ENROLLED HOUSE BILL NO. 2660

ENACTED BY THE SECOND REGULAR SESSION OF THE

49TH LEGISLATURE OF THE STATE OF OKLAHOMA

NUMBERED BY THE SECRETARY OF STATE

STATE QUESTION NUMBER 713

LEGISLATIVE REFERENDUM NUMBER 336

RECEIVED: May 21, 2004

An Act

ENROLLED HOUSE
BILL NO. 2660

By: Adair and Pope of the House

and

Hobson, Monson and Robinson
of the Senate

An Act relating to revenue and taxation; ordering a legislative referendum pursuant to the Oklahoma Constitution; providing for levy of tax on cigarettes; providing for apportionment of funds; providing for collection and administration of tax; creating committee; providing for appointment of members; providing authority of committee; prohibiting wholesalers from paying excise tax on the inventory of cigarettes held prior to effective date of act; creating Comprehensive Cancer Center Debt Service Revolving Fund; creating Oklahoma State University College of Osteopathic Medicine Revolving Fund; amending 68 O.S. 2001, Section 311, which relates to the Cigarette Stamp Tax; modifying amount of discount compensation; amending 68 O.S. 2001, Sections 346 and 352, which relate to Cigarette Stamp Tax; penalizing compacting tribes that violate terms of compact; requiring Tax Commission to do certain audits; modifying references for payment of excise tax; providing for levy of tax on certain tobacco products; providing for apportionment of revenues; prohibiting wholesalers from paying excise tax on the inventory of tobacco products held prior to effective date of the act; amending 68 O.S. 2001, Section 1355, which relates to exemptions for items subject to other tax; providing exemption for cigarettes and other tobacco products; amending 68 O.S. 2001, Sections 2355 and 2358, as last amended by Section 70, Chapter 3, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2358), which relate to income tax; setting income tax rate; eliminating income tax rate determination procedure; increasing exemption for certain retirement benefits; modifying qualifications for certain exemptions; providing exemption for certain earnings of individual taxpayer; defining terms; amending 68 O.S. 2001, Section 5011, which relates to the Sales Tax Relief Act; deleting certain references to suspension procedures; modifying years certain income levels apply to; exempting certain funds from budgetary limits; amending 62 O.S. 2001, Section 41.29b, as amended by Section 2, Chapter 315, O.S.L. 2003 (62 O.S. Supp. 2003, Section 41.29b), which relates to the Education Reform Revolving Fund; expanding sources of revenue for the fund; repealing 68 O.S. 2001, Section 4001, which relates to funds available for appropriation; providing for codification; providing for noncodification;

providing an effective date; providing ballot title; and directing filing.

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

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at the next General Election.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302-5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Effective January 1, 2005, in addition to the tax levied in Sections 302, 302-1, 302-2, 302-3 and 302-4 of Title 68 of the Oklahoma Statutes, there is hereby levied upon the sale, use, gift, possession, or consumption of cigarettes, as defined in Sections 301 through 325 of Title 68 of the Oklahoma Statutes, within this state, a tax at the rate of forty (40) mills per cigarette.

B. Except as provided in subsection D of this section, the revenue resulting from the additional tax levied in subsection A of this section shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer as follows:

1. Twenty-two and six-hundredths percent (22.06%) shall be placed to the credit of the Health Employee and Economy Improvement Act Revolving Fund created in Section 1 of Enrolled Senate Bill No. 1546 of the 2nd Session of the 49th Oklahoma Legislature;

2. Three and nine-hundredths percent (3.09%) shall be placed to the credit of the Comprehensive Cancer Center Debt Service Revolving Fund created in Section 5 of this act;

3. Seven and fifty-hundredths percent (7.50%) shall be placed to the credit of the Trauma Care Assistance Revolving Fund created in Section 1-2522 of Title 63 of the Oklahoma Statutes;

4. Three and nine-hundredths percent (3.09%) shall be placed to the credit of the Oklahoma State University College of Osteopathic Medicine Revolving Fund created in Section 6 of this act;

5. Twenty-six and thirty-eight-hundredths percent (26.38%) shall be placed to the credit of the Oklahoma Health Care Authority Medicaid Program Fund created in Section 5020 of Title 63 of the Oklahoma Statutes for the purposes of maintaining programs and services funded under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", reimbursing city/county-owned hospitals, increasing emergency room physician rates, and providing TEFRA 134, also known as "Katie Beckett" services;

6. Two and sixty-five-hundredths percent (2.65%) shall be placed to the credit of the Department of Mental Health and

Substance Abuse Services Revolving Fund created in Section 2-303 of Title 43A of the Oklahoma Statutes;

7. Forty-four-hundredths of one percent (0.44%) shall be placed to the credit of the Belle Maxine Hilliard Breast and Cervical Cancer Treatment Revolving Fund created in Section 1 of Enrolled House Bill No. 2552 of the 2nd Session of the 49th Oklahoma Legislature;

8. One percent (1%) shall be placed to the credit of the Teachers' Retirement System Revolving Fund created in Section 158 of Title 62 of the Oklahoma Statutes;

9. Two and seven-hundredths percent (2.07%) shall be placed to the credit of the Education Reform Revolving Fund created in Section 41.29b of Title 62 of the Oklahoma Statutes;

10. Sixty-six-hundredths percent (0.66%) shall be placed to the credit of the Tobacco Prevention and Cessation Revolving Fund created in Section 1-105d of Title 63 of the Oklahoma Statutes;

11. Sixteen and eighty-three-hundredths percent (16.83%) shall be placed to the credit of the General Revenue Fund; and

12. For fiscal years beginning July 1, 2004, and ending June 30, 2006, fourteen and twenty-three-hundredths percent (14.23%) shall be apportioned to municipalities and counties that levy a sales tax, in the proportions which total municipal and county sales tax revenue was apportioned by the Tax Commission in the preceding month.

