

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 969

By: Newberry

6 AS INTRODUCED

7 An Act relating to income tax; creating the Oklahoma
8 Equal Opportunity Education Scholarship Act;
9 providing short title; providing for specified credit
10 against income tax liability; specifying amount of
11 credit for certain contribution by specified taxpayer
12 type and limiting credit; providing conditions under
13 which credit shall not be allowed; limiting total
14 amount of credits allowed annually; defining terms;
15 requiring Oklahoma Tax Commission to maintain certain
16 list for purposes of allocating credit; establishing
17 criteria for reserving credit; requiring Tax
18 Commission to notify certain entities under certain
19 circumstances; providing for carryover of unused
20 credit; requiring Tax Commission to promulgate rules
21 in consultation with State Department of Education;
22 amending 68 O.S. 2001, Section 2358, as last amended
23 by Section 1, Chapter 421, O.S.L. 2010 (68 O.S. Supp.
24 2010, Section 2358), which relates to adjustments of
taxable income; requiring certain amounts to be added
to Oklahoma taxable income under specified
circumstances; providing for codification; and
providing an effective date.

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

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2357.206 of Title 68, unless
23 there is created a duplication in numbering, reads as follows:
24

1 A. This act shall be known and may be cited as the "Oklahoma
2 Equal Opportunity Education Scholarship Act".

3 B. 1. For tax years beginning after December 31, 2011, there
4 shall be allowed a credit for any taxpayer who makes a contribution
5 to an eligible scholarship-granting organization, as follows:

6 a. the credit against the tax imposed by subsections B, C
7 and F of Section 2355 of Title 68 of the Oklahoma
8 Statutes shall be equal to one hundred percent (100%)
9 of the total amount of contributions made during a
10 taxable year, not to exceed One Thousand Dollars
11 (\$1,000.00) for each taxpayer or Two Thousand Dollars
12 (\$2,000.00) for married individuals filing jointly for
13 the taxable year in which the credit provided in this
14 section is claimed, or

15 b. the credit against the tax imposed by subsections D
16 and E of Section 2355 of Title 68 of the Oklahoma
17 Statutes shall be equal to sixty-five percent (65%) of
18 the total contributions made during a taxable year;
19 provided, no credit authorized by this subparagraph
20 shall exceed an amount which is equal to One Hundred
21 Thousand Dollars (\$100,000.00) for the taxable year in
22 which the credit provided in this section is claimed.

23 2. A credit shall not be allowed by the Oklahoma Tax Commission
24 for contributions made to a scholarship-granting organization if

1 that organization's percentage of funds actually awarded is less
2 than ninety percent (90%). For purposes of this section, the
3 "percentage of funds actually awarded" shall be determined by
4 dividing the total amount of funds actually awarded as educational
5 scholarships over the most recent twenty-four (24) months by the
6 total amount available to award as educational scholarships over the
7 most recent twenty-four (24) months.

8 3. The total credits authorized by subparagraph b of paragraph
9 1 of this subsection against the taxes imposed by subsections D and
10 E of Section 2355 of Title 68 of the Oklahoma Statutes shall not
11 exceed Ten Million Dollars (\$10,000,000.00) annually, to be
12 allocated by the Oklahoma Tax Commission as provided in subsection D
13 of this section.

14 4. Any taxpayer who claims a credit for a contribution pursuant
15 to this section and also deducts the same contribution from federal
16 taxable net income as a charitable contribution shall be required to
17 add the amount of the federal deduction to Oklahoma taxable income
18 for the tax year during which the contribution was made pursuant to
19 paragraph 11 of subsection A of Section 2358 of the Oklahoma
20 Statutes.

