

ENROLLED HOUSE
BILL NO. 3152

By: Benson, Langmacher, Adair, Bastin,
Begley, Beutler, Erwin, Hamilton,
Hilliard, Kinnamon, Rice, Settle,
Steidley, Thomas, Fields, Glover,
Hefner, Seikel, Tyler, Adkins,
Braddock, Bryant, Case, Claunch,
Coleman, Cox, Dank, Davis,
Deutschendorf, Easley, Gilbert,
Graves, Greenwood, Hiett, Ingmire,
Kirby, Kouba, Liotta, Maddux,
Miller, Mitchell, Morgan, Newport,
O'Neal, Ostrander, Perry,
Pettigrew, Phillips, Pope (Clay),
Pope (Tim), Ramsey, Roach,
Roberts, Smith (Hopper),
Thornbrugh, Vaughn, Voskuhl, Webb,
Weese, Worthen and Sullivan (John)
of the House

and

Taylor, Wilcoxson, Campbell,
Laughlin, Martin, Easley, Helton
and Cain of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 809, as amended by Section 3, Chapter 334, O.S.L. 1996 (68 O.S. Supp. 1997, Section 809), which relates to estate tax exemptions; increasing amount of estate tax exemption; decreasing additional estate tax exemption; providing that additional estate tax exemption not be available after certain date; limiting total amount of exemption for certain estates; amending 68 O.S. 1991, Section 2355, as amended by Section 1, Chapter 311, O.S.L. 1992 (68 O.S. Supp. 1997, Section 2355), which relates to income tax rates; modifying income tax rates; setting forth certain income tax rate based on certain action by the State Board of Equalization; setting forth certain duties of the State Board of Equalization; requiring State Board of Equalization to determine certain amounts and make certain finding; requiring certain tax rates and income levels to be suspended under certain circumstances; setting forth certain procedure for the State Board of Equalization to determine if conditions warrant continuation of certain provisions; setting forth procedure for suspending certain reductions; setting forth procedure after suspension of certain provisions; defining term; creating income tax credit; defining term; authorizing income tax credit for expenditure related to certain guaranty fee; requiring payment based upon participation in certain Small Business Administration program; limiting credit to certain income; permitting taxpayer to carry forward unused credit for certain

time period; restricting claimants eligible to claim credit; amending 68 O.S. 1991, Section 2385.3, as amended by Section 47, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1997, Section 2385.3), which relates to payment of withholding taxes; modifying time periods for paying withholding taxes; setting forth certain schedule for paying withholding taxes; amending 68 O.S. 1991, Section 5011, as amended by Section 2, Chapter 311, O.S.L. 1992 (68 O.S. Supp. 1997, Section 5011), which relates to the Sales Tax Relief Act; modifying eligibility requirements for certain years for sales tax relief claim; defining term; clarifying that certain gross household income amount shall apply to certain law; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 809, as amended by Section 3, Chapter 334, O.S.L. 1996 (68 O.S. Supp. 1997, Section 809), is amended to read as follows:

Section 809. A. If any portion of the net estate, as herein determined, in excess of the deductions allowed in Section 808 of this title passes to the father, mother, child, child of husband or wife, adopted child or any lineal descendant of decedent or of such adopted child, there shall be deducted from such net estate the portion of the net estate passing to such person or persons to the extent of and not exceeding a total aggregate exemption ~~of One Hundred Seventy-five Thousand Dollars (\$175,000.00)~~ in amounts as follows, and the tax shall be paid on the remainder at the rates herein set out:

1. For the estate of a decedent who dies before January 1, 1999, the exemption shall be One Hundred Seventy-five Thousand Dollars (\$175,000.00);

2. For the estate of a decedent who dies on or after January 1, 1999, and before January 1, 2000, the exemption shall be Two Hundred Seventy-five Thousand Dollars (\$275,000.00);

3. For the estate of a decedent who dies on or after January 1, 2000, and before January 1, 2001, the exemption shall be Four Hundred Seventy-five Thousand Dollars (\$475,000.00);

4. For the estate of a decedent who dies on or after January 1, 2001, and before January 1, 2002, the exemption shall be Six Hundred Seventy-five Thousand Dollars (\$675,000.00);

5. For the estate of a decedent who dies on or after January 1, 2002, and before January 1, 2004, the exemption shall be Seven Hundred Thousand Dollars (\$700,000.00);

6. For the estate of a decedent who dies on or after January 1, 2004, and before January 1, 2005, the exemption shall be Eight Hundred Fifty Thousand Dollars (\$850,000.00);

7. For the estate of a decedent who dies on or after January 1, 2005, and before January 1, 2006, the exemption shall be Nine Hundred Fifty Thousand Dollars (\$950,000.00); and

8. For the estate of a decedent who dies on or after January 1, 2006, the exemption shall be One Million Dollars (\$1,000,000.00).