For fiscal years beginning July 1, 2006, and thereafter, the apportionment percentage specified in paragraph 12 of this subsection will be adjusted by dividing the total municipal and county sales tax revenue collected in the calendar year immediately preceding the commencement of the fiscal year by the sum of the state sales tax revenue and total municipal and county sales tax revenue collected in the same year. This ratio shall be divided by the ratio of the total municipal and county sales tax revenue collected in the calendar year beginning January 1, 2004, and ending December 31, 2004, divided by the sum of the state sales tax revenue and total municipal and county sales tax revenue collected in the same year. The resulting quotient shall be multiplied by fourteen and twenty-three-hundredths percent (14.23%) to determine the apportionment percentage for the fiscal year.

For fiscal years beginning July 1, 2006, and thereafter, any adjustment to the percentage of revenues apportioned to municipalities and counties shall be reflected in the percent of revenues apportioned to the General Revenue Fund.

C. The tax shall be evidenced by tax stamps as now provided for; however, as to cigarette packages of less than ten cigarettes for free distribution as samples, the tax herein levied shall be computed and paid as provided for other cigarette taxes without affixing stamps on each such package.

D. The net amount of any revenue resulting from a payment in lieu of excise taxes on cigarettes levied by this section, pursuant to a compact with a federally recognized Indian tribe or nation

after deductions for deposits into trust accounts pursuant to such compacts, shall be apportioned by the Tax Commission and transmitted to the State Treasurer as follows:

1. Thirty-three and forty-nine-hundredths percent (33.49%) shall be placed to the credit of the Health Employee and Economy Improvement Act Revolving Fund created in Section 1 of Enrolled Senate Bill No. 1546 of the 2nd Session of the 49th Oklahoma Legislature;

2. Four and sixty-nine-hundredths percent (4.69%) shall be placed to the credit of the Comprehensive Cancer Center Debt Service Revolving Fund created in Section 5 of this act;

3. Eleven and thirty-nine-hundredths percent (11.39%) shall be placed to the credit of the Trauma Care Assistance Revolving Fund created in Section 1-2522 of Title 63 of the Oklahoma Statutes;

4. Four and sixty-nine-hundredths percent (4.69%) shall be placed to the credit of the Oklahoma State University College of Osteopathic Medicine Revolving Fund created in Section 6 of this act;

5. Forty and six-hundredths percent (40.06%) shall be placed to the credit of the Oklahoma Health Care Authority Medicaid Program Fund created in Section 5020 of Title 63 of the Oklahoma Statutes for the purposes of maintaining programs and services funded under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", reimbursing city/county-owned hospitals, increasing emergency room physician rates, and providing TEFRA 134, also known as "Katie Beckett" services;

6. Four and one-hundredths percent (4.01%) shall be placed to the credit of the Department of Mental Health and Substance Abuse Services Revolving Fund created in Section 2-303 of Title 43A of the Oklahoma Statutes;

7. Sixty-seven-hundredths percent (0.67%) shall be placed to the credit of the Belle Maxine Hilliard Breast and Cervical Cancer Treatment Revolving Fund created in Section 1 of Enrolled House Bill No. 2552 of the 2nd Session of the 49th Oklahoma Legislature; and

8. One percent (1%) shall be placed to the credit of the Tobacco Prevention and Cessation Revolving Fund created in Section 1-105d of Title 63 of the Oklahoma Statutes.

E. No part of the revenues resulting from the additional taxes levied in this section shall be used in determining the amount of cigarette tax collections to be paid into:

1. The State of Oklahoma Building Bonds of 1961 Sinking Fund pursuant to the provisions of Sections 57.31 through 57.43 of Title 62 of the Oklahoma Statutes;

2. The State of Oklahoma Institutional Building Bonds of 1965 Sinking Fund pursuant to the provisions of Sections 57.61 through 57.73 of Title 62 of the Oklahoma Statutes;

3. The State of Oklahoma Institutional Building Bonds of 1965 Sinking Fund Series C and Series D pursuant to Sections 57.81 through 57.112 of Title 62 of the Oklahoma Statutes;

4. The State of Oklahoma Building Bonds of 1968 Sinking Fund pursuant to the provisions of Sections 57.121 through 57.193 of Title 62 of the Oklahoma Statutes; or

5. The Oklahoma Building Bonds of 1992 Sinking Fund pursuant to the provisions of Sections 57.300 through 57.313 of Title 62 of the Oklahoma Statutes.

