

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 2041

By: Pope (Clay)

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; ordering a legislative referendum pursuant to the Oklahoma Constitution; amending 68 O.S. 2001, Sections 1207, 1210 and 1212, which relate to the Franchise Tax Code; deleting reference and procedures relating to franchise tax; modifying certain reporting requirements; amending 68 O.S. 2001, Sections 1354, 1354.2, 1354.3 and 1402, which relate to sales and use tax rates; increasing the sales and use tax rates; amending 68 O.S. 2001, Sections 2353, 2355 and 2358, which relate to income tax; modifying definitions; requiring tax to be imposed on income at certain rate; eliminating provisions that relate to classes of taxpayers; eliminating certain exemptions and deductions; repealing 68 O.S. 2001, Sections 801, 802, 802.1, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 815.1, 816, 816.1, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 1203, 1204, 1205, 1208 and 1209, which relate to the estate tax and the Franchise Tax Code; providing effective dates; providing ballot title; and directing filing.

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

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at the next General Election.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 1207, is amended to read as follows:

Section 1207. ~~The tax herein levied shall not be exacted for~~  
For the fiscal year during which a domestic or foreign corporation, association or organization has paid an incorporating, filing or

qualifying fee or tax to the Secretary of State. ~~However,~~ such corporations or organizations shall file a "no tax" report to comply with such regulations as shall be adopted by the Oklahoma Tax Commission, who shall, upon ~~such~~ the filing, issue a "no tax" license expiring on the next ensuing June 30th. ~~Provided, that in the computation of the tax imposed by this article no credit shall be allowed against such tax by reason of any money paid to the Secretary of State as additional incorporation, qualifying or filing fee covering an increase of authorized capital or capital apportioned to this state.~~

SECTION 3. AMENDATORY 68 O.S. 2001, Section 1210, is amended to read as follows:

Section 1210. A. In addition to any other statement required by law, each and every corporation, association or organization, as enumerated in ~~Sections~~ Section 1201, ~~1203,~~ and 1204 of this title, subject to the provisions of Section 1201 et seq. of this title, ~~either during the period of July 1 to August 31, inclusive, of each year or on or before the date by which an income tax return is required to be filed pursuant to the provisions of subsection C of Section 2368 of this title or pursuant to the provisions of Section 216 of this title, based upon the election by the taxpayer regarding the due date for payment of tax,~~ shall file with the Tax Commission a statement under oath of its president, secretary or managing officer, or managing agent in this state. The statement shall be in such form as the Tax Commission shall prescribe, ~~including balance sheets as at the close of its last preceding taxable year for which an income tax return was required to be filed,~~ showing the following:

- ~~1. The amount of its authorized capital stock, interests, certificates, or other evidence of interest or ownership;~~
- ~~2. The amount thereof then paid up;~~
- ~~3. The number of units into which the same is divided;~~

~~4. The par value of each unit and the number of such units issued and outstanding;~~

~~5. The location of the office or offices;~~

~~6. The value of all property owned or used in its business and wherever located;~~

~~7. The value of all property owned or used in its business within this state as it existed on the last day of the tax year;~~

~~8. The total amount of all business wherever transacted during the tax year;~~

~~9. The total amount of business transacted within the State of Oklahoma during such year; and~~

~~10. The names of its officers and the residence and post office address of each as the same appear of record on the last day of the tax year, based upon the election by the taxpayer regarding the due date for payment of tax.~~

~~B. If any corporation, association or organization making a return under the provisions of Section 1201 et seq. of this title has no authorized capital, or if any of its shares of stock or other evidences of interest or ownership have no par value, then such corporation, association or organization shall so state in its return, and shall, in addition thereto, state the book value of its shares of stock or other evidences of interest or ownership. It shall also, in making its return, make the showing required of all other corporations, associations and organizations, and each Each foreign corporation shall state the name of its registered agent residing at the capital of the state. The return shall be in such form as the Tax Commission shall prescribe.~~

~~C. A corporation or organization subject to the tax levied by Section 1203 or Section 1204 of this title for which the computation of capital employed in the state equals or exceeds Sixteen Million Dollars (\$16,000,000.00), shall file a maximum franchise tax return on such form as may be prescribed by the Oklahoma Tax Commission.~~

~~D. A corporation or organization subject to the tax levied by Section 1203 or Section 1204 of this title for which the computation of capital employed in this state is Eight Thousand Dollars (\$8,000.00) or less shall file a minimum franchise tax return on such form as may be prescribed by the Oklahoma Tax Commission.~~

~~E. The Oklahoma Tax Commission shall prescribe a form for use by corporations or organizations subject to the minimum tax and maximum tax imposed by Section 1205 of this title in order for such corporations or organizations to determine if the value of capital employed in this state requires filing either a minimum franchise tax return or maximum franchise tax return. If a corporation or organization is required to file either the minimum or maximum franchise tax return, such return shall not be subject to the requirements of subsection A of this section and the return shall only contain such information as may be prescribed by the Commission. The return shall be in such form as the Tax Commission shall prescribe The statement shall be filed as part of the income tax return as provided in the Income Tax Code.~~

SECTION 4. AMENDATORY 68 O.S. 2001, Section 1212, is amended to read as follows:

Section 1212. ~~(a) A.~~ A. If the ~~report herein~~ statement required ~~and the tax levied by Section 1210 of this title~~ is not filed and paid within the time provided under subsection (c) of Section 1208 of this title, the Oklahoma Tax Commission shall levy and collect a penalty for such delinquency in the amount of ten percent (10%) of the tax due. Such penalty shall be collected and apportioned in the same manner as is the tax itself, and the Tax Commission may enter an order directing the suspension of the charter or other instrument of organization, under which the corporation, association or organization may be organized, and the forfeiture of all corporate or other rights inuring thereunder. However, no such order of the Tax Commission shall be issued nor effective as to any corporation,

association or organization the charter or certificate of authority of which is issued by the State Banking Board or State Banking Commissioner rather than the Secretary of State and the Tax Commission shall only notify the registered agents or managing officer of the corporation, association, or organization and shall notify the State Banking Board or State Banking Commissioner of the ~~amount of unpaid tax~~ unfiled statement. The Banking Commissioner shall require the ~~payment of such tax, plus interest and penalty, if any,~~ filing of the statement within a reasonable time.

