

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1073

By: Mazzei

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5
6 AS INTRODUCED

7 An Act relating to income tax; amending Section 4,
8 Chapter 195, O.S.L. 2014, Section 5, Chapter 195,
9 O.S.L. 2014, 68 O.S. 2011, Section 2358, as last
10 amended by Section 1, Chapter 138, O.S.L. 2014 (68
11 O.S. Supp. 2015, Sections 2355.1F, 2355.1G and 2358),
12 which relate to tax rates; providing exception to
13 implementation of certain top marginal rate subject
14 to revenue failure declaration; modifying methodology
15 for certain determination; for specified time period,
16 requiring certain adjustment of taxable income under
17 specified circumstances; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 4, Chapter 195, O.S.L.
2014 (68 O.S. Supp. 2015, Section 2355.1F), is amended to read as
follows:

Section 2355.1F. A. The provisions of this section shall be
applicable with respect to the implementation of the five percent
(5%) top marginal rate of individual income tax otherwise authorized
pursuant to the provisions of subparagraph (f) of paragraphs 1 and 2
of subsection C of Section 2355 of Title 68 of the Oklahoma
Statutes, which shall be contingent upon a determination by the

1 State Board of Equalization made by a comparison described by this
2 section which shall be conducted until the income tax rate of five
3 percent (5%) is effective.

4 B. In addition to any other duties prescribed by law, at the
5 meeting required by paragraph 1 of Section 23 of Article X of the
6 Oklahoma Constitution to be held in December 2014, and for any
7 subsequent December meeting of the State Board of Equalization, if
8 the five percent (5%) top marginal income tax rate prescribed by
9 subparagraph (f) of paragraphs 1 and 2 of subsection C of Section
10 2355 of Title 68 of the Oklahoma Statutes has not become effective,
11 the State Board of Equalization shall compare:

12 1. The total General Revenue Fund proposed estimate for fiscal
13 year 2014 which was certified at the State Board of Equalization
14 meeting held in February 2013; and

15 2. The total General Revenue Fund proposed estimate for fiscal
16 year 2016, or if the five percent (5%) top marginal income tax rate
17 prescribed by subparagraph (f) of paragraphs 1 and 2 of subsection C
18 of Section 2355 of Title 68 of the Oklahoma Statutes has not become
19 effective, the fiscal year for which the Board is certifying a
20 proposed estimate.

21 If the amount determined pursuant to the provisions of paragraph
22 2 of this subsection is equal to or greater than the amount
23 determined pursuant to the provisions of paragraph 1 of this
24 subsection, the Board shall make a finding that the revenue

1 computations required by this section will authorize the
2 implementation of the five percent (5%) top marginal income tax rate
3 prescribed by subparagraph (f) of paragraphs 1 and 2 of subsection C
4 of Section 2355 of Title 68 of the Oklahoma Statutes beginning on
5 the second January 1 following the December meeting. Provided, a
6 finding by the Board to authorize the implementation of the five
7 percent (5%) top marginal income tax rate shall be void and the rate
8 unenforceable if such rate would otherwise become effective during a
9 fiscal year when a revenue failure is subsequently declared by the
10 Board pursuant to paragraph 7 of Section 23 of Article X of the
11 Oklahoma Constitution.

12 If the amount determined pursuant to the provisions of paragraph
13 2 of this subsection is less than the amount determined pursuant to
14 the provisions of paragraph 1 of this subsection, the Board shall
15 make a finding that the revenue computations required by this
16 section will not authorize the implementation of the five percent
17 (5%) top marginal income tax rate prescribed by subparagraph (f) of
18 paragraphs 1 and 2 of subsection C of Section 2355 of Title 68 of
19 the Oklahoma Statutes beginning on the second January 1 following
20 the December meeting.

21 C. If the Board makes a finding that the revenue computations
22 required by this section do not authorize the implementation of the
23 5% top marginal income tax rate prescribed by of subparagraph (f) of
24 paragraphs 1 and 2 of subsection C of Section 2355 of Title 68 of

1 the Oklahoma Statutes beginning with calendar year 2016 pursuant to
2 the provisions of subsection B of this section, such procedures
3 shall be repeated by the State Board of Equalization for each
4 successive two-year comparison until the rate is implemented.