F. The cigarette taxes levied in this section shall be collected and administered in all respects not inconsistent with as now or hereafter provided for by law for other cigarette taxes now levied, collected, and administered pursuant to the provisions of Sections 301 through 325 of Title 68 of the Oklahoma Statutes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302-6 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Cigarette and Tobacco Tax Advisory Committee. The Committee shall consist of nine (9) members. Three members shall be appointed by the Governor, three members shall be appointed by the President Pro Tempore of the Senate and three members shall be appointed by the Speaker of the House of Representatives. The initial appointments of each appointing authority shall be made for progressive terms of one (1) through three (3) years so that the term of only one member appointed by each appointing authority expires each calendar year; subsequent appointments shall be for three-year terms. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments. Five members shall constitute a quorum. The Committee shall be composed as follows:

1. The Governor shall appoint three members as follows:

   a. one member who shall be a retailer of cigarettes and tobacco products licensed by a federally recognized Indian tribe or nation,

   b. one member who shall be a nontribal retailer of cigarettes and tobacco products, and

   c. one member who shall be a wholesaler of cigarettes and tobacco products;

2. The President Pro Tempore of the Senate shall appoint three members as follows:

   a. one member who shall be a retailer of cigarettes and tobacco products licensed by a federally recognized Indian tribe or nation,

   b. one member who shall be a nontribal retailer of cigarettes and tobacco products, and

c. one member who shall be primarily engaged in the retail sales of groceries in this state;

3. The Speaker of the House of Representatives shall appoint three members as follows:

a. one member who shall be a retailer of cigarettes and tobacco products licensed by a federally recognized Indian tribe or nation,

b. one member who shall be a nontribal retailer of cigarettes and tobacco products, and

c. one member who shall be primarily engaged in the practice of law or financial services.

B. The Committee shall annually elect a chair and a vice-chair from among its members. The Committee shall meet as desired to review proposed rules of the Oklahoma Tax Commission and discuss other issues relating to the implementation and enforcement of the levy, collections and remittance of taxes on cigarettes and tobacco products in this state.

C. The Committee may recommend to the Oklahoma Tax Commission rules to implement and enforce the provisions of this act and other provisions of law relating to the levy, collection and remittance of taxes on cigarettes and tobacco products in this state. The Tax Commission shall consider comments submitted by the Committee prior to the adoption of a proposed rule. Prior to the adoption of any rule or amendment or revocation of a rule relating to the administration of taxes levied on cigarettes and tobacco products, the Tax Commission shall send notice of any intended action to the members of the Committee. If the intended action relates to permanent rulemaking, such notice shall be given at least thirty (30) days prior to publication of notice of intended rulemaking action required under Section 303 of Title 75 of the Oklahoma Statutes. If the intended action relates to emergency rulemaking, the Tax Commission will provide the Committee as much notice as practicable prior to the rulemaking action. The Committee may submit comments on issues related to the intended rulemaking action including, but not limited to, identifying portions of the industry affected, probable economic impact, and any costs or benefits to the industry.

D. In addition to making recommendations, the Committee may represent the industry in communicating concerns to the Tax Commission about issues related to the levy and remittance of taxes pursuant to Section 301 et seq. of Title 68 of the Oklahoma Statutes and Section 401 et seq. of Title 68 of the Oklahoma Statutes.

E. Members of the Committee shall serve without compensation but may be reimbursed expenses incurred in the performance of their duties by their respective appointing authorities, as provided in the State Travel Reimbursement Act.

SECTION 4. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. The Oklahoma Tax Commission shall not administer the additional excise tax upon cigarettes as provided for in Section 2

of this act in a manner that results in collection of such excise tax upon any inventory of cigarettes held for sale before the effective date specified for the excise tax levy.

B. The additional excise tax upon cigarettes as provided in Section 2 of this act shall only be imposed upon inventory of cigarettes acquired on or after the effective date specified for the excise tax levy.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.1 of Title 62, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the University of Oklahoma Health Sciences Center to be designated the "Comprehensive Cancer Center Debt Service Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies apportioned to the fund pursuant to Sections 2 and 10 of this act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the University for the purpose of servicing debt obligations incurred by the University to construct a nationally designated comprehensive cancer center. The cancer center constructed shall include a department known as the Janna L. Robbins Memorial Colorectal Screening and Research Department that has a primary function of conducting research and screening procedures for the treatment and detection of colorectal cancer. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.2 of Title 62, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma State University College of Osteopathic Medicine to be designated the "Oklahoma State University College of Osteopathic Medicine Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies apportioned to the fund pursuant to Sections 2 and 10 of this act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Oklahoma State University College of Osteopathic Medicine for the purpose of servicing debt obligations for construction of a building dedicated to telemedicine to expand telemedicine to rural areas, for the purchase of telemedicine equipment and to provide uninsured/indigent care in Tulsa County. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 7. AMENDATORY 68 O.S. 2001, Section 311, is amended to read as follows:

Section 311. For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamp to each package of cigarettes and tobacco before making a sale of such cigarettes and tobacco, each person purchasing cigarette or tobacco tax stamps from the <u>Oklahoma</u> Tax Commission as required by law~~,~~ may

purchase ~~said~~ stamps from the ~~said~~ Tax Commission at a reduction of ~~four percent (4%) of the face value of each lot of stamps so purchased~~ one and one-half cents ($0.015) per stamp, provided that such discount or reduction shall not be applicable on purchases of less than One Hundred Dollars ($100.00) at any one time; and provided, further, that no discount shall be allowed to out-of-state purchasers which reside in the states that do not give discounts on cigarette stamps purchased from ~~said~~ State of Oklahoma cigarette dealers. The discount herein provided shall be the only discount allowed to purchasers from the Tax Commission; provided, that if a purchaser refuses to comply with the laws of the State of Oklahoma, the Tax Commission shall require the full face value for stamps purchased until such time as ~~said~~ the person has complied with the provisions of the law. The Tax Commission may authorize the use of a metering device for the impress of the tax stamp.

