

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1989

By: Morrissette

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5
6 AS INTRODUCED

7 An Act relating to corporate taxation; creating the
8 Corporate Citizenship and Economic Prosperity Act;
9 defining terms; requiring certain corporations to
10 file; requiring certain information be contained in
11 annual filings; allowing certain alternate filing
12 option; requiring amended statement; requiring
13 statement be made public; providing for
14 administration; providing legislative findings;
15 defining terms; requiring filing of annual
16 expenditures report; requiring report contain certain
17 information; requiring filing of annual reports
18 containing certain information; restricting subsidy
19 eligibility; establishing certain recipient
20 corporation requirements; providing for recapture if
21 requirements are not satisfied; establishing right of
22 enforcement; subjecting records to Oklahoma Open
23 Records Act; allowing for certain collective
24 bargaining agreements; stating severability; defining
terms; requiring filing of certain reports; providing
for computation of net business income; allowing
combined return; allowing for certain apportionment
of shares election; establishing location of certain
sales; defining terms; allowing for certain
deduction; providing for codification; and providing
an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4301 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Corporate
5 Citizenship and Economic Prosperity Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 4302 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 A. As used in this act, "corporation" means any entity subject
10 to the tax imposed by law or by subchapter C of the Internal Revenue
11 Code of 1986, as amended, except that personal service corporations,
12 as defined in Section 269A of the Internal Revenue Code of 1986, as
13 amended, shall be exempt from this section.

14 B. As used in this act, "corporation" includes, but is not
15 limited to, any state or national bank, bank and trust company,
16 building and loan association, credit union, insurance company,
17 national banking association, production credit association, savings
18 and loan association, trust company, or any other corporation whose
19 principal business is in direct competition with national and state
20 banks.

21 C. As used in this act, "doing business in this state" means
22 owning or renting real or tangible personal property physically
23 located in this state; having employees, agents, or representatives
24 in this state; making sales of tangible personal property to

1 purchasers that take possession of such property in this state;
2 providing services to customers located in this state; earning
3 income from intangible property that has a business situs in this
4 state; engaging in regular and systematic solicitation of sales in
5 this state; being a general partner in a partnership engaged in any
6 of the preceding activities in this state; or being a member of a
7 limited liability company engaged in any of the preceding activities
8 in this state.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 4303 of Title 68, unless there
11 is created a duplication in numbering, reads as follows:

12 The following corporations shall file with the Secretary of
13 State the statement described by Section 4 of this act:

14 1. All publicly traded corporations doing business in this
15 state; and

16 2. Any other corporation doing business in this state if such
17 corporation employs fifty or more full-time employees in this state
18 as of January 1 preceding the date a statement is required to be
19 filed under this section, or if such corporation had sales to
20 customers located in this state in excess of Ten Million Dollars
21 (\$10,000,000.00), in the tax year immediately preceding the year for
22 which a statement is required to be filed under this section.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4304 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 The statement required by Section 3 of this act shall be filed
5 annually in an electronic format specified by the Secretary of State
6 no more than thirty (30) days following the filing of the tax return
7 required by law or, in the case of a corporation not required to
8 file such a tax return, within ninety (90) days of the end of such
9 corporation's tax year for federal tax purposes. The statement
10 shall contain the following information:

11 1. The name of the corporation and the street address of its
12 principal executive office;

13 2. If different from paragraph 1 of this section, the parent
14 corporation, and the street address of its principal executive
15 office;

16 3. The corporation's three-digit North American Industry
17 Classification System code number;

18 4. A unique code number, assigned by the Secretary of State, to
19 identify the corporation, which shall not be the corporation's
20 Federal Employee Identification Number or any other identifier the
21 mandatory disclosure of which is prohibited by federal law, and
22 which will remain constant from year to year;

23 5. The following information reported on the corporation's tax
24 return filed as required by law, or in the case of a corporation

1 included in a consolidated tax return, reported on the consolidated
2 tax return filed as required by law, or in the case of a corporation
3 not required by law to file a tax return, the information that would
4 be required to be reported on the tax return were the corporation
5 required to file such a return:

- 6 a. total receipts of the corporation or consolidated
7 group,
- 8 b. taxable income of the corporation or the consolidated
9 group prior to net operating loss deductions or
10 apportionment,
- 11 c. property, payroll and sales apportionment factors of
12 the corporation or consolidated group,
- 13 d. calculated overall apportionment factor for the
14 corporation or consolidated group,
- 15 e. total business income apportioned to the state,
- 16 f. net operating loss deduction, if any, of the
17 corporation or the consolidated group apportioned to
18 the state,
- 19 g. total nonbusiness income and nonbusiness income
20 allocated to this state,
- 21 h. total taxable income,
- 22 i. total tax before credits,
- 23 j. alternative minimum tax, if applicable,
- 24 k. tax credits claimed, individually enumerated,

- 1 l. tax due,
- 2 m. tax paid, and
- 3 n. amount of tax due paid under protest, if applicable;
- 4 and

5 6. a. total deductions for management services fees and for
6 royalty, interest, license fee, and similar payments
7 made for the use of intangible property to any entity
8 that is not included in the consolidated income tax
9 return, if any, that includes the corporation,

10 b. the sales factor that would be calculated for this
11 state if the corporation or consolidated group were
12 required to treat as sales in this state sales of
13 tangible personal property to the federal government
14 and sales of tangible personal property shipped or
15 delivered to a customer in a state in which the
16 selling corporation is neither subject to a state
17 corporate income tax or state franchise tax measured
18 by net income nor could be subjected to such a tax
19 were the state to impose it,

20 c. a description of any nonbusiness income reported on
21 the return and the identification of the state(s) to
22 which such income was reported,

23 d. a listing of all corporations included in the
24 consolidated tax return that includes the corporation,

1 if such a return is filed, and their state
2 identification numbers assigned under the provisions
3 of this section,

4 e. full-time-equivalent employment of the corporation in
5 the state on the last day of the tax year for which
6 the return is being filed and for the three (3)
7 previous tax years,

8 f. in the case of a publicly traded corporation, profits
9 before tax reported on the Securities and Exchange
10 Commission Form 10-K for the corporation or the
11 federal consolidated group of which the corporation is
12 a member for the corporate fiscal year that contains
13 the last day of the tax year for which the return is
14 filed, and

15 g. the property and payroll factors for this state
16 calculated as required by the Uniform Division of
17 Income for Tax Purposes Act as embodied in Article IV
18 of the Multistate Tax Compact and Multistate Tax
19 Commission regulations applying thereto.