5 SECTION 2. AMENDATORY Section 5, Chapter 195, O.S.L.
6 2014 (68 O.S. Supp. 2015, Section 2355.1G), is amended to read as
7 follows:

8 Section 2355.1G. A. The provisions of this section shall be
9 applicable with respect to the implementation of the four and
10 eighty-five hundredths percent (4.85%) top marginal rate of
11 individual income tax otherwise authorized pursuant to the
12 provisions of subparagraph (f) of paragraphs 1 and 2 of subsection C
13 of Section 2355 of Title 68 of the Oklahoma Statutes, which shall be
14 contingent upon a determination by the State Board of Equalization
15 made by a comparison of the revenue computations described by this
16 section which shall be conducted until the income tax rate of four
17 and eighty-five hundredths percent (4.85%) is effective.

18 B. In addition to any other duties prescribed by law, at the
19 meeting required by paragraph 1 of Section 23 of Article X of the
20 Oklahoma Constitution to be held in December of the year in which
21 the five percent (5%) top marginal income tax rate prescribed by
22 subparagraph (f) of paragraphs 1 and 2 of subsection C of Section
23 2355 of Title 68 of the Oklahoma Statutes becomes effective, and for
24 any subsequent December meeting of the State Board of Equalization,

1 if the four and eighty-five hundredths percent (4.85%) top marginal
2 income tax rate prescribed by subparagraph (f) of paragraphs 1 and 2
3 of subsection C of Section 2355 of Title 68 of the Oklahoma Statutes
4 has not become effective, the State Board of Equalization shall
5 determine:

6 1. The amount of estimated revenue growth in the General
7 Revenue Fund of the State Treasury for the fiscal year beginning on
8 the next ensuing July 1; and

9 2. The amount by which the income tax revenue for the tax year
10 which will begin on the second January 1 following such December
11 meeting is estimated to be reduced by a fifteen hundredths percent
12 (0.15%) decrease in the top marginal income tax rate, plus an amount
13 equal to three percent (3%) of the revised General Revenue Fund
14 estimate for the then current fiscal year in order for a top
15 marginal income tax rate of four and eighty-five hundredths percent
16 (4.85%) to be effective.

17 If the amount determined pursuant to the provisions of paragraph
18 1 of this subsection is equal to or greater than the amount
19 determined pursuant to the provisions of paragraph 2 of this
20 subsection, the Board shall make a preliminary finding that the
21 Board anticipates that a finding will be made at the February
22 meeting immediately subsequent to the December meeting that the
23 revenue computations required by this section will authorize the
24 implementation of the four and eighty-five hundredths percent

1 (4.85%) top marginal rate pursuant to subparagraph (f) of paragraphs
2 1 and 2 of subsection C of Section 2355 of Title 68 of the Oklahoma
3 Statutes beginning on the second January 1 following the December
4 meeting.

5 If the amount determined pursuant to the provisions of paragraph
6 1 of this subsection is less than the amount determined pursuant to
7 the provisions of paragraph 2 of this subsection, the Board shall
8 make a preliminary finding that the Board anticipates that a finding
9 will be made at the February meeting immediately subsequent to the
10 December meeting that the revenue computations required by this
11 section will not authorize the implementation of the four and
12 eighty-five hundredths percent (4.85%) top marginal income tax rate
13 subparagraph (f) of paragraphs 1 and 2 of subsection C of Section
14 2355 of Title 68 of the Oklahoma Statutes beginning on the second
15 January 1 following the December meeting.

16 C. In addition to any other duties prescribed by law, at the
17 meeting required by paragraph 3 of Section 23 of Article X of the
18 Oklahoma Constitution to be held in February following the year in
19 which the five percent (5%) top marginal income tax rate prescribed
20 by subparagraph (f) of paragraphs 1 and 2 of subsection C of Section
21 2355 of Title 68 of the Oklahoma Statutes becomes effective, and for
22 any subsequent February meeting of the State Board of Equalization,
23 if the four and eighty-five hundredths percent (4.85%) top marginal
24 income tax rate prescribed by subparagraph (f) of paragraphs 1 and 2

1 of subsection C of Section 2355 of Title 68 of the Oklahoma Statutes
2 has not become effective, the State Board of Equalization shall
3 determine:

4 1. The amount of estimated revenue growth in the General
5 Revenue Fund of the State Treasury for the fiscal year beginning on
6 the next ensuing July 1; and

7 2. The amount by which the income tax revenue for the tax year
8 which will begin on the January 1 immediately following the February
9 meeting is estimated to be reduced by a fifteen hundredths percent
10 (.15%) decrease in the top marginal income tax rate, plus an amount
11 equal to three percent (3%) of the revised General Revenue Fund
12 estimate for the then current fiscal year in order for a top
13 marginal income tax rate of four and eighty-five hundredths percent
14 (4.85%) to be effective.

