

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2908

By: Blackburn

AS INTRODUCED

An Act relating to schools; amending 68 O.S. 2001, Section 2358, which relates to income tax adjustments; modifying adjustment for contributions to an Oklahoma College Savings Plan account; amending 70 O.S. 2001, Sections 3970.3, 3970.6 and 3970.7, which relate to the Oklahoma College Savings Plan Act; adding definition; modifying certain definition; clarifying certain term; deleting certain transfer procedures; providing for certain changes and transfers to an account; requiring certain information be provided to account owners; deleting certain prohibitions for changes or rollovers; authorizing certain transfers or withdrawals from certain accounts; providing certain limitations to changes and transfers; modifying penalty for nonqualified withdrawals; changing the authority of the Board to change the penalty; deleting authority of the Board to decrease the penalty; modifying prohibition against directing investments for an account; changing requirement for certain rules; repealing 70 O.S. 2001, Section 3970.8, which relates to distributions from an account; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2358, is amended to read as follows:

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

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

1. There shall be added interest income on obligations of any state or political subdivision thereto which is not otherwise

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

- a. absence from the United States, which term includes only the states and the District of Columbia;
 - b. absence from the State of Oklahoma while on active duty; or
 - c. confinement in a hospital within the United States for treatment of wounds, injuries or disease,
- the time for filing a return and paying an income tax shall be and is hereby extended without incurring liability for interest or penalties, to the fifteenth day of the third month following the month in which:

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

is granted pursuant to subparagraph c of this paragraph; or

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

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

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

7. Notwithstanding anything in the Internal Revenue Code or in the Oklahoma Income Tax Act to the contrary, it is expressly provided that, in the case of resident individuals, amounts received as dividends or distributions of earnings from savings and loan associations or credit unions located in Oklahoma, and interest received on savings accounts and time deposits from such sources or from state and national banks or trust companies located in Oklahoma, shall qualify as dividends for the purpose of the dividend exclusion, and taxable income shall be adjusted accordingly to arrive at Oklahoma taxable income; provided, however, that the dividend, distribution of earnings and/or interest exclusion provided for hereinabove shall not be cumulative to the maximum dividend exclusion allowed by the Internal Revenue Code. Any dividend exclusion already allowed by 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. 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. 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. In taxable years beginning after December 31, 1984, Social Security benefits received by an individual shall be exempt from taxable income, to the extent such benefits are included in the federal adjusted gross income pursuant to the provisions of Section 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

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

individual retirement accounts within the meaning of Section 408 of the Internal Revenue Code.

12. 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. 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. 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. 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 of this subsection shall not be permitted to claim a combined total exemption pursuant to this paragraph and paragraph 9 of this subsection in an amount exceeding Five Thousand Five Hundred Dollars (\$5,500.00).

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

SECTION 2. AMENDATORY 70 O.S. 2001, Section 3970.3, is amended to read as follows:

Section 3970.3 As used in this act:

1. "Account" means an individual trust account or savings account established as prescribed in this act;

2. "Account owner" means the person or other entity allowable under Section 529 of the Internal Revenue Code designated at the time an account is opened as having the right to withdraw monies from the account before the account is disbursed to or for the benefit of the designated beneficiary;

3. "Board" means the Board of Trustees of the Oklahoma College Savings Plan;

4. "Designated beneficiary" means:

- a. with respect to an account, the person designated at the time the account is opened as the person whose higher education expenses are expected to be paid from the account,
- b. in the case of a change in beneficiaries described in Section 3970.7 of this title, the individual who is the new beneficiary, or
- c. in the case of an interest in the program created by this act purchased by the State of Oklahoma or a local government in this state, or an agency or instrumentality of such state or local government, or an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of that Code as part of a scholarship program operated by such government or organization, the individual(s) receiving such interest or scholarship;

5. "Eligible educational institution" means an institution as described in Section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), and is eligible to participate in a program under Title IV of that Act;

6. "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, an insurance company, brokerage firm, or other similar entity that is authorized to do business in this state;

7. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

8. "Member of family" means an individual who bears a relationship to another individual which is a relationship described in ~~paragraphs (1) through (8) of Section 152(a)~~ 529 of the Internal Revenue Code, ~~or the spouse of an individual described therein;~~

~~8.~~ 9. "Nonqualified withdrawal" means a withdrawal from an account other than one of the following:

- a. a qualified withdrawal,
- b. a withdrawal made as a result of the death or disability of the designated beneficiary of an account,
- c. withdrawal that is made on the account of a scholarship or the allowance or payment described in Section ~~135(d)(1)(B) or (C) or by~~ 529 of the Internal Revenue Code, received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment, or
- d. a rollover or change of designated beneficiary as permitted by subsection F of Section 3970.7 of this title;

~~9.~~ 10. "Program" means the Oklahoma College Savings Plan established under this act;

~~10.~~ 11. "Qualified higher education expenses" means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution, including room and board expenses, to the extent such expenses are allowable under Section 529 of the Internal Revenue Code;

~~11.~~ 12. "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this act.

