location purposes pursuant to this section shall agree that it is receiving income from sources within this state or doing business in this state for purposes of the Oklahoma tax laws.

SECTION 9. AMENDATORY 68 O.S. 1991, Section 607.2, as amended by Section 2, Chapter 33, O.S.L. 1994 (68 O.S. Supp. 1996, Section 607.2), is amended to read as follows:

Section 607.2 A. There is hereby created the Oklahoma Motor/Diesel Fuel ~~Importer for Use~~ Indemnity Fund. The fund shall be established to ensure that the Oklahoma Tax Commission recovers tax revenue not remitted to the Oklahoma Tax Commission because of negligence, malfeasance or fraud by a motor fuel/diesel fuel importer or a motor fuel distributor.

B. The fund shall be administered by the three (3) members of the Oklahoma Tax Commission or their designees. The Commission shall invest all monies deposited in the fund in insured accounts and all interest shall be deposited in the fund.

C. Beginning March 15, 1988, the nonrefundable assessment of Twenty-five Dollars (\$25.00) for each motor fuel/diesel fuel importer shall be collected by the Motor Vehicle Division of the Oklahoma Tax Commission and remitted to the Commission for deposit into the fund. The Commission shall have the power to make annual assessments for contribution to the fund in an amount not to exceed Twenty-five Dollars (\$25.00) per year for each motor fuel/diesel fuel importer. Nothing herein shall be construed as prohibiting the Motor Vehicle Division of the Oklahoma Tax Commission from requiring a motor fuel/diesel fuel importer to file a bond payable to the Oklahoma Tax Commission as provided in this act.

D. Upon final determination by the Motor Vehicle Division of the Oklahoma Tax Commission of the tax liability of the motor fuel/diesel fuel importer or a motor fuel distributor, a claim in the amount of said liability may be made by the Motor Vehicle Division of the Oklahoma Tax Commission against the fund. ~~Said~~ The claim shall be paid by the fund unless the Commission finds that there has not been a final determination of the tax liability by the Motor Vehicle Division of the Oklahoma Tax Commission. No claim shall be paid until sixty (60) days' written notice is given to the delinquent importer or motor fuel distributor.

E. The payment of a claim shall subrogate the Commission's right to recover the tax liability to the fund. The Commission, on behalf of the fund, shall have the same rights and remedies to recover the amounts paid by the fund as afforded the Commission to recover delinquent tax, penalty and interest. Any tax warrant shall remain in effect until the fund has recovered the amount paid.

F. The State Auditor and Inspector shall conduct an annual audit of the activity for the Oklahoma Motor/Diesel Fuel ~~Importer~~ ~~for Use~~ Indemnity Fund each fiscal year. The audit shall be made in accordance with standards established by the American Institute of Certified Public Accountants by a licensed public accountant or a certified public accountant holding a permit to practice in this state. A copy of the review examination shall be forwarded to the

Oklahoma Tax Commission. The State Auditor and Inspector and the Tax Commission shall review the examination and may conduct any further examinations as deemed necessary.

G. For purposes of this section, "motor fuel distributor" means a distributor as defined and licensed pursuant to the Motor Fuel Tax Code prior to October 1, 1996.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 801, is amended to read as follows:

Section 801. In any action to determine heirs, partition real estate, quiet title thereto, foreclose a lien thereon, or any combination thereof, where such title has been derived wholly or in part, directly or remotely, by inheritance, devise or gift made in contemplation of death, from any deceased person, the State of Oklahoma may be made a party defendant for the purpose of determining its claim against the estate of such deceased person for inheritance or transfer taxes. The court shall not acquire jurisdiction to enter any judgment against the State of Oklahoma or the Oklahoma Tax Commission in any such action until there shall have been served on the Oklahoma Tax Commission, in the manner hereinafter provided, a notice of the pendency of ~~said~~ the suit containing the ~~following details, viz.,~~ the title and number under which ~~said~~ the action is filed, the court in which filed, the name, date and place of death of the deceased person, the name, relationship and address, if known, of each heir, executor, administrator, devisee, trustee, and assign, of such deceased person, the identifying number of any tax liens which may have been filed against the decedent, and a description of the real estate covered by such action in which it is claimed the decedent owned or held any right, title or interest, which notice shall be signed by the plaintiff or his attorney of record. ~~Said~~ The notice, with a copy of the petition in ~~said~~ the cause thereto attached, shall be served on the Oklahoma Tax Commission in the same manner as for the service of summons; ~~provided, however, that~~ the. The Oklahoma Tax Commission or its General Counsel may, in lieu of service, accept service by indorsement of such acceptance on one copy of ~~said~~ the notice; and ~~said~~ the service or acceptance