~~(b)~~ B. Any person who attempts or purports to exercise any of the rights, privileges or powers of any ~~such~~ domestic corporation, association or organization, or who does or attempts to do any business in the state in behalf of any ~~such~~ foreign corporation, association or organization, without having first obtained a license ~~therefor,~~ as provided ~~herein~~ by law, or after any such license so obtained shall have been canceled, forfeited, or expired, shall be guilty of a misdemeanor.

~~(c)~~ C. Each trustee, director or officer of any such corporation, association or organization, whose right to do business within this state shall be so forfeited, shall, as to any and all debts of such corporation, association or organization, which may be created or incurred with ~~his~~ the knowledge, approval and consent of the trustee, director or officer, within this state after ~~such~~ the forfeiture and before the reinstatement of the right of ~~such~~ the corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if ~~such~~ the trustees, directors, and officers of ~~such~~ the corporation, association or organization were partners. Any corporation, association or organization whose right to do business shall be ~~thus~~ forfeited, shall be denied the right to sue or defend in any court of this state, except in a suit to forfeit the charter of ~~such~~ the corporation, association or organization. In any suit against such

corporation, association or organization on a cause of action arising before ~~such~~ the forfeiture, no affirmative relief shall be granted to ~~such~~ the corporation, association or organization unless its right to do business in this state shall be reinstated as provided herein. Every contract entered into by or in behalf of ~~such~~ the corporation, association or organization, after ~~such~~ the forfeiture as provided herein, is hereby declared to be voidable.

~~(d)~~ D. Notice of ~~such~~ the suspension and forfeiture shall be forwarded by certified mail, return receipt requested, to the last-known address of the registered agent or managing officer of each corporation, association or organization, and the Tax Commission may cause notice of ~~such~~ the suspension and forfeiture to be published in a newspaper of general circulation in the county in which the general business office of each such corporation, association or organization is located in this state.

~~(e)~~ E. The Tax Commission, ~~shall~~ immediately upon entering an order suspending and forfeiting any ~~such~~ charter or other instrument of organization, shall transmit the name of each ~~such~~ corporation, association or organization named therein to the Secretary of State or the county clerk of the county in which the instrument under which it may be organized is filed, and the Secretary of State or county clerk, as the case may be, shall immediately record the same and such record shall constitute notice to the public. The suspension and forfeiture ~~herein~~ provided for in this section shall become effective immediately upon ~~such~~ the record being made and the certificate of the Secretary of State or the county clerk shall be prima facie evidence of ~~such~~ the suspension and forfeiture.

~~(f)~~ F. After the issuance of ~~such~~ the order of suspension and forfeiture by the Tax Commission, the charter or other instrument of organization may only be revived and reinstated upon the payment of the accrued fees and penalties and a reinstatement fee in the amount of Fifteen Dollars (\$15.00), and a showing by the corporation,

association or organization of a full compliance with the laws of this state. Such payment of accrued fees and penalties must be made prior to the expiration of the time provided in ~~such~~ the charter or other instrument of organization for the life of ~~such~~ the corporation, association or organization.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 1354, is amended to read as follows:

Section 1354. A. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, an excise tax of ~~four and one-half percent (4.5%)~~ six and twenty-five one-hundredths percent (6.25%) of the gross receipts or gross proceeds of each sale of the following:

1. Tangible personal property, except newspapers and periodicals;

2. Natural or artificial gas, electricity, ice, steam, or any other utility or public service, and associated delivery or transmission services, except water, sewage and refuse and those specifically exempt pursuant to the provisions of Section 1357 of this title;

3. Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation companies, pullman car companies, airlines, and other means of transportation for hire, excluding:

- a. transportation services provided by a tourism service broker which are incidental to the rendition of tourism brokerage services by such broker to a customer regardless of whether or not such transportation services are actually owned and operated by the tourism service broker. For purposes of this subsection, "tourism service broker" means any person, firm, association or corporation or any employee of such person, firm, association or

corporation which, for a fee, commission or other valuable consideration, arranges or offers to arrange trips, tours or other vacation or recreational travel plans for a customer, and

- b. transportation services provided by a funeral establishment to family members and other persons for purposes of conducting a funeral in this state;

4. Telecommunications services that originate and terminate in this state and that originate or terminate in this state and are charged to the consumer's telephone number or account in this state regardless of where the billing for such service is made, all mobile telecommunications services that are sourced to this state pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C., Sections 116-126, and all local telecommunications service and rental charges, including all installation and construction charges and all service and rental charges having any connection with transmission of any message or image. Provided:

- a. the term "telecommunications services" shall mean the transmission of any interactive, two-way electromagnetic communications, including voice, image, data and information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media, but shall not include the following:
  - (1) sales of value-added nonvocal services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted, including charges for the storage of data or information for subsequent retrieval but not including services commonly known as voice mail,

- (2) any interstate telecommunications service which is:
    - (a) rendered by a company for private use within its organization, or
    - (b) used, allocated, or distributed by a company to its affiliated group, or
  - (3) sales of any carrier access services, right of access services, telecommunications services to be resold, or telecommunications services used in the subsequent provision of, use as a component part of, or integrated into end-to-end telecommunications service, and
- b. the term "telecommunications services" shall include, but not be limited to sales of any interstate telecommunications services which:
- (1) entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or
  - (2) entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges, and
- c. the term "interstate" includes any international service that either originates or terminates outside of the fifty (50) United States and the District of Columbia;

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

6. Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp;

7. Service of furnishing storage or parking privileges by auto hotels or parking lots;

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

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

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

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

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

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

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

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

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

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

18. Flowers, plants, shrubs, trees, and other floral items, whether or not produced by the vendor, sold by persons engaged in

florist or nursery business in this state, including all orders taken by an Oklahoma business for delivery in another state. All orders taken outside this state for delivery within this state shall not be subject to the taxes levied in this section;

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

- a. the operation of the business,
- b. the nature of the business,
- c. the turnover of independent contractors,
- d. the lack of place of business in which to display a permit or keep records,
- e. lack of adequate records,
- f. the fact that the persons are minors or transients,
- g. the fact that the persons are engaged in service businesses, or
- h. any other reasonable reason;

20. Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete

the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale and the contractor shall file a claim for refund before the expiration of three (3) years after the date of contract completion or five (5) years after the contract was entered into, whichever occurs earlier. However, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection; and

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

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

SECTION 6. AMENDATORY 68 O.S. 2001, Section 1354.2, is amended to read as follows:

Section 1354.2 ~~(A)~~ A. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of ~~four and one-half percent (4.5%)~~ six and twenty-five one-hundredths percent (6.25%) of the gross receipts or gross proceeds of each sale of tangible personal property to the consumer-user in this state by an out-of-state vendor who engages in business in this state through the continuous, regular or systematic solicitation of

retail sales by advertisement in the newspapers or radio or television media operating within Oklahoma. The tax shall be collected, reported, and remitted or paid in accordance with the Oklahoma Sales Tax Code.