20 SECTION 5. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 4305 of Title 68, unless there
22 is created a duplication in numbering, reads as follows:

23 In lieu of the statement described in Section 4 of this act, a
24 corporation doing business in this state but not required by law to

1 file a tax return may elect to file a statement with the Secretary
2 of State containing the following information:

3 1. The information specified in paragraphs 1 through 4,
4 inclusive, of Section 4 of this act;

5 2. An explanation of why the corporation is not required to
6 file a corporate income tax return in this state, which explanation
7 may take the form of checking one or more possible explanations
8 drafted by the Secretary of State; and

9 3. Identification of which of the following ranges the
10 corporation's total gross receipts from sales to purchasers in this
11 state fell into, in the tax year for which this statement is filed:

12 a. less than Ten Million Dollars (\$10,000,000.00),

13 b. Ten Million Dollars (\$10,000,000.00) to Fifty Million
14 Dollars (\$50,000,000.00),

15 c. more than Fifty Million Dollars (\$50,000,000.00) to
16 One Hundred Million Dollars (\$100,000,000.00),

17 d. more than One Hundred Million Dollars
18 (\$100,000,000.00) to Two Hundred Fifty Million Dollars
19 (\$250,000,000.00), and

20 e. more than Two Hundred Fifty Million Dollars
21 (\$250,000,000.00).

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 4306 of Title 68, unless there
24 is created a duplication in numbering, reads as follows:

1 If a corporation files an amended tax return, the corporation
2 shall file a revised statement under this section within sixty (60)
3 calendar days after the amended return is filed. If a corporation's
4 tax liability for a tax year is changed as the result of an
5 uncontested audit adjustment or final determination of liability by
6 the Oklahoma Tax Commission or by a court of law, the corporation
7 shall file a revised statement under this section within sixty (60)
8 calendar days of the final determination of liability.

9 SECTION 7. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 4307 of Title 68, unless there
11 is created a duplication in numbering, reads as follows:

12 The statements required under this section shall be a public
13 record. The Secretary of State shall make all information contained
14 in the statements required under this section for all filing
15 corporations available to the public on an ongoing basis in the form
16 of a searchable database accessible through the Internet. The
17 Secretary of State shall make available and set charges that cover
18 the cost to the state of providing copies on appropriate computer-
19 readable media of the entire database for statements filed during
20 each calendar year as well as hard copies of an individual annual
21 statement for a specific corporation.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 4308 of Title 68, unless there
24 is created a duplication in numbering, reads as follows:

1 The statements required under this section shall be deemed to be
2 part of the tax return that is filed as required by law and subject
3 to audit by the Oklahoma Tax Commission under the normal procedures
4 applicable to such returns. The Secretary of State shall develop
5 and implement an oversight and penalty system to ensure that
6 corporations doing business in this state, including those not
7 required by law to file a return, shall provide the required
8 information in a timely and accurate manner. The Secretary of State
9 shall promulgate appropriate rules to implement the provisions of
10 this act.

11 SECTION 9. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 4309 of Title 68, unless there
13 is created a duplication in numbering, reads as follows:

14 The Legislature finds that, although the state and its local
15 government units have granted numerous economic development
16 subsidies in the last twenty-five (25) years, the real wage levels
17 and health care coverage of working families have declined.

18 The Legislature further finds that when workers receive low
19 wages and poor benefits, such jobs often impose hidden taxpayer
20 costs upon its citizens, in the form of Medicaid, food stamps,
21 earned income tax credits and other forms of public assistance to
22 the working poor and their families.

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1 The Legislature further finds that citizen participation in
2 economic development has been impeded by a lack of readily
3 accessible information regarding expenditures and outcomes.

4 Therefore, in order to improve the effectiveness of expenditures
5 for economic development and to ensure that they achieve the goal of
6 raising living standards for working families, the Legislature finds
7 it necessary to collect, analyze and make publicly available
8 information regarding those expenditures and to enact certain
9 safeguards for their use.

10 SECTION 10. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 4310 of Title 68, unless there
12 is created a duplication in numbering, reads as follows:

13 A. "Corporate parent" means any person, association,
14 corporation, joint venture, partnership, or other entity, that owns
15 or controls fifty percent (50%) or more of a recipient corporation.

16 B. "Date of subsidy" means the date that a granting body
17 provides the initial monetary value of a development subsidy to a
18 recipient corporation; provided, however, that where the subsidy is
19 for the installation of new equipment, such date shall be the date
20 the corporation puts the equipment into service; and provided
21 further, that where the subsidy is for improvements to property,
22 such date shall be the date the improvements are finished, or the
23 date the corporation occupies the property, whichever is earlier.

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1 C. "Development subsidy" means any expenditure of public funds
2 with a value of at least Twenty-five Thousand Dollars (\$25,000.00)
3 for the purpose of stimulating economic development within the state
4 including, but not limited to, bonds, grants, loans, loan
5 guarantees, enterprise zones, empowerment zones, tax increment
6 financing, grants, fee waivers, land price subsidies, matching
7 funds, tax abatements, tax exemptions, and tax credits.

8 D. "Full-time job" means a job in which an individual is
9 employed by a recipient corporation for at least thirty-five (35)
10 hours per week.

11 E. "Granting body" means any agency, board, office, public
12 benefit corporation or authority of the state or a local government
13 unit that provides a development subsidy.

14 F. "Local government unit" means an agency, board, commission,
15 office, public benefit corporation, or public authority of a
16 political subdivision of the state.

17 G. "New employee" means a full-time employee who represents a
18 net increase in the number of individuals employed by the recipient
19 corporation in the state. "New employee" does not include an
20 employee who performs a job that was previously performed by another
21 employee of the recipient corporation if that job existed for at
22 least six (6) months before hiring the employee.

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1 H. "Part-time job" means a job in which an individual is
2 employed by a recipient corporation for less than thirty-five (35)
3 hours per week.

4 I. "Project site" means the site of a project for which any
5 development subsidy is provided.

6 J. "Property-taxing entity" means any entity which levies taxes
7 upon real or personal property.

8 K. "Recipient corporation" means any person, association,
9 corporation, joint venture, partnership or other entity that
10 receives a development subsidy.

11 L. "Small business" means a corporation whose corporate parent,
12 and all subsidiaries thereof, employed fewer than twenty full-time
13 employees or had total gross receipts of less than One Million
14 Dollars (\$1,000,000.00) during the calendar year.

15 M. "State" means an agency, board, commission, office, public
16 benefit corporation or public benefit authority of the state.