B. 1. In addition to the exemption provided pursuant to subsection A of this section, for the estate of a decedent who dies on or after January 1, 1997, there shall be deducted the value of the assets used in a qualifying family business or farm passing to

one or more qualifying heirs of the decedent to the extent of and not exceeding a total aggregate exemption of the amounts specified in this subsection. The additional exemption shall be in an amount ~~not exceeding~~ as follows:

- a. for the estate of a decedent who dies before January 1, 1999, the exemption shall be Four Hundred Twenty-five Thousand Dollars (\$425,000.00),
- b. for the estate of a decedent who dies on or after January 1, 1999, and before January 1, 2000, the exemption shall be Three Hundred Twenty-five Thousand Dollars (\$325,000.00),
- c. for the estate of a decedent who dies on or after January 1, 2000, and before January 1, 2001, the exemption shall be One Hundred Twenty-five Thousand Dollars (\$125,000.00),
- d. for the estate of a decedent who dies on or after January 1, 2001, no additional exemption shall be allowed.

~~In no event shall~~ 2. For the estate of a decedent who dies prior to January 1, 2001, the total exemption allowed pursuant to subsection A of this section and this subsection shall not exceed a total of Six Hundred Thousand Dollars (\$600,000.00) for any estate. For purposes of this subsection:

~~1. "Assets~~

- a. "assets of a qualifying family business or farm" means real or tangible personal property owned by a qualifying business or farm and used as a farm or for farming purposes, or in a trade or business other than farming,

~~2. "Qualifying~~

- b. "qualifying family business or farm" means any interest in a closely held family corporation, sole proprietorship, partnership, limited liability company, or other unincorporated family business engaged in the trade or business of farming or in a trade or business other than farming, where some or all of the assets thereof are held by a decedent or are held collectively by a decedent and one or more qualifying heirs of the decedent, provided the decedent, or at least one qualifying heir of the decedent, was receiving wages from the business or farm or was subject to the self employment tax on income earned from the business or farm on the date of the death of the decedent,

~~3. "Closely~~

- c. "closely held family corporation" means any corporation if at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote, and at least fifty percent (50%) of all other classes of stock of the corporation are owned by the decedent and not more than ten (10) qualifying heirs, and

~~4. "Qualifying~~

- d. "qualifying heir" means any heir as set forth in subsection A of this section.

C. In order to qualify for the exemption provided in subsection B of this section, the estate of the decedent shall submit the appropriate tax returns or tax schedules of the qualifying family business or farm for the five (5) taxable years prior to the death of the decedent showing proof of continuous operation of the

qualifying family business or farm. The qualifying family business or farm shall also be required to continue the business or farm for a period of five (5) years following the date of death of decedent and shall submit each taxable year the appropriate tax returns or tax schedules to the Oklahoma Tax Commission as proof of continuous operation of the business or farm. If evidence of continuous operation is not submitted, the qualified heirs shall be liable for twenty percent (20%) of the total estate tax which would have been due if the business or farm had not qualified for the exemption provided for in subsection B of this section for each year evidence of continuous operation is not submitted.

