

SB 881

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THE STATE SENATE
Monday, February 23, 2009

Senate Bill No. 881
As Amended

SENATE BILL NO. 881 - By: Russell of the Senate and Banz of the House.

[revenue and taxation - modifying income tax deduction - effective date]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2358, as last amended by Section 3, Chapter 395, O.S.L. 2008 (68 O.S. Supp. 2008, Section 2358), is amended to read as follows:

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

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

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

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

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

7 a. For carryovers and carrybacks to taxable years
8 beginning before January 1, 1981, the amount of any
9 net operating loss deduction allowed to a taxpayer for
10 federal income tax purposes shall be reduced to an
11 amount which is the same portion thereof as the loss
12 from sources within this state, as determined pursuant
13 to this section and Section 2362 of this title, for
14 the taxable year in which such loss is sustained is of
15 the total loss for such year;

16 b. For carryovers and carrybacks to taxable years
17 beginning after December 31, 1980, the amount of any
18 net operating loss deduction allowed for the taxable
19 year shall be an amount equal to the aggregate of the
20 Oklahoma net operating loss carryovers and carrybacks
21 to such year. Oklahoma net operating losses shall be
22 separately determined by reference to Section 172 of
23 the Internal Revenue Code, 26 U.S.C., Section 172, as

1 modified by the Oklahoma Income Tax Act, Section 2351
2 et seq. of this title, and shall be allowed without
3 regard to the existence of a federal net operating
4 loss. For tax years beginning after December 31,
5 2000, the years to which such losses may be carried
6 shall be determined solely by reference to Section 172
7 of the Internal Revenue Code, 26 U.S.C., Section 172,
8 with the exception that the terms "net operating loss"
9 and "taxable income" shall be replaced with "Oklahoma
10 net operating loss" and "Oklahoma taxable income".

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

16 a. Income from real and tangible personal property, such
17 as rents, oil and mining production or royalties, and
18 gains or losses from sales of such property, shall be
19 allocated in accordance with the situs of such
20 property;

21 b. Income from intangible personal property, such as
22 interest, dividends, patent or copyright royalties,
23 and gains or losses from sales of such property, shall

1 be allocated in accordance with the domiciliary situs
2 of the taxpayer, except that:

3 (1) where such property has acquired a nonunitary
4 business or commercial situs apart from the
5 domicile of the taxpayer such income shall be
6 allocated in accordance with such business or
7 commercial situs; interest income from
8 investments held to generate working capital for
9 a unitary business enterprise shall be included
10 in apportionable income; a resident trust or
11 resident estate shall be treated as having a
12 separate commercial or business situs insofar as
13 undistributed income is concerned, but shall not
14 be treated as having a separate commercial or
15 business situs insofar as distributed income is
16 concerned,

17 (2) for taxable years beginning after December 31,
18 2003, capital or ordinary gains or losses from
19 the sale of an ownership interest in a publicly
20 traded partnership, as defined by Section 7704(b)
21 of the Internal Revenue Code of 1986, as amended,
22 shall be allocated to this state in the ratio of
23 the original cost of such partnership's tangible

1 property in this state to the original cost of
2 such partnership's tangible property everywhere,
3 as determined at the time of the sale; if more
4 than fifty percent (50%) of the value of the
5 partnership's assets consists of intangible
6 assets, capital or ordinary gains or losses from
7 the sale of an ownership interest in the
8 partnership shall be allocated to this state in
9 accordance with the sales factor of the
10 partnership for its first full tax period
11 immediately preceding its tax period during which
12 the ownership interest in the partnership was
13 sold; the provisions of this division shall only
14 apply if the capital or ordinary gains or losses
15 from the sale of an ownership interest in a
16 partnership do not constitute qualifying gain
17 receiving capital treatment as defined in
18 subparagraph a of paragraph 2 of subsection F of
19 this section,

20 (3) income from such property which is required to be
21 allocated pursuant to the provisions of paragraph
22 5 of this subsection shall be allocated as herein
23 provided;

- 1 c. Net income or loss from a business activity which is
2 not a part of business carried on within or without
3 the state of a unitary character shall be separately
4 allocated to the state in which such activity is
5 conducted;
- 6 d. In the case of a manufacturing or processing
7 enterprise the business of which in Oklahoma consists
8 solely of marketing its products by:
- 9 (1) sales having a situs without this state, shipped
10 directly to a point from without the state to a
11 purchaser within the state, commonly known as
12 interstate sales,
- 13 (2) sales of the product stored in public warehouses
14 within the state pursuant to "in transit"
15 tariffs, as prescribed and allowed by the
16 Interstate Commerce Commission, to a purchaser
17 within the state,
- 18 (3) sales of the product stored in public warehouses
19 within the state where the shipment to such
20 warehouses is not covered by "in transit"
21 tariffs, as prescribed and allowed by the
22 Interstate Commerce Commission, to a purchaser
23 within or without the state,

1 the Oklahoma net income shall, at the option of the
2 taxpayer, be that portion of the total net income of
3 the taxpayer for federal income tax purposes derived
4 from the manufacture and/or processing and sales
5 everywhere as determined by the ratio of the sales
6 defined in this section made to the purchaser within
7 the state to the total sales everywhere. The term
8 "public warehouse" as used in this subparagraph means
9 a licensed public warehouse, the principal business of
10 which is warehousing merchandise for the public;

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

16 (1) except as otherwise provided by division (2) of
17 this subparagraph, taxable income of an insurance
18 company for a taxable year shall be apportioned
19 to this state by multiplying such income by a
20 fraction, the numerator of which is the direct
21 premiums written for insurance on property or
22 risks in this state, and the denominator of which
23 is the direct premiums written for insurance on