21 C. As used in this section:

22 1. "Eligible student" means a child of school age who is
23 lawfully present in the United States and who is a member of a
24 household in which the total annual income during the preceding tax

1 year does not exceed an amount equal to three hundred percent (300%)
2 of the income standard used to qualify for a free or reduced school
3 lunch or who, during the immediately preceding school year, attended
4 or, by virtue of the location of such student's place of residence,
5 was eligible to attend a public school in this state which has been
6 identified for school improvement as determined by the State Board
7 of Education pursuant to the requirements of the No Child Left
8 Behind Act of 2001, P.L. No. 107-110. Once a student has received
9 an educational scholarship, as defined in paragraph 3 of this
10 subsection, the student and any siblings who are members of the same
11 household shall remain eligible until they graduate from high school
12 or reach twenty-one (21) years of age, whichever occurs first;

13 2. "Eligible special needs student" means a child of school age
14 who has attended public school in our state with an individualized
15 education program pursuant to the Individuals With Disabilities
16 Education Act, 20 U.S.C.A., Section 1400 et seq.;

17 3. "Educational scholarships" means:

18 a. grants to an eligible student of up to Five Thousand
19 Dollars (\$5,000.00) or eighty percent (80%) of the
20 average per-pupil expenditure in the school district
21 where the recipient student resides, whichever is
22 greater, to cover all or part of the tuition, fees and
23 transportation costs of a qualified private school
24 which is accredited by the State Board of Education or

1 an accrediting association approved by the Board
2 pursuant to Section 3-104 of Title 70 of the Oklahoma
3 Statutes, or

4 b. grants to an eligible special needs student of up to
5 Twenty-five Thousand Dollars (\$25,000.00) to cover all
6 or part of the tuition, fees and transportation costs
7 of a qualified private school for eligible special
8 needs students which is accredited by the State Board
9 of Education or an accrediting association approved by
10 the Board pursuant to Section 3-104 of Title 70 of the
11 Oklahoma Statutes;

12 4. "Low-income eligible student" means an eligible student or
13 eligible special needs student who qualifies for a free or reduced-
14 price lunch;

15 5. "Qualified school" means an elementary or secondary private
16 school in this state, including schools which provide pre-
17 kindergarten educational programs for four-year-olds, which is:

- 18 a. accredited by the State Board of Education or an
19 accrediting association approved by the Board pursuant
20 to Section 3-104 of Title 70 of the Oklahoma Statutes,
21 b. in compliance with all applicable health and safety
22 laws and codes,

- c. has a stated policy against discrimination in admissions on the basis of race, color, national origin or disability, and
- d. ensures academic accountability to parents and guardians of students through regular progress reports;

6. "Qualified school for eligible special needs students" means an elementary or secondary private school in a county in this state;

7. "Scholarship-granting organization" means an organization which:

- a. is a nonprofit entity exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
- b. distributes periodic scholarship payments as checks made out to an eligible student's or eligible special needs student's parent or guardian and mailed to the qualified school where the student is enrolled,
- c. spends no more than ten percent (10%) of its annual revenue on expenditures other than educational scholarships as defined in paragraph 3 of this subsection,
- d. spends each year a portion of its expenditures on educational scholarships for low-income eligible students, as defined in paragraph 4 of this

1 subsection, in an amount equal to or greater than the
2 percentage of low-income eligible students in the
3 state,

4 e. ensures that scholarships are portable during the
5 school year and can be used at any qualified school
6 that accepts the eligible student or at any qualified
7 school for special needs students that accepts the
8 eligible special needs student,

9 f. registers with the Oklahoma Tax Commission as a
10 scholarship-granting organization, and

11 g. has policies in place to:

12 (1) carry out criminal background checks on all
13 employees and board members to ensure that no
14 individual is involved with the organization who
15 might reasonably pose a risk to the appropriate
16 use of contributed funds, and

17 (2) maintain full and accurate records with respect
18 to the receipt of contributions and expenditures
19 of those contributions and supply such records
20 and any other documentation required by the Tax
21 Commission to demonstrate financial
22 accountability; and

23 8. "Annual revenue" means the total amount or value of
24 contributions received by an organization from taxpayers awarded

1 credits during the organization's fiscal year and all amounts earned
2 from interest or investments.

3 D. 1. In order to allocate the total credits authorized by
4 this section against the taxes imposed by subsections D and E of
5 Section 2355 of Title 68 of the Oklahoma Statutes, the Tax
6 Commission shall maintain a list of the total credits reserved
7 during any taxable year. Credits shall be considered reserved only
8 when:

9 a. a scholarship-granting organization has received a
10 pledge from a taxpayer to make a specified donation,
11 and

12 b. the scholarship-granting organization has deposited
13 the funds pledged within seven (7) business days from
14 the date the pledge was received.

