

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 2034

By: Mazzei and Wilson of the
Senate

3

and

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Terrill of the House

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(motor vehicles - specifying limit on liability -

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provide certificate for license plate - permitting

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owners of trailers to register - codification -

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effective date)

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AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

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"An Act relating to revenue and taxation; amending 47
O.S. 2001, Section 1121, which relates to payment
for vehicle registrations; providing exemption from
certain costs or charges related to dishonored
checks; amending 47 O.S. 2001, Section 1128, which
relates to motor vehicles; modifying provisions
related to in-transit license plates; authorizing
certain registration fee for boat trailers and
utility-type trailers; amending 47 O.S. 2001,
Section 1140, as last amended by Section 77, Chapter
1, O.S.L. 2005 (47 O.S. Supp. 2007, Section 1140),
which relates to motor license agencies; providing
exemption from certain prohibition on locations of
motor license agencies; amending 68 O.S. 2001,
Section 118, as last amended by Section 3, Chapter
335, O.S.L. 2007 (68 O.S. Supp. 2007, Section 118),
which relates to revenue estimation; making certain

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1 date certain; amending 68 O.S. 2001, Section 205, as
2 last amended by Section 2, Chapter 327, O.S.L. 2007
3 (68 O.S. Supp. 2007, Section 205), which relates to
4 tax records; allowing the providing of information
5 to certain groups; amending Section 4, Chapter 475,
6 O.S.L. 2003, as amended by Section 7, Chapter 479,
7 O.S.L. 2005 (68 O.S. Supp. 2007, Section 312.1),
8 which relates to records and procedures; modifying
9 provision related to disclosure of information to
10 law enforcement officials; amending 68 O.S. 2001,
11 Section 316, as amended by Section 5, Chapter 475,
12 O.S.L. 2003 (68 O.S. Supp. 2007, Section 316), which
13 relates to certain offenses related to cigarette
14 taxation; modifying punishment; imposing limitation
15 upon sales of cigarettes by wholesalers to tribal
16 retailers; defining terms; prohibiting sales of
17 cigarettes at reduced tax rates; providing
18 exception; imposing limitations with respect to
19 quantity; authorizing requests for allowances by Tax
20 Commission; requiring certain information to be
21 provided regarding cigarette sales for certain
22 period of time; providing for certain computations;
23 prescribing procedures; requiring communications by
24 wholesalers to Tax Commission; providing for
revocation of license; imposing liability for sales
of certain cigarettes; imposing presumption;
authorizing administrative penalties; amending 68
O.S. 2001, Section 305, as amended by Section 3,
Chapter 475, O.S.L. 2003 and Section 7, Chapter 266,
O.S.L. 2004 (68 O.S. Supp. 2007, Sections 305 and
360.7), which relate to cigarettes; providing
procedure for seizure and forfeiture of certain
cigarettes; amending 68 O.S. 2001, Section 417,
which relates to modifying certain cigarette
forfeiture and seizure procedures; amending Section
20, Chapter 413, O.S.L. 2003, as last amended by
Section 6, Chapter 155, O.S.L. 2007 (68 O.S. Supp.
2007, Section 1354.27), which relates to sourcing;
modifying time period during which sourcing rule
applies; amending 68 O.S. 2001, Section 1356, as
last amended by Section 5, Chapter 353, O.S.L. 2007
(68 O.S. Supp. 2007, Section 1356), which relates to
sales tax; expanding certain sales tax exemption;
amending Section 3, Chapter 503, O.S.L. 2002 (68
O.S. Supp. 2007, Section 2358.6), which relates to
certain bonus depreciation adjustments; providing
for increase of federal taxable income of certain

1 entities for purposes of Economic Stimulus Act of
2 2008; requiring filing of amended returns; amending
3 Section 4, Chapter 42, 2nd Extraordinary Session,
4 O.S.L. 2006, as amended by Section 2, Chapter 346,
5 O.S.L. 2007 (68 O.S. Supp. 2007, Section 2355.1A),
6 which relates to certain determinations by State
7 Board of Equalization; modifying method and timing
8 of revenue determinations; amending 68 O.S. 2001,
9 Section 2358, as last amended by Section 37 of
10 Enrolled Senate Bill No. 1830 of the 2nd Session of
11 the 51st Oklahoma Legislature, which relates to
12 income tax; requiring certain adjustments to taxable
13 income; defining terms; providing for application of
14 certain rules; providing for codification; and
15 providing effective dates.

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 1121, is
amended to read as follows:

Section 1121. A. When, at the time of registration of any
vehicle, payment is made by check for fees and taxes and the check
is not paid by the bank on which drawn for any reason, after said
check has been presented for payment a second time, such certificate
of registration and other such instruments issued at the time of
registration of such vehicle shall be invalid. The motor license
agent shall transmit all documents and the dishonored check to the
Oklahoma Tax Commission for credit to the motor license agent's
account. The Commission may enter into a contract for the
collection of dishonored checks and canceled instruments. In all
such cases, such vehicles shall be subject to the license fees and

1 penalties provided in this act as though no attempt to register the
2 vehicle had been made and the motor license agent shall charge the
3 person issuing the check a fee of Twenty-five Dollars (\$25.00) for
4 each check to cover the costs of processing each returned check. An
5 individual who subsequently purchases any such vehicle shall not be
6 required, as a condition for registration of the vehicle, to pay any
7 ~~penalties imposed by this section~~ tax, fee or penalty due resulting
8 from the dishonored check.

9 A mortgagee who repossesses any such vehicle shall not be
10 required, as a condition for registration of said vehicle, to pay
11 the dishonored check penalties which had accrued as of the date of
12 such repossession.

13 B. Whenever payment is made by check for any Oklahoma ~~driver's~~
14 driver license and the check is not paid by the bank on which drawn
15 for any reason, after said check has been presented for payment a
16 second time, such ~~driver's~~ driver license shall be invalid and all
17 driving privileges of the holder of the ~~driver's~~ driver license
18 shall be canceled. The motor license agent shall transmit the
19 dishonored check to the Oklahoma Tax Commission for credit to the
20 motor license agents account. The Commission may enter into a
21 contract for the collection of dishonored checks. The motor license
22 agent shall charge the person issuing the check a fee of Twenty-five
23 Dollars (\$25.00) for each check to cover the cost of processing each
24 returned check. The motor license agent shall transmit a copy of

1 all documents associated with the application and issuance of the
2 ~~driver's~~ driver license and a copy of the dishonored check to the
3 Department of Public Safety.

4 SECTION 2. AMENDATORY 47 O.S. 2001, Section 1128, is
5 amended to read as follows:

6 Section 1128. A. Every person manufacturing or having a
7 contract to sell new vehicles in this state shall file a verified
8 application for a general distinctive number for all new vehicles
9 owned or controlled by the manufacturer or dealer; provided, the
10 Oklahoma Tax Commission shall issue a license to sell such new motor
11 vehicles only for those types of new vehicles for which the
12 applicant has a sales contract or franchise; provided, further, that
13 no license shall be issued to any applicant that has not complied
14 with the provisions of Sections 561 through 568 of this title and
15 does not hold a current license issued by the Oklahoma Motor Vehicle
16 Commission pursuant thereto. A separate manufacturer's or dealer's
17 license shall be required for each separate county within which such
18 manufacturer or dealer has an established place of business and upon
19 payment of a license fee of Ten Dollars (\$10.00) there shall be
20 assigned and issued to such manufacturer or dealer a Certificate of
21 Registration and one license plate which shall be displayed upon
22 each vehicle of such manufacturer or dealer when same is operated,
23 driven, or displayed on any street, road, or highway, in the same
24 manner as hereinbefore provided for vehicles owned by other persons.

1 Such a manufacturer or dealer in new vehicles may obtain as many
2 additional license plates as may be desired, upon the payment of the
3 sum of Ten Dollars (\$10.00) for each additional plate; provided that
4 no such license plate issued to any manufacturer or dealer shall be
5 used or displayed upon any secondhand or used vehicle, or upon any
6 new vehicle which is used for a service car, or private use, or for
7 hire. Any person, with consent of the dealer, may operate a motor
8 vehicle, with the dealer's tag affixed, while contemplating
9 purchase, so long as this intent is limited to a consecutive
10 seventy-two-hour period, or a weekend. An individual holding a
11 valid salesman's license issued by the Oklahoma Motor Vehicle
12 Commission shall not be subject to this limitation. If such person
13 also buys and sells used vehicles, he shall, after obtaining his new
14 motor vehicle dealer's license from the Oklahoma Motor Vehicle
15 Commission, also obtain a used motor vehicle dealer's license, from
16 the Used Motor Vehicle and Parts Commission, the cost of which shall
17 be as prescribed in Section 1101 et seq. of this title.

18 B. Each dealer and used motor vehicle dealer shall keep a
19 record of the purchase and sale of each motor vehicle he buys or
20 sells, which shall show the name of the seller or buyer as the case
21 may be, and a complete description of the vehicle purchased or sold,
22 and such other information as the Commission may prescribe.

23 C. Application for manufacturer's or dealer's license must show
24 that such dealer or manufacturer has not violated any of the

1 provisions of this section; and such license shall be nonassignable;
2 and any such license may be suspended temporarily or revoked by the
3 Commission for violation or failure to comply with this section,
4 provided, the holder of such license shall be given ten (10) days'
5 notice of hearing to suspend or cancel such license. If any such
6 person subject to any of the licenses required in this section fails
7 to obtain it when due, a penalty of twenty-five cents (\$0.25) per
8 day on each such license shall be charged in the same manner as is
9 now provided on delinquent motor vehicle registrations, and after a
10 period of thirty (30) days such penalty shall be equal to the
11 license fee. It shall be the duty of every person licensed to sell
12 new or used motor vehicles to advise each purchaser in writing about
13 his title requirements and payment of any taxes due. Each used
14 motor vehicle must display a proper Oklahoma license plate or a used
15 dealer's license plate. Dealers failing to comply with provisions
16 of this section shall be responsible for all taxes due on such sales
17 or on such vehicles.

18 D. Every person engaged in the business of transporting and
19 delivering new or used vehicles by driving, either singly or by
20 towbar, saddle mount or full mount method, engaging in drive-away
21 operations as defined in Section 3 of Title 85 of the Oklahoma
22 Statutes, or any combination thereof, from the manufacturer or
23 shipper to the dealer or consignee and using the public highways of
24 this state shall file with the Commission a verified application for

1 in-transit license plates to identify such vehicles. The
2 application shall provide for a general distinctive number for all
3 vehicles so transported. Upon payment of a license fee of Ten
4 Dollars (\$10.00) there shall be assigned and issued to such person
5 one in-transit plate. Such in-transit plate shall be used by such
6 person only on vehicles when so transported. Such person may obtain
7 as many additional in-transit plates as desired upon payment of a
8 fee of Ten Dollars (\$10.00) for each additional plate. Provided, a
9 used motor vehicle dealer shall use a used dealer license plate in
10 lieu of the in-transit license plate for transporting a used motor
11 vehicle and, in such cases, shall be exempt from making application
12 for an in-transit license plate. Provided further, only a person
13 who possesses a ~~certificate issued by the Interstate Commerce~~
14 ~~Commission or the Corporation Commission to engage in the business~~
15 ~~of transporting and delivering manufactured homes for hire~~ valid
16 motor carrier authority issued by the Federal Motor Carrier Safety
17 Administration, or a valid for-hire authority issued by the
18 Corporation Commission may use the in-transit license plates
19 obtained by them as herein authorized for transporting new or used
20 manufactured homes from one location to another location within
21 Oklahoma or from a point in another state to a point in this state.
22 Nothing contained in this section shall relieve any person from the
23 payment of license fees otherwise provided by law. When the
24 Commission deems it advisable and in the public interest, it may

1 require the holder of any in-transit license, or any person making
2 application therefor, to file a proper surety bond in any amount it
3 deems proper, not to exceed Ten Thousand Dollars (\$10,000.00).

4 E. The Oklahoma Tax Commission shall issue dealer licenses to
5 new and used manufactured home dealers, new and used travel trailer
6 dealers and new and used commercial trailer dealers.

7 F. All licenses provided for in this section shall expire on
8 December 31 of each year.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1133.3 of Title 47, unless there
11 is created a duplication in numbering, reads as follows:

12 At the option of the owner, the Oklahoma Tax Commission is
13 authorized to register boat trailers and utility-type trailers,
14 which are not being utilized in a commercial capacity, on an annual
15 basis for a fee of One Dollar (\$1.00).

16 SECTION 4. AMENDATORY 47 O.S. 2001, Section 1140, as
17 last amended by Section 77, Chapter 1, O.S.L. 2005 (47 O.S. Supp.
18 2007, Section 1140), is amended to read as follows:

19 Section 1140. A. In municipalities having a population in
20 excess of eight thousand five hundred (8,500) located in a county
21 having a population in excess of one hundred thirty thousand
22 (130,000), according to the latest Federal Decennial Census, the
23 Oklahoma Tax Commission shall adopt rules prescribing minimum
24 qualifications and requirements for locating motor license agencies

1 and for persons applying for appointment as a motor license agent.

2 Such qualifications and requirements shall include, but not be

3 limited to, the following:

4 1. Necessary job skills and experience;

5 2. Minimum office hours;

6 3. Provision for sufficient staffing, equipment, office space
7 and parking to provide maximum efficiency and maximum convenience to
8 the public;

9 4. Obtainment of a faithful performance surety bond as provided
10 for by law;

11 5. A requirement that operation of a motor license agency be
12 the primary source of income for said agent;

13 6. That the applicant has not been convicted of a felony and
14 that no felony charges are pending against the applicant;

15 7. That a complete financial statement be submitted by the
16 applicant on forms provided by the Tax Commission;

17 8. That a report of the applicant's credit history be obtained
18 through the appropriate credit bureau; and

19 9. That the location specified in the application for
20 appointment as a motor license agent not be owned by a member of the
21 Oklahoma Legislature or any person related to a member of the
22 Oklahoma Legislature within the third degree by consanguinity or
23 affinity and that the location not be within a three-mile radius of
24 an existing motor license agency unless the applicant is assuming

1 the location of an operating agency. The Tax Commission may, at its
2 discretion, approve the relocation of an existing agency within a
3 three-mile radius of another existing agency only if a naturally
4 intervening geographic barrier within that radius causes the
5 locations to be separated by not less than three (3) miles of
6 roadway by the most direct route.

7 After the necessary information has been forwarded to the Tax
8 Commission, each applicant shall be interviewed by the Tax
9 Commission or its designees and each item of information shall be
10 reviewed.

11 The qualifications and requirements specified in this subsection
12 shall apply only to persons making application to be appointed as
13 motor license agents on or after June 25, 1987.

14 Any person making application to the Tax Commission for the
15 purpose of becoming a motor license agent shall pay when submitting
16 the application, a nonrefundable application fee of One Hundred
17 Dollars (\$100.00). All such application fees shall be deposited in
18 the Oklahoma Tax Commission Revolving Fund.

19 Upon application by a person to serve as a motor license agent,
20 in such counties, the Tax Commission shall make a determination
21 whether such person and such location meets the qualifications and
22 requirements prescribed herein and, if such be the case, shall
23 appoint such person to serve as a motor license agent.

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1 A motor license agent, appointed pursuant to this subsection
2 shall be permitted to operate a motor license agency at a single
3 location and shall be prohibited from operating subagencies or
4 branch agencies, unless such subagencies or branch agencies were
5 established prior to June 1, 1985.

6 Unless otherwise specifically provided, motor license agents
7 appointed pursuant to this subsection shall be subject to all laws
8 relating to motor license agents and shall be subject to removal at
9 the will of the Tax Commission.

10 B. In all other counties of this state and in municipalities
11 having a population of less than eight thousand five hundred (8,500)
12 located in a county having a population in excess of one hundred
13 thirty thousand (130,000), according to the latest Federal Decennial
14 Census, the Tax Commission shall appoint as many motor license
15 agents as it deems necessary to carry out the provisions of the
16 Motor Vehicle License and Registration Act. Provided, that in
17 counties with a population in excess of twenty-five thousand
18 (25,000) persons, according to the latest Federal Decennial Census,
19 having only one motor license agent serving the county, the Tax
20 Commission shall establish at least one additional agency to serve
21 the county.

22 Such agents shall be self-employed independent contractors, and
23 all agents shall be under the supervision of the Tax Commission;
24 provided, any agent authorized to issue registrations pursuant to

1 the International Registration Plan shall also be under the
2 supervision of the Corporation Commission, subject to rules
3 promulgated by the Corporation Commission pursuant to the provisions
4 of subsection E of Section ~~2~~ 1166 of this ~~act~~ title. Any such
5 agent, upon being appointed, shall furnish and file with the Tax
6 Commission a bond in such amount as may be fixed by the Tax
7 Commission. Such agent shall be removable at the will of the Tax
8 Commission. Such agent shall perform all duties and do such things
9 in the administration of the laws of this state as shall be enjoined
10 upon and required by the Tax Commission or the Corporation
11 Commission. Provided, the Tax Commission may operate a motor
12 license agency in any county where a vacancy occurs.

13 C. In the event of a vacancy existing by reason of resignation,
14 removal, death or otherwise, in the position of any motor license
15 agent, the Tax Commission is hereby empowered and authorized to take
16 any and all actions it deems appropriate in order to provide for the
17 orderly transition and for the maintenance of operations of the
18 motor license agency including but not limited to the designation of
19 one of its regular employees to serve as "acting agent" without
20 bond, and to receive and expend all fees or charges authorized or
21 provided by law and exercise the same powers and authority as a
22 regularly appointed motor license agent. An acting agent may be
23 authorized by the Tax Commission equally as the preceding agent to
24 make disbursements from any balances in the preceding motor license

1 agent's operating account and the agent's operating funds for the
2 payment of expenses of operations and salaries and other overhead.
3 If such funds are insufficient, the Tax Commission is authorized to
4 expend from funds appropriated for the operation of the Tax
5 Commission such amounts as are necessary to maintain and continue
6 the operation of any such motor license agency until a successor
7 agent is appointed and qualified. The Tax Commission may require a
8 blanket fiduciary bond of the agency employees.

9 D. Any motor license agency operated by a motor license agent
10 who has been charged with a felony shall be closed immediately. The
11 State Auditor and Inspector shall immediately conduct an audit of
12 such motor license agency and forward the report of the audit to the
13 Tax Commission for review. The Tax Commission shall determine
14 whether the motor license agency shall be reopened and operated by
15 the motor license agent or whether the agency shall be reopened and
16 operated by the Tax Commission. The review of the audit and the Tax
17 Commission determination shall be effected as soon as possible to
18 prevent additional inconvenience to the public.

19 E. When an application for registration is made with the Tax
20 Commission, Corporation Commission or a motor license agent, a
21 registration fee of One Dollar and seventy-five cents (\$1.75) shall
22 be collected for each license plate or decal issued. Such fees
23 shall be in addition to the registration fees on motor vehicles and
24 when an application for registration is made to the motor license

1 agent such motor license agent shall retain a fee as provided in
2 Section 1141.1 of this title. When the fee is paid by a person
3 making application directly with the Tax Commission or Corporation
4 Commission, as applicable, the registration fees shall be in the
5 same amount as provided for motor license agents and the fee
6 provided by Section 1141.1 of this title shall be deposited in the
7 Oklahoma Tax Commission Revolving Fund or as provided in Section ~~3~~
8 1167 of this ~~act~~ title, as applicable. The Tax Commission shall
9 prepare schedules of registration fees and charges for titles which
10 shall include the fees for such agents and all fees and charges paid
11 by a person shall be listed separately on the application and
12 registration and totaled on the application and registration. The
13 motor license agents shall charge only such fees as are specifically
14 provided for by law, and all such authorized fees shall be posted in
15 such a manner that any person shall have notice of all fees that are
16 imposed by law.

17 F. No person shall be appointed as a motor license agent unless
18 the person has attested under oath that the person is not related by
19 affinity or consanguinity within the third degree to:

20 1. Any member of the Oklahoma Legislature;

21 2. Any person who has served as a member of the Oklahoma
22 Legislature within the two-year period preceding the date of
23 appointment as motor license agent; or

24 3. Any employee of the Tax Commission.

1 G. Any motor license agent appointed under the provisions of
2 this title shall be responsible for all costs incurred by the Tax
3 Commission when relocating an existing motor license agency. The
4 Tax Commission may waive payment of such costs in case of unforeseen
5 business or emergency conditions beyond the control of the agent.

6 SECTION 5. AMENDATORY 68 O.S. 2001, Section 118, as last
7 amended by Section 3, Chapter 335, O.S.L. 2007 (68 O.S. Supp. 2007,
8 Section 118), is amended to read as follows:

9 Section 118. A. Upon receipt of a written request from a
10 member or employee of the Legislature, the Oklahoma Tax Commission
11 shall provide:

12 1. A written estimate of the revenue gain or loss to the state
13 as a result of an actual or proposed change to a state tax law; and

14 2. A written statement of the Tax Commission's recommendation
15 to the State Board of Equalization as to the change in the amount
16 certified as available for appropriation by the Legislature as a
17 result of an actual or proposed change to a state tax law.

18 The Tax Commission shall provide such estimate and statement
19 within two (2) weeks of the date the request was received unless the
20 member or employee of the Legislature specifies an earlier date. If
21 the Tax Commission determines that it is unable to provide such
22 estimate and statement within the time period required by this
23 section, it shall provide a written explanation and date by which

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1 the estimate and statement will be provided to the member or
2 employee.