1 property or risks everywhere. For purposes of
2 this subsection, the term "direct premiums
3 written" means the total amount of direct
4 premiums written, assessments and annuity
5 considerations as reported for the taxable year
6 on the annual statement filed by the company with
7 the Insurance Commissioner in the form approved
8 by the National Association of Insurance
9 Commissioners, or such other form as may be
10 prescribed in lieu thereof,

11 (2) if the principal source of premiums written by an
12 insurance company consists of premiums for
13 reinsurance accepted by it, the taxable income of
14 such company shall be apportioned to this state
15 by multiplying such income by a fraction, the
16 numerator of which is the sum of (a) direct
17 premiums written for insurance on property or
18 risks in this state, plus (b) premiums written
19 for reinsurance accepted in respect of property
20 or risks in this state, and the denominator of
21 which is the sum of (c) direct premiums written
22 for insurance on property or risks everywhere,
23 plus (d) premiums written for reinsurance

1 accepted in respect of property or risks
2 everywhere. For purposes of this paragraph,
3 premiums written for reinsurance accepted in
4 respect of property or risks in this state,
5 whether or not otherwise determinable, may at the
6 election of the company be determined on the
7 basis of the proportion which premiums written
8 for insurance accepted from companies
9 commercially domiciled in Oklahoma bears to
10 premiums written for reinsurance accepted from
11 all sources, or alternatively in the proportion
12 which the sum of the direct premiums written for
13 insurance on property or risks in this state by
14 each ceding company from which reinsurance is
15 accepted bears to the sum of the total direct
16 premiums written by each such ceding company for
17 the taxable year.

18 5. The net income or loss remaining after the separate
19 allocation in paragraph 4 of this subsection, being that which is
20 derived from a unitary business enterprise, shall be apportioned to
21 this state on the basis of the arithmetical average of three factors
22 consisting of property, payroll and sales or gross revenue
23 enumerated as subparagraphs a, b and c of this paragraph. Net

1 income or loss as used in this paragraph includes that derived from
2 patent or copyright royalties, purchase discounts, and interest on
3 accounts receivable relating to or arising from a business activity,
4 the income from which is apportioned pursuant to this subsection,
5 including the sale or other disposition of such property and any
6 other property used in the unitary enterprise. Deductions used in
7 computing such net income or loss shall not include taxes based on
8 or measured by income. Provided, for corporations whose property
9 for purposes of the tax imposed by Section 2355 of this title has an
10 initial investment cost equaling or exceeding Two Hundred Million
11 Dollars (\$200,000,000.00) and such investment is made on or after
12 July 1, 1997, or for corporations which expand their property or
13 facilities in this state and such expansion has an investment cost
14 equaling or exceeding Two Hundred Million Dollars (\$200,000,000.00)
15 over a period not to exceed three (3) years, and such expansion is
16 commenced on or after January 1, 2000, the three factors shall be
17 apportioned with property and payroll, each comprising twenty-five
18 percent (25%) of the apportionment factor and sales comprising fifty
19 percent (50%) of the apportionment factor. The apportionment
20 factors shall be computed as follows:

- 21 a. The property factor is a fraction, the numerator of
22 which is the average value of the taxpayer's real and
23 tangible personal property owned or rented and used in

1 this state during the tax period and the denominator
2 of which is the average value of all the taxpayer's
3 real and tangible personal property everywhere owned
4 or rented and used during the tax period.

5 (1) Property, the income from which is separately
6 allocated in paragraph 4 of this subsection,
7 shall not be included in determining this
8 fraction. The numerator of the fraction shall
9 include a portion of the investment in
10 transportation and other equipment having no
11 fixed situs, such as rolling stock, buses, trucks
12 and trailers, including machinery and equipment
13 carried thereon, airplanes, salespersons'
14 automobiles and other similar equipment, in the
15 proportion that miles traveled in Oklahoma by
16 such equipment bears to total miles traveled,

17 (2) Property owned by the taxpayer is valued at its
18 original cost. Property rented by the taxpayer
19 is valued at eight times the net annual rental
20 rate. Net annual rental rate is the annual
21 rental rate paid by the taxpayer, less any annual
22 rental rate received by the taxpayer from
23 subrentals,

1 (3) The average value of property shall be determined
2 by averaging the values at the beginning and
3 ending of the tax period but the Oklahoma Tax
4 Commission may require the averaging of monthly
5 values during the tax period if reasonably
6 required to reflect properly the average value of
7 the taxpayer's property;

8 b. The payroll factor is a fraction, the numerator of
9 which is the total compensation for services rendered
10 in the state during the tax period, and the
11 denominator of which is the total compensation for
12 services rendered everywhere during the tax period.
13 "Compensation", as used in this subsection means those
14 paid-for services to the extent related to the unitary
15 business but does not include officers' salaries,
16 wages and other compensation.

17 (1) In the case of a transportation enterprise, the
18 numerator of the fraction shall include a portion
19 of such expenditure in connection with employees
20 operating equipment over a fixed route, such as
21 railroad employees, airline pilots, or bus
22 drivers, in this state only a part of the time,
23 in the proportion that mileage traveled in

1 Oklahoma bears to total mileage traveled by such
2 employees,

3 (2) In any case the numerator of the fraction shall
4 include a portion of such expenditures in
5 connection with itinerant employees, such as
6 traveling salespersons, in this state only a part
7 of the time, in the proportion that time spent in
8 Oklahoma bears to total time spent in furtherance
9 of the enterprise by such employees;

10 c. The sales factor is a fraction, the numerator of which
11 is the total sales or gross revenue of the taxpayer in
12 this state during the tax period, and the denominator
13 of which is the total sales or gross revenue of the
14 taxpayer everywhere during the tax period. "Sales",
15 as used in this subsection does not include sales or
16 gross revenue which are separately allocated in
17 paragraph 4 of this subsection.