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of service shall operate to make the State of Oklahoma a party to such action; ~~and provided, further, that the~~. The Oklahoma Tax Commission may in its discretion, without service of any notice on ~~said the~~ Commission, disclaim or plead in any ~~said such~~ cause. The Oklahoma Tax Commission shall have forty (40) days after the date of service or acceptance of service within which to plead in ~~said the~~ cause, and the Oklahoma Tax Commission shall set up any interest the State of Oklahoma may have in the subject matter of ~~said the~~ action. If the Oklahoma Tax Commission fails to answer such petition within the time allowed, judgment may be rendered foreclosing the State of Oklahoma from any interest, lien or claim for state taxes, interest or penalty on or against the property described in the ~~said~~ notice. Provided, that in all cases where the person, or persons, owning the real property involved in ~~said the~~ action at the time of death has been dead for more than ten (10) years, prior to the institution of ~~said the~~ action and such facts are set forth in the petition, it shall not be necessary to make the State of Oklahoma a party to such action.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 1213, is amended to read as follows:

Section 1213. The provisions of ~~68 O.S. 1961,~~ Section ~~454~~ 205 of this title shall not be construed to prevent the Tax Commission from furnishing the names of officers, or registered agents, and it may furnish certificates to show the compliance or noncompliance with the provisions of this article by any particular corporation, association or organization, under such rules as the Tax Commission may adopt, and shall collect a fee of One Dollar (\$1.00) ~~7~~ for each certificate so furnished.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 1358.1, as last amended by Section 1, Chapter 182, O.S.L. 1995 (68 O.S. Supp. 1996, Section 1358.1), is amended to read as follows:

Section 1358.1 A. In order to qualify for any exemption authorized by Section 1358 of this title, at the time of sale, the person to whom the sale is made shall be required to furnish the vendor proof of eligibility for the exemption as required by this section.

B. All vendors shall honor the proof of eligibility for sales tax exemption as authorized by this section and sales to a person providing such proof shall be exempt from the tax levied by this article, Section 1350 et seq. of this title.

~~C. For persons holding a valid motor fuel tax exemption permit issued pursuant to Section 509 of this title, the permit shall constitute proof of eligibility for a sales tax exemption as provided by Section 1358 of this title. Upon the expiration of the permit or if an original application for the exemption is made, the holder may apply for the motor fuel tax exemption and, if the application is approved, a new permit shall be issued indicating the nature of the motor fuel tax exemption and the permit shall contain a statement that the holder of the permit is eligible for sales tax exemptions authorized by Section 1358 of this title.~~

~~D. For persons who do not hold a motor fuel tax exemption permit as provided by this section, the person shall obtain an~~ The agricultural exemption permit, the size and design of which shall be prescribed by the Oklahoma Tax Commission, ~~which~~ shall constitute proof of eligibility for sales tax exemptions authorized by Section 1358 of this title. The permit shall be obtained by listing personal property used in farming or ranching by the person with the county assessor each year as provided by law. If the assessor determines that the personal property is correctly listed and assessed for ad valorem taxation and the county treasurer certifies whether the person has delinquent accounts appearing on the personal property tax lien docket in the county treasurer's office, the assessor shall certify the assessment upon a form prescribed by the Oklahoma Tax Commission. One (1) copy shall be retained by the assessor, one (1) copy shall be forwarded to the Oklahoma Tax Commission and one (1) copy shall be given to the person listing the personal property. Upon verification that the applicant qualifies for the exemptions authorized by Section 1358 of this title and that the applicant has no delinquent accounts appearing on the personal property tax lien docket in the office of the county treasurer, ~~the Commission~~

~~shall issue a permit shall be issued~~ as prescribed by this section. ~~The permit shall constitute proof of eligibility for sales tax exemptions as authorized by Section 1358 of this title.~~ The permit shall be renewable annually in the manner provided by this section.