SECTION 3. AMENDATORY 70 O.S. 2001, Section 3970.6, is amended to read as follows:

Section 3970.6 A. The Board of Trustees of the Oklahoma College Savings Plan shall implement the program through the use of

one or more financial institutions to act as the depositories and managers. Under the program, persons may establish accounts through the program at a depository that has been selected by the Board.

B. The Board shall solicit proposals from financial institutions to act as the depositories and managers of the program. Financial institutions that submit proposals shall provide all information required by the Board which is sufficient to enable the evaluation of the investment strategies and asset allocations consistent with the program objectives set by the Board.

C. The Board shall select as program depositories and managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and this state, of the following factors:

1. Financial stability and integrity;
2. The safety of the investment instruments being offered by the financial institution, taking into account any insurance provided with respect to these instruments;
3. The ability of the financial institution to ensure that the plan it offers tracks requirements of the Internal Revenue Code, regulations of the Internal Revenue Service, other pertinent federal and state laws and regulations, and rules and requirements of the Regents;
4. The ability of the financial institution to track estimated costs of higher education as provided by the Regents and provided by the financial institution to the account holder;
5. The ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements, including those created by Section 529 of the Internal Revenue Code and Internal Revenue Service regulations;
6. The financial institution's plan for promoting the program and the investment it is willing to make to promote the program,

including any use of institutions with offices in Oklahoma as plan marketers and enrollment agents;

7. The fees, if any, proposed to be charged to persons for maintaining accounts;

8. The minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution to accept contributions through payroll deduction plans and other deposit plans; and

9. Any other benefits to this state or its residents included in the proposal, including an account opening fee payable to the Board by the account owner and an additional fee from the financial institution for statewide program marketing by the Board.

D. The Board shall enter into a contract with a financial institution, or institutions provided in subsection E of this section to serve as program managers and depositories.

E. The Board shall determine a minimum term for contracts executed between the Board and a financial institution pursuant to this section and shall establish procedures by which a contract may be renewed.

F. The Board may select more than one financial institution and investment for the program if the following conditions exist:

1. The United States Internal Revenue Service has provided guidance that giving a contributor a choice of more than one investment instrument under a state plan will not cause the plan to fail to qualify for favorable tax treatment under Section 529 of the Internal Revenue Code; and

2. The Board concludes that the choice of instrument vehicles is in the best interest of college savers and will not interfere with the promotion of the program.

G. A program manager shall:

1. Take all action required to keep the program in compliance with the requirements of this act and shall not take action contrary

to this act or its contract to manage the program so that it is treated as a qualified ~~state~~ tuition plan under Section 529 of the Internal Revenue Code;

2. Keep adequate records of each account, keep each account segregated from each other account and provide the Board with the information necessary to prepare statements required by federal and state law or regulation or file these statements on behalf of the Board;

3. Compile and total information contained in statements required to be prepared under federal and state law and regulation and provide these compilations to the Board;

4. If there is more than one program manager, the program managers shall provide the Board with sufficient information to determine compliance with subsection ~~Q~~ P of Section ~~7~~ 3970.7 of this ~~act~~ title;

5. Provide representatives of the Board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract; and

6. Hold all accounts in trust for the benefit of this state and the account owner.

H. If a contract executed between the Board and a financial institution pursuant to this section is not renewed, all of the following conditions apply at the end of the term of the nonrenewed contract:

1. Accounts previously established and held in investment instruments at the financial institution shall not be terminated;

2. Additional contributions may be made to the accounts; and

3. No new accounts may be placed with that financial institution.

I. The Board may terminate a contract with a financial institution at any time for good cause. If a contract is terminated

pursuant to this section, the Board shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment instruments as similar to the original investments as possible.

SECTION 4. AMENDATORY 70 O.S. 2001, Section 3970.7, is amended to read as follows:

Section 3970.7 A. The program shall be operated through the use of accounts. An account may be opened by any person who desires to save to pay the qualified higher education expenses of a person by:

1. Completing an application in the form prescribed by the Board;

2. Paying the one-time application fee established by the Board;

3. Making the minimum contribution required by the Board or by opening an account; and

4. Designating the type of account to be opened if more than one type of account is offered.

B. Any person may make contributions to an account after the account is opened.

C. Contributions to accounts may be made only in cash.

D. Account owners may withdraw all or part of the balance from an account on sixty (60) days' notice, or a shorter period as may be authorized by the Board, under rules prescribed by the Board. These rules shall include provisions that will generally enable the Board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may, but need not, require one or more of the following:

1. Account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide

certifications, copies of bills for qualified higher education expenses or other supporting material;

2. Qualified withdrawals from an account shall be made only by a check payable jointly to the designated beneficiary and a higher education institution; or

3. Withdrawals not meeting certain requirements shall be treated as nonqualified withdrawals by the program manager. ~~Account owners seeking a refund of penalties in disputes over whether a withdrawal should have been treated as a qualified withdrawal by the program manager must seek refunds of penalties directly from the Board.~~

E. An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the Board.

~~F. On direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account. Within sixty (60) days of a distribution to a designated beneficiary, all or part of the amount so distributed may be transferred to the credit of another designated beneficiary under a qualified state tuition plan who is a member of the family of the designated beneficiary with respect to whom the original distribution was made.~~ An account owner may make the following changes and transfers relating to the account:

1. Change the beneficiary of the account;

2. Transfer funds between accounts; and

3. Transfer funds between an account and an account in a qualified tuition program in another state or make a deposit to a new or existing account or to an account in a qualified tuition program in another state.