D. It is declared to be intended by this section that where a portion of the net estate passes to any of the parties named herein, no greater amount shall be deducted from the net estate than passes to such person or persons combined and that the exemption shall in no event exceed the amounts specified in this section, regardless of the amount of the estate that may pass to any or all of such person or persons; provided, that when the property comprising the estate of the decedent consists of property within and property without the state, only the percentage of the exemptions and deductions enumerated in this section, and in Section 808 of this title, shall be allowed as the ratio of the value of the estate within this state bears to the value of the entire estate.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 2355, as amended by Section 1, Chapter 311, O.S.L. 1992 (68 O.S. Supp. 1997, Section 2355), is amended to read as follows:

Section 2355. A. Individuals. ~~For~~ Except as otherwise provided in Section 3 of this act, for all taxable years beginning after December 31, ~~1989~~ 1998, a tax is hereby imposed upon the Oklahoma taxable income of every resident or nonresident individual, which tax shall be computed at the option of the taxpayer under one of the two following methods:

1. METHOD 1.

a. Single individuals and married individuals filing separately not deducting federal income tax:

(1) 1/2% tax on first \$1,000.00 or part thereof,

(2) 1% tax on next \$1,500.00 or part thereof,

(3) 2% tax on next \$1,250.00 or part thereof,

(4) 3% tax on next \$1,150.00 or part thereof,

(5) 4% tax on next \$1,300.00 or part thereof,

(6) 5% tax on next \$1,500.00 or part thereof,

(7) 6% tax on next \$2,300.00 or part thereof, and

(8) (a) for taxable years beginning after December 31, 1998, 6.75% tax on the remainder, or

(b) for taxable years beginning after December 31, 1999, for which the State Board of Equalization suspends the provisions of subdivision (a) of this division pursuant to the provisions of Section 3 of this act, 7% tax on the remainder.

b. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code not deducting federal income tax:

(1) 1/2% tax on first \$2,000.00 or part thereof,

(2) 1% tax on next \$3,000.00 or part thereof,

(3) 2% tax on next \$2,500.00 or part thereof,

(4) 3% tax on next \$2,300.00 or part thereof,

- (5) 4% tax on next \$2,400.00 or part thereof,
- (6) 5% tax on next \$2,800.00 or part thereof,
- (7) 6% tax on next \$6,000.00 or part thereof, and
- (8) (a) for taxable years beginning after December 31, 1998, 6.75% tax on the remainder, or
- (b) for taxable years beginning after December 31, 1999, for which the State Board of Equalization suspends the provisions of subdivision (a) of this division pursuant to the provisions of Section 3 of this act, 7% tax on the remainder.

2. METHOD 2.

a. Single individuals and married individuals filing separately deducting federal income tax:

- (1) 1/2% tax on first \$1,000.00 or part thereof,
- (2) 1% tax on next \$1,500.00 or part thereof,
- (3) 2% tax on next \$1,250.00 or part thereof,
- (4) 3% tax on next \$1,150.00 or part thereof,
- (5) 4% tax on next \$1,200.00 or part thereof,
- (6) 5% tax on next \$1,400.00 or part thereof,
- (7) 6% tax on next \$1,500.00 or part thereof,
- (8) 7% tax on next \$1,500.00 or part thereof,
- (9) 8% tax on next \$2,000.00 or part thereof,
- (10) 9% tax on next \$3,500.00 or part thereof, and
- (11) 10% tax on the remainder.

b. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code deducting federal income tax:

- (1) 1/2% tax on the first \$2,000.00 or part thereof,
- (2) 1% tax on the next \$3,000.00 or part thereof,
- (3) 2% tax on the next \$2,500.00 or part thereof,
- (4) 3% tax on the next \$1,400.00 or part thereof,
- (5) 4% tax on the next \$1,500.00 or part thereof,
- (6) 5% tax on the next \$1,600.00 or part thereof,
- (7) 6% tax on the next \$1,250.00 or part thereof,
- (8) 7% tax on the next \$1,750.00 or part thereof,
- (9) 8% tax on the next \$3,000.00 or part thereof,
- (10) 9% tax on the next \$6,000.00 or part thereof, and
- (11) 10% tax on the remainder.

B. Nonresident aliens. In lieu of the rates set forth in subsection A above, there shall be imposed on nonresident aliens, as defined in the Internal Revenue Code, a tax of eight percent (8%) instead of thirty percent (30%) as used in the Internal Revenue Code, with respect to the Oklahoma taxable income of such nonresident aliens as determined under the provision of the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection ~~B~~ shall deduct and withhold from such amounts paid each payee an amount equal to eight percent (8%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or

before January 31, of the succeeding year, a written statement showing the name of the payer, the name of the payee and his social security account number, if any, the total amount paid subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

C. Corporations. For all taxable years beginning after December 31, 1989, a tax is hereby imposed upon the Oklahoma taxable income of every corporation doing business within this state or deriving income from sources within this state in an amount equal to six percent (6%) thereof.