~~E.~~ D. A person who does not otherwise qualify for a permit pursuant to subsection ~~D~~ C of this section, except as provided in subsection ~~F~~ E of this section, shall file with the Oklahoma Tax Commission an application for an agricultural exemption permit constituting proof of eligibility for the sales tax exemptions authorized by Section 1358 of this title, setting forth such information as the Tax Commission may require. The application shall be certified by the applicant that the applicant is engaged in custom farming operations or in the business of farming or ranching. If the applicant is a corporation, the application shall be certified by a legally constituted officer thereof.

~~F.~~ E. For a person who is a resident of another state and who is engaged in custom farming operations in this state, the person shall provide the vendor proof of residency, the name, address and telephone number of the person engaging the custom farmer and certification on the face of the invoice, under the penalty of perjury, that the property purchased shall be used in agricultural production as proof of eligibility for the sales tax exemption authorized by Section 1358 of this title.

~~G.~~ F. If an agricultural exemption permit holder purchases tangible personal property from a vendor on a regular basis, the permit holder may furnish the vendor proof of eligibility as provided for in subsections ~~D~~ C and ~~F~~ D of this section and the vendor may subsequently make sales of tangible personal property to the permit holder without requiring proof of eligibility for each subsequent sale. Provided, the permit holder shall notify the vendor of all purchases which are not exempt from sales tax under the provisions of Section 1358 of this title and remit the applicable amount of tax thereon. If the permit holder fails to notify the vendor of purchases not exempt from sales tax, then sufficient grounds shall exist for the Oklahoma Tax Commission to

cancel the agricultural exemption permit of the permit holder who so failed to notify the vendor.

~~H.~~ G. A purchaser who uses an agricultural exemption permit or provides proof of eligibility pursuant to subsection ~~F~~ E of this section to purchase, exempt from sales tax, items not authorized for exemption under Section 1358 of this title shall be subject to a penalty in the amount of Five Hundred Dollars (\$500.00).

SECTION 13. AMENDATORY 68 O.S. 1991, Section 1364, is amended to read as follows:

Section 1364. Permits to do business.

~~(A)~~ A. Every person desiring to engage in a business within this state who would be designated as a Group One or Group Three vendor, pursuant to Section 1363 of this title, shall be required to secure from the Oklahoma Tax Commission every three (3) years a written permit for a fee of Twenty Dollars (\$20.00) prior to engaging in such business in this state. Each such person shall file with the Tax Commission an application for a permit to engage in or transact business in this state, setting forth such information as the Tax Commission may require. The application shall be signed by the owner of the business or representative of the business entity and as a natural person, and, in the case of a corporation, as a legally constituted officer thereof.

~~(B) Upon verification that the applicant is a Group One vendor, the Tax Commission shall issue a permit for the place of business set forth in the application for permit.~~ B. Upon receipt of an initial application, the Tax Commission may issue a probationary permit effective for six (6) months which will automatically renew for an additional thirty (30) months unless the applicant receives written notification of the refusal of the Commission to renew the permit. If the applicant receives a notice of refusal, the applicant may request a hearing to show cause why the permit should be renewed. Upon receipt of a request for a hearing, the Tax Commission shall set the matter for hearing and give ten (10) days' notice in writing of the time and place of the hearing. At the hearing, the applicant shall set forth the

qualifications of the applicant for a permit and proof of compliance with all state tax laws.

C. Holders of a probationary permit as provided in subsection B of this section shall not be permitted to present the permit to obtain a commercial license plate for their motor vehicle as provided in Section 1133.1 of Title 47 of the Oklahoma Statutes.

D. Upon verification that the applicant is a Group Three vendor, the Tax Commission may require such applicant to furnish a surety bond or other security as the Commission may deem necessary to secure payment of taxes under this article, prior to issuance of a permit for the place of business set forth in the application for permit. Provided, the Tax Commission is hereby authorized to set guidelines, by adoption of regulations, for the issuance of sales tax permits. Pursuant to said guidelines the Tax Commission may refuse to issue permits to any Group Three vendors, or any class of vendors included in the whole classification of Group Three vendors, if the Commission determines that it is likely this state will lose tax revenue due to the difficulty of enforcing this article for any reasons stated in subsection (T) of Section 1354 of this title.

~~(C)~~ E. A separate permit for each additional place of business to be operated must be obtained from the Tax Commission for a fee of Ten Dollars (\$10.00). Such permit shall be good for a period of three (3) years. The Tax Commission shall grant and issue to each applicant a separate permit for each place of business in this state, upon proper application therefor and verification thereof by the Tax Commission.