15 If the amount determined pursuant to the provisions of paragraph
16 1 of this subsection is equal to or greater than the amount
17 determined pursuant to the provisions of paragraph 2 of this
18 subsection, the Board shall make a finding that the revenue
19 computations required by this section will authorize the
20 implementation of the four and eighty-five hundredths percent
21 (4.85%) top marginal income tax rate pursuant to subparagraph (f) of
22 paragraphs 1 and 2 of subsection C of Section 2355 of Title 68 of
23 the Oklahoma Statutes beginning on the January 1 immediately
24 following the February meeting.

1 If the amount determined pursuant to the provisions of paragraph
2 1 of this subsection is less than the amount determined pursuant to
3 the provisions of paragraph 2 of this subsection, the Board shall
4 make a finding that the revenue computations required by this
5 section do not authorize the implementation of the four and eighty-
6 five hundredths percent (4.85%) top marginal income tax rate
7 pursuant to subparagraph (f) of paragraphs 1 and 2 of subsection C
8 of Section 2355 of Title 68 of the Oklahoma Statutes beginning with
9 the January 1 immediately following the February meeting.

10 D. If the Board makes a finding that the revenue computations
11 required by this section do not authorize the implementation of the
12 four and eighty-five hundredths percent (4.85%) top marginal income
13 tax rate pursuant to subparagraph (f) of paragraphs 1 and 2 of
14 subsection C of Section 2355 of Title 68 of the Oklahoma Statutes
15 beginning with calendar year 2018 pursuant to the provisions of
16 subsection C of this section, the procedures prescribed by
17 subsection A, subsection B, and subsection C of this section shall
18 be repeated by the State Board of Equalization for each successive
19 two-year comparison. Once the four and eighty-five hundredths
20 percent (4.85%) top marginal income tax rate otherwise authorized
21 pursuant to subparagraph (f) of paragraphs 1 and 2 of subsection C
22 of Section 2355 of Title 68 of the Oklahoma Statutes has been
23 implemented, such income tax rate shall be in effect for all
24 subsequent tax years.

1 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2358, as
2 last amended by Section 1, Chapter 138, O.S.L. 2014 (68 O.S. Supp.
3 2015, Section 2358), is amended to read as follows:

4 Section 2358. For all tax years beginning after December 31,
5 1981, taxable income and adjusted gross income shall be adjusted to
6 arrive at Oklahoma taxable income and Oklahoma adjusted gross income
7 as required by this section.

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

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

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

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

22 a. For carryovers and carrybacks to taxable years
23 beginning before January 1, 1981, the amount of any
24 net operating loss deduction allowed to a taxpayer for

1 federal income tax purposes shall be reduced to an
2 amount which is the same portion thereof as the loss
3 from sources within this state, as determined pursuant
4 to this section and Section 2362 of this title, for
5 the taxable year in which such loss is sustained is of
6 the total loss for such year;

7 b. For carryovers and carrybacks to taxable years

8 beginning after December 31, 1980, the amount of any
9 net operating loss deduction allowed for the taxable
10 year shall be an amount equal to the aggregate of the
11 Oklahoma net operating loss carryovers and carrybacks
12 to such year. Oklahoma net operating losses shall be
13 separately determined by reference to Section 172 of
14 the Internal Revenue Code, 26 U.S.C., Section 172, as
15 modified by the Oklahoma Income Tax Act, Section 2351
16 et seq. of this title, and shall be allowed without
17 regard to the existence of a federal net operating
18 loss. For tax years beginning after December 31,
19 2000, and ending before January 1, 2008, the years to
20 which such losses may be carried shall be determined
21 solely by reference to Section 172 of the Internal
22 Revenue Code, 26 U.S.C., Section 172, with the
23 exception that the terms "net operating loss" and
24 "taxable income" shall be replaced with "Oklahoma net

