

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1926

By: Morrissette

4  
5 AS INTRODUCED

6 An Act relating to revenue and taxation; amending 68  
7 O.S. 2001, Section 1357, as last amended by Section  
8 3, Chapter 436, O.S.L. 2008 (68 O.S. Supp. 2008,  
9 Section 1357), which relates to sales tax; exempting  
10 produce, milk, juice, baby food, baby formula and  
11 diapers from sales tax; defining term; amending 68  
12 O.S. 2001, Section 2105, as amended by Section 3,  
13 Chapter 413, O.S.L. 2005 (68 O.S. Supp. 2008, Section  
14 2105), which relates to Oklahoma vehicle excise tax;  
15 adding exemption from excise tax for certain new  
16 vehicles; amending 68 O.S. 2001, Section 2357.43,  
17 which relates to income tax credits; modifying  
18 calculation of credit; increasing amount of credit;  
19 amending 68 O.S. 2001, Section 2358, as last amended  
20 by Section 3, Chapter 395, O.S.L. 2008 (68 O.S. Supp.  
21 2008, Section 2358), which relates to Oklahoma income  
22 tax; providing income tax deduction for certain  
23 health care expenses; specifying eligible expenses;  
24 limiting eligibility for deduction based on income;  
providing effective dates; and declaring an  
emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as  
last amended by Section 3, Chapter 436, O.S.L. 2008 (68 O.S. Supp.  
2008, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

1        There are hereby specifically exempted from the tax levied by  
2 the Oklahoma Sales Tax Code:

3        1.    Transportation of school pupils to and from elementary  
4 schools or high schools in motor or other vehicles;

5        2.    Transportation of persons where the fare of each person does  
6 not exceed One Dollar (\$1.00), or local transportation of persons  
7 within the corporate limits of a municipality except by taxicabs;

8        3.    Sales for resale to persons engaged in the business of  
9 reselling the articles purchased, whether within or without the  
10 state, provided that such sales to residents of this state are made  
11 to persons to whom sales tax permits have been issued as provided in  
12 the Oklahoma Sales Tax Code. This exemption shall not apply to the  
13 sales of articles made to persons holding permits when such persons  
14 purchase items for their use and which they are not regularly  
15 engaged in the business of reselling; neither shall this exemption  
16 apply to sales of tangible personal property to peddlers, solicitors  
17 and other salespersons who do not have an established place of  
18 business and a sales tax permit. The exemption provided by this  
19 paragraph shall apply to sales of motor fuel or diesel fuel to a  
20 Group Five vendor, but the use of such motor fuel or diesel fuel by  
21 the Group Five vendor shall not be exempt from the tax levied by the  
22 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel  
23 is exempt from sales tax when the motor fuel is for shipment outside  
24 this state and consumed by a common carrier by rail in the conduct

1 of its business. The sales tax shall apply to the purchase of motor  
2 fuel or diesel fuel in Oklahoma by a common carrier by rail when  
3 such motor fuel is purchased for fueling, within this state, of any  
4 locomotive or other motorized flanged wheel equipment;

5 4. Sales of advertising space in newspapers and periodicals;

6 5. Sales of programs relating to sporting and entertainment  
7 events, and sales of advertising on billboards (including signage,  
8 posters, panels, marquees, or on other similar surfaces, whether  
9 indoors or outdoors) or in programs relating to sporting and  
10 entertainment events, and sales of any advertising, to be displayed  
11 at or in connection with a sporting event, via the Internet,  
12 electronic display devices, or through public address or broadcast  
13 systems. The exemption authorized by this paragraph shall be  
14 effective for all sales made on or after January 1, 2001;

15 6. Sales of any advertising, other than the advertising  
16 described by paragraph 5 of this section, via the Internet,  
17 electronic display devices, or through the electronic media,  
18 including radio, public address or broadcast systems, television  
19 (whether through closed circuit broadcasting systems or otherwise),  
20 and cable and satellite television, and the servicing of any  
21 advertising devices;

22 7. Eggs, feed, supplies, machinery and equipment purchased by  
23 persons regularly engaged in the business of raising worms, fish,  
24 any insect or any other form of terrestrial or aquatic animal life

1 and used for the purpose of raising same for marketing. This  
2 exemption shall only be granted and extended to the purchaser when  
3 the items are to be used and in fact are used in the raising of  
4 animal life as set out above. Each purchaser shall certify, in  
5 writing, on the invoice or sales ticket retained by the vendor that  
6 the purchaser is regularly engaged in the business of raising such  
7 animal life and that the items purchased will be used only in such  
8 business. The vendor shall certify to the Oklahoma Tax Commission  
9 that the price of the items has been reduced to grant the full  
10 benefit of the exemption. Violation hereof by the purchaser or  
11 vendor shall be a misdemeanor;

12 8. Sale of natural or artificial gas and electricity, and  
13 associated delivery or transmission services, when sold exclusively  
14 for residential use. Provided, this exemption shall not apply to  
15 any sales tax levied by a city or town, or a county, or any other  
16 jurisdiction in this state;

17 9. In addition to the exemptions authorized by Section 1357.6  
18 of this title, sales of drugs sold pursuant to a prescription  
19 written for the treatment of human beings by a person licensed to  
20 prescribe the drugs, and sales of insulin and medical oxygen.  
21 Provided, this exemption shall not apply to over-the-counter drugs;

22 10. Transfers of title or possession of empty, partially  
23 filled, or filled returnable oil and chemical drums to any person  
24 who is not regularly engaged in the business of selling, reselling

1 or otherwise transferring empty, partially filled, or filled  
2 returnable oil drums;

3 11. Sales of one-way utensils, paper napkins, paper cups,  
4 disposable hot containers and other one-way carry out materials to a  
5 vendor of meals or beverages;

6 12. Sales of food or food products for home consumption which  
7 are purchased in whole or in part with coupons issued pursuant to  
8 the federal food stamp program as authorized by Sections 2011  
9 through 2029 of Title 7 of the United States Code, as to that  
10 portion purchased with such coupons. The exemption provided for  
11 such sales shall be inapplicable to such sales upon the effective  
12 date of any federal law that removes the requirement of the  
13 exemption as a condition for participation by the state in the  
14 federal food stamp program;

15 13. Sales of food or food products, or any equipment or  
16 supplies used in the preparation of the food or food products to or  
17 by an organization which:

18 a. is exempt from taxation pursuant to the provisions of  
19 Section 501(c)(3) of the Internal Revenue Code, 26  
20 U.S.C., Section 501(c)(3), and which provides and  
21 delivers prepared meals for home consumption to  
22 elderly or homebound persons as part of a program  
23 commonly known as "Meals on Wheels" or "Mobile Meals",  
24 or

1           b.    is exempt from taxation pursuant to the provisions of  
2                    Section 501(c)(3) of the Internal Revenue Code, 26  
3                    U.S.C., Section 501(c)(3), and which receives federal  
4                    funding pursuant to the Older Americans Act of 1965,  
5                    as amended, for the purpose of providing nutrition  
6                    programs for the care and benefit of elderly persons;

7       14.   a.    Sales of tangible personal property or services to or  
8                    by organizations which are exempt from taxation  
9                    pursuant to the provisions of Section 501(c)(3) of the  
10                   Internal Revenue Code, 26 U.S.C., Section 501(c)(3),  
11                   and:

12                   (1) are primarily involved in the collection and  
13                   distribution of food and other household products  
14                   to other organizations that facilitate the  
15                   distribution of such products to the needy and  
16                   such distributee organizations are exempt from  
17                   taxation pursuant to the provisions of Section  
18                   501(c)(3) of the Internal Revenue Code, 26  
19                   U.S.C., Section 501(c)(3), or

20                   (2) facilitate the distribution of such products to  
21                   the needy.

22           b.    Sales made in the course of business for profit or  
23                   savings, competing with other persons engaged in the  
24

1 same or similar business shall not be exempt under  
2 this paragraph;

3 15. Sales of tangible personal property or services to  
4 children's homes which are located on church-owned property and are  
5 operated by organizations exempt from taxation pursuant to the  
6 provisions of the Internal Revenue Code, 26 U.S.C., Section  
7 501(c)(3);

8 16. Sales of computers, data processing equipment, related  
9 peripherals and telephone, telegraph or telecommunications service  
10 and equipment for use in a qualified aircraft maintenance or  
11 manufacturing facility. For purposes of this paragraph, "qualified  
12 aircraft maintenance or manufacturing facility" means a new or  
13 expanding facility primarily engaged in aircraft repair, building or  
14 rebuilding whether or not on a factory basis, whose total cost of  
15 construction exceeds the sum of Five Million Dollars (\$5,000,000.00)  
16 and which employs at least two hundred fifty (250) new full-time-  
17 equivalent employees, as certified by the Oklahoma Employment  
18 Security Commission, upon completion of the facility. In order to  
19 qualify for the exemption provided for by this paragraph, the cost  
20 of the items purchased by the qualified aircraft maintenance or  
21 manufacturing facility shall equal or exceed the sum of Two Million  
22 Dollars (\$2,000,000.00);

23 17. Sales of tangible personal property consumed or  
24 incorporated in the construction or expansion of a qualified