There shall be no additional Oklahoma income tax imposed on accumulated taxable income or on undistributed personal holding company income as those terms are defined in the Internal Revenue Code.

D. Certain foreign corporations. In lieu of the tax imposed in the first paragraph of subsection C of this section, for all taxable years beginning after December 31, 1989, there shall be imposed on foreign corporations, as defined in the Internal Revenue Code, a tax of six percent (6%) instead of thirty percent (30%) as used in the Internal Revenue Code, where such income is received from sources within Oklahoma, in accordance with the provisions of the Internal Revenue Code and the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection shall deduct and withhold from such amounts paid each payee an amount equal to six percent (6%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or before January 31, of the succeeding year, a written statement showing the name of the payer, the name of the payee and his social security account number, if any, the total amounts paid subject to taxation, the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

E. Fiduciaries. A tax is hereby imposed upon the Oklahoma taxable income of every trust and estate at the same rates as are provided in subsection A of this section for single individuals. Fiduciaries are not allowed a deduction for any federal income tax paid.

F. Tax rate tables. For all taxable years beginning after December 31, 1991, in lieu of the tax imposed by subsection A of this section, there is hereby imposed for each taxable year on the taxable income of every individual, whose taxable income for such taxable year does not exceed the ceiling amount, a tax determined under tables, applicable to such taxable year which shall be prescribed by the Tax Commission and which shall be in such form as it determines appropriate. In the table so prescribed, the amounts of the tax shall be computed on the basis of the rates prescribed by subsection A of this section. For purposes of this subsection, the term "ceiling amount" means, with respect to any taxpayer, the

amount determined by the Tax Commission for the tax rate category in which such taxpayer falls.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4001 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other duties prescribed by law, at the meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held in December 1999, the State Board of Equalization shall determine for fiscal year 2001;

1. The amount of funds available for appropriation if the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes are not in effect; and

2. The amount by which such funds will be reduced if such provisions are in effect.

If the amount determined pursuant to the provisions of paragraph 1 of this subsection less the amount of funds available for appropriation for fiscal year 2000 is greater than the amount determined pursuant to the provisions of paragraph 2 of this subsection, the Board shall make a finding that economic growth in the state warrants the taking effect of the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes and such provisions shall be effective for the following calendar year. If the amount determined pursuant to the provisions of paragraph 1 of this subsection less the amount of funds available for appropriation for fiscal year 2000 is less than the amount determined pursuant to the provisions of paragraph 2 of this subsection, but the amount determined pursuant to the provisions of paragraph 1 of this subsection is greater than the amount of funds available for appropriation for fiscal year 2000, the Board shall make a finding that economic growth in the state does not warrant the taking effect of the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes and the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsection B of Section 5011 of Title 68 of the Oklahoma Statutes shall remain in effect for the following calendar year and the Board shall proceed pursuant to the provisions of subsection D of this section. If the amount determined pursuant to the provisions of paragraph 1 of this subsection is less than the amount of funds available for appropriation for fiscal year 2000, the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and the provisions of subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes shall be suspended for the calendar year 2000 and the Board shall proceed pursuant to the provisions of subsection C of this section.

B. In addition to any other duties prescribed by law, at each meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held following a meeting at which the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes are not suspended pursuant to the provisions of this section, the Board shall determine the amount of funds available for appropriation for the following fiscal year. If such amount is greater than the amount of funds available for appropriations for the then-current fiscal year, the Board shall make a finding that economic conditions in the state warrant the continuation of the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and of subsection C of Section 5011 of Title 68 of the Oklahoma

Statutes and such provisions shall be effective for the following calendar year. If such finding is not made, such provisions shall be suspended for the following calendar year and the Board shall proceed pursuant to the provisions of subsection C of this section.