~~(B)~~ B. For purposes of administration of the sales tax laws, a sale occurs within this state if delivery or transfer of possession of the tangible personal property occurs within this state.

~~(C)~~ C. Any advertisement soliciting sales to the Oklahoma consumer, subject to this section, to be published or broadcasted by newspapers or radio or television media operating in this state, shall contain a notice that the sale is subject to Oklahoma sales or use tax and shall include the sales tax permit number issued the advertising vendor by the Oklahoma Tax Commission. It shall be the duty of the vendor to provide such notice in advertisements referred to herein. No penalty as a result of this act shall lie against any newspaper, broadcaster or other Oklahoma advertising media.

~~(D)~~ D. Any out-of-state vendor required to collect, report and remit or pay sales or use tax in accordance with this act shall be entitled to the discount allowed other vendors pursuant to the Oklahoma Sales Tax Code.

~~(E)~~ E. Any out-of-state vendor doing business in this state subject to this act shall be subject to all the civil and criminal penalties and liabilities imposed by the Oklahoma Sales Tax Code on vendors within the state.

~~(F)~~ F. All sales or use tax revenues collected pursuant to this act shall be apportioned in the same manner as other sales or use tax revenues.

SECTION 7. AMENDATORY 68 O.S. 2001, Section 1354.3, is amended to read as follows:

Section 1354.3 ~~(A)~~ A. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, ~~Sections~~ Section 1350 et seq. of Title 68 of the Oklahoma Statutes this

title, or the Oklahoma Use Tax Code, ~~Sections~~ Section 1401 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title, an excise tax of ~~four and one-half percent (4.5%)~~ six and twenty-five one-hundredths percent (6.25%) of the gross receipts or gross proceeds of each sale or use of tangible personal property to or by a consumer-user in this state purchased from an out-of-state vendor who engages in business in this state through the continuous, regular or systematic solicitation of retail sales by advertisement through mail order or catalog publications. The tax shall be collected, reported and remitted or paid and apportioned in the same manner as any other sales or use tax levied by this state.

~~(B)~~ B. Any out-of-state vendor required to collect, report or remit or pay sales or use tax in accordance with this act shall be entitled to the discount allowed other vendors required to collect and report Oklahoma sales or use tax.

SECTION 8. AMENDATORY 68 O.S. 2001, Section 1402, is amended to read as follows:

Section 1402. There is hereby levied and there shall be paid by every person storing, using, or otherwise consuming within this state, tangible personal property purchased or brought into this state, an excise tax on the storage, use, or other consumption in this state of such property at the rate of ~~four and one-half percent (4.5%)~~ six and twenty-five one-hundredths percent (6.25%) of the purchase price of such property. Said tax shall not be levied on tangible personal property intended solely for use in other states, but which is stored in Oklahoma pending shipment to such other states or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service. The tax in such instances shall be paid at the time of importation or storage of the property within the state and a subsequent credit shall be taken by the taxpayer for the amount so paid upon removal of the property from the state. Such tax is

hereby levied and shall be paid in an amount equal to ~~four and one-half percent (4.5%)~~ six and twenty-five one-hundredths percent (6.25%) of the purchase price of such tangible personal property.

SECTION 9. AMENDATORY 68 O.S. 2001, Section 2353, is amended to read as follows:

Section 2353. For the purpose of and when used in Section 2351 et seq. of this title unless the context otherwise requires:

1. The term "Tax Commission" means the Oklahoma Tax Commission;
2. "Internal Revenue Code" means the United States Internal Revenue Code, as the same may be amended or adopted from time to time applicable to the taxable year; and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time or from time to time applicable to the taxable year;
3. Any term used in Section 2351 et seq. of this title shall have the same meaning as when used in a comparable context in the Internal Revenue Code, unless a different meaning is clearly required. For all taxable periods covered by Section 2351 et seq. of this title, the tax status and all elections of all taxpayers covered by Section 2351 et seq. of this title shall be the same for all purposes material hereto as they are for federal income tax purposes except when Section 2351 et seq. of this title specifically provides otherwise;
4. "Resident individual" means a natural person who is domiciled in this state, and any other natural person who spends in the aggregate more than seven (7) months of the taxable year within this state shall be presumed to be a resident for purposes of Section 2351 et seq. of this title in absence of proof to the contrary. A natural person who resides less than seven (7) months of the taxable year within this state is presumed to be a "part-year resident individual" for purposes of the Oklahoma Income Tax Code, Section 2351 et seq. of this title, in absence of proof to the

contrary. A "nonresident individual" means an individual other than a resident individual or a part-year resident individual.

For all tax years beginning after December 31, 1981, a nonresident individual, with respect to foreign earned income and deductions, shall include an individual who:

- a. during any period of twenty-four (24) consecutive months is out of the United States at least five hundred fifty (550) days,
- b. during such period referred to in subparagraph a of this paragraph is not present in this state for more than ninety (90) days during any taxable year,
- c. during any period of less than an entire taxable year, which period is contained within the period referred to in subparagraph a of this paragraph, is not present in this state for a number of days in excess of an amount which bears the same ratio to ninety (90) days as the number of days contained in the period of less than an entire taxable year bears to three hundred sixty-five (365), and
- d. during such period referred to in subparagraph a of this paragraph does not maintain a permanent place of abode in this state at which the spouse of the individual, unless such spouse is legally separated, or minor children of the individual are present for more than one hundred eighty (180) days;

5. "Resident estate" means the estate of a decedent who at death was domiciled in this state. "Nonresident estate" means an estate other than a resident estate;

6. "Resident trust" means:

- a. a trust, or a portion of a trust, consisting of property transferred by will of a decedent domiciled in this state at death, or a trust, or a portion of a

trust, consisting of the property of a person domiciled in this state if such trust is not irrevocable, and

- b. a trust, or portion of a trust, consisting of property of a person domiciled in this state at the time such property was transferred to the trust if such trust or portion was then irrevocable or a person domiciled in this state at the time such trust or portion became irrevocable. A trust, or portion of a trust, is irrevocable if it is not subject to a power exercisable solely by the transferor of such property, at any time, to revest title in the transferor.