18 (1) Sales of tangible personal property have a situs
19 in this state if the property is delivered or
20 shipped to a purchaser other than the United
21 States government, within this state regardless
22 of the FOB point or other conditions of the sale;
23 or the property is shipped from an office, store,

1 warehouse, factory or other place of storage in
2 this state and (a) the purchaser is the United
3 States government or (b) the taxpayer is not
4 doing business in the state of the destination of
5 the shipment.

6 (2) In the case of a railroad or interurban railway
7 enterprise, the numerator of the fraction shall
8 not be less than the allocation of revenues to
9 this state as shown in its annual report to the
10 Corporation Commission.

11 (3) In the case of an airline, truck or bus
12 enterprise or freight car, tank car, refrigerator
13 car or other railroad equipment enterprise, the
14 numerator of the fraction shall include a portion
15 of revenue from interstate transportation in the
16 proportion that interstate mileage traveled in
17 Oklahoma bears to total interstate mileage
18 traveled.

19 (4) In the case of an oil, gasoline or gas pipeline
20 enterprise, the numerator of the fraction shall
21 be either the total of traffic units of the
22 enterprise within Oklahoma or the revenue
23 allocated to Oklahoma based upon miles moved, at

1 the option of the taxpayer, and the denominator
2 of which shall be the total of traffic units of
3 the enterprise or the revenue of the enterprise
4 everywhere as appropriate to the numerator. A
5 "traffic unit" is hereby defined as the
6 transportation for a distance of one (1) mile of
7 one (1) barrel of oil, one (1) gallon of gasoline
8 or one thousand (1,000) cubic feet of natural or
9 casinghead gas, as the case may be.

10 (5) In the case of a telephone or telegraph or other
11 communication enterprise, the numerator of the
12 fraction shall include that portion of the
13 interstate revenue as is allocated pursuant to
14 the accounting procedures prescribed by the
15 Federal Communications Commission; provided that
16 in respect to each corporation or business entity
17 required by the Federal Communications Commission
18 to keep its books and records in accordance with
19 a uniform system of accounts prescribed by such
20 Commission, the intrastate net income shall be
21 determined separately in the manner provided by
22 such uniform system of accounts and only the
23 interstate income shall be subject to allocation

1 pursuant to the provisions of this subsection.

2 Provided further, that the gross revenue factors
3 shall be those as are determined pursuant to the
4 accounting procedures prescribed by the Federal
5 Communications Commission.

6 In any case where the apportionment of the three factors
7 prescribed in this paragraph attributes to Oklahoma a portion of net
8 income of the enterprise out of all appropriate proportion to the
9 property owned and/or business transacted within this state, because
10 of the fact that one or more of the factors so prescribed are not
11 employed to any appreciable extent in furtherance of the enterprise;
12 or because one or more factors not so prescribed are employed to a
13 considerable extent in furtherance of the enterprise; or because of
14 other reasons, the Tax Commission is empowered to permit, after a
15 showing by taxpayer that an excessive portion of net income has been
16 attributed to Oklahoma, or require, when in its judgment an
17 insufficient portion of net income has been attributed to Oklahoma,
18 the elimination, substitution, or use of additional factors, or
19 reduction or increase in the weight of such prescribed factors.
20 Provided, however, that any such variance from such prescribed
21 factors which has the effect of increasing the portion of net income
22 attributable to Oklahoma must not be inherently arbitrary, and
23 application of the recomputed final apportionment to the net income

1 of the enterprise must attribute to Oklahoma only a reasonable
2 portion thereof.

3 6. For calendar years 1997 and 1998, the owner of a new or
4 expanded agricultural commodity processing facility in this state
5 may exclude from Oklahoma taxable income, or in the case of an
6 individual, the Oklahoma adjusted gross income, fifteen percent
7 (15%) of the investment by the owner in the new or expanded
8 agricultural commodity processing facility. For calendar year 1999,
9 and all subsequent years, the percentage, not to exceed fifteen
10 percent (15%), available to the owner of a new or expanded
11 agricultural commodity processing facility in this state claiming
12 the exemption shall be adjusted annually so that the total estimated
13 reduction in tax liability does not exceed One Million Dollars
14 (\$1,000,000.00) annually. The Tax Commission shall promulgate rules
15 for determining the percentage of the investment which each eligible
16 taxpayer may exclude. The exclusion provided by this paragraph
17 shall be taken in the taxable year when the investment is made. In
18 the event the total reduction in tax liability authorized by this
19 paragraph exceeds One Million Dollars (\$1,000,000.00) in any
20 calendar year, the Tax Commission shall permit any excess over One
21 Million Dollars (\$1,000,000.00) and shall factor such excess into
22 the percentage for subsequent years. Any amount of the exemption
23 permitted to be excluded pursuant to the provisions of this

1 paragraph but not used in any year may be carried forward as an
2 exemption from income pursuant to the provisions of this paragraph
3 for a period not exceeding six (6) years following the year in which
4 the investment was originally made.

5 For purposes of this paragraph:

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

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

19 (1) the processing of agricultural commodities,
20 including receiving or storing agricultural
21 commodities, or the production of milk at a dairy
22 operation,

- 1 (2) transporting the agricultural commodities or
- 2 product before, during or after the processing,
- 3 or
- 4 (3) packaging or otherwise preparing the product for
- 5 sale or shipment.

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

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

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

1 paragraph, "qualified wages" means those wages used to calculate the
2 federal credit pursuant to 26 U.S.C.A., Section 45A.

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

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

1 ten percent (10%) of the amount of gross proceeds received by such
2 transferor corporation as a result of the technology transfer. Such
3 exemption shall be allowed for a period not to exceed ten (10) years
4 from the date of receipt of the first royalty payment accruing from
5 such transfer. No exemption may be claimed for transfers of
6 technology to qualified small businesses made prior to January 1,
7 1988.