C. In addition to any other duties prescribed by law, at the meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held in December of any calendar year for which the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsection C of Section 5011 of Title 68 of the Oklahoma Statutes are suspended pursuant to the provisions of subsection B of this section, the State Board of Equalization shall determine for the following fiscal year:

1. The amount of funds available for appropriation if the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and the provisions of subsection B of Section 5011 of Title 68 of the Oklahoma Statutes are not in effect; and

2. The amount by which such funds will be reduced if such provisions are in effect.

If the amount determined pursuant to the provisions of paragraph 1 of this subsection less the amount of funds available for appropriation for the then-current fiscal year is greater than the amount determined pursuant to the provisions of paragraph 2 of this subsection, the Board shall make a finding that economic growth in the state warrants the taking effect of the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and of subsection B of Section 5011 of Title 68 of the Oklahoma Statutes and such provisions shall be effective for the following calendar year. If such finding is not made, such provisions and the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes shall be suspended for the following calendar year and the Board shall again proceed pursuant to the provisions of this subsection.

D. In addition to any other duties prescribed by law, at the first meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held following a meeting at which the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsection B of Section 5011 of Title 68 of the Oklahoma Statutes are not suspended pursuant to the provisions of subsection C of this section, the Board shall determine for the following fiscal year:

1. The amount of funds available for appropriation for the following fiscal year if the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes are not in effect; and

2. The amount by which such funds will be reduced if such provisions are in effect.

If the amount determined pursuant to the provisions of paragraph 1 of this subsection less the amount of funds available for appropriation for the then-current fiscal year is greater than the amount determined pursuant to the provisions of paragraph 2 of this subsection, the Board shall make a finding that economic growth in the state warrants the taking effect of the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes and such provisions shall be effective for the following calendar year. If the amount determined pursuant to the provisions of paragraph 1 of this subsection less the amount of funds available for appropriation for the then-current fiscal year is less than the amount determined pursuant to the provisions of paragraph 2 of this subsection, but

the amount determined pursuant to the provisions of paragraph 1 of this subsection is greater than the amount of funds available for appropriation for the then-current fiscal year, the Board shall make a finding that economic growth in the state does not warrant the taking effect of the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes and the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsection B of Section 5011 of Title 68 of the Oklahoma Statutes shall remain in effect for the following calendar year and the Board shall again proceed pursuant to the provisions of this subsection. If the amount determined pursuant to the provisions of paragraph 1 of this subsection is less than the amount of funds available for appropriation for the then-current fiscal year, the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and the provisions of subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes shall be suspended for the following calendar year and the Board shall proceed pursuant to the provisions of subsection C of this section.

E. Upon the suspension of the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and the provisions of subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes, the provisions of subdivision (b) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of the Oklahoma Statutes and the provisions of subsection A of Section 5011 of Title 68 of the Oklahoma Statutes shall be in effect for the following calendar year. At its next meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution following a meeting at which the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and the provisions of subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes are suspended, the Board shall proceed pursuant to the provisions of subsection C of this section.

F. As used in this section, "funds available for appropriation" means the amount certified as available for appropriation for the next fiscal year as determined by the State Board of Equalization at the meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution. Such term shall not include:

1. Any appropriation of bond proceeds;
2. Appropriations from or amounts to be deposited to the Constitutional Reserve Fund;
3. Appropriations from or amounts to be deposited to the Education Reform Revolving Fund;
4. Appropriations from or amounts to be deposited to revolving funds;
5. Federal funds;
6. Appropriations from or amounts to be deposited to the Cash Flow Reserve Fund;
7. Prior year certified but unappropriated funds; or
8. Any cash on hand.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.30 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "small business" means any corporation, partnership, sole proprietorship or other business entity qualifying as "small" under the standards contained in Section 121 of Title 13 of the Code of Federal Regulations (13 C.F.R., Section 121).

B. For taxable years beginning after December 31, 1998, every small business operating within this state shall be entitled to claim as a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes, subject to the limitations provided by subsection C of this section, any amount paid to the U.S. Small Business Administration as a guaranty fee pursuant to the obtaining of financing guaranteed by the Small Business Administration.

C. The credit authorized by this section shall only be claimed against the tax liability resulting from income generated by the small business. If an income tax return upon which this credit is claimed includes taxable income from sources other than the small business, the credit shall only be allowed to be claimed upon a percentage of the income tax liability which does not exceed the percentage of income generated by the small business as compared to the total Oklahoma adjusted gross income shown on the return. The Oklahoma Tax Commission shall promulgate rules and prescribe forms to implement the provisions of this section.

