STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

SENATE BILL 881 By: Russell

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 2358, as last amended by Section 3, Chapter 395, O.S.L. 2008 (68 O.S. Supp. 2008, Section 2358), which relates to income tax; deleting obsolete language; modifying certain deduction amount after certain time period; conforming language relating to certain deduction; and providing an effective date.

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

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

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

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

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

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

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

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

b. For carryovers and carrybacks to taxable years beginning after December 31, 1980, the amount of any net operating loss deduction allowed for the taxable year shall be an amount equal to the aggregate of the

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

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

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

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

(1) where such property has acquired a nonunitary business or commercial situs apart from the domicile of the taxpayer such income shall be allocated in accordance with such business or commercial situs; interest income from investments held to generate working capital for a unitary business enterprise shall be included in apportionable income; a resident trust or resident estate shall be treated as having a separate commercial or business situs insofar as undistributed income is concerned, but shall not be treated as having a separate commercial or business situs insofar as distributed income is concerned,

(2) for taxable years beginning after December 31, 2003, capital or ordinary gains or losses from the sale of an ownership interest in a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code of 1986, as amended,

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

(3) income from such property which is required to be allocated pursuant to the provisions of paragraph

5 of this subsection shall be allocated as herein provided;

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

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

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

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

(3) sales of the product stored in public warehouses within the state where the shipment to such warehouses is not covered by "in transit" tariffs, as prescribed and allowed by the

Interstate Commerce Commission, to a purchaser within or without the state,

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

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

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

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

(2) if the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the taxable income of such company shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the sum of (a) direct premiums written for insurance on property or risks in this state, plus (b) premiums written for reinsurance accepted in respect of property or risks in this state, and the denominator of which is the sum of (c) direct premiums written for insurance on property or risks everywhere, plus (d) premiums written for reinsurance

accepted in respect of property or risks everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect of property or risks in this state, whether or not otherwise determinable, may at the election of the company be determined on the basis of the proportion which premiums written for insurance accepted from companies commercially domiciled in Oklahoma bears to premiums written for reinsurance accepted from all sources, or alternatively in the proportion which the sum of the direct premiums written for insurance on property or risks in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.

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

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

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

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

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

(3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Oklahoma Tax

Commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property;

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

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

(2) In any case the numerator of the fraction shall include a portion of such expenditures in

connection with itinerant employees, such as traveling salespersons, in this state only a part of the time, in the proportion that time spent in Oklahoma bears to total time spent in furtherance of the enterprise by such employees;

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

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

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

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

(4) In the case of an oil, gasoline or gas pipeline enterprise, the numerator of the fraction shall be either the total of traffic units of the enterprise within Oklahoma or the revenue allocated to Oklahoma based upon miles moved, at the option of the taxpayer, and the denominator of which shall be the total of traffic units of the enterprise or the revenue of the enterprise everywhere as appropriate to the numerator. A "traffic unit" is hereby defined as the transportation for a distance of one (1) mile of

one (1) barrel of oil, one (1) gallon of gasoline or one thousand (1,000) cubic feet of natural or casinghead gas, as the case may be.

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

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

6. For calendar years 1997 and 1998, the owner of a new or expanded agricultural commodity processing facility in this state may exclude from Oklahoma taxable income, or in the case of an individual, the Oklahoma adjusted gross income, fifteen percent (15%) of the investment by the owner in the new or expanded agricultural commodity processing facility. For calendar year 1999,

and all subsequent years, the percentage, not to exceed fifteen percent (15%), available to the owner of a new or expanded agricultural commodity processing facility in this state claiming the exemption shall be adjusted annually so that the total estimated reduction in tax liability does not exceed One Million Dollars ($1,000,000.00) annually. The Tax Commission shall promulgate rules for determining the percentage of the investment which each eligible taxpayer may exclude. The exclusion provided by this paragraph shall be taken in the taxable year when the investment is made. In the event the total reduction in tax liability authorized by this paragraph exceeds One Million Dollars ($1,000,000.00) in any calendar year, the Tax Commission shall permit any excess over One Million Dollars ($1,000,000.00) and shall factor such excess into the percentage for subsequent years. Any amount of the exemption permitted to be excluded pursuant to the provisions of this paragraph but not used in any year may be carried forward as an exemption from income pursuant to the provisions of this paragraph for a period not exceeding six (6) years following the year in which the investment was originally made.

For purposes of this paragraph:

a. "Agricultural commodity processing facility" means building, structures, fixtures and improvements used or operated primarily for the processing or production of marketable products from agricultural commodities.

The term shall also mean a dairy operation that requires a depreciable investment of at least Two Hundred Fifty Thousand Dollars ($250,000.00) and which produces milk from dairy cows. The term does not include a facility that provides only, and nothing more than, storage, cleaning, drying or transportation of agricultural commodities, and

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

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

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

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

7. Despite any provision to the contrary in paragraph 3 of this subsection, for taxable years beginning after December 31, 1999, in the case of a taxpayer which has a farming loss, such farming loss shall be considered a net operating loss carryback in accordance with and to the extent of the Internal Revenue Code, 26 U.S.C.,

Section 172(b)(G). However, the amount of the net operating loss carryback shall not exceed the lesser of:

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

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

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

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

B. The taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income, except those corporations electing treatment as provided in subchapter S of the

Internal Revenue Code, 26 U.S.C., Section 1361 et seq., and Section 2365 of this title, deductions pursuant to the provisions of the Accelerated Cost Recovery System as defined and allowed in the Economic Recovery Tax Act of 1981, Public Law 97-34, 26 U.S.C., Section 168, for depreciation of assets placed into service after December 31, 1981, shall not be allowed in calculating Oklahoma taxable income. Such corporations shall be allowed a deduction for depreciation of assets placed into service after December 31, 1981, in accordance with provisions of the Internal Revenue Code, 26 U.S.C., Section 1 et seq., in effect immediately prior to the enactment of the Accelerated Cost Recovery System. The Oklahoma tax basis for all such assets placed into service after December 31, 1981, calculated in this section shall be retained and utilized for all Oklahoma income tax purposes through the final disposition of such assets.

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

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

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

2. For purposes of this subsection:

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

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

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

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

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

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

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

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

2. As used in this subsection:

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

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

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

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

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

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

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

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

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

(2) With respect to sales of stock or ownership interest in or sales of all or substantially all of the assets of an Oklahoma company, limited liability company, or partnership, the deduction described in this subsection shall not apply

unless the pass-through entity that makes the sale has held the stock or ownership interest or the assets for not less than three (3) uninterrupted years prior to the date of the transaction that created the capital gain, and each pass-through entity included in the chain of ownership has been a member, partner or shareholder of the pass-through entity in the tier immediately below it for an uninterrupted period of not less than three (3) years.

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

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

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

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

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

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

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

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

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

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

2. a. For taxable years beginning on or before December 31, 2005, in the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction in lieu of the standard deduction allowed by the Internal Revenue Code, in an amount equal to the larger of fifteen percent (15%) of the Oklahoma adjusted gross income or One Thousand Dollars ($1,000.00), but not to exceed Two Thousand Dollars ($2,000.00), except that

in the case of a married individual filing a separate return such deduction shall be the larger of fifteen percent (15%) of such Oklahoma adjusted gross income or Five Hundred Dollars ($500.00), but not to exceed the maximum amount of One Thousand Dollars ($1,000.00),

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Internal Revenue Code of 1986, as amended, based upon the amount and filing status prescribed by such Code for purposes of filing federal individual income tax returns.

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

4. A resident individual with a physical disability constituting a substantial handicap to employment may deduct from Oklahoma adjusted gross income such expenditures to modify a motor vehicle, home or workplace as are necessary to compensate for his or her handicap. A veteran certified by the Department of Veterans Affairs of the federal government as having a service-connected disability shall be conclusively presumed to be an individual with a

physical disability constituting a substantial handicap to employment. The Tax Commission shall promulgate rules containing a list of combinations of common disabilities and modifications which may be presumed to qualify for this deduction. The Tax Commission shall prescribe necessary requirements for verification.

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

a. absence from the United States, which term includes only the states and the District of Columbia;

b. absence from the State of Oklahoma while on active duty; or

c. confinement in a hospital within the United States for treatment of wounds, injuries or disease,

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

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

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

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

6. ~~The~~ For all tax years beginning before January 1, 2010, the salary or any other form of compensation, received from the United States by a member of any component of the Armed Forces of the

United States, shall be deducted from taxable income during the time in which the person is detained by the enemy in a conflict, is a prisoner of war or is missing in action and not deceased<u>; provided, for all tax years beginning on or after January 1, 2010, all such salary or compensation shall be deducted pursuant to paragraph 5 of this subsection</u>.

7. Notwithstanding anything in the Internal Revenue Code or in the Oklahoma Income Tax Act to the contrary, it is expressly provided that, in the case of resident individuals, amounts received as dividends or distributions of earnings from savings and loan associations or credit unions located in Oklahoma, and interest received on savings accounts and time deposits from such sources or from state and national banks or trust companies located in Oklahoma, shall qualify as dividends for the purpose of the dividend exclusion, and taxable income shall be adjusted accordingly to arrive at Oklahoma taxable income; provided, however, that the dividend, distribution of earnings and/or interest exclusion provided for hereinabove shall not be cumulative to the maximum dividend exclusion allowed by the Internal Revenue Code. Any dividend exclusion already allowed by the Internal Revenue Code and reflected in the taxpayer's Oklahoma taxable income together with exclusion allowed herein shall not exceed the total of One Hundred Dollars ($100.00) per individual or Two Hundred Dollars ($200.00) per couple filing a joint return.

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

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

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

16, and the advanced refund of such credit shall not be subject to taxation.

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

9. Retirement benefits not to exceed Five Thousand Five Hundred Dollars ($5,500.00) for the 2004 tax year, Seven Thousand Five Hundred Dollars ($7,500.00) for the 2005 tax year and Ten Thousand Dollars ($10,000.00) for the 2006 tax year and all subsequent tax years, which are received by an individual from the civil service of the United States, the Oklahoma Public Employees Retirement System, the Teachers' Retirement System of Oklahoma, the Oklahoma Law Enforcement Retirement System, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the employee retirement systems created by counties pursuant to Section 951 et seq. of Title 19 of the Oklahoma Statutes, the Uniform Retirement System for Justices and Judges, the Oklahoma Wildlife Conservation Department Retirement Fund, the Oklahoma Employment Security Commission Retirement Plan, or the employee retirement systems created by municipalities pursuant to Section 48-101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt from taxable income.

10. In taxable years beginning after December 3l, 1984, Social Security benefits received by an individual shall be exempt from

taxable income, to the extent such benefits are included in the federal adjusted gross income pursuant to the provisions of Section 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

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

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

13. For taxable years beginning after December 31, 1996, the Oklahoma adjusted gross income of any individual taxpayer who is a swine or poultry producer may be further adjusted for the deduction

for depreciation allowed for new construction or expansion costs which may be computed using the same depreciation method elected for federal income tax purposes except that the useful life shall be seven (7) years for purposes of this paragraph. If depreciation is allowed as a deduction in determining the adjusted gross income of an individual, any depreciation calculated and claimed pursuant to this section shall in no event be a duplication of any depreciation allowed or permitted on the federal income tax return of the individual.

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

(1) the adoption of a minor, or

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

may be deducted from the Oklahoma adjusted gross income.

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

c. The Tax Commission shall promulgate rules to implement the provisions of this paragraph which shall contain a specific list of nonrecurring adoption expenses which may be presumed to qualify for the deduction. The Tax

Commission shall prescribe necessary requirements for verification.

d. "Nonrecurring adoption expenses" means adoption fees, court costs, medical expenses, attorney fees and expenses which are directly related to the legal process of adoption of a child including, but not limited to, costs relating to the adoption study, health and psychological examinations, transportation and reasonable costs of lodging and food for the child or adoptive parents which are incurred to complete the adoption process and are not reimbursed by other sources. The term "nonrecurring adoption expenses" shall not include attorney fees incurred for the purpose of litigating a contested adoption, from and after the point of the initiation of the contest, costs associated with physical remodeling, renovation and alteration of the adoptive parents' home or property, except for a special needs child as authorized by the court.

15. a. In taxable years beginning before January 1, 2005, retirement benefits not to exceed the amounts specified in this paragraph, which are received by an individual sixty-five (65) years of age or older and whose Oklahoma adjusted gross income is Twenty-five

Thousand Dollars ($25,000.00) or less if the filing status is single, head of household, or married filing separate, or Fifty Thousand Dollars ($50,000.00) or less if the filing status is married filing joint or qualifying widow, shall be exempt from taxable income. In taxable years beginning after December 31, 2004, retirement benefits not to exceed the amounts specified in this paragraph, which are received by an individual whose Oklahoma adjusted gross income is less than the qualifying amount specified in this paragraph, shall be exempt from taxable income.

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

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

(2) in the taxable year beginning January 1, 2007, the qualifying amount shall be Fifty Thousand Dollars ($50,000.00) or less if the filing status

is single, head of household, or married filing separate, or One Hundred Thousand Dollars ($100,000.00) or less if the filing status is married filing jointly or qualifying widow,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. In taxable years beginning after December 31, 2004, each taxpayer shall be allowed a deduction for contributions to accounts established pursuant to the Oklahoma College Savings Plan Act. The maximum annual deduction shall equal the amount of contributions to all such accounts plus any contributions to such accounts by the taxpayer for prior taxable years after December 31, 2004, which were not deducted, but in no event shall the deduction for each tax year exceed Ten Thousand Dollars ($10,000.00) for each individual taxpayer or Twenty Thousand Dollars ($20,000.00) for taxpayers filing a joint return. Any amount of a contribution that is not deducted by the taxpayer in the year for which the contribution is made may be carried forward as a deduction from income for the succeeding five (5) years. For taxable years beginning after December 31, 2005, deductions may be taken for contributions and rollovers made during a taxable year and up to April 15 of the succeeding year, or the due date of a taxpayer's state income tax return, excluding extensions, whichever is later. Provided, a deduction for the same contribution may not be taken for two (2) different taxable years.

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

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

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

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

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

f. As used in this paragraph:

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

(a) a qualified withdrawal,

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

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

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

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

19. For taxable years beginning after December 31, 2005, retirement benefits received by an individual from any component of

the Armed Forces of the United States in an amount not to exceed the greater of seventy-five percent (75%) of such benefits or Ten Thousand Dollars ($10,000.00) shall be exempt from taxable income but in no case less than the amount of the exemption provided by paragraph 15 of this subsection.

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

a. in the taxable year beginning January 1, 2007, twenty percent (20%) of such benefits shall be exempt,

b. in the taxable year beginning January 1, 2008, forty percent (40%) of such benefits shall be exempt,

c. in the taxable year beginning January 1, 2009, sixty percent (60%) of such benefits shall be exempt,

d. in the taxable year beginning January 1, 2010, eighty percent (80%) of such benefits shall be exempt, and

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

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

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

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

22. For taxable years beginning after December 31, 2008, there shall be exempt from taxable income any amount received by the

beneficiary of the death benefit for an emergency medical technician provided by Section ~~1~~ 1-2505.1 of this ~~act~~ title.

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

2. As used in this subsection:

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

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

(2) the sale of stock or the sale of a direct or indirect ownership interest in an Oklahoma company, limited liability company, or partnership where such stock or ownership interest has been directly or indirectly owned by

the individual taxpayer for a holding period of at least two (2) years prior to the date of the transaction from which the net capital gains arise, or

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

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

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

d. “direct” means the individual taxpayer directly owns the asset,

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

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

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

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

f. "Oklahoma proprietorship business enterprise" means a business enterprise whose income and expenses have been reported on Schedule C or F of an individual taxpayer’s federal income tax return, or any similar successor schedule published by the Internal Revenue Service and whose primary headquarters have been located in Oklahoma for at least three (3) uninterrupted years prior to the date of the transaction from which the net capital gains arise.

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

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

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

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

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

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

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

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

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

(3) any Listed Australian Property Trust (meaning an Australian unit trust registered as a "Managed

Investment Scheme” under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market), or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, seventy-five percent (75%) or more of the voting power or value of the beneficial interests or shares of such trust, or

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

(a) at least seventy-five percent (75%) of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and U.S. Government securities,

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

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

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

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

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

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

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