1 aircraft maintenance or manufacturing facility as defined in  
2 paragraph 16 of this section. For purposes of this paragraph, sales  
3 made to a contractor or subcontractor that has previously entered  
4 into a contractual relationship with a qualified aircraft  
5 maintenance or manufacturing facility for construction or expansion  
6 of such a facility shall be considered sales made to a qualified  
7 aircraft maintenance or manufacturing facility;

8 18. Sales of the following telecommunications services:

9 a. Interstate and International "800 service". "800  
10 service" means a "telecommunications service" that  
11 allows a caller to dial a toll-free number without  
12 incurring a charge for the call. The service is  
13 typically marketed under the name "800", "855", "866",  
14 "877", and "888" toll-free calling, and any subsequent  
15 numbers designated by the Federal Communications  
16 Commission, or

17 b. Interstate and International "900 service". "900  
18 service" means an inbound toll "telecommunications  
19 service" purchased by a subscriber that allows the  
20 subscriber's customers to call in to the subscriber's  
21 prerecorded announcement or live service. "900  
22 service" does not include the charge for: collection  
23 services provided by the seller of the  
24 "telecommunications services" to the subscriber, or

1 service or product sold by the subscriber to the  
2 subscriber's customer. The service is typically  
3 marketed under the name "900" service, and any  
4 subsequent numbers designated by the Federal  
5 Communications Commission,

6 c. Interstate and International "private communications  
7 service". "Private communications service" means a  
8 "telecommunications service" that entitles the  
9 customer to exclusive or priority use of a  
10 communications channel or group of channels between or  
11 among termination points, regardless of the manner in  
12 which such channel or channels are connected, and  
13 includes switching capacity, extension lines,  
14 stations, and any other associated services that are  
15 provided in connection with the use of such channel or  
16 channels,

17 d. "Value-added nonvoice data service". "Value-added  
18 nonvoice data service" means a service that otherwise  
19 meets the definition of "telecommunications services"  
20 in which computer processing applications are used to  
21 act on the form, content, code, or protocol of the  
22 information or data primarily for a purpose other than  
23 transmission, conveyance or routing,

24

1 e. Interstate and International telecommunications

2 service which is:

3 (1) rendered by a company for private use within its  
4 organization, or

5 (2) used, allocated, or distributed by a company to  
6 its affiliated group,

7 f. Regulatory assessments and charges, including charges

8 to fund the Oklahoma Universal Service Fund, the

9 Oklahoma Lifeline Fund and the Oklahoma High Cost

10 Fund, and

11 g. Telecommunications nonrecurring charges, including but

12 not limited to the installation, connection, change or

13 initiation of telecommunications services which are

14 not associated with a retail consumer sale;

15 19. Sales of railroad track spikes manufactured and sold for  
16 use in this state in the construction or repair of railroad tracks,  
17 switches, sidings and turnouts;

18 20. Sales of aircraft and aircraft parts provided such sales  
19 occur at a qualified aircraft maintenance facility. As used in this  
20 paragraph, "qualified aircraft maintenance facility" means a  
21 facility operated by an air common carrier at which there were  
22 employed at least two thousand (2,000) full-time-equivalent  
23 employees in the preceding year as certified by the Oklahoma  
24 Employment Security Commission and which is primarily related to the

1 fabrication, repair, alteration, modification, refurbishing,  
2 maintenance, building or rebuilding of commercial aircraft or  
3 aircraft parts used in air common carriage. For purposes of this  
4 paragraph, "air common carrier" shall also include members of an  
5 affiliated group as defined by Section 1504 of the Internal Revenue  
6 Code, 26 U.S.C., Section 1504;

7 21. Sales of machinery and equipment purchased and used by  
8 persons and establishments primarily engaged in computer services  
9 and data processing:

10 a. as defined under Industrial Group Numbers 7372 and  
11 7373 of the Standard Industrial Classification (SIC)  
12 Manual, latest version, which derive at least fifty  
13 percent (50%) of their annual gross revenues from the  
14 sale of a product or service to an out-of-state buyer  
15 or consumer, and

16 b. as defined under Industrial Group Number 7374 of the  
17 SIC Manual, latest version, which derive at least  
18 eighty percent (80%) of their annual gross revenues  
19 from the sale of a product or service to an out-of-  
20 state buyer or consumer.

21 Eligibility for the exemption set out in this paragraph shall be  
22 established, subject to review by the Tax Commission, by annually  
23 filing an affidavit with the Tax Commission stating that the  
24 facility so qualifies and such information as required by the Tax

1 Commission. For purposes of determining whether annual gross  
2 revenues are derived from sales to out-of-state buyers or consumers,  
3 all sales to the federal government shall be considered to be to an  
4 out-of-state buyer or consumer;

5 22. Sales of prosthetic devices to an individual for use by  
6 such individual. For purposes of this paragraph, "prosthetic  
7 device" shall have the same meaning as provided in Section 1357.6 of  
8 this title, but shall not include corrective eye glasses, contact  
9 lenses or hearing aids;

10 23. Sales of tangible personal property or services to a motion  
11 picture or television production company to be used or consumed in  
12 connection with an eligible production. For purposes of this  
13 paragraph, "eligible production" means a documentary, special, music  
14 video, or a television commercial or television program that will  
15 serve as a pilot for or be a segment of an ongoing dramatic or  
16 situation comedy series filmed or taped for network or national or  
17 regional syndication or a feature-length motion picture intended for  
18 theatrical release or for network or national or regional  
19 syndication or broadcast. The provisions of this paragraph shall  
20 apply to sales occurring on or after July 1, 1996. In order to  
21 qualify for the exemption, the motion picture or television  
22 production company shall file any documentation and information  
23 required to be submitted pursuant to rules promulgated by the Tax  
24 Commission;

1        24. Sales of diesel fuel sold for consumption by commercial  
2 vessels, barges and other commercial watercraft;

3        25. Sales of tangible personal property or services to tax-  
4 exempt independent nonprofit biomedical research foundations that  
5 provide educational programs for Oklahoma science students and  
6 teachers and to tax-exempt independent nonprofit community blood  
7 banks headquartered in this state;

8        26. Effective May 6, 1992, sales of wireless telecommunications  
9 equipment to a vendor who subsequently transfers the equipment at no  
10 charge or for a discounted charge to a consumer as part of a  
11 promotional package or as an inducement to commence or continue a  
12 contract for wireless telecommunications services;

13        27. Effective January 1, 1991, leases of rail transportation  
14 cars to haul coal to coal-fired plants located in this state which  
15 generate electric power;

16        28. Beginning July 1, 2005, sales of aircraft engine repairs,  
17 modification, and replacement parts, sales of aircraft frame repairs  
18 and modification, aircraft interior modification, and paint, and  
19 sales of services employed in the repair, modification and  
20 replacement of parts of aircraft engines, aircraft frame and  
21 interior repair and modification, and paint;

22        29. Sales of materials and supplies to the owner or operator of  
23 a ship, motor vessel or barge that is used in interstate or  
24 international commerce if the materials and supplies:

1           a.    are loaded on the ship, motor vessel or barge and used  
2                    in the maintenance and operation of the ship, motor  
3                    vessel or barge, or

4           b.    enter into and become component parts of the ship,  
5                    motor vessel or barge;

6           30.   Sales of tangible personal property made at estate sales at  
7           which such property is offered for sale on the premises of the  
8           former residence of the decedent by a person who is not required to  
9           be licensed pursuant to the Transient Merchant Licensing Act, or who  
10          is not otherwise required to obtain a sales tax permit for the sale  
11          of such property pursuant to the provisions of Section 1364 of this  
12          title; provided:

13           a.    such sale or event may not be held for a period  
14                    exceeding three (3) consecutive days,

15           b.    the sale must be conducted within six (6) months of  
16                    the date of death of the decedent, and

17           c.    the exemption allowed by this paragraph shall not be  
18                    allowed for property that was not part of the  
19                    decedent's estate;

20          31.   Beginning January 1, 2004, sales of electricity and  
21          associated delivery and transmission services, when sold exclusively  
22          for use by an oil and gas operator for reservoir dewatering projects  
23          and associated operations commencing on or after July 1, 2003, in  
24          which the initial water-to-oil ratio is greater than or equal to

1 five-to-one water-to-oil, and such oil and gas development projects  
2 have been classified by the Corporation Commission as a reservoir  
3 dewatering unit;

4 32. Sales of prewritten computer software that is delivered  
5 electronically. For purposes of this paragraph, "delivered  
6 electronically" means delivered to the purchaser by means other than  
7 tangible storage media;

8 33. Sales of modular dwelling units when built at a production  
9 facility and moved in whole or in parts, to be assembled on-site,  
10 and permanently affixed to the real property and used for  
11 residential or commercial purposes. The exemption provided by this  
12 paragraph shall equal forty-five percent (45%) of the total sales  
13 price of the modular dwelling unit. For purposes of this paragraph,  
14 "modular dwelling unit" means a structure that is not subject to the  
15 motor vehicle excise tax imposed pursuant to Section 2103 of this  
16 title;

17 34. Sales of tangible personal property or services to persons  
18 who are residents of Oklahoma and have been honorably discharged  
19 from active service in any branch of the Armed Forces of the United  
20 States or Oklahoma National Guard and who have been certified by the  
21 United States Department of Veterans Affairs or its successor to be  
22 in receipt of disability compensation at the one-hundred-percent  
23 rate and the disability shall be permanent and have been sustained  
24 through military action or accident or resulting from disease