SECTION 8. AMENDATORY 68 O.S. 2001, Section 346, is amended to read as follows:

Section 346. A. The Legislature finds that:

1. Federal law recognizes the right of Indian tribes ~~and~~ or nations to engage in sales of cigarettes and tobacco products to their members free of state taxation;

2. The doctrine of tribal sovereign immunity prohibits the State of Oklahoma from bringing a lawsuit against an Indian tribe or nation to compel the tribe or nation to collect state taxes on sales made in Indian country to either members or nonmembers of the tribe or nation without a waiver of immunity by the tribe or nation or congressional abrogation of the doctrine; and

3. The Supreme Court of the United States, in "Oklahoma Tax Commission v. Citizen Band Pottawatomie Indian Tribe of Oklahoma", suggested that a state may provide other methods of collection of state taxes on sales of cigarettes and tobacco products made by Indian tribes or nations to persons who are not members of the tribe or nation, such as entering into mutually satisfactory agreements with Indian tribes or nations.

B. It is the intent of the Legislature to establish a system of state taxation of sales of cigarettes and tobacco products made by federally recognized Indian tribes or nations or their licensees, other than such tribes or nations which have entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of this section, under which the rate of payments in lieu of state taxes is less than the rate of state taxes on other sales of cigarettes and tobacco products in order to allow such tribes or nations or their licensees to make sales of cigarettes and tobacco products to tribal members free of state taxation.

C. The Governor is authorized by this enactment to enter into cigarette and tobacco products tax compacts on behalf of the State of Oklahoma with the federally recognized Indian tribes or nations of this state. The compacts shall set forth the terms of agreement between the sovereign parties regulating sale of cigarettes and tobacco products by the tribes or nations or their licensees in Indian country. All sales in Indian country by those compacting tribes or nations and their licensees shall be exempt from the taxes levied pursuant to the provisions of Section 301 et seq., Section

401 et seq. and Section 1350 et seq. of Title 68 of the Oklahoma Statutes and Sections ~~4~~ 349 and ~~9~~ 425 of this ~~act~~ title, subject to the following terms and conditions:

1. A payment in lieu of state sales and excise taxes, as provided for in said compact, shall be paid to the State of Oklahoma by the tribes or nations, their licensees or their wholesalers upon purchase of all cigarettes and tobacco products intended for resale in Indian country by the tribes or nations or their licensees;

2. All cigarettes and tobacco products sold or held for sale to the public, without distinction between member and nonmember sales, shall bear a payment in lieu of tax stamp evidencing that payment in lieu of state taxes has been paid to the state. State and tribal officials may provide for use of a single joint stamp evidencing payment of both the payment in lieu of tax as specified in a compact pursuant to the provisions of this section and any tax levied by a tribe or nation;

3. In the event that a compacting tribe or nation fails to comply with all terms and conditions of the compact including, but not limited to, requirements to include all state taxes required by the terms of the compact to be collected by the tribe or nation in the price of its cigarettes or tobacco products, the tribe or nation shall not be eligible to receive any payment due from the state pursuant to the terms of the compact for the tax-reporting period during which the noncompliance occurred;

4. Records of all sales of cigarettes and tobacco products to the tribes or nations and their licensees shall be kept by all wholesalers doing business in the State of Oklahoma and shall be made available for inspection by state officials on a timely basis. Copies of all invoices of wholesale sales of cigarettes or tobacco products to tribally owned or licensed retail stores shall be forwarded by the wholesaler to the Oklahoma Tax Commission; and

~~4.~~ 5. For purposes of a compact pursuant to the provisions of this section, the term "tribal licensee" shall only extend to:

a. members of the tribe or nation, and

b. business entities in which the tribe or nation or tribal members have a majority ownership interest.

D. In addition to any other authority granted by law, the Tax Commission shall regularly conduct an audit of wholesalers, distributors, jobbers and warehousemen selling cigarettes or tobacco products to a federally recognized Indian tribe or nation or a tribally owned or licensed store to determine if the correct amount of tax payable under this act has been collected and to determine compliance with any and all compacts.

SECTION 9. AMENDATORY 68 O.S. 2001, Section 352, is amended to read as follows:

Section 352. A. ~~Any~~ Except as otherwise provided in subsection D of Section 2 of this act, any revenue from a payment in lieu of excise taxes on cigarettes pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation

pursuant to the provisions of subsection C of Section ~~1~~ 346 of this ~~act~~ title shall be deposited to the General Revenue Fund.

B. Any revenue from payment of the tax imposed by Section ~~4~~ 349 of this ~~act~~ title shall be deposited to the General Revenue Fund.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402-3 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In addition to the tax levied in Sections 402, 402-1 and 402-2 of Title 68 of the Oklahoma Statutes, effective January 1, 2005, there shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in Section 401 et seq. of Title 68 of the Oklahoma Statutes, a tax in the following amounts:

1. Little Cigars. Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three (3) pounds per thousand, twenty-seven (27) mills for each cigar. Provided, that the tax levied on the products coming under this paragraph shall not apply if the tax on such products is reported and paid as cigarette tax under Sections 301 through 325 of Title 68 of the Oklahoma Statutes;

2. Cigars. Upon all other cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three (3) pounds per thousand, Ninety Dollars ($90.00) per thousand. For the purpose of computing the tax, cheroots, stogies, etc., are hereby classed as cigars;

3. Smoking Tobacco. Upon all smoking tobacco including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, the tax shall be forty percent (40%) of the factory list price exclusive of any trade discount, special discount or deals; and

4. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco, and snuff, the tax shall be thirty percent (30%) of the factory list price exclusive of any trade discount, special discount or deals.

