

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2421

By: Pope, Kirby, Nance,
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Tibbs, Trebilcock and
Winchester of the House

and

Rabon and Corn of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 1356, as last amended by Section 1 of Enrolled Senate Bill No. 1383 of the 2nd Session of the 49th Oklahoma Legislature, which relates to sales tax exemptions; providing sales tax exemptions for sales to border states or their political subdivisions and Career Technology Student Organizations; amending Section 16, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 1364.2), which relates to the special event permit; allowing promoters or organizers of certain special events to request to limit their responsibilities as they relate to the special event permit; providing procedures for the remitting of sales tax by special event vendors; specifying that an event sponsored by certain entities is not a special event; amending Section 19, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2357.45), which relates to income tax credit for donations to an independent biomedical research institute; eliminating procedure to suspend tax credit under certain conditions; amending Section 24, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2385.30), as amended by Section 1 of Enrolled Senate Bill No. 1556 of the 2nd Session of the 49th Oklahoma Legislature, and Section 25, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2385.31), which relate to withholding by certain entities; modifying date when certain withholding is due; authorizing certain entities to make quarterly estimated payments; providing penalties for failure to make certain estimated payments in a timely manner; amending 68 O.S. 2001, Sections 2876 and 2877, which relate to ad valorem taxes; modifying

determination of time to file a written protest with the county assessor; requiring the county assessor to provide certain information to the county board of equalization; providing options for the holding of the informal hearing; specifying information to be provided to the county board of equalization; authorizing the county to assess to the taxpayer certain costs incurred in preparation of certain hearing; allowing for the rescheduling of certain hearing under certain circumstances; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1356, as last amended by Section 1 of Enrolled Senate Bill No. 1383 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by Section 1350 et seq. of this title, except as hereinafter provided;

2. Sales of property to agents appointed by or under contract with agencies or instrumentalities of the United States government if ownership and possession of such property transfers immediately to the United States government;

3. Sales of property to agents appointed by or under contract with a political subdivision of this state if the sale of such property is associated with the development of a qualified federal facility, as provided in the Oklahoma Federal Facilities Development

Act, and if ownership and possession of such property transfers immediately to the political subdivision or the state;

4. Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority or sales of admission tickets to such fairs or fair events at any location in the state authorized by county, district or state fair authorities; provided, the exemption provided by this paragraph for admission tickets to fair events shall apply only to any portion of the admission price that is retained by or distributed to the fair authority. As used in this paragraph, "fair event" shall be limited to an event held on the premises of the fair authority in conjunction with and during the time period of a county, district or state fair;

5. Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;

6. Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members and dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects;

7. Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or a similar business or sale of tangible personal property or services

by an organization exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, made on behalf of or at the request of a church or churches if the sale of such property is conducted not more than once each calendar year for a period not to exceed three (3) days by the organization and proceeds from the sale of such property are used by the church or churches or by the organization for charitable purposes;

8. The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university or any public trust of which a county in this state is the beneficiary, for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but are not limited to, athletic fields, athletic stadiums, field houses, amphitheaters and theaters. To be eligible for this sales tax exemption, the amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the college or university to effect the capital improvements hereinbefore described;

9. Sales of tangible personal property or services to the council organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire Boys and Girls;

10. Sale of tangible personal property or services to any county, municipality, rural water district, public school district, the institutions of The Oklahoma State System of Higher Education, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, City

of Tulsa-Rogers County Port Authority, Muskogee City-County Port Authority, the Oklahoma Department of Veterans Affairs, the Broken Bow Economic Development Authority or to any person with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

11. Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by the institutions and operated for educational purposes.

Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify in writing, on the copy of the invoice or sales ticket the nature of

the purchases, and violation of this paragraph shall be a misdemeanor as set forth in paragraph 10 of this section;

12. Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

13. a. Sales of tangible personal property made by:

- (1) a public school,
- (2) a private school offering instruction for grade levels kindergarten through twelfth grade,
- (3) a public school district,
- (4) a public or private school board,
- (5) a public or private school student group or organization,
- (6) a parent-teacher association or organization other than as specified in subparagraph b of this paragraph, or
- (7) public or private school personnel for purposes of raising funds for the benefit of a public or private school, public school district, public or private school board or public or private school student group or organization, or

b. Sales of tangible personal property made by or to nonprofit parent-teacher associations or organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3).