"Nonresident trust" means a trust other than a resident trust;

7. "Resident partner" means a partner who is a resident individual, a resident estate, a resident trust or a resident corporation. "Nonresident partner" means a partner other than a resident partner;

8. "Resident beneficiary" means a beneficiary of an estate or trust which beneficiary is a resident individual, a resident estate, a resident trust or a resident corporation. "Nonresident beneficiary" means a beneficiary other than a resident beneficiary;

9. "Resident corporation" means a corporation whose principal place of business is located within the State of Oklahoma. "Nonresident corporation" means any corporation other than a resident corporation;

10. "Taxable income" with respect to any taxpayer means the "taxable income", "life insurance company taxable income", "mutual insurance company taxable income", "(regulated) investment company taxable income", "real estate investment trust taxable income", and "cooperatives' taxable income" and any other "taxable income" as defined in the Internal Revenue Code as applies to such taxpayer or

any other income of such taxpayer including, but not limited to, lump sum distributions as defined by the Internal Revenue Code of 1986, as amended; provided, in the case of income derived from oil and gas well production, any taxpayer, at his or her option, may deduct as an allowance for depletion, in lieu of other calculation of depletion based on the cost of the oil and gas deposit, twenty-two percent (22%) of the gross income derived from the properties during the taxable year. Provided further, for tax years beginning on or after January 1, 1997, and ending on or before December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2004, for major oil companies as defined in Section 288.2 of Title 52 of the Oklahoma Statutes, such allowance shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property. During taxable years other than those specified herein, for all taxpayers, such allowance shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property. If a depletion allowance is allowed as a deduction in arriving at the adjusted gross income in the case of an individual, or taxable income for corporations and trusts, or distributable income of partnerships by the Internal Revenue Service, the percentage depletion so calculated shall in no event be a duplication of depletion allowed on the Federal Income Tax Return;

11. ~~"Adjusted gross income" means "adjusted gross income" as defined in the Internal Revenue Code;~~

~~12.~~ "Oklahoma taxable income" means "taxable income" as reported (or as would have been reported by the taxpayer had a return been filed) to the federal government, and in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided;

~~13. "Oklahoma adjusted gross income" means "adjusted gross income" as reported to the federal government (or as would have been reported by the taxpayer had a return been filed), or in the event of adjustments thereby by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided;~~

~~14. 12.~~ "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any political subdivision thereof; and

~~15. 13~~ "Taxpayer" means any person subject to a tax imposed by this Article, or whose income is, in whole or in part, subject to a tax imposed by any provision of this article.

SECTION 10. AMENDATORY 68 O.S. 2001, Section 2355, is amended to read as follows:

Section 2355. A. Individuals. ~~Except as otherwise provided in Section 4001 of this title, for~~ For all taxable years beginning after December 31, ~~1998~~ 2002, a tax is hereby imposed at a rate of five percent (5%) 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, and before January 1, 2002, 6.75% tax on the remainder and for taxable years beginning on or after January 1, 2002, 6.65% 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 4001 of this title, 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, and before January 1, 2002, 6.75% tax on the remainder and for taxable years beginning on or after January 1, 2002, 6.65% 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 4001 of this title, 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 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.~~ C. Certain foreign corporations. In lieu of the tax imposed in the first paragraph of subsection E B 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. D.~~ Fiduciaries. A tax is hereby imposed upon the Oklahoma taxable income of every trust and estate at the same ~~rates~~ rate as ~~are~~ is 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 11. AMENDATORY 68 O.S. 2001, Section 2358, is amended to read as follows:

Section 2358. For all tax years beginning after December 31, ~~1981~~ 2002, taxable income and ~~adjusted gross income~~ shall be adjusted to arrive at Oklahoma taxable income and ~~Oklahoma adjusted gross income~~ as required by this section.

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

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

such interest is not included in taxable income and adjusted gross income.

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

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

- a. For carryovers and carrybacks to taxable years beginning before January 1, 1981, the amount of any net operating loss deduction allowed to a taxpayer for federal income tax purposes shall be reduced to an amount which is the same portion thereof as the loss from sources within this state, as determined pursuant to this section and Section 2362 of this title, for the taxable year in which such loss is sustained is of the total loss for such year;
- b. For carryovers and carrybacks to taxable years beginning after December 31, 1980, the amount of any net operating loss deduction allowed for the taxable year shall be an amount equal to the aggregate of the Oklahoma net operating loss carryovers and carrybacks to such year. Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal Revenue Code, 26 U.S.C., Section 172, as modified by the Oklahoma Income Tax Act, Section 2351 et seq. of this title, and shall be allowed without regard to the existence of a federal net operating loss. For tax years beginning after December 31, 2000, the years to which such losses may be carried shall be determined solely by reference to Section 172 of the Internal Revenue Code, 26 U.S.C., Section 172,

with the exception that the terms "net operating loss" and "taxable income" shall be replaced with "Oklahoma net operating loss" and "Oklahoma taxable income".

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

a. Income from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property;

b. Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer, except that:

(1) where such property has acquired a nonunitary business or commercial situs apart from the domicile of the taxpayer such income shall be allocated in accordance with such business or commercial situs; interest income from investments held to generate working capital for a unitary business enterprise shall be included in apportionable income; a resident trust or resident estate shall be treated as having a separate commercial or business situs insofar as undistributed income is concerned, but shall not be treated as having a separate commercial or business situs insofar as distributed income is concerned,

(2) income from such property which is required to be allocated pursuant to the provisions of paragraph 5 of this subsection shall be allocated as herein provided;

c. Net income or loss from a business activity which is not a part of business carried on within or without the state of a unitary character shall be separately allocated to the state in which such activity is conducted;

d. In the case of a manufacturing or processing enterprise the business of which in Oklahoma consists solely of marketing its products by:

(1) sales having a situs without this state, shipped directly to a point from without the state to a purchaser within the state, commonly known as interstate sales,

(2) sales of the product stored in public warehouses within the state pursuant to "in transit" tariffs, as prescribed and allowed by the Interstate Commerce Commission, to a purchaser within the state,

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

the Oklahoma net income shall, at the option of the taxpayer, be that portion of the total net income of the taxpayer for federal income tax purposes derived from the manufacture and/or processing and sales everywhere as determined by the ratio of the sales

defined in this section made to the purchaser within the state to the total sales everywhere. The term "public warehouse" as used in this subparagraph means a licensed public warehouse, the principal business of which is warehousing merchandise for the public;

e. In the case of insurance companies, Oklahoma taxable income shall be taxable income of the taxpayer for federal tax purposes, as adjusted for the adjustments provided pursuant to the provisions of paragraphs 1 and 2 of this subsection, apportioned as follows:

- (1) except as otherwise provided by division (2) of this subparagraph, taxable income of an insurance company for a taxable year shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance on property or risks in this state, and the denominator of which is the direct premiums written for insurance on property or risks everywhere. For purposes of this subsection, the term "direct premiums written" means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Oklahoma Insurance Commissioner in the form approved by the National Association of Insurance Commissioners, or such other form as may be prescribed in lieu thereof,
- (2) if the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the taxable income of such company shall be apportioned to this state

by multiplying such income by a fraction, the numerator of which is the sum of (a) direct premiums written for insurance on property or risks in this state, plus (b) premiums written for reinsurance accepted in respect of property or risks in this state, and the denominator of which is the sum of (c) direct premiums written for insurance on property or risks everywhere, plus (d) premiums written for reinsurance accepted in respect of property or risks everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect of property or risks in this state, whether or not otherwise determinable, may at the election of the company be determined on the basis of the proportion which premiums written for insurance accepted from companies commercially domiciled in Oklahoma bears to premiums written for reinsurance accepted from all sources, or alternatively in the proportion which the sum of the direct premiums written for insurance on property or risks in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.

5. The net income or loss remaining after the separate allocation in paragraph 4 of this subsection, being that which is derived from a unitary business enterprise, shall be apportioned to this state on the basis of the arithmetical average of three factors consisting of property, payroll and sales or gross revenue enumerated as subparagraphs a, b and c of this paragraph. Net

income or loss as used in this paragraph includes that derived from patent or copyright royalties, purchase discounts, and interest on accounts receivable relating to or arising from a business activity, the income from which is apportioned pursuant to this subsection, including the sale or other disposition of such property and any other property used in the unitary enterprise. Deductions used in computing such net income or loss shall not include taxes based on or measured by income. Provided, for corporations whose property for purposes of the tax imposed by Section 2355 of this title has an initial investment cost equaling or exceeding Two Hundred Million Dollars (\$200,000,000.00) and such investment is made on or after July 1, 1997, or for corporations which expand their property or facilities in this state and such expansion has an investment cost equaling or exceeding Two Hundred Million Dollars (\$200,000,000.00) over a period not to exceed three (3) years, and such expansion is commenced on or after January 1, 2000, the three factors shall be apportioned with property and payroll, each comprising twenty-five percent (25%) of the apportionment factor and sales comprising fifty percent (50%) of the apportionment factor. The apportionment factors shall be computed as follows:

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

- (1) Property, the income from which is separately allocated in paragraph 4 of this subsection, shall not be included in determining this fraction. The numerator of the fraction shall include a portion of the investment in

transportation and other equipment having no fixed situs, such as rolling stock, buses, trucks and trailers, including machinery and equipment carried thereon, airplanes, salespersons' automobiles and other similar equipment, in the proportion that miles traveled in Oklahoma by such equipment bears to total miles traveled,

(2) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals,

(3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Oklahoma Tax Commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property;

b. The payroll factor is a fraction, the numerator of which is the total compensation for services rendered in the state during the tax period, and the denominator of which is the total compensation for services rendered everywhere during the tax period. "Compensation", as used in this subsection means those paid-for services to the extent related to the unitary business but does not include officers' salaries, wages and other compensation.

(1) In the case of a transportation enterprise, the numerator of the fraction shall include a portion

of such expenditure in connection with employees operating equipment over a fixed route, such as railroad employees, airline pilots, or bus drivers, in this state only a part of the time, in the proportion that mileage traveled in Oklahoma bears to total mileage traveled by such employees,

(2) In any case the numerator of the fraction shall include a portion of such expenditures in connection with itinerant employees, such as traveling salespersons, in this state only a part of the time, in the proportion that time spent in Oklahoma bears to total time spent in furtherance of the enterprise by such employees;

c. The sales factor is a fraction, the numerator of which is the total sales or gross revenue of the taxpayer in this state during the tax period, and the denominator of which is the total sales or gross revenue of the taxpayer everywhere during the tax period. "Sales", as used in this subsection does not include sales or gross revenue which are separately allocated in paragraph 4 of this subsection.

(1) Sales of tangible personal property have a situs in this state if the property is delivered or shipped to a purchaser other than the United States government, within this state regardless of the FOB point or other conditions of the sale; or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (a) the purchaser is the United States government or (b) the taxpayer is not

doing business in the state of the destination of the shipment.

- (2) In the case of a railroad or interurban railway enterprise, the numerator of the fraction shall not be less than the allocation of revenues to this state as shown in its annual report to the Corporation Commission.
- (3) In the case of an airline, truck or bus enterprise or freight car, tank car, refrigerator car or other railroad equipment enterprise, the numerator of the fraction shall include a portion of revenue from interstate transportation in the proportion that interstate mileage traveled in Oklahoma bears to total interstate mileage traveled.
- (4) In the case of an oil, gasoline or gas pipeline enterprise, the numerator of the fraction shall be either the total of traffic units of the enterprise within Oklahoma or the revenue allocated to Oklahoma based upon miles moved, at the option of the taxpayer, and the denominator of which shall be the total of traffic units of the enterprise or the revenue of the enterprise everywhere as appropriate to the numerator. A "traffic unit" is hereby defined as the transportation for a distance of one (1) mile of one (1) barrel of oil, one (1) gallon of gasoline or one thousand (1,000) cubic feet of natural or casinghead gas, as the case may be.
- (5) In the case of a telephone or telegraph or other communication enterprise, the numerator of the fraction shall include that portion of the

interstate revenue as is allocated pursuant to the accounting procedures prescribed by the Federal Communications Commission; provided that in respect to each corporation or business entity required by the Federal Communications Commission to keep its books and records in accordance with a uniform system of accounts prescribed by such Commission, the intrastate net income shall be determined separately in the manner provided by such uniform system of accounts and only the interstate income shall be subject to allocation pursuant to the provisions of this subsection. Provided further, that the gross revenue factors shall be those as are determined pursuant to the accounting procedures prescribed by the Federal Communications Commission.

