STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1407 By: Askins

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 809, which relates to deduction for estate tax purposes; modifying persons entitled to deduct certain value from net estate; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 809, is amended to read as follows:

Section 809. A. If any portion of the net estate, as herein determined, in excess of the deductions allowed in Section 808 of this title passes to the father, mother, brother, sister, child, child of husband or wife, adopted child or any lineal descendant of decedent or of such adopted child, there shall be deducted from such net estate the portion of the net estate passing to such person or persons to the extent of and not exceeding a total aggregate exemption in amounts as follows, and the tax shall be paid on the remainder at the rates herein set out:

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

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

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

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

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

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

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

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

B. 1. In addition to the exemption provided pursuant to subsection A of this section, for the estate of a decedent who dies on or after January 1, 1997, there shall be deducted the value of the assets used in a qualifying family business or farm passing to one or more qualifying heirs of the decedent to the extent of and not exceeding a total aggregate exemption of the amounts specified in this subsection. The additional exemption shall be in an amount as follows:

a. for the estate of a decedent who dies before January 1, 1999, the exemption shall be Four Hundred Twenty-five Thousand Dollars ($425,000.00),

b. for the estate of a decedent who dies on or after January 1, 1999, and before January 1, 2000, the exemption shall be Three Hundred Twenty-five Thousand Dollars ($325,000.00),

c. for the estate of a decedent who dies on or after January 1, 2000, and before January 1, 2001, the

exemption shall be One Hundred Twenty-five Thousand Dollars ($125,000.00),

d. for the estate of a decedent who dies on or after January 1, 2001, no additional exemption shall be allowed.

2. For the estate of a decedent who dies prior to January 1, 2001, the total exemption allowed pursuant to subsection A of this section and this subsection shall not exceed a total of Six Hundred Thousand Dollars ($600,000.00) for any estate. For purposes of this subsection:

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

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

c. "closely held family corporation" means any corporation if at least fifty percent (50%) of the total combined voting power of all classes of stock

entitled to vote, and at least fifty percent (50%) of all other classes of stock of the corporation are owned by the decedent and not more than ten (10) qualifying heirs, and

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

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

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

be allowed as the ratio of the value of the estate within this state bears to the value of the entire estate.

SECTION 2. This act shall become effective January 1, 2006.

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