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

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

- 18 a. Income from real and tangible personal property, such
19 as rents, oil and mining production or royalties, and
20 gains or losses from sales of such property, shall be
21 allocated in accordance with the situs of such
22 property;
- 23 b. Income from intangible personal property, such as
24 interest, dividends, patent or copyright royalties,

1 and gains or losses from sales of such property, shall
2 be allocated in accordance with the domiciliary situs
3 of the taxpayer, except that:

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

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

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

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

24

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

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

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

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

18 (3) sales of the product stored in public warehouses
19 within the state where the shipment to such
20 warehouses is not covered by "in transit"
21 tariffs, as prescribed and allowed by the
22 Interstate Commerce Commission, to a purchaser
23 within or without the state,
24

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

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

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

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

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

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

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

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

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

- 1 (1) Property, the income from which is separately
2 allocated in paragraph 4 of this subsection,
3 shall not be included in determining this
4 fraction. The numerator of the fraction shall
5 include a portion of the investment in
6 transportation and other equipment having no
7 fixed situs, such as rolling stock, buses, trucks
8 and trailers, including machinery and equipment
9 carried thereon, airplanes, salespersons'
10 automobiles and other similar equipment, in the
11 proportion that miles traveled in Oklahoma by
12 such equipment bears to total miles traveled,
- 13 (2) Property owned by the taxpayer is valued at its
14 original cost. Property rented by the taxpayer
15 is valued at eight times the net annual rental
16 rate. Net annual rental rate is the annual
17 rental rate paid by the taxpayer, less any annual
18 rental rate received by the taxpayer from
19 subrentals,
- 20 (3) The average value of property shall be determined
21 by averaging the values at the beginning and
22 ending of the tax period but the Oklahoma Tax
23 Commission may require the averaging of monthly
24 values during the tax period if reasonably

1 required to reflect properly the average value of
2 the taxpayer's property;

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

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

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

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

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

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

23 (2) In the case of a railroad or interurban railway
24 enterprise, the numerator of the fraction shall

1 not be less than the allocation of revenues to
2 this state as shown in its annual report to the
3 Corporation Commission.

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

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

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

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

22 In any case where the apportionment of the three factors
23 prescribed in this paragraph attributes to Oklahoma a portion of net
24 income of the enterprise out of all appropriate proportion to the

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

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

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

19 For purposes of this paragraph:

- 20 a. "Agricultural commodity processing facility" means
21 building, structures, fixtures and improvements used
22 or operated primarily for the processing or production
23 of marketable products from agricultural commodities.
24 The term shall also mean a dairy operation that

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

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

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

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

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

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

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

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

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

20 10. For taxable years beginning on or after January 1, 2010,
21 there shall be added to Oklahoma taxable income an amount equal to
22 the amount of deferred income not included in such taxable income
23 pursuant to Section 108(i)(1) of the Internal Revenue Code of 1986
24 as amended by Section 1231 of the American Recovery and Reinvestment

1 Act of 2009 (P.L. No. 111-5). There shall be subtracted from
2 Oklahoma taxable income an amount equal to the amount of deferred
3 income included in such taxable income pursuant to Section 108(i)(1)
4 of the Internal Revenue Code of 1986, as amended by Section 1231 of
5 the American Recovery and Reinvestment Act of 2009 (P.L. No. 111-5).

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

24

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

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

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

20 C. 1. For taxable years beginning after December 31, 1987, the
21 taxable income of any corporation shall be further adjusted to
22 arrive at Oklahoma taxable income for transfers of technology to
23 qualified small businesses located in Oklahoma. Such transferor
24 corporation shall be allowed an exemption from taxable income of an

1 amount equal to the amount of royalty payment received as a result
2 of such transfer; provided, however, such amount shall not exceed
3 ten percent (10%) of the amount of gross proceeds received by such
4 transferor corporation as a result of the technology transfer. Such
5 exemption shall be allowed for a period not to exceed ten (10) years
6 from the date of receipt of the first royalty payment accruing from
7 such transfer. No exemption may be claimed for transfers of
8 technology to qualified small businesses made prior to January 1,
9 1988.