8 2. For purposes of this subsection:

- 9 a. "Qualified small business" means an entity, whether
10 organized as a corporation, partnership, or
11 proprietorship, organized for profit with its
12 principal place of business located within this state
13 and which meets the following criteria:
- 14 (1) Capitalization of not more than Two Hundred Fifty
15 Thousand Dollars (\$250,000.00),
 - 16 (2) Having at least fifty percent (50%) of its
17 employees and assets located in Oklahoma at the
18 time of the transfer, and
 - 19 (3) Not a subsidiary or affiliate of the transferor
20 corporation;
- 21 b. "Technology" means a proprietary process, formula,
22 pattern, device or compilation of scientific or

1 technical information which is not in the public
2 domain;

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

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

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

17 2. As used in this subsection:

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

- 1 (1) the sale of real property or tangible personal
2 property located within Oklahoma that has been
3 directly or indirectly owned by the corporation,
4 estate or trust for a holding period of at least
5 five (5) years prior to the date of the
6 transaction from which such net capital gains
7 arise,
- 8 (2) the sale of stock or on the sale of an ownership
9 interest in an Oklahoma company, limited
10 liability company, or partnership where such
11 stock or ownership interest has been directly or
12 indirectly owned by the corporation, estate or
13 trust for a holding period of at least three (3)
14 years prior to the date of the transaction from
15 which the net capital gains arise, or
- 16 (3) the sale of real property, tangible personal
17 property or intangible personal property located
18 within Oklahoma as part of the sale of all or
19 substantially all of the assets of an Oklahoma
20 company, limited liability company, or
21 partnership where such property has been directly
22 or indirectly owned by such entity owned by the
23 owners of such entity, and used in or derived

1 from such entity for a period of at least three
2 (3) years prior to the date of the transaction
3 from which the net capital gains arise,

4 b. "holding period" means an uninterrupted period of
5 time. The holding period shall include any additional
6 period when the property was held by another
7 individual or entity, if such additional period is
8 included in the taxpayer's holding period for the
9 asset pursuant to the Internal Revenue Code,

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

16 d. "direct" means the taxpayer directly owns the asset,
17 and

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

22 (1) With respect to sales of real property or
23 tangible personal property located within

1 Oklahoma, the deduction described in this
2 subsection shall not apply unless the pass-
3 through entity that makes the sale has held the
4 property for not less than five (5) uninterrupted
5 years prior to the date of the transaction that
6 created the capital gain, and each pass-through
7 entity included in the chain of ownership has
8 been a member, partner, or shareholder of the
9 pass-through entity in the tier immediately below
10 it for an uninterrupted period of not less than
11 five (5) years.

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

1 shareholder of the pass-through entity in the
2 tier immediately below it for an uninterrupted
3 period of not less than three (3) years.

4 E. The Oklahoma adjusted gross income of any individual
5 taxpayer shall be further adjusted as follows to arrive at Oklahoma
6 taxable income:

7 1. a. In the case of individuals, there shall be added or
8 deducted, as the case may be, the difference necessary
9 to allow personal exemptions of One Thousand Dollars
10 (\$1,000.00) in lieu of the personal exemptions allowed
11 by the Internal Revenue Code.

12 b. There shall be allowed an additional exemption of One
13 Thousand Dollars (\$1,000.00) for each taxpayer or
14 spouse who is blind at the close of the tax year. For
15 purposes of this subparagraph, an individual is blind
16 only if the central visual acuity of the individual
17 does not exceed 20/200 in the better eye with
18 correcting lenses, or if the visual acuity of the
19 individual is greater than 20/200, but is accompanied
20 by a limitation in the fields of vision such that the
21 widest diameter of the visual field subtends an angle
22 no greater than twenty (20) degrees.

1 c. There shall be allowed an additional exemption of One
2 Thousand Dollars (\$1,000.00) for each taxpayer or
3 spouse who is sixty-five (65) years of age or older at
4 the close of the tax year based upon the filing status
5 and federal adjusted gross income of the taxpayer.
6 Taxpayers with the following filing status may claim
7 this exemption if the federal adjusted gross income
8 does not exceed:

9 (1) Twenty-five Thousand Dollars (\$25,000.00) if
10 married and filing jointly;

11 (2) Twelve Thousand Five Hundred Dollars (\$12,500.00)
12 if married and filing separately;

13 (3) Fifteen Thousand Dollars (\$15,000.00) if single;
14 and

15 (4) Nineteen Thousand Dollars (\$19,000.00) if a
16 qualifying head of household.

17 Provided, for taxable years beginning after December
18 31, 1999, amounts included in the calculation of
19 federal adjusted gross income pursuant to the
20 conversion of a traditional individual retirement
21 account to a Roth individual retirement account shall
22 be excluded from federal adjusted gross income for

1 purposes of the income thresholds provided in this
2 subparagraph.

3 ~~d. For taxable years beginning after December 31, 1990,~~
4 ~~and beginning before January 1, 1992, there shall be~~
5 ~~allowed a one-time additional exemption of Four~~
6 ~~Hundred Dollars (\$400.00) for each taxpayer or spouse~~
7 ~~who is a member of the National Guard or any reserve~~
8 ~~unit of the Armed Forces of the United States and who~~
9 ~~was at any time during such taxable year deployed in~~
10 ~~active service during a time of war or conflict with~~
11 ~~an enemy of the United States.~~

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

1 percent (15%) of such Oklahoma adjusted gross income
2 or Five Hundred Dollars (\$500.00), but not to exceed
3 the maximum amount of One Thousand Dollars
4 (\$1,000.00),

5 b. For taxable years beginning on or after January 1,
6 2006, and before January 1, 2007, in the case of
7 individuals who use the standard deduction in
8 determining taxable income, there shall be added or
9 deducted, as the case may be, the difference necessary
10 to allow a standard deduction in lieu of the standard
11 deduction allowed by the Internal Revenue Code, in an
12 amount equal to:

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

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

18 c. For the taxable year beginning on January 1, 2007, and
19 ending December 31, 2007, in the case of individuals
20 who use the standard deduction in determining taxable
21 income, there shall be added or deducted, as the case
22 may be, the difference necessary to allow a standard

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

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

6 (2) Four Thousand One Hundred Twenty-five Dollars
7 (\$4,125.00) for a head of household; or

8 (3) Two Thousand Seven Hundred Fifty Dollars
9 (\$2,750.00), if the filing status is single or
10 married filing separate.

