STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3138 By: Turner

AS INTRODUCED

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; expanding group to whom certain deductions may be made for certain years; increasing the exemption; prohibiting certain total amount; modifying qualification requirements; amending 68 O.S. 1991, Section 2385.7, as amended by Section 25, Chapter 294, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2385.7), which relates to income tax; modifying certain exceptions and application of act; 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, or collateral heirs, provided that the decedent has no living lineal descendants at the time of transfer, 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), and the tax shall be paid on the remainder at the rates herein set out.

B. 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 exemption shall be in an amount not exceeding Four Hundred Twenty-five Thousand Dollars ($425,000.00). In no event shall the total exemption allowed pursuant to subsection A of this section and this subsection exceed a total of Six Hundred Thousand Dollars ($600,000.00) for any estate.

C. In addition to the exemption provided pursuant to subsections A and B of this section, for the estate of a decedent who dies on or after January 1, 1999, 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 exemption shall be in an amount not exceeding Six Hundred Twenty-five Thousand Dollars ($625,000.00). In no event shall the total exemption allowed pursuant to subsection A of this section and this subsection exceed a total of One Million Three Hundred Thousand Dollars ($1,300,000.00) for any estate.

D. For purposes of this ~~subsection~~ section:

1. "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 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 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 heir" means any heir as set forth in subsection A of this section.

~~C.~~ E. In order to qualify for the exemption provided in subsection B or C of this section, the estate of the decedent shall submit the appropriate federal tax returns or tax schedules of the qualifying family business or farm for ~~the~~ at least five (5) out of the eight (8) 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~~ at least five (5) tax years of any eight (8) tax-year period within ten (10) tax years following the date of death of decedent and shall

submit each taxable year the appropriate federal tax returns or tax schedules to the Oklahoma Tax Commission as proof of ~~continuous operation~~ required participation of the business or farm. If evidence of ~~continuous operation~~ required participation 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 or C of this section for each year evidence of ~~continuous operation~~ required participation is not submitted.

~~D.~~ F. 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 2385.7, as amended by Section 25, Chapter 294, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2385.7), is amended to read as follows:

Section 2385.7 A. Except as provided in subsection B of this section, every taxpayer, as defined by Section 2353 of this title, shall make a declaration of the estimated tax for the taxable year if:

1. In the case of a single individual taxpayer, the tax liability of the taxpayer can reasonably be expected to be Five Hundred Dollars ($500.00) or more in excess of taxes to be withheld from wages;

2. In the case of married individuals, the combined tax liability of the married individuals can reasonably be expected to be Five Hundred Dollars ($500.00) or more in excess of taxes to be withheld from wages; or

3. In the case of a corporation or trust, the tax of the corporation or trust for the taxable year can reasonably be expected to be Five Hundred Dollars ($500.00) or more.

B. Subsection A of this section shall not apply to:

1. Estates; and

2. Any individual whose gross income from farming for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total estimated gross income from all sources for the taxable year. However, if an individual whose gross income from farming qualifies pursuant to the provisions of this paragraph for the ~~previous~~ current taxable year, the individual shall not be required to qualify for the ~~current~~ ensuing taxable year. In no event shall the qualification for the ~~previous~~ current taxable year be carried forward for more than one (1) year.

SECTION 3. This act shall become effective January 1, 1999.

46-2-8182 KSM