10 2. For purposes of this subsection:

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

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

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

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

23 b. "Technology" means a proprietary process, formula,
24 pattern, device or compilation of scientific or

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

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

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

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

17 2. As used in this subsection:

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

23 (1) the sale of real property or tangible personal
24 property located within Oklahoma that has been

1 directly or indirectly owned by the corporation,
2 estate or trust for a holding period of at least
3 five (5) years prior to the date of the
4 transaction from which such net capital gains
5 arise,

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

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

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

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

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

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

19 (1) With respect to sales of real property or
20 tangible personal property located within
21 Oklahoma, the deduction described in this
22 subsection shall not apply unless the pass-
23 through entity that makes the sale has held the
24 property for not less than five (5) uninterrupted

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

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

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

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

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

20 c. There shall be allowed an additional exemption of One
21 Thousand Dollars (\$1,000.00) for each taxpayer or
22 spouse who is sixty-five (65) years of age or older at
23 the close of the tax year based upon the filing status
24 and federal adjusted gross income of the taxpayer.

1 Taxpayers with the following filing status may claim
2 this exemption if the federal adjusted gross income
3 does not exceed:

- 4 (1) Twenty-five Thousand Dollars (\$25,000.00) if
5 married and filing jointly;
- 6 (2) Twelve Thousand Five Hundred Dollars (\$12,500.00)
7 if married and filing separately;
- 8 (3) Fifteen Thousand Dollars (\$15,000.00) if single;
9 and
- 10 (4) Nineteen Thousand Dollars (\$19,000.00) if a
11 qualifying head of household.

12 Provided, for taxable years beginning after December
13 31, 1999, amounts included in the calculation of
14 federal adjusted gross income pursuant to the
15 conversion of a traditional individual retirement
16 account to a Roth individual retirement account shall
17 be excluded from federal adjusted gross income for
18 purposes of the income thresholds provided in this
19 subparagraph.

- 20 2. a. For taxable years beginning on or before December 31,
21 2005, in the case of individuals who use the standard
22 deduction in determining taxable income, there shall
23 be added or deducted, as the case may be, the
24 difference necessary to allow a standard deduction in

1 lieu of the standard deduction allowed by the Internal
2 Revenue Code, in an amount equal to the larger of
3 fifteen percent (15%) of the Oklahoma adjusted gross
4 income or One Thousand Dollars (\$1,000.00), but not to
5 exceed Two Thousand Dollars (\$2,000.00), except that
6 in the case of a married individual filing a separate
7 return such deduction shall be the larger of fifteen
8 percent (15%) of such Oklahoma adjusted gross income
9 or Five Hundred Dollars (\$500.00), but not to exceed
10 the maximum amount of One Thousand Dollars
11 (\$1,000.00).

12 b. For taxable years beginning on or after January 1,
13 2006, and before January 1, 2007, in the case of
14 individuals who use the standard deduction in
15 determining taxable income, there shall be added or
16 deducted, as the case may be, the difference necessary
17 to allow a standard deduction in lieu of the standard
18 deduction allowed by the Internal Revenue Code, in an
19 amount equal to:

- 20 (1) Three Thousand Dollars (\$3,000.00), if the filing
21 status is married filing joint, head of household
22 or qualifying widow; or
23 (2) Two Thousand Dollars (\$2,000.00), if the filing
24 status is single or married filing separate.

1 c. For the taxable year beginning on January 1, 2007, and
2 ending December 31, 2007, 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) Five Thousand Five Hundred Dollars (\$5,500.00),
9 if the filing status is married filing joint or
10 qualifying widow; or

11 (2) Four Thousand One Hundred Twenty-five Dollars
12 (\$4,125.00) for a head of household; or

13 (3) Two Thousand Seven Hundred Fifty Dollars
14 (\$2,750.00), if the filing status is single or
15 married filing separate.

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

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

4 (2) Four Thousand Eight Hundred Seventy-five Dollars
5 (\$4,875.00) for a head of household, or

6 (3) Three Thousand Two Hundred Fifty Dollars
7 (\$3,250.00), if the filing status is single or
8 married filing separate.