11 d. For the taxable year beginning on January 1, 2008, and
12 ending December 31, 2008, in the case of individuals
13 who use the standard deduction in determining taxable
14 income, there shall be added or deducted, as the case
15 may be, the difference necessary to allow a standard
16 deduction in lieu of the standard deduction allowed by
17 the Internal Revenue Code, in an amount equal to:

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

21 (2) Four Thousand Eight Hundred Seventy-five Dollars
22 (\$4,875.00) for a head of household, or

1 (3) Three Thousand Two Hundred Fifty Dollars
2 (\$3,250.00), if the filing status is single or
3 married filing separate.

4 e. For the taxable year beginning on January 1, 2009, and
5 ending December 31, 2009, in the case of individuals
6 who use the standard deduction in determining taxable
7 income, there shall be added or deducted, as the case
8 may be, the difference necessary to allow a standard
9 deduction in lieu of the standard deduction allowed by
10 the Internal Revenue Code, in an amount equal to:

11 (1) Eight Thousand Five Hundred Dollars (\$8,500.00),
12 if the filing status is married filing joint or
13 qualifying widow, or

14 (2) Six Thousand Three Hundred Seventy-five Dollars
15 (\$6,375.00) for a head of household, or

16 (3) Four Thousand Two Hundred Fifty Dollars
17 (\$4,250.00), if the filing status is single or
18 married filing separate.

19 f. For taxable years beginning on or after January 1,
20 2010, in the case of individuals who use the standard
21 deduction in determining taxable income, there shall
22 be added or deducted, as the case may be, the
23 difference necessary to allow a standard deduction

1 equal to the standard deduction allowed by the
2 Internal Revenue Code of 1986, as amended, based upon
3 the amount and filing status prescribed by such Code
4 for purposes of filing federal individual income tax
5 returns.

6 3. In the case of resident and part-year resident individuals
7 having adjusted gross income from sources both within and without
8 the state, the itemized or standard deductions and personal
9 exemptions shall be reduced to an amount which is the same portion
10 of the total thereof as Oklahoma adjusted gross income is of
11 adjusted gross income. To the extent itemized deductions include
12 allowable moving expense, proration of moving expense shall not be
13 required or permitted but allowable moving expense shall be fully
14 deductible for those taxpayers moving within or into Oklahoma and no
15 part of moving expense shall be deductible for those taxpayers
16 moving without or out of Oklahoma. All other itemized or standard
17 deductions and personal exemptions shall be subject to proration as
18 provided by law.

19 4. A resident individual with a physical disability
20 constituting a substantial handicap to employment may deduct from
21 Oklahoma adjusted gross income such expenditures to modify a motor
22 vehicle, home or workplace as are necessary to compensate for his or
23 her handicap. A veteran certified by the Department of Veterans

1 Affairs of the federal government as having a service-connected
2 disability shall be conclusively presumed to be an individual with a
3 physical disability constituting a substantial handicap to
4 employment. The Tax Commission shall promulgate rules containing a
5 list of combinations of common disabilities and modifications which
6 may be presumed to qualify for this deduction. The Tax Commission
7 shall prescribe necessary requirements for verification.

8 5. In any taxable year beginning before January 1, 2010 the
9 first One Thousand Five Hundred Dollars (\$1,500.00) of income, and
10 in any taxable year beginning on or after January 1, 2010, one
11 hundred percent (100%) of the income, received by any person from
12 the United States as salary or compensation in any form, other than
13 retirement benefits, as a member of any component of the Armed
14 Forces of the United States shall be deducted from taxable income.
15 Whenever the filing of a timely income tax return by a member of the
16 Armed Forces of the United States is made impracticable or
17 impossible of accomplishment by reason of:

- 18 a. absence from the United States, which term includes
19 only the states and the District of Columbia;
- 20 b. absence from the State of Oklahoma while on active
21 duty; or
- 22 c. confinement in a hospital within the United States for
23 treatment of wounds, injuries or disease,

1 the time for filing a return and paying an income tax shall
2 be and is hereby extended without incurring liability for
3 interest or penalties, to the fifteenth day of the third
4 month following the month in which:

5 (1) Such individual shall return to the United States
6 if the extension is granted pursuant to
7 subparagraph a of this paragraph, return to the
8 State of Oklahoma if the extension is granted
9 pursuant to subparagraph b of this paragraph or
10 be discharged from such hospital if the extension
11 is granted pursuant to subparagraph c of this
12 paragraph; or

13 (2) An executor, administrator, or conservator of the
14 estate of the taxpayer is appointed, whichever
15 event occurs the earliest.

16 Provided, that the Tax Commission may, in its discretion, grant
17 any member of the Armed Forces of the United States an extension of
18 time for filing of income tax returns and payment of income tax
19 without incurring liabilities for interest or penalties. Such
20 extension may be granted only when in the judgment of the Tax
21 Commission a good cause exists therefor and may be for a period in
22 excess of six (6) months. A record of every such extension granted,
23 and the reason therefor, shall be kept.

1 6. ~~The~~ For all tax years beginning before January 1, 2010, the
2 salary or any other form of compensation, received from the United
3 States by a member of any component of the Armed Forces of the
4 United States, shall be deducted from taxable income during the time
5 in which the person is detained by the enemy in a conflict, is a
6 prisoner of war or is missing in action and not deceased; provided,
7 for all tax years beginning on or after January 1, 2010, all such
8 salary or compensation shall be deducted pursuant to paragraph 5 of
9 this subsection.