3 B. ~~As soon as is practicable~~ On or after December 31, ~~2008~~
4 2009, and subject to the availability of funds, the Tax Commission
5 shall develop the estimates and statements required by subsection A
6 of this section utilizing a dynamic revenue estimating model. Such
7 model shall take into consideration changes in economic activity as
8 a result of the proposed legislation and consequent revenue gains or
9 losses due to factors such as taxpayer behavior, employment and
10 business investment. The Tax Commission may, subject to the laws of
11 this state relating to confidentiality of information, contract with
12 institutions of higher education in this state or other entities to
13 perform its duties as set forth in this subsection. The Tax
14 Commission is authorized to promulgate rules to carry out the
15 implementation of this section.

16 C. For the purpose of providing an annual forecast of gross
17 production tax revenues from the production of natural and
18 casinghead gas to the Office of State Finance, the Tax Commission
19 shall subscribe to appropriate reference materials which provide
20 economic outlook of future gas prices that have most closely
21 followed the historical trend of Oklahoma gas prices. To determine
22 the average differential between the published forecasted prices and
23 Oklahoma gas prices, the Tax Commission shall compare prices in at
24 least twenty-four (24) of the immediate thirty-six (36) previous

1 months of production. The Tax Commission shall utilize the
2 procedures provided herein to forecast the collection of gross
3 production tax revenues from the production of natural and
4 casinghead gas for the fiscal year beginning July 1, 2005, and each
5 fiscal year thereafter.

6 SECTION 6. AMENDATORY 68 O.S. 2001, Section 205, as last
7 amended by Section 2, Chapter 327, O.S.L. 2007 (68 O.S. Supp. 2007,
8 Section 205), is amended to read as follows:

9 Section 205. A. The records and files of the Oklahoma Tax
10 Commission concerning the administration of the Uniform Tax
11 Procedure Code or of any state tax law shall be considered
12 confidential and privileged, except as otherwise provided for by
13 law, and neither the Tax Commission nor any employee engaged in the
14 administration of the Tax Commission or charged with the custody of
15 any such records or files nor any person who may have secured
16 information from the Tax Commission shall disclose any information
17 obtained from the records or files or from any examination or
18 inspection of the premises or property of any person.

19 B. Except as provided in paragraph 26 of subsection C of this
20 section, neither the Tax Commission nor any employee engaged in the
21 administration of the Tax Commission or charged with the custody of
22 any such records or files shall be required by any court of this
23 state to produce any of the records or files for the inspection of
24 any person or for use in any action or proceeding, except when the

1 records or files or the facts shown thereby are directly involved in
2 an action or proceeding pursuant to the provisions of the Uniform
3 Tax Procedure Code or of the state tax law, or when the
4 determination of the action or proceeding will affect the validity
5 or the amount of the claim of the state pursuant to any state tax
6 law, or when the information contained in the records or files
7 constitutes evidence of violation of the provisions of the Uniform
8 Tax Procedure Code or of any state tax law.

9 C. The provisions of this section shall not prevent the Tax
10 Commission from disclosing the following information and no
11 liability whatsoever, civil or criminal, shall attach to any member
12 of the Tax Commission or any employee thereof for any error or
13 omission in the disclosure of such information:

14 1. The delivery to a taxpayer or a duly authorized
15 representative of the taxpayer of a copy of any report or any other
16 paper filed by the taxpayer pursuant to the provisions of the
17 Uniform Tax Procedure Code or of any state tax law;

18 2. The exchange of information that is not protected by the
19 federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.,
20 pursuant to reciprocal agreements entered into by the Tax Commission
21 and other state agencies or agencies of the federal government;

22 3. The publication of statistics so classified as to prevent
23 the identification of a particular report and the items thereof;

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1 4. The examination of records and files by the State Auditor
2 and Inspector or the duly authorized agents of the State Auditor and
3 Inspector;

4 5. The disclosing of information or evidence to the Oklahoma
5 State Bureau of Investigation, Attorney General, Oklahoma State
6 Bureau of Narcotics and Dangerous Drugs Control, any district
7 attorney, or agent of any federal law enforcement agency when the
8 information or evidence is to be used by such officials to
9 investigate or prosecute violations of the criminal provisions of
10 the Uniform Tax Procedure Code or of any state tax law or of any
11 federal crime committed against this state. Any information
12 disclosed to the Oklahoma State Bureau of Investigation, Attorney
13 General, Oklahoma State Bureau of Narcotics and Dangerous Drugs
14 Control, any district attorney, or agent of any federal law
15 enforcement agency shall be kept confidential by such person and not
16 be disclosed except when presented to a court in a prosecution for
17 violation of the tax laws of this state or except as specifically
18 authorized by law, and a violation by the Oklahoma State Bureau of
19 Investigation, Attorney General, Oklahoma State Bureau of Narcotics
20 and Dangerous Drugs Control, district attorney, or agent of any
21 federal law enforcement agency by otherwise releasing the
22 information shall be a felony;

23 6. The use by any division of the Tax Commission of any
24 information or evidence in the possession of or contained in any

1 report or return filed with any other division of the Tax
2 Commission;

3 7. The furnishing, at the discretion of the Tax Commission, of
4 any information disclosed by its records or files to any official
5 person or body of this state, any other state, the United States, or
6 foreign country who is concerned with the administration or
7 assessment of any similar tax in this state, any other state or the
8 United States. The provisions of this paragraph shall include the
9 furnishing of information by the Tax Commission to a county assessor
10 to determine the amount of gross household income pursuant to the
11 provisions of Section 8C of Article X of the Oklahoma Constitution
12 or Section 2890 of this title. The Tax Commission shall promulgate
13 rules to give guidance to the county assessors regarding the type of
14 information which may be used by the county assessors in determining
15 the amount of gross household income pursuant to Section 8C of
16 Article X of the Oklahoma Constitution or Section 2890 of this
17 title. The provisions of this paragraph shall also include the
18 furnishing of information to the State Treasurer for the purpose of
19 administration of the Uniform Unclaimed Property Act;

20 8. The furnishing of information to other state agencies for
21 the limited purpose of aiding in the collection of debts owed by
22 individuals to such requesting agencies;

23 9. The furnishing of information requested by any member of the
24 general public and stated in the sworn lists or schedules of taxable

1 property of public service corporations organized, existing, or
2 doing business in this state which are submitted to and certified by
3 the State Board of Equalization pursuant to the provisions of
4 Section 2858 of this title and Section 21 of Article X of the
5 Oklahoma Constitution, provided such information would be a public
6 record if filed pursuant to Sections 2838 and 2839 of this title on
7 behalf of a corporation other than a public service corporation;

8 10. The furnishing of information requested by any member of
9 the general public and stated in the findings of the Tax Commission
10 as to the adjustment and equalization of the valuation of real and
11 personal property of the counties of the state, which are submitted
12 to and certified by the State Board of Equalization pursuant to the
13 provisions of Section 2865 of this title and Section 21 of Article X
14 of the Oklahoma Constitution;

15 11. The furnishing of information to an Oklahoma wholesaler of
16 low-point beer, licensed under the provisions of Section 163.1 et
17 seq. of Title 37 of the Oklahoma Statutes, or an association or
18 organization whose membership is comprised of such wholesalers, of
19 the licensed retailers authorized by law to purchase low-point beer
20 in this state or the furnishing of information to a licensed
21 Oklahoma wholesaler of low-point beer of shipments by licensed
22 manufacturers into this state;

23 12. The furnishing of information as to the issuance or
24 revocation of any tax permit, license or exemption by the Tax

1 Commission as provided for by law. Such information shall be
2 limited to the name of the person issued the permit, license or
3 exemption, the name of the business entity authorized to engage in
4 business pursuant to the permit, license or exemption, the address
5 of the business entity, and the grounds for revocation;

6 13. The posting of notice of revocation of any tax permit or
7 license upon the premises of the place of business of any business
8 entity which has had any tax permit or license revoked by the Tax
9 Commission as provided for by law. Such notice shall be limited to
10 the name of the person issued the permit or license, the name of the
11 business entity authorized to engage in business pursuant to the
12 permit or license, the address of the business entity, and the
13 grounds for revocation;

14 14. The furnishing of information upon written request by any
15 member of the general public as to the outstanding and unpaid amount
16 due and owing by any taxpayer of this state for any delinquent tax,
17 together with penalty and interest, for which a tax warrant or a
18 certificate of indebtedness has been filed pursuant to law;

19 15. After the filing of a tax warrant pursuant to law, the
20 furnishing of information upon written request by any member of the
21 general public as to any agreement entered into by the Tax
22 Commission concerning a compromise of tax liability for an amount
23 less than the amount of tax liability stated on such warrant;

24

1 16. The disclosure of information necessary to complete the
2 performance of any contract authorized by ~~Sections 255 and 262 of~~
3 this title to any person with whom the Tax Commission has
4 contracted;

5 17. The disclosure of information to any person for a purpose
6 as authorized by the taxpayer pursuant to a waiver of
7 confidentiality. The waiver shall be in writing and shall be made
8 upon such form as the Tax Commission may prescribe;

9 18. The disclosure of information required in order to comply
10 with the provisions of Section 2369 of this title;

11 19. The disclosure to an employer, as defined in Sections
12 2385.1 and 2385.3 of this title, of information required in order to
13 collect the tax imposed by Section 2385.2 of this title;

14 20. The disclosure to a plaintiff of a corporation's last-known
15 address shown on the records of the Franchise Tax Division of the
16 Tax Commission in order for such plaintiff to comply with the
17 requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

18 21. The disclosure of information directly involved in the
19 resolution of the protest by a taxpayer to an assessment of tax or
20 additional tax or the resolution of a claim for refund filed by a
21 taxpayer, including the disclosure of the pendency of an
22 administrative proceeding involving such protest or claim, to a
23 person called by the Tax Commission as an expert witness or as a
24 witness whose area of knowledge or expertise specifically addresses

1 the issue addressed in the protest or claim for refund. Such
2 disclosure to a witness shall be limited to information pertaining
3 to the specific knowledge of that witness as to the transaction or
4 relationship between taxpayer and witness;

5 22. The disclosure of information necessary to implement an
6 agreement authorized by Section 2702 of this title when such
7 information is directly involved in the resolution of issues arising
8 out of the enforcement of a municipal sales tax ordinance. Such
9 disclosure shall be to the governing body or to the municipal
10 attorney, if so designated by the governing body;

11 23. The furnishing of information regarding incentive payments
12 made pursuant to the provisions of Sections 3601 through 3609 of
13 this title or incentive payments made pursuant to the provisions of
14 Sections 3501 through 3508 of this title;

15 24. The furnishing to a prospective purchaser of any business,
16 or his or her authorized representative, of information relating to
17 any liabilities, delinquencies, assessments or warrants of the
18 prospective seller of the business which have not been filed of
19 record, established, or become final and which relate solely to the
20 seller's business. Any disclosure under this paragraph shall only
21 be allowed upon the presentment by the prospective buyer, or the
22 buyer's authorized representative, of the purchase contract and a
23 written authorization between the parties;

24

1 25. The furnishing of information as to the amount of state
2 revenue affected by the issuance or granting of any tax permit,
3 license, exemption, deduction, credit or other tax preference by the
4 Tax Commission as provided for by law. Such information shall be
5 limited to the type of permit, license, exemption, deduction, credit
6 or other tax preference issued or granted, the date and duration of
7 such permit, license, exemption, deduction, credit or other tax
8 preference and the amount of such revenue. The provisions of this
9 paragraph shall not authorize the disclosure of the name of the
10 person issued such permit, license, exemption, deduction, credit or
11 other tax preference, or the name of the business entity authorized
12 to engage in business pursuant to the permit, license, exemption,
13 deduction, credit or other tax preference;

14 26. The examination of records and files of a person or entity
15 by the Oklahoma State Bureau of Narcotics and Dangerous Drugs
16 Control pursuant to a court order by a magistrate in whose
17 territorial jurisdiction the person or entity resides, or where the
18 Tax Commission records and files are physically located. Such an
19 order may only be issued upon a sworn application by an agent of the
20 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,
21 certifying that the person or entity whose records and files are to
22 be examined is the target of an ongoing investigation of a felony
23 violation of the Uniform Controlled Dangerous Substances Act and
24 that information resulting from such an examination would likely be

1 relevant to that investigation. Any records or information obtained
2 pursuant to such an order may only be used by the Oklahoma State
3 Bureau of Narcotics and Dangerous Drugs Control in the investigation
4 and prosecution of a felony violation of the Uniform Controlled
5 Dangerous Substances Act. Any such order issued pursuant to this
6 paragraph, along with the underlying application, shall be sealed
7 and not disclosed to the person or entity whose records were
8 examined, for a period of ninety (90) days. The issuing magistrate
9 may grant extensions of such period upon a showing of good cause in
10 furtherance of the investigation. Upon the expiration of ninety
11 (90) days and any extensions granted by the magistrate, a copy of
12 the application and order shall be served upon the person or entity
13 whose records were examined, along with a copy of the records or
14 information actually provided by the Tax Commission;

15 27. The disclosure of information, as prescribed by this
16 paragraph, which is related to the proposed or actual usage of tax
17 credits pursuant to Section 2357.7 of this title, the Small Business
18 Capital Formation Incentive Act or the Rural Venture Capital
19 Formation Incentive Act. Unless the context clearly requires
20 otherwise, the terms used in this paragraph shall have the same
21 meaning as defined by Section 2357.7, 2357.61 or 2357.72 of this
22 title. The disclosure of information authorized by this paragraph
23 shall include:

24

- 1 a. the legal name of any qualified venture capital
2 company, qualified small business capital company, or
3 qualified rural small business capital company,
- 4 b. the identity or legal name of any person or entity
5 that is a shareholder or partner of a qualified
6 venture capital company, qualified small business
7 capital company, or qualified rural small business
8 capital company,
- 9 c. the identity or legal name of any Oklahoma business
10 venture, Oklahoma small business venture, or Oklahoma
11 rural small business venture in which a qualified
12 investment has been made by a capital company, or
- 13 d. the amount of funds invested in a qualified venture
14 capital company, the amount of qualified investments
15 in a qualified small business capital company or
16 qualified rural small business capital company and the
17 amount of investments made by a qualified venture
18 capital company, qualified small business capital
19 company, or qualified rural small business capital
20 company; or

21 28. The disclosure of specific information as required by
22 Section ~~± 46~~ of ~~this act~~ Title 62 of the Oklahoma Statutes.

23 D. The Tax Commission shall cause to be prepared and made
24 available for public inspection in the office of the Tax Commission

1 in such manner as it may determine an annual list containing the
2 name and post office address of each person, whether individual,
3 corporate, or otherwise, making and filing an income tax return with
4 the Tax Commission.

5 It is specifically provided that no liability whatsoever, civil
6 or criminal, shall attach to any member of the Tax Commission or any
7 employee thereof for any error or omission of any name or address in
8 the preparation and publication of the list.

9 E. The Tax Commission shall prepare or cause to be prepared a
10 report on all provisions of state tax law that reduce state revenue
11 through exclusions, deductions, credits, exemptions, deferrals or
12 other preferential tax treatments. The report shall be prepared not
13 later than October 1 of each even-numbered year and shall be
14 submitted to the Governor, the President Pro Tempore of the Senate
15 and the Speaker of the House of Representatives. The Tax Commission
16 may prepare and submit supplements to the report at other times of
17 the year if additional or updated information relevant to the report
18 becomes available. The report shall include, for the previous
19 fiscal year, the Tax Commission's best estimate of the amount of
20 state revenue that would have been collected but for the existence
21 of each such exclusion, deduction, credit, exemption, deferral or
22 other preferential tax treatment allowed by law. The Tax Commission
23 may request the assistance of other state agencies as may be needed
24 to prepare the report. The Tax Commission is authorized to require

1 any recipient of a tax incentive or tax expenditure to report to the
2 Tax Commission such information as requested so that the Tax
3 Commission may provide the information to the Incentive Review
4 Committee or fulfill its obligations as required by this subsection.
5 The Tax Commission may require this information to be submitted in
6 an electronic format. The Tax Commission may disallow any claim of
7 a person for a tax incentive due to its failure to file a report as
8 required under the authority of this subsection. The Tax Commission
9 may consult with the Incentive Review Committee to develop a
10 reporting system to obtain the information requested in a manner
11 that is the least burdensome on the taxpayer.

12 F. It is further provided that the provisions of this section
13 shall be strictly interpreted and shall not be construed as
14 permitting the disclosure of any other information contained in the
15 records and files of the Tax Commission relating to income tax or to
16 any other taxes.

17 G. Unless otherwise provided for in this section, any violation
18 of the provisions of this section shall constitute a misdemeanor and
19 shall be punishable by the imposition of a fine not exceeding One
20 Thousand Dollars (\$1,000.00) or by imprisonment in the county jail
21 for a term not exceeding one (1) year, or by both such fine and
22 imprisonment, and the offender shall be removed or dismissed from
23 office.

24

1 H. Offenses described in Section 2376 of this title shall be
2 reported to the appropriate district attorney of this state by the
3 Tax Commission as soon as the offenses are discovered by the Tax
4 Commission or its agents or employees. The Tax Commission shall
5 make available to the appropriate district attorney or to the
6 authorized agent of the district attorney its records and files
7 pertinent to prosecutions, and such records and files shall be fully
8 admissible as evidence for the purpose of such prosecutions.

9 SECTION 7. AMENDATORY Section 4, Chapter 475, O.S.L.
10 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S.
11 Supp. 2007, Section 312.1), is amended to read as follows:

12 Section 312.1 A. The Oklahoma Tax Commission, if in its
13 discretion it deems practical and reasonable, may establish
14 procedures for maintaining records and filing reports containing the
15 information required by this section. The exercise by the Tax
16 Commission of the authority granted in this subsection shall be by
17 adoption of rules necessary to establish procedures that increase
18 compliance with the requirements of this article. If the Tax
19 Commission determines to utilize its discretion, the provisions of
20 subsections B through J of this section shall apply.

21 B. Every wholesaler and distributor receiving cigarettes shall
22 submit periodic reports containing the information required by this
23 subsection. In each case, the information required shall be
24 itemized so as to disclose clearly the brand style of the product.

1 The reports shall be provided separately with respect to each of the
2 facilities operated by the wholesaler and distributor and shall
3 include:

4 1. The quantity of cigarette packages that were distributed or
5 shipped to another distributor or to a retailer within the borders
6 of Oklahoma during the reporting period and the name and address of
7 each person to whom those products were distributed or shipped;

8 2. The quantity of cigarette packages that were distributed or
9 shipped to another facility of the same distributor within the
10 borders of Oklahoma during the reporting period; and

11 3. The quantity of cigarette packages that were distributed or
12 shipped within the borders of Oklahoma to Indian tribal entities or
13 instrumentalities of the federal government during the reporting
14 period and the name and address of each person to whom those
15 products were distributed or shipped.

16 C. Manufacturers shall submit periodic reports containing the
17 information required by this subsection. In each case, the
18 information required shall be itemized so as to disclose clearly the
19 brand style of the product. The reports shall be provided
20 separately with respect to each of the facilities operated by the
21 manufacturer and shall include:

22 1. The quantity of cigarette packages that were distributed or
23 shipped to another manufacturer or to a distributor within the
24 borders of Oklahoma during the reporting period and the name and

1 address of each person to whom those products were distributed or
2 shipped;

3 2. The quantity of cigarette packages that were distributed or
4 shipped to another facility of the same manufacturer within the
5 borders of Oklahoma during the reporting period; and

6 3. The quantity of cigarette packages that were distributed or
7 shipped within the borders of Oklahoma to instrumentalities of the
8 federal government during the reporting period and the name and
9 address of each person to whom those products were distributed or
10 shipped.

11 D. The Tax Commission shall establish the reporting period,
12 which shall be no longer than three (3) calendar months and no
13 shorter than one (1) calendar month. Reports shall be submitted
14 electronically as prescribed by the Tax Commission.

15 E. Each distributor shall maintain copies of invoices or
16 equivalent documentation for each of its facilities for every
17 transaction in which the distributor is the seller, purchaser,
18 consignor, consignee, or recipient of cigarettes. The invoices or
19 documentation shall show the name, address, phone number and
20 wholesale license number of the consignor, seller, purchaser, or
21 consignee, and the quantity by brand style of the cigarettes
22 involved in the transaction.

23 F. Each retailer shall maintain copies of invoices or
24 equivalent documentation for every transaction in which the retailer

1 receives or purchases cigarettes at each of its facilities. The
2 invoices or documentation shall show the name and address of the
3 distributor from whom, or the address of another facility of the
4 same retailer from which, the cigarettes were received, the quantity
5 of each brand style received in such transaction and the retail
6 cigarette license number or sales tax license number.

7 G. Each manufacturer shall maintain copies of invoices or
8 equivalent documentation for each of its facilities for every
9 transaction in which the manufacturer is the seller, purchaser,
10 consignor, consignee, or recipient of cigarettes. The invoices or
11 documentation shall show the name and address of the consignor,
12 seller, purchaser, or consignee, and the quantity by brand style of
13 the cigarettes involved in the transaction.

14 H. Records required under subsections E through G of this
15 section shall be preserved on the premises described in the license
16 in such a manner as to ensure permanency and accessibility for
17 inspection at reasonable hours by authorized personnel of the
18 Oklahoma Tax Commission. With the permission of the Tax Commission,
19 manufacturers, distributors, and retailers with multiple places of
20 business may retain centralized records, but shall transmit
21 duplicates of the invoices or the equivalent documentation to each
22 place of business within twenty-four (24) hours upon the request of
23 the Tax Commission.

24

1 I. The records required by subsections E through G of this
2 section shall be retained for a period of three (3) years from the
3 date of the transaction.