~~(D)~~ F. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The permit shall at all times be conspicuously displayed at the place of business for which issued in a position where it can be easily seen. ~~Said~~ The permit shall be in addition to all other permits required by the ~~Statutes of Oklahoma~~ laws of this state. Provided, if the location of the business is changed, such person shall file with the Tax Commission an application for a permit to engage in or

transact business at the new location. Upon issuance of the permit to the new location of such business, no additional permit fee shall be due until the expiration of the permit issued to the previous location of such business.

~~(E)~~ G. It shall be unlawful for any person coming within the class designated as Group One or the class designated as Group Three to engage in or transact a business of reselling tangible personal property or services within this state unless a written permit or permits shall have been issued to ~~him~~ such person. Any person who engages in a business subject to the provisions of this section without a permit or permits, or after a permit has been suspended, upon conviction, shall be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00). Any person convicted of a second or subsequent violation hereof shall be guilty of a felony and punishable by a fine of not more than Five Thousand Dollars (\$5,000.00) or by a term of imprisonment in the State Penitentiary for not more than two (2) years, or both such fine and imprisonment.

~~(F)~~ H. Any person operating under a permit as provided in this article shall, upon discontinuance of business by sale or otherwise, return such permit to the Tax Commission for cancellation, together with a remittance for any unpaid or accrued taxes. Failure to surrender a permit and pay any and all accrued taxes will be sufficient cause for the Tax Commission to refuse to issue a permit subsequently to such person to engage in or transact any other business in this state. In the case of a sale of any business, the tax shall be deemed to be due on the sale of the fixtures and equipment, and the Tax Commission shall not issue a permit to continue or conduct ~~said~~ the business to the purchaser until all tax claims due the State of Oklahoma have been settled.

~~(G)~~ I. All permits issued under the provisions of this article shall expire three (3) years from the date of issuance at the close of business at each place or location of the business within this state. No refund of the fee shall be made if the business is terminated prior to the expiration of the permit.

~~(H)~~ J. Whenever a holder of a permit fails to comply with any provisions of this article, the Tax Commission, after giving ten (10) days' notice in writing of the time and place of hearing to show cause why ~~his~~ the permit should not be revoked, may revoke or suspend the permit, ~~said~~ the permit to be renewed upon removal of cause or causes of revocation or suspension. However, if a holder of a permit becomes delinquent for a period of three (3) months or more in reporting or paying of any tax due under this article, any duly authorized agent of the Tax Commission may remove the permit from the taxpayer's premises and it shall be returned or renewed only upon the filing of proper reports and payment of all taxes due under this article.

~~(I)~~ K. Permits are not required of persons coming within the classification designated as Group Two. The Oklahoma Tax Commission shall issue a limited permit to Group Five vendors. The permit shall be in such form as the Commission may prescribe.

~~(J)~~ L. Nothing in this article shall be construed to allow a permit holder to purchase, tax exempt, anything for resale that ~~he~~ the permit holder is not regularly in the business of reselling.

~~(K)~~ M. All monies received pursuant to issuance of such permits to do business shall be paid to the State Treasurer and placed to the credit of the General Revenue Fund of the State Treasury.

~~(L)~~ N. Notwithstanding the provisions of Section 205 of this title, the Oklahoma Tax Commission is authorized to release the following information contained in the Master Sales and Use Tax File to vendors:

- ~~(1)~~ 1. Permit number;
- ~~(2)~~ 2. Name in which permit is issued;
- ~~(3)~~ 3. Name of business operation if different from ownership (DBA);
- ~~(4)~~ 4. Mailing address;
- ~~(5)~~ 5. Business address;
- ~~(6)~~ 6. Business class or Standard Industrial Code (SIC); and
- ~~(7)~~ 7. Effective date and expiration or cancellation date of permit.

Release of such information shall be limited to tax remitters for the express purpose of determining the validity of sales permits presented as evidence of purchasers' sales tax resale status under this Code.

The provisions of this subsection shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to sales tax or to any other taxes.

This information may be provided on a subscription basis, with periodic updates, and sufficient fee charged, not to exceed One Hundred Fifty Dollars (\$150.00) per year, to offset the administrative costs of providing the list. All revenue received by the Oklahoma Tax Commission from such fees shall be deposited to the credit of the Oklahoma Tax Commission Revolving Fund. No liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of information pursuant to this subsection.