9 e. For the taxable year beginning on January 1, 2009, and
10 ending December 31, 2009, 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) Eight Thousand Five Hundred Dollars (\$8,500.00),
17 if the filing status is married filing joint or
18 qualifying widow, or

19 (2) Six Thousand Three Hundred Seventy-five Dollars
20 (\$6,375.00) for a head of household, or

21 (3) Four Thousand Two Hundred Fifty Dollars
22 (\$4,250.00), if the filing status is single or
23 married filing separate.
24

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

4 f. For taxable years beginning on or after January 1,
5 2010, in the case of individuals who use the standard
6 deduction in determining taxable income, there shall
7 be added or deducted, as the case may be, the
8 difference necessary to allow a standard deduction
9 equal to the standard deduction allowed by the
10 Internal Revenue Code of 1986, as amended, based upon
11 the amount and filing status prescribed by such Code
12 for purposes of filing federal individual income tax
13 returns.

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

1 deductions and personal exemptions shall be subject to proration as
2 provided by law.

3 4. A resident individual with a physical disability
4 constituting a substantial handicap to employment may deduct from
5 Oklahoma adjusted gross income such expenditures to modify a motor
6 vehicle, home or workplace as are necessary to compensate for his or
7 her handicap. A veteran certified by the Department of Veterans
8 Affairs of the federal government as having a service-connected
9 disability shall be conclusively presumed to be an individual with a
10 physical disability constituting a substantial handicap to
11 employment. The Tax Commission shall promulgate rules containing a
12 list of combinations of common disabilities and modifications which
13 may be presumed to qualify for this deduction. The Tax Commission
14 shall prescribe necessary requirements for verification.

15 5. a. Before July 1, 2010, the first One Thousand Five
16 Hundred Dollars (\$1,500.00) received by any person
17 from the United States as salary or compensation in
18 any form, other than retirement benefits, as a member
19 of any component of the Armed Forces of the United
20 States shall be deducted from taxable income.

21 b. On or after July 1, 2010, one hundred percent (100%)
22 of the income received by any person from the United
23 States as salary or compensation in any form, other
24 than retirement benefits, as a member of any component

1 of the Armed Forces of the United States shall be
2 deducted from taxable income.

3 c. Whenever the filing of a timely income tax return by a
4 member of the Armed Forces of the United States is
5 made impracticable or impossible of accomplishment by
6 reason of:

7 (1) absence from the United States, which term
8 includes only the states and the District of
9 Columbia;

10 (2) absence from the State of Oklahoma while on
11 active duty; or

12 (3) confinement in a hospital within the United
13 States for treatment of wounds, injuries or
14 disease,

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

19 (a) Such individual shall return to the United
20 States if the extension is granted pursuant
21 to subparagraph a of this paragraph, return
22 to the State of Oklahoma if the extension is
23 granted pursuant to subparagraph b of this
24 paragraph or be discharged from such

1 hospital if the extension is granted
2 pursuant to subparagraph c of this
3 paragraph; or

4 (b) An executor, administrator, or conservator
5 of the estate of the taxpayer is appointed,
6 whichever event occurs the earliest.

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

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

23 7. a. An individual taxpayer, whether resident or
24 nonresident, may deduct an amount equal to the federal

1 income taxes paid by the taxpayer during the taxable
2 year.

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

12 c. For the purpose of this paragraph, "federal income
13 taxes paid" shall mean federal income taxes, surtaxes
14 imposed on incomes or excess profits taxes, as though
15 the taxpayer was on the accrual basis. In determining
16 the amount of deduction for federal income taxes for
17 tax year 2001, the amount of the deduction shall not
18 be adjusted by the amount of any accelerated ten
19 percent (10%) tax rate bracket credit or advanced
20 refund of the credit received during the tax year
21 provided pursuant to the federal Economic Growth and
22 Tax Relief Reconciliation Act of 2001, P.L. No. 107-
23 16, and the advanced refund of such credit shall not
24 be subject to taxation.

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

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

21 9. In taxable years beginning after December 31, 1984, Social
22 Security benefits received by an individual shall be exempt from
23 taxable income, to the extent such benefits are included in the
24

1 federal adjusted gross income pursuant to the provisions of Section
2 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

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

17 11. In taxable years beginning after December 31, 1995,
18 contributions made to and interest received from a medical savings
19 account established pursuant to Sections 2621 through 2623 of Title
20 63 of the Oklahoma Statutes shall be exempt from taxable income.

21 12. For taxable years beginning after December 31, 1996, the
22 Oklahoma adjusted gross income of any individual taxpayer who is a
23 swine or poultry producer may be further adjusted for the deduction
24 for depreciation allowed for new construction or expansion costs

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

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

12 (1) the adoption of a minor, or

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

15 may be deducted from the Oklahoma adjusted gross
16 income.