The account owner shall be informed that certain tax consequences may apply to these changes.

~~G. Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate either of the following:~~

~~1. Subsection Q of this section relating to excess contributions; or~~

~~2. Subsection N of this section relating to investment choice~~
An account owner may make the changes, transfers, and withdrawals described in subsection F of this section to an account that is owned by the account owner. The account owner may also make such transfers and withdrawals to an account that is owned by the account owner or another person. If a change of beneficiary or transfer causes the total account balance for all accounts under the program for the new beneficiary to exceed the maximum account balance limit, the excess amount shall be rejected and returned to the account owner.

H. In the case of any nonqualified withdrawal from an account, an amount ~~equal to ten percent (10%) of the portion~~ of not more than five percent (5%) of the proposed withdrawal ~~that would constitute income as determined in accordance with Section 529 of the Internal Revenue Code~~ shall be withheld as a penalty and paid to the Board for use in operating and marketing the program and for state student financial aid.

I. The Board, ~~by rule, shall increase~~ may set the percentage of the penalty prescribed in subsection H of this section or change the basis of this penalty if the Board determines ~~that the amount of the penalty must be increased to constitute a penalty that is more than a de minimis penalty for purposes of qualifying the program as a qualified state tuition program under Section 529 of the Internal Revenue Code~~ that establishing a penalty or raising an existing penalty is needed to discourage nonqualified withdrawals.

~~J. The Board may decrease the percentage of the penalty prescribed in subsection H of this section if it determines that both of the following conditions exist:~~

~~1. The penalty is greater than is required to constitute a de minimis penalty for purposes of qualifying the program as a qualified state tuition program under Section 529 of the Internal Revenue Code; and~~

~~2. The penalty, when combined with other revenue generated under this act, is producing more revenue than is required to cover the costs of operating and marketing the program and to recover any costs not previously recovered.~~

~~K.~~ If an account owner makes a nonqualified withdrawal and no penalty amount is withheld pursuant to subsection H of this section or the amount withheld was less than the amount required to be withheld under that subsection for nonqualified withdrawals, the account owner shall pay the unpaid portion of the penalty to the Board on or before April 15 of the following tax year.

~~L.~~ K. Each account for each designated beneficiary shall be maintained separately from each other account under the program.

~~M.~~ L. Separate records and accounting shall be maintained for each account for each designated beneficiary.

~~N.~~ No M. Except as permitted by Section 529 of the Internal Revenue Code, no contributor to, account owner of, or designated beneficiary of any account may directly or indirectly direct the investment of any contributions to an account or the earnings from the account.

~~O.~~ N. If the Board terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the Board shall select the financial institution and type of investment to which the balance of the account is moved unless the Internal Revenue Service provides guidance stating that allowing the account

owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a qualified state tuition plan.

~~P.~~ O. Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

~~O.~~ P. The Board shall adopt ~~rules~~ guidelines and procedures to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The ~~rules shall~~ guidelines may address the following:

1. Procedures for aggregating the total balances of multiple accounts in qualified state tuition programs established for a designated beneficiary;

2. The establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

3. Requirements that persons who contribute to an account certify that to the best of their knowledge the balance in all qualified state tuition programs, as defined in Section 529 of the Internal Revenue Code, of which the designated beneficiary is the designated beneficiary does not exceed the lesser of:

- a. a maximum college savings amount established by the Board from time to time, and

- b. the cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;

4. Requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or transferred to another account of a family member or rolled over to another family member beneficiary in accordance with this section.

~~R.~~ Q. The financial institution(s) shall make all reports and informational returns as required by the Internal Revenue Service, the Oklahoma Tax Commission, and other pertinent federal and state laws and regulations.

~~S.~~ R. The program manager shall make such reports with respect to contributions, distributions and other matters that the Board may require pursuant to federal and state law reporting requirements. The statement shall identify the contributions made during a preceding twelve-month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period and any other matters that the Board requires be reported to the account owner.

~~T.~~ S. The State of Oklahoma, a local government of this state or organizations described in Section 501(c)(3) of the Internal Revenue Code may open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened. Accounts established pursuant to this section shall be exempt from the requirement that a beneficiary be designated when an account is opened. Each person who receives an interest in the account established pursuant to this section in the form of a scholarship shall be considered a designated beneficiary for the purposes of this act.

SECTION 5. REPEALER 70 O.S. 2001, Section 3970.8, is hereby repealed.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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