SECTION 14. AMENDATORY Section 1, Chapter 126, O.S.L. 1996 (68 O.S. Supp. 1996, Section 1364.1), is amended to read as follows:

Section 1364.1 Every person ~~desiring~~ who makes purchases of One Million Dollars (\$1,000,000.00) or more annually in taxable items for use in their Oklahoma enterprises and desires to directly remit the taxes due under Section 1350 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title or Section 1401 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title to the Oklahoma Tax Commission rather than remit such taxes to the vendor may apply to the Tax Commission for a direct payment permit. The permit shall be valid for three (3) years and the fee for the permit shall be Twenty Dollars (\$20.00). Each such person shall file with the Tax Commission an application for a direct payment permit, setting forth such information as the Tax Commission may require, including but not limited to:

1. An agreement that is signed by the owner of the business or representative of the business entity and as a natural person, and, in the case of a corporation, as a legally constituted officer thereof, that provides that the applicant agrees to:

- a. accrue and remit all taxes imposed by Section 1350 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title or Section 1401 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title on the sale or use of all taxable personal property or services sold to or leased or rented by the applicant,
- b. pay such taxes as required by Section 1365 of ~~Title 68 of the Oklahoma Statutes~~ this title,
- c. waive the discount permitted by Section 1367.1 of ~~Title 68 of the Oklahoma Statutes~~ this title on the payment of all taxes remitted directly to the Tax Commission; and

2. A description of the accounting method by which the applicant proposes to differentiate between taxable and exempt transactions.

Upon verification that the applicant is eligible to receive a direct payment permit, the Tax Commission shall issue a direct payment permit for the place of business set forth in the application for the permit. The Tax Commission shall be the sole judge of the applicant's qualifications and may refuse to issue a direct payment permit to an applicant. An applicant who has been denied the issuance of a permit may submit an amended application or may submit a new application after a reasonable period of time after the denial of the original application.

SECTION 15. AMENDATORY 68 O.S. 1991, Section 2103, is amended to read as follows:

Section 2103. A. 1. Except as otherwise provided in Sections 2101 through 2108 of this title, there is hereby levied an excise tax upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered in this state and upon the use of any vehicle registered for the first time in this state. The excise tax shall

be levied at three and one-fourth percent (3 1/4%) of the value of each vehicle, except; for any truck or truck-tractor registered under the provisions of subsection A of Section 1133 of Title 47 of the Oklahoma Statutes, for a laden weight or combined laden weight of 54,001 pounds or more, and for any trailer or semitrailer registered under subsection C of Section 1133 of Title 47 of the Oklahoma Statutes, which is primarily designed to transport cargo over the highways of this state and generally recognized as such, the excise tax shall be Ten Dollars (\$10.00). ~~Provided further, this~~ This exception shall not apply to special mobilized machinery, trailers, or semitrailers manufactured, modified or remanufactured for the purpose of providing services other than transporting cargo over the highways of this state. This exception shall also not apply to pickup trucks, vans, or sport utility vehicles.

2. The tax hereby levied shall be due at the time of the transfer of legal ownership or first registration in this state of such vehicle, and shall be collected by the Tax Commission at the time of the issuance of a certificate of title for any such vehicle. In the event an excise tax is collected on the transfer of legal ownership or use of the vehicle during any calendar year, then an additional excise tax must be collected upon all subsequent transfers of legal ownership. The excise tax levied by this section shall be delinquent from and after the thirtieth day after the legal ownership or possession of any vehicle is obtained. Any person failing or refusing to pay the tax as herein provided on or before date of delinquency shall pay in addition to the tax a penalty of twenty-five cents (\$0.25) per day for each day of delinquency, but such penalty shall in no event exceed the amount of the tax.

B. The excise tax levied in subsection A of this section assessed on all commercial vehicles registered pursuant to Section 1120 of Title 47 of the Oklahoma Statutes, as amended, shall be in lieu of all sales and use taxes levied under Articles 13 and 14 of this title. The transfer of legal ownership of any motor vehicle as used in this section and Articles 13 and 14 of this title shall

include the lease, lease purchase or lease finance agreement involving any truck in excess of eight thousand (8,000) pounds combined laden weight or any truck-tractor provided the vehicle is registered in Oklahoma pursuant to Section 1120 of Title 47 of the Oklahoma Statutes or any trailer, semitrailer or open commercial vehicle registered pursuant to Section 1133 of Title 47 of the Oklahoma Statutes, as amended. The excise tax levied herein shall not be subsequently collected at the end of the lease period if the lessee acquires complete legal title of ~~said~~ the vehicle.