B. Except as provided in subsection C of this section, the revenue resulting from the additional tax levied in subsection A of this section shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer as follows:

1. Twenty-two and six-hundredths percent (22.06%) shall be placed to the credit of the Health Employee and Economy Improvement Act Revolving Fund created in Section 1 of Enrolled Senate Bill No. 1546 of the 2nd Session of the 49th Oklahoma Legislature;

2. Three and nine-hundredths percent (3.09%) shall be placed to the credit of the Comprehensive Cancer Center Debt Service Revolving Fund created in Section 5 of this act;

3. Seven and fifty-hundredths percent (7.50%) shall be placed to the credit of the Trauma Care Assistance Revolving Fund created in Section 1-2522 of Title 63 of the Oklahoma Statutes;

4. Three and nine-hundredths percent (3.09%) shall be placed to the credit of the Oklahoma State University College of Osteopathic Medicine Revolving Fund created in Section 6 of this act;

5. Twenty-six and thirty-eight-hundredths percent (26.38%) shall be placed to the credit of the Oklahoma Health Care Authority Medicaid Program Fund created in Section 5020 of Title 63 of the Oklahoma Statutes for the purposes of maintaining programs and services funded under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", reimbursing city/county-owned hospitals, increasing emergency room physician rates, and providing TEFRA 134, also known as "Katie Beckett" services;

6. Two and sixty-five-hundredths percent (2.65%) shall be placed to the credit of the Department of Mental Health and Substance Abuse Services Revolving Fund created in Section 2-303 of Title 43A of the Oklahoma Statutes;

7. Forty-four-hundredths of one percent (0.44%) shall be placed to the credit of the Belle Maxine Hilliard Breast and Cervical Cancer Treatment Revolving Fund created in Section 1 of Enrolled House Bill No. 2552 of the 2nd Session of the 49th Oklahoma Legislature;

8. One percent (1%) shall be placed to the credit of the Teachers' Retirement System Revolving Fund created in Section 158 of Title 62 of the Oklahoma Statutes;

9. Two and seven-hundredths percent (2.07%) shall be placed to the credit of the Education Reform Revolving Fund created in Section 41.29b of Title 62 of the Oklahoma Statutes;

10. Sixty-six-hundredths percent (.66%) shall be placed to the credit of the Tobacco Prevention and Cessation Revolving Fund created in Section 1-105d of Title 63 of the Oklahoma Statutes;

11. Sixteen and eighty-three-hundredths percent (16.83%) shall be placed to the credit of the General Revenue Fund; and

12. For fiscal years beginning July 1, 2004, and ending June 30, 2006, fourteen and twenty-three-hundredths percent (14.23%) shall be apportioned to municipalities and counties that levy a sales tax, in the proportions which total municipal and county sales tax revenue was apportioned by the Tax Commission in the preceding month.

For fiscal years beginning July 1, 2006, and thereafter, the apportionment percentage specified in paragraph 12 of this subsection will be adjusted by dividing the total municipal and county sales tax revenue collected in the calendar year immediately preceding the commencement of the fiscal year by the sum of the state sales tax revenue and total municipal and county sales tax revenue collected in the same year. This ratio shall be divided by the ratio of the total municipal and county sales tax revenue collected in the calendar year beginning January 1, 2004, and ending December 31, 2004, divided by the sum of the state sales tax revenue and total municipal and county sales tax revenue collected in the same year. The resulting quotient shall be multiplied by fourteen and twenty-three-hundredths percent (14.23%) to determine the apportionment percentage for the fiscal year.

For fiscal years beginning July 1, 2006, and thereafter, any adjustment to the percentage of revenues apportioned to municipalities and counties shall be reflected in the percent of revenues apportioned to the General Revenue Fund.

C. The net amount of any revenue resulting from a payment in lieu of excise taxes on little cigars, cigars, smoking tobacco and chewing tobacco levied by this section, pursuant to a compact with a federally recognized Indian tribe or nation after deductions for deposits into trust accounts pursuant to such compacts, shall be apportioned by the Tax Commission and transmitted to the State Treasurer as follows:

1. Thirty-three and forty-nine-hundredths percent (33.49%) shall be placed to the credit of the Health Employee and Economy Improvement Act Revolving Fund created in Section 1 of Enrolled Senate Bill No. 1546 of the 2nd Session of the 49th Oklahoma Legislature;

2. Four and sixty-nine-hundredths percent (4.69%) shall be placed to the credit of the Comprehensive Cancer Center Debt Service Revolving Fund created in Section 5 of this act;

3. Eleven and thirty-nine-hundredths percent (11.39%) shall be placed to the credit of the Trauma Care Assistance Revolving Fund created in Section 1-2522 of Title 63 of the Oklahoma Statutes;

4. Four and sixty-nine-hundredths percent (4.69%) shall be placed to the credit of the Oklahoma State University College of Osteopathic Medicine Revolving Fund created in Section 6 of this act;

5. Forty and six-hundredths percent (40.06%) shall be placed to the credit of the Oklahoma Health Care Authority Medicaid Program Fund created in Section 5020 of Title 63 of the Oklahoma Statutes for the purposes of maintaining programs and services funded under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", reimbursing city/county-owned hospitals, increasing emergency room physician rates, and providing TEFRA 134, also known as "Katie Beckett" services;