17 N. "Subsidy value" means the face value of any and all
18 development subsidies provided to a recipient corporation.

19 O. "Temporary job" means a job in which an individual is hired
20 for a season or for a limited period of time.

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 4311 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

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1 The Oklahoma Tax Commission shall submit an annual Unified
2 Economic Development Budget to the Legislature no later than three
3 (3) months after the end of the state's fiscal year. The report
4 shall present all types of expenditures for economic development
5 during the prior fiscal year including, but not limited to:

6 1. The amount of uncollected state tax revenues resulting from
7 every corporate tax credit, abatement, exemption and reduction
8 provided by the state or a local governmental unit including, but
9 not limited to, gross receipts, income, sales, use, raw materials,
10 excise, property, utility, and inventory taxes;

11 2. The name of each corporate taxpayer which claimed any tax
12 credit, abatement, exemption or reduction under paragraph 1 of this
13 section of any value equal to or greater than Five Thousand Dollars
14 (\$5,000.00), together with the dollar amount received by each such
15 corporation;

16 3. Any tax credit, abatement, exemption or reduction received
17 by a corporation of less than Five Thousand Dollars (\$5,000.00) each
18 shall not be itemized. The Oklahoma Tax Commission shall report an
19 aggregate dollar amount of such expenditures and the number of
20 companies so aggregated for each tax expenditure; and

21 4. All state-appropriated expenditures for economic
22 development, including line-item budgets for every state-funded
23 entity concerned with economic development including, but not
24 limited to, State Department of Commerce, vocational education

1 programs, state university research programs, manufacturing
2 extension services, workforce investment boards, economic
3 development commissions, industrial development authorities,
4 regional development authorities, and finance authorities.

5 SECTION 12. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 4312 of Title 68, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Each property-taxing entity shall annually submit a report
9 to the Oklahoma Tax Commission regarding any real property in the
10 entity's jurisdiction that has received a property tax abatement or
11 reduction during the fiscal year. The report shall contain
12 information including, but not limited to: the name of the property
13 owner; the address of the property; the start and end dates of the
14 property tax reduction or abatement; the schedule of the tax
15 reduction; each tax abatement, reduction and exemption for the
16 property; and the amount of property tax revenue not paid to the
17 taxing entity as a result of the reduction or abatement.

18 B. Each property-taxing entity shall also submit a report to
19 the Tax Commission setting forth the total property tax revenue not
20 paid to such entity during the fiscal year as a result of all
21 property tax reductions and abatements in the entity's jurisdiction.

22 C. The reports required under subsections A and B of this
23 section shall be prepared on two forms prepared by the Tax
24 Commission, and shall be submitted to the Tax Commission by the

1 property-taxing entity no later than three (3) months after the end
2 of the fiscal year.

3 D. The Tax Commission shall annually compile and publish all of
4 the data contained in the reports required under subsections A and B
5 of this section in both written and electronic form, including the
6 Department's World Wide Web site.

7 E. If a property-taxing entity fails to submit its reports to
8 the Tax Commission within the prescribed time, the Tax Commission
9 shall notify the State Comptroller, whereupon the Comptroller shall
10 withhold further payments of any development subsidy to the
11 delinquent entity until the entity files its reports with the Tax
12 Commission.

13 SECTION 13. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 4313 of Title 68, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Each granting body, together with the applicant for a
17 development subsidy, shall complete an application for the subsidy
18 on a form prepared by the Oklahoma Tax Commission. The information
19 required on the application shall include the following:

20 1. An application tracking number for the granting agency and
21 the project;

22 2. The name, street and mailing address, and phone number of
23 the chief officer of the granting body;

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- 1 3. The name, street and mailing address, and phone number of
2 the chief officer of the applicant's corporate parent;
- 3 4. The name, street and mailing address, and phone number of
4 the chief officer of the applicant;
- 5 5. The street address of the project site;
- 6 6. The three-digit North American Industry Classification
7 System number of the project site;
- 8 7. The total number of individuals employed by the applicant at
9 the project site on the date of the application, broken down by
10 full-time, part-time, and temporary positions;
- 11 8. The total number of individuals employed in the state by the
12 applicant's corporate parent, and all subsidiaries thereof, as of
13 December 31 of the prior fiscal year, broken down by full-time,
14 part-time and temporary positions;
- 15 9. The development subsidy or subsidies being applied for with
16 the granting body, and the value of such subsidy or subsidies;
- 17 10. The number of new jobs to be created by the applicant at
18 the project site, broken down by full-time, part-time and temporary
19 positions;
- 20 11. The average hourly wage to be paid to all current and new
21 employees at the project site, broken down by full-time, part-time
22 and temporary positions, and further broken down by wage groups as
23 follows: Six Dollars (\$6.00) or less an hour, Six Dollars and one
24 cent (\$6.01) to Seven Dollars (\$7.00) an hour, Seven Dollars and one

1 cent (\$7.01) to Eight Dollars (\$8.00) an hour, Eight Dollars and one
2 cent (\$8.01) to Nine Dollars (\$9.00) an hour, Nine Dollars and one
3 cent (\$9.01) to Ten Dollars (\$10.00) an hour, Ten Dollars and one
4 cent (\$10.01) to Eleven Dollars (\$11.00) an hour, Eleven Dollars and
5 one cent (\$11.01) to Twelve Dollars (\$12.00) an hour, Twelve Dollars
6 and one cent (\$12.01) to Thirteen Dollars (\$13.00) an hour, Thirteen
7 Dollars and one cent (\$13.01) to Fourteen Dollars (\$14.00) an hour,
8 and Fourteen Dollars and one cent (\$14.01) or more per hour;

9 12. For project sites located in a metropolitan statistical
10 area, as defined by the federal Office of Management and Budget, the
11 average hourly wage paid to nonmanagerial employees in the state for
12 the industries involved at the project, as established by the United
13 States Bureau of Labor Statistics;

14 13. For project sites located outside of metropolitan
15 statistical areas, the average weekly wage paid to nonmanagerial
16 employees in the county for industries involved at the project, as
17 established by the United States Department of Commerce;

18 14. The type and amount of health care coverage to be provided
19 by the applicant within ninety (90) days of commencement of
20 employment at the project site, including any costs to be borne by
21 the employees;

22 15. A list of all development subsidies which the applicant is
23 requesting, and the name of any other granting body from which such
24 subsidies are sought;

1 16. A statement as to whether the development subsidy may
2 reduce employment at any other site controlled by the applicant or
3 its corporate parent, within or without the state, resulting from
4 automation, merger, acquisition, corporate restructuring or other
5 business activity; and

6 17. A certification by the chief officer of the applicant as to
7 the accuracy of the application.