1 contracted while in such active service; provided, sales for the  
2 benefit of the person to a spouse of the eligible person or to a  
3 member of the household in which the eligible person resides and who  
4 is authorized to make purchases on the person's behalf, when such  
5 eligible person is not present at the sale, shall also be exempt for  
6 purposes of this paragraph. Sales qualifying for the exemption  
7 authorized by this paragraph shall not exceed Twenty-five Thousand  
8 Dollars (\$25,000.00) per year per individual. Upon request of the  
9 Tax Commission, a person asserting or claiming the exemption  
10 authorized by this paragraph shall provide a statement, executed  
11 under oath, that the total sales amounts for which the exemption is  
12 applicable have not exceeded Twenty-five Thousand Dollars  
13 (\$25,000.00) per year. If the amount of such exempt sales exceeds  
14 such amount, the sales tax in excess of the authorized amount shall  
15 be treated as a direct sales tax liability and may be recovered by  
16 the Tax Commission in the same manner provided by law for other  
17 taxes, including penalty and interest;

18 35. Sales of electricity to the operator, specifically  
19 designated by the ~~Oklahoma~~ Corporation Commission, of a spacing unit  
20 or lease from which oil is produced or attempted to be produced  
21 using enhanced recovery methods, including, but not limited to,  
22 increased pressure in a producing formation through the use of water  
23 or saltwater if the electrical usage is associated with and  
24 necessary for the operation of equipment required to inject or

1 circulate fluids in a producing formation for the purpose of forcing  
2 oil or petroleum into a wellbore for eventual recovery and  
3 production from the wellhead. In order to be eligible for the sales  
4 tax exemption authorized by this paragraph, the total content of oil  
5 recovered after the use of enhanced recovery methods shall not  
6 exceed one percent (1%) by volume. The exemption authorized by this  
7 paragraph shall be applicable only to the state sales tax rate and  
8 shall not be applicable to any county or municipal sales tax rate;

9 36. Sales of intrastate charter and tour bus transportation.  
10 As used in this paragraph, "intrastate charter and tour bus  
11 transportation" means the transportation of persons from one  
12 location in this state to another location in this state in a motor  
13 vehicle which has been constructed in such a manner that it may  
14 lawfully carry more than eighteen persons, and which is ordinarily  
15 used or rented to carry persons for compensation. Provided, this  
16 exemption shall not apply to regularly scheduled bus transportation  
17 for the general public;

18 37. Sales of vitamins, minerals and dietary supplements by a  
19 licensed chiropractor to a person who is the patient of such  
20 chiropractor at the physical location where the chiropractor  
21 provides chiropractic care or services to such patient. The  
22 provisions of this paragraph shall not be applicable to any drug,  
23 medicine or substance for which a prescription by a licensed  
24 physician is required;

1        38. Sales of goods, wares, merchandise, tangible personal  
2 property, machinery and equipment to a web search portal located in  
3 this state which derives at least eighty percent (80%) of its annual  
4 gross revenue from the sale of a product or service to an out-of-  
5 state buyer or consumer. For purposes of this paragraph, "web  
6 search portal" means an establishment classified under NAICS code  
7 518112 which operates web sites that use a search engine to generate  
8 and maintain extensive databases of Internet addresses and content  
9 in an easily searchable format;

10       39. Sales of tangible personal property consumed or  
11 incorporated in the construction or expansion of a facility for a  
12 corporation organized under Section 437 et seq. of Title 18 of the  
13 Oklahoma Statutes as a rural electric cooperative. For purposes of  
14 this paragraph, sales made to a contractor or subcontractor that has  
15 previously entered into a contractual relationship with a rural  
16 electric cooperative for construction or expansion of a facility  
17 shall be considered sales made to a rural electric cooperative;

18       40. Sales of tangible personal property or services to a  
19 business primarily engaged in the repair of consumer electronic  
20 goods, including, but not limited to, cell phones, compact disc  
21 players, personal computers, MP3 players, digital devices for the  
22 storage and retrieval of information through hard-wired or wireless  
23 computer or Internet connections, if the devices are sold to the  
24 business by the original manufacturer of such devices and the

1 devices are repaired, refitted or refurbished for sale by the entity  
2 qualifying for the exemption authorized by this paragraph directly  
3 to retail consumers or if the devices are sold to another business  
4 entity for sale to retail consumers; and

5 41. Before July 1, 2014, sales of rolling stock when sold or  
6 leased by the manufacturer, regardless of whether the purchaser is a  
7 public services corporation engaged in business as a common carrier  
8 of property or passengers by railway, for use or consumption by a  
9 common carrier directly in the rendition of public service. For  
10 purposes of this paragraph, "rolling stock" means locomotives,  
11 autocars and railroad cars;

12 42. Sales of produce, milk and juice. For purposes of this  
13 paragraph, "produce" means fresh fruits and vegetables; and

14 43. Sales of food, formula and diapers designed for children  
15 under three (3) years of age.

16 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2105, as  
17 amended by Section 3, Chapter 413, O.S.L. 2005 (68 O.S. Supp. 2008,  
18 Section 2105), is amended to read as follows:

19 Section 2105. An original or a transfer certificate of title  
20 shall be issued without the payment of the excise tax levied by  
21 Section 2101 et seq. of this title for:

22 1. Any vehicle owned by a nonresident person who operates  
23 principally in some other state but who is in Oklahoma only  
24 occasionally;

1           2. Any vehicle brought into this state by a person formerly  
2 living in another state, who has owned and registered the vehicle in  
3 such other state of residence at least sixty (60) days prior to the  
4 time it is required to be registered in this state; provided,  
5 however, this paragraph shall not apply to businesses engaged in  
6 renting cars without a driver;

7           3. Any vehicle registered by the State of Oklahoma, by any of  
8 the political subdivisions thereof, or by a fire department  
9 organized pursuant to Section 592 of Title 18 of the Oklahoma  
10 Statutes to be used for the purposes of the fire department, or a  
11 vehicle which is the subject of a lease or lease-purchase agreement  
12 executed between the person seeking an original or transfer  
13 certificate of title for the vehicle and a municipality, county,  
14 school district, or fire protection district. The person seeking an  
15 original or transfer certificate of title shall provide adequate  
16 proof that the vehicle is subject to a lease or lease-purchase  
17 agreement with a municipality, county, school district, or fire  
18 protection district at the time the excise tax levied would  
19 otherwise be payable. The Oklahoma Tax Commission shall have the  
20 authority to determine what constitutes adequate proof as required  
21 by this section;

22           4. Any vehicle, the legal ownership of which is obtained by the  
23 applicant for a certificate of title by inheritance;

24

1       5. Any used motor vehicle, travel trailer, or commercial  
2 trailer which is owned and being offered for sale by a person  
3 licensed as a dealer to sell the same, under the provisions of  
4 Section 1101 et seq. of Title 47 of the Oklahoma Statutes:

- 5           a. if such vehicle, travel trailer, or commercial trailer  
6               has been registered in Oklahoma and the excise tax  
7               paid thereon, or
- 8           b. when such vehicle, travel trailer, or commercial  
9               trailer has been registered in some other state but is  
10              not the latest manufactured model.

11       Provided, the provisions of this paragraph shall not be  
12 construed as allowing an exemption to any person not licensed as a  
13 dealer of used motor vehicles, travel trailers, or commercial  
14 trailers, or as an automotive dismantler and parts recycler in this  
15 state;

16       6. Any vehicle which was purchased by a person licensed to sell  
17 new or used motor vehicles in another state:

- 18           a. if such vehicle is not purchased for operation or  
19               resale in this state, and
- 20           b. the state from which the dealer is licensed offers  
21               reciprocal privileges to a dealer licensed in this  
22               state, pursuant to a reciprocal agreement between the  
23               duly authorized agent of the Tax Commission and the  
24               licensing state;

1           7. Any vehicle, the ownership of which was obtained by the  
2 lienholder or mortgagee under or by foreclosure of a lien or  
3 mortgage in the manner provided by law or to the insurer under  
4 subrogated rights arising by reason of loss under an insurance  
5 contract;

6           8. Any vehicle which is taxed on an ad valorem basis;

7           9. Any vehicle or motor vehicle, the legal ownership of which  
8 is obtained by transfers:

9           a. from one corporation to another corporation pursuant  
10 to a reorganization. As used in this subsection the  
11 term "reorganization" means:

12           (1) a statutory merger or consolidation, or

13           (2) the acquisition by a corporation of substantially  
14 all of the properties of another corporation when  
15 the consideration is solely all or a part of the  
16 voting stock of the acquiring corporation, or of  
17 its parent or subsidiary corporation,

18           b. in connection with the winding up, dissolution, or  
19 liquidation of a corporation only when there is a  
20 distribution in kind to the shareholders of the  
21 property of such corporation,

22           c. to a corporation where the former owners of the  
23 vehicle or motor vehicle transferred are, immediately  
24 after the transfer, in control of the corporation, and

- 1 the stock or securities received by each is  
2 substantially in proportion to the interest in the  
3 vehicle or motor vehicle prior to the transfer,
- 4 d. to a partnership if the former owners of the vehicle  
5 or motor vehicle transferred are, immediately after  
6 the transfer, members of such partnership and the  
7 interest in the partnership received by each is  
8 substantially in proportion to the interest in the  
9 vehicle or motor vehicle prior to the transfer,
- 10 e. from a partnership to the members thereof when made in  
11 the dissolution of such partnership,
- 12 f. to a limited liability company if the former owners of  
13 the vehicle or motor vehicle transferred are,  
14 immediately after the transfer, members of the limited  
15 liability company and the interest in the limited  
16 liability company received by each is substantially in  
17 proportion to the interest in the vehicle or motor  
18 vehicle prior to the transfer, or
- 19 g. from a limited liability company to the members  
20 thereof when made in the dissolution of such  
21 partnership;