C. The provisions of this section shall not apply to transfers made without consideration between:

1. Husband and wife;
2. Parent and child; or
3. An individual and an express trust which that individual or the spouse, child or parent of that individual has a right to revoke.

D. 1. There shall be a credit allowed with respect to the excise tax paid for a new vehicle which is a replacement for:

- a. a new original vehicle which is stolen from the purchaser/registant within ninety (90) days of the date of purchase of the original vehicle as certified by a police report or other documentation as required by the Commission, or
- b. a defective new original vehicle returned by the purchaser/registant to the seller within six (6) months of the date of purchase of the defective new original vehicle as certified by the manufacturer.

2. The credit allowed pursuant to paragraph 1 of this subsection shall be in the amount of the excise tax which was paid for the new original vehicle and shall be applied to the excise tax due on the replacement vehicle. In no event ~~will said~~ shall the credit be refunded.

SECTION 16. AMENDATORY 68 O.S. 1991, Section 2357, as amended by Section 8, Chapter 289, O.S.L. 1996 (68 O.S. Supp. 1996, Section 2357), is amended to read as follows:

Section 2357. A. The withheld taxes and estimated taxes paid shall be allowed as credits as provided by law.

B. 1. There shall be allowed as a credit against the tax imposed by Section 2355 of this title the amount of tax paid another state by a resident individual, as defined in paragraph 4 of Section 2353 of this title, upon income received as compensation for personal services in such other state; provided, such credit shall not be allowed with respect to any income specified in Section 114 of Title 4 of the United States Code, 4 U.S.C., Section 114, upon which a state is prohibited from imposing an income tax. The credit shall not exceed such proportion of the tax payable under Section 2355 of this title as the compensation for personal services subject to tax in the other state and also taxable under Section 2355 of this title bears to the Oklahoma adjusted gross income as defined in paragraph 13 of Section 2353 of this title.

2. For tax years beginning after December 31, 1975, there shall be allowed to a resident individual or part-year resident individual or nonresident individual member of the Armed Forces as a credit against the tax imposed by Section 2355 of this title twenty percent (20%) of the credit for child care expenses allowed under the Internal Revenue Code of the United States. The credit shall not exceed the tax imposed by Section 2355 of this title. The maximum child care credit allowable on the Oklahoma income tax return shall be prorated on the ratio that Oklahoma adjusted gross income bears to the federal adjusted gross income.

C. 1. Every taxpayer who operates a manufacturing establishment in the state shall be allowed a direct credit against income taxes owed by such taxpayer to the state, the amount of which credit shall be proportioned to the amount of gas used or consumed in Oklahoma by such taxpayer in the operation of a manufacturing establishment, at a rate of three (3) mills per thousand (1,000) cubic feet of gas used or consumed after May 1, 1971, and during each taxable year of such taxpayer provided that the credit allowed herein shall not apply to the first twenty-five thousand (25,000) MCF of gas used or gas used to generate

electricity or consumed after May 1, 1971, and during each taxable year of such taxpayer.

2. As used in this subsection:

- a. "manufacturing establishment" means a plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which has already gone through some artificial process~~—~~—
- b. "gas used or consumed" shall include all natural or casinghead gas used in the operation of the manufacturing establishment for whatever purposes, but shall not include the following:
  - (1) gas which, after being severed from the earth, is subsequently injected into a formation in the state for the purpose of storing, recycling, repressuring or pressure maintenance~~—~~—
  - (2) gas vented or flared directly into the atmosphere~~—~~—
  - (3) gas used for fuel in connection with the operation and development for or production of oil or gas in the field where produced~~—~~—, and
  - (4) gas, any part of which is resold by the manufacturing establishment, except as to that part and quantity of the gas which is actually used by the establishment and not resold~~—~~—, and
- c. "one thousand (1,000) cubic feet of gas" (MCF) means that quantity of gas which, measured at a pressure of fifteen and twenty-five thousandths (15.025) pounds per square inch absolute and at a temperature of sixty-nine (69) degrees Fahrenheit, would have the volume of one thousand (1,000) cubic feet.