4 J. The Tax Commission, upon request, shall have access to
5 reports and records required under this act. The Tax Commission at
6 its sole discretion may share the records and reports required by
7 such sections with law enforcement officials of the federal
8 government, the State of Oklahoma, other states, or international
9 authorities.

10 SECTION 8. AMENDATORY 68 O.S. 2001, Section 316, as
11 amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2007,
12 Section 316), is amended to read as follows:

13 Section 316. A. Any person who shall:

14 1. Sell, offer for sale or present as a prize or gift
15 cigarettes without a stamp being then and there affixed to each
16 individual package;

17 2. Sell cigarettes in quantities less than an individual
18 package;

19 3. Knowingly consume, use or smoke any cigarettes upon which a
20 tax is required to be paid without a stamp being affixed upon each
21 individual package;

22 4. Knowingly cancel or mutilate any stamp affixed to any
23 individual package of cigarettes for the purpose of concealing any
24

1 violation of Section 301 et seq. of this title or with any other
2 fraudulent intent;

3 5. Use any artful device or deceptive practice to conceal any
4 violation of Section 301 et seq. of this title;

5 6. Refuse to surrender to the Oklahoma Tax Commission upon
6 demand any cigarettes possessed in violation of any provision of
7 Section 301 et seq. of this title; or

8 7. Make a first sale of cigarettes without a stamp being then
9 and there affixed to each individual package;
10 shall be guilty of a misdemeanor, and upon conviction thereof shall
11 be fined not more than Two Hundred Dollars (\$200.00), where specific
12 penalties are not otherwise provided.

13 B. Any distributor, wholesale dealer, retail dealer or
14 distributing agent who shall:

15 1. Commit any of the acts specifically enumerated in subsection
16 A of this section, where such acts are applicable to such person;

17 2. Sell any cigarettes upon which tax is required to be paid by
18 Section 301 et seq. of this title without at the time of making such
19 sale having a valid license;

20 3. Make a first sale of cigarettes without at the time of first
21 sale having a license posted so as to be easily seen by the public;
22 or

23 4. Fail to deliver an invoice required by law to a purchaser of
24 cigarettes;

1 shall be guilty of a misdemeanor, and upon conviction thereof shall
2 be punished by a fine of not more than Two Hundred Dollars
3 (\$200.00), where specific penalties are not otherwise provided.

4 C. Any distributing agent who shall:

5 1. Commit any of the acts specifically enumerated in
6 subsections A and B of this section where such provisions are
7 applicable to such distributing agent; or

8 2. Store any unstamped cigarettes in the state or deliver or
9 distribute any unstamped cigarettes within this state, without at
10 the time of storage or delivery having a valid license posted so as
11 to be easily seen by the public;

12 shall be guilty of a misdemeanor, and upon conviction shall be
13 punished by a fine of not more than Two Hundred Dollars (\$200.00).

14 D. Any retailer violating the provisions of Section ~~305.1~~ 301
15 et seq. of this title ~~shall~~ may:

16 1. For a first offense, be punished by an administrative fine
17 of not more than One Hundred Dollars (\$100.00);

18 2. For a second offense, be punished by an administrative fine
19 of not more than One Thousand Dollars (\$1,000.00); and

20 3. For a third or subsequent offense, be punished by an
21 administrative fine of not more than Five Thousand Dollars
22 (\$5,000.00).

23 E. Any wholesaler, jobber or warehouseman violating the
24 provisions of Section 305.1 of this title shall:

1 1. For a first offense, be punished by an administrative fine
2 of not more than Five Thousand Dollars (\$5,000.00); and

3 2. For a second or subsequent offense, be punished by an
4 administrative fine of not more than Twenty Thousand Dollars
5 (\$20,000.00).

6 Administrative fines collected pursuant to the provisions of
7 this subsection shall be deposited to the revolving fund created in
8 Section 305.2 of this title.

9 F. The Tax Commission shall immediately revoke the license of a
10 person punished for a violation pursuant to the provisions of
11 paragraph 3 of subsection D of this section or a person punished for
12 a violation pursuant to the provisions of subsection E of this
13 section. A person whose license is so revoked shall not be eligible
14 to receive another license pursuant to the provisions of Section 301
15 et seq. of this title for a period of ten (10) years.

16 G. Whoever, with intent to defraud Oklahoma:

17 1. Fails to keep or make any record, return, report, or
18 inventory, or keeps or makes any false or fraudulent record, return,
19 report, or inventory, required by Section 301 et seq. of this title
20 or rules promulgated thereunder;

21 2. Refuses to pay any tax imposed by Section 301 et seq. of
22 this title, or attempts in any manner to evade or defeat the tax or
23 the payment thereof; or

24

1 3. Fails to comply with any requirement of Section 301 et seq.
2 of this title;
3 shall, for each such offense, be fined not more than Ten Thousand
4 Dollars (\$10,000.00), or imprisoned not more than five (5) years, or
5 both.

6 H. Whoever knowingly omits, neglects, or refuses to comply with
7 any duty imposed upon the person by Section 301 et seq. of this
8 title, or to do, or cause to be done, any of the things required by
9 Section 301 et seq. of this title, or does anything prohibited by
10 Section 301 et seq. of this title, shall, in addition to any other
11 penalty provided in Section 301 et seq. of this title, pay an
12 administrative penalty of One Thousand Dollars (\$1,000.00).

13 I. Whoever fails to pay any tax imposed by Section 301 et seq.
14 of this title at the time prescribed by law or rules, shall, in
15 addition to any other penalty provided in Section 301 et seq. of
16 this title, be liable to a penalty of five hundred percent (500%) of
17 the tax due but unpaid.

18 J. 1. All cigarettes which are held for sale or distribution
19 within the borders of Oklahoma, in violation of the requirements of
20 Section 301 et seq. of this title, and the machinery used to
21 manufacture counterfeit cigarettes shall be forfeited to Oklahoma.
22 All cigarettes and machinery forfeited to Oklahoma under this
23 paragraph shall be destroyed.

24

1 2. All fixtures, equipment, and all other materials and personal
2 property on the premises of any distributor or retailer who, with
3 intent to defraud the state, fails to keep or make any record,
4 return, report, or inventory; keeps or makes any false or fraudulent
5 record, return, report, or inventory required by Section 301 et seq.
6 of this title; refuses to pay any tax imposed by Section 301 et seq.
7 of this title; or attempts in any manner to evade or defeat the
8 requirements of Section 301 et seq. of this title shall be forfeited
9 to Oklahoma.

10 K. Notwithstanding any other provision of law, the sale or
11 possession for sale of counterfeit cigarettes, or the sale or
12 possession for sale of counterfeit cigarettes by a manufacturer,
13 distributor, or retailer shall result in the seizure of the product
14 and related machinery by the Tax Commission or any law enforcement
15 agency and shall be punishable as follows:

16 1. A first violation with a total quantity of less than two
17 cartons of cigarettes or the equivalent amount of other cigarettes
18 shall be punishable by a fine not to exceed One Thousand Dollars
19 (\$1,000.00) or imprisonment not to exceed five (5) years, or both
20 fine and imprisonment;

21 2. A subsequent violation with a total quantity of less than two
22 cartons of cigarettes, or the equivalent amount of other cigarettes
23 shall be punishable by a fine not to exceed Five Thousand Dollars
24 (\$5,000.00), or imprisonment not to exceed five (5) years, or both

1 the fine and the imprisonment, and shall also result in the
2 revocation by the Tax Commission of the manufacturer, distributor,
3 or retailer license;

4 3. A first violation with a total quantity of more than two
5 cartons of cigarettes, or the equivalent amount of other cigarettes,
6 shall be punishable by a fine not to exceed Two Thousand Dollars
7 (\$2,000.00) or imprisonment not to exceed five (5) years, or both
8 the fine and imprisonment; and

9 4. A subsequent violation with a quantity of two cartons of
10 cigarettes or more, or the equivalent amount of other cigarettes
11 shall be punishable by a fine not to exceed Fifty Thousand Dollars
12 (\$50,000.00) or imprisonment not to exceed five (5) years, or both
13 the fine and imprisonment, and shall also result in the revocation
14 by the Tax Commission of the manufacturer, distributor, or retailer
15 license.

16 For the purposes of this section, "counterfeit cigarettes"
17 includes cigarettes that have false manufacturing labels or tobacco
18 product packs without tax stamps or with counterfeit tax stamps or a
19 combination thereof. Any counterfeit cigarette seized by the Tax
20 Commission shall be destroyed.

21 SECTION 9. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 312.2 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. Sales of cigarettes by a wholesaler licensed by the Oklahoma
2 Tax Commission to a tribal retailer shall be limited as set forth
3 herein to the number of packs of cigarettes sold at a reduced tax
4 rate.

5 B. For purposes of this section:

6 1. "Pack" means a sealed, original package, containing twenty
7 or twenty-five cigarettes, to which the required tax stamp is
8 affixed;

9 2. "Reduced tax rate" means the tax rate provided by Section
10 349 of Title 68 of the Oklahoma Statutes and the fees in lieu of tax
11 provided by compacts entered into between the State of Oklahoma and
12 a federally recognized Indian tribe or nation that are less than the
13 highest rate provided by the compacts; and

14 3. "Tribal retailer" means a store or place of business which
15 is duly licensed by a federally recognized Indian tribe or nation
16 pursuant to tribal laws or ordinances to conduct business located on
17 Indian country within the territorial jurisdiction of that tribe or
18 nation.

19 C. No wholesaler may sell packs of cigarettes at a reduced tax
20 rate to any tribal retailer, unless the name of the tribal retailer
21 appearing on the order and/or invoice to be issued on the
22 transaction also appears on the list of tribal retailers compiled
23 and furnished by the Oklahoma Tax Commission to licensed
24 wholesalers. For purposes of compliance with this section,

1 wholesalers are entitled to rely on the accuracy of the list of
2 tribal retailers compiled and furnished by the Tax Commission.

3 D. No wholesaler may sell to any tribal retailer, in any one
4 (1) calendar month, packs of cigarettes at a reduced tax rate in a
5 quantity which exceeds one-twelfth (1/12) of a sum equal to the
6 total amount of packs of cigarettes sold by the wholesaler to that
7 tribal retailer in calendar year 2004, plus ten percent (10%);
8 provided, however, that upon request to the Tax Commission, proposed
9 sales in excess of the allowance may be permitted upon a showing of
10 good cause, which must include documented proof that the tribal
11 retailer attempting the purchase has offered or will offer the packs
12 of cigarettes for sale to consumers at the location of the tribal
13 retailer.

14 E. The Tax Commission shall furnish each wholesaler, from
15 reports filed by that wholesaler with the Tax Commission for
16 calendar year 2004, a computation of the amount of packs of
17 cigarettes which may be sold at a reduced tax rate to each tribal
18 retailer to which the wholesaler sold cigarettes in calendar year
19 2004, unless an increased allowance is requested and granted under
20 the procedures specified by subsection D of this section.

21 F. In the event that a wholesaler desires to sell to a tribal
22 retailer that it did not sell to in calendar year 2004, the
23 wholesaler shall request from the Tax Commission a computation of
24 the amount of packs of cigarettes purchased by the tribal retailer

1 in calendar year 2004. The request shall be accompanied by the
2 written consent of the tribal retailer to disclose the statistical
3 information furnished by wholesalers concerning the tribal retailer.
4 The Tax Commission shall furnish the wholesaler with a computation
5 of the amount of packs of cigarettes that may be sold to such tribal
6 retailer at a reduced tax rate, unless an increased allowance is
7 requested and granted under the procedures specified by subsection D
8 of this section.

9 G. In the event that a wholesaler desires to sell to a tribal
10 retailer that was not in business in calendar year 2004, before
11 selling any packs of cigarettes to such tribal retailer, the
12 wholesaler shall contact the Tax Commission, which shall provide a
13 statement of the number of packs of cigarettes which may be sold at
14 a reduced rate, based upon the average, per wholesaler, per tribal
15 retailer in calendar year 2004, plus ten percent (10%); in the event
16 the tribal retailer claims such amount to be insufficient, an
17 increased allowance may be requested under the procedures specified
18 by subsection D of this section.

19 H. Wholesalers shall telephonically report and confirm in
20 writing to the Tax Commission, on the same day as received, any
21 request of a tribal retailer for purchase of packs of cigarettes at
22 a reduced tax rate, in a quantity which exceeds one-twelfth (1/12)
23 of a sum equal to the total amount of cigarettes sold to that tribal
24

1 retailer by the wholesaler in calendar year 2004, plus ten percent
2 (10%).

3 I. Wholesalers are subject to revocation of their cigarette
4 and/or tobacco products licenses, sales tax permits and any other
5 licenses or permits issued to such wholesalers by the Tax
6 Commission, upon the determination that such wholesalers have
7 violated any of the provisions of this section, and/or any other
8 state tax law and/or rule of the Tax Commission applicable to such
9 wholesalers. Such licensure revocation is in addition to, and not
10 to the exclusion of, any other remedies of the Tax Commission
11 including, but not limited to, liability for the cigarette stamp tax
12 or compact payment in lieu thereof upon sales of cigarettes to
13 tribal retailers at rates which are in violation of this section.

14 J. If any wholesaler files a cigarette stamp tax report which
15 evidences a sale of packs of cigarettes to a tribal retailer not
16 included on the list of tribal retailers provided the wholesaler by
17 the Tax Commission, such sale shall be presumed not to constitute a
18 sale to a tribal retailer, as defined herein, and the wholesaler
19 shall be responsible and liable for payment of tax at the nontribal
20 statutory rate for all packs of cigarettes reported sold. In
21 addition, the wholesaler is subject to imposition of an
22 administrative penalty not exceeding five hundred percent (500%) of
23 the unpaid tax or payment in lieu of tax as to each pack sold as
24 provided in Section 316 of this title.

1 SECTION 10. AMENDATORY 68 O.S. 2001, Section 305, as
2 amended by Section 3, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2007,
3 Section 305), is amended to read as follows:

4 Section 305. A. Every wholesaler, jobber, distributor, or
5 warehouseman doing business within this state and required to secure
6 a license as provided under Section 304 of this title shall, upon
7 withdrawal from storage, and before making any sale or distribution
8 of cigarettes for consumption thereof, affix or cause the same to
9 have affixed thereto the stamp or stamps as required by Section 301
10 et seq. of this title. It shall be the duty of the wholesaler,
11 jobber, distributor, or warehouseman to supply and charge to the
12 retailer the necessary stamps to cover any and all drop shipments of
13 cigarettes billed to the retailer or consumer by the wholesaler,
14 jobber, distributor, or warehouseman; and the wholesaler, jobber,
15 distributor, or warehouseman shall be liable to the Oklahoma Tax
16 Commission to perform this service. Distributors may apply stamps
17 only to cigarette packages that they have received directly from a
18 manufacturer or importer of cigarettes who possesses a valid and
19 current permit under Section 5712 of Title 26 of the United States
20 Code.

21 B. Every retailer who has received cigarettes from a
22 manufacturer, wholesaler, jobber, warehouseman or distributor not
23 required to secure a license as provided for under Section 304 of
24 this title, or to affix stamps as required under subsection A of

1 this section, shall, within seventy-two (72) hours, excluding
2 Sundays and holidays, from the time such cigarettes come into the
3 retailer's possession, and before making any sale or distribution
4 for consumption thereof, affix stamps upon all cigarette packages in
5 the proper denomination and amount, as required by Section 302 of
6 this title.

7 C. Any unlicensed consumer who buys direct from any
8 distributor, jobber, manufacturer, warehouseman, or wholesaler, or
9 other person, within or without this state, any cigarettes in excess
10 of forty, at any one time to which are not affixed the stamps
11 required by Section 301 et seq. of this title shall, before
12 purchasing such cigarettes, secure from the Tax Commission a written
13 license and shall pay therefor an annual fee of Twenty-five Dollars
14 (\$25.00), and shall immediately, upon the receipt of any unstamped
15 cigarettes, report the same to the Tax Commission on such forms as
16 the Tax Commission may prescribe, and immediately purchase from the
17 Tax Commission proper stamps and attach the same to all such
18 cigarettes received. It shall be unlawful for any person to sell or
19 consume cigarettes on which the tax, as levied by Section 301 et
20 seq. of this title, has not been paid, and which are not contained
21 in packages to which are securely affixed the stamps evidencing
22 payment of the tax imposed by Section 301 et seq. of this title.

23 D. If, upon examination of invoices or from other
24 investigations, the Tax Commission finds that cigarettes have been

1 sold without stamps affixed as required by Section 301 et seq. of
2 this title, the Tax Commission shall have the power to require such
3 person to pay to the Tax Commission a sum equal to twice the amount
4 of the tax due. If, under the same circumstances, a person is
5 unable to furnish evidence to the Tax Commission of sufficient stamp
6 purchases to cover unstamped cigarettes purchased, the prima facie
7 presumption shall arise that such cigarettes were sold without
8 proper stamps being affixed thereto.

9 E. 1. All unstamped cigarettes upon which taxes are imposed by
10 Section 301 et seq. of this title and all cigarettes stamped, sold,
11 offered for sale, or imported into this state in violation of the
12 provisions of Section 305.1 of this title which shall be found in
13 the possession, custody, or control of any person, for the purpose
14 of being consumed, sold or transported from one place to another in
15 this state, for the purpose of evading or violating the provisions
16 of Section 301 et seq. of this title, or with intent to avoid
17 payment of the tax imposed hereunder, and any automobile, truck,
18 conveyance, or other vehicle whatsoever used in the transportation
19 of such cigarettes, and all paraphernalia, equipment or other
20 tangible personal property incident to the use of such purposes,
21 found in the place, building, vehicle or vehicles, where such
22 cigarettes are found, may be seized by any authorized agent of the
23 Tax Commission, or any sheriff, deputy sheriff, constable or other
24 peace officer within the state, without process. The same shall be,

1 from the time of such seizure, forfeited to the State of Oklahoma,
2 and a proper proceeding filed ~~in a court of competent jurisdiction~~
3 ~~in the county of seizure,~~ to maintain such seizure and prosecute the
4 forfeiture as herein provided.

5 2. All such cigarettes so seized shall first be listed and
6 appraised by the officer making such seizure and turned over to the
7 Oklahoma Tax Commission and a receipt therefor taken. The person
8 making such seizure shall immediately make and file a written report
9 thereof, showing the name of the person making such seizure, the
10 place where and the person from whom such property was seized, and
11 an inventory and appraisal thereof, at the usual and ordinary
12 retail price of such articles received, to the Tax Commission, and
13 the Attorney General, in the case of cigarettes stamped, sold,
14 offered for sale, or imported into this state in violation of the
15 provisions of Section 305.1 of this title. The Oklahoma Tax
16 Commission shall then proceed to hear and determine the matter of
17 whether or not the cigarettes should, in fact, be forfeited to the
18 State of Oklahoma. The owner of the cigarettes shall be given at
19 least ten (10) days' notice of the hearing. In the event the
20 Commission finds that the cigarettes should be forfeited to the
21 State of Oklahoma, it shall make an order forfeiting the cigarettes
22 to the State of Oklahoma and directing the destruction of such
23 cigarettes.

24

1 3. Any and all such ~~cigarettes,~~ vehicles and property so seized
2 shall first be listed and appraised by the officer making such
3 seizure and turned over to the county sheriff of the county in which
4 the seizure is made and a receipt therefor taken. The person making
5 such seizure shall immediately make and file a written report
6 thereof, showing the name of the person making such seizure, the
7 place, where and the person ~~where,~~ and from whom such property was
8 seized, and an inventory and appraisal thereof, at the usual and
9 ordinary retail price of such articles received, to the Tax
10 Commission, ~~or the Attorney General, in the case of cigarettes~~
11 ~~stamped, sold, offered for sale, or imported into this state in~~
12 ~~violation of the provisions of Section 305.1 of this title.~~ The
13 district attorney of the county in which the seizures are made
14 shall, at the request of the Tax Commission or Attorney General,
15 file in the district court forfeiture proceedings in the name of the
16 State of Oklahoma, as plaintiff, and in the name of the owner or
17 person in possession, as defendant, if known, and if unknown in the
18 name of the property seized. The clerk of the court shall issue
19 summons to the owner or person in whose possession such property was
20 found, directing the owner or person to answer within ten (10) days.
21 If the property is declared forfeited and ordered sold, notice of
22 the sale shall be posted in five public places in the county not
23 less than ten (10) days before the date of sale; ~~provided, cigarette~~
24 ~~packages or containers as described in Section 305.1 of this title~~

1 ~~shall only be sold for export outside the United States or as~~
2 ~~otherwise permitted by federal law.~~ The proceeds of the sale shall
3 be deposited with the clerk of the court, who shall after deducting
4 costs, including the costs of sale, pay the balance to the Tax
5 Commission as cigarette tax collected, or in the case of vehicles
6 and property seized in connection with cigarettes seized as being in
7 violation of the provisions of Section 305.1 of this title, to the
8 Attorney General. The Attorney General shall remit the amount of
9 cigarette tax, if any be due, including all penalties and interest
10 due, to the Tax Commission as cigarette tax collected and shall
11 deposit the remainder to the revolving fund created in Section 305.2
12 of this title.

13 ~~3.~~ 4. The seizure and sale of cigarettes shall not relieve the
14 person from whom such cigarettes were seized from any prosecution or
15 the payment of any penalties provided for under Section 301 et seq.
16 of this title; ~~nor shall it relieve the purchaser thereof from any~~
17 ~~payment of the regular cigarette tax and the placing of proper~~
18 ~~stamps thereon before making any sale of the cigarettes or the~~
19 ~~personal consumption of the same.~~

20 ~~4.~~ 5. The forfeiture provisions of Section 301 et seq. of this
21 title shall only apply to persons having possession of or
22 transporting cigarettes with intent to barter, sell or give away the
23 same; provided, that such possession of cigarettes in any quantity
24 of five or more cartons of ten packages each shall be prima facie

1 evidence of intent to barter, sell or give away such cigarettes in
2 violation of the provisions of Section 301 et seq. of this title.