15 2. When the amount of total credits reserved during the tax
16 year has reached Ten Million Dollars (\$10,000,000.00), the Tax
17 Commission shall notify all registered scholarship-granting
18 organizations that no additional credit is available for the tax
19 year.

20 E. The credit authorized by this section shall not be used to
21 reduce the tax liability of the taxpayer to less than zero (0).

22 F. Any credits allowed but not used in any tax year may be
23 carried over, in order, to each of the three (3) years following the
24 year of qualification.

1 G. In consultation with the State Department of Education, the
2 Tax Commission shall promulgate rules necessary to implement this
3 act. Such rules shall include procedures for the registration of a
4 scholarship-granting organization for purposes of determining if the
5 organization meets the requirements of this act and for notice as
6 required in paragraph 2 of Subsection D of this section.

7 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2358, as
8 last amended by Section 1, Chapter 421, O.S.L. 2010 (68 O.S. Supp.
9 2010, Section 2358), is amended to read as follows:

10 Section 2358. For all tax years beginning after December 31,
11 1981, taxable income and adjusted gross income shall be adjusted to
12 arrive at Oklahoma taxable income and Oklahoma adjusted gross income
13 as required by this section.

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

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

22 2. There shall be deducted amounts included in such income that
23 the state is prohibited from taxing because of the provisions of the
24

1 Federal Constitution, the State Constitution, federal laws or laws
2 of Oklahoma.

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

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

14 b. For carryovers and carrybacks to taxable years
15 beginning after December 31, 1980, the amount of any
16 net operating loss deduction allowed for the taxable
17 year shall be an amount equal to the aggregate of the
18 Oklahoma net operating loss carryovers and carrybacks
19 to such year. Oklahoma net operating losses shall be
20 separately determined by reference to Section 172 of
21 the Internal Revenue Code, 26 U.S.C., Section 172, as
22 modified by the Oklahoma Income Tax Act, Section 2351
23 et seq. of this title, and shall be allowed without
24 regard to the existence of a federal net operating

1 loss. For tax years beginning after December 31,
2 2000, and ending before January 1, 2008, the years to
3 which such losses may be carried shall be determined
4 solely by reference to Section 172 of the Internal
5 Revenue Code, 26 U.S.C., Section 172, with the
6 exception that the terms "net operating loss" and
7 "taxable income" shall be replaced with "Oklahoma net
8 operating loss" and "Oklahoma taxable income". For
9 tax years beginning after December 31, 2007, and
10 ending before January 1, 2009, years to which such
11 losses may be carried back shall be limited to two (2)
12 years. For tax years beginning after December 31,
13 2008, the years to which such losses may be carried
14 back shall be determined solely by reference to
15 Section 172 of the Internal Revenue Code, 26 U.S.C.,
16 Section 172, with the exception that the terms "net
17 operating loss" and "taxable income" shall be replaced
18 with "Oklahoma net operating loss" and "Oklahoma
19 taxable income".

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

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

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

11 (1) where such property has acquired a nonunitary
12 business or commercial situs apart from the
13 domicile of the taxpayer such income shall be
14 allocated in accordance with such business or
15 commercial situs; interest income from
16 investments held to generate working capital for
17 a unitary business enterprise shall be included
18 in apportionable income; a resident trust or
19 resident estate shall be treated as having a
20 separate commercial or business situs insofar as
21 undistributed income is concerned, but shall not
22 be treated as having a separate commercial or
23 business situs insofar as distributed income is
24 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

1 subparagraph a of paragraph 2 of subsection F of
2 this section,

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

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

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

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

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

1 (3) sales of the product stored in public warehouses
2 within the state where the shipment to such
3 warehouses is not covered by "in transit"
4 tariffs, as prescribed and allowed by the
5 Interstate Commerce Commission, to a purchaser
6 within or without the state,

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

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

22 (1) except as otherwise provided by division (2) of
23 this subparagraph, taxable income of an insurance
24 company for a taxable year shall be apportioned

1 to this state by multiplying such income by a
2 fraction, the numerator of which is the direct
3 premiums written for insurance on property or
4 risks in this state, and the denominator of which
5 is the direct premiums written for insurance on
6 property or risks everywhere. For purposes of
7 this subsection, the term "direct premiums
8 written" means the total amount of direct
9 premiums written, assessments and annuity
10 considerations as reported for the taxable year
11 on the annual statement filed by the company with
12 the Insurance Commissioner in the form approved
13 by the National Association of Insurance
14 Commissioners, or such other form as may be
15 prescribed in lieu thereof,

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

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

22 5. The net income or loss remaining after the separate
23 allocation in paragraph 4 of this subsection, being that which is
24 derived from a unitary business enterprise, shall be apportioned to

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

24

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

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

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

1 rental rate received by the taxpayer from
2 subrentals,

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

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

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

1 in the proportion that mileage traveled in
2 Oklahoma bears to total mileage traveled by such
3 employees,

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

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

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

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

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

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

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

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

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

1 shall be those as are determined pursuant to the
2 accounting procedures prescribed by the Federal
3 Communications Commission.

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

1 6. For calendar years 1997 and 1998, the owner of a new or
2 expanded agricultural commodity processing facility in this state
3 may exclude from Oklahoma taxable income, or in the case of an
4 individual, the Oklahoma adjusted gross income, fifteen percent
5 (15%) of the investment by the owner in the new or expanded
6 agricultural commodity processing facility. For calendar year 1999,
7 and all subsequent years, the percentage, not to exceed fifteen
8 percent (15%), available to the owner of a new or expanded
9 agricultural commodity processing facility in this state claiming
10 the exemption shall be adjusted annually so that the total estimated
11 reduction in tax liability does not exceed One Million Dollars
12 (\$1,000,000.00) annually. The Tax Commission shall promulgate rules
13 for determining the percentage of the investment which each eligible
14 taxpayer may exclude. The exclusion provided by this paragraph
15 shall be taken in the taxable year when the investment is made. In
16 the event the total reduction in tax liability authorized by this
17 paragraph exceeds One Million Dollars (\$1,000,000.00) in any
18 calendar year, the Tax Commission shall permit any excess over One
19 Million Dollars (\$1,000,000.00) and shall factor such excess into
20 the percentage for subsequent years. Any amount of the exemption
21 permitted to be excluded pursuant to the provisions of this
22 paragraph but not used in any year may be carried forward as an
23 exemption from income pursuant to the provisions of this paragraph
24

1 for a period not exceeding six (6) years following the year in which
2 the investment was originally made.

3 For purposes of this paragraph:

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

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

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

21 (2) transporting the agricultural commodities or
22 product before, during or after the processing,
23 or
24

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

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

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

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

15 8. In taxable years beginning after December 31, 1995, all
16 qualified wages equal to the federal income tax credit set forth in
17 26 U.S.C.A., Section 45A, shall be deducted from taxable income.
18 The deduction allowed pursuant to this paragraph shall only be
19 permitted for the tax years in which the federal tax credit pursuant
20 to 26 U.S.C.A., Section 45A, is allowed. For purposes of this
21 paragraph, "qualified wages" means those wages used to calculate the
22 federal credit pursuant to 26 U.S.C.A., Section 45A.

23 9. In taxable years beginning after December 31, 2005, an
24 employer that is eligible for and utilizes the Safety Pays OSHA

1 Consultation Service provided by the Oklahoma Department of Labor
2 shall receive an exemption from taxable income in the amount of One
3 Thousand Dollars (\$1,000.00) for the tax year that the service is
4 utilized.

5 10. For taxable years beginning on or after January 1, 2010,
6 there shall be added to Oklahoma taxable income an amount equal to
7 the amount of deferred income not included in such taxable income
8 pursuant to Section 108(i)(1) of the Internal Revenue Code of 1986
9 as amended by Section 1231 of the American Recovery and Reinvestment
10 Act of 2009 (P.L. No. 111-5). There shall be subtracted from
11 Oklahoma taxable income an amount equal to the amount of deferred
12 income included in such taxable income pursuant to Section 108(i)(1)
13 of the Internal Revenue Code of 1986, as amended by Section 1231 of
14 the American Recovery and Reinvestment Act of 2009 (P.L. No. 111-5).

15 11. For taxable years beginning on or after January 1, 2012,
16 there shall be added to Oklahoma taxable income an amount equal to
17 the amount of a contribution to a scholarship-granting organization
18 claimed as a credit pursuant to Section 1 of this act if such
19 contribution amount was also deducted from federal taxable income as
20 a charitable donation to a charitable organization qualified under
21 Section 501 (c)(3) of the Internal Revenue Code.

22 B. 1. The taxable income of any corporation shall be further
23 adjusted to arrive at Oklahoma taxable income, except those
24 corporations electing treatment as provided in subchapter S of the

1 Internal Revenue Code, 26 U.S.C., Section 1361 et seq., and Section
2 2365 of this title, deductions pursuant to the provisions of the
3 Accelerated Cost Recovery System as defined and allowed in the
4 Economic Recovery Tax Act of 1981, Public Law 97-34, 26 U.S.C.,
5 Section 168, for depreciation of assets placed into service after
6 December 31, 1981, shall not be allowed in calculating Oklahoma
7 taxable income. Such corporations shall be allowed a deduction for
8 depreciation of assets placed into service after December 31, 1981,
9 in accordance with provisions of the Internal Revenue Code, 26
10 U.S.C., Section 1 et seq., in effect immediately prior to the
11 enactment of the Accelerated Cost Recovery System. The Oklahoma tax
12 basis for all such assets placed into service after December 31,
13 1981, calculated in this section shall be retained and utilized for
14 all Oklahoma income tax purposes through the final disposition of
15 such assets.

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

21 For assets placed in service and held by a corporation in which
22 accelerated cost recovery system was previously disallowed, an
23 adjustment to taxable income is required in the first taxable year
24 beginning after December 31, 1982, to reconcile the basis of such

1 assets to the basis allowed in the Internal Revenue Code. The
2 purpose of this adjustment is to equalize the basis and allowance
3 for depreciation accounts between that reported to the Internal
4 Revenue Service and that reported to Oklahoma.

5 2. For tax years beginning on or after January 1, 2009, and
6 ending on or before December 31, 2009, there shall be added to
7 Oklahoma taxable income any amount in excess of One Hundred Seventy-
8 five Thousand Dollars (\$175,000.00) which has been deducted as a
9 small business expense under Internal Revenue Code, Section 179 as
10 provided in the American Recovery and Reinvestment Act of 2009.

11 C. 1. For taxable years beginning after December 31, 1987, the
12 taxable income of any corporation shall be further adjusted to
13 arrive at Oklahoma taxable income for transfers of technology to
14 qualified small businesses located in Oklahoma. Such transferor
15 corporation shall be allowed an exemption from taxable income of an
16 amount equal to the amount of royalty payment received as a result
17 of such transfer; provided, however, such amount shall not exceed
18 ten percent (10%) of the amount of gross proceeds received by such
19 transferor corporation as a result of the technology transfer. Such
20 exemption shall be allowed for a period not to exceed ten (10) years
21 from the date of receipt of the first royalty payment accruing from
22 such transfer. No exemption may be claimed for transfers of
23 technology to qualified small businesses made prior to January 1,
24 1988.

1 2. For purposes of this subsection:

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

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

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

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

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

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

21 d. "Gross proceeds" means the total amount of
22 consideration for the transfer of technology, whether
23 the consideration is in money or otherwise.
24

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

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 the
13 federal income tax return of the corporation, estate
14 or trust that 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 corporation,
18 estate or trust for a holding period of at least
19 five (5) years prior to the date of the
20 transaction from which such net capital gains
21 arise,

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

1 stock or ownership interest has been directly or
2 indirectly owned by the corporation, estate or
3 trust for a holding period of at least three (3)
4 years prior to the date of the transaction from
5 which the net capital gains 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 where such property has been directly
12 or indirectly owned by such entity owned by the
13 owners of such entity, and used in or derived
14 from such entity for a period of at least three
15 (3) years prior to the date of the transaction
16 from which the net capital gains arise,

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

23 c. "Oklahoma company", "limited liability company", or
24 "partnership" means an entity whose primary

1 headquarters have been located in Oklahoma for at
2 least three (3) uninterrupted years prior to the date
3 of the transaction from which the net capital gains
4 arise,

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

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

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

1 (2) With respect to sales of stock or ownership
2 interest in or sales of all or substantially all
3 of the assets of an Oklahoma company, limited
4 liability company, or partnership, the deduction
5 described in this subsection shall not apply
6 unless the pass-through entity that makes the
7 sale has held the stock or ownership interest or
8 the assets for not less than three (3)
9 uninterrupted years prior to the date of the
10 transaction that created the capital gain, and
11 each pass-through entity included in the chain of
12 ownership has been a member, partner or
13 shareholder of the pass-through entity in the
14 tier immediately below it for an uninterrupted
15 period of not less than three (3) years.

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

- 19 1. a. In the case of individuals, there shall be added or
20 deducted, as the case may be, the difference necessary
21 to allow personal exemptions of One Thousand Dollars
22 (\$1,000.00) in lieu of the personal exemptions allowed
23 by the Internal Revenue Code.

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

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

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

22 (2) Twelve Thousand Five Hundred Dollars (\$12,500.00)
23 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.

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

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

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

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

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

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

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 Oklahoma adjusted gross income shall be increased by
17 any amounts paid for motor vehicle excise taxes which
18 were deducted as allowed by the Internal Revenue Code.

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

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

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

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

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

6 5. a. Before July 1, 2010, the first One Thousand Five
7 Hundred Dollars (\$1,500.00) received by any person
8 from the United States as salary or compensation in
9 any form, other than retirement benefits, as a member
10 of any component of the Armed Forces of the United
11 States shall be deducted from taxable income.

12 b. On or after July 1, 2010, and ending before January 1,
13 2015, one hundred percent (100%) of the income
14 received by any person from the United States as
15 salary or compensation in any form, other than
16 retirement benefits, as a member of any component of
17 the Armed Forces of the United States shall be
18 deducted from taxable income.

19 c. For the taxable year beginning on January 1, 2015, and
20 every year thereafter, if the State Board of
21 Equalization makes a determination pursuant to Section
22 2355.1D of this title that, for the purposes of this
23 paragraph, revenue collections exceed revenue
24 reductions, the one hundred percent (100%) deduction

1 provided for in subparagraph b of this paragraph may
2 be claimed.

3 d. For the taxable year beginning on January 1, 2015, and
4 every year thereafter, if the State Board of
5 Equalization makes a determination pursuant to Section
6 2355.1D of this title that, for the purposes of this
7 paragraph, revenue collections do not exceed revenue
8 reductions, a deduction of the first One Thousand Five
9 Hundred Dollars (\$1,500.00) received by any person
10 from the United States as salary or compensation in
11 any form, other than retirement benefits, as a member
12 of any component of the Armed Forces of the United
13 States shall be allowed.

14 e. Whenever the filing of a timely income tax return by a
15 member of the Armed Forces of the United States is
16 made impracticable or impossible of accomplishment by
17 reason of:

18 (1) absence from the United States, which term
19 includes only the states and the District of
20 Columbia;

21 (2) absence from the State of Oklahoma while on
22 active duty; or
23
24

1 (3) confinement in a hospital within the United
2 States for treatment of wounds, injuries or
3 disease,
4 the time for filing a return and paying an income tax shall
5 be and is hereby extended without incurring liability for
6 interest or penalties, to the fifteenth day of the third
7 month following the month in which:

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

17 (b) An executor, administrator, or conservator
18 of the estate of the taxpayer is appointed,
19 whichever event occurs the earliest.

20 Provided, that the Tax Commission may, in its discretion, grant
21 any member of the Armed Forces of the United States an extension of
22 time for filing of income tax returns and payment of income tax
23 without incurring liabilities for interest or penalties. Such
24 extension may be granted only when in the judgment of the Tax

1 Commission a good cause exists therefor and may be for a period in
2 excess of six (6) months. A record of every such extension granted,
3 and the reason therefor, shall be kept.

4 6. Before July 1, 2010, the salary or any other form of
5 compensation, received from the United States by a member of any
6 component of the Armed Forces of the United States, shall be
7 deducted from taxable income during the time in which the person is
8 detained by the enemy in a conflict, is a prisoner of war or is
9 missing in action and not deceased; provided, after July 1, 2010,
10 all such salary or compensation shall be subject to the deduction as
11 provided pursuant to paragraph 5 of this subsection.

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

1 dividend exclusion already allowed by the Internal Revenue Code and
2 reflected in the taxpayer's Oklahoma taxable income together with
3 exclusion allowed herein shall not exceed the total of One Hundred
4 Dollars (\$100.00) per individual or Two Hundred Dollars (\$200.00)
5 per couple filing a joint return.

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

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

19 c. For the purpose of this paragraph, "federal income
20 taxes paid" shall mean federal income taxes, surtaxes
21 imposed on incomes or excess profits taxes, as though
22 the taxpayer was on the accrual basis. In determining
23 the amount of deduction for federal income taxes for
24 tax year 2001, the amount of the deduction shall not

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

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

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

1 retirement systems created by municipalities pursuant to Section 48-
2 101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt
3 from taxable income.

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

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

23 12. In taxable years beginning after December 31, 1995,
24 contributions made to and interest received from a medical savings

1 account established pursuant to Sections 2621 through 2623 of Title
2 63 of the Oklahoma Statutes shall be exempt from taxable income.

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

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

18 (1) the adoption of a minor, or

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

21 may be deducted from the Oklahoma adjusted gross
22 income.
23
24

- 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

1 property, except for a special needs child as
2 authorized by the court.

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

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

21 (1) in taxable years beginning after December 31,
22 2004, and prior to January 1, 2007, the
23 qualifying amount shall be Thirty-seven Thousand
24 Five Hundred Dollars (\$37,500.00) or less if the

- 1 filing status is single, head of household, or
2 married filing separate, or Seventy-Five Thousand
3 Dollars (\$75,000.00) or less if the filing status
4 is married filing jointly or qualifying widow,
5 (2) in the taxable year beginning January 1, 2007,
6 the qualifying amount shall be Fifty Thousand
7 Dollars (\$50,000.00) or less if the filing status
8 is single, head of household, or married filing
9 separate, or One Hundred Thousand Dollars
10 (\$100,000.00) or less if the filing status is
11 married filing jointly or qualifying widow,
12 (3) in the taxable year beginning January 1, 2008,
13 the qualifying amount shall be Sixty-two Thousand
14 Five Hundred Dollars (\$62,500.00) or less if the
15 filing status is single, head of household, or
16 married filing separate, or One Hundred Twenty-
17 five Thousand Dollars (\$125,000.00) or less if
18 the filing status is married filing jointly or
19 qualifying widow,
20 (4) in the taxable year beginning January 1, 2009,
21 the qualifying amount shall be One Hundred
22 Thousand Dollars (\$100,000.00) or less if the
23 filing status is single, head of household, or
24 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 (1) for a taxpayer who qualified for the five-year
2 carryforward election and who takes a rollover or
3 nonqualified withdrawal during that period, the
4 tax deduction otherwise available pursuant to
5 subparagraph b of this paragraph shall be reduced
6 by the amount which is equal to the rollover or
7 nonqualified withdrawal, and

8 (2) for a taxpayer who elects to take a rollover or
9 nonqualified withdrawal within the same tax year
10 in which a contribution was made to the
11 taxpayer's account, the tax deduction otherwise
12 available pursuant to subparagraph b of this
13 paragraph shall be reduced by the amount of the
14 contribution which is equal to the rollover or
15 nonqualified withdrawal.

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

23 e. If a taxpayer makes a nonqualified withdrawal of
24 contributions for which a deduction was taken pursuant

1 to subparagraph b of this paragraph, such nonqualified
2 withdrawal and any earnings thereon shall be included
3 in the adjusted gross income of the taxpayer in the
4 taxable year of the nonqualified withdrawal.

5 f. As used in this paragraph:

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

9 (a) a qualified withdrawal,

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

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

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

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

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

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

- 18 a. in the taxable year beginning January 1, 2007, twenty
19 percent (20%) of such benefits shall be exempt,
20 b. in the taxable year beginning January 1, 2008, forty
21 percent (40%) of such benefits shall be exempt,
22 c. in the taxable year beginning January 1, 2009, sixty
23 percent (60%) of such benefits shall be exempt,
24

- 1 d. in the taxable year beginning January 1, 2010, eighty
2 percent (80%) of such benefits shall be exempt, and
3 e. in the taxable year beginning January 1, 2011, and
4 subsequent taxable years, one hundred percent (100%)
5 of such benefits shall be exempt.

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

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

22 c. The Oklahoma Tax Commission shall promulgate rules to
23 implement the provisions of this paragraph which shall
24 contain a specific list of expenses which may be

1 presumed to qualify for the deduction. The Tax
2 Commission shall prescribe necessary requirements for
3 verification.

4 22. For taxable years beginning after December 31, 2009, there
5 shall be exempt from taxable income any amount received by the
6 beneficiary of the death benefit for an emergency medical technician
7 or a registered emergency medical responder provided by Section 1-
8 2505.1 of Title 63 of the Oklahoma Statutes.

9 23. For taxable years beginning after December 31, 2008,
10 taxable income shall be increased by any unemployment compensation
11 exempted under Section 85 (c) of the Internal Revenue Code, 26
12 U.S.C., Section 85(c) (2009).

13 24. For taxable years beginning after December 31, 2008, there
14 shall be exempt from taxable income any payment in an amount less
15 than Six Hundred Dollars (\$600.00) received by a person as an award
16 for participation in a competitive livestock show event. For
17 purposes of this paragraph, the payment shall be treated as a
18 scholarship amount paid by the entity sponsoring the event and the
19 sponsoring entity shall cause the payment to be categorized as a
20 scholarship in its books and records.

21 F. 1. For taxable years beginning after December 31, 2004, a
22 deduction from the Oklahoma adjusted gross income of any individual
23 taxpayer shall be allowed for qualifying gains receiving capital
24

1 treatment that are included in the federal adjusted gross income of
2 such individual taxpayer during the taxable year.

3 2. As used in this subsection:

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

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

15 (2) the sale of stock or the sale of a direct or
16 indirect ownership interest in an Oklahoma
17 company, limited liability company, or
18 partnership where such stock or ownership
19 interest has been directly or indirectly owned by
20 the individual taxpayer for a holding period of
21 at least two (2) years prior to the date of the
22 transaction from which the net capital gains
23 arise, or
24

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

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

20 c. "Oklahoma company," "limited liability company," or
21 "partnership" means an entity whose primary
22 headquarters have been located in Oklahoma for at
23 least three (3) uninterrupted years prior to the date
24

1 of the transaction from which the net capital gains
2 arise,

3 d. "direct" means the individual taxpayer directly owns
4 the asset,

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

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

22 (2) With respect to sales of stock or ownership
23 interest in or sales of all or substantially all
24 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)

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

3 G. 1. For purposes of computing its Oklahoma taxable income
4 under this section, the dividends-paid deduction otherwise allowed
5 by federal law in computing net income of a real estate investment
6 trust that is subject to federal income tax shall be added back in
7 computing the tax imposed by this state under this title if the real
8 estate investment trust is a captive real estate investment trust.

9 2. For purposes of computing its Oklahoma taxable income under
10 this section, a taxpayer shall add back otherwise deductible rents
11 and interest expenses paid to a captive real estate investment trust
12 that is not subject to the provisions of paragraph 1 of this
13 subsection. As used in this subsection:

- 14 a. the term "real estate investment trust" or "REIT"
15 means the meaning ascribed to such term in Section 856
16 of the Internal Revenue Code of 1986, as amended,
17 b. the term "captive real estate investment trust" means
18 a real estate investment trust, the shares or
19 beneficial interests of which are not regularly traded
20 on an established securities market and more than
21 fifty percent (50%) of the voting power or value of
22 the beneficial interests or shares of which are owned
23 or controlled, directly or indirectly, or
24 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

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,

- 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 3. 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 4. A real estate investment trust that does not become
2 regularly traded on an established securities market within one (1)
3 year of the date on which it first becomes a real estate investment
4 trust shall be deemed not to have been regularly traded on an
5 established securities market, retroactive to the date it first
6 became a real estate investment trust, and shall file an amended
7 return reflecting such retroactive designation for any tax year or
8 part year occurring during its initial year of status as a real
9 estate investment trust. For purposes of this subsection, a real
10 estate investment trust becomes a real estate investment trust on
11 the first day it has both met the requirements of Section 856 of the
12 Internal Revenue Code and has elected to be treated as a real estate
13 investment trust pursuant to Section 856(c)(1) of the Internal
14 Revenue Code.

15 SECTION 3. This act shall become effective January 1, 2012.

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