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

20 c. The Tax Commission shall promulgate rules to implement
21 the provisions of this paragraph which shall contain a
22 specific list of nonrecurring adoption expenses which
23 may be presumed to qualify for the deduction. The Tax
24

1 Commission shall prescribe necessary requirements for
2 verification.

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

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

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

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

- 14 (1) in taxable years beginning after December 31,
15 2004, and prior to January 1, 2007, the
16 qualifying amount shall be Thirty-seven Thousand
17 Five Hundred Dollars (\$37,500.00) or less if the
18 filing status is single, head of household, or
19 married filing separate, or Seventy-Five Thousand
20 Dollars (\$75,000.00) or less if the filing status
21 is married filing jointly or qualifying widow,
22 (2) in the taxable year beginning January 1, 2007,
23 the qualifying amount shall be Fifty Thousand
24 Dollars (\$50,000.00) or less if the filing status

1 is single, head of household, or married filing
2 separate, or One Hundred Thousand Dollars
3 (\$100,000.00) or less if the filing status is
4 married filing jointly or qualifying widow,

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

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

21 (5) in the taxable year beginning January 1, 2010,
22 and subsequent taxable years, there shall be no
23 limitation upon the qualifying amount.
24

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

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

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

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

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

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

20 (6) lump-sum distributions from a retirement plan
21 which satisfies the requirements of Section
22 402(e) of the Internal Revenue Code, 26 U.S.C.,
23 Section 402(e).
24

1 d. The amount of the exemption provided by this paragraph
2 shall be limited to Five Thousand Five Hundred Dollars
3 (\$5,500.00) for the 2004 tax year, Seven Thousand Five
4 Hundred Dollars (\$7,500.00) for the 2005 tax year and
5 Ten Thousand Dollars (\$10,000.00) for the tax year
6 2006 and for all subsequent tax years. Any individual
7 who claims the exemption provided for in paragraph 8
8 of this subsection shall not be permitted to claim a
9 combined total exemption pursuant to this paragraph
10 and paragraph 8 of this subsection in an amount
11 exceeding Five Thousand Five Hundred Dollars
12 (\$5,500.00) for the 2004 tax year, Seven Thousand Five
13 Hundred Dollars (\$7,500.00) for the 2005 tax year and
14 Ten Thousand Dollars (\$10,000.00) for the 2006 tax
15 year and all subsequent tax years.

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

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

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

15 b. In taxable years beginning after December 31, 2004,
16 each taxpayer shall be allowed a deduction for
17 contributions to accounts established pursuant to the
18 Oklahoma College Savings Plan Act. The maximum annual
19 deduction shall equal the amount of contributions to
20 all such accounts plus any contributions to such
21 accounts by the taxpayer for prior taxable years after
22 December 31, 2004, which were not deducted, but in no
23 event shall the deduction for each tax year exceed Ten
24 Thousand Dollars (\$10,000.00) for each individual

1 taxpayer or Twenty Thousand Dollars (\$20,000.00) for
2 taxpayers filing a joint return. Any amount of a
3 contribution that is not deducted by the taxpayer in
4 the year for which the contribution is made may be
5 carried forward as a deduction from income for the
6 succeeding five (5) years. For taxable years
7 beginning after December 31, 2005, deductions may be
8 taken for contributions and rollovers made during a
9 taxable year and up to April 15 of the succeeding
10 year, or the due date of a taxpayer's state income tax
11 return, excluding extensions, whichever is later.
12 Provided, a deduction for the same contribution may
13 not be taken for two (2) different taxable years.

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

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

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

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

16 e. If a taxpayer makes a nonqualified withdrawal of
17 contributions for which a deduction was taken pursuant
18 to subparagraph b of this paragraph, such nonqualified
19 withdrawal and any earnings thereon shall be included
20 in the adjusted gross income of the taxpayer in the
21 taxable year of the nonqualified withdrawal.

22 f. As used in this paragraph:
23
24

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

4 (a) a qualified withdrawal,

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

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

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

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

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

1 the Armed Forces of the United States in an amount not to exceed the
2 greater of seventy-five percent (75%) of such benefits or Ten
3 Thousand Dollars (\$10,000.00) shall be exempt from taxable income
4 but in no case less than the amount of the exemption provided by
5 paragraph 14 of this subsection.