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

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

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

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

1 Employment Security Commission Retirement Plan, or the employee
2 retirement systems created by municipalities pursuant to Section 48-
3 101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt
4 from taxable income.

5 10. In taxable years beginning after December 31, 1984, Social
6 Security benefits received by an individual shall be exempt from
7 taxable income, to the extent such benefits are included in the
8 federal adjusted gross income pursuant to the provisions of Section
9 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

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

1 12. In taxable years beginning after December 31, 1995,
2 contributions made to and interest received from a medical savings
3 account established pursuant to Sections 2621 through 2623 of Title
4 63 of the Oklahoma Statutes shall be exempt from taxable income.

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

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

1 may be deducted from the Oklahoma adjusted gross
2 income.

3 b. The deductions for adoptions and proposed adoptions
4 authorized by this paragraph shall not exceed Twenty
5 Thousand Dollars (\$20,000.00) per calendar year.

6 c. The Tax Commission shall promulgate rules to implement
7 the provisions of this paragraph which shall contain a
8 specific list of nonrecurring adoption expenses which
9 may be presumed to qualify for the deduction. The Tax
10 Commission shall prescribe necessary requirements for
11 verification.

12 d. "Nonrecurring adoption expenses" means adoption fees,
13 court costs, medical expenses, attorney fees and
14 expenses which are directly related to the legal
15 process of adoption of a child including, but not
16 limited to, costs relating to the adoption study,
17 health and psychological examinations, transportation
18 and reasonable costs of lodging and food for the child
19 or adoptive parents which are incurred to complete the
20 adoption process and are not reimbursed by other
21 sources. The term "nonrecurring adoption expenses"
22 shall not include attorney fees incurred for the
23 purpose of litigating a contested adoption, from and

1 after the point of the initiation of the contest,
2 costs associated with physical remodeling, renovation
3 and alteration of the adoptive parents' home or
4 property, except for a special needs child as
5 authorized by the court.

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

- 1 (1) in taxable years beginning after December 31,
2 2004, and prior to January 1, 2007, the
3 qualifying amount shall be Thirty-seven Thousand
4 Five Hundred Dollars (\$37,500.00) or less if the
5 filing status is single, head of household, or
6 married filing separate, or Seventy-Five Thousand
7 Dollars (\$75,000.00) or less if the filing status
8 is married filing jointly or qualifying widow,
- 9 (2) in the taxable year beginning January 1, 2007,
10 the qualifying amount shall be Fifty Thousand
11 Dollars (\$50,000.00) or less if the filing status
12 is single, head of household, or married filing
13 separate, or One Hundred Thousand Dollars
14 (\$100,000.00) or less if the filing status is
15 married filing jointly or qualifying widow,
- 16 (3) in the taxable year beginning January 1, 2008,
17 the qualifying amount shall be Sixty-two Thousand
18 Five Hundred Dollars (\$62,500.00) or less if the
19 filing status is single, head of household, or
20 married filing separate, or One Hundred Twenty-
21 five Thousand Dollars (\$125,000.00) or less if
22 the filing status is married filing jointly or
23 qualifying widow,

1 (4) in the taxable year beginning January 1, 2009,
2 the qualifying amount shall be One Hundred
3 Thousand Dollars (\$100,000.00) or less if the
4 filing status is single, head of household, or
5 married filing separate, or Two Hundred Thousand
6 Dollars (\$200,000.00) or less if the filing
7 status is married filing jointly or qualifying
8 widow, and

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

12 c. For purposes of this paragraph, "retirement benefits"
13 means the total distributions or withdrawals from the
14 following:

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

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

21 (3) an individual retirement account, annuity or
22 trust or simplified employee pension that

1 satisfies the requirements of Section 408 of the
2 Internal Revenue Code, 26 U.S.C., Section 408,
3 (4) an employee annuity subject to the provisions of
4 Section 403(a) or (b) of the Internal Revenue
5 Code, 26 U.S.C., Section 403(a) or (b),
6 (5) United States Retirement Bonds which satisfy the
7 requirements of Section 86 of the Internal
8 Revenue Code, 26 U.S.C., Section 86, or
9 (6) lump-sum distributions from a retirement plan
10 which satisfies the requirements of Section
11 402(e) of the Internal Revenue Code, 26 U.S.C.,
12 Section 402(e).

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

1 (\$5,500.00) for the 2004 tax year, Seven Thousand Five
2 Hundred Dollars (\$7,500.00) for the 2005 tax year and
3 Ten Thousand Dollars (\$10,000.00) for the 2006 tax
4 year and all subsequent tax years.

5 16. In taxable years beginning after December 31, 1999, for an
6 individual engaged in production agriculture who has filed a
7 Schedule F form with the taxpayer's federal income tax return for
8 such taxable year, there shall be excluded from taxable income any
9 amount which was included as federal taxable income or federal
10 adjusted gross income and which consists of the discharge of an
11 obligation by a creditor of the taxpayer incurred to finance the
12 production of agricultural products.

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

18 18. a. In taxable years beginning after December 31, 2001,
19 and before January 1, 2005, there shall be allowed a
20 deduction in the amount of contributions to accounts
21 established pursuant to the Oklahoma College Savings
22 Plan Act. The deduction shall equal the amount of
23 contributions to accounts, but in no event shall the

1 deduction for each contributor exceed Two Thousand
2 Five Hundred Dollars (\$2,500.00) each taxable year for
3 each account.