22 10. Any vehicle which is purchased by a person to be used by a  
23 business engaged in renting motor vehicles without a driver,  
24 provided:

- 1 a. the vehicle shall not be rented to the same person for  
2 a period exceeding ninety (90) days,
- 3 b. any such vehicle exempted from the excise tax by these  
4 provisions shall not be placed under any type of lease  
5 agreement,
- 6 c. on any such vehicle exempted from the excise tax by  
7 this subsection that is reregistered in this state,  
8 without a prior sale or transfer to the persons  
9 specified in divisions (1) and (2) of this  
10 subparagraph, at any time prior to the expiration of  
11 twelve (12) months from the date of issuance of the  
12 original title, the seller shall pay immediately the  
13 amount of excise tax which would have been due had  
14 this exemption not been granted plus a penalty of  
15 twenty percent (20%). No such excise tax or penalty  
16 shall become due and payable if the vehicle is sold or  
17 transferred in a condition either physical or  
18 mechanical which would render it eligible for a  
19 salvage title pursuant to law or if the vehicle is  
20 sold and transferred in this state at any time prior  
21 to the expiration of twelve (12) months:  
22 (1) to the manufacturer of the vehicle or its  
23 controlled financing arm, or  
24

- 1 (2) to a factory authorized franchised new motor  
2 vehicle dealer which holds a franchise of the  
3 same line-make of the vehicle being purchased, or  
4 d. when this exemption is claimed, the Tax Commission  
5 shall issue a special title which shall restrict the  
6 transfer of the title only within this state prior to  
7 the expiration of twelve (12) months unless:  
8 (1) payment of the excise tax plus penalty as  
9 provided in this section is made,  
10 (2) the sale is made to a person specified in  
11 division (1) or (2) of subparagraph c of this  
12 paragraph, or  
13 (3) the vehicle is eligible for a salvage title.

14 For all other tax purposes vehicles herein exempted shall be  
15 treated as though the excise tax has been paid;

16 11. Any vehicle of the latest manufactured model, registered  
17 from a title in the name of the original manufacturer or assigned to  
18 the original manufacturer and issued by any state and transferred to  
19 a licensed, franchised Oklahoma motor vehicle dealer, as defined by  
20 Section 1102 of Title 47 of the Oklahoma Statutes, which holds a  
21 franchise of the same line-make as the vehicle being registered;

22 12. Any new motor vehicle, registered in the name of a  
23 manufacturer or dealer of new motor vehicles, for which a license  
24 plate has been issued pursuant to Section 1116.1 of Title 47 of the

1 Oklahoma Statutes, if such vehicle is authorized by the manufacturer  
2 or dealer for personal use by an individual. The authorization for  
3 such use shall not exceed four (4) months which shall not be renewed  
4 or the exemption provided by this subsection shall not be  
5 applicable. The exemption provided by this subsection shall not be  
6 applicable to a transfer of ownership or registration subsequent to  
7 the first registration of the vehicle by a manufacturer or dealer;

8 13. Any vehicle, travel trailer, or commercial trailer of the  
9 latest manufacturer model purchased by a franchised Oklahoma dealer  
10 licensed to sell the same which holds a franchise of the same line-  
11 make as the vehicle, travel trailer, or commercial trailer being  
12 registered;

13 14. Any vehicle which is the subject of a lease or lease-  
14 purchase agreement and which the ownership of such vehicle is being  
15 obtained by the lessee, if the vehicle excise tax was paid at the  
16 time of the initial lease or lease-purchase agreement;

17 15. Any vehicle which:

18 a. is purchased by a private, nonprofit organization  
19 which is exempt from taxation pursuant to the  
20 provisions of Section 501(c)(3) of the Internal  
21 Revenue Code, 26 U.S.C., Section 501(c)(3), and which  
22 is primarily funded by a fraternal or civic service  
23 organization with at least one hundred local chapters  
24 or clubs, and

1           b.    is designed and used to provide mobile health  
2                screening services to the general public at no cost to  
3                the recipient, and for which no reimbursement of any  
4                kind is received from any health insurance provider,  
5                health maintenance organization, or governmental  
6                program; ~~or~~

7           16. Any vehicle which is purchased by an individual who has  
8           been honorably discharged from active service in any branch of the  
9           Armed Forces of the United States or Oklahoma National Guard and who  
10           has been certified by the United States Department of Veterans  
11           Affairs, its successor, or the Armed Forces of the United States to  
12           be a disabled veteran in receipt of compensation at the one-hundred-  
13           percent rate for a permanent disability sustained through military  
14           action or accident resulting from disease contracted while in such  
15           active service. Provided, this exemption may not be claimed by an  
16           individual for more than one vehicle in a consecutive three-year  
17           period; or

18           17. Any new motor vehicle weighing less than six thousand five  
19           hundred (6,500) pounds which was manufactured in the United States  
20           of America.

21           SECTION 3.           AMENDATORY           68 O.S. 2001, Section 2357.43, is  
22           amended to read as follows:

23           Section 2357.43 For tax years beginning after December 31, ~~2001~~  
24           2009, there shall be allowed to a resident individual or a part-year

1 resident individual as a credit against the tax imposed by Section  
2 2355 of this title ~~five percent (5%) of~~ an amount equal to the  
3 earned income tax credit allowed under Section 32 of the Internal  
4 Revenue Code of the United States, 26 U.S.C., Section 32. However,  
5 this credit shall not be paid in advance pursuant to the provisions  
6 of Section 3507 of the Internal Revenue Code. If the credit exceeds  
7 the tax imposed by Section 2355 of this title, the excess amount  
8 shall be refunded to the taxpayer. The maximum earned income tax  
9 credit allowable on the Oklahoma income tax return shall be prorated  
10 on the ratio that Oklahoma adjusted gross income bears to the  
11 federal adjusted gross income.

12 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2358, as  
13 last amended by Section 3, Chapter 395, O.S.L. 2008 (68 O.S. Supp.  
14 2008, Section 2358), is amended to read as follows:

15 Section 2358. For all tax years beginning after December 31,  
16 1981, taxable income and adjusted gross income shall be adjusted to  
17 arrive at Oklahoma taxable income and Oklahoma adjusted gross income  
18 as required by this section.

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

22 1. There shall be added interest income on obligations of any  
23 state or political subdivision thereto which is not otherwise  
24 exempted pursuant to other laws of this state, to the extent that

1 such interest is not included in taxable income and adjusted gross  
2 income.

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

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

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

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

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

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

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

22 b. Income from intangible personal property, such as  
23 interest, dividends, patent or copyright royalties,  
24 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  
24 property in this state to the original cost of

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

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

23 c. Net income or loss from a business activity which is  
24 not a part of business carried on within or without

1 the state of a unitary character shall be separately  
2 allocated to the state in which such activity is  
3 conducted;

4 d. In the case of a manufacturing or processing  
5 enterprise the business of which in Oklahoma consists  
6 solely of marketing its products by:

7 (1) sales having a situs without this state, shipped  
8 directly to a point from without the state to a  
9 purchaser within the state, commonly known as  
10 interstate sales,

11 (2) sales of the product stored in public warehouses  
12 within the state pursuant to "in transit"  
13 tariffs, as prescribed and allowed by the  
14 Interstate Commerce Commission, to a purchaser  
15 within the state,

16 (3) sales of the product stored in public warehouses  
17 within the state where the shipment to such  
18 warehouses is not covered by "in transit"  
19 tariffs, as prescribed and allowed by the  
20 Interstate Commerce Commission, to a purchaser  
21 within or without the state,

22 the Oklahoma net income shall, at the option of the  
23 taxpayer, be that portion of the total net income of  
24 the taxpayer for federal income tax purposes derived

1 from the manufacture and/or processing and sales  
2 everywhere as determined by the ratio of the sales  
3 defined in this section made to the purchaser within  
4 the state to the total sales everywhere. The term  
5 "public warehouse" as used in this subparagraph means  
6 a licensed public warehouse, the principal business of  
7 which is warehousing merchandise for the public;

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

13 (1) except as otherwise provided by division (2) of  
14 this subparagraph, taxable income of an insurance  
15 company for a taxable year shall be apportioned  
16 to this state by multiplying such income by a  
17 fraction, the numerator of which is the direct  
18 premiums written for insurance on property or  
19 risks in this state, and the denominator of which  
20 is the direct premiums written for insurance on  
21 property or risks everywhere. For purposes of  
22 this subsection, the term "direct premiums  
23 written" means the total amount of direct  
24 premiums written, assessments and annuity

1 considerations as reported for the taxable year  
2 on the annual statement filed by the company with  
3 the Insurance Commissioner in the form approved  
4 by the National Association of Insurance  
5 Commissioners, or such other form as may be  
6 prescribed in lieu thereof,

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

1 election of the company be determined on the  
2 basis of the proportion which premiums written  
3 for insurance accepted from companies  
4 commercially domiciled in Oklahoma bears to  
5 premiums written for reinsurance accepted from  
6 all sources, or alternatively in the proportion  
7 which the sum of the direct premiums written for  
8 insurance on property or risks in this state by  
9 each ceding company from which reinsurance is  
10 accepted bears to the sum of the total direct  
11 premiums written by each such ceding company for  
12 the taxable year.