D. No additions to tax shall be made in Oklahoma income tax returns by reason of the recapture or restoration of credits under the Internal Revenue Code, and no other credits against tax shall be allowed in Oklahoma income tax returns except as follows:

1. Those credits provided in this section ~~;~~ and

2. Those credits authorized by Sections 921 through 925 of Title 82 of the Oklahoma Statutes, or Sections 2001 through 2008 of Title 63 of the Oklahoma Statutes, which have been, or may hereafter be, certified pursuant to applications therefor made on or before March 22, 1971. Provided, the total amount of the credits referred to in this subparagraph to be taken by the taxpayer shall not exceed the certified net investment cost of the facilities or processes to which such credits pertain, reduced by the greater of:

- a. the reduction in federal income tax of taxpayer as the result of deducting depreciation on such facilities or processes, or deducting nondepreciable costs for which credit has been so certified ~~;~~ or
- b. the increase in the amount of Oklahoma income tax that would result if taxable income were increased by the amount deducted as set forth in subparagraph a ~~above~~ of this paragraph.

And, provided further, that, after such credits have been exhausted, taxpayer shall each year thereafter adjust taxable income by adding any depreciation taken on such facilities or processes, or any nondepreciable costs having been included in the net investment cost allowed as credit, and which depreciation or costs have been allowed as a deduction in arriving at federal taxable income for such year.

SECTION 17. AMENDATORY 68 O.S. 1991, Section 2375, as last amended by Section 28, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1996, Section 2375), is amended to read as follows:

Section 2375. A. At the time of transmitting the return required hereunder to the Tax Commission, the taxpayer shall remit therewith to the Tax Commission the amount of tax due under the applicable provisions of this article. Failure to pay such tax on or before the date the return is due shall cause ~~said~~ the tax to become delinquent. If the return is filed electronically, the amount of the tax due pursuant to the provisions of this article shall be due on or before the 15th day of April following the

close of the taxable year regardless of when the return is electronically filed. The tax shall be deemed delinquent after the 15th day of April if the return is electronically filed.

B. If any tax due under this article, except a deficiency determined under Section 221 of this title, is not paid on or before the date such tax becomes delinquent, a penalty of five percent (5%) of the total amount of the tax due shall be added thereto, collected and paid.

C. If any part of deficiency, arbitrary or jeopardy assessment made by the Tax Commission is based upon or occasioned by the refusal of any taxpayer to file with the Tax Commission any return as required by this article, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by registered letter with a return receipt attached, the Tax Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. In the exercise of the authority granted by subsection (c) of Section 223 and Section 224 of this title, the Oklahoma Tax Commission shall assess the tax as an estimated tax on the basis of its own determination of the Oklahoma taxable income of the taxpayer, to be adjusted if and when Oklahoma taxable income is ascertained under the provisions of this act.

D. If any part of any deficiency was due to negligence or intentional disregard, without the intent to defraud, then ten percent (10%) of the total amount of the deficiency, in addition to such deficiency, including interest as authorized by law, shall be added, collected and paid.

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

F. The provisions in this section for penalties shall supersede all other provisions for penalties on income taxes. The provisions in this section for penalties shall supersede the provisions in the Uniform Tax Procedure Code, Section 201 et seq.

of this title, only to the extent of conflict between such provisions and the penalty provisions in this section.

G. All taxes, penalties and interest levied under this article must be paid to the Tax Commission at Oklahoma City, in the form or remittance required by and payable to it.

H. 1. The period of time prescribed in Section 223 of this title, in which the procedures for the assessment of income tax may be commenced by the Oklahoma Tax Commission, shall be tolled and extended until the amount of taxable income for any year of a taxpayer under the Internal Revenue Code has been finally determined under applicable federal law and for the additional period of time hereinafter provided in this subsection.

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

3. In the event of failure by a taxpayer to comply with the provisions of paragraph 2 of this subsection, the statute of limitations shall be tolled for a period of time equal to the time between the date the amended return under this subsection is required until such return is actually furnished.

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

such items or matters do not relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, the Tax Commission shall be bound by the revisions made in such final determination.