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

- 13 a. in the taxable year beginning January 1, 2007, twenty
14 percent (20%) of such benefits shall be exempt,
- 15 b. in the taxable year beginning January 1, 2008, forty
16 percent (40%) of such benefits shall be exempt,
- 17 c. in the taxable year beginning January 1, 2009, sixty
18 percent (60%) of such benefits shall be exempt,
- 19 d. in the taxable year beginning January 1, 2010, eighty
20 percent (80%) of such benefits shall be exempt, and
- 21 e. in the taxable year beginning January 1, 2011, and
22 subsequent taxable years, one hundred percent (100%)
23 of such benefits shall be exempt.

24

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

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

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

23 21. For taxable years beginning after December 31, 2009, there
24 shall be exempt from taxable income any amount received by the

1 beneficiary of the death benefit for an emergency medical technician
2 or a registered emergency medical responder provided by Section 1-
3 2505.1 of Title 63 of the Oklahoma Statutes.

4 22. For taxable years beginning after December 31, 2008,
5 taxable income shall be increased by any unemployment compensation
6 exempted under Section 85 (c) of the Internal Revenue Code, 26
7 U.S.C., Section 85(c) (2009).

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

16 24. For taxable years beginning on or after January 1 of the
17 first year for which a top marginal income tax rate of four and
18 eighty-five hundredths percent (4.85%) is implemented pursuant to
19 Section 2355.1F of this title, taxable income shall be increased by
20 any amount of state and local taxes deducted under 26 U.S.C.,
21 Section 164 of the Internal Revenue Code. If the amount of state
22 and local taxes deducted on the Oklahoma return is limited, taxable
23 income on the state return shall be increased only by the amount
24 actually deducted after any such limitations are applied.

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

6 2. As used in this subsection:

7 a. "qualifying gains receiving capital treatment" means
8 the amount of net capital gains, as defined in Section
9 1222(11) of the Internal Revenue Code, included in an
10 individual taxpayer's federal income tax return that
11 result from:

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

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

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

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

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

22 c. "Oklahoma company," "limited liability company," or
23 "partnership" means an entity whose primary
24 headquarters have been located in Oklahoma for at

1 least three (3) uninterrupted years prior to the date
2 of the transaction from which the net capital gains
3 arise,

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

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

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

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

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

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

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

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

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

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

18 b. the term "captive real estate investment trust" means
19 a real estate investment trust, the shares or
20 beneficial interests of which are not regularly traded
21 on an established securities market and more than
22 fifty percent (50%) of the voting power or value of
23 the beneficial interests or shares of which are owned
24

1 or controlled, directly or indirectly, or
2 constructively, by a single entity that is:

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

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

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

- 17 (1) any real estate investment trust as defined in
18 paragraph a of this subsection other than a
19 "captive real estate investment trust", or
20 (2) any qualified real estate investment trust
21 subsidiary under Section 856(i) of the Internal
22 Revenue Code of 1986, as amended, other than a
23 qualified REIT subsidiary of a "captive real
24 estate investment trust", or

1 (3) any Listed Australian Property Trust (meaning an
2 Australian unit trust registered as a "Managed
3 Investment Scheme" under the Australian
4 Corporations Act in which the principal class of
5 units is listed on a recognized stock exchange in
6 Australia and is regularly traded on an
7 established securities market), or an entity
8 organized as a trust, provided that a Listed
9 Australian Property Trust owns or controls,
10 directly or indirectly, seventy-five percent
11 (75%) or more of the voting power or value of the
12 beneficial interests or shares of such trust, or

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

17 (a) at least seventy-five percent (75%) of the
18 entity's total asset value at the close of
19 its taxable year is represented by real
20 estate assets, as defined in Section
21 856(c) (5) (B) of the Internal Revenue Code of
22 1986, as amended, thereby including shares
23 or certificates of beneficial interest in
24 any real estate investment trust, cash and

1 cash equivalents, and U.S. Government
2 securities,

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

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

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

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

22 3. For purposes of this subsection, the constructive ownership
23 rules of Section 318(a) of the Internal Revenue Code of 1986, as
24 amended, as modified by Section 856(d)(5) of the Internal Revenue

1 Code of 1986, as amended, shall apply in determining the ownership
2 of stock, assets, or net profits of any person.

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

17 SECTION 4. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

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