D. If the credit authorized by this section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer as computed pursuant to the provisions of subsection C of this section, the amount of the credit not used may be carried forward as a credit against subsequent income tax liability for a period not to exceed five (5) years. The credit shall be claimable only by the small business which is the primary obligor in the financing transaction and which actually paid the guaranty fee.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 2385.3, as amended by Section 47, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1997, Section 2385.3), is amended to read as follows:

Section 2385.3 ~~(a) A.~~ Every employer required to deduct and withhold taxes under Section 2385.2 of this title shall, ~~for the quarterly period beginning July 1, 1961, and for each quarterly period thereafter, on or before the fifteenth day of the month following the close of each such quarterly period,~~ pay over the amount so withheld as taxes to the Oklahoma Tax Commission, and shall file a return ~~with each such payment; and such return shall be in such form as the Tax Commission shall prescribe; except that where the amounts withheld are more than Five Hundred Dollars (\$500.00) per quarter, the employer withholding such amounts shall for each monthly period beginning July 1, 1968, and for each monthly period thereafter, on or before the fifteenth day of each succeeding month pay over to the Commission the amounts so withheld, and shall file a return monthly, as hereinabove provided, together with the payment of any balance withheld but not included in the previous payments during that quarter for all quarterly or monthly periods beginning before the effective date of this act, Section 2385.1 et seq. of this title, withholding income tax shall be reported and remitted to the Tax Commission pursuant to the provisions of this section~~ under the following schedule:

1. Effective January 1, 1999, every employer owing an average of One Hundred Thousand Dollars (\$100,000.00) or more per month in taxes in the previous fiscal year shall pay over the amount so withheld on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes. For employers making payments other than by electronic funds transfer, a withholding return shall be filed with each payment. For employers making payments by electronic funds transfer, a withholding return shall not be required to be filed with each payment. A withholding return for payments made by electronic funds transfer shall be filed

monthly on or before the fifteenth day of the month following the close of each monthly period;

2. Effective January 1, 2000, every employer owing an average of Ten Thousand Dollars (\$10,000.00) or more per month in taxes in the previous fiscal year shall pay over the amount so withheld on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes. For employers making payments other than by electronic funds transfer, a withholding return shall be filed with each payment. For employers making payments by electronic funds transfer, a withholding return shall not be required to be filed with each payment. A withholding return for payments made by electronic funds transfer shall be filed monthly on or before the fifteenth day of the month following the close of each monthly period;

3. Every employer owing an average of Five Hundred Dollars (\$500.00) or more per quarter in taxes in the previous fiscal year who is not subject to the provisions of paragraph 1 or 2 of this subsection shall pay over the amount so withheld on or before the fifteenth day of each succeeding month and shall file a monthly return together with the payment; and

4. Every employer owing an average of less than Five Hundred Dollars (\$500.00) per quarter in taxes in the previous fiscal year shall pay over the amount so withheld on or before the fifteenth day of the month following the close of each succeeding quarterly period and shall file a quarterly return together with the payment.

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

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

~~(d)~~ D. Every employer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma. The term "employer" as used in this subsection and in Section 2385.6 of this title includes an officer or employee of a corporation, manager or member of a limited liability company or a member or employee of a partnership, who as an officer or employee of a corporation, or manager or member of a limited liability company or member or employee of a partnership is under a duty to act for a corporation, limited liability company or partnership to withhold and remit withholding taxes in accordance with this section and Section 2385.2 of this title. Any sum or sums withheld in accordance with the provisions of Section 2385.2 of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the employer shall have a fiduciary duty to the State of Oklahoma in regard to such sums and shall be subject to the trust laws of this state. Any employer who fails to pay to the Tax Commission any sums required to be withheld by such employer, after such sums have been withheld from the wages of employees, and

appropriates the tax held in trust to his own use, or to the use of any person not entitled thereto, without authority of law shall be guilty of embezzlement.

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

~~(f)~~ F. Every person making payments of winnings subject to withholding shall, for each monthly period, on or before the fifteenth day of the month following the payment of such winnings pay over to the Tax Commission the amounts so withheld, and shall file a return, in a form as prescribed by the Tax Commission.