5. The provisions of this subsection shall be effective on September 1, 1993, and except in the case of tax years which are the subject of closing, settlement or resolution agreements entered into by taxpayers and the Tax Commission, keep open all tax years beginning after June 30, 1988, and all tax years beginning on or before June 30, 1988, for which extensions of the statute of limitations have been executed by the taxpayer, but only to the extent such extensions remain open on the date of enactment hereof.

SECTION 18. AMENDATORY 68 O.S. 1991, Section 2385.13, as amended by Section 1, Chapter 42, O.S.L. 1996 (68 O.S. Supp. 1996, Section 2385.13), is amended to read as follows:

Section 2385.13 Every taxpayer required under the provisions of Section 2385.7 of this title to make a declaration of estimated tax shall make the declaration at the time provided in Section 2385.8 of this title, for the amount the taxpayer expects to owe for the current year. The estimate so made may be amended by either increasing or decreasing the amount originally estimated on either of the dates provided for the making of installment payments on estimates, and the estimates at the respective dates shall be not less than seventy percent (70%) of the amount of tax due as indicated by the taxpayer's records or information on the respective dates. For purposes of determining the amount of tax due on any of the respective dates, taxpayers with Oklahoma taxable income of at least One Million Dollars (\$1,000,000.00) in at least one of the preceding three (3) taxable years may compute the tax by placing taxable income on an annualized basis as prescribed by rules promulgated by the Tax Commission which rules shall be in accordance with the annualization provisions of the Internal Revenue Code. The provisions allowed in this section for computing estimated taxes on an annualized basis shall only be permitted for a taxable year of twelve (12) months. ~~Should a~~

~~taxpayer fail to make an estimate on any quarterly due date equivalent to at least seventy percent (70%) of the amount so indicated to be due, a penalty of five percent (5%) of the amount of the underpayment and interest thereon at the rate of one and one-quarter percent (1 1/4%) per month, or fraction thereof, for the period of the underpayment, shall be added thereto and paid. The penalty and interest provided by this section shall not be applicable where the amount of Oklahoma income tax withheld during the current year and/or payments made on the estimated tax for the current year is an amount which is equal to or greater than the amount shown to be due by the return for the preceding taxable year of twelve (12) months~~ A penalty of five percent (5%) and interest at one and one-quarter percent (1.25%) per month of the amount of underpayment for the period of the underpayment shall be assessed for underestimating. The penalty and interest provided by this section shall not be applicable where the amount of Oklahoma income tax withheld during the current year or the quarterly payments made on the estimated tax for the current year is an amount equal to or greater than the amount shown to be due by the return for the preceding taxable year of twelve (12) months. The penalty and interest provided by this section shall also not be applicable where the quarterly payments due on the respective dates is equal to at least seventy percent (70%) of the amount of tax due as indicated by the taxpayer's records or information on the respective dates, or if ninety percent (90%) of the current year's estimated tax due is paid by January 15 of the succeeding taxable year.

SECTION 19. AMENDATORY 68 O.S. 1991, Section 2810, is amended to read as follows:

Section 2810. A. It shall be the duty of each county assessor, when taking assessments of farm tractors, to issue a certificate in triplicate upon forms prescribed and furnished by the Oklahoma Tax Commission, which certificate shall show the name and address of the person listing the tractor for assessment, the value at which it was listed, the engine number, the make of tractor, horsepower and year made of the tractor listed, and such

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other information as may be required by the Oklahoma Tax Commission.

B. The Oklahoma Tax Commission copy of said certificate shall be signed and dated by the county assessor or his deputy. The assessor's copy shall be retained by the county assessor, and shall be made available for inspection by the Oklahoma Tax Commission upon request of the Oklahoma Tax Commission or any authorized representative thereof. The owner's copy shall be retained by the person who is listing the tractor for assessment. ~~Each Oklahoma Tax Commission copy shall be forwarded to the Oklahoma Tax Commission by the county assessor on a weekly basis as proof of assessment and application of the owner of each farm tractor for agricultural exemption permit on motor fuel to be used exclusively for agricultural purposes in accordance with the provisions of laws levying gasoline excise taxes.~~

SECTION 20. AMENDATORY 68 O.S. 1991, Section 6003, as last amended by Section 3, Chapter 344, O.S.L. 1996 (68 O.S. Supp. 1996, 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 or used by commercial airlines as defined by paragraph 2 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 21. REPEALER 59 O.S. 1991, Section 1404, is hereby repealed.

SECTION 22. This act shall become effective November 1, 1997.