In any case where the apportionment of the three factors prescribed in this paragraph attributes to Oklahoma a portion of net income of the enterprise out of all appropriate proportion to the property owned and/or business transacted within this state, because of the fact that one or more of the factors so prescribed are not employed to any appreciable extent in furtherance of the enterprise; or because one or more factors not so prescribed are employed to a considerable extent in furtherance of the enterprise; or because of other reasons, the Tax Commission is empowered to permit, after a showing by taxpayer that an excessive portion of net income has been attributed to Oklahoma, or require, when in its judgment an insufficient portion of net income has been attributed to Oklahoma, the elimination, substitution, or use of additional factors, or reduction or increase in the weight of such prescribed factors. Provided, however, that any such variance from such prescribed factors which has the effect of increasing the portion of net income

attributable to Oklahoma must not be inherently arbitrary, and application of the recomputed final apportionment to the net income of the enterprise must attribute to Oklahoma only a reasonable portion thereof.

6. For calendar years 1997 and 1998, the owner of a new or expanded agricultural commodity processing facility in this state may exclude from Oklahoma taxable income, or in the case of an individual, the Oklahoma adjusted gross income, fifteen percent (15%) of the investment by the owner in the new or expanded agricultural commodity processing facility. For calendar year 1999, and all subsequent years, the percentage, not to exceed fifteen percent (15%), available to the owner of a new or expanded agricultural commodity processing facility in this state claiming the exemption shall be adjusted annually so that the total estimated reduction in tax liability does not exceed One Million Dollars (\$1,000,000.00) annually. The Tax Commission shall promulgate rules for determining the percentage of the investment which each eligible taxpayer may exclude. The exclusion provided by this paragraph shall be taken in the taxable year when the investment is made. In the event the total reduction in tax liability authorized by this paragraph exceeds One Million Dollars (\$1,000,000.00) in any calendar year, the Tax Commission shall permit any excess over One Million Dollars (\$1,000,000.00) and shall factor such excess into the percentage for subsequent years. Any amount of the exemption permitted to be excluded pursuant to the provisions of this paragraph but not used in any year may be carried forward as an exemption from income pursuant to the provisions of this paragraph for a period not exceeding six (6) years following the year in which the investment was originally made.

For purposes of this paragraph:

- a. "Agricultural commodity processing facility" means building, structures, fixtures and improvements used

or operated primarily for the processing or production of marketable products from agricultural commodities. The term shall also mean a dairy operation that requires a depreciable investment of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) and which produces milk from dairy cows. The term does not include a facility that provides only, and nothing more than, storage, cleaning, drying or transportation of agricultural commodities, and

- b. "Facility" means each part of the facility which is used in a process primarily for:
- (1) the processing of agricultural commodities, including receiving or storing agricultural commodities, or the production of milk at a dairy operation,
  - (2) transporting the agricultural commodities or product before, during or after the processing, or
  - (3) packaging or otherwise preparing the product for sale or shipment.

7. Despite any provision to the contrary in paragraph 3 of this subsection, for taxable years beginning after December 31, 1999, in the case of a taxpayer which has a farming loss, such farming loss shall be considered a net operating loss carryback in accordance with and to the extent of the Internal Revenue Code, 26 U.S.C., Section 172(b)(G). However, the amount of the net operating loss carryback shall not exceed the lesser of:

- a. Sixty Thousand Dollars (\$60,000.00), or
- b. the loss properly shown on Schedule F of the Internal Revenue Service Form 1040 reduced by one-half (1/2) of the income from all other sources other than reflected on Schedule F.

8. In taxable years beginning after December 31, 1995, all qualified wages equal to the federal income tax credit set forth in 26 U.S.C.A., Section 45A, shall be deducted from taxable income. The deduction allowed pursuant to this paragraph shall only be permitted for the tax years in which the federal tax credit pursuant to 26 U.S.C.A., Section 45A, is allowed. For purposes of this paragraph, "qualified wages" means those wages used to calculate the federal credit pursuant to 26 U.S.C.A., Section 45A.

B. The taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income, except those corporations electing treatment as provided in subchapter S of the Internal Revenue Code, 26 U.S.C., Section 1361 et seq., and Section 2365 of this title, deductions pursuant to the provisions of the Accelerated Cost Recovery System as defined and allowed in the Economic Recovery Tax Act of 1981, Public Law 97-34, 26 U.S.C., Section 168, for depreciation of assets placed into service after December 31, 1981, shall not be allowed in calculating Oklahoma taxable income. Such corporations shall be allowed a deduction for depreciation of assets placed into service after December 31, 1981, in accordance with provisions of the Internal Revenue Code, 26 U.S.C., Section 1 et seq., in effect immediately prior to the enactment of the Accelerated Cost Recovery System. The Oklahoma tax basis for all such assets placed into service after December 31, 1981, calculated in this section shall be retained and utilized for all Oklahoma income tax purposes through the final disposition of such assets.

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

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

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

2. For purposes of this subsection:

a. "Qualified small business" means an entity, whether organized as a corporation, partnership, or proprietorship, organized for profit with its principal place of business located within this state and which meets the following criteria:

(1) Capitalization of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00),

- (2) Having at least fifty percent (50%) of its employees and assets located in Oklahoma at the time of the transfer, and
- (3) Not a subsidiary or affiliate of the transferor corporation;

- b. "Technology" means a proprietary process, formula, pattern, device or compilation of scientific or technical information which is not in the public domain;
- c. "Transferor corporation" means a corporation which is the exclusive and undisputed owner of the technology at the time the transfer is made; and
- d. "Gross proceeds" means the total amount of consideration for the transfer of technology, whether the consideration is in money or otherwise.

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

- 1.
  - ~~a. In the case of individuals, there shall be added or deducted, as the case may be, the difference necessary to allow personal exemptions of One Thousand Dollars (\$1,000.00) in lieu of the personal exemptions allowed by the Internal Revenue Code.~~
  - ~~b. There shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is blind at the close of the tax year. For purposes of this subparagraph, an individual is blind only if the central visual acuity of the individual does not exceed 20/200 in the better eye with correcting lenses, or if the visual acuity of the individual is greater than 20/200, but is accompanied by a limitation in the fields of vision such that the~~

~~widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.~~

~~c. There shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following filing status may claim this exemption if the federal adjusted gross income does not exceed:~~

~~(1) Twenty-five Thousand Dollars (\$25,000.00) if married and filing jointly;~~

~~(2) Twelve Thousand Five Hundred Dollars (\$12,500.00) if married and filing separately;~~

~~(3) Fifteen Thousand Dollars (\$15,000.00) if single; and~~

~~(4) Nineteen Thousand Dollars (\$19,000.00) if a qualifying head of household.~~