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

SECTION 6. AMENDATORY 68 O.S. 1991, Section 5011, as amended by Section 2, Chapter 311, O.S.L. 1992 (68 O.S. Supp. 1997, Section 5011), is amended to read as follows:

Section 5011. A. Except as otherwise provided by this section, beginning with the calendar year 1990 and for each calendar year ~~thereafter~~ through 1998, and for years in which the State Board of Equalization suspends subsection B or C of this section pursuant to the provisions of Section 3 of this act, any individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made and whose gross household income for such year does not exceed Twelve Thousand Dollars (\$12,000.00) may file a claim for sales tax relief. ~~For calendar year 1990, the amount of the claim filed pursuant to this act shall be Twenty Dollars (\$20.00) multiplied by the number of personal exemptions to which the taxpayer would be entitled pursuant to the provisions of the Oklahoma Income Tax Act, Section 2351 et seq. of this title, except for the exemptions such taxpayer would be entitled to pursuant to Section 2358 of this title if such taxpayer or spouse is blind or sixty-five (65) years of age or older at the close of the tax year~~

B. For calendar year 1999, and for all other years for which the requirements of Section 3 of this act may apply, any individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made may file a claim for sales tax relief if the gross household income for such year does not exceed the following amounts:

1. For an individual not subject to the provisions of paragraph 2 of this subsection and claiming no allowable personal exemption other than the allowable personal exemption for that individual or the spouse of that individual, Fifteen Thousand Dollars (\$15,000.00); or

2. For an individual claiming one or more allowable personal exemptions other than the allowable personal exemption for that individual or the spouse of that individual, an individual with a physical disability constituting a substantial handicap to employment, or an individual who is sixty-five (65) years of age or older at the close of the tax year, Thirty Thousand Dollars (\$30,000.00).

C. Except as otherwise may be provided in Section 3 of this act, for calendar year 2000, and for all other years for which the

requirements of Section 3 of this act may apply, an individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made may file a claim for sales tax relief if the gross household income for such year does not exceed the following amounts:

1. For an individual not subject to the provisions of paragraph 2 of this subsection and claiming no allowable personal exemption other than the allowable personal exemption for that individual or the spouse of that individual, Twenty Thousand Dollars (\$20,000.00); or

2. For an individual claiming one or more allowable personal exemptions other than the allowable personal exemption for that individual or the spouse of that individual, an individual with a physical disability constituting a substantial handicap to employment, or an individual whose is sixty-five (65) years of age or older at the close of the tax year, Fifty Thousand Dollars (\$50,000.00).

~~For calendar year 1991 and each year thereafter, the D.~~ The amount of the claim filed pursuant to ~~this act~~ the Sales Tax Relief Act shall be Forty Dollars (\$40.00) multiplied by the number of allowable personal exemptions. As used in the Sales Tax Relief Act, "allowable personal exemption" means a personal exemption to which the taxpayer would be entitled pursuant to the provisions of the Oklahoma Income Tax Act, except for:

1. The exemptions such taxpayer would be entitled to pursuant to Section 2358 of this title if such taxpayer or spouse is blind or sixty-five (65) years of age or older at the close of the tax year;

2. An exemption for a person convicted of a felony if during all or any part of the calendar year for which the claim is filed such person was an inmate in the custody of the Department of Corrections; or

3. An exemption for a person if during all or any part of the calendar year for which the claim is filed such person resided outside of this state.

~~B.~~ E. A person convicted of a felony shall not be permitted to file a claim for sales tax relief pursuant to the provisions of Sections 5010 through 5016 of this title for the period of time during which the person is an inmate in the custody of the Department of Corrections. Such period of time shall include the entire calendar year if the person is in the custody of the Department of Corrections during any part of the calendar year. The provisions of this subsection shall not prohibit all other members of the household of an inmate from filing a claim based upon the personal exemptions to which the household members would be entitled pursuant to the provisions of the Oklahoma Income Tax Act.

~~C.~~ F. The Department of Corrections shall withhold up to fifty percent (50%) of any money inmates receive for claims made pursuant to the Sales Tax Relief Act prior to September 1, 1991, for costs of incarceration.

G. For purposes of Section 139.105 of Title 17 of the Oklahoma Statutes, the gross household income of any individual who may file a claim for sales tax relief shall not exceed Twelve Thousand Dollars (\$12,000.00).

SECTION 7. This act shall become effective January 1, 1999.

Passed the House of Representatives the 29th day of May, 1998.

Speaker of the House of
Representatives

Passed the Senate the 29th day of May, 1998.

President of the Senate