8 B. If the granting body shall approve the application, it shall
9 send a copy to the Oklahoma Tax Commission within fifteen (15) days
10 of such approval. If the application is not approved, the granting
11 body shall retain the application in its records.

12 SECTION 14. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 4314 of Title 68, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Annual reports.

16 1. Each granting body shall file a progress report with the
17 Oklahoma Tax Commission for each project for which a development
18 subsidy has been granted, no later than February 1 each year. The
19 report shall include the following information:

- 20 a. the application tracking number,
- 21 b. the name, street and mailing addresses, phone number
22 and chief officer of the granting body,
- 23 c. the name, street and mailing addresses, phone number,
24 and chief officer of the recipient corporation,

- 1 d. a summary of the number of jobs required, created and
2 lost, broken down by full-time, part-time and
3 temporary positions, and by wage groups,
4 e. the type and amount of health care coverage provided
5 to the employees at the project site, including any
6 costs borne by the employees,
7 f. the comparison of the total employment in the state by
8 the recipient's corporate parent on the date of the
9 application and the date of the report, broken down by
10 full-time, part-time and temporary positions,
11 g. a statement as to whether the use of the development
12 subsidy during the previous fiscal year has reduced
13 employment at any other site controlled by the
14 recipient corporation or its corporate parent, within
15 or without the state as a result of automation,
16 merger, acquisition, corporate restructuring or other
17 business activity, and
18 h. a signed certification by the chief officer of the
19 recipient corporation as to the accuracy of the
20 progress report.

21 2. On all subsequent annual progress reports, the granting body
22 shall indicate whether the recipient corporation is still in
23 compliance with its job-creation, wage and benefit goals, and
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1 whether the corporate parent is still in compliance with its state
2 employment requirement.

3 3. Granting bodies and recipient corporations shall file annual
4 progress reports for the duration of the subsidy, or not less than
5 five (5) years, whichever period is greater.

6 B. Two-year report:

7 1. No later than fifteen (15) days after the second anniversary
8 of the date of subsidy, the granting body shall file with the
9 Department a two-year progress report including the same information
10 as required under subsection A of this section. The recipient
11 corporation shall certify as to the accuracy of such report.

12 2. The granting body shall state in the two-year report whether
13 the recipient corporation has achieved its job-creation, wage and
14 benefit goals, and whether the corporate parent has maintained
15 ninety percent (90%) of its employment in the state.

16 C. The Tax Commission shall compile and publish all data from
17 the progress reports in both written and electronic form, including
18 the Tax Commission's WorldWide Web site.

19 D. The granting body and the Tax Commission shall have access
20 at all reasonable times to the project site and the records of the
21 recipient corporation in order to monitor the project and to prepare
22 progress reports.

23 E. A recipient corporation that fails to provide the granting
24 body with the information or access required under paragraphs 1 and

1 2 of subsection A of this section shall be subject to a fine of not
2 less than Five Hundred Dollars (\$500.00) per day to commence within
3 ten (10) working days after the February 1 deadline, and of not less
4 than One Thousand Dollars (\$1,000.00) per day to commence twenty
5 (20) days after such deadline.

6 SECTION 15. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 4315 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 A. A granting body shall not grant or award a development
10 subsidy if the cost per job is greater than Thirty-five Thousand
11 Dollars (\$35,000.00). Such cost shall be determined by dividing the
12 amount of the subsidy by the number of full-time jobs required under
13 the application approved by the granting body.

14 B. A granting body shall not grant a subsidy to an applicant
15 unless the wages paid to employees at the project site are equal to
16 or exceed eighty-five percent (85%) of the average wage as
17 established under paragraphs 12 and 13 of subsection A of Section 12
18 of this act; provided, however, that for small businesses, the
19 average wage must equal or exceed seventy-five percent (75%) of the
20 wages established hereunder. The computation of wages under this
21 section shall only apply to a recipient corporation that provides
22 the health care coverage as approved in its application by the
23 granting body.

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1 SECTION 16. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4316 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A recipient corporation shall fulfill its job creation,
5 wage, health care and other benefit requirements for the project
6 site within two (2) years of the date of subsidy. Such recipient
7 shall maintain its wage and benefit goals as long as the subsidy is
8 in effect, or five (5) years, whichever is longer.

9 B. The corporate parent of a recipient corporation must
10 maintain at least ninety percent (90%) of its employment in the
11 state as long as the development subsidy is in effect, or not less
12 than five (5) years, whichever is longer.

13 C. If the requirements under subsection A or B of this section
14 are not fulfilled, the granting body shall recapture the development
15 subsidy from the recipient corporation as follows:

16 1. Upon a failure by the recipient corporation to create the
17 required number of jobs or to pay the required wages or benefits,
18 the amount recaptured shall be based on the pro rata amount by which
19 the unfulfilled jobs, wages or benefits bear to the total amount of
20 the development subsidy; and

21 2. Upon a failure of the corporate parent to maintain ninety
22 percent (90%) of its employment in the state, the rate of recapture
23 shall equal twice the percentage by which such employment is less
24 than ninety percent (90%).

1 D. The granting body shall provide notice to the recipient
2 corporation of its intent to recapture the development subsidy and
3 state the reasons and amount to be recaptured. The recipient
4 corporation shall remit to the governing body such amount within
5 sixty (60) calendar days of the date of such notice.

6 E. If a recipient corporation defaults on a development subsidy
7 in three (3) consecutive calendar years, the granting body shall
8 declare the subsidy null and void, and shall so notify the Oklahoma
9 Tax Commission and the recipient corporation. The recipient
10 corporation shall pay back to the granting body all remaining value
11 of the development subsidy it has not previously repaid within one
12 hundred eighty (180) calendar days of the date of the notice of such
13 default.

14 SECTION 17. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 4317 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 If a granting body fails to enforce any provision of this act,
18 any individual who paid personal income taxes to the state in the
19 calendar year prior to the year in dispute, or any organization
20 representing such taxpayers, shall be entitled to bring a civil
21 action in state court to compel enforcement under this statute. The
22 court shall award reasonable attorney fees and costs to such
23 prevailing taxpayer or organization.

24

1 SECTION 18. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4318 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 All records required to be prepared or maintained under this
5 act, including but not limited to applications, progress reports,
6 recapture notices and any other records or proceedings relating
7 thereto, shall be subject to disclosure under the Oklahoma Open
8 Records Act.