13 5. The net income or loss remaining after the separate  
14 allocation in paragraph 4 of this subsection, being that which is  
15 derived from a unitary business enterprise, shall be apportioned to  
16 this state on the basis of the arithmetical average of three factors  
17 consisting of property, payroll and sales or gross revenue  
18 enumerated as subparagraphs a, b and c of this paragraph. Net  
19 income or loss as used in this paragraph includes that derived from  
20 patent or copyright royalties, purchase discounts, and interest on  
21 accounts receivable relating to or arising from a business activity,  
22 the income from which is apportioned pursuant to this subsection,  
23 including the sale or other disposition of such property and any  
24 other property used in the unitary enterprise. Deductions used in

1 computing such net income or loss shall not include taxes based on  
2 or measured by income. Provided, for corporations whose property  
3 for purposes of the tax imposed by Section 2355 of this title has an  
4 initial investment cost equaling or exceeding Two Hundred Million  
5 Dollars (\$200,000,000.00) and such investment is made on or after  
6 July 1, 1997, or for corporations which expand their property or  
7 facilities in this state and such expansion has an investment cost  
8 equaling or exceeding Two Hundred Million Dollars (\$200,000,000.00)  
9 over a period not to exceed three (3) years, and such expansion is  
10 commenced on or after January 1, 2000, the three factors shall be  
11 apportioned with property and payroll, each comprising twenty-five  
12 percent (25%) of the apportionment factor and sales comprising fifty  
13 percent (50%) of the apportionment factor. The apportionment  
14 factors shall be computed as follows:

15       a. The property factor is a fraction, the numerator of  
16       which is the average value of the taxpayer's real and  
17       tangible personal property owned or rented and used in  
18       this state during the tax period and the denominator  
19       of which is the average value of all the taxpayer's  
20       real and tangible personal property everywhere owned  
21       or rented and used during the tax period.

22       (1) Property, the income from which is separately  
23       allocated in paragraph 4 of this subsection,  
24       shall not be included in determining this

1 fraction. The numerator of the fraction shall  
2 include a portion of the investment in  
3 transportation and other equipment having no  
4 fixed situs, such as rolling stock, buses, trucks  
5 and trailers, including machinery and equipment  
6 carried thereon, airplanes, salespersons'  
7 automobiles and other similar equipment, in the  
8 proportion that miles traveled in Oklahoma by  
9 such equipment bears to total miles traveled,

10 (2) Property owned by the taxpayer is valued at its  
11 original cost. Property rented by the taxpayer  
12 is valued at eight times the net annual rental  
13 rate. Net annual rental rate is the annual  
14 rental rate paid by the taxpayer, less any annual  
15 rental rate received by the taxpayer from  
16 subrentals,

17 (3) The average value of property shall be determined  
18 by averaging the values at the beginning and  
19 ending of the tax period but the Oklahoma Tax  
20 Commission may require the averaging of monthly  
21 values during the tax period if reasonably  
22 required to reflect properly the average value of  
23 the taxpayer's property;

1           b.    The payroll factor is a fraction, the numerator of  
2                which is the total compensation for services rendered  
3                in the state during the tax period, and the  
4                denominator of which is the total compensation for  
5                services rendered everywhere during the tax period.  
6                "Compensation", as used in this subsection means those  
7                paid-for services to the extent related to the unitary  
8                business but does not include officers' salaries,  
9                wages and other compensation.

10           (1)   In the case of a transportation enterprise, the  
11                 numerator of the fraction shall include a portion  
12                 of such expenditure in connection with employees  
13                 operating equipment over a fixed route, such as  
14                 railroad employees, airline pilots, or bus  
15                 drivers, in this state only a part of the time,  
16                 in the proportion that mileage traveled in  
17                 Oklahoma bears to total mileage traveled by such  
18                 employees,

19           (2)   In any case the numerator of the fraction shall  
20                 include a portion of such expenditures in  
21                 connection with itinerant employees, such as  
22                 traveling salespersons, in this state only a part  
23                 of the time, in the proportion that time spent in  
24

1 Oklahoma bears to total time spent in furtherance  
2 of the enterprise by such employees;

3 c. The sales factor is a fraction, the numerator of which  
4 is the total sales or gross revenue of the taxpayer in  
5 this state during the tax period, and the denominator  
6 of which is the total sales or gross revenue of the  
7 taxpayer everywhere during the tax period. "Sales",  
8 as used in this subsection does not include sales or  
9 gross revenue which are separately allocated in  
10 paragraph 4 of this subsection.

11 (1) Sales of tangible personal property have a situs  
12 in this state if the property is delivered or  
13 shipped to a purchaser other than the United  
14 States government, within this state regardless  
15 of the FOB point or other conditions of the sale;  
16 or the property is shipped from an office, store,  
17 warehouse, factory or other place of storage in  
18 this state and (a) the purchaser is the United  
19 States government or (b) the taxpayer is not  
20 doing business in the state of the destination of  
21 the shipment.

22 (2) In the case of a railroad or interurban railway  
23 enterprise, the numerator of the fraction shall  
24 not be less than the allocation of revenues to

1 this state as shown in its annual report to the  
2 Corporation Commission.

3 (3) In the case of an airline, truck or bus  
4 enterprise or freight car, tank car, refrigerator  
5 car or other railroad equipment enterprise, the  
6 numerator of the fraction shall include a portion  
7 of revenue from interstate transportation in the  
8 proportion that interstate mileage traveled in  
9 Oklahoma bears to total interstate mileage  
10 traveled.

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

1 (5) In the case of a telephone or telegraph or other  
2 communication enterprise, the numerator of the  
3 fraction shall include that portion of the  
4 interstate revenue as is allocated pursuant to  
5 the accounting procedures prescribed by the  
6 Federal Communications Commission; provided that  
7 in respect to each corporation or business entity  
8 required by the Federal Communications Commission  
9 to keep its books and records in accordance with  
10 a uniform system of accounts prescribed by such  
11 Commission, the intrastate net income shall be  
12 determined separately in the manner provided by  
13 such uniform system of accounts and only the  
14 interstate income shall be subject to allocation  
15 pursuant to the provisions of this subsection.  
16 Provided further, that the gross revenue factors  
17 shall be those as are determined pursuant to the  
18 accounting procedures prescribed by the Federal  
19 Communications Commission.

20 In any case where the apportionment of the three factors  
21 prescribed in this paragraph attributes to Oklahoma a portion of net  
22 income of the enterprise out of all appropriate proportion to the  
23 property owned and/or business transacted within this state, because  
24 of the fact that one or more of the factors so prescribed are not

1 employed to any appreciable extent in furtherance of the enterprise;  
2 or because one or more factors not so prescribed are employed to a  
3 considerable extent in furtherance of the enterprise; or because of  
4 other reasons, the Tax Commission is empowered to permit, after a  
5 showing by taxpayer that an excessive portion of net income has been  
6 attributed to Oklahoma, or require, when in its judgment an  
7 insufficient portion of net income has been attributed to Oklahoma,  
8 the elimination, substitution, or use of additional factors, or  
9 reduction or increase in the weight of such prescribed factors.  
10 Provided, however, that any such variance from such prescribed  
11 factors which has the effect of increasing the portion of net income  
12 attributable to Oklahoma must not be inherently arbitrary, and  
13 application of the recomputed final apportionment to the net income  
14 of the enterprise must attribute to Oklahoma only a reasonable  
15 portion thereof.

16 6. For calendar years 1997 and 1998, the owner of a new or  
17 expanded agricultural commodity processing facility in this state  
18 may exclude from Oklahoma taxable income, or in the case of an  
19 individual, the Oklahoma adjusted gross income, fifteen percent  
20 (15%) of the investment by the owner in the new or expanded  
21 agricultural commodity processing facility. For calendar year 1999,  
22 and all subsequent years, the percentage, not to exceed fifteen  
23 percent (15%), available to the owner of a new or expanded  
24 agricultural commodity processing facility in this state claiming

1 the exemption shall be adjusted annually so that the total estimated  
2 reduction in tax liability does not exceed One Million Dollars  
3 (\$1,000,000.00) annually. The Tax Commission shall promulgate rules  
4 for determining the percentage of the investment which each eligible  
5 taxpayer may exclude. The exclusion provided by this paragraph  
6 shall be taken in the taxable year when the investment is made. In  
7 the event the total reduction in tax liability authorized by this  
8 paragraph exceeds One Million Dollars (\$1,000,000.00) in any  
9 calendar year, the Tax Commission shall permit any excess over One  
10 Million Dollars (\$1,000,000.00) and shall factor such excess into  
11 the percentage for subsequent years. Any amount of the exemption  
12 permitted to be excluded pursuant to the provisions of this  
13 paragraph but not used in any year may be carried forward as an  
14 exemption from income pursuant to the provisions of this paragraph  
15 for a period not exceeding six (6) years following the year in which  
16 the investment was originally made.

17 For purposes of this paragraph:

- 18 a. "Agricultural commodity processing facility" means  
19 building, structures, fixtures and improvements used  
20 or operated primarily for the processing or production  
21 of marketable products from agricultural commodities.  
22 The term shall also mean a dairy operation that  
23 requires a depreciable investment of at least Two  
24 Hundred Fifty Thousand Dollars (\$250,000.00) and which

1 produces milk from dairy cows. The term does not  
2 include a facility that provides only, and nothing  
3 more than, storage, cleaning, drying or transportation  
4 of agricultural commodities, and

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

7 (1) the processing of agricultural commodities,  
8 including receiving or storing agricultural  
9 commodities, or the production of milk at a dairy  
10 operation,

11 (2) transporting the agricultural commodities or  
12 product before, during or after the processing,  
13 or

14 (3) packaging or otherwise preparing the product for  
15 sale or shipment.

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

23 a. Sixty Thousand Dollars (\$60,000.00), or  
24

1           b.    the loss properly shown on Schedule F of the Internal  
2                    Revenue Service Form 1040 reduced by one-half (1/2) of  
3                    the income from all other sources other than reflected  
4                    on Schedule F.

5           8.    In taxable years beginning after December 31, 1995, all  
6   qualified wages equal to the federal income tax credit set forth in  
7   26 U.S.C.A., Section 45A, shall be deducted from taxable income.  
8   The deduction allowed pursuant to this paragraph shall only be  
9   permitted for the tax years in which the federal tax credit pursuant  
10  to 26 U.S.C.A., Section 45A, is allowed.  For purposes of this  
11  paragraph, "qualified wages" means those wages used to calculate the  
12  federal credit pursuant to 26 U.S.C.A., Section 45A.

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

19          B.    The taxable income of any corporation shall be further  
20  adjusted to arrive at Oklahoma taxable income, except those  
21  corporations electing treatment as provided in subchapter S of the  
22  Internal Revenue Code, 26 U.S.C., Section 1361 et seq., and Section  
23  2365 of this title, deductions pursuant to the provisions of the  
24  Accelerated Cost Recovery System as defined and allowed in the

1 Economic Recovery Tax Act of 1981, Public Law 97-34, 26 U.S.C.,  
2 Section 168, for depreciation of assets placed into service after  
3 December 31, 1981, shall not be allowed in calculating Oklahoma  
4 taxable income. Such corporations shall be allowed a deduction for  
5 depreciation of assets placed into service after December 31, 1981,  
6 in accordance with provisions of the Internal Revenue Code, 26  
7 U.S.C., Section 1 et seq., in effect immediately prior to the  
8 enactment of the Accelerated Cost Recovery System. The Oklahoma tax  
9 basis for all such assets placed into service after December 31,  
10 1981, calculated in this section shall be retained and utilized for  
11 all Oklahoma income tax purposes through the final disposition of  
12 such assets.

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

18 For assets placed in service and held by a corporation in which  
19 accelerated cost recovery system was previously disallowed, an  
20 adjustment to taxable income is required in the first taxable year  
21 beginning after December 31, 1982, to reconcile the basis of such  
22 assets to the basis allowed in the Internal Revenue Code. The  
23 purpose of this adjustment is to equalize the basis and allowance  
24

1 for depreciation accounts between that reported to the Internal  
2 Revenue Service and that reported to Oklahoma.

3 C. 1. For taxable years beginning after December 31, 1987, the  
4 taxable income of any corporation shall be further adjusted to  
5 arrive at Oklahoma taxable income for transfers of technology to  
6 qualified small businesses located in Oklahoma. Such transferor  
7 corporation shall be allowed an exemption from taxable income of an  
8 amount equal to the amount of royalty payment received as a result  
9 of such transfer; provided, however, such amount shall not exceed  
10 ten percent (10%) of the amount of gross proceeds received by such  
11 transferor corporation as a result of the technology transfer. Such  
12 exemption shall be allowed for a period not to exceed ten (10) years  
13 from the date of receipt of the first royalty payment accruing from  
14 such transfer. No exemption may be claimed for transfers of  
15 technology to qualified small businesses made prior to January 1,  
16 1988.

17 2. For purposes of this subsection:

18 a. "Qualified small business" means an entity, whether  
19 organized as a corporation, partnership, or  
20 proprietorship, organized for profit with its  
21 principal place of business located within this state  
22 and which meets the following criteria:

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

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

4 (3) Not a subsidiary or affiliate of the transferor  
5 corporation;

6 b. "Technology" means a proprietary process, formula,  
7 pattern, device or compilation of scientific or  
8 technical information which is not in the public  
9 domain;

10 c. "Transferor corporation" means a corporation which is  
11 the exclusive and undisputed owner of the technology  
12 at the time the transfer is made; and

13 d. "Gross proceeds" means the total amount of  
14 consideration for the transfer of technology, whether  
15 the consideration is in money or otherwise.

16 D. 1. For taxable years beginning after December 31, 2005, the  
17 taxable income of any corporation, estate or trust, shall be further  
18 adjusted for qualifying gains receiving capital treatment. Such  
19 corporations, estates or trusts shall be allowed a deduction from  
20 Oklahoma taxable income for the amount of qualifying gains receiving  
21 capital treatment earned by the corporation, estate or trust during  
22 the taxable year and included in the federal taxable income of such  
23 corporation, estate or trust.

24 2. As used in this subsection:

1 a. "qualifying gains receiving capital treatment" means  
2 the amount of net capital gains, as defined in Section  
3 1222(11) of the Internal Revenue Code, included in the  
4 federal income tax return of the corporation, estate  
5 or trust that result from:

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

13 (2) the sale of stock or on the sale of an ownership  
14 interest in an Oklahoma company, limited  
15 liability company, or partnership where such  
16 stock or ownership interest has been directly or  
17 indirectly owned by the corporation, estate or  
18 trust for a holding period of at least three (3)  
19 years prior to the date of the transaction from  
20 which the net capital gains arise, or

21 (3) the sale of real property, tangible personal  
22 property or intangible personal property located  
23 within Oklahoma as part of the sale of all or  
24 substantially all of the assets of an Oklahoma

1 company, limited liability company, or  
2 partnership where such property has been directly  
3 or indirectly owned by such entity owned by the  
4 owners of such entity, and used in or derived  
5 from such entity for a period of at least three  
6 (3) years prior to the date of the transaction  
7 from which the net capital gains arise,

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

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

20 d. "direct" means the taxpayer directly owns the asset,  
21 and

22 e. "indirect" means the taxpayer owns an interest in a  
23 pass-through entity (or chain of pass-through  
24

1 entities) that sells the asset that gives rise to the  
2 qualifying gains receiving capital treatment.

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

16 (2) With respect to sales of stock or ownership  
17 interest in or sales of all or substantially all  
18 of the assets of an Oklahoma company, limited  
19 liability company, or partnership, the deduction  
20 described in this subsection shall not apply  
21 unless the pass-through entity that makes the  
22 sale has held the stock or ownership interest or  
23 the assets for not less than three (3)  
24 uninterrupted years prior to the date of the

1 transaction that created the capital gain, and  
2 each pass-through entity included in the chain of  
3 ownership has been a member, partner or  
4 shareholder of the pass-through entity in the  
5 tier immediately below it for an uninterrupted  
6 period of not less than three (3) years.

7 E. The Oklahoma adjusted gross income of any individual  
8 taxpayer shall be further adjusted as follows to arrive at Oklahoma  
9 taxable income:

10 1. a. In the case of individuals, there shall be added or  
11 deducted, as the case may be, the difference necessary  
12 to allow personal exemptions of One Thousand Dollars  
13 (\$1,000.00) in lieu of the personal exemptions allowed  
14 by the Internal Revenue Code.

15 b. There shall be allowed an additional exemption of One  
16 Thousand Dollars (\$1,000.00) for each taxpayer or  
17 spouse who is blind at the close of the tax year. For  
18 purposes of this subparagraph, an individual is blind  
19 only if the central visual acuity of the individual  
20 does not exceed 20/200 in the better eye with  
21 correcting lenses, or if the visual acuity of the  
22 individual is greater than 20/200, but is accompanied  
23 by a limitation in the fields of vision such that the  
24

1           widest diameter of the visual field subtends an angle  
2           no greater than twenty (20) degrees.

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

- 11           (1)   Twenty-five Thousand Dollars (\$25,000.00) if  
12                married and filing jointly;
- 13           (2)   Twelve Thousand Five Hundred Dollars (\$12,500.00)  
14                if married and filing separately;
- 15           (3)   Fifteen Thousand Dollars (\$15,000.00) if single;
- 16                and
- 17           (4)   Nineteen Thousand Dollars (\$19,000.00) if a  
18                qualifying head of household.

19          Provided, for taxable years beginning after December  
20          31, 1999, amounts included in the calculation of  
21          federal adjusted gross income pursuant to the  
22          conversion of a traditional individual retirement  
23          account to a Roth individual retirement account shall  
24          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  
24 percent (15%) of such Oklahoma adjusted gross income

1 or Five Hundred Dollars (\$500.00), but not to exceed  
2 the maximum amount of One Thousand Dollars  
3 (\$1,000.00),

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

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

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

17 c. For the taxable year beginning on January 1, 2007, and  
18 ending December 31, 2007, in the case of individuals  
19 who use the standard deduction in determining taxable  
20 income, there shall be added or deducted, as the case  
21 may be, the difference necessary to allow a standard  
22 deduction in lieu of the standard deduction allowed by  
23 the Internal Revenue Code, in an amount equal to:  
24

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

4 (2) Four Thousand One Hundred Twenty-five Dollars  
5 (\$4,125.00) for a head of household; or

6 (3) Two Thousand Seven Hundred Fifty Dollars  
7 (\$2,750.00), if the filing status is single or  
8 married filing separate.

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

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

19 (2) Four Thousand Eight Hundred Seventy-five Dollars  
20 (\$4,875.00) for a head of household, or

21 (3) Three Thousand Two Hundred Fifty Dollars  
22 (\$3,250.00), if the filing status is single or  
23 married filing separate.  
24

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

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

11 (2) Six Thousand Three Hundred Seventy-five Dollars  
12 (\$6,375.00) for a head of household, or

13 (3) Four Thousand Two Hundred Fifty Dollars  
14 (\$4,250.00), if the filing status is single or  
15 married filing separate.

16 f. For taxable years beginning on or after January 1,  
17 2010, in the case of individuals who use the standard  
18 deduction in determining taxable income, there shall  
19 be added or deducted, as the case may be, the  
20 difference necessary to allow a standard deduction  
21 equal to the standard deduction allowed by the  
22 Internal Revenue Code of 1986, as amended, based upon  
23 the amount and filing status prescribed by such Code  
24

1 for purposes of filing federal individual income tax  
2 returns.

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

16 4. A resident individual with a physical disability  
17 constituting a substantial handicap to employment may deduct from  
18 Oklahoma adjusted gross income such expenditures to modify a motor  
19 vehicle, home or workplace as are necessary to compensate for his or  
20 her handicap. A veteran certified by the Department of Veterans  
21 Affairs of the federal government as having a service-connected  
22 disability shall be conclusively presumed to be an individual with a  
23 physical disability constituting a substantial handicap to  
24 employment. The Tax Commission shall promulgate rules containing a

1 list of combinations of common disabilities and modifications which  
2 may be presumed to qualify for this deduction. The Tax Commission  
3 shall prescribe necessary requirements for verification.

4 5. In any taxable year the first One Thousand Five Hundred  
5 Dollars (\$1,500.00) received by any person from the United States as  
6 salary or compensation in any form, other than retirement benefits,  
7 as a member of any component of the Armed Forces of the United  
8 States shall be deducted from taxable income. Whenever the filing  
9 of a timely income tax return by a member of the Armed Forces of the  
10 United States is made impracticable or impossible of accomplishment  
11 by reason of:

- 12 a. absence from the United States, which term includes  
13 only the states and the District of Columbia;
- 14 b. absence from the State of Oklahoma while on active  
15 duty; or
- 16 c. confinement in a hospital within the United States for  
17 treatment of wounds, injuries or disease,  
18 the time for filing a return and paying an income tax shall  
19 be and is hereby extended without incurring liability for  
20 interest or penalties, to the fifteenth day of the third  
21 month following the month in which:

22 (1) Such individual shall return to the United States  
23 if the extension is granted pursuant to  
24 subparagraph a of this paragraph, return to the

1 State of Oklahoma if the extension is granted  
2 pursuant to subparagraph b of this paragraph or  
3 be discharged from such hospital if the extension  
4 is granted pursuant to subparagraph c of this  
5 paragraph; or

6 (2) An executor, administrator, or conservator of the  
7 estate of the taxpayer is appointed, whichever  
8 event occurs the earliest.

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

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

22 7. Notwithstanding anything in the Internal Revenue Code or in  
23 the Oklahoma Income Tax Act to the contrary, it is expressly  
24 provided that, in the case of resident individuals, amounts received

1 as dividends or distributions of earnings from savings and loan  
2 associations or credit unions located in Oklahoma, and interest  
3 received on savings accounts and time deposits from such sources or  
4 from state and national banks or trust companies located in  
5 Oklahoma, shall qualify as dividends for the purpose of the dividend  
6 exclusion, and taxable income shall be adjusted accordingly to  
7 arrive at Oklahoma taxable income; provided, however, that the  
8 dividend, distribution of earnings and/or interest exclusion  
9 provided for hereinabove shall not be cumulative to the maximum  
10 dividend exclusion allowed by the Internal Revenue Code. Any  
11 dividend exclusion already allowed by the Internal Revenue Code and  
12 reflected in the taxpayer's Oklahoma taxable income together with  
13 exclusion allowed herein shall not exceed the total of One Hundred  
14 Dollars (\$100.00) per individual or Two Hundred Dollars (\$200.00)  
15 per couple filing a joint return.

16 8. a. An individual taxpayer, whether resident or  
17 nonresident, may deduct an amount equal to the federal  
18 income taxes paid by the taxpayer during the taxable  
19 year.

20 b. Federal taxes as described in subparagraph a of this  
21 paragraph shall be deductible by any individual  
22 taxpayer, whether resident or nonresident, only to the  
23 extent they relate to income subject to taxation  
24 pursuant to the provisions of the Oklahoma Income Tax

1 Act. The maximum amount allowable in the preceding  
2 paragraph shall be prorated on the ratio of the  
3 Oklahoma adjusted gross income to federal adjusted  
4 gross income.

5 c. For the purpose of this paragraph, "federal income  
6 taxes paid" shall mean federal income taxes, surtaxes  
7 imposed on incomes or excess profits taxes, as though  
8 the taxpayer was on the accrual basis. In determining  
9 the amount of deduction for federal income taxes for  
10 tax year 2001, the amount of the deduction shall not  
11 be adjusted by the amount of any accelerated ten  
12 percent (10%) tax rate bracket credit or advanced  
13 refund of the credit received during the tax year  
14 provided pursuant to the federal Economic Growth and  
15 Tax Relief Reconciliation Act of 2001, P.L. No. 107-  
16 16, and the advanced refund of such credit shall not  
17 be subject to taxation.

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

21 9. Retirement benefits not to exceed Five Thousand Five Hundred  
22 Dollars (\$5,500.00) for the 2004 tax year, Seven Thousand Five  
23 Hundred Dollars (\$7,500.00) for the 2005 tax year and Ten Thousand  
24 Dollars (\$10,000.00) for the 2006 tax year and all subsequent tax

1 years, which are received by an individual from the civil service of  
2 the United States, the Oklahoma Public Employees Retirement System,  
3 the Teachers' Retirement System of Oklahoma, the Oklahoma Law  
4 Enforcement Retirement System, the Oklahoma Firefighters Pension and  
5 Retirement System, the Oklahoma Police Pension and Retirement  
6 System, the employee retirement systems created by counties pursuant  
7 to Section 951 et seq. of Title 19 of the Oklahoma Statutes, the  
8 Uniform Retirement System for Justices and Judges, the Oklahoma  
9 Wildlife Conservation Department Retirement Fund, the Oklahoma  
10 Employment Security Commission Retirement Plan, or the employee  
11 retirement systems created by municipalities pursuant to Section 48-  
12 101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt  
13 from taxable income.

14 10. In taxable years beginning after December 31, 1984, Social  
15 Security benefits received by an individual shall be exempt from  
16 taxable income, to the extent such benefits are included in the  
17 federal adjusted gross income pursuant to the provisions of Section  
18 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

19 11. For taxable years beginning after December 31, 1994, lump-  
20 sum distributions from employer plans of deferred compensation,  
21 which are not qualified plans within the meaning of Section 401(a)  
22 of the Internal Revenue Code, 26 U.S.C., Section 401(a), and which  
23 are deposited in and accounted for within a separate bank account or  
24 brokerage account in a financial institution within this state,

1 shall be excluded from taxable income in the same manner as a  
2 qualifying rollover contribution to an individual retirement account  
3 within the meaning of Section 408 of the Internal Revenue Code, 26  
4 U.S.C., Section 408. Amounts withdrawn from such bank or brokerage  
5 account, including any earnings thereon, shall be included in  
6 taxable income when withdrawn in the same manner as withdrawals from  
7 individual retirement accounts within the meaning of Section 408 of  
8 the Internal Revenue Code.

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

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

1 14. a. In taxable years beginning after December 31, 2002,  
2 nonrecurring adoption expenses paid by a resident  
3 individual taxpayer in connection with:

4 (1) the adoption of a minor, or

5 (2) a proposed adoption of a minor which did not  
6 result in a decreed adoption,

7 may be deducted from the Oklahoma adjusted gross  
8 income.

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

12 c. The Tax Commission shall promulgate rules to implement  
13 the provisions of this paragraph which shall contain a  
14 specific list of nonrecurring adoption expenses which  
15 may be presumed to qualify for the deduction. The Tax  
16 Commission shall prescribe necessary requirements for  
17 verification.

18 d. "Nonrecurring adoption expenses" means adoption fees,  
19 court costs, medical expenses, attorney fees and  
20 expenses which are directly related to the legal  
21 process of adoption of a child including, but not  
22 limited to, costs relating to the adoption study,  
23 health and psychological examinations, transportation  
24 and reasonable costs of lodging and food for the child

1 or adoptive parents which are incurred to complete the  
2 adoption process and are not reimbursed by other  
3 sources. The term "nonrecurring adoption expenses"  
4 shall not include attorney fees incurred for the  
5 purpose of litigating a contested adoption, from and  
6 after the point of the initiation of the contest,  
7 costs associated with physical remodeling, renovation  
8 and alteration of the adoptive parents' home or  
9 property, except for a special needs child as  
10 authorized by the court.

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

1 less than the qualifying amount specified in this  
2 paragraph, shall be exempt from taxable income.

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

5 (1) in taxable years beginning after December 31,  
6 2004, and prior to January 1, 2007, the  
7 qualifying amount shall be Thirty-seven Thousand  
8 Five Hundred Dollars (\$37,500.00) or less if the  
9 filing status is single, head of household, or  
10 married filing separate, or Seventy-Five Thousand  
11 Dollars (\$75,000.00) or less if the filing status  
12 is married filing jointly or qualifying widow,

13 (2) in the taxable year beginning January 1, 2007,  
14 the qualifying amount shall be Fifty Thousand  
15 Dollars (\$50,000.00) or less if the filing status  
16 is single, head of household, or married filing  
17 separate, or One Hundred Thousand Dollars  
18 (\$100,000.00) or less if the filing status is  
19 married filing jointly or qualifying widow,

20 (3) in the taxable year beginning January 1, 2008,  
21 the qualifying amount shall be Sixty-two Thousand  
22 Five Hundred Dollars (\$62,500.00) or less if the  
23 filing status is single, head of household, or  
24 married filing separate, or One Hundred Twenty-

1 five Thousand Dollars (\$125,000.00) or less if  
2 the filing status is married filing jointly or  
3 qualifying widow,

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

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

15 c. For purposes of this paragraph, "retirement benefits"  
16 means the total distributions or withdrawals from the  
17 following:

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

21 (2) an eligible deferred compensation plan that  
22 satisfies the requirements of Section 457 of the  
23 Internal Revenue Code, 26 U.S.C., Section 457,  
24

- 1 (3) an individual retirement account, annuity or  
2 trust or simplified employee pension that  
3 satisfies the requirements of Section 408 of the  
4 Internal Revenue Code, 26 U.S.C., Section 408,  
5 (4) an employee annuity subject to the provisions of  
6 Section 403(a) or (b) of the Internal Revenue  
7 Code, 26 U.S.C., Section 403(a) or (b),  
8 (5) United States Retirement Bonds which satisfy the  
9 requirements of Section 86 of the Internal  
10 Revenue Code, 26 U.S.C., Section 86, or  
11 (6) lump-sum distributions from a retirement plan  
12 which satisfies the requirements of Section  
13 402(e) of the Internal Revenue Code, 26 U.S.C.,  
14 Section 402(e).

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

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

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

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

19 18. a. In taxable years beginning after December 31, 2001,  
20 and before January 1, 2005, there shall be allowed a  
21 deduction in the amount of contributions to accounts  
22 established pursuant to the Oklahoma College Savings  
23 Plan Act. The deduction shall equal the amount of  
24 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  
24 return, excluding extensions, whichever is later.

1            Provided, a deduction for the same contribution may  
2            not be taken for two (2) different taxable years.

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

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

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

22           d.    If a taxpayer elects to take a rollover on a  
23           contribution for which a deduction has been taken  
24           pursuant to subparagraph b of this paragraph within

1 one year of the date of contribution, the amount of  
2 such rollover shall be included in the adjusted gross  
3 income of the taxpayer in the taxable year of the  
4 rollover.

5 e. If a taxpayer makes a non-qualified withdrawal of  
6 contributions for which a deduction was taken pursuant  
7 to subparagraph b of this paragraph, such non-  
8 qualified withdrawal and any earnings thereon shall be  
9 included in the adjusted gross income of the taxpayer  
10 in the taxable year of the non-qualified withdrawal.

11 f. As used in this paragraph:

12 (1) "non-qualified withdrawal" means a withdrawal  
13 from an Oklahoma College Savings Plan account  
14 other than one of the following:

15 (a) a qualified withdrawal,

16 (b) a withdrawal made as a result of the death  
17 or disability of the designated beneficiary  
18 of an account,

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

1 amount of the scholarship, allowance, or  
2 payment, or

3 (d) a rollover or change of designated  
4 beneficiary as permitted by subsection F of  
5 Section 3970.7 of Title 70 of Oklahoma  
6 Statutes, and

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

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

17 20. For taxable years beginning after December 31, 2006,  
18 retirement benefits received by federal civil service retirees,  
19 including survivor annuities, paid in lieu of Social Security  
20 benefits shall be exempt from taxable income to the extent such  
21 benefits are included in the federal adjusted gross income pursuant  
22 to the provisions of Section 86 of the Internal Revenue Code, 26  
23 U.S.C., Section 86, according to the following schedule:  
24

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

- 12 21. a. For taxable years beginning after December 31, 2007, a  
13 resident individual may deduct up to Ten Thousand  
14 Dollars (\$10,000.00) from Oklahoma adjusted gross  
15 income if the individual, or the dependent of the  
16 individual, while living, donates one or more human  
17 organs of the individual to another human being for  
18 human organ transplantation. As used in this  
19 paragraph, "human organ" means all or part of a liver,  
20 pancreas, kidney, intestine, lung, or bone marrow. A  
21 deduction that is claimed under this paragraph may be  
22 claimed in the taxable year in which the human organ  
23 transplantation occurs.  
24

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

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

11          22. For taxable years beginning after December 31, 2008, there  
12          shall be exempt from taxable income any amount received by the  
13          beneficiary of the death benefit for an emergency medical technician  
14          provided by Section 1 of this act.

15          23. For taxable years beginning after December 31, 2009,  
16          individuals shall receive an income tax deduction equal to fifty  
17          percent (50%) of the amount paid by the individual for coverage  
18          through a health insurance plan, health maintenance organization, or  
19          preferred provider organization applicable to the individual and any  
20          other person insured under the same health care policy or any other  
21          health care insurance premium regardless of the person insured. In  
22          order to qualify for the deduction provided by this paragraph an  
23          individual shall possess an Oklahoma adjusted gross income of Sixty-  
24          five Thousand Dollars (\$65,000.00) or less if single, Seventy-five

1 Thousand Dollars (\$75,000.00) or less if married with one or fewer  
2 children, or One Hundred Thousand Dollars (\$100,000.00) or less if  
3 married with two or more children.

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

9 2. As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 12           a. the term "real estate investment trust" or "REIT"  
13           means the meaning ascribed to such term in Section 856  
14           of the Internal Revenue Code of 1986, as amended,
- 15           b. the term "captive real estate investment trust" means  
16           a real estate investment trust, the shares or  
17           beneficial interests of which are not regularly traded  
18           on an established securities market and more than  
19           fifty percent (50%) of the voting power or value of  
20           the beneficial interests or shares of which are owned  
21           or controlled, directly or indirectly, or  
22           constructively, by a single entity that is:

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

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

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

- 15 (1) any real estate investment trust as defined in  
16 paragraph a of this subsection other than a  
17 "captive real estate investment trust", or  
18 (2) any qualified real estate investment trust  
19 subsidiary under Section 856(i) of the Internal  
20 Revenue Code of 1986, as amended, other than a  
21 qualified REIT subsidiary of a "captive real  
22 estate investment trust", or  
23 (3) any Listed Australian Property Trust (meaning an  
24 Australian unit trust registered as a "Managed

1 Investment Scheme" under the Australian  
2 Corporations Act in which the principal class of  
3 units is listed on a recognized stock exchange in  
4 Australia and is regularly traded on an  
5 established securities market), or an entity  
6 organized as a trust, provided that a Listed  
7 Australian Property Trust owns or controls,  
8 directly or indirectly, seventy-five percent  
9 (75%) or more of the voting power or value of the  
10 beneficial interests or shares of such trust, or  
11 (4) any Qualified Foreign Entity, meaning a  
12 corporation, trust, association or partnership  
13 organized outside the laws of the United States  
14 and which satisfies the following criteria:  
15 (a) at least seventy-five percent (75%) of the  
16 entity's total asset value at the close of  
17 its taxable year is represented by real  
18 estate assets, as defined in Section  
19 856(c)(5)(B) of the Internal Revenue Code of  
20 1986, as amended, thereby including shares  
21 or certificates of beneficial interest in  
22 any real estate investment trust, cash and  
23 cash equivalents, and U.S. Government  
24 securities,

- 1 (b) the entity receives a dividend-paid  
2 deduction comparable to Section 561 of the  
3 Internal Revenue Code of 1986, as amended,  
4 or is exempt from entity level tax,
- 5 (c) the entity is required to distribute at  
6 least eighty-five percent (85%) of its  
7 taxable income, as computed in the  
8 jurisdiction in which it is organized, to  
9 the holders of its shares or certificates of  
10 beneficial interest on an annual basis,
- 11 (d) not more than ten percent (10%) of the  
12 voting power or value in such entity is held  
13 directly or indirectly or constructively by  
14 a single entity or individual, or the shares  
15 or beneficial interests of such entity are  
16 regularly traded on an established  
17 securities market, and
- 18 (e) the entity is organized in a country which  
19 has a tax treaty with the United States.

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

1 SECTION 5. Sections 1 and 2 of this act shall become effective  
2 July 1, 2009.

3 SECTION 6. Sections 3 and 4 of this act shall become effective  
4 January 1, 2010.

5 SECTION 7. It being immediately necessary for the preservation  
6 of the public peace, health and safety, an emergency is hereby  
7 declared to exist, by reason whereof this act shall take effect and  
8 be in full force from and after its passage and approval.

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