3 F. The Tax Commission shall exchange new stamps for any stamps
4 which are damaged, or for stamps which have been affixed to packages
5 of cigarettes returned to factories, or shipped to other states, or
6 sold to government agencies or state institutions, or for stamps
7 purchased in excess of floor stocks. Application to the Tax
8 Commission for such exchanges must be accompanied by affidavit,
9 damaged stamps, bill of lading covering shipment to factory or other
10 states, or other proof required by the Tax Commission. Any person
11 to whom stamps shall be issued under this paragraph may, upon
12 approval of the Tax Commission, sell such stamps to any wholesaler
13 as defined in Section 301 et seq. of this title.

14 G. Any person, including distributing agents, wholesalers,
15 jobbers, carriers, warehousemen, retailers and consumers, having
16 possession of unstamped cigarettes in this state shall be liable for
17 the tax on such cigarettes in case the same are lost, stolen or
18 unaccounted for, in transit, storage or otherwise, and in such event
19 a presumption shall exist for the purposes of taxation, that such
20 cigarettes were used and consumed in Oklahoma.

21 SECTION 11. AMENDATORY Section 7, Chapter 266, O.S.L.
22 2004 (68 O.S. Supp. 2007, Section 360.7), is amended to read as
23 follows:

24

1 Section 360.7 A. In addition to or in lieu of any other civil
2 or criminal remedy provided by law, upon a determination that a
3 stamping agent has violated Section ~~6~~ 360.6 of this ~~act~~ title or any
4 rule promulgated pursuant to the Master Settlement Agreement
5 Complementary Act, the Oklahoma Tax Commission may revoke or suspend
6 the license of the stamping agent. Each stamp affixed and each sale
7 or offer to sell cigarettes in violation of the Master Settlement
8 Agreement Complementary Act shall constitute a separate violation.
9 For each violation, the Oklahoma Tax Commission may also impose a
10 civil penalty in an amount not to exceed the greater of five hundred
11 percent (500%) of the retail value of the cigarettes or Five
12 Thousand Dollars (\$5,000.00) upon a determination of violation of
13 the Master Settlement Agreement Complementary Act or any rules
14 promulgated pursuant thereto.

15 B. Any cigarettes that have been sold, offered for sale, or
16 possessed for sale in this state or imported for personal
17 consumption in this state, in violation of the Master Settlement
18 Agreement Complementary Act, shall be deemed contraband pursuant to
19 the Master Settlement Agreement Complementary Act. Those cigarettes
20 shall be subject to seizure and forfeiture as provided by this
21 section and all cigarettes so seized and forfeited shall be
22 destroyed as provided by this section and not resold.

23 C. 1. Cigarettes or tobacco product distributors and
24 wholesalers licensed by the Oklahoma Tax Commission, pursuant to

1 Section 304 or 415 of ~~Title 68 of the Oklahoma Statutes~~ this title,
2 who also distribute cigarettes in a state bordering Oklahoma may
3 store in their Oklahoma warehouse cigarettes made contraband under
4 this section if, and only if, they have the tax stamp of another
5 state affixed to each package of cigarettes.

6 2. Cigarettes or roll-your-own tobacco products made contraband
7 pursuant to this section, without being subject to seizure or
8 forfeiture, may be transported in, into, or through the state
9 either:

- 10 a. on a commercial carrier with a proper bill of lading
11 with an out-of-state destination,
- 12 b. when the tax stamp of another state is affixed to each
13 pack of cigarettes or tobacco product transported, or
- 14 c. on a commercial carrier with a proper bill of lading
15 to a tobacco product distributor or wholesaler
16 licensed by the Oklahoma Tax Commission, pursuant to
17 Section 304 or 415 of ~~Title 68 of the Oklahoma~~
18 ~~Statutes~~ this title, who also distributes cigarettes
19 in a state bordering Oklahoma if, and only if, the
20 packing slip accompanying the shipment indicates the
21 shipment is for sale in another state and indicates
22 which state, and the invoice for the shipment also
23 indicates the shipment is for sale in a state other
24 than Oklahoma and identifies the state in which the

1 shipment is to be sold. The time of delivery of the
2 shipments shall be indicated on the bill of lading of
3 the common carrier when delivery is completed. The
4 receiving Oklahoma distributor or wholesaler must,
5 within twenty-four (24) hours of receiving the
6 delivery, affix or cause to be affixed to each package
7 of cigarettes the stamp of the state in which they are
8 to be sold.

9 3. All such cigarettes and tobacco products so seized shall
10 first be listed and appraised by the officer making such seizure and
11 turned over to the Oklahoma Tax Commission and a receipt therefor
12 taken. The person making such seizure shall immediately make and
13 file a written report thereof, showing the name of the person making
14 such seizure, the place where and the person from whom such property
15 was seized, and an inventory and appraisal thereof, at the usual
16 and ordinary retail price of such articles received, to the Tax
17 Commission, and the Attorney General, in the case of cigarettes
18 stamped, sold, offered for sale, or imported into this state in
19 violation of the provisions of Section 305.1 of this title and
20 tobacco made contraband by this section. The Oklahoma Tax
21 Commission shall then proceed to hear and determine the matter of
22 whether or not the cigarettes and tobacco products should, in fact
23 be forfeited to the State of Oklahoma. The owner of the cigarettes
24 and tobacco products shall be given at least ten (10) days' notice

1 of the hearing. In the event the Commission finds that the
2 cigarettes and tobacco products should be forfeited to the State of
3 Oklahoma, it shall make an order forfeiting the cigarettes and
4 tobacco products to the State of Oklahoma and directing the
5 destruction of such cigarettes and tobacco products.

6 4. All cigarettes, tobacco products, Any and all vehicles, and
7 property so seized shall be listed and appraised by the officer
8 making the seizure and turned over to the county sheriff of the
9 county in which the seizure is made and a receipt therefor taken.
10 The person making the seizure shall immediately make a written
11 report of the seizure, showing the name of the person making the
12 seizure, the location of the seizure, the person from whom the
13 property was seized, and an inventory and appraisalment of the
14 property at the usual and ordinary retail price of the articles
15 received. The report shall be filed with the Oklahoma Tax
16 Commission and the Attorney General. The district attorney of the
17 county in which the seizures are made, at the request of the
18 Oklahoma Tax Commission or Attorney General, shall file in the
19 district court forfeiture proceedings in the name of the State of
20 Oklahoma, as plaintiff, and in the name of the owner or person in
21 possession, as defendant, if known, and if unknown or not
22 susceptible to the jurisdiction of the court, in the name of the
23 property seized. The clerk of the court shall issue a summons to
24 the owner or person in whose possession the property was found

1 directing the owner or person to answer within ten (10) days. At
2 the forfeiture proceeding, if a distributor or wholesaler
3 demonstrates through clear and convincing evidence that the
4 possession of contraband by the distributor or wholesaler was
5 accidental, the vehicle in which the contraband was being
6 transported shall not be forfeited. In no case, however, shall
7 possession of more than twenty (20) cartons of contraband product be
8 considered by the courts as being possessed accidentally. If the
9 property is declared forfeited and ordered sold, notice of the sale
10 shall be posted not less than ten (10) days before the date of sale
11 in five public places in the county in which the seizures are made.
12 ~~However, any cigarettes or tobacco products forfeited pursuant to~~
13 ~~this section shall be destroyed by the county sheriff.~~ Proceeds of
14 the sale shall be deposited with the clerk of the court, who shall,
15 after deducting costs including the costs of prosecution, storage,
16 and sale, pay the balance to the Oklahoma Tax Commission for deposit
17 in the Tobacco Settlement Endowment Trust Fund.

18 D. The Attorney General may seek an injunction to restrain a
19 threatened or actual violation of the Master Settlement Agreement
20 Complementary Act by a stamping agent and to compel the stamping
21 agent to comply with those provisions. In any action brought
22 pursuant to this section, the state shall be entitled to recover the
23 costs of investigation, costs of the action, and reasonable attorney
24 fees.

1 E. 1. It shall be unlawful for a person to:

2 a. sell or distribute cigarettes, or

3 b. acquire, hold, own, possess, transport, import, or

4 cause to be imported cigarettes that the person knows

5 or should know are intended for distribution or sale

6 in the state in violation of the Master Settlement

7 Agreement Complementary Act. A violation of the act

8 shall be a misdemeanor.

9 2. A person who violates subsection C of Section 4 360.4 of
10 this ~~act~~ title engages in an unfair and deceptive trade practice in
11 violation of the provisions of the Oklahoma Consumer Protection Act.

12 SECTION 12. AMENDATORY 68 O.S. 2001, Section 417, is
13 amended to read as follows:

14 Section 417. A. All unstamped tobacco products upon which a
15 tax is levied by Section 401 et seq. of this title and all tobacco
16 products stamped, sold, offered for sale, or imported into this
17 state in violation of the provisions of Section 4 403.2 of this ~~act~~
18 title, found in the possession, custody or control of any person for
19 the purpose of being consumed, sold or transported from one place to
20 another in this state, for the purpose of evading or violating the
21 provisions of Section 401 et seq. of this title, or with intent to
22 avoid payment of the tax imposed thereunder, may be seized by any
23 authorized agent of the Oklahoma Tax Commission or any sheriff,
24 deputy sheriff or police within the state. Tobacco products from

1 the time of seizure shall be forfeited to the State of Oklahoma. A
2 proper proceeding shall be filed ~~in the district court of the county~~
3 ~~of seizure,~~ to maintain such seizure and prosecute the forfeiture as
4 herein provided; the provisions of this section shall not apply,
5 however, where the tax on such unstamped tobacco products does not
6 exceed One Dollar (\$1.00).

7 B. All such tobacco products so seized shall first be listed
8 and appraised by the officer making such seizure and turned over to
9 the ~~sheriff of the county in which the seizure is made,~~ Oklahoma Tax
10 Commission and a receipt taken therefor.

11 C. The person making such seizure shall immediately make and
12 file a written report thereof to the Tax Commission, showing the
13 name of the person making such seizure, the place where seized, the
14 person from whom seized, the property seized and an inventory and
15 appraisal thereof, which inventory shall be based on the usual
16 and ordinary retail price or value of the articles seized, ~~or~~ and
17 the Attorney General, in the case of tobacco products stamped, sold,
18 offered for sale, or imported into this state in violation of the
19 provisions of Section 4 403.2 of this ~~act~~ title. ~~The district~~
20 ~~attorney of the county in which such seizure is made shall, at the~~
21 ~~request of the Tax Commission or Attorney General, file in the~~
22 ~~district court forfeiture proceedings in the name of the State of~~
23 ~~Oklahoma against the owner or person in possession of the property~~
24 ~~seized, if known, and if unknown, against the property seized. The~~

1 ~~clerk of the court shall issue summons to the owner or person in~~
2 ~~whose possession such property was found. Summons so issued and all~~
3 ~~procedure thereafter shall be governed by statutes relating to~~
4 ~~procedure in civil actions. If personal service cannot be had, or~~
5 ~~if suit be filed against the property seized, service may be~~
6 ~~obtained by the posting of notices in five public places within the~~
7 ~~county. The notice shall direct the owner, or if the owner be~~
8 ~~unknown, the person in possession of the property seized, to answer~~
9 ~~the petition filed within twenty (20) days from the date of the~~
10 ~~posting of such notices. The district attorney shall within three~~
11 ~~(3) days after the posting of the notices cause a copy of the same~~
12 ~~to be mailed to any defendant on whom personal service was not had,~~
13 ~~addressed to the defendant's last known address. If, after a full~~
14 ~~hearing upon the petition, the court finds that the property seized~~
15 ~~is forfeited to the State of Oklahoma, the court shall direct to the~~
16 ~~sheriff to sell the property at public auction ten (10) days after~~
17 ~~the posting of notices of sale in five public places within the~~
18 ~~county; provided, tobacco products as described in Section 4 of this~~
19 ~~act shall only be sold for export outside the United States or as~~
20 ~~otherwise permitted by federal law. The proceeds of the sale shall~~
21 ~~be deposited with the clerk of the court who shall, after deducting~~
22 ~~costs including the cost of the sale, pay same to the Tax Commission~~
23 ~~as tobacco products tax collected, or in the case of tobacco~~
24 ~~products seized as being in violation of the provisions of Section 4~~

1 ~~of this act, to the Attorney General. The Attorney General shall~~
2 ~~remit the amount of tobacco products tax, if any be due, including~~
3 ~~all penalties and interest due, to the Tax Commission as tobacco~~
4 ~~products tax collected and shall deposit the remainder to the~~
5 ~~revolving fund created in Section 7 of this act. The Oklahoma Tax~~
6 Commission shall then proceed to hear and determine the matter of
7 whether or not the tobacco products should, in fact be forfeited to
8 the State of Oklahoma. The owner of the tobacco products shall be
9 given at least ten (10) days' notice of the hearing. In the event
10 the Commission finds that the tobacco products should be forfeited
11 to the State of Oklahoma, it shall make an order forfeiting the
12 tobacco products to the State of Oklahoma and directing the
13 destruction of such tobacco products.

14 D. The seizure and sale of such tobacco products shall not
15 relieve the person from whom such tobacco products were seized from
16 prosecution or the payment of penalties. ~~The purchaser of forfeited~~
17 ~~tobacco products shall pay the regular tobacco products tax and~~
18 ~~shall place proper stamps thereon before any of such tobacco~~
19 ~~products are sold or consumed.~~

20 E. The forfeiture provisions of Section 401 et seq. of this
21 title shall only apply to persons having possession of or
22 transporting tobacco products with intent to barter, sell or give
23 away the same.

24

1 SECTION 13. AMENDATORY Section 20, Chapter 413, O.S.L.
2 2003, as last amended by Section 6, Chapter 155, O.S.L. 2007 (68
3 O.S. Supp. 2007, Section 1354.27), is amended to read as follows:

4 Section 1354.27 A. The retail sale, excluding lease or rental,
5 of a product shall be sourced as follows:

6 1. When the product is received by the purchaser at a business
7 location of the seller, the sale is sourced to that business
8 location;

9 2. When the product is not received by the purchaser at a
10 business location of the seller, the sale is sourced to the location
11 where receipt by the purchaser, or the purchaser's donee, designated
12 as such by the purchaser, occurs, including the location indicated
13 by instructions for delivery to the purchaser or donee, known to the
14 seller. Provided, this subsection shall not apply to florists until
15 January 1, ~~2009~~ 2011. Prior to that date, all sales by florists
16 shall be sourced to its business location;

17 3. When the provisions of paragraphs 1 and 2 of this subsection
18 do not apply, the sale is sourced to the location indicated by an
19 address for the purchaser that is available from the business
20 records of the seller that are maintained in the ordinary course of
21 the seller's business when use of this address does not constitute
22 bad faith;

23 4. When the provisions of paragraphs 1, 2 and 3 of this
24 subsection do not apply, the sale is sourced to the location

1 indicated by an address for the purchaser obtained during the
2 consummation of the sale, including the address of a purchaser's
3 payment instrument, if no other address is available, when use of
4 this address does not constitute bad faith; and

5 5. When none of the previous rules of paragraphs 1, 2, 3 and 4
6 of this subsection apply, including the circumstance in which the
7 seller is without sufficient information to apply the previous
8 rules, then the location will be determined by the address from
9 which tangible personal property was shipped, from which the digital
10 good or the computer software delivered electronically was first
11 available for transmission by the seller, or from which the service
12 was provided, disregarding for these purposes any location that
13 merely provided the digital transfer of the product sold. In the
14 case of a sale of mobile telecommunications service that is a
15 prepaid telecommunications service, the location will be that which
16 is associated with the mobile telephone number.

17 B. The lease or rental of tangible personal property, other
18 than property identified in subsection C or D of this section, shall
19 be sourced as follows:

20 1. For a lease or rental that requires recurring periodic
21 payments, the first periodic payment is sourced the same as a retail
22 sale in accordance with the provisions of subsection A of this
23 section. Periodic payments made subsequent to the first payment are
24 sourced to the primary property location for each period covered by

1 the payment. The primary property location shall be as indicated by
2 an address for the property provided by the lessee that is available
3 to the lessor from its records maintained in the ordinary course of
4 business, when use of this address does not constitute bad faith.

5 The property location shall not be altered by intermittent use at
6 different locations, such as use of business property that
7 accompanies employees on business trips and service calls; and

8 2. For a lease or rental that does not require recurring
9 periodic payments, the payment is sourced the same as a retail sale
10 in accordance with the provisions of subsection A of this section.

11 This subsection does not affect the imposition or computation of
12 sales or use tax on leases or rentals based on a lump sum or
13 accelerated basis, or on the acquisition of property for lease.

14 C. The lease or rental of motor vehicles, trailers,
15 semitrailers, or aircraft that do not qualify as transportation
16 equipment, as defined in subsection D of this section, shall be
17 sourced as follows:

18 1. For a lease or rental that requires recurring periodic
19 payments, each periodic payment is sourced to the primary property
20 location. The primary property location shall be as indicated by an
21 address for the property provided by the lessee that is available to
22 the lessor from its records maintained in the ordinary course of
23 business, when use of this address does not constitute bad faith.

24

1 This location shall not be altered by intermittent use at different
2 locations; and

3 2. For a lease or rental that does not require recurring
4 periodic payments, the payment is sourced the same as a retail sale
5 in accordance with the provisions of subsection A of this section.
6 This subsection does not affect the imposition or computation of
7 sales or use tax on leases or rentals based on a lump sum or
8 accelerated basis, or on the acquisition of property for lease.

9 D. The retail sale, including lease or rental, of
10 transportation equipment shall be sourced the same as a retail sale
11 in accordance with the provisions of subsection A of this section,
12 notwithstanding the exclusion of lease or rental in subsection A of
13 this section. "Transportation equipment" means any of the
14 following:

15 1. Locomotives and railcars that are utilized for the carriage
16 of persons or property in interstate commerce;

17 2. Trucks and truck-tractors with a Gross Vehicle Weight Rating
18 (GVWR) of ten thousand one (10,001) pounds or greater, trailers,
19 semitrailers, or passenger buses that are:

- 20 a. registered through the International Registration
21 Plan, and
22 b. operated under authority of a carrier authorized and
23 certificated by the United States Department of
24 Transportation or another federal authority to engage

1 in the carriage of persons or property in interstate
2 commerce;

3 3. Aircraft that are operated by air carriers authorized and
4 certificated by the United States Department of Transportation or
5 another federal or a foreign authority to engage in the carriage of
6 persons or property in interstate or foreign commerce; and

7 4. Containers designed for use on and component parts attached
8 or secured on the items set forth in paragraphs 1, 2 and 3 of this
9 subsection.

10 E. For the purposes of this section, the terms "receive" and
11 "receipt" mean:

12 1. Taking possession of tangible personal property;

13 2. Making first use of services; or

14 3. Taking possession or making first use of digital goods,
15 whichever comes first.

16 The terms "receive" and "receipt" do not include possession by a
17 shipping company on behalf of the purchaser.

18 SECTION 14. AMENDATORY 68 O.S. 2001, Section 1356, as
19 last amended by Section 5, Chapter 353, O.S.L. 2007 (68 O.S. Supp.
20 2007, Section 1356), is amended to read as follows:

21 Section 1356. Exemptions - Governmental and nonprofit entities.

22 There are hereby specifically exempted from the tax levied by
23 Section 1350 et seq. of this title:
24

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

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

13 3. Sales of property to agents appointed by or under contract
14 with a political subdivision of this state if the sale of such
15 property is associated with the development of a qualified federal
16 facility, as provided in the Oklahoma Federal Facilities Development
17 Act, and if ownership and possession of such property transfers
18 immediately to the political subdivision or the state;

19 4. Sales made directly by county, district or state fair
20 authorities of this state, upon the premises of the fair authority,
21 for the sole benefit of the fair authority or sales of admission
22 tickets to such fairs or fair events at any location in the state
23 authorized by county, district or state fair authorities; provided,
24 the exemption provided by this paragraph for admission tickets to

1 fair events shall apply only to any portion of the admission price
2 that is retained by or distributed to the fair authority. As used
3 in this paragraph, "fair event" shall be limited to an event held on
4 the premises of the fair authority in conjunction with and during
5 the time period of a county, district or state fair;

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

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

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

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

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

24

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

5 10. Sale of tangible personal property or services to any
6 county, municipality, rural water district, public school district,
7 the institutions of The Oklahoma State System of Higher Education,
8 the Grand River Dam Authority, the Northeast Oklahoma Public
9 Facilities Authority, the Oklahoma Municipal Power Authority, City
10 of Tulsa-Rogers County Port Authority, Muskogee City-County Port
11 Authority, the Oklahoma Department of Veterans Affairs, the Broken
12 Bow Economic Development Authority, Ardmore Development Authority,
13 Durant Industrial Authority, Oklahoma Ordnance Works Authority,
14 Central Oklahoma Master Conservancy District or to any person with
15 whom any of the above-named subdivisions or agencies of this state
16 has duly entered into a public contract pursuant to law, necessary
17 for carrying out such public contract or to any subcontractor to
18 such a public contract. Any person making purchases on behalf of
19 such subdivision or agency of this state shall certify, in writing,
20 on the copy of the invoice or sales ticket to be retained by the
21 vendor that the purchases are made for and on behalf of such
22 subdivision or agency of this state and set out the name of such
23 public subdivision or agency. Any person who wrongfully or
24 erroneously certifies that purchases are for any of the above-named

1 subdivisions or agencies of this state or who otherwise violates
2 this section shall be guilty of a misdemeanor and upon conviction
3 thereof shall be fined an amount equal to double the amount of sales
4 tax involved or incarcerated for not more than sixty (60) days or
5 both;

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

17 Any person, firm, agency or entity making purchases on behalf of
18 any institution, agency or subdivision in this state, shall certify
19 in writing, on the copy of the invoice or sales ticket the nature of
20 the purchases, and violation of this paragraph shall be a
21 misdemeanor as set forth in paragraph 10 of this section;

22 12. Tuition and educational fees paid to private institutions
23 of higher education and private elementary and secondary
24 institutions of education accredited by the State Department of

1 Education or registered by the State Board of Education for purposes
2 of participating in federal programs or accredited as defined by the
3 Oklahoma State Regents for Higher Education which are exempt from
4 taxation pursuant to the provisions of the Internal Revenue Code, 26
5 U.S.C., Section 501(c)(3);

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

7 (1) a public school,

8 (2) a private school offering instruction for grade
9 levels kindergarten through twelfth grade,

10 (3) a public school district,

11 (4) a public or private school board,

12 (5) a public or private school student group or
13 organization,

14 (6) a parent-teacher association or organization
15 other than as specified in subparagraph b of this
16 paragraph, or

17 (7) public or private school personnel for purposes
18 of raising funds for the benefit of a public or
19 private school, public school district, public or
20 private school board or public or private school
21 student group or organization, or

22 b. Sales of tangible personal property made by or to
23 nonprofit parent-teacher associations or organizations
24

1 exempt from taxation pursuant to the provisions of the
2 Internal Revenue Code, 26 U.S.C., Section 501(c)(3).

3 The exemption provided by this paragraph for sales made by a
4 public or private school shall be limited to those public or private
5 schools accredited by the State Department of Education or
6 registered by the State Board of Education for purposes of
7 participating in federal programs. Sale of tangible personal
8 property in this paragraph shall include sale of admission tickets
9 and concessions at athletic events;

10 14. Sales of tangible personal property by:

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

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

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

1 16. Items or services which are subsequently given away by the
2 Oklahoma Tourism and Recreation Department as promotional items
3 pursuant to Section 1834 of Title 74 of the Oklahoma Statutes and
4 the sale of advertising in travel brochures and other promotional
5 materials produced at the direction of the Department;

6 17. Sales of tangible personal property or services to fire
7 departments organized pursuant to Section 592 of Title 18 of the
8 Oklahoma Statutes which items are to be used for the purposes of the
9 fire department. Any person making purchases on behalf of any such
10 fire department shall certify, in writing, on the copy of the
11 invoice or sales ticket to be retained by the vendor that the
12 purchases are made for and on behalf of such fire department and set
13 out the name of such fire department. Any person who wrongfully or
14 erroneously certifies that the purchases are for any such fire
15 department or who otherwise violates the provisions of this section
16 shall be deemed guilty of a misdemeanor and upon conviction thereof,
17 shall be fined an amount equal to double the amount of sales tax
18 involved or incarcerated for not more than sixty (60) days, or both;

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

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

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

14 21. Sales of tangible personal property or services to any
15 organization, which takes court-adjudicated juveniles for purposes
16 of rehabilitation, and which is exempt from taxation pursuant to the
17 provisions of the Internal Revenue Code, 26 U.S.C., Section
18 501(c)(3), provided that at least fifty percent (50%) of the
19 juveniles served by such organization are court adjudicated and the
20 organization receives state funds in an amount less than ten percent
21 (10%) of the annual budget of the organization;

22 22. Sales of tangible personal property or services to:
23
24

- 1 a. any federally qualified community health center as
2 defined in Section 254c of Title 42 of the United
3 States Code,
4 b. any migrant health center as defined in Section 254b
5 of Title 42 of the United States Code,
6 c. any clinic receiving disbursements of state monies
7 from the Indigent Health Care Revolving Fund pursuant
8 to the provisions of Section 66 of Title 56 of the
9 Oklahoma Statutes,
10 d. any community based health center which meets all of
11 the following criteria:
12 (1) provides primary care services at no cost to the
13 recipient, and
14 (2) is exempt from taxation pursuant to the
15 provisions of Section 501(c)(3) of the Internal
16 Revenue Code, 26 U.S.C., Section 501(c)(3), and
17 e. any community mental health center as defined in
18 Section 3-302 of Title 43A of the Oklahoma Statutes;

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

23 24. The first Fifteen Thousand Dollars (\$15,000.00) each year
24 from sales of tangible personal property or services to or by a

1 cultural organization established to sponsor and promote
2 educational, charitable and cultural events for disadvantaged
3 children, and which organization is exempt from taxation pursuant to
4 the provisions of the Internal Revenue Code, 26 U.S.C., Section
5 501(c) (3);

6 25. Sales of tangible personal property or services to museums
7 or other entities which have been accredited by the American
8 Association of Museums. Any person making purchases on behalf of
9 any such museum or other entity shall certify, in writing, on the
10 copy of the invoice or sales ticket to be retained by the vendor
11 that the purchases are made for and on behalf of such museum or
12 other entity and set out the name of such museum or other entity.
13 Any person who wrongfully or erroneously certifies that the
14 purchases are for any such museum or other entity or who otherwise
15 violates the provisions of this paragraph shall be deemed guilty of
16 a misdemeanor and, upon conviction thereof, shall be fined an amount
17 equal to double the amount of sales tax involved or incarcerated for
18 not more than sixty (60) days, or by both such fine and
19 incarceration;

20 26. Sales of tickets for admission by any museum accredited by
21 the American Association of Museums. In order to be eligible for
22 the exemption provided by this paragraph, an amount equivalent to
23 the amount of the tax which would otherwise be required to be
24 collected pursuant to the provisions of Section 1350 et seq. of this

1 title shall be separately stated on the admission ticket and shall
2 be collected and used for the sole purpose of servicing or aiding in
3 the servicing of debt incurred by the museum to effect the
4 construction, enlarging or renovation of any facility to be used for
5 entertainment, edification or cultural cultivation to which entry is
6 gained with a paid admission ticket;

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

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

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

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

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

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

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

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

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

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

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

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

19 37. The purchase or lease of machinery and equipment for use at
20 a fixed location in this state, which is used exclusively in the
21 manufacturing, processing, compounding, or producing of any space
22 facility, space propulsion system or space vehicle, satellite, or
23 station of any kind possessing space flight capacity. Provided, the
24 exemption provided for in this paragraph shall not be allowed unless

1 the purchaser or lessee signs an affidavit stating that the item or
2 items to be exempted are for the exclusive use designated herein.
3 Any person furnishing a false affidavit to the vendor for the
4 purpose of evading payment of any tax imposed by Section 1354 of
5 this title shall be subject to the penalties provided by law. As
6 used in this paragraph, "machinery and equipment" means "section 38
7 property" as defined in Sections 48(a)(1)(A) and (B)(i) of the
8 Internal Revenue Code of 1986, which is used as an integral part of
9 the manufacturing, processing, compounding, or producing of items of
10 tangible personal property. Such term includes parts and
11 accessories only to the extent that the exemption thereof is
12 consistent with the provisions of this paragraph;

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

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

24

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

3 41. Sales of tangible personal property or services for use on
4 campus or school construction projects for the benefit of
5 institutions of The Oklahoma State System of Higher Education,
6 private institutions of higher education accredited by the Oklahoma
7 State Regents for Higher Education or any public school or school
8 district when such projects are financed by or through the use of
9 nonprofit entities which are exempt from taxation pursuant to the
10 provisions of the Internal Revenue Code, 26 U.S.C., Section
11 501(c) (3);

12 42. Sales of tangible personal property or services by an
13 organization which is exempt from taxation pursuant to the
14 provisions of the Internal Revenue Code, 26 U.S.C., Section
15 501(c) (3), in the course of conducting a national championship
16 sports event, but only if all or a portion of the payment in
17 exchange therefor would qualify as the receipt of a qualified
18 sponsorship payment described in Internal Revenue Code, 26 U.S.C.,
19 Section 513(i). Sales exempted pursuant to this paragraph shall be
20 exempt from all Oklahoma sales, use, excise and gross receipts
21 taxes;

22 43. Sales of tangible personal property or services to or by an
23 organization which:
24

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

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

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

21 46. Sales of tangible personal property or services to or by an
22 organization which is exempt from taxation pursuant to the
23 provisions of the Internal Revenue Code, 26 U.S.C., Section
24

1 501(c) (3) and is operating the Oklahoma City National Memorial and
2 Museum, an affiliate of the National Park System;

3 47. Sales of tangible personal property or services to
4 organizations which are exempt from federal taxation pursuant to the
5 provisions of Section 501(c) (3) of the Internal Revenue Code, 26
6 U.S.C., Section 501(c) (3), the memberships of which are limited to
7 honorably discharged veterans, and which furnish financial support
8 to area veterans' organizations to be used for the purpose of
9 constructing a memorial or museum;

10 48. Sales of tangible personal property or services on or after
11 January 1, 2003, to an organization which is exempt from taxation
12 pursuant to the provisions of the Internal Revenue Code, 26 U.S.C.,
13 Section 501(c) (3) that is expending monies received from a private
14 foundation grant in conjunction with expenditures of local sales tax
15 revenue to construct a local public library;

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

21 50. Effective July 1, 2005, sales of tangible personal property
22 or services to the Career Technology Student Organizations under the
23 direction and supervision of the Oklahoma Department of Career and
24 Technology Education;

1 51. Sales of tangible personal property to a public trust
2 having either a single city, town or county or multiple cities,
3 towns or counties or combination thereof as beneficiary or
4 beneficiaries or a nonprofit organization which is exempt from
5 taxation pursuant to the provisions of the Internal Revenue Code, 26
6 U.S.C., Section 501(c)(3) for the purpose of constructing
7 improvements to or expanding a hospital or nursing home owned and
8 operated by any such public trust or nonprofit entity prior to the
9 effective date of this act in counties with a population of less
10 than one hundred thousand (100,000) persons, according to the most
11 recent Federal Decennial Census. As used in this paragraph,
12 "constructing improvements to or expanding" shall not mean any
13 expense for routine maintenance or general repairs and shall require
14 a project cost of at least One Hundred Thousand Dollars
15 (\$100,000.00). For purposes of this paragraph, sales made to a
16 contractor or subcontractor that enters into a contractual
17 relationship with a public trust or nonprofit entity as described by
18 this paragraph shall be considered sales made to the public trust or
19 nonprofit entity. The exemption authorized by this paragraph shall
20 be administered in the form of a refund from the sales tax revenues
21 apportioned pursuant to Section 1353 of this title and the vendor
22 shall be required to collect the sales tax otherwise applicable to
23 the transaction. The purchaser may apply for a refund of the sales
24 tax paid in the manner prescribed by this paragraph. Within thirty

1 (30) days after the end of each fiscal year, any purchaser that is
2 entitled to make application for a refund based upon the exempt
3 treatment authorized by this paragraph may file an application for
4 refund of the sales taxes paid during such preceding fiscal year.
5 The Tax Commission shall prescribe a form for purposes of making the
6 application for refund. The Tax Commission shall determine whether
7 or not the total amount of sales tax exemptions claimed by all
8 purchasers is equal to or less than Six Hundred Fifty Thousand
9 Dollars (\$650,000.00). If such claims are less than or equal to
10 that amount, the Tax Commission shall make refunds to the purchasers
11 in the full amount of the documented and verified sales tax amounts.
12 If such claims by all purchasers are in excess of Six Hundred Fifty
13 Thousand Dollars (\$650,000.00), the Tax Commission shall determine
14 the amount of each purchaser's claim, the total amount of all claims
15 by all purchasers, and the percentage each purchaser's claim amount
16 bears to the total. The resulting percentage determined for each
17 purchaser shall be multiplied by Six Hundred Fifty Thousand Dollars
18 (\$650,000.00) to determine the amount of refundable sales tax to be
19 paid to each purchaser. The pro rata refund amount shall be the
20 only method to recover sales taxes paid during the preceding fiscal
21 year and no balance of any sales taxes paid on a pro rata basis
22 shall be the subject of any subsequent refund claim pursuant to this
23 paragraph;

24

1 52. Effective July 1, 2006, sales of tangible personal property
2 or services to any organization which assists, trains, educates, and
3 provides housing for physically and mentally handicapped persons and
4 which is exempt from taxation pursuant to the provisions of the
5 Internal Revenue Code, 26 U.S.C., Section 501(c)(3) and that
6 receives at least eighty-five percent (85%) of its annual budget
7 from state or federal funds. In order to receive the benefit of the
8 exemption authorized by this paragraph, the taxpayer shall be
9 required to make payment of the applicable sales tax at the time of
10 sale to the vendor in the manner otherwise required by law.
11 Notwithstanding any other provision of the Oklahoma Uniform Tax
12 Procedure Code to the contrary, the taxpayer shall be authorized to
13 file a claim for refund of sales taxes paid that qualify for the
14 exemption authorized by this paragraph for a period of one (1) year
15 after the date of the sale transaction. The taxpayer shall be
16 required to provide documentation as may be prescribed by the
17 Oklahoma Tax Commission in support of the refund claim. The total
18 amount of sales tax qualifying for exempt treatment pursuant to this
19 paragraph shall not exceed One Hundred Seventy-five Thousand Dollars
20 (\$175,000.00) each fiscal year. Claims for refund shall be
21 processed in the order in which such claims are received by the
22 Oklahoma Tax Commission. If a claim otherwise timely filed exceeds
23 the total amount of refunds payable for a fiscal year, such claim
24 shall be barred;

1 53. The first Two Thousand Dollars (\$2,000.00) each year of
2 sales of tangible personal property or services to, by, or for the
3 benefit of a qualified neighborhood watch organization that is
4 endorsed or supported by or working directly with a law enforcement
5 agency with jurisdiction in the area in which the neighborhood watch
6 organization is located. As used in this paragraph, "qualified
7 neighborhood watch organization" means an organization that is a
8 not-for-profit corporation under the laws of the State of Oklahoma
9 that was created to help prevent criminal activity in an area
10 through community involvement and interaction with local law
11 enforcement and which is one of the first two thousand organizations
12 which makes application to the Oklahoma Tax Commission for the
13 exemption after the effective date of this act;

14 54. Sales of tangible personal property to a nonprofit
15 organization, exempt from taxation pursuant to the provisions of the
16 Internal Revenue Code, 26 U.S.C., Section 501(c)(3), organized
17 primarily for the purpose of providing services to homeless persons
18 during the day and located in a metropolitan area with a population
19 in excess of five hundred thousand (500,000) persons according to
20 the latest Federal Decennial Census. The exemption authorized by
21 this paragraph shall be applicable to sales of tangible personal
22 property to a qualified entity occurring on or after January 1,
23 2005;

24

1 55. Sales of tangible personal property or services by an
2 organization which is exempt from taxation pursuant to the
3 provisions of the Internal Revenue Code, 26 U.S.C., Section
4 501(c)(3) made during auction events the principal purpose of which
5 is to provide funding for the preservation of wetlands and habitat
6 for wild ducks;

7 56. Sales of tangible personal property or services by an
8 organization which is exempt from taxation pursuant to the
9 provisions of the Internal Revenue Code, 26 U.S.C., Section
10 501(c)(3) made during auction events the principal purpose of which
11 is to provide funding for the preservation and conservation of wild
12 turkeys;

13 57. Sales of tangible personal property or services to an
14 organization which:

15 a. is exempt from taxation pursuant to the provisions of
16 the Internal Revenue Code, 26 U.S.C., Section
17 501(c)(3), and

18 b. is part of a network of community-based, autonomous
19 member organizations that meets the following
20 criteria:

21 (1) serves people with workplace disadvantages and
22 disabilities by providing job training and
23 employment services, as well as job placement
24 opportunities and post-employment support,

- 1 (2) has locations in the United States and at least
- 2 twenty other countries,
- 3 (3) collects donated clothing and household goods to
- 4 sell in retail stores and provides contract labor
- 5 services to business and government, and
- 6 (4) provides documentation to the Oklahoma Tax
- 7 Commission that over seventy-five percent (75%)
- 8 of its revenues are channeled into employment,
- 9 job training and placement programs and other
- 10 critical community services;

11 58. Sales of tickets made on or after September 21, 2005, and
12 complimentary or free tickets for admission issued on or after
13 September 21, 2005, which have a value equivalent to the charge that
14 would have otherwise been made, for admission to a professional
15 athletic event in which a team in the National Basketball
16 Association is a participant, which is held in a facility owned or
17 operated by a municipality, a county or a public trust of which a
18 municipality or a county is the sole beneficiary, and sales of
19 tickets made on or after the effective date of this act, and
20 complimentary or free tickets for admission issued on or after the
21 effective date of this act, which have a value equivalent to the
22 charge that would have otherwise been made, for admission to a
23 professional athletic event in which a team in the National Hockey
24 League is a participant, which is held in a facility owned or

1 operated by a municipality, a county or a public trust of which a
2 municipality or a county is the sole beneficiary;

3 59. Sales of tickets for admission and complimentary or free
4 tickets for admission which have a value equivalent to the charge
5 that would have otherwise been made to a professional sporting event
6 involving ice hockey, baseball, basketball, football or arena
7 football, or soccer. As used in this paragraph, "professional
8 sporting event" means an organized athletic competition between
9 teams that are members of an organized league or association with
10 centralized management, other than a national league or national
11 association, that imposes requirements for participation in the
12 league upon the teams, the individual athletes or both, and which
13 uses a salary structure to compensate the athletes;

14 60. Sales of tickets for admission to an annual event sponsored
15 by an educational and charitable organization of women which is
16 exempt from taxation pursuant to the provisions of the Internal
17 Revenue Code, 26 U.S.C., Section 501(c)(3) and has as its mission
18 promoting volunteerism, developing the potential of women and
19 improving the community through the effective action and leadership
20 of trained volunteers;

21 61. Sales of tangible personal property or services to an
22 organization, which is exempt from taxation pursuant to the
23 provisions of the Internal Revenue Code, 26 U.S.C., Section
24 501(c)(3), and which is itself a member of an organization which is

1 exempt from taxation pursuant to the provisions of the Internal
2 Revenue Code, 26 U.S.C., Section 501(c)(3), if the membership
3 organization is primarily engaged in advancing the purposes of its
4 member organizations through fundraising, public awareness or other
5 efforts for the benefit of its member organizations, and if the
6 member organization is primarily engaged either in providing
7 educational services and programs concerning health-related diseases
8 and conditions to individuals suffering from such health-related
9 diseases and conditions or their caregivers and family members or
10 support to such individuals, or in health-related research as to
11 such diseases and conditions, or both. In order to qualify for the
12 exemption authorized by this paragraph, the member nonprofit
13 organization shall be required to provide proof to the Oklahoma Tax
14 Commission of its membership status in the membership organization;

15 62. Sales of tangible personal property or services to or by an
16 organization which is part of a national volunteer women's service
17 organization dedicated to promoting patriotism, preserving American
18 history and securing better education for children and which has at
19 least 168,000 members in 3,000 chapters across the United States;

20 63. Sales of tangible personal property or services to or by a
21 YWCA or YMCA organization which is part of a national nonprofit
22 community service organization working to meet the health and social
23 service needs of its members across the United States;

24

1 64. Sales of tangible personal property or services to or by a
2 veteran's organization which is exempt from taxation pursuant to the
3 provisions of the Internal Revenue Code, 26 U.S.C., Section 501
4 (c)(19) and which is known as the Veterans of Foreign Wars of the
5 United States, Oklahoma Chapters;

6 65. Sales of boxes of food by a church or by an organization,
7 which is exempt from taxation pursuant to the provisions of the
8 Internal Revenue Code, 26 U.S.C., Section 501(c)(3). To qualify
9 under the provisions of this paragraph, the organization must be
10 organized for the primary purpose of feeding needy individuals or to
11 encourage volunteer service by requiring such service in order to
12 purchase food. These boxes shall only contain edible staple food
13 items;

14 66. Sales of tangible personal property or services to any
15 person with whom a church has duly entered into a construction
16 contract, necessary for carrying out such contract or to any
17 subcontractor to such a construction contract;

18 67. Sales of tangible personal property or services used
19 exclusively for charitable or educational purposes, to or by an
20 organization which:

- 21 a. is exempt from taxation pursuant to the provisions of
22 the Internal Revenue Code, 26 U.S.C., Section
23 501(c)(3),

1 b. has filed a Not-for-Profit Certificate of
2 Incorporation in this state, and

3 c. is organized for the purpose of:

4 (1) providing training and education to
5 developmentally disabled individuals,

6 (2) educating the community about the rights,
7 abilities and strengths of developmentally
8 disabled individuals, and

9 (3) promoting unity among developmentally disabled
10 individuals in their community and geographic
11 area;

12 68. Sales of tangible personal property or services to any
13 organization which is a shelter for abused, neglected, or abandoned
14 children and which is exempt from taxation pursuant to the
15 provisions of the Internal Revenue Code, 26 U.S.C., Section
16 501(c)(3); provided, until July 1, 2008, such exemption shall apply
17 only to eligible shelters for children from birth to age twelve (12)
18 and after July 1, 2008, such exemption shall apply to eligible
19 shelters for children from birth to age eighteen (18);

20 69. Sales of tangible personal property or services to a child
21 care center which is licensed pursuant to the Oklahoma Child Care
22 Facilities Licensing Act and which:

1 a. possesses a 3-star rating from the Department of Human
2 Services Reaching for the Stars Program or a national
3 accreditation, and

4 b. allows on site universal pre-kindergarten education to
5 be provided to four-year-old children through a
6 contractual agreement with any public school or school
7 district.

8 For the purposes of this paragraph, sales made to any person,
9 firm, agency or entity that has entered previously into a
10 contractual relationship with a child care center for construction
11 and improvement of buildings and other structures owned by the child
12 care center and operated for educational purposes shall be
13 considered sales made to a child care center. Any such person,
14 firm, agency or entity making purchases on behalf of a child care
15 center shall certify in writing, on the copy of the invoice or sales
16 ticket the nature of the purchase. Any such person, or person
17 acting on behalf of a firm, agency or entity making purchases on
18 behalf of a child care center in violation of this paragraph shall
19 be guilty of a misdemeanor and upon conviction thereof shall be
20 fined an amount equal to double the amount of sales tax involved or
21 incarcerated for not more than sixty (60) days or both; and

22 70. a. Sales of tangible personal property to a service
23 organization of mothers who have children who are
24 serving or who have served in the military, which

1 service organization is exempt from taxation pursuant
2 to the provisions of the Internal Revenue Code, 26
3 U.S.C., Section 501(c)(19) and which is known as the
4 Blue Star Mothers of America, Inc. The exemption
5 provided by this paragraph shall only apply to the
6 purchase of tangible personal property actually sent
7 to United States military personnel overseas who are
8 serving in a combat zone and not to any other tangible
9 personal property purchased by the organization.
10 Provided, this exemption shall not apply to any sales
11 tax levied by a city, town, county, or any other
12 jurisdiction in this state.

13 b. The exemption authorized by this paragraph shall be
14 administered in the form of a refund from the sales
15 tax revenues apportioned pursuant to Section 1353 of
16 this title, and the vendor shall be required to
17 collect the sales tax otherwise applicable to the
18 transaction. The purchaser may apply for a refund of
19 the state sales tax paid in the manner prescribed by
20 this paragraph. Within sixty (60) days after the end
21 of each calendar quarter, any purchaser that is
22 entitled to make application for a refund based upon
23 the exempt treatment authorized by this paragraph may
24 file an application for refund of the state sales

1 taxes paid during such preceding calendar quarter.

2 The Tax Commission shall prescribe a form for purposes
3 of making the application for refund.

4 c. A purchaser who applies for a refund pursuant to this
5 paragraph shall certify that the items were actually
6 sent to military personnel overseas in a combat zone.
7 Any purchaser that applies for a refund for the
8 purchase of items that are not authorized for
9 exemption under this paragraph shall be subject to a
10 penalty in the amount of Five Hundred Dollars
11 (\$500.00).

12 SECTION 15. AMENDATORY Section 3, Chapter 503, O.S.L.
13 2002 (68 O.S. Supp. 2007, Section 2358.6), is amended to read as
14 follows:

15 Section 2358.6 A. For income tax returns filed after September
16 10, 2001, by corporations and fiduciaries, federal taxable income
17 shall be increased by eighty percent (80%) of any amount of bonus
18 depreciation received under the federal Job Creation and Worker
19 Assistance Act of 2002, under Section 168(k) or Section 1400L of the
20 Internal Revenue Code of 1986, as amended, for assets placed in
21 service after September 10, 2001, and before September 11, 2004.

22 B. For income tax returns filed after December 31, 2007, by
23 corporations and fiduciaries, federal taxable income shall be
24 increased by eighty percent (80%) of any amount of bonus

1 depreciation received under the federal Economic Stimulus Act of
2 2008, under Section 168(k) or Section 1400L of the Internal Revenue
3 Code of 1986, as amended, for assets placed in service after
4 December 31, 2007, and before January 1, 2009.

5 C. For a corporation with a unitary business having activity
6 both inside and outside the state, the increase shall be apportioned
7 to Oklahoma in the same manner as income is apportioned to the state
8 under Section 2358 and Section 2362 of ~~Title 68 of the Oklahoma~~
9 ~~Statutes~~ this title.

10 ~~C.~~ D. The amount of bonus depreciation added to federal taxable
11 income by this section shall be subtracted in a later taxable year
12 as herein provided. Twenty-five percent (25%) of the total amount
13 of bonus depreciation added back may be subtracted in the first
14 taxable year following the year of the addition and twenty-five
15 percent (25%) may be subtracted in each of the next three following
16 taxable years.

17 ~~D.~~ E. A corporation or fiduciary filing a return for which
18 federal taxable income is not increased as provided in subsection A
19 of this section prior to October 1, 2002, shall file an amended
20 return reflecting such increase not later than June 30, 2003. The
21 Oklahoma Tax Commission shall not assess penalties or interest with
22 respect to the failure to reflect such increase if a correct amended
23 return is filed as required herein. A corporation or fiduciary
24 filing a return for which federal taxable income is not increased as

1 provided for in subsection B of this section prior to October 1,
2 2008, shall file an amended return reflecting such increase not
3 later than June 30, 2009. The Oklahoma Tax Commission shall not
4 assess penalties or interest with respect to the failure to reflect
5 such increase if a correct amended return is filed as required
6 herein.

7 SECTION 16. AMENDATORY Section 4, Chapter 42, 2nd
8 Extraordinary Session, O.S.L. 2006, as amended by Section 2, Chapter
9 346, O.S.L. 2007 (68 O.S. Supp. 2007, Section 2355.1A), is amended
10 to read as follows:

11 Section 2355.1A A. The provisions of this section shall be
12 applicable with respect to the implementation of the decreases in
13 the top marginal rate of individual income tax otherwise authorized
14 pursuant to the provisions of subparagraph (h) of paragraphs 1 and 2
15 of subsection B of Section 2355 of this title which shall be
16 contingent upon a determination by the State Board of Equalization
17 made by a comparison of the revenue computations described by this
18 section which shall be conducted until the income tax rate of five
19 and twenty-five hundredths percent (5.25%) is effective.

20 B. In addition to any other duties prescribed by law, at the
21 meeting required by paragraph 1 of Section 23 of Article X of the
22 Oklahoma Constitution to be held in December ~~2007~~ 2008, and for any
23 subsequent December meeting of the State Board of Equalization if
24 the top marginal income tax rate prescribed by subparagraph (h) of

1 paragraphs 1 and 2 of subsection B of Section 2355 of this title has
2 not become effective, the State Board of Equalization shall
3 determine:

4 1. The amount of revenue growth in the General Revenue Fund of
5 the State Treasury by comparing the fiscal year ~~2009~~ General Revenue
6 Fund estimate for the fiscal year beginning on the next ensuing July
7 1 date to the revised General Revenue Fund estimate for the then
8 current fiscal year ~~2008~~; and

9 2. The amount by which the income tax revenue for the tax year
10 ~~2009~~ which will begin on the second January 1 date following such
11 December meeting is estimated to be reduced by the increase in the
12 standard deduction provided in paragraph 2 of subsection E of
13 Section 2358 of this title, plus an amount equal to four percent
14 (4%) of the revised General Revenue Fund estimate for the then
15 current fiscal year ~~2008~~ in order for a top marginal income tax rate
16 of five and twenty-five hundredths percent (5.25%) to be effective.

17 If the amount determined pursuant to the provisions of paragraph
18 1 of this subsection is equal to or greater than the amount
19 determined pursuant to the provisions of paragraph 2 of this
20 subsection, the Board shall make a preliminary finding that the
21 Board anticipates that a finding will be made at the February ~~2008~~
22 meeting immediately subsequent to the December meeting that
23 applicable revenue growth in the state will authorize the
24 implementation of the provisions of subparagraph (h) of paragraphs 1

1 and 2 of subsection B of Section 2355 of this title beginning with
2 ~~calendar year 2009~~ on the second January 1 following such December
3 meeting.

4 If the amount determined pursuant to the provisions of paragraph
5 1 of this subsection is less than the amount determined pursuant to
6 the provisions of paragraph 2 of this subsection, the Board shall
7 make a preliminary finding that the Board anticipates that a finding
8 will be made at the February ~~2008~~ meeting immediately subsequent to
9 the December meeting that applicable revenue growth in the state
10 will not authorize the implementation of the provisions of
11 subparagraph (h) of paragraphs 1 and 2 of subsection B of Section
12 2355 of this title beginning with ~~calendar year 2009~~ on the second
13 January 1 following such December meeting.

14 ~~B.~~ C. In addition to any other duties prescribed by law, at the
15 meeting required by paragraph 3 of Section 23 of Article X of the
16 Oklahoma Constitution to be held in February ~~2008~~ 2009, and for any
17 subsequent February meeting of the State Board of Equalization if
18 the top marginal income tax rate prescribed by subparagraph (h) of
19 paragraphs 1 and 2 of subsection B of Section 2355 of this title has
20 not become effective the State Board of Equalization shall
21 determine:

22 1. The amount of revenue growth in the General Revenue Fund of
23 the State Treasury by comparing the fiscal year ~~2009~~ General Revenue
24 Fund estimate for the fiscal year beginning on the next ensuing July

1 1 date to the revised General Revenue Fund estimate for the then
2 current fiscal year ~~2008~~; and

3 2. The amount by which the income tax revenue for the tax year
4 ~~2009~~ which will begin on the January 1 date immediately following
5 such February meeting is estimated to be reduced by the increase in
6 the standard deduction provided in paragraph 2 of subsection E of
7 Section 2358 of this title plus an amount equal to four percent (4%)
8 of the revised General Revenue Fund estimate for the then current
9 fiscal year ~~2008~~ in order for a top marginal income tax rate of five
10 and twenty-five hundredths percent (5.25%) to be effective.

11 If the amount determined pursuant to the provisions of paragraph
12 1 of this subsection is equal to or greater than the amount
13 determined pursuant to the provisions of paragraph 2 of this
14 subsection, the Board shall make a finding that applicable revenue
15 growth in the state will authorize the implementation of the
16 provisions of subparagraph (h) of paragraphs 1 and 2 of subsection B
17 of Section 2355 of this title beginning ~~with calendar year 2009~~ on
18 the January 1 date immediately following such February meeting.

19 If the amount determined pursuant to the provisions of paragraph
20 1 of this subsection is less than the amount determined pursuant to
21 the provisions of paragraph 2 of this subsection, the Board shall
22 make a finding that applicable revenue growth in the state does not
23 authorize the implementation of the provisions of subparagraph (h)
24 of paragraphs 1 and 2 of subsection B of Section 2355 of this title

1 beginning with ~~calendar year 2009~~ the January 1 date immediately
2 following such February meeting.

3 ~~C.~~ D. If the Board makes a finding that applicable revenue
4 growth in the state does not authorize the implementation of the
5 provisions of subparagraph (h) of paragraphs 1 and 2 of subsection B
6 of Section 2355 of this title beginning with calendar year ~~2009~~ 2010
7 pursuant to the provisions of subsection ~~B~~ C of this section, the
8 procedures prescribed by subsection A ~~and~~, subsection B, and
9 subsection C of this section shall be repeated by the State Board of
10 Equalization for each successive two-year comparison. Once the
11 income tax rate otherwise authorized pursuant to subparagraph (h) of
12 paragraphs 1 and 2 of subsection B of Section 2355 of this title has
13 been implemented as a result of the analysis of the General Revenue
14 Fund estimates together with the fiscal impact of the standard
15 deduction as authorized pursuant to paragraph 2 of subsection E of
16 Section 2358 of this title, such income tax rate shall be in effect
17 for ~~all subsequent~~ the tax years as prescribed by subparagraph (h)
18 of paragraphs 1 and 2 of subsection B of Section 2355 of this title.

19 ~~D.~~ ~~For purposes of this section, the estimate of the revenue~~
20 ~~for appropriations authority for fiscal year 2009 shall be made~~
21 ~~assuming a top individual income tax rate of five and twenty-five~~
22 ~~hundredths percent (5.25%) as provided in subparagraph (h) of~~
23 ~~paragraphs 1 and 2 of subsection B of Section 2355 of this title.~~

24

1 SECTION 17. AMENDATORY 68 O.S. 2001, Section 2358, as
2 last amended by Section 37 of Enrolled Senate Bill No. 1830 of the
3 2nd Session of the 51st Oklahoma Legislature, is amended to read as
4 follows:

5 Section 2358. For all tax years beginning after December 31,
6 1981, taxable income and adjusted gross income shall be adjusted to
7 arrive at Oklahoma taxable income and Oklahoma adjusted gross income
8 as required by this section.

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

12 1. There shall be added interest income on obligations of any
13 state or political subdivision thereto which is not otherwise
14 exempted pursuant to other laws of this state, to the extent that
15 such interest is not included in taxable income and adjusted gross
16 income.

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

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

23 a. For carryovers and carrybacks to taxable years
24 beginning before January 1, 1981, the amount of any

1 net operating loss deduction allowed to a taxpayer for
2 federal income tax purposes shall be reduced to an
3 amount which is the same portion thereof as the loss
4 from sources within this state, as determined pursuant
5 to this section and Section 2362 of this title, for
6 the taxable year in which such loss is sustained is of
7 the total loss for such year;

8 b. For carryovers and carrybacks to taxable years
9 beginning after December 31, 1980, the amount of any
10 net operating loss deduction allowed for the taxable
11 year shall be an amount equal to the aggregate of the
12 Oklahoma net operating loss carryovers and carrybacks
13 to such year. Oklahoma net operating losses shall be
14 separately determined by reference to Section 172 of
15 the Internal Revenue Code, 26 U.S.C., Section 172, as
16 modified by the Oklahoma Income Tax Act, Section 2351
17 et seq. of this title, and shall be allowed without
18 regard to the existence of a federal net operating
19 loss. For tax years beginning after December 31,
20 2000, the years to which such losses may be carried
21 shall be determined solely by reference to Section 172
22 of the Internal Revenue Code, 26 U.S.C., Section 172,
23 with the exception that the terms "net operating loss"
24

1 and "taxable income" shall be replaced with "Oklahoma
2 net operating loss" and "Oklahoma taxable income".

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

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

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

18 (1) where such property has acquired a nonunitary
19 business or commercial situs apart from the
20 domicile of the taxpayer such income shall be
21 allocated in accordance with such business or
22 commercial situs; interest income from
23 investments held to generate working capital for
24 a unitary business enterprise shall be included

1 in apportionable income; a resident trust or
2 resident estate shall be treated as having a
3 separate commercial or business situs insofar as
4 undistributed income is concerned, but shall not
5 be treated as having a separate commercial or
6 business situs insofar as distributed income is
7 concerned,

8 (2) for taxable years beginning after December 31,
9 2003, capital or ordinary gains or losses from
10 the sale of an ownership interest in a publicly
11 traded partnership, as defined by Section 7704(b)
12 of the Internal Revenue Code of 1986, as amended,
13 shall be allocated to this state in the ratio of
14 the original cost of such partnership's tangible
15 property in this state to the original cost of
16 such partnership's tangible property everywhere,
17 as determined at the time of the sale; if more
18 than fifty percent (50%) of the value of the
19 partnership's assets consists of intangible
20 assets, capital or ordinary gains or losses from
21 the sale of an ownership interest in the
22 partnership shall be allocated to this state in
23 accordance with the sales factor of the
24 partnership for its first full tax period

1 immediately preceding its tax period during which
2 the ownership interest in the partnership was
3 sold; the provisions of this division shall only
4 apply if the capital or ordinary gains or losses
5 from the sale of an ownership interest in a
6 partnership do not constitute qualifying gain
7 receiving capital treatment as defined in
8 subparagraph a of paragraph 2 of subsection F of
9 this section,

10 (3) income from such property which is required to be
11 allocated pursuant to the provisions of paragraph
12 5 of this subsection shall be allocated as herein
13 provided;

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

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

22 (1) sales having a situs without this state, shipped
23 directly to a point from without the state to a
24

1 purchaser within the state, commonly known as
2 interstate sales,

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

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

14 the Oklahoma net income shall, at the option of the
15 taxpayer, be that portion of the total net income of
16 the taxpayer for federal income tax purposes derived
17 from the manufacture and/or processing and sales
18 everywhere as determined by the ratio of the sales
19 defined in this section made to the purchaser within
20 the state to the total sales everywhere. The term
21 "public warehouse" as used in this subparagraph means
22 a licensed public warehouse, the principal business of
23 which is warehousing merchandise for the public;

24

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

6 (1) except as otherwise provided by division (2) of
7 this subparagraph, taxable income of an insurance
8 company for a taxable year shall be apportioned
9 to this state by multiplying such income by a
10 fraction, the numerator of which is the direct
11 premiums written for insurance on property or
12 risks in this state, and the denominator of which
13 is the direct premiums written for insurance on
14 property or risks everywhere. For purposes of
15 this subsection, the term "direct premiums
16 written" means the total amount of direct
17 premiums written, assessments and annuity
18 considerations as reported for the taxable year
19 on the annual statement filed by the company with
20 the Insurance Commissioner in the form approved
21 by the National Association of Insurance
22 Commissioners, or such other form as may be
23 prescribed in lieu thereof,
24

1 (2) if the principal source of premiums written by an
2 insurance company consists of premiums for
3 reinsurance accepted by it, the taxable income of
4 such company shall be apportioned to this state
5 by multiplying such income by a fraction, the
6 numerator of which is the sum of (a) direct
7 premiums written for insurance on property or
8 risks in this state, plus (b) premiums written
9 for reinsurance accepted in respect of property
10 or risks in this state, and the denominator of
11 which is the sum of (c) direct premiums written
12 for insurance on property or risks everywhere,
13 plus (d) premiums written for reinsurance
14 accepted in respect of property or risks
15 everywhere. For purposes of this paragraph,
16 premiums written for reinsurance accepted in
17 respect of property or risks in this state,
18 whether or not otherwise determinable, may at the
19 election of the company be determined on the
20 basis of the proportion which premiums written
21 for insurance accepted from companies
22 commercially domiciled in Oklahoma bears to
23 premiums written for reinsurance accepted from
24 all sources, or alternatively in the proportion

1 which the sum of the direct premiums written for
2 insurance on property or risks in this state by
3 each ceding company from which reinsurance is
4 accepted bears to the sum of the total direct
5 premiums written by each such ceding company for
6 the taxable year.

7 5. The net income or loss remaining after the separate
8 allocation in paragraph 4 of this subsection, being that which is
9 derived from a unitary business enterprise, shall be apportioned to
10 this state on the basis of the arithmetical average of three factors
11 consisting of property, payroll and sales or gross revenue
12 enumerated as subparagraphs a, b and c of this paragraph. Net
13 income or loss as used in this paragraph includes that derived from
14 patent or copyright royalties, purchase discounts, and interest on
15 accounts receivable relating to or arising from a business activity,
16 the income from which is apportioned pursuant to this subsection,
17 including the sale or other disposition of such property and any
18 other property used in the unitary enterprise. Deductions used in
19 computing such net income or loss shall not include taxes based on
20 or measured by income. Provided, for corporations whose property
21 for purposes of the tax imposed by Section 2355 of this title has an
22 initial investment cost equaling or exceeding Two Hundred Million
23 Dollars (\$200,000,000.00) and such investment is made on or after
24 July 1, 1997, or for corporations which expand their property or

1 facilities in this state and such expansion has an investment cost
2 equaling or exceeding Two Hundred Million Dollars (\$200,000,000.00)
3 over a period not to exceed three (3) years, and such expansion is
4 commenced on or after January 1, 2000, the three factors shall be
5 apportioned with property and payroll, each comprising twenty-five
6 percent (25%) of the apportionment factor and sales comprising fifty
7 percent (50%) of the apportionment factor. The apportionment
8 factors shall be computed as follows:

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

16 (1) Property, the income from which is separately
17 allocated in paragraph 4 of this subsection,
18 shall not be included in determining this
19 fraction. The numerator of the fraction shall
20 include a portion of the investment in
21 transportation and other equipment having no
22 fixed situs, such as rolling stock, buses, trucks
23 and trailers, including machinery and equipment
24 carried thereon, airplanes, salespersons'

1 automobiles and other similar equipment, in the
2 proportion that miles traveled in Oklahoma by
3 such equipment bears to total miles traveled,

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

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

18 b. The payroll factor is a fraction, the numerator of
19 which is the total compensation for services rendered
20 in the state during the tax period, and the
21 denominator of which is the total compensation for
22 services rendered everywhere during the tax period.
23 "Compensation", as used in this subsection means those
24 paid-for services to the extent related to the unitary

1 business but does not include officers' salaries,
2 wages and other compensation.

3 (1) In the case of a transportation enterprise, the
4 numerator of the fraction shall include a portion
5 of such expenditure in connection with employees
6 operating equipment over a fixed route, such as
7 railroad employees, airline pilots, or bus
8 drivers, in this state only a part of the time,
9 in the proportion that mileage traveled in
10 Oklahoma bears to total mileage traveled by such
11 employees,

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

19 c. The sales factor is a fraction, the numerator of which
20 is the total sales or gross revenue of the taxpayer in
21 this state during the tax period, and the denominator
22 of which is the total sales or gross revenue of the
23 taxpayer everywhere during the tax period. "Sales",
24 as used in this subsection does not include sales or

1 gross revenue which are separately allocated in
2 paragraph 4 of this subsection.

3 (1) Sales of tangible personal property have a situs
4 in this state if the property is delivered or
5 shipped to a purchaser other than the United
6 States government, within this state regardless
7 of the FOB point or other conditions of the sale;
8 or the property is shipped from an office, store,
9 warehouse, factory or other place of storage in
10 this state and (a) the purchaser is the United
11 States government or (b) the taxpayer is not
12 doing business in the state of the destination of
13 the shipment.

14 (2) In the case of a railroad or interurban railway
15 enterprise, the numerator of the fraction shall
16 not be less than the allocation of revenues to
17 this state as shown in its annual report to the
18 Corporation Commission.

19 (3) In the case of an airline, truck or bus
20 enterprise or freight car, tank car, refrigerator
21 car or other railroad equipment enterprise, the
22 numerator of the fraction shall include a portion
23 of revenue from interstate transportation in the
24 proportion that interstate mileage traveled in

1 Oklahoma bears to total interstate mileage
2 traveled.

3 (4) In the case of an oil, gasoline or gas pipeline
4 enterprise, the numerator of the fraction shall
5 be either the total of traffic units of the
6 enterprise within Oklahoma or the revenue
7 allocated to Oklahoma based upon miles moved, at
8 the option of the taxpayer, and the denominator
9 of which shall be the total of traffic units of
10 the enterprise or the revenue of the enterprise
11 everywhere as appropriate to the numerator. A
12 "traffic unit" is hereby defined as the
13 transportation for a distance of one (1) mile of
14 one (1) barrel of oil, one (1) gallon of gasoline
15 or one thousand (1,000) cubic feet of natural or
16 casinghead gas, as the case may be.

17 (5) In the case of a telephone or telegraph or other
18 communication enterprise, the numerator of the
19 fraction shall include that portion of the
20 interstate revenue as is allocated pursuant to
21 the accounting procedures prescribed by the
22 Federal Communications Commission; provided that
23 in respect to each corporation or business entity
24 required by the Federal Communications Commission

1 to keep its books and records in accordance with
2 a uniform system of accounts prescribed by such
3 Commission, the intrastate net income shall be
4 determined separately in the manner provided by
5 such uniform system of accounts and only the
6 interstate income shall be subject to allocation
7 pursuant to the provisions of this subsection.
8 Provided further, that the gross revenue factors
9 shall be those as are determined pursuant to the
10 accounting procedures prescribed by the Federal
11 Communications Commission.

12 In any case where the apportionment of the three factors prescribed
13 in this paragraph attributes to Oklahoma a portion of net income of
14 the enterprise out of all appropriate proportion to the property
15 owned and/or business transacted within this state, because of the
16 fact that one or more of the factors so prescribed are not employed
17 to any appreciable extent in furtherance of the enterprise; or
18 because one or more factors not so prescribed are employed to a
19 considerable extent in furtherance of the enterprise; or because of
20 other reasons, the Tax Commission is empowered to permit, after a
21 showing by taxpayer that an excessive portion of net income has been
22 attributed to Oklahoma, or require, when in its judgment an
23 insufficient portion of net income has been attributed to Oklahoma,
24 the elimination, substitution, or use of additional factors, or

1 reduction or increase in the weight of such prescribed factors.
2 Provided, however, that any such variance from such prescribed
3 factors which has the effect of increasing the portion of net income
4 attributable to Oklahoma must not be inherently arbitrary, and
5 application of the recomputed final apportionment to the net income
6 of the enterprise must attribute to Oklahoma only a reasonable
7 portion thereof.

8 6. For calendar years 1997 and 1998, the owner of a new or
9 expanded agricultural commodity processing facility in this state
10 may exclude from Oklahoma taxable income, or in the case of an
11 individual, the Oklahoma adjusted gross income, fifteen percent
12 (15%) of the investment by the owner in the new or expanded
13 agricultural commodity processing facility. For calendar year 1999,
14 and all subsequent years, the percentage, not to exceed fifteen
15 percent (15%), available to the owner of a new or expanded
16 agricultural commodity processing facility in this state claiming
17 the exemption shall be adjusted annually so that the total estimated
18 reduction in tax liability does not exceed One Million Dollars
19 (\$1,000,000.00) annually. The Tax Commission shall promulgate rules
20 for determining the percentage of the investment which each eligible
21 taxpayer may exclude. The exclusion provided by this paragraph
22 shall be taken in the taxable year when the investment is made. In
23 the event the total reduction in tax liability authorized by this
24 paragraph exceeds One Million Dollars (\$1,000,000.00) in any

1 calendar year, the Tax Commission shall permit any excess over One
2 Million Dollars (\$1,000,000.00) and shall factor such excess into
3 the percentage for subsequent years. Any amount of the exemption
4 permitted to be excluded pursuant to the provisions of this
5 paragraph but not used in any year may be carried forward as an
6 exemption from income pursuant to the provisions of this paragraph
7 for a period not exceeding six (6) years following the year in which
8 the investment was originally made.

9 For purposes of this paragraph:

10 a. "Agricultural commodity processing facility" means
11 building, structures, fixtures and improvements used
12 or operated primarily for the processing or production
13 of marketable products from agricultural commodities.
14 The term shall also mean a dairy operation that
15 requires a depreciable investment of at least Two
16 Hundred Fifty Thousand Dollars (\$250,000.00) and which
17 produces milk from dairy cows. The term does not
18 include a facility that provides only, and nothing
19 more than, storage, cleaning, drying or transportation
20 of agricultural commodities, and

21 b. "Facility" means each part of the facility which is
22 used in a process primarily for:

23 (1) the processing of agricultural commodities,
24 including receiving or storing agricultural

1 commodities, or the production of milk at a dairy
2 operation,

3 (2) transporting the agricultural commodities or
4 product before, during or after the processing,
5 or

6 (3) packaging or otherwise preparing the product for
7 sale or shipment.

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

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

20 8. In taxable years beginning after December 31, 1995, all
21 qualified wages equal to the federal income tax credit set forth in
22 26 U.S.C.A., Section 45A, shall be deducted from taxable income.
23 The deduction allowed pursuant to this paragraph shall only be
24 permitted for the tax years in which the federal tax credit pursuant

1 to 26 U.S.C.A., Section 45A, is allowed. For purposes of this
2 paragraph, "qualified wages" means those wages used to calculate the
3 federal credit pursuant to 26 U.S.C.A., Section 45A.

4 9. In taxable years beginning after December 31, 2005, an
5 employer that is eligible for and utilizes the Safety Pays OSHA
6 Consultation Service provided by the Oklahoma Department of Labor
7 shall receive an exemption from taxable income in the amount of One
8 Thousand Dollars (\$1,000.00) for the tax year that the service is
9 utilized.

10 B. The taxable income of any corporation shall be further
11 adjusted to arrive at Oklahoma taxable income, except those
12 corporations electing treatment as provided in subchapter S of the
13 Internal Revenue Code, 26 U.S.C., Section 1361 et seq., and Section
14 2365 of this title, deductions pursuant to the provisions of the
15 Accelerated Cost Recovery System as defined and allowed in the
16 Economic Recovery Tax Act of 1981, Public Law 97-34, 26 U.S.C.,
17 Section 168, for depreciation of assets placed into service after
18 December 31, 1981, shall not be allowed in calculating Oklahoma
19 taxable income. Such corporations shall be allowed a deduction for
20 depreciation of assets placed into service after December 31, 1981,
21 in accordance with provisions of the Internal Revenue Code, 26
22 U.S.C., Section 1 et seq., in effect immediately prior to the
23 enactment of the Accelerated Cost Recovery System. The Oklahoma tax
24 basis for all such assets placed into service after December 31,

1 1981, calculated in this section shall be retained and utilized for
2 all Oklahoma income tax purposes through the final disposition of
3 such assets.

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

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

17 C. 1. For taxable years beginning after December 31, 1987, the
18 taxable income of any corporation shall be further adjusted to
19 arrive at Oklahoma taxable income for transfers of technology to
20 qualified small businesses located in Oklahoma. Such transferor
21 corporation shall be allowed an exemption from taxable income of an
22 amount equal to the amount of royalty payment received as a result
23 of such transfer; provided, however, such amount shall not exceed
24 ten percent (10%) of the amount of gross proceeds received by such

1 transferor corporation as a result of the technology transfer. Such
2 exemption shall be allowed for a period not to exceed ten (10) years
3 from the date of receipt of the first royalty payment accruing from
4 such transfer. No exemption may be claimed for transfers of
5 technology to qualified small businesses made prior to January 1,
6 1988.

7 2. For purposes of this subsection:

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

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

15 (2) Having at least fifty percent (50%) of its
16 employees and assets located in Oklahoma at the
17 time of the transfer, and

18 (3) Not a subsidiary or affiliate of the transferor
19 corporation;

20 b. "Technology" means a proprietary process, formula,
21 pattern, device or compilation of scientific or
22 technical information which is not in the public
23 domain;

24

1 c. "Transferor corporation" means a corporation which is
2 the exclusive and undisputed owner of the technology
3 at the time the transfer is made; and

4 d. "Gross proceeds" means the total amount of
5 consideration for the transfer of technology, whether
6 the consideration is in money or otherwise.

7 D. 1. For taxable years beginning after December 31, 2005, the
8 taxable income of any corporation, estate or trust, shall be further
9 adjusted for qualifying gains receiving capital treatment. Such
10 corporations, estates or trusts shall be allowed a deduction from
11 Oklahoma taxable income for the amount of qualifying gains receiving
12 capital treatment earned by the corporation, estate or trust during
13 the taxable year and included in the federal taxable income of such
14 corporation, estate or trust.

15 2. As used in this subsection:

16 a. "qualifying gains receiving capital treatment" means
17 the amount of net capital gains, as defined in Section
18 1222(11) of the Internal Revenue Code, included in the
19 federal income tax return of the corporation, estate
20 or trust that result from:

21 (1) the sale of real property or tangible personal
22 property located within Oklahoma that has been
23 directly or indirectly owned by the corporation,
24 estate or trust for a holding period of at least

1 five (5) years prior to the date of the
2 transaction from which such net capital gains
3 arise,

4 (2) the sale of stock or on the sale of an ownership
5 interest in an Oklahoma company, limited
6 liability company, or partnership where such
7 stock or ownership interest has been directly or
8 indirectly owned by the corporation, estate or
9 trust for a holding period of at least three (3)
10 years prior to the date of the transaction from
11 which the net capital gains arise, or

12 (3) the sale of real property, tangible personal
13 property or intangible personal property located
14 within Oklahoma as part of the sale of all or
15 substantially all of the assets of an Oklahoma
16 company, limited liability company, or
17 partnership where such property has been directly
18 or indirectly owned by such entity owned by the
19 owners of such entity, and used in or derived
20 from such entity for a period of at least three
21 (3) years prior to the date of the transaction
22 from which the net capital gains arise,

23 b. "holding period" means an uninterrupted period of
24 time. The holding period shall include any additional

1 period when the property was held by another
2 individual or entity, if such additional period is
3 included in the taxpayer's holding period for the
4 asset pursuant to the Internal Revenue Code,

5 c. "Oklahoma company", "limited liability company", or
6 "partnership" means an entity whose primary
7 headquarters have been located in Oklahoma for at
8 least three (3) uninterrupted years prior to the date
9 of the transaction from which the net capital gains
10 arise,

11 d. "direct" means the taxpayer directly owns the asset,
12 and

13 e. "indirect" means the taxpayer owns an interest in a
14 pass-through entity (or chain of pass-through
15 entities) that sells the asset that gives rise to the
16 qualifying gains receiving capital treatment.

17 (1) With respect to sales of real property or
18 tangible personal property located within
19 Oklahoma, the deduction described in this
20 subsection shall not apply unless the pass-
21 through entity that makes the sale has held the
22 property for not less than five (5) uninterrupted
23 years prior to the date of the transaction that
24 created the capital gain, and each pass-through

1 entity included in the chain of ownership has
2 been a member, partner, or shareholder of the
3 pass-through entity in the tier immediately below
4 it for an uninterrupted period of not less than
5 five (5) years.

6 (2) With respect to sales of stock or ownership
7 interest in or sales of all or substantially all
8 of the assets of an Oklahoma company, limited
9 liability company, or partnership, the deduction
10 described in this subsection shall not apply
11 unless the pass-through entity that makes the
12 sale has held the stock or ownership interest or
13 the assets for not less than three (3)
14 uninterrupted years prior to the date of the
15 transaction that created the capital gain, and
16 each pass-through entity included in the chain of
17 ownership has been a member, partner or
18 shareholder of the pass-through entity in the
19 tier immediately below it for an uninterrupted
20 period of not less than three (3) years.

21 E. The Oklahoma adjusted gross income of any individual
22 taxpayer shall be further adjusted as follows to arrive at Oklahoma
23 taxable income:

- 1 (1) Twenty-five Thousand Dollars (\$25,000.00) if
2 married and filing jointly;
- 3 (2) Twelve Thousand Five Hundred Dollars (\$12,500.00)
4 if married and filing separately;
- 5 (3) Fifteen Thousand Dollars (\$15,000.00) if single;
6 and
- 7 (4) Nineteen Thousand Dollars (\$19,000.00) if a
8 qualifying head of household.

9 Provided, for taxable years beginning after December
10 31, 1999, amounts included in the calculation of
11 federal adjusted gross income pursuant to the
12 conversion of a traditional individual retirement
13 account to a Roth individual retirement account shall
14 be excluded from federal adjusted gross income for
15 purposes of the income thresholds provided in this
16 subparagraph.

- 17 d. For taxable years beginning after December 31, 1990,
18 and beginning before January 1, 1992, there shall be
19 allowed a one-time additional exemption of Four
20 Hundred Dollars (\$400.00) for each taxpayer or spouse
21 who is a member of the National Guard or any reserve
22 unit of the Armed Forces of the United States and who
23 was at any time during such taxable year deployed in
24

1 active service during a time of war or conflict with
2 an enemy of the United States.

3 2. a. For taxable years beginning on or before December 31,
4 2005, in the case of individuals who use the standard
5 deduction in determining taxable income, there shall
6 be added or deducted, as the case may be, the
7 difference necessary to allow a standard deduction in
8 lieu of the standard deduction allowed by the Internal
9 Revenue Code, in an amount equal to the larger of
10 fifteen percent (15%) of the Oklahoma adjusted gross
11 income or One Thousand Dollars (\$1,000.00), but not to
12 exceed Two Thousand Dollars (\$2,000.00), except that
13 in the case of a married individual filing a separate
14 return such deduction shall be the larger of fifteen
15 percent (15%) of such Oklahoma adjusted gross income
16 or Five Hundred Dollars (\$500.00), but not to exceed
17 the maximum amount of One Thousand Dollars
18 (\$1,000.00),

19 b. For taxable years beginning on or after January 1,
20 2006, and before January 1, 2007, in the case of
21 individuals who use the standard deduction in
22 determining taxable income, there shall be added or
23 deducted, as the case may be, the difference necessary
24 to allow a standard deduction in lieu of the standard

1 deduction allowed by the Internal Revenue Code, in an
2 amount equal to:

3 (1) Three Thousand Dollars (\$3,000.00), if the filing
4 status is married filing joint, head of household
5 or qualifying widow; or

6 (2) Two Thousand Dollars (\$2,000.00), if the filing
7 status is single or married filing separate.

8 c. For the taxable year beginning on January 1, 2007, and
9 ending December 31, 2007, in the case of individuals
10 who use the standard deduction in determining taxable
11 income, there shall be added or deducted, as the case
12 may be, the difference necessary to allow a standard
13 deduction in lieu of the standard deduction allowed by
14 the Internal Revenue Code, in an amount equal to:

15 (1) Five Thousand Five Hundred Dollars (\$5,500.00),
16 if the filing status is married filing joint or
17 qualifying widow; or

18 (2) Four Thousand One Hundred Twenty-five Dollars
19 (\$4,125.00) for a head of household; or

20 (3) Two Thousand Seven Hundred Fifty Dollars
21 (\$2,750.00), if the filing status is single or
22 married filing separate.

23 d. For the taxable year beginning on January 1, 2008, and
24 ending December 31, 2008, in the case of individuals

1 who use the standard deduction in determining taxable
2 income, there shall be added or deducted, as the case
3 may be, the difference necessary to allow a standard
4 deduction in lieu of the standard deduction allowed by
5 the Internal Revenue Code, in an amount equal to:

6 (1) Six Thousand Five Hundred Dollars (\$6,500.00), if
7 the filing status is married filing joint or
8 qualifying widow, or

9 (2) Four Thousand Eight Hundred Seventy-five Dollars
10 (\$4,875.00) for a head of household, or

11 (3) Three Thousand Two Hundred Fifty Dollars
12 (\$3,250.00), if the filing status is single or
13 married filing separate.

14 e. For the taxable year beginning on January 1, 2009, and
15 ending December 31, 2009, in the case of individuals
16 who use the standard deduction in determining taxable
17 income, there shall be added or deducted, as the case
18 may be, the difference necessary to allow a standard
19 deduction in lieu of the standard deduction allowed by
20 the Internal Revenue Code, in an amount equal to:

21 (1) Eight Thousand Five Hundred Dollars (\$8,500.00),
22 if the filing status is married filing joint or
23 qualifying widow, or
24

- 1 (2) Six Thousand Three Hundred Seventy-five Dollars
2 (\$6,375.00) for a head of household, or
3 (3) Four Thousand Two Hundred Fifty Dollars
4 (\$4,250.00), if the filing status is single or
5 married filing separate.

6 f. For taxable years beginning on or after January 1,
7 2010, in the case of individuals who use the standard
8 deduction in determining taxable income, there shall
9 be added or deducted, as the case may be, the
10 difference necessary to allow a standard deduction
11 equal to the standard deduction allowed by the
12 Internal Revenue Code of 1986, as amended, based upon
13 the amount and filing status prescribed by such Code
14 for purposes of filing federal individual income tax
15 returns.

16 3. In the case of resident and part-year resident individuals
17 having adjusted gross income from sources both within and without
18 the state, the itemized or standard deductions and personal
19 exemptions shall be reduced to an amount which is the same portion
20 of the total thereof as Oklahoma adjusted gross income is of
21 adjusted gross income. To the extent itemized deductions include
22 allowable moving expense, proration of moving expense shall not be
23 required or permitted but allowable moving expense shall be fully
24 deductible for those taxpayers moving within or into Oklahoma and no

1 part of moving expense shall be deductible for those taxpayers
2 moving without or out of Oklahoma. All other itemized or standard
3 deductions and personal exemptions shall be subject to proration as
4 provided by law.

5 4. A resident individual with a physical disability
6 constituting a substantial handicap to employment may deduct from
7 Oklahoma adjusted gross income such expenditures to modify a motor
8 vehicle, home or workplace as are necessary to compensate for his or
9 her handicap. A veteran certified by the Veterans Administration of
10 the federal government as having a service-connected disability
11 shall be conclusively presumed to be an individual with a physical
12 disability constituting a substantial handicap to employment. The
13 Tax Commission shall promulgate rules containing a list of
14 combinations of common disabilities and modifications which may be
15 presumed to qualify for this deduction. The Tax Commission shall
16 prescribe necessary requirements for verification.

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

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

11 (1) Such individual shall return to the United States
12 if the extension is granted pursuant to
13 subparagraph a of this paragraph, return to the
14 State of Oklahoma if the extension is granted
15 pursuant to subparagraph b of this paragraph or
16 be discharged from such hospital if the extension
17 is granted pursuant to subparagraph c of this
18 paragraph; or

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

22 Provided, that the Tax Commission may, in its discretion, grant any
23 member of the Armed Forces of the United States an extension of time
24 for filing of income tax returns and payment of income tax without

1 incurring liabilities for interest or penalties. Such extension may
2 be granted only when in the judgment of the Tax Commission a good
3 cause exists therefor and may be for a period in excess of six (6)
4 months. A record of every such extension granted, and the reason
5 therefor, shall be kept.

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

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

1 reflected in the taxpayer's Oklahoma taxable income together with
2 exclusion allowed herein shall not exceed the total of One Hundred
3 Dollars (\$100.00) per individual or Two Hundred Dollars (\$200.00)
4 per couple filing a joint return.

5 8. a. An individual taxpayer, whether resident or
6 nonresident, may deduct an amount equal to the federal
7 income taxes paid by the taxpayer during the taxable
8 year.

9 b. Federal taxes as described in subparagraph a of this
10 paragraph shall be deductible by any individual
11 taxpayer, whether resident or nonresident, only to the
12 extent they relate to income subject to taxation
13 pursuant to the provisions of the Oklahoma Income Tax
14 Act. The maximum amount allowable in the preceding
15 paragraph shall be prorated on the ratio of the
16 Oklahoma adjusted gross income to federal adjusted
17 gross income.

18 c. For the purpose of this paragraph, "federal income
19 taxes paid" shall mean federal income taxes, surtaxes
20 imposed on incomes or excess profits taxes, as though
21 the taxpayer was on the accrual basis. In determining
22 the amount of deduction for federal income taxes for
23 tax year 2001, the amount of the deduction shall not
24 be adjusted by the amount of any accelerated ten

1 percent (10%) tax rate bracket credit or advanced
2 refund of the credit received during the tax year
3 provided pursuant to the federal Economic Growth and
4 Tax Relief Reconciliation Act of 2001, P.L. No. 107-
5 16, and the advanced refund of such credit shall not
6 be subject to taxation.

7 d. The provisions of this paragraph shall apply to all
8 taxable years ending after December 31, 1978, and
9 beginning before January 1, 2006.

10 9. Retirement benefits not to exceed Five Thousand Five Hundred
11 Dollars (\$5,500.00) for the 2004 tax year, Seven Thousand Five
12 Hundred Dollars (\$7,500.00) for the 2005 tax year and Ten Thousand
13 Dollars (\$10,000.00) for the 2006 tax year and all subsequent tax
14 years, which are received by an individual from the civil service of
15 the United States, the Oklahoma Public Employees Retirement System,
16 the Teachers' Retirement System of Oklahoma, the Oklahoma Law
17 Enforcement Retirement System, the Oklahoma Firefighters Pension and
18 Retirement System, the Oklahoma Police Pension and Retirement
19 System, the employee retirement systems created by counties pursuant
20 to Section 951 et seq. of Title 19 of the Oklahoma Statutes, the
21 Uniform Retirement System for Justices and Judges, the Oklahoma
22 Wildlife Conservation Department Retirement Fund, the Oklahoma
23 Employment Security Commission Retirement Plan, or the employee
24 retirement systems created by municipalities pursuant to Section 48-

1 101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt
2 from taxable income.

3 10. In taxable years beginning after December 31, 1984, Social
4 Security benefits received by an individual shall be exempt from
5 taxable income, to the extent such benefits are included in the
6 federal adjusted gross income pursuant to the provisions of Section
7 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

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

22 12. In taxable years beginning after December 31, 1995,
23 contributions made to and interest received from a medical savings
24

1 account established pursuant to Sections 2621 through 2623 of Title
2 63 of the Oklahoma Statutes shall be exempt from taxable income.

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

15 14. a. In taxable years beginning after December 31, 2002,
16 nonrecurring adoption expenses paid by a resident
17 individual taxpayer in connection with:
18 (1) the adoption of a minor, or
19 (2) a proposed adoption of a minor which did not
20 result in a decreed adoption,
21 may be deducted from the Oklahoma adjusted gross
22 income.

23
24

- 1 b. The deductions for adoptions and proposed adoptions
2 authorized by this paragraph shall not exceed Twenty
3 Thousand Dollars (\$20,000.00) per calendar year.
- 4 c. The Tax Commission shall promulgate rules to implement
5 the provisions of this paragraph which shall contain a
6 specific list of nonrecurring adoption expenses which
7 may be presumed to qualify for the deduction. The Tax
8 Commission shall prescribe necessary requirements for
9 verification.
- 10 d. "Nonrecurring adoption expenses" means adoption fees,
11 court costs, medical expenses, attorney fees and
12 expenses which are directly related to the legal
13 process of adoption of a child including, but not
14 limited to, costs relating to the adoption study,
15 health and psychological examinations, transportation
16 and reasonable costs of lodging and food for the child
17 or adoptive parents which are incurred to complete the
18 adoption process and are not reimbursed by other
19 sources. The term "nonrecurring adoption expenses"
20 shall not include attorney fees incurred for the
21 purpose of litigating a contested adoption, from and
22 after the point of the initiation of the contest,
23 costs associated with physical remodeling, renovation
24 and alteration of the adoptive parents' home or

1 property, except for a special needs child as
2 authorized by the court.

3 15. a. In taxable years beginning before January 1, 2005,
4 retirement benefits not to exceed the amounts
5 specified in this paragraph, which are received by an
6 individual sixty-five (65) years of age or older and
7 whose Oklahoma adjusted gross income is Twenty-five
8 Thousand Dollars (\$25,000.00) or less if the filing
9 status is single, head of household, or married filing
10 separate, or Fifty Thousand Dollars (\$50,000.00) or
11 less if the filing status is married filing joint or
12 qualifying widow, shall be exempt from taxable income.
13 In taxable years beginning after December 31, 2004,
14 retirement benefits not to exceed the amounts
15 specified in this paragraph, which are received by an
16 individual whose Oklahoma adjusted gross income is
17 less than the qualifying amount specified in this
18 paragraph, shall be exempt from taxable income.

19 b. For purposes of this paragraph, the qualifying amount
20 shall be as follows:

21 (1) in taxable years beginning after December 31,
22 2004, and prior to January 1, 2007, the
23 qualifying amount shall be Thirty-seven Thousand
24 Five Hundred Dollars (\$37,500.00) or less if the

1 filing status is single, head of household, or
2 married filing separate, or Seventy-Five Thousand
3 Dollars (\$75,000.00) or less if the filing status
4 is married filing jointly or qualifying widow,

5 (2) in the taxable year beginning January 1, 2007,
6 the qualifying amount shall be Fifty Thousand
7 Dollars (\$50,000.00) or less if the filing status
8 is single, head of household, or married filing
9 separate, or One Hundred Thousand Dollars
10 (\$100,000.00) or less if the filing status is
11 married filing jointly or qualifying widow,

12 (3) in the taxable year beginning January 1, 2008,
13 the qualifying amount shall be Sixty-two Thousand
14 Five Hundred Dollars (\$62,500.00) or less if the
15 filing status is single, head of household, or
16 married filing separate, or One Hundred Twenty-
17 five Thousand Dollars (\$125,000.00) or less if
18 the filing status is married filing jointly or
19 qualifying widow,

20 (4) in the taxable year beginning January 1, 2009,
21 the qualifying amount shall be One Hundred
22 Thousand Dollars (\$100,000.00) or less if the
23 filing status is single, head of household, or
24 married filing separate, or Two Hundred Thousand

1 Dollars (\$200,000.00) or less if the filing
2 status is married filing jointly or qualifying
3 widow, and

4 (5) in the taxable year beginning January 1, 2010,
5 and subsequent taxable years, there shall be no
6 limitation upon the qualifying amount.

7 c. For purposes of this paragraph, "retirement benefits"
8 means the total distributions or withdrawals from the
9 following:

10 (1) an employee pension benefit plan which satisfies
11 the requirements of Section 401 of the Internal
12 Revenue Code, 26 U.S.C., Section 401,

13 (2) an eligible deferred compensation plan that
14 satisfies the requirements of Section 457 of the
15 Internal Revenue Code, 26 U.S.C., Section 457,

16 (3) an individual retirement account, annuity or
17 trust or simplified employee pension that
18 satisfies the requirements of Section 408 of the
19 Internal Revenue Code, 26 U.S.C., Section 408,

20 (4) an employee annuity subject to the provisions of
21 Section 403(a) or (b) of the Internal Revenue
22 Code, 26 U.S.C., Section 403(a) or (b),

1 (5) United States Retirement Bonds which satisfy the
2 requirements of Section 86 of the Internal
3 Revenue Code, 26 U.S.C., Section 86, or

4 (6) lump-sum distributions from a retirement plan
5 which satisfies the requirements of Section
6 402(e) of the Internal Revenue Code, 26 U.S.C.,
7 Section 402(e).

8 d. The amount of the exemption provided by this paragraph
9 shall be limited to Five Thousand Five Hundred Dollars
10 (\$5,500.00) for the 2004 tax year, Seven Thousand Five
11 Hundred Dollars (\$7,500.00) for the 2005 tax year and
12 Ten Thousand Dollars (\$10,000.00) for the tax year
13 2006 and for all subsequent tax years. Any individual
14 who claims the exemption provided for in paragraph 9
15 of this subsection shall not be permitted to claim a
16 combined total exemption pursuant to this paragraph
17 and paragraph 9 of this subsection in an amount
18 exceeding Five Thousand Five Hundred Dollars
19 (\$5,500.00) for the 2004 tax year, Seven Thousand Five
20 Hundred Dollars (\$7,500.00) for the 2005 tax year and
21 Ten Thousand Dollars (\$10,000.00) for the 2006 tax
22 year and all subsequent tax years.

23 16. In taxable years beginning after December 31, 1999, for an
24 individual engaged in production agriculture who has filed a

1 Schedule F form with the taxpayer's federal income tax return for
2 such taxable year, there shall be excluded from taxable income any
3 amount which was included as federal taxable income or federal
4 adjusted gross income and which consists of the discharge of an
5 obligation by a creditor of the taxpayer incurred to finance the
6 production of agricultural products.

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

12 18. a. In taxable years beginning after December 31, 2001,
13 and before January 1, 2005, there shall be allowed a
14 deduction in the amount of contributions to accounts
15 established pursuant to the Oklahoma College Savings
16 Plan Act. The deduction shall equal the amount of
17 contributions to accounts, but in no event shall the
18 deduction for each contributor exceed Two Thousand
19 Five Hundred Dollars (\$2,500.00) each taxable year for
20 each account.

21 b. In taxable years beginning after December 31, 2004,
22 each taxpayer shall be allowed a deduction for
23 contributions to accounts established pursuant to the
24 Oklahoma College Savings Plan Act. The maximum annual

1 deduction shall equal the amount of contributions to
2 all such accounts plus any contributions to such
3 accounts by the taxpayer for prior taxable years after
4 December 31, 2004, which were not deducted, but in no
5 event shall the deduction for each tax year exceed Ten
6 Thousand Dollars (\$10,000.00) for each individual
7 taxpayer or Twenty Thousand Dollars (\$20,000.00) for
8 taxpayers filing a joint return. Any amount of a
9 contribution that is not deducted by the taxpayer in
10 the year for which the contribution is made may be
11 carried forward as a deduction from income for the
12 succeeding five (5) years. For taxable years
13 beginning after December 31, 2005, deductions may be
14 taken for contributions and rollovers made during a
15 taxable year and up to April 15 of the succeeding
16 year, or the due date of a taxpayer's state income tax
17 return, excluding extensions, whichever is later.
18 Provided, a deduction for the same contribution may
19 not be taken for two (2) different taxable years.

20 c. In taxable years beginning after December 31, 2006,
21 deductions for contributions made pursuant to
22 subparagraph b of this paragraph shall be limited as
23 follows:
24

1 (1) for a taxpayer who qualified for the five-year
2 carryforward election and who takes a rollover or
3 nonqualified withdrawal during that period, the
4 tax deduction otherwise available pursuant to
5 subparagraph b of this paragraph shall be reduced
6 by the amount which is equal to the rollover or
7 nonqualified withdrawal, and

8 (2) for a taxpayer who elects to take a rollover or
9 nonqualified withdrawal within the same tax year
10 in which a contribution was made to the
11 taxpayer's account, the tax deduction otherwise
12 available pursuant to subparagraph b of this
13 paragraph shall be reduced by the amount of the
14 contribution which is equal to the rollover or
15 nonqualified withdrawal.

16 d. If a taxpayer elects to take a rollover on a
17 contribution for which a deduction has been taken
18 pursuant to subparagraph b of this paragraph within
19 one year of the date of contribution, the amount of
20 such rollover shall be included in the adjusted gross
21 income of the taxpayer in the taxable year of the
22 rollover.

23 e. If a taxpayer makes a nonqualified withdrawal of
24 contributions for which a deduction was taken pursuant

1 to subparagraph b of this paragraph, such nonqualified
2 withdrawal and any earnings thereon shall be included
3 in the adjusted gross income of the taxpayer in the
4 taxable year of the nonqualified withdrawal.

5 f. As used in this paragraph:

6 (1) "nonqualified withdrawal" means a withdrawal from
7 an Oklahoma College Savings Plan account other
8 than one of the following:

9 (a) a qualified withdrawal,

10 (b) a withdrawal made as a result of the death
11 or disability of the designated beneficiary
12 of an account,

13 (c) a withdrawal that is made on the account of
14 a scholarship or the allowance or payment
15 described in Section 135(d)(1)(B) or (C) or
16 by the Internal Revenue Code, received by
17 the designated beneficiary to the extent the
18 amount of the refund does not exceed the
19 amount of the scholarship, allowance, or
20 payment, or

21 (d) a rollover or change of designated
22 beneficiary as permitted by subsection F of
23 Section 3970.7 of Title 70 of Oklahoma
24 Statutes, and

1 (2) "rollover" means the transfer of funds from the
2 Oklahoma College Savings Plan to any other plan
3 under Section 529 of the Internal Revenue Code.

4 19. For taxable years beginning after December 31, 2005,
5 retirement benefits received by an individual from any component of
6 the Armed Forces of the United States in an amount not to exceed the
7 greater of seventy-five percent (75%) of such benefits or Ten
8 Thousand Dollars (\$10,000.00) shall be exempt from taxable income
9 but in no case less than the amount of the exemption provided by
10 paragraph 15 of this subsection.

11 20. For taxable years beginning after December 31, 2006,
12 retirement benefits received by federal civil service retirees,
13 including survivor annuities, paid in lieu of Social Security
14 benefits shall be exempt from taxable income to the extent such
15 benefits are included in the federal adjusted gross income pursuant
16 to the provisions of Section 86 of the Internal Revenue Code, 26
17 U.S.C., Section 86, according to the following schedule:

- 18 a. in the taxable year beginning January 1, 2007, twenty
19 percent (20%) of such benefits shall be exempt,
20 b. in the taxable year beginning January 1, 2008, forty
21 percent (40%) of such benefits shall be exempt,
22 c. in the taxable year beginning January 1, 2009, sixty
23 percent (60%) of such benefits shall be exempt,
24

- d. in the taxable year beginning January 1, 2010, eighty percent (80%) of such benefits shall be exempt, and
- e. in the taxable year beginning January 1, 2011, and subsequent taxable years, one hundred percent (100%) of such benefits shall be exempt.

21. a. For taxable years beginning after December 31, 2007, a resident individual may deduct up to Ten Thousand Dollars (\$10,000.00) from Oklahoma adjusted gross income if the individual, or the dependent of the individual, while living, donates one or more human organs of the individual to another human being for human organ transplantation. As used in this paragraph, "human organ" means all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow. A deduction that is claimed under this paragraph may be claimed in the taxable year in which the human organ transplantation occurs.

b. An individual may claim this deduction only once, and the deduction may be claimed only for unreimbursed expenses that are incurred by the individual and related to the organ donation of the individual.

c. The Oklahoma Tax Commission shall promulgate rules to implement the provisions of this paragraph which shall contain a specific list of expenses which may be

1 presumed to qualify for the deduction. The Tax
2 Commission shall prescribe necessary requirements for
3 verification.

4 F. 1. For taxable years beginning after December 31, 2004, a
5 deduction from the Oklahoma adjusted gross income of any individual
6 taxpayer shall be allowed for qualifying gains receiving capital
7 treatment that are included in the federal adjusted gross income of
8 such individual taxpayer during the taxable year.

9 2. As used in this subsection:

10 a. "qualifying gains receiving capital treatment" means
11 the amount of net capital gains, as defined in Section
12 1222(11) of the Internal Revenue Code, included in an
13 individual taxpayer's federal income tax return that
14 result from:

15 (1) the sale of real property or tangible personal
16 property located within Oklahoma that has been
17 directly or indirectly owned by the individual
18 taxpayer for a holding period of at least five
19 (5) years prior to the date of the transaction
20 from which such net capital gains arise,

21 (2) the sale of stock or the sale of a direct or
22 indirect ownership interest in an Oklahoma
23 company, limited liability company, or
24 partnership where such stock or ownership

1 interest has been directly or indirectly owned by
2 the individual taxpayer for a holding period of
3 at least two (2) years prior to the date of the
4 transaction from which the net capital gains
5 arise, or

6 (3) the sale of real property, tangible personal
7 property or intangible personal property located
8 within Oklahoma as part of the sale of all or
9 substantially all of the assets of an Oklahoma
10 company, limited liability company, or
11 partnership or an Oklahoma proprietorship
12 business enterprise where such property has been
13 directly or indirectly owned by such entity or
14 business enterprise or owned by the owners of
15 such entity or business enterprise for a period
16 of at least two (2) years prior to the date of
17 the transaction from which the net capital gains
18 arise,

19 b. "holding period" means an uninterrupted period of
20 time. The holding period shall include any additional
21 period when the property was held by another
22 individual or entity, if such additional period is
23 included in the taxpayer's holding period for the
24 asset pursuant to the Internal Revenue Code,

1 c. "Oklahoma company," "limited liability company," or
2 "partnership" means an entity whose primary
3 headquarters have been located in Oklahoma for at
4 least three (3) uninterrupted years prior to the date
5 of the transaction from which the net capital gains
6 arise,

7 d. "direct" means the individual taxpayer directly owns
8 the asset,

9 e. "indirect" means the individual taxpayer owns an
10 interest in a pass-through entity (or chain of pass-
11 through entities) that sells the asset that gives rise
12 to the qualifying gains receiving capital treatment.

13 (1) With respect to sales of real property or
14 tangible personal property located within
15 Oklahoma, the deduction described in this
16 subsection shall not apply unless the pass-
17 through entity that makes the sale has held the
18 property for not less than five (5) uninterrupted
19 years prior to the date of the transaction that
20 created the capital gain, and each pass-through
21 entity included in the chain of ownership has
22 been a member, partner, or shareholder of the
23 pass-through entity in the tier immediately below
24

1 it for an uninterrupted period of not less than
2 five (5) years.

3 (2) With respect to sales of stock or ownership
4 interest in or sales of all or substantially all
5 of the assets of an Oklahoma company, limited
6 liability company, partnership or Oklahoma
7 proprietorship business enterprise, the deduction
8 described in this subsection shall not apply
9 unless the pass-through entity that makes the
10 sale has held the stock or ownership interest for
11 not less than two (2) uninterrupted years prior
12 to the date of the transaction that created the
13 capital gain, and each pass-through entity
14 included in the chain of ownership has been a
15 member, partner or shareholder of the pass-
16 through entity in the tier immediately below it
17 for an uninterrupted period of not less than two
18 (2) years. For purposes of this division,
19 uninterrupted ownership prior to the effective
20 date of this act shall be included in the
21 determination of the required holding period
22 prescribed by this division, and

23 f. "Oklahoma proprietorship business enterprise" means a
24 business enterprise whose income and expenses have

1 been reported on Schedule C or F of an individual
2 taxpayer's federal income tax return, or any similar
3 successor schedule published by the Internal Revenue
4 Service and whose primary headquarters have been
5 located in Oklahoma for at least three (3)
6 uninterrupted years prior to the date of the
7 transaction from which the net capital gains arise.

8 G. 1. For purposes of computing its Oklahoma taxable income
9 under this section, a taxpayer shall add back otherwise deductible
10 rents and interest expenses paid to a captive real estate investment
11 trust. As used in this subsection:

12 a. the term "real estate investment trust" (REIT) shall
13 have the meaning ascribed to such term in Section 856
14 of the Internal Revenue Code of 1986, as amended,

15 b. the term "captive real estate investment trust" shall
16 mean a real estate investment trust the shares or
17 beneficial interests of which are not regularly traded
18 on an established securities market and more than
19 fifty percent (50%) of the voting power or value of
20 the beneficial interests or shares of which are owned
21 or controlled, directly or indirectly, or
22 constructively, by a single entity that is:

- 1 (1) treated as an association taxable as a
2 corporation under the Internal Revenue Code of
3 1986, as amended, and
4 (2) not exempt from federal income tax pursuant to
5 the provisions of Section 501(a) of the Internal
6 Revenue Code of 1986, as amended.

7 The term shall not include a real estate investment
8 trust that is intended to be regularly traded on an
9 established securities market, and that satisfies the
10 requirements of Section 856(a)(5) and (6) of the U.S.
11 Internal Revenue Code by reason of Section 856(h)(2)
12 of the Internal Revenue Code,

13 c. the term "association taxable as a
14 corporation" shall not include the following
15 entities:

- 16 (1) any real estate investment trust as defined in
17 subparagraph b of this paragraph other than a
18 "captive real estate investment trust", or
19 (2) any qualified real estate investment trust
20 subsidiary under Section 856(i) of the Internal
21 Revenue Code of 1986, as amended, other than a
22 qualified REIT subsidiary of a "captive real
23 estate investment trust", or

1 (3) any Listed Australian Property Trust (meaning an
2 Australian unit trust registered as a "Managed
3 Investment Scheme" under the Australian
4 Corporations Act in which the principal class of
5 units is listed on a recognized stock exchange in
6 Australia and is regularly traded on an
7 established securities market), or an entity
8 organized as a trust, provided that a Listed
9 Australian Property Trust owns or controls,
10 directly or indirectly, seventy-five percent
11 (75%) or more of the voting power or value of the
12 beneficial interests or shares of such trust, or

13 (4) any Qualified Foreign Entity, meaning a
14 corporation, trust, association or partnership
15 organized outside the laws of the United States
16 and which satisfies the following criteria:

17 (a) at least seventy-five percent (75%) of the
18 entity's total asset value at the close of
19 its taxable year is represented by real
20 estate assets (as defined at Section
21 856(c) (5) (B) of the Internal Revenue Code of
22 1986, as amended, thereby including shares
23 or certificates of beneficial interest in
24 any real estate investment trust), cash and

1 cash equivalents, and U.S. Government
2 securities,

3 (b) the entity receives a dividend-paid
4 deduction comparable to Section 561 of the
5 Internal Revenue Code of 1986, as amended,
6 or is exempt from entity level tax,

7 (c) the entity is required to distribute at
8 least eighty-five percent (85%) of its
9 taxable income (as computed in the
10 jurisdiction in which it is organized) to
11 the holders of its shares or certificates of
12 beneficial interest on an annual basis,

13 (d) not more than ten percent (10%) of the
14 voting power or value in such entity is held
15 directly or indirectly or constructively by
16 a single entity or individual, or the shares
17 or beneficial interests of such entity are
18 regularly traded on an established
19 securities market, and

20 (e) the entity is organized in a country which
21 has a tax treaty with the United States.

22 2. For purposes of this subsection, the constructive ownership
23 rules of Section 318(a) of the Internal Revenue Code of 1986, as
24 amended, as modified by Section 856(d)(5) of the Internal Revenue

1 Code of 1986, as amended, shall apply in determining the ownership
2 of stock, assets, or net profits of any person.

3 SECTION 18. Sections 1, 2, 3 and 5 of this act shall become
4 effective July 1, 2008.

5 SECTION 19. Section 17 of this act shall become effective
6 January 1, 2008."

7 Passed the House of Representatives the 22nd day of April, 2008.

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10 _____
11 Presiding Officer of the House of
Representatives

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12 Passed the Senate the ____ day of _____, 2008.

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16 Presiding Officer of the Senate

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