9 SECTION 19. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 4319 of Title 68, unless there
11 is created a duplication in numbering, reads as follows:

12 Nothing in this act shall be read to require or authorize any
13 recipient corporation to reduce wages or benefits established under
14 any collective bargaining agreement or state or federal prevailing
15 wage law.

16 SECTION 20. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 4320 of Title 68, unless there
18 is created a duplication in numbering, reads as follows:

19 If any provision of this act is determined to be unenforceable
20 in a court of law, such determination shall not affect the validity
21 or enforceability of any other provision of this act.

22 SECTION 21. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 4321 of Title 68, unless there
24 is created a duplication in numbering, reads as follows:

1 The tax imposed by this act shall apply to the entire Oklahoma
2 taxable income received by every foreign or domestic corporation
3 owning property within this state, doing business within this state,
4 or deriving income from sources within this state to the extent
5 permitted by the United States Constitution and federal statutes. A
6 corporation shall be deemed to be doing business within this state
7 if it engages within this state in any activities or transactions
8 for the purpose of financial profit or gain whether or not:

9 1. The corporation qualifies to do business in this state;

10 2. The corporation maintains an office or place of doing
11 business within this state; or

12 3. Any such activity or transaction is connected with
13 interstate or foreign commerce.

14 SECTION 22. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 4322 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 A. "Person" means any individual; firm; partnership; general
18 partner of a partnership; limited liability company; registered
19 limited liability partnership; foreign limited liability
20 partnership; association; corporation, whether or not the
21 corporation is, or would be if doing business in this state, subject
22 to Oklahoma state income tax; company; syndicate; estate; trust;
23 business trust; trustee; trustee in bankruptcy; receiver; executor;
24 administrator; assignee; or organization of any kind.

1 B. "Taxpayer" means any person subject to the tax imposed by
2 Section 2355 of Title 68 of the Oklahoma Statutes.

3 C. "Corporation" means any corporation as defined by the laws
4 of this state or organization of any kind treated as a corporation
5 for tax purposes under the laws of this state, wherever located,
6 which if it were doing business in this state would be a taxpayer.
7 The business conducted by a partnership which is directly or
8 indirectly held by a corporation shall be considered the business of
9 the corporation to the extent of the corporation's distributive
10 share of the partnership income, inclusive of guaranteed payments to
11 the extent prescribed by regulation.

12 D. "Partnership" means a general or limited partnership, or
13 organization of any kind treated as a partnership for tax purposes
14 under the laws of this state.

15 E. "Internal Revenue Code" means Title 26 of the United States
16 Code of 1986 and amendments thereto without regard to application of
17 federal treaties unless expressly made applicable to states of the
18 United States.

19 F. "Unitary business" means a single economic enterprise that
20 is made up either of separate parts of a single business entity or
21 of a commonly controlled group of business entities that are
22 sufficiently interdependent, integrated and interrelated through
23 their activities so as to provide a synergy and mutual benefit that
24

1 produces a sharing or exchange of value among them and a significant
2 flow of value to the separate parts.

3 G. "Combined group" means the group of all persons whose income
4 and apportionment factors are required to be taken into account
5 pursuant to subsections A and B of Section 23 of this act in
6 determining the taxpayer's share of the net business income or loss
7 apportionable to this state.

8 H. "United States" means the fifty (50) states of the United
9 States, the District of Columbia, and the United States' territories
10 and possessions.

11 I. "Tax haven" means a jurisdiction that, during the tax year
12 in question:

13 1. Is identified by the Organization for Economic Cooperation
14 and Development (OECD) as a tax haven or as having a harmful
15 preferential tax regime; or

16 2. Exhibits the following characteristics, established by the
17 OECD in its 1998 report entitled "Harmful Tax Competition: An
18 Emerging Global Issue", as indicative of a tax haven or as a
19 jurisdiction having a harmful preferential tax regime, regardless of
20 whether it is listed by the OECD as an uncooperative tax haven:

21 a. has no or nominal effective tax on the relevant
22 income, and

23 b. (1) has laws or practices that prevent effective
24 exchange of information for tax purposes with

1 other governments on taxpayers benefiting from
2 the tax regime,

3 (2) has a tax regime which lacks transparency. A tax
4 regime lacks transparency if the details of
5 legislative, legal or administrative provisions
6 are not open and apparent or are not consistently
7 applied among similarly situated taxpayers, or if
8 the information needed by tax authorities to
9 determine a taxpayer's correct tax liability,
10 such as accounting records and underlying
11 documentation, is not adequately available,

12 (3) facilitates the establishment of foreign-owned
13 entities without the need for a local substantive
14 presence or prohibits these entities from having
15 any commercial impact on the local economy,

16 (4) explicitly or implicitly excludes the
17 jurisdiction's resident taxpayers from taking
18 advantage of the tax regime's benefits or
19 prohibits enterprises that benefit from the
20 regime from operating in the jurisdiction's
21 domestic market, or

22 (5) has created a tax regime which is favorable for
23 tax avoidance, based upon an overall assessment
24 of relevant factors, including whether the

1 jurisdiction has a significant untaxed offshore
2 financial/other services sector relative to its
3 overall economy.

4 SECTION 23. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 4323 of Title 68, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A taxpayer engaged in a unitary business with one or more
8 other corporations shall file a combined report which includes the
9 income, determined under paragraph 3 of Section 24 of this act and
10 apportionment factors, determined under paragraph 2 of Section 24 of
11 this act, of all corporations that are members of the unitary
12 business, and such other information as required by the Director.

13 B. The Director may, by regulation, require the combined report
14 include the income and associated apportionment factors of any
15 persons that are not included pursuant to this act, but that are
16 members of a unitary business, in order to reflect proper
17 apportionment of income of entire unitary businesses. Authority to
18 require combination by regulation under this act, includes authority
19 to require combination of persons that are not, or would not be if
20 doing business in this state, subject to Oklahoma income tax.

21 In addition, if the Director determines that the reported income
22 or loss of a taxpayer engaged in a unitary business with any person
23 not included pursuant to subsection A of this section represents an
24 avoidance or evasion of tax by such taxpayer, the Director may, on a

1 case by case basis, require all or any part of the income and
2 associated apportionment factors of such person be included in the
3 taxpayer's combined report.

4 With respect to inclusion of associated apportionment factors
5 pursuant to this act, the Director may require the exclusion of any
6 one or more of the factors, the inclusion of one or more additional
7 factors which will fairly represent the taxpayer's business activity
8 in this state, or the employment of any other method to effectuate a
9 proper reflection of the total amount of income subject to
10 apportionment and an equitable allocation and apportionment of the
11 taxpayer's income.

12 SECTION 24. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 4324 of Title 68, unless there
14 is created a duplication in numbering, reads as follows:

15 The use of a combined report does not disregard the separate
16 identities of the taxpayer members of the combined group. Each
17 taxpayer member is responsible for tax based on its taxable income
18 or loss apportioned or allocated to this state, which shall include,
19 in addition to other types of income, the taxpayer member's
20 apportioned share of business income of the combined group, where
21 business income of the combined group is calculated as a summation
22 of the individual net business incomes of all members of the
23 combined group. A member's net business income is determined by
24

1 removing all but business income, expense and loss from that
2 member's total income, as provided in detail below.

3 1. Components of income subject to tax in this state;
4 application of tax credits and postapportionment deductions.

5 a. Each taxpayer member is responsible for tax based on
6 its taxable income or loss apportioned or allocated to
7 this state, which shall include:

8 (1) its share of any business income apportionable to
9 this state of each of the combined groups of
10 which it is a member, determined under paragraph
11 2 of this section,

12 (2) its share of any business income apportionable to
13 this state of a distinct business activity
14 conducted within and without the state wholly by
15 the taxpayer member, determined under provisions
16 for apportionment of business income,

17 (3) its income from a business conducted wholly by
18 the taxpayer member entirely within the state,

19 (4) its income sourced to this state from the sale or
20 exchange of capital or assets, and from
21 involuntary conversions, as determined under
22 division (7) of subparagraph b of paragraph 3 of
23 this section,
24

- 1 (5) its nonbusiness income or loss allocable to this
2 state, determined under provisions for allocation
3 of nonbusiness income,
4 (6) its income or loss allocated or apportioned in an
5 earlier year, required to be taken into account
6 as state source income during the income year,
7 other than a net operating loss, and
8 (7) its net operating loss carryover or carryback.

9 If the taxable income computed pursuant to this
10 section results in a loss for a taxpayer member
11 of the combined group, that taxpayer member has
12 an Oklahoma net operating loss (NOL), subject to
13 the net operating loss limitations, carryforward
14 and carryback provisions of Oklahoma law. Such
15 NOL is applied as a deduction in a prior or
16 subsequent year only if that taxpayer has
17 Oklahoma source-positive net income, whether or
18 not the taxpayer is or was a member of a combined
19 reporting group in the prior or subsequent year.

- 20 b. Except where otherwise provided, no tax credit or
21 postapportionment deduction earned by one member of
22 the group, but not fully used by or allowed to that
23 member, may be used in whole or in part by another
24 member of the group or applied in whole or in part

1 against the total income of the combined group; and a
2 postapportionment deduction carried over into a
3 subsequent year as to the member that incurred it, and
4 available as a deduction to that member in a
5 subsequent year, will be considered in the computation
6 of the income of that member in the subsequent year,
7 regardless of the composition of that income as
8 apportioned, allocated or wholly within this state.

9 2. Determination of taxpayer's share of the business income of
10 a combined group apportionable to this state.

11 The taxpayer's share of the business income apportionable to
12 this state of each combined group of which it is a member shall be
13 the product of:

- 14 a. the business income of the combined group, determined
15 under paragraph 3 of this section, and
- 16 b. the taxpayer member's apportionment percentage,
17 determined according to Oklahoma law, including in the
18 property, payroll, and sales factor numerators the
19 taxpayer's property, payroll, and sales, respectively,
20 associated with the combined group's unitary business
21 in this state, and including in the denominator the
22 property, payroll, and sales of all members of the
23 combined group, including the taxpayer, which
24 property, payroll and sales are associated with the

1 combined group's unitary business wherever located.
2 The property, payroll, and sales of a partnership
3 shall be included in the determination of the
4 partner's apportionment percentage in proportion to a
5 ratio the numerator of which is the amount of the
6 partner's distributive share of partnership's unitary
7 income included in the income of the combined group in
8 accordance with division 3 of subparagraph b of
9 paragraph 3 of this section and the denominator of
10 which is the amount of the partnership's total unitary
11 income.

12 3. Determination of the business income of the combined group.

13 The business income of a combined group is determined as
14 follows:

- 15 a. from the total income of the combined group,
16 determined under subparagraph b of this paragraph,
17 subtract any income, and add any expense or loss,
18 other than the business income, expense or loss of the
19 combined group,
- 20 b. except as otherwise provided, the total income of the
21 combined group is the sum of the incomes, separately
22 determined, of each member of the combined group. The
23 income of each member of the combined group shall be
24 determined as follows:

1 (1) for any member incorporated in the United States,
2 or included in a consolidated federal corporate
3 income tax return, the income to be included in
4 the total income of the combined group shall be
5 the taxable income for the corporation after
6 making appropriate adjustments as authorized by
7 law,

8 (2) for any member not included in division (1) of
9 this subparagraph:

10 (a) the income to be included in the total
11 income of the combined group shall be
12 determined as follows:

13 i. a profit and loss statement shall be
14 prepared for each foreign branch or
15 corporation in the currency in which
16 the books of account of the branch or
17 corporation are regularly maintained,

18 ii. adjustments shall be made to the profit
19 and loss statement to conform it to the
20 accounting principles generally
21 accepted in the United States for the
22 preparation of such statements except
23 as modified by this regulation,
24

1 which is prepared for filing with the
2 Securities and Exchange Commission by
3 related corporations. If the member is not
4 required to file with the Securities and
5 Exchange Commission, the Director may allow
6 the use of the consolidated profit and loss
7 statement prepared for reporting to
8 shareholders and subject to review by an
9 independent auditor. If the above
10 statements do not reasonably approximate the
11 income as determined under law, the Director
12 may accept those statements with appropriate
13 adjustments to approximate that income,

14 (3) if a unitary business includes income from a
15 partnership, the income to be included in the
16 total income of the combined group shall be the
17 member of the combined group's direct and
18 indirect distributive share of the partnership's
19 unitary business income,

20 (4) all dividends paid by one to another of the
21 members of the combined group shall, to the
22 extent those dividends are paid out of the
23 earnings and profits of the unitary business
24 included in the combined report, in the current

1 or an earlier year, be eliminated from the income
2 of the recipient. This provision shall not apply
3 to dividends received from members of the unitary
4 business which are not a part of the combined
5 group,

6 (5) except as otherwise provided by regulation,
7 business income from an intercompany transaction
8 between members of the same combined group shall
9 be deferred in a manner similar to 26 CFR,
10 Section 1.1502-13. Upon the occurrence of any of
11 the following events, deferred business income
12 resulting from an intercompany transaction
13 between members of a combined group shall be
14 restored to the income of the seller, and shall
15 be apportioned as business income earned
16 immediately before the event:

17 (a) the object of a deferred intercompany
18 transaction is:

- 19 i. resold by the buyer to an entity that
20 is not a member of the combined group,
21 ii. resold by the buyer to an entity that
22 is a member of the combined group for
23 use outside the unitary business in
24

1 which the buyer and seller are engaged,
2 or

3 iii. converted by the buyer to a use outside
4 the unitary business in which the buyer
5 and seller are engaged, or

6 (b) the buyer and seller are no longer members
7 of the same combined group, regardless of
8 whether the members remain unitary,

9 (6) a charitable expense incurred by a member of a
10 combined group shall, to the extent allowable as
11 a deduction pursuant to the Internal Revenue
12 Code, Section 170, be subtracted first from the
13 business income of the combined group, subject to
14 the income limitations of that section applied to
15 the entire business income of the group, and any
16 remaining amount shall then be treated as a
17 nonbusiness expense allocable to the member that
18 incurred the expense, subject to the income
19 limitations of that section applied to the
20 nonbusiness income of that specific member. Any
21 charitable deduction disallowed under the
22 foregoing rule, but allowed as a carryover
23 deduction in a subsequent year, shall be treated
24 as originally incurred in the subsequent year by

1 the same member, and the rules of this section
2 shall apply in the subsequent year in determining
3 the allowable deduction in that year,

4 (7) gain or loss from the sale or exchange of capital
5 assets, property described by the Internal
6 Revenue Code, Section 1231(a)(3), and property
7 subject to an involuntary conversion, shall be
8 removed from the total separate net income of
9 each member of a combined group and shall be
10 apportioned and allocated as follows:

11 (a) for each class of gain or loss such as
12 short-term capital, long-term capital, the
13 Internal Revenue Code, Section 1231, and
14 involuntary conversions, all members'
15 business gain and loss for the class shall
16 be combined without netting between such
17 classes, and each class of net business gain
18 or loss separately apportioned to each
19 member using the member's apportionment
20 percentage determined under paragraph 2 of
21 this section,

22 (b) each taxpayer member shall then net its
23 apportioned business gain or loss for all
24 classes, including any such apportioned

1 business gain and loss from other combined
2 groups, against the taxpayer member's
3 nonbusiness gain and loss for all classes
4 allocated to this state, using the rules of
5 the Internal Revenue Code, Sections 1231 and
6 1222, without regard to any of the taxpayer
7 member's gains or losses from the sale or
8 exchange of capital assets, Section 1231
9 property, and involuntary conversions which
10 are nonbusiness items allocated to another
11 state,

12 (c) any resulting state source income or loss,
13 if the loss is not subject to the
14 limitations of the Internal Revenue Code,
15 Section 1211, of a taxpayer member produced
16 by the application of the preceding
17 subdivisions, shall then be applied to all
18 other state source income or loss of that
19 member, and

20 (d) any resulting state source loss of a member
21 that is subject to the limitations of the
22 Internal Revenue Code, Section 1211, shall
23 be carried forward or carried back by that
24 member, and shall be treated as state source

1 short-term capital loss incurred by that
2 member for the year for which the carryover
3 or carryback applies, and

4 (8) any expense of one member of the unitary group
5 which is directly or indirectly attributable to
6 the nonbusiness or exempt income of another
7 member of the unitary group shall be allocated to
8 that other member as corresponding nonbusiness or
9 exempt expense, as appropriate.

10 SECTION 25. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 4325 of Title 68, unless there
12 is created a duplication in numbering, reads as follows:

13 As a filing convenience, and without changing the respective
14 liability of the group members, members of a combined reporting
15 group may annually elect to designate one taxpayer member of the
16 combined group to file a single return in the form and manner
17 prescribed by the Tax Commission, in lieu of filing their own
18 respective returns, provided that the taxpayer designated to file
19 the single return consents to act as surety with respect to the tax
20 liability of all other taxpayers properly included in the combined
21 report, and agrees to act as agent on behalf of those taxpayers for
22 the year of the election for tax matters relating to the combined
23 report for that year. If for any reason the surety is unwilling or
24

1 unable to perform its responsibilities, the tax liability may be
2 assessed against the taxpayer members.

3 SECTION 26. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 4326 of Title 68, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Taxpayer members of a unitary group that meet the
7 requirements of subsection B of this section may elect to determine
8 each of their apportioned shares of the net business income or loss
9 of the combined group pursuant to a water's-edge election. Under
10 such election, taxpayer members shall take into account all or a
11 portion of the income and apportionment factors of only the
12 following members otherwise included in the combined group pursuant
13 to Section 23 of this act, as described below:

14 1. The entire income and apportionment factors of any member
15 incorporated in the United States or formed under the laws of any
16 state, the District of Columbia, or any territory or possession of
17 the United States;

18 2. The entire income and apportionment factors of any member,
19 regardless of the place incorporated or formed, if the average of
20 its property, payroll, and sales factors within the United States is
21 twenty percent (20%) or more;

22 3. The entire income and apportionment factors of any member
23 which is a domestic international sales corporation as described in
24 the Internal Revenue Code, Sections 991 to 994, inclusive; a foreign

1 sales corporation as described in the Internal Revenue Code,
2 Sections 921 to 927, inclusive; or any member which is an export
3 trade corporation, as described in the Internal Revenue Code,
4 Sections 970 to 971, inclusive;

5 4. Any member not described in paragraphs 1 through 3 of this
6 subsection, inclusive, shall include the portion of its income
7 derived from or attributable to sources within the United States, as
8 determined under the Internal Revenue Code without regard to federal
9 treaties, and its apportionment factors related thereto;

10 5. Any member that is a "controlled foreign corporation", as
11 defined in the Internal Revenue Code, Section 957, to the extent of
12 the income of that member that is defined in Section 952 of Subpart
13 F of the Internal Revenue Code ("Subpart F income") not excluding
14 lower-tier subsidiaries' distributions of such income which were
15 previously taxed, determined without regard to federal treaties, and
16 the apportionment factors related to that income; any item of income
17 received by a controlled foreign corporation shall be excluded if
18 such income was subject to an effective rate of income tax imposed
19 by a foreign country greater than ninety percent (90%) of the
20 maximum rate of tax specified in the Internal Revenue Code, Section
21 11;

22 6. Any member that earns more than twenty percent (20%) of its
23 income, directly or indirectly, from intangible property or service-
24 related activities that are deductible against the business income

1 of other members of the combined group, to the extent of that income
2 and the apportionment factors related thereto; and

3 7. The entire income and apportionment factors of any member
4 that is doing business in a tax haven, where "doing business in a
5 tax haven" is defined as being engaged in activity sufficient for
6 that tax haven jurisdiction to impose a tax under United States
7 constitutional standards. If the member's business activity within
8 a tax haven is entirely outside the scope of the laws, provisions
9 and practices that cause the jurisdiction to meet the criteria
10 established in subsection I of Section 22 of this act, the activity
11 of the member shall be treated as not having been conducted in a tax
12 haven.

13 B. 1. A water's-edge election is effective only if made on a
14 timely-filed, original return for a tax year by every member of the
15 unitary business subject to tax under Oklahoma law. The Tax
16 Commission⁰ shall develop rules and regulations governing the
17 impact, if any, on the scope or application of a water's-edge
18 election, including termination or deemed election, resulting from a
19 change in the composition of the unitary group, the combined group,
20 the taxpayer members, and any other similar change.

21 2. Such election shall constitute consent to the reasonable
22 production of documents and taking of depositions in accordance with
23 law.

24

1 3. In the discretion of the Director, a water's-edge election
2 may be disregarded in part or in whole, and the income and
3 apportionment factors of any member of the taxpayer's unitary group
4 may be included in the combined report without regard to the
5 provisions of this section, if any member of the unitary group fails
6 to comply with any provision of this act or if a person otherwise
7 not included in the water's-edge combined group was availed of with
8 a substantial objective of avoiding state income tax.

9 4. A water's-edge election is binding for and applicable to the
10 tax year it is made and all tax years thereafter for a period of ten
11 (10) years. It may be withdrawn or reinstated after withdrawal,
12 prior to the expiration of the ten-year period, only upon written
13 request for reasonable cause based on extraordinary hardship due to
14 unforeseen changes in state tax statutes, law, or policy, and only
15 with the written permission of the Director. If the Director grants
16 a withdrawal of election, he or she shall impose reasonable
17 conditions as necessary to prevent the evasion of tax or to clearly
18 reflect income for the election period prior to or after the
19 withdrawal. Upon the expiration of the ten-year period, a taxpayer
20 may withdraw from the water's-edge election. Such withdrawal must
21 be made in writing within one (1) year of the expiration of the
22 election, and is binding for a period of ten (10) years, subject to
23 the same conditions as applied to the original election. If no
24 withdrawal is properly made, the water's-edge election shall be in

1 place for an additional ten-year period, subject to the same
2 conditions as applied to the original election.

3 SECTION 27. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 4327 of Title 68, unless there
5 is created a duplication in numbering, reads as follows:

6 Sales of tangible personal property are in this state if:

7 1. The property is delivered or shipped to a purchaser, other
8 than the United States Government, within this state regardless of
9 the f.o.b. point or other conditions of the sale; or

10 2. The property is shipped from an office, store, warehouse,
11 factory, or other place of storage in this state, and:

12 a. the purchaser is the United States Government, or

13 b. the taxpayer is not taxable in the state of the
14 purchaser.

15 3. A taxpayer is "taxable in another state" if:

16 a. in that state he is subject to a net income tax, a
17 franchise tax measured by net income, a franchise tax
18 for the privilege of doing business, or a corporate
19 stock tax, or

20 b. that state has jurisdiction to subject the taxpayer to
21 a net income tax regardless of whether, in fact, the
22 state does or does not do so.

23

24

1 SECTION 28. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4328 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. "Business income" means all income of a taxpayer which is
5 apportionable under the Constitution of the United States.

6 B. "Nonbusiness income" means all income of a taxpayer other
7 than business income.

8 SECTION 29. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 4329 of Title 68, unless there
10 is created a duplication in numbering, reads as follows:

11 The amount of net operating loss deducted pursuant to Section
12 172 of the Internal Revenue Code:

13 1. Allowance of deduction. There shall be allowed as a
14 deduction for the taxable year the amount of any net operating loss
15 deduction as provided in Section 172 of the Internal Revenue Code,
16 subject to the limitations and modifications provided in this
17 section;

18 2. Defined and limited.

19 a. The term "net operating loss" as used in this section
20 shall mean a net operating loss as defined in Section
21 172(c) of the Internal Revenue Code, with the
22 modifications specified in paragraph 4 of this
23 section. The deductions provided in Oklahoma law
24

1 cannot be used in the determination of a net operating
2 loss.

3 b. The term "net operating loss deduction" as used in
4 this section means the aggregate of the net operating
5 loss carryovers to the taxable year, computed in
6 accordance with paragraph 3 of this section. The
7 provisions of Section 172(b) of the Internal Revenue
8 Code relating to the carryback of net operating losses
9 do not apply;

10 3. Carryover.

11 a. A net operating loss incurred in a taxable year
12 beginning after December 31, 2007, shall be a net
13 operating loss carryover to each of the twenty (20)
14 taxable years, or shorter period, if conformity to
15 federal law is not desired, following the taxable year
16 of such loss.

17 b. The entire amount of the net operating loss for any
18 taxable year shall be carried to the earliest of the
19 taxable years to which such loss may be carried. The
20 portion of such loss which shall be carried to each of
21 the other taxable years shall be the excess, if any,
22 of the amount of such loss over the sum of the taxable
23 net income, adjusted by the modifications specified in
24

1 paragraph 4 of this section, for each of the taxable
2 years to which such loss may be carried.

3 c. Where a corporation apportions its income under the
4 provisions of Oklahoma law, the net operating loss
5 deduction incurred in any taxable year shall be
6 allowed to the extent of the apportionment ratio of
7 the loss year; and

8 4. Computation and modifications. The following modifications
9 shall be made in computing a net operating loss in any taxable year
10 and also in computing the taxable net income for any taxable year
11 before a net operating loss deduction shall be allowed:

12 a. no deduction shall be allowed for or with respect to
13 losses connected with income-producing activities if
14 the income therefrom would not be required to be
15 either assignable to this state or included in
16 computing the taxpayer's taxable net income, and

17 b. a net operating loss deduction shall not be allowed.

18 SECTION 30. This act shall become effective January 1, 2008.

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