~~Provided, for taxable years beginning after December 31, 1999, amounts included in the calculation of federal adjusted gross income pursuant to the conversion of a traditional individual retirement account to a Roth individual retirement account shall be excluded from federal adjusted gross income for purposes of the income thresholds provided in this subparagraph.~~

~~d. For taxable years beginning after December 31, 1990, and beginning before January 1, 1992, there shall be allowed a one-time additional exemption of Four Hundred Dollars (\$400.00) for each taxpayer or spouse who is a member of the National Guard or any reserve unit of the Armed Forces of the United States and who~~

~~was at any time during such taxable year deployed in active service during a time of war or conflict with an enemy of the United States.~~

~~2. In the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction in lieu of the standard deduction allowed by the Internal Revenue Code, in an amount equal to the larger of fifteen percent (15%) of the Oklahoma adjusted gross income or One Thousand Dollars (\$1,000.00), but not to exceed Two Thousand Dollars (\$2,000.00), except that in the case of a married individual filing a separate return such deduction shall be the larger of fifteen percent (15%) of such Oklahoma adjusted gross income or Five Hundred Dollars (\$500.00), but not to exceed the maximum amount of One Thousand Dollars (\$1,000.00).~~

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

~~4. 2. A resident individual with a physical disability constituting a substantial handicap to employment may deduct from Oklahoma adjusted gross income such expenditures to modify a motor vehicle, home or workplace as are necessary to compensate for his or~~

her handicap. A veteran certified by the Veterans Administration of the federal government as having a service-connected disability shall be conclusively presumed to be an individual with a physical disability constituting a substantial handicap to employment. The Tax Commission shall promulgate rules containing a list of combinations of common disabilities and modifications which may be presumed to qualify for this deduction. The Tax Commission shall prescribe necessary requirements for verification.

~~5.~~ 3. In any taxable year the first One Thousand Five Hundred Dollars (\$1,500.00) received by any person from the United States as salary or compensation in any form, other than retirement benefits, as a member of any component of the Armed Forces of the United States shall be deducted from taxable income. Whenever the filing of a timely income tax return by a member of the Armed Forces of the United States is made impracticable or impossible of accomplishment by reason of:

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

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

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

is granted pursuant to subparagraph c of this paragraph; or

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

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

~~6.~~ 4. The salary or any other form of compensation, received from the United States by a member of any component of the Armed Forces of the United States, shall be deducted from taxable income during the time in which the person is detained by the enemy in a conflict, is a prisoner of war or is missing in action and not deceased.

~~7.~~ 5. Notwithstanding anything in the Internal Revenue Code or in the Oklahoma Income Tax Act to the contrary, it is expressly provided that, in the case of resident individuals, amounts received as dividends or distributions of earnings from savings and loan associations or credit unions located in Oklahoma, and interest received on savings accounts and time deposits from such sources or from state and national banks or trust companies located in Oklahoma, shall qualify as dividends for the purpose of the dividend exclusion, and taxable income shall be adjusted accordingly to arrive at Oklahoma taxable income; provided, however, that the dividend, distribution of earnings and/or interest exclusion provided for hereinabove shall not be cumulative to the maximum dividend exclusion allowed by the Internal Revenue Code. Any

dividend exclusion already allowed by the Internal Revenue Code and reflected in the taxpayer's Oklahoma taxable income together with exclusion allowed herein shall not exceed the total of One Hundred Dollars (\$100.00) per individual or Two Hundred Dollars (\$200.00) per couple filing a joint return.

- ~~8.~~ 6. a. An individual taxpayer, whether resident or nonresident, may deduct an amount equal to the federal income taxes paid by the taxpayer during the taxable year.
- b. Federal taxes as described in subparagraph a of this paragraph shall be deductible by any individual taxpayer, whether resident or nonresident, only to the extent they relate to income subject to taxation pursuant to the provisions of the Oklahoma Income Tax Act. The maximum amount allowable in the preceding paragraph shall be prorated on the ratio of the Oklahoma adjusted gross income to federal adjusted gross income.
- c. For the purpose of this paragraph, "federal income taxes paid" shall mean federal income taxes, surtaxes imposed on incomes or excess profits taxes, as though the taxpayer was on the accrual basis. In determining the amount of deduction for federal income taxes for tax year 2001, the amount of the deduction shall not be adjusted by the amount of any accelerated ten percent (10%) tax rate bracket credit or advanced refund of the credit received during the tax year provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. No. 170-16, and the advanced refund of such credit shall not be subject to taxation.

d. The provisions of this paragraph shall apply to all taxable years ending after December 31, 1978.

~~9.~~ 7. Retirement benefits not to exceed Five Thousand Five Hundred Dollars (\$5,500.00), which are received by an individual from the civil service of the United States, any component of the Armed Forces of the United States, the Oklahoma Public Employees Retirement System, the Teachers' Retirement System of Oklahoma, the Oklahoma Law Enforcement Retirement System, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the employee retirement systems created by counties pursuant to Section 951 et seq. of Title 19 of the Oklahoma Statutes, the Uniform Retirement System for Justices and Judges, the Oklahoma Wildlife Conservation Department Retirement Fund, the Oklahoma Employment Security Commission Retirement Plan, or the employee retirement systems created by municipalities pursuant to Section 48-101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt from taxable income.

~~10.~~ 8. In taxable years beginning after December 31, 1984, Social Security benefits received by an individual shall be exempt from taxable income, to the extent such benefits are included in the federal adjusted gross income pursuant to the provisions of Section 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

~~11.~~ 9. For taxable years beginning after December 31, 1994, lump-sum distributions from employer plans of deferred compensation, which are not qualified plans within the meaning of Section 401(a) of the Internal Revenue Code, 26 U.S.C., Section 401(a), and which are deposited in and accounted for within a separate bank account or brokerage account in a financial institution within this state, shall be excluded from taxable income in the same manner as a qualifying rollover contribution to an individual retirement account within the meaning of Section 408 of the Internal Revenue Code, 26 U.S.C., Section 408. Amounts withdrawn from such bank or brokerage

account, including any earnings thereon, shall be included in taxable income when withdrawn in the same manner as withdrawals from individual retirement accounts within the meaning of Section 408 of the Internal Revenue Code.

~~12.~~ 10. In taxable years beginning after December 31, 1995, contributions made to and interest received from a medical savings account established pursuant to Sections 2621 through 2623 of Title 63 of the Oklahoma Statutes shall be exempt from taxable income.