4 b. In taxable years beginning after December 31, 2004,
5 each taxpayer shall be allowed a deduction for
6 contributions to accounts established pursuant to the
7 Oklahoma College Savings Plan Act. The maximum annual
8 deduction shall equal the amount of contributions to
9 all such accounts plus any contributions to such
10 accounts by the taxpayer for prior taxable years after
11 December 31, 2004, which were not deducted, but in no
12 event shall the deduction for each tax year exceed Ten
13 Thousand Dollars (\$10,000.00) for each individual
14 taxpayer or Twenty Thousand Dollars (\$20,000.00) for
15 taxpayers filing a joint return. Any amount of a
16 contribution that is not deducted by the taxpayer in
17 the year for which the contribution is made may be
18 carried forward as a deduction from income for the
19 succeeding five (5) years. For taxable years
20 beginning after December 31, 2005, deductions may be
21 taken for contributions and rollovers made during a
22 taxable year and up to April 15 of the succeeding
23 year, or the due date of a taxpayer's state income tax

1 return, excluding extensions, whichever is later.
2 Provided, a deduction for the same contribution may
3 not be taken for two (2) different taxable years.

4 c. In taxable years beginning after December 31, 2006,
5 deductions for contributions made pursuant to
6 subparagraph b of this paragraph shall be limited as
7 follows:

8 (1) for a taxpayer who qualified for the five-year
9 carryforward election and who takes a rollover or
10 non-qualified withdrawal during that period, the
11 tax deduction otherwise available pursuant to
12 subparagraph b of this paragraph shall be reduced
13 by the amount which is equal to the rollover or
14 non-qualified withdrawal, and

15 (2) for a taxpayer who elects to take a rollover or
16 non-qualified withdrawal within the same tax year
17 in which a contribution was made to the
18 taxpayer's account, the tax deduction otherwise
19 available pursuant to subparagraph b of this
20 paragraph shall be reduced by the amount of the
21 contribution which is equal to the rollover or
22 non-qualified withdrawal.

- 1 d. If a taxpayer elects to take a rollover on a
2 contribution for which a deduction has been taken
3 pursuant to subparagraph b of this paragraph within
4 one year of the date of contribution, the amount of
5 such rollover shall be included in the adjusted gross
6 income of the taxpayer in the taxable year of the
7 rollover.
- 8 e. If a taxpayer makes a non-qualified withdrawal of
9 contributions for which a deduction was taken pursuant
10 to subparagraph b of this paragraph, such non-
11 qualified withdrawal and any earnings thereon shall be
12 included in the adjusted gross income of the taxpayer
13 in the taxable year of the non-qualified withdrawal.
- 14 f. As used in this paragraph:
- 15 (1) "non-qualified withdrawal" means a withdrawal
16 from an Oklahoma College Savings Plan account
17 other than one of the following:
- 18 (a) a qualified withdrawal,
19 (b) a withdrawal made as a result of the death
20 or disability of the designated beneficiary
21 of an account,
22 (c) a withdrawal that is made on the account of
23 a scholarship or the allowance or payment

1 described in Section 135(d)(1)(B) or (C) or
2 by the Internal Revenue Code, received by
3 the designated beneficiary to the extent the
4 amount of the refund does not exceed the
5 amount of the scholarship, allowance, or
6 payment, or

7 (d) a rollover or change of designated
8 beneficiary as permitted by subsection F of
9 Section 3970.7 of Title 70 of Oklahoma
10 Statutes, and

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

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

21 20. For taxable years beginning after December 31, 2006,
22 retirement benefits received by federal civil service retirees,
23 including survivor annuities, paid in lieu of Social Security

1 benefits shall be exempt from taxable income to the extent such
2 benefits are included in the federal adjusted gross income pursuant
3 to the provisions of Section 86 of the Internal Revenue Code, 26
4 U.S.C., Section 86, according to the following schedule:

- 5 a. in the taxable year beginning January 1, 2007, twenty
6 percent (20%) of such benefits shall be exempt,
- 7 b. in the taxable year beginning January 1, 2008, forty
8 percent (40%) of such benefits shall be exempt,
- 9 c. in the taxable year beginning January 1, 2009, sixty
10 percent (60%) of such benefits shall be exempt,
- 11 d. in the taxable year beginning January 1, 2010, eighty
12 percent (80%) of such benefits shall be exempt, and
- 13 e. in the taxable year beginning January 1, 2011, and
14 subsequent taxable years, one hundred percent (100%)
15 of such benefits shall be exempt.

16 21. a. For taxable years beginning after December 31, 2007, a
17 resident individual may deduct up to Ten Thousand
18 Dollars (\$10,000.00) from Oklahoma adjusted gross
19 income if the individual, or the dependent of the
20 individual, while living, donates one or more human
21 organs of the individual to another human being for
22 human organ transplantation. As used in this
23 paragraph, "human organ" means all or part of a liver,

1 pancreas, kidney, intestine, lung, or bone marrow. A
2 deduction that is claimed under this paragraph may be
3 claimed in the taxable year in which the human organ
4 transplantation occurs.

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

9 c. The ~~Oklahoma~~ Tax Commission shall promulgate rules to
10 implement the provisions of this paragraph which shall
11 contain a specific list of expenses which may be
12 presumed to qualify for the deduction. The Tax
13 Commission shall prescribe necessary requirements for
14 verification.

15 22. For taxable years beginning after December 31, 2008, there
16 shall be exempt from taxable income any amount received by the
17 beneficiary of the death benefit for an emergency medical technician
18 provided by Section ~~±~~ 1-2505.1 of this ~~act~~ title.