6. Four and one-hundredths percent (4.01%) shall be placed to the credit of the Department of Mental Health and Substance Abuse Services Revolving Fund created in Section 2-303 of Title 43A of the Oklahoma Statutes;

7. Sixty-seven-hundredths percent (0.67%) shall be placed to the credit of the Belle Maxine Hilliard Breast and Cervical Cancer Treatment Revolving Fund created in Section 1 of Enrolled House Bill No. 2552 of the 2nd Session of the 49th Oklahoma Legislature; and

8. One percent (1%) shall be placed to the credit of the Tobacco Prevention and Cessation Revolving Fund created in Section 1-105d of Title 63 of the Oklahoma Statutes.

D. It shall not be permissible for a retailer to advertise that the retailer will absorb the tax due on the taxable merchandise described herein. Such tax shall be paid by the consumer.

SECTION 11. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. The Oklahoma Tax Commission shall not administer the additional excise tax upon little cigars, cigars, smoking tobacco and chewing tobacco as provided for in Section 10 of this act in a manner that results in collection of such excise tax upon any inventory of little cigars, cigars, smoking tobacco and chewing tobacco held for sale before the effective date specified for the excise tax levy.

B. The additional excise tax upon little cigars, cigars, smoking tobacco and chewing tobacco as provided in Section 10 of this act shall only be imposed upon inventory of little cigars, cigars, smoking tobacco and chewing tobacco acquired on or after the effective date specified for the excise tax levy.

SECTION 12. AMENDATORY 68 O.S. 2001, Section 1355, is amended to read as follows:

Section 1355. Exemptions - Subject to other tax.

There are hereby specifically exempted from the tax levied pursuant to the provisions of ~~this article~~ Section 1350 et seq. of this title:

1. Sale of gasoline, motor fuel, methanol, "M-85" which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol, compressed natural gas, liquefied natural gas, or liquefied petroleum gas on which the Motor Fuel Tax, Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special Fuels Tax levied in ~~Article 5, 6, or 7~~ Section 500.1 et seq., Section 601 et seq. or Section 701 et seq. of this title has been, or will be paid;

2. Sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in ~~Article 21~~ Section 2101 et seq. of this title has been, or will be paid;

3. Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax pursuant to the provisions of ~~Articles 10 and 11~~ Section 1001 et seq. and Section 1101 et seq. of this title. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas. This paragraph shall not operate to increase or repeal the gross production tax levied by the laws of this state;

4. Sale of aircraft on which the tax levied pursuant to the provisions of Sections 6001 through ~~6004~~ 6007 of this title has been, or will be paid or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title;

5. Sales from coin-operated devices on which the fee imposed by Sections 1501 through ~~1513~~ 1512 of this title has been paid;

6. Leases of twelve (12) months or more of motor vehicles in which the owners of the vehicles have paid the vehicle excise tax levied by Section 2103 of this title;

7. Sales of charity game equipment on which a tax is levied pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of Title 3A of the Oklahoma Statutes;

8. Sales of cigarettes or tobacco products to:

a. a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 346 of this title or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid, or

b. a federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied pursuant to the provisions of Section 349 or Section 426 of this title has been paid;

9. Leases of aircraft upon which the owners have paid the aircraft excise tax levied by Section 6001 et seq. of this title or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title; ~~and~~

10. The sale of low-speed electrical vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in ~~Article 21~~ Section 2101 et seq. of this title has been or will be paid; and

11. Effective January 1, 2005, sales of cigarettes on which the tax levied in Section 301 et seq. of this title or tobacco products on which the tax levied in Section 401 et seq. of this title has been paid.

SECTION 13. AMENDATORY 68 O.S. 2001, Section 2355, is amended to read as follows:

Section 2355. A. Individuals. ~~Except as otherwise provided in Section 4001 of this title, for~~ For all taxable years beginning after December 31, 1998, a tax is hereby imposed upon the Oklahoma taxable income of every resident or nonresident individual, which tax shall be computed at the option of the taxpayer under one of the two following methods:

1. METHOD 1.

a. Single individuals and married individuals filing separately not deducting federal income tax:

(1) 1/2% tax on first $1,000.00 or part thereof,

(2) 1% tax on next $1,500.00 or part thereof,

(3) 2% tax on next $1,250.00 or part thereof,

(4) 3% tax on next $1,150.00 or part thereof,

(5) 4% tax on next $1,300.00 or part thereof,

(6) 5% tax on next $1,500.00 or part thereof,

(7) 6% tax on next $2,300.00 or part thereof, and

(8) (a) for taxable years beginning after December 31, 1998, and before January 1, 2002, 6.75% tax on the remainder ~~and~~,

(b) for taxable years beginning on or after January 1, 2002, and before January 1, 2004, 7% tax on the remainder, and

(c) for taxable years beginning on or after January 1, 2004, 6.65% tax on the remainder~~, or~~

~~(b) for taxable years beginning after December 31, 1999, for which the State Board of Equalization suspends the provisions of subdivision (a) of this division pursuant to the provisions of Section 4001 of this title, 7% tax on the remainder~~.

b. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code not deducting federal income tax:

(1) 1/2% tax on first $2,000.00 or part thereof,

(2) 1% tax on next $3,000.00 or part thereof,

(3) 2% tax on next $2,500.00 or part thereof,

(4) 3% tax on next $2,300.00 or part thereof,

(5) 4% tax on next $2,400.00 or part thereof,

(6) 5% tax on next $2,800.00 or part thereof,

(7) 6% tax on next $6,000.00 or part thereof, and

(8) (a) for taxable years beginning after December 31, 1998, and before January 1, 2002, 6.75% tax on the remainder ~~and~~,

(b) for taxable years beginning on or after January 1, 2002, and before January 1, 2004, 7% tax on the remainder, and

(c) for taxable years beginning on or after January 1, 2004, 6.65% tax on the remainder~~, or~~

~~(b) for taxable years beginning after December 31, 1999, for which the State Board of Equalization suspends the provisions of~~

~~subdivision (a) of this division pursuant to the provisions of Section 4001 of this title, 7% tax on the remainder~~.

2. METHOD 2.

a. Single individuals and married individuals filing separately deducting federal income tax:

(1) 1/2% tax on first $1,000.00 or part thereof,

(2) 1% tax on next $1,500.00 or part thereof,

(3) 2% tax on next $1,250.00 or part thereof,

(4) 3% tax on next $1,150.00 or part thereof,

(5) 4% tax on next $1,200.00 or part thereof,

(6) 5% tax on next $1,400.00 or part thereof,

(7) 6% tax on next $1,500.00 or part thereof,

(8) 7% tax on next $1,500.00 or part thereof,

(9) 8% tax on next $2,000.00 or part thereof,

(10) 9% tax on next $3,500.00 or part thereof, and

(11) 10% tax on the remainder.

b. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code deducting federal income tax:

(1) 1/2% tax on the first $2,000.00 or part thereof,

(2) 1% tax on the next $3,000.00 or part thereof,

(3) 2% tax on the next $2,500.00 or part thereof,

(4) 3% tax on the next $1,400.00 or part thereof,

(5) 4% tax on the next $1,500.00 or part thereof,

(6) 5% tax on the next $1,600.00 or part thereof,

(7) 6% tax on the next $1,250.00 or part thereof,

(8) 7% tax on the next $1,750.00 or part thereof,

(9) 8% tax on the next $3,000.00 or part thereof,

(10) 9% tax on the next $6,000.00 or part thereof, and

(11) 10% tax on the remainder.

B. Nonresident aliens. In lieu of the rates set forth in subsection A above, there shall be imposed on nonresident aliens, as defined in the Internal Revenue Code, a tax of eight percent (8%) instead of thirty percent (30%) as used in the Internal Revenue Code, with respect to the Oklahoma taxable income of such nonresident aliens as determined under the provision of the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection shall deduct and withhold from such amounts paid each payee an amount equal to eight percent (8%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or before January 31, of the succeeding year, a written statement showing the name of the payer, the name of the payee and ~~his~~ the payee's social security account number, if any, the total amount paid subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

C. Corporations. For all taxable years beginning after December 31, 1989, a tax is hereby imposed upon the Oklahoma taxable income of every corporation doing business within this state or deriving income from sources within this state in an amount equal to six percent (6%) thereof.

There shall be no additional Oklahoma income tax imposed on accumulated taxable income or on undistributed personal holding company income as those terms are defined in the Internal Revenue Code.

D. Certain foreign corporations. In lieu of the tax imposed in the first paragraph of subsection C of this section, for all taxable years beginning after December 31, 1989, there shall be imposed on foreign corporations, as defined in the Internal Revenue Code, a tax of six percent (6%) instead of thirty percent (30%) as used in the Internal Revenue Code, where such income is received from sources within Oklahoma, in accordance with the provisions of the Internal Revenue Code and the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection shall deduct and withhold from such amounts paid each payee an amount equal to six percent (6%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or before January 31, of the succeeding year, a written statement

showing the name of the payer, the name of the payee and ~~his~~ the payee's social security account number, if any, the total amounts paid subject to taxation, the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

E. Fiduciaries. A tax is hereby imposed upon the Oklahoma taxable income of every trust and estate at the same rates as are provided in subsection A of this section for single individuals. Fiduciaries are not allowed a deduction for any federal income tax paid.

F. Tax rate tables. For all taxable years beginning after December 31, 1991, in lieu of the tax imposed by subsection A of this section, there is hereby imposed for each taxable year on the taxable income of every individual, whose taxable income for such taxable year does not exceed the ceiling amount, a tax determined under tables, applicable to such taxable year which shall be prescribed by the Tax Commission and which shall be in such form as it determines appropriate. In the table so prescribed, the amounts of the tax shall be computed on the basis of the rates prescribed by subsection A of this section. For purposes of this subsection, the term "ceiling amount" means, with respect to any taxpayer, the amount determined by the Tax Commission for the tax rate category in which such taxpayer falls.