The exemption provided by this paragraph for sales made by a public or private school shall be limited to those public or private

schools accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall include sale of admission tickets and concessions at athletic events;

14. Sales of tangible personal property by:

- a. local 4-H clubs,
- b. county, regional or state 4-H councils,
- c. county, regional or state 4-H committees,
- d. 4-H leader associations,
- e. county, regional or state 4-H foundations, and
- f. authorized 4-H camps and training centers.

The exemption provided by this paragraph shall be limited to sales for the purpose of raising funds for the benefit of such organizations. Sale of tangible personal property exempted by this paragraph shall include sale of admission tickets;

15. The first Seventy-five Thousand Dollars (\$75,000.00) each year from sale of tickets and concessions at athletic events by each organization exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(4);

16. Items or services which are subsequently given away by the Oklahoma Tourism and Recreation Department as promotional items pursuant to Section 1834 of Title 74 of the Oklahoma Statutes;

17. Sales of tangible personal property or services to fire departments organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes which items are to be used for the purposes of the fire department. Any person making purchases on behalf of any such fire department shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such fire department and set out the name of such fire department. Any person who wrongfully or erroneously certifies that the purchases are for any such fire

department or who otherwise violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days, or both;

18. Complimentary or free tickets for admission to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities which are issued through a box office or other entity which is operated by a state institution of higher education with institutional employees or by a municipality with municipal employees;

19. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property by fire departments organized pursuant to Titles 11, 18, or 19 of the Oklahoma Statutes for the purposes of raising funds for the benefit of the fire department. Fire departments selling tangible personal property for the purposes of raising funds shall be limited to no more than six (6) days each year to raise such funds in order to receive the exemption granted by this paragraph;

20. Sales of tangible personal property or services to any Boys & Girls Clubs of America affiliate in this state which is not affiliated with the Salvation Army and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

21. Sales of tangible personal property or services to any organization, which takes court-adjudicated juveniles for purposes of rehabilitation, and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), provided that at least fifty percent (50%) of the juveniles served by such organization are court adjudicated and the organization receives state funds in an amount less than ten percent (10%) of the annual budget of the organization;

22. Sales of tangible personal property or services to:

- a. any federally qualified community health center as defined in Section 254c of Title 42 of the United States Code,
- b. any migrant health center as defined in Section 254b of Title 42 of the United States Code,
- c. any clinic receiving disbursements of state monies from the Indigent Health Care Revolving Fund pursuant to the provisions of Section 66 of Title 56 of the Oklahoma Statutes, and
- d. any community based health center which meets all of the following criteria:
 - (1) provides primary care services at no cost to the recipient, and
 - (2) is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

23. Dues or fees, including free or complimentary dues or fees which have a value equivalent to the charge that could have otherwise been made, to YMCAs, YWCAs or municipally-owned recreation centers for the use of facilities and programs;

24. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property or services to or by a cultural organization established to sponsor and promote educational, charitable and cultural events for disadvantaged children, and which organization is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

25. Sales of tangible personal property or services to museums or other entities which have been accredited by the American Association of Museums. Any person making purchases on behalf of any such museum or other entity shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor

that the purchases are made for and on behalf of such museum or other entity and set out the name of such museum or other entity. Any person who wrongfully or erroneously certifies that the purchases are for any such museum or other entity or who otherwise violates the provisions of this paragraph shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days, or by both such fine and incarceration;

26. Sales of tickets for admission by any museum accredited by the American Association of Museums. In order to be eligible for the exemption provided by this paragraph, an amount equivalent to the amount of the tax which would otherwise be required to be collected pursuant to the provisions of Section 1350 et seq. of this title shall be separately stated on the admission ticket and shall be collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the museum to effect the construction, enlarging or renovation of any facility to be used for entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket;

27. Sales of tangible personal property or services occurring on or after June 1, 1995, to children's homes which are supported or sponsored by one or more churches, members of which serve as trustees of the home;

28. Sales of tangible personal property or services to the organization known as the Disabled American Veterans, Department of Oklahoma, Inc., and subordinate chapters thereof;

29. Sales of tangible personal property or services to youth camps which are supported or sponsored by one or more churches, members of which serve as trustees of the organization;

30. Transfer of tangible personal property made pursuant to Section 3226 of Title 63 of the Oklahoma Statutes by the University Hospitals Trust;

31. Sales of tangible personal property or services to a municipality, county or school district pursuant to a lease or lease-purchase agreement executed between the vendor and a municipality, county or school district. A copy of the lease or lease-purchase agreement shall be retained by the vendor;

32. Sales of tangible personal property or services to any spaceport user, as defined in the Oklahoma Space Industry Development Act;

33. The sale, use, storage, consumption, or distribution in this state, whether by the importer, exporter, or another person, of any satellite or any associated launch vehicle, including components of, and parts and motors for, any such satellite or launch vehicle, imported or caused to be imported into this state for the purpose of export by means of launching into space. This exemption provided by this paragraph shall not be affected by:

- a. the destruction in whole or in part of the satellite or launch vehicle,
- b. the failure of a launch to occur or be successful, or
- c. the absence of any transfer or title to, or possession of, the satellite or launch vehicle after launch;

34. The sale, lease, use, storage, consumption, or distribution in this state of any space facility, space propulsion system or space vehicle, satellite, or station of any kind possessing space flight capacity, including components thereof;

35. The sale, lease, use, storage, consumption, or distribution in this state of tangible personal property, placed on or used aboard any space facility, space propulsion system or space vehicle, satellite, or station possessing space flight capacity, which is launched into space, irrespective of whether such tangible property

is returned to this state for subsequent use, storage, or consumption in any manner;

36. The sale, lease, use, storage, consumption, or distribution in this state of tangible personal property meeting the definition of "section 38 property" as defined in Sections 48(a)(1)(A) and (B)(i) of the Internal Revenue Code of 1986, that is an integral part of and used primarily in support of space flight; however, section 38 property used in support of space flight shall not include general office equipment, any boat, mobile home, motor vehicle, or other vehicle of a class or type required to be registered, licensed, titled, or documented in this state or by the United States government, or any other property not specifically suited to supporting space activity. The term "in support of space flight", for purposes of this paragraph, means the altering, monitoring, controlling, regulating, adjusting, servicing, or repairing of any space facility, space propulsion systems or space vehicle, satellite, or station possessing space flight capacity, including the components thereof;

37. The purchase or lease of machinery and equipment for use at a fixed location in this state, which is used exclusively in the manufacturing, processing, compounding, or producing of any space facility, space propulsion system or space vehicle, satellite, or station of any kind possessing space flight capacity. Provided, the exemption provided for in this paragraph shall not be allowed unless the purchaser or lessee signs an affidavit stating that the item or items to be exempted are for the exclusive use designated herein. Any person furnishing a false affidavit to the vendor for the purpose of evading payment of any tax imposed by Section 1354 of this title shall be subject to the penalties provided by law. As used in this paragraph, "machinery and equipment" means "section 38 property" as defined in Sections 48(a)(1)(A) and (B)(i) of the Internal Revenue Code of 1986, which is used as an integral part of

the manufacturing, processing, compounding, or producing of items of tangible personal property. Such term includes parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph;

38. The amount of a surcharge or any other amount which is separately stated on an admission ticket which is imposed, collected and used for the sole purpose of constructing, remodeling or enlarging facilities of a public trust having a municipality or county as its sole beneficiary;

39. Sales of tangible personal property or services which are directly used in or for the benefit of a state park in this state, which are made to an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) and which is organized primarily for the purpose of supporting one or more state parks located in this state;

40. The sale, lease or use of parking privileges by an institution of The Oklahoma State System of Higher Education;

41. Sales of tangible personal property or services for use on campus construction projects for the benefit of institutions of The Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education when such projects are financed by or through the use of nonprofit entities which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

42. Sales of tangible personal property or services by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), in the course of conducting a national championship sports event, but only if all or a portion of the payment in exchange therefor would qualify as the receipt of a qualified sponsorship payment described in Internal Revenue Code, 26 U.S.C.,

Section 513(i). Sales exempted pursuant to this paragraph shall be exempt from all Oklahoma sales, use, excise and gross receipts taxes;

43. Sales of tangible personal property or services to or by an organization which:

- a. is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3),
- b. is affiliated with a comprehensive university within The Oklahoma State System of Higher Education, and
- c. has been organized primarily for the purpose of providing education and teacher training and conducting events relating to robotics;

44. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property by youth athletic teams which are part of an athletic organization exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (4), for the purposes of raising funds for the benefit of the team;

45. Sales of tickets for admission to a collegiate athletic event that is held in a facility owned or operated by a municipality or a public trust of which the municipality is the sole beneficiary and that actually determines or is part of a tournament or tournament process for determining a conference tournament championship, a conference championship, or a national championship; ~~and~~

46. Sales of tangible personal property or services to or by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3) and is operating the Oklahoma City National Memorial and Museum, an affiliate of the National Park System;

47. Sales of tangible personal property or services to a state that borders this state or any political subdivision of that state, but only to the extent that the other state or political subdivision exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state; and

48. Effective July 1, 2005, sales of tangible personal property or services to the Career Technology Student Organizations under the direction and supervision of the Oklahoma Department of Career and Technology Education.

SECTION 2. AMENDATORY Section 16, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 1364.2), is amended to read as follows:

Section 1364.2 A. Promoters or organizers of special events shall submit an application for a special event permit to the Oklahoma Tax Commission at least twenty (20) days prior to the special event. The application shall be accompanied by a fee of Fifty Dollars (\$50.00). The application shall include the location and dates of the special event, expected number of vendors, and any other information that may be required by the Tax Commission. A separate permit shall be required for each special event and must be prominently displayed. Multiple events held at the same location during the calendar year may be included in one application.

B. All monies received from such fees shall be paid to the State Treasurer and placed to the credit of the General Revenue Fund of the State Treasurer.

C. Promoters or organizers shall provide forms to special event vendors for reporting sales tax collections and any other information that may be required by the Tax Commission.

D. ~~Special~~ Unless otherwise provided in this section, special event vendors shall collect sales tax from purchasers of tangible personal property and services taxable under Section 1350 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title and shall remit the tax

~~daily~~, along with a ~~daily~~ sales tax report, to the promoter or organizer.

E. Within fifteen (15) days following the conclusion of the special event, the organizer or promoter shall forward all ~~daily~~ reports and payments to the Tax Commission along with a completed sales tax report. If not filed on or before the fifteenth day, the tax shall be delinquent from such date. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed.

F. Within fifteen (15) days following the conclusion of the special event, the organizer or promoter shall also submit a list of vendors at each event that hold a valid sales tax permit issued under Section 1364 of ~~Title 68 of the Oklahoma Statutes~~ this title. The list shall include the vendor's name, address, telephone number and sales tax permit number.

G. For the purposes of compensating the promoter or organizer in keeping sales tax records, filing reports and remitting the tax when due, a promoter or organizer shall be allowed a deduction of the tax due as provided in Section 1367.1 of ~~Title 68 of the Oklahoma Statutes~~ this title.

H. Promoters and organizers shall only be liable for failure to report and remit all taxes that are remitted to them by special event vendors.

I. Promoters or organizers of a special event that is held on an annual basis during the same thirty-day period each year may request that the Tax Commission limit their responsibilities to the following:

1. Submitting of an application for a special event permit as provided in subsection A of this section;
2. Providing report forms to special event vendors as provided in subsection C of this section; and

3. Within fifteen (15) days following the conclusion of the special event, submitting a list of special event vendors at each event, including the vendor's name, address, and telephone number.

Such requests may be denied by the Tax Commission for reasons including, but not limited to, failure by the promoter to comply with the requirements of this section or failure by vendors of the promoter's previous special events to comply with the provisions of subsection J of this section.

J. Special event vendors of special events that are approved under subsection I of this section shall remit the tax along with a sales tax report directly to the Tax Commission within fifteen (15) days following the conclusion of the special event. If not filed on or before the fifteenth day, the tax shall be delinquent from such date. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed.

K. As used in this section:

1. "Promoter" or "organizer" means any person who organizes or promotes a special event which results in the rental, occupation, or use of any structure, lot, tract of land, sample or display case, table, or any other similar items for the exhibition and sale of tangible personal property or services taxable under Section 1350 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title by special event vendors;

2. "Special event" means an entertainment, amusement, recreation, or marketing event that occurs at a single location on an irregular basis and at which tangible personal property is sold. "Special event" shall include, but not be limited to, gun shows, knife shows, craft shows, antique shows, flea markets, carnivals, bazaars, art shows, and other merchandise displays or exhibits. Special event shall not include any county, district, or state fair

or public or private school or university-sponsored event. Special event shall not include an event sponsored by a city or town that includes less than ten special event vendors; and

3. "Special event vendor" means a person making sales of tangible personal property or services taxable under Section 1350 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title at a special event within this state and who is not permitted under Section 1364 of ~~Title 68 of the Oklahoma Statutes~~ this title.

SECTION 3. AMENDATORY Section 19, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2357.45), is amended to read as follows:

Section 2357.45 A. 1. For tax years beginning after December 31, 2004, ~~unless the State Board of Equalization suspends this section in any tax year pursuant to subsection E of this section,~~ there shall be allowed against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title, a credit for any taxpayer who makes a donation to an independent biomedical research institute. For calendar years 2005 and 2006, the amount of the credit shall be fifty percent (50%) of the amount donated to an independent biomedical research institute but in no event shall the credit exceed One Thousand Dollars (\$1,000.00) for each taxpayer. For calendar year 2007 and all subsequent years ~~the credit is not suspended pursuant to subsection E of this section,~~ the credit percentage, not to exceed fifty percent (50%), shall be adjusted annually so that the total estimate of the credits does not exceed Two Million Dollars (\$2,000,000.00) annually. The formula to be used for the percentage adjusted shall be fifty percent (50%) times Two Million Dollars (\$2,000,000.00) divided by the credits claimed in the preceding year. In no event shall the credit be claimed more than once by a taxpayer each taxable year nor shall the credit exceed One Thousand Dollars (\$1,000.00) for each taxpayer. In the event the total tax credits authorized by this section exceed Two

Million Dollars (\$2,000,000.00) in any calendar year, the Oklahoma Tax Commission shall permit any excess over Two Million Dollars (\$2,000,000.00) but shall factor such excess into the percentage adjustment formula for subsequent years.

2. For purposes of this section, "independent biomedical research institute" means an organization which is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) whose primary focus is conducting peer-reviewed basic biomedical research. The organization shall:

- a. have a board of directors,
- b. be able to accept grants in its own name,
- c. be an identifiable institute that has its own employees and administrative staff, and
- d. receive at least Fifteen Million Dollars (\$15,000,000.00) in National Institute of Health funding each year.

B. In no event shall the amount of the credit exceed the amount of any tax liability of the taxpayer.

C. Any credits allowed but not used in any tax year may be carried over, in order, to each of the four (4) years following the year of qualification.

D. The Tax Commission shall have the authority to prescribe forms for purposes of claiming the credit authorized by this section.

~~E. In addition to any other duties prescribed by law, at the meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held in December 2006 and subsequent calendar years, the State Board of Equalization shall determine for the following fiscal years:~~

~~1. The amount of funds available for appropriation if the provisions of subsection A of this section are not in effect; and~~

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

~~If the amount determined pursuant to the provisions of paragraph 2 of this subsection is greater than the amount of funds available for appropriation for the then-current fiscal year, the Board shall make a finding that economic growth in the state warrants the taking effect of the provisions of subsection A of this section and such provisions shall be effective for the following calendar year. If the amount determined pursuant to the provisions of paragraph 2 of this subsection is less than the amount of funds available for appropriation for the then-current fiscal year, the Board shall make a finding that economic growth in the state warrants a suspension of the provisions of subsection A of this section for the following calendar year.~~

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

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

SECTION 4. AMENDATORY Section 24, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2385.30), as amended by Section 1 of Enrolled Senate Bill No. 1556 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 2385.30 A. A pass-through entity shall withhold income tax at the rate of five percent (5%) from a nonresident member's share of the Oklahoma share of income of the entity distributed to each nonresident member and pay the withheld amount ~~as follows:~~

~~1. For distributions made to nonresident members during the months of January, February and March, the withholding amounts shall be due on or before April 30;~~

~~2. For distributions made to nonresident members during the months of April, May and June, the withholding amounts shall be due on or before July 31;~~

~~3. For distributions made to nonresident members payments made during the months of July, August and September, the withholding amounts shall be due on or before October 31; and~~

~~4. For distributions made to nonresident members during the months of October, November and December, the withholding amounts shall be due on or before January 31 of the succeeding calendar year on or before the due date of the pass-through entity's income tax return, including extensions.~~

The pass-through entity shall file a return with each payment to the Oklahoma Tax Commission. The return, in a form prescribed by the Tax Commission, shall show the amount of the Oklahoma ~~distribution subject to~~ taxable income upon which withholding was based and the amount withheld.

~~At its option, a pass-through entity making distributions to a nonresident member more frequently than once per calendar quarter may withhold amounts as infrequently as once in that calendar quarter to cover all such distributions in that calendar quarter. An entity's decision not to withhold from certain distributions~~

~~within a calendar quarter in reliance on this option will not eliminate the entity's duty to make adequate withholding in that calendar quarter.~~

B. A pass-through entity may make quarterly estimated payments for the taxable year and a pass-through entity shall be required to make quarterly estimated payments for the taxable year if the amount that must be withheld from all nonresident members for the taxable year can reasonably be expected to exceed Five Hundred Dollars (\$500.00). The estimated tax payments shall be paid in equal quarterly installments on or before the last day of the month succeeding the calendar quarter. The total of quarterly estimated payments required to be paid by a pass-through entity for the taxable year shall be the lesser of:

1. Seventy percent (70%) of the withholding tax that must be withheld from all its nonresident members for the taxable year; or
2. One hundred percent (100%) of the withholding tax that had to be withheld from all of its nonresident members for the preceding taxable year.

The provisions of this subsection shall not relieve a pass-through entity from the requirement of remitting amounts to the Tax Commission that were actually withheld from distributions.

C. The amount of income tax withheld shall be allowed as a credit to the recipient of the income as income taxes paid.

D. A pass-through entity shall not be required to withhold income tax ~~on distributions made to any~~ from an entity exempt pursuant to subsection C of Section 2359 of this title or Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3).

~~E.~~ E. Every pass-through entity required pursuant to this section to ~~deduct and~~ withhold income tax shall furnish to its nonresident member and to the Tax Commission annually, but not later than the ~~last day of the second month after the end of its~~ due date

of the pass-through entity's income tax return for the taxable year including extensions, a written statement of the amount of ~~distribution made~~ taxable income upon which withholding was based and of the tax withheld on behalf of the nonresident member on forms prescribed by the Tax Commission. The written statement shall show the name of member, the applicable social security number or federal identification number, the amount of the nonresident member's share of Oklahoma ~~distribution~~ taxable income upon which withholding was based, the amounts withheld, and any such information as may be required by the Tax Commission.

~~D.~~ F. If the Tax Commission, in any case, has justifiable reason to believe that the collection of the amount required in subsection A of this section is in jeopardy, the Tax Commission may require a pass-through entity to file a return and pay the withheld amounts at any time.

~~E.~~ G. All amounts received by the Tax Commission pursuant to the provisions of Sections 2385.29 through 2385.31 of this title shall be deposited as provided by Section 2385.16 of this title.

~~F.~~ H. Notwithstanding the provisions of subsection A of this section, a pass-through entity is not required to withhold tax for a nonresident member if:

1. The Tax Commission has determined, by rule, that the income of the nonresident member is not subject to withholding;

2. The nonresident member files an affidavit with the Tax Commission, in the form and manner prescribed by the Tax Commission, whereby such nonresident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. The Tax Commission may revoke an exemption granted by this subsection at any time it determines that the nonresident member is not abiding by the terms of the affidavit; or

3. The entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, which is treated as a partnership for the purposes of the Internal Revenue Code, and which has agreed to file an annual information return reporting the name, address, taxpayer identification number and other information requested by the Tax Commission of each unitholder with an income in the state in excess of Five Hundred Dollars (\$500.00).

SECTION 5. AMENDATORY Section 25, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2385.31), is amended to read as follows:

Section 2385.31 A. Any amounts withheld in accordance with the provisions of Section ~~24~~ 2385.30 of this ~~act~~ title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the pass-through entity shall have a fiduciary duty to the State of Oklahoma in regard to such amounts and shall be subject to the trust laws of this state. Any pass-through entity who fails to pay to the Tax Commission any amounts required to be withheld by such pass-through entity, after such amounts have been withheld from distributions to nonresident members, and appropriates the amount held in trust to the pass-through entity's own use, or to the use of any person not entitled thereto, without authority of law, shall be guilty of embezzlement.

B. If any pass-through entity fails to withhold or pay required estimated payments of the amounts required to be withheld by Section ~~24~~ 2385.30 of this ~~act~~ title and thereafter income tax is paid by the nonresident member with respect to such payment, the amount so required to be withheld shall not be collected from the pass-through entity, but such pass-through entity shall not be relieved from the liability for penalties or interest otherwise applicable because of such failure to withhold or pay such amount.

C. If a pass-through entity fails to file a return or to pay to the Tax Commission the amounts withheld or any estimated payment

required within the time prescribed by Section ~~24~~ 2385.30 of this ~~act~~ title, there shall be imposed on the pass-through entity a penalty equal to ten percent (10%) of the amount required to be withheld or paid, or ten percent (10%) of the amount of the underpayment of the amount required to be withheld or paid, if such failure is not corrected on or before the last day of the month when due. There shall also be imposed on such pass-through entity interest at the rate of one and one-fourth percent (1 1/4%) per month during the period such underpayment exists. For the purposes of this subsection, "underpayment" shall mean the excess of the amount required to be paid over the amount thereof actually paid on or before the date prescribed therefor. Such penalty and interest shall be added to and become a part of the amount assessed.

However, the Tax Commission shall not collect the penalty assessed if the pass-through entity remits the amount required to be withheld within thirty (30) days of the mailing of a proposed assessment or voluntarily pays such amount upon the filing of an amended return.

D. Any pass-through entity who is required under the provisions of subsection ~~E~~ E of Section ~~24~~ 2385.30 of this ~~act~~ title to furnish a statement to a nonresident member, but who willfully fails to furnish such recipient the statement, shall be punished by an administrative fine not exceeding One Thousand Dollars (\$1,000.00).

SECTION 6. AMENDATORY 68 O.S. 2001, Section 2876, is amended to read as follows:

Section 2876. A. If the county assessor shall increase the valuation of any property above that returned by the taxpayer, or in the case of real property increase the valuation over the assessment from the preceding year, or pursuant to the requirements of law if the assessor has added property not listed by the taxpayer, the county assessor shall notify in writing the person in whose name any such property is listed, giving the amount of such valuation as increased or valuation of property so added.

B. The notice required by this section shall, for cases in which the valuation of real property has increased, include the fair cash value of the property as used in determining the assessment for the preceding and current year, the taxable value for the preceding and current year, if different than the fair cash value, and the assessment percentage for the preceding and current year.

C. The notice required by this section may be mailed or delivered to the last-known address of the person affected or to the person in charge of or in possession of the property and shall clearly be marked with the date upon which the notice was prepared. Any notice dated as required by this section shall be mailed or delivered within one (1) working day of such date. The notice shall describe the property with sufficient accuracy to notify the taxpayer as to the property included, together with the assessed value of the property. Duplicate copies of the notice, showing the date of issuance and mailing or delivery, shall be kept in the office of the county assessor. Such record shall be prima facie evidence as to the fact of notice having been given as required by this section.