~~13.~~ 11. For taxable years beginning after December 31, 1996, the Oklahoma adjusted gross income of any individual taxpayer who is a swine or poultry producer may be further adjusted for the deduction for depreciation allowed for new construction or expansion costs which may be computed using the same depreciation method elected for federal income tax purposes except that the useful life shall be seven (7) years for purposes of this paragraph. If depreciation is allowed as a deduction in determining the adjusted gross income of an individual, any depreciation calculated and claimed pursuant to this section shall in no event be a duplication of any depreciation allowed or permitted on the federal income tax return of the individual.

- ~~14.~~ 12. a. In taxable years beginning after December 31, 1995, nonrecurring adoption expenses paid by a resident individual taxpayer in connection with:
- (1) the adoption of a minor, or
  - (2) a proposed adoption of a minor which did not result in a decreed adoption,
- may be deducted from the Oklahoma adjusted gross income.
- b. The deductions for adoptions and proposed adoptions authorized by this paragraph shall not exceed Ten Thousand Dollars (\$10,000.00) per calendar year.

- c. The Tax Commission shall promulgate rules to implement the provisions of this paragraph which shall contain a specific list of nonrecurring adoption expenses which may be presumed to qualify for the deduction. The Tax Commission shall prescribe necessary requirements for verification.
- d. "Nonrecurring adoption expenses" means adoption fees, court costs, medical expenses, attorney fees and expenses which are directly related to the legal process of adoption of a child including, but not limited to, costs relating to the adoption study, health and psychological examinations, transportation and reasonable costs of lodging and food for the child or adoptive parents which are incurred to complete the adoption process and are not reimbursed by other sources. The term "nonrecurring adoption expenses" shall not include attorney fees incurred for the purpose of litigating a contested adoption, from and after the point of the initiation of the contest, costs associated with physical remodeling, renovation and alteration of the adoptive parents' home or property, except for a special needs child as authorized by the court.

~~15.~~ 13. In taxable years beginning after December 31, 1996, retirement benefits not to exceed the amounts specified in this paragraph, which are received by an individual sixty-five (65) years of age or older and whose Oklahoma adjusted gross income is Twenty-five Thousand Dollars (\$25,000.00) or less if the filing status is single, head of household, or married filing separate, or Fifty Thousand Dollars (\$50,000.00) or less if the filing status is married filing joint or qualifying widow, shall be exempt from taxable income. For purposes of this paragraph, "retirement

benefits" means the total distributions or withdrawals from the following:

- a. an employee pension benefit plan which satisfies the requirements of Section 401 of the Internal Revenue Code, 26 U.S.C., Section 401,
- b. an eligible deferred compensation plan that satisfies the requirements of Section 457 of the Internal Revenue Code, 26 U.S.C., Section 457,
- c. an individual retirement account, annuity or trust or simplified employee pension that satisfies the requirements of Section 408 of the Internal Revenue Code, 26 U.S.C., Section 408,
- d. an employee annuity subject to the provisions of Section 403(a) or (b) of the Internal Revenue Code, 26 U.S.C., Section 403(a) or (b),
- e. United States Retirement Bonds which satisfy the requirements of Section 86 of the Internal Revenue Code, 26 U.S.C., Section 86, or
- f. lump-sum distributions from a retirement plan which satisfies the requirements of Section 402(e) of the Internal Revenue Code, 26 U.S.C., Section 402(e).

The amount of the exemption provided by this paragraph shall be limited to One Thousand One Hundred Dollars (\$1,100.00) for the 1997 tax year; Two Thousand Two Hundred Dollars (\$2,200.00) for the 1998 tax year; Three Thousand Three Hundred Dollars (\$3,300.00) for the 1999 tax year; Four Thousand Four Hundred Dollars (\$4,400.00) for the 2000 tax year; and Five Thousand Five Hundred Dollars (\$5,500.00) for all subsequent tax years. Any individual who claims the exemption provided for in paragraph ~~9~~ 7 of this subsection shall not be permitted to claim a combined total exemption pursuant to this paragraph and paragraph ~~9~~ 7 of this subsection in an amount exceeding Five Thousand Five Hundred Dollars (\$5,500.00).

~~16.~~ 14. In taxable years beginning after December 31, 1999, for an individual engaged in production agriculture who has filed a Schedule F form with the taxpayer's federal income tax return for such taxable year, there shall be excluded from taxable income any amount which was included as federal taxable income or federal adjusted gross income and which consists of the discharge of an obligation by a creditor of the taxpayer incurred to finance the production of agricultural products.

~~17.~~ 15. In taxable years beginning December 31, 2000, an amount equal to one hundred percent (100%) of the amount of any scholarship or stipend received from participation in the Oklahoma Police Corps Program, as established in Section 2-140.3 of Title 47 of the Oklahoma Statutes shall be exempt from taxable income.

~~18.~~ 16. In taxable years beginning after December 31, 2001, there shall be allowed a deduction in the amount of a contribution to an account established pursuant to the Oklahoma College Savings Plan Act. The deduction shall equal the amount of the contribution to the account, but in no event shall the deduction exceed Two Thousand Five Hundred Dollars (\$2,500.00) each taxable year for each designated beneficiary of the account.

SECTION 12. REPEALER 68 O.S. 2001, Sections 801, 802, 802.1, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 815.1, 816, 816.1, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 1203, 1204, 1205, 1208 and 1209, are hereby repealed.

SECTION 13. Sections 5 through 8 of this act shall become effective December 1, 2002.

SECTION 14. Sections 2 through 4 and 9 through 12 of this act shall become effective January 1, 2003.

SECTION 15. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. \_\_\_\_\_ State Question No. \_\_\_\_\_

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure would change several Oklahoma taxes. The estate tax and the franchise tax would be eliminated. The state sales and use tax would increase from 4.5% to 6.25%. The different income tax rates on individuals would be eliminated. The new income tax rate for all individual taxpayers would be 5%. The sales tax increase would be effective December 1, 2002. The income tax rate change would be effective January 1, 2003. The estate and franchise tax would be eliminated effective January 1, 2003.

SHALL THIS ACT BE APPROVED BY THE PEOPLE?

YES, FOR THE AMENDMENT

NO, AGAINST THE AMENDMENT

SECTION 16. The Chief Clerk of the House of Representatives, immediately after the passage of this order for legislative referendum, shall prepare and file in accordance with Section 3 of Article V of the Oklahoma Constitution one copy thereof, including the Ballot Title set forth in SECTION 15 hereof, with the Secretary of State and one copy with the Attorney General.

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