SECTION 14. AMENDATORY 68 O.S. 2001, Section 2358, as last amended by Section 70, Chapter 3, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2358), is amended to read as follows:

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

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

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

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

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

a. For carryovers and carrybacks to taxable years beginning before January 1, 1981, the amount of any net operating loss deduction allowed to a taxpayer for federal income tax purposes shall be reduced to an amount which is the same portion thereof as the loss

from sources within this state, as determined pursuant to this section and Section 2362 of this title, for the taxable year in which such loss is sustained is of the total loss for such year;

b. For carryovers and carrybacks to taxable years beginning after December 31, 1980, the amount of any net operating loss deduction allowed for the taxable year shall be an amount equal to the aggregate of the Oklahoma net operating loss carryovers and carrybacks to such year. Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal Revenue Code, 26 U.S.C., Section 172, as modified by the Oklahoma Income Tax Act, Section 2351 et seq. of this title, and shall be allowed without regard to the existence of a federal net operating loss. For tax years beginning after December 31, 2000, the years to which such losses may be carried shall be determined solely by reference to Section 172 of the Internal Revenue Code, 26 U.S.C., Section 172, with the exception that the terms "net operating loss" and "taxable income" shall be replaced with "Oklahoma net operating loss" and "Oklahoma taxable income".

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

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

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

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

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

5 of this subsection shall be allocated as herein provided;

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

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

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

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

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

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

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

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

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

(2) if the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the taxable income of such company shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the sum of (a) direct premiums written for insurance on property or risks in this state, plus (b) premiums written for reinsurance accepted in respect of property or risks in this state, and the denominator of which is the sum of (c) direct premiums written for insurance on property or risks everywhere, plus (d) premiums written for reinsurance accepted in respect of property or risks everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect of property or risks in this state, whether or not otherwise determinable, may at the election of the company be determined on the basis of the proportion which premiums written for insurance accepted from companies commercially domiciled in Oklahoma bears to premiums written for reinsurance accepted from all sources, or alternatively in the proportion which the sum of the direct premiums written for insurance on property or risks in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.

5. The net income or loss remaining after the separate allocation in paragraph 4 of this subsection, being that which is derived from a unitary business enterprise, shall be apportioned to this state on the basis of the arithmetical average of three factors consisting of property, payroll and sales or gross revenue enumerated as subparagraphs a, b and c of this paragraph. Net income or loss as used in this paragraph includes that derived from patent or copyright royalties, purchase discounts, and interest on accounts receivable relating to or arising from a business activity, the income from which is apportioned pursuant to this subsection, including the sale or other disposition of such property and any other property used in the unitary enterprise. Deductions used in computing such net income or loss shall not include taxes based on or measured by income. Provided, for corporations whose property for purposes of the tax imposed by Section 2355 of this title has an initial investment cost equaling or exceeding Two Hundred Million Dollars ($200,000,000.00) and such investment is made on or after July 1, 1997, or for corporations which expand their property or facilities in this state and such expansion has an investment cost equaling or exceeding Two Hundred Million Dollars ($200,000,000.00) over a period not to exceed three (3) years, and such expansion is commenced on or after January 1, 2000, the three factors shall be

apportioned with property and payroll, each comprising twenty-five percent (25%) of the apportionment factor and sales comprising fifty percent (50%) of the apportionment factor. The apportionment factors shall be computed as follows:

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

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

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

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

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

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

Oklahoma bears to total mileage traveled by such employees,

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

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

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

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

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

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

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

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

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

6. For calendar years 1997 and 1998, the owner of a new or expanded agricultural commodity processing facility in this state may exclude from Oklahoma taxable income, or in the case of an individual, the Oklahoma adjusted gross income, fifteen percent (15%) of the investment by the owner in the new or expanded agricultural commodity processing facility. For calendar year 1999, and all subsequent years, the percentage, not to exceed fifteen percent (15%), available to the owner of a new or expanded agricultural commodity processing facility in this state claiming the exemption shall be adjusted annually so that the total estimated reduction in tax liability does not exceed One Million Dollars ($1,000,000.00) annually. The Tax Commission shall promulgate rules for determining the percentage of the investment which each eligible taxpayer may exclude. The exclusion provided by this paragraph shall be taken in the taxable year when the investment is made. In the event the total reduction in tax liability authorized by this

paragraph exceeds One Million Dollars ($1,000,000.00) in any calendar year, the Tax Commission shall permit any excess over One Million Dollars ($1,000,000.00) and shall factor such excess into the percentage for subsequent years. Any amount of the exemption permitted to be excluded pursuant to the provisions of this paragraph but not used in any year may be carried forward as an exemption from income pursuant to the provisions of this paragraph for a period not exceeding six (6) years following the year in which the investment was originally made.

For purposes of this paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. In the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction in lieu of the standard deduction allowed by the Internal Revenue Code, in an amount equal to the larger of fifteen percent (15%) of the Oklahoma adjusted gross income or One Thousand Dollars ($1,000.00), but not to exceed Two Thousand Dollars ($2,000.00), except that in the case of a married individual filing a separate return such deduction shall be the larger of fifteen percent (15%) of such Oklahoma adjusted gross income or Five Hundred Dollars ($500.00), but not to exceed the maximum amount of One Thousand Dollars ($1,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

7. Notwithstanding anything in the Internal Revenue Code or in the Oklahoma Income Tax Act to the contrary, it is expressly provided that, in the case of resident individuals, amounts received as dividends or distributions of earnings from savings and loan

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

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

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

c. For the purpose of this paragraph, "federal income taxes paid" shall mean federal income taxes, surtaxes imposed on incomes or excess profits taxes, as though the taxpayer was on the accrual basis. In determining the amount of deduction for federal income taxes for tax year 2001, the amount of the deduction shall not be adjusted by the amount of any accelerated ten percent (10%) tax rate bracket credit or advanced refund of the credit received during the tax year provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. No. 170-16, and the advanced refund of such credit shall not be subject to taxation.

d. The provisions of this paragraