

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2757

By: Cox

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7 COMMITTEE SUBSTITUTE

8 An Act relating to homestead and exemptions; amending
9 Sections 2 and 3, Chapter 509, O.S.L. 2004, as
10 amended by Sections 1 and 2, Chapter 438, O.S.L. 2005
11 (31 O.S. Supp. 2007, Sections 11 and 12), which
12 relate to the Family Wealth Preservation Trust Act;
13 providing for certain individual as trustee; defining
14 term; modifying aggregate fair market value
15 limitation; and providing an effective date.

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

17 SECTION 1. AMENDATORY Section 2, Chapter 509, O.S.L.
18 2004, as amended by Section 1, Chapter 438, O.S.L. 2005 (31 O.S.
19 Supp. 2007, Section 11), is amended to read as follows:

20 Section 11. As used in the Family Wealth Preservation Trust
21 Act:

22 1. "Grantor" means an individual, whether or not a resident of
23 this state, establishing or creating a preservation trust;

24 2. "Oklahoma assets" includes:

- 1 a. a stock, bond, debenture, membership interest,
2 partnership interest, or other equity or debt interest
3 issued by an Oklahoma-based company,
- 4 b. a bond or other obligation issued by this state or an
5 Oklahoma governmental agency,
- 6 c. a bond or other obligation issued by a county of this
7 state, by a municipal government located in this
8 state, by a school district located in this state or
9 by any public trust for the benefit of either this
10 state or one or more political subdivisions of this
11 state,
- 12 d. an account in an Oklahoma-based bank. As used in this
13 subparagraph, "account" means a demand, time, savings
14 or passbook type of account or a certificate of
15 deposit type of account,
- 16 e. real or tangible personal property, or any interest
17 therein, having a situs in this state, which shall
18 include, but not be limited to:
- 19 (1) mineral interests, or
20 (2) promissory notes secured primarily by real or
21 tangible personal property or both,
- 22 f. any security backed exclusively by promissory notes,
23 if at least a majority in value of such promissory
24

1 notes are secured by real or tangible personal
2 property having a situs in this state or both, and
3 g. mutual funds, as defined pursuant to The Investment
4 Company Act of 1940, 15 U.S.C., Section 80a-1 et seq.
5 and The Securities Act of 1933, 15 U.S.C., Section 77a
6 et seq., and common trust funds, as defined pursuant
7 to Section 1010 of Title 6 of the Oklahoma Statutes,
8 to the extent the assets within such funds meet one or
9 more of the requirements listed in subparagraphs a
10 through f of this paragraph;

11 3. a. "Oklahoma-based bank" means a bank, savings
12 association or credit union which both:

13 (1) takes deposits insured by the Federal Deposit
14 Insurance Corporation or the National Credit
15 Union Administration, and

16 (2) has a place of business in Oklahoma, which shall
17 be a physical location, and

18 b. "Oklahoma-based trust company" means a trust company
19 chartered under the laws of this state or nationally
20 chartered and having a place of business in Oklahoma,
21 which shall be a physical location;

22 4. "Oklahoma-based company" means a corporation, limited
23 liability company, limited partnership, limited liability
24 partnership or other legal entity formed or qualified to do business

1 in this state and having its principal place of business in this
2 state, which principal place of business shall be a physical
3 location;

4 5. "Preservation trust" means a trust:

5 a. established by a grantor under Oklahoma law,

6 b. having at all times:

7 (1) as a trustee or cotrustee an Oklahoma-based bank
8 that maintains a trust department or an Oklahoma-
9 based trust company, or

10 (2) as a trustee, an individual if a majority in
11 value of the assets of the trust consists of
12 qualified property used in a family farm,

13 c. having as beneficiaries only qualified beneficiaries
14 or a qualified beneficiary,

15 d. having a majority in value of its assets comprised of
16 Oklahoma assets, except that if any asset which
17 qualifies, or is intended to qualify, as an Oklahoma
18 asset ceases or fails to qualify as an Oklahoma asset,
19 the trustee shall have a reasonable period of time
20 following discovery thereof to convert such
21 nonqualifying asset into an Oklahoma asset, and

22 e. reciting in its terms that the income generated from
23 the corpus of the trust is subject to the income tax
24 laws of this state; ~~and~~

1 6. "Qualified beneficiary" or "qualified beneficiaries" means:

2 a. the lineal ancestors and lineal descendants of the
3 grantor or the grantor's spouse, including adopted
4 lineal descendants if they were under the age of
5 eighteen (18) at the time of the adoption,

6 b. the spouse of the grantor,

7 c. a nonprofit organization qualified under the
8 provisions of the Internal Revenue Code of 1986, 26
9 U.S.C., Section 501(c)(3), or

10 d. a trust settled for the sole benefit of one or more
11 qualified beneficiaries; and

12 7. "Qualified property used in a family farm" means:

13 a. real property:

14 (1) having a situs in this state,

15 (2) located outside the boundaries of a municipality,

16 (3) each parcel of which is used primarily for
17 agricultural purposes,

18 (4) limited to a total of two thousand (2,000) acres
19 or less which need not be contiguous, and

20 (5) used by the grantor or one or more qualified
21 beneficiaries for agricultural purposes, and

22 b. tangible personal property if:

23 (1) it is used primarily for agricultural purposes,
24 and

1 (2) used on, or in conjunction with, the real property
2 described in subparagraph a of this paragraph.

3 For purposes of this paragraph, real property that constitutes
4 qualified property used in a family farm shall not cease to be
5 qualified if the real property is annexed by a municipality after it
6 is conveyed to a preservation trust, and the term "agricultural
7 purposes" shall have the same meaning as paragraph 2 of Section
8 500.3 of Title 68 of the Oklahoma Statutes.

9 SECTION 2. AMENDATORY Section 3, Chapter 509, O.S.L.
10 2004, as amended by Section 2, Chapter 438, O.S.L. 2005 (31 O.S.
11 Supp. 2007, Section 12), is amended to read as follows:

12 Section 12. Notwithstanding Section 3 of this title and Section
13 299.15 of Title 60 of the Oklahoma Statutes, the corpus and income
14 of a preservation trust shall be exempt from attachment or execution
15 and every other species of forced sale and no judgment, decree, or
16 execution can be a lien on the trust for the payment of debts of a
17 grantor, except a child support judgment, except for any additional
18 property contributed to the preservation trust by the grantor having
19 an aggregate fair market value, determined as of the date of each
20 contribution, minus liabilities to which the property is subject, in
21 excess of ~~One Million Dollars (\$1,000,000.00)~~ Two Million Dollars
22 (\$2,000,000.00). Any incremental growth derived from income or an
23 increase in value of the corpus of a preservation trust shall also
24 be considered protected by this section. Transfer of an asset to a

1 preservation trust does not affect any mortgage, security interest
2 or lien to which that asset is subject.

3 SECTION 3. This act shall become effective November 1, 2008.

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