D. The taxpayer shall have twenty (20) ~~calendar~~ working days from the date the notice was mailed or in the event that notice was delivered from the date of delivery in which to file a written complaint with the county assessor specifying objections to action taken by the county assessor; provided, in the case of a scrivener's error or other admitted error on the part of the county assessor, the assessor may make corrections to a valuation at any time, notwithstanding the twenty-day period specified in this subsection. The complaint shall set out the pertinent facts in relation to the matter contained in the notice in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended. The complaint shall be made upon a form prescribed by the Oklahoma Tax Commission.

E. A taxpayer may file a complaint if the valuation of property has not increased or decreased from the previous year if the complaint is filed on or before the first Monday in May. Such complaint shall be made upon a form prescribed by the Oklahoma Tax Commission.

F. The county assessor shall schedule an informal hearing with the taxpayer to hear the protest as to the disputed valuation or addition of omitted property. The informal hearing may be held in person or may be held telephonically or by other methods that can be used to adequately conduct the hearing and that are agreed upon by both the county assessor and the taxpayer. The assessor shall take final action upon the matter disputed within five (5) working days of the date of the informal hearing and shall mail or deliver notice of final action to the taxpayer. The notice of final action shall clearly be marked with the date upon which the notice was prepared. Such notice shall be mailed or delivered within one (1) working day of such date. Within ten (10) working days of the date the notice is mailed or delivered, the taxpayer may file an appeal with the county board of equalization. For purposes of this section, "working days" shall mean Monday through Friday and shall exclude Saturday and Sunday and any legal holidays. The appeal shall be made upon a form prescribed by the Oklahoma Tax Commission. One copy of the form shall be mailed or delivered to the county assessor and one copy shall be mailed or delivered to the county board of equalization. On receipt of the notice of an appeal to the county board of equalization by the taxpayer, the county assessor shall provide the county board of equalization with all information submitted by the taxpayer, data supporting the disputed valuation and a written explanation of the results of the informal hearing.

SECTION 7. AMENDATORY 68 O.S. 2001, Section 2877, is amended to read as follows:

Section 2877. A. Upon receipt of an appeal from action by the county assessor on the form prescribed by the Oklahoma Tax Commission, the secretary of the county board of equalization shall fix a date of hearing, at which time said board shall be authorized and empowered to take evidence pertinent to said appeal; and for that purpose, is authorized to compel the attendance of witnesses and the production of books, records, and papers by subpoena, and to confirm, correct, or adjust the valuation of real or personal property or to cancel an assessment of personal property added by the assessor not listed by the taxpayer if the personal property is not subject to taxation or if the taxpayer is not responsible for payment of ad valorem taxes upon such property. The secretary of the board shall fix the dates of the hearings provided for in this section in such a manner as to ensure that the board is able to hear all complaints within the time provided for by law. The county board of equalization shall be required to follow the procedures prescribed by the Ad Valorem Tax Code or administrative rules and regulations promulgated pursuant to such Code governing the valuation of real and personal property. The county board of equalization shall not modify a valuation of real or personal property as established by the county assessor unless such modification is explained in writing upon a form prescribed by the Oklahoma Tax Commission. Each decision of the county board of equalization shall be explained in writing upon a form prescribed by the Oklahoma Tax Commission. The county board of equalization shall make a record of each proceeding involving an appeal from action by the county assessor either in transcribed or tape recorded form.

B. In all cases where the county assessor has, without giving the notice required by law, increased the valuation of property as listed by the taxpayer, and the taxpayer has knowledge of such adjustment or addition, the taxpayer may at any time prior to the adjournment of the board, file an appeal in the form and manner

provided for in Section 2876 of this title. Thereafter, the board shall fix a date of hearing, notify the taxpayer, and conduct the hearing as required by this section.

C. If the taxpayer or agent fails to appear before the county board of equalization at the scheduled hearing, unless advance notification is given for the reason of absence, the county shall be authorized to assess against the taxpayer the costs incurred by the county in preparation for the scheduled hearing. If such costs are assessed, payment of the costs shall be a prerequisite to the filing of an appeal to the district court. A taxpayer that gives advance notification of their absence shall be given the opportunity to reschedule the hearing date.

SECTION 8. This act shall become effective July 1, 2004.

SECTION 9. 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.

49-2-9287 ARE 05/26/04