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

1 2. As used in this subsection:

2 a. "qualifying gains receiving capital treatment" means
3 the amount of net capital gains, as defined in Section
4 1222(11) of the Internal Revenue Code, included in an
5 individual taxpayer's federal income tax return that
6 result from:

7 (1) the sale of real property or tangible personal
8 property located within Oklahoma that has been
9 directly or indirectly owned by the individual
10 taxpayer for a holding period of at least five
11 (5) years prior to the date of the transaction
12 from which such net capital gains arise,

13 (2) the sale of stock or the sale of a direct or
14 indirect ownership interest in an Oklahoma
15 company, limited liability company, or
16 partnership where such stock or ownership
17 interest has been directly or indirectly owned by
18 the individual taxpayer for a holding period of
19 at least two (2) years prior to the date of the
20 transaction from which the net capital gains
21 arise, or

22 (3) the sale of real property, tangible personal
23 property or intangible personal property located

1 within Oklahoma as part of the sale of all or
2 substantially all of the assets of an Oklahoma
3 company, limited liability company, or
4 partnership or an Oklahoma proprietorship
5 business enterprise where such property has been
6 directly or indirectly owned by such entity or
7 business enterprise or owned by the owners of
8 such entity or business enterprise for a period
9 of at least two (2) years prior to the date of
10 the transaction from which the net capital gains
11 arise,

12 b. "holding period" means an uninterrupted period of
13 time. The holding period shall include any additional
14 period when the property was held by another
15 individual or entity, if such additional period is
16 included in the taxpayer's holding period for the
17 asset pursuant to the Internal Revenue Code,

18 c. "Oklahoma company," "limited liability company," or
19 "partnership" means an entity whose primary
20 headquarters have been located in Oklahoma for at
21 least three (3) uninterrupted years prior to the date
22 of the transaction from which the net capital gains
23 arise,

1 d. "direct" means the individual taxpayer directly owns
2 the asset,
3 e. "indirect" means the individual taxpayer owns an
4 interest in a pass-through entity (or chain of pass-
5 through entities) that sells the asset that gives rise
6 to the qualifying gains receiving capital treatment.
7 (1) With respect to sales of real property or
8 tangible personal property located within
9 Oklahoma, the deduction described in this
10 subsection shall not apply unless the pass-
11 through entity that makes the sale has held the
12 property for not less than five (5) uninterrupted
13 years prior to the date of the transaction that
14 created the capital gain, and each pass-through
15 entity included in the chain of ownership has
16 been a member, partner, or shareholder of the
17 pass-through entity in the tier immediately below
18 it for an uninterrupted period of not less than
19 five (5) years.
20 (2) With respect to sales of stock or ownership
21 interest in or sales of all or substantially all
22 of the assets of an Oklahoma company, limited
23 liability company, partnership or Oklahoma

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

17 f. "Oklahoma proprietorship business enterprise" means a
18 business enterprise whose income and expenses have
19 been reported on Schedule C or F of an individual
20 taxpayer's federal income tax return, or any similar
21 successor schedule published by the Internal Revenue
22 Service and whose primary headquarters have been
23 located in Oklahoma for at least three (3)

1 uninterrupted years prior to the date of the
2 transaction from which the net capital gains arise.

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

7 a. the term "real estate investment trust" or "REIT"
8 means the meaning ascribed to such term in Section 856
9 of the Internal Revenue Code of 1986, as amended,

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

18 (1) treated as an association taxable as a
19 corporation under the Internal Revenue Code of
20 1986, as amended, and

21 (2) not exempt from federal income tax pursuant to
22 the provisions of Section 501(a) of the Internal
23 Revenue Code of 1986, as amended.

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

7 c. the term "association taxable as a corporation" shall
8 not include the following entities:

9 (1) any real estate investment trust as defined in
10 paragraph a of this subsection other than a
11 "captively real estate investment trust", or

12 (2) any qualified real estate investment trust
13 subsidiary under Section 856(i) of the Internal
14 Revenue Code of 1986, as amended, other than a
15 qualified REIT subsidiary of a "captively real
16 estate investment trust", or

17 (3) any Listed Australian Property Trust (meaning an
18 Australian unit trust registered as a "Managed
19 Investment Scheme" under the Australian
20 Corporations Act in which the principal class of
21 units is listed on a recognized stock exchange in
22 Australia and is regularly traded on an
23 established securities market), or an entity

1 organized as a trust, provided that a Listed
2 Australian Property Trust owns or controls,
3 directly or indirectly, seventy-five percent
4 (75%) or more of the voting power or value of the
5 beneficial interests or shares of such trust, or
6 (4) any Qualified Foreign Entity, meaning a
7 corporation, trust, association or partnership
8 organized outside the laws of the United States
9 and which satisfies the following criteria:
10 (a) at least seventy-five percent (75%) of the
11 entity's total asset value at the close of
12 its taxable year is represented by real
13 estate assets, as defined in Section
14 856(c)(5)(B) of the Internal Revenue Code of
15 1986, as amended, thereby including shares
16 or certificates of beneficial interest in
17 any real estate investment trust, cash and
18 cash equivalents, and U.S. Government
19 securities,
20 (b) the entity receives a dividend-paid
21 deduction comparable to Section 561 of the
22 Internal Revenue Code of 1986, as amended,
23 or is exempt from entity level tax,

- 1 (c) the entity is required to distribute at
2 least eighty-five percent (85%) of its
3 taxable income, as computed in the
4 jurisdiction in which it is organized, to
5 the holders of its shares or certificates of
6 beneficial interest on an annual basis,
7 (d) not more than ten percent (10%) of the
8 voting power or value in such entity is held
9 directly or indirectly or constructively by
10 a single entity or individual, or the shares
11 or beneficial interests of such entity are
12 regularly traded on an established
13 securities market, and
14 (e) the entity is organized in a country which
15 has a tax treaty with the United States.

16 2. For purposes of this subsection, the constructive ownership
17 rules of Section 318(a) of the Internal Revenue Code of 1986, as
18 amended, as modified by Section 856(d)(5) of the Internal Revenue
19 Code of 1986, as amended, shall apply in determining the ownership
20 of stock, assets, or net profits of any person.

21 SECTION 2. This act shall become effective January 1, 2010.

22 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-17-09 - DO PASS,
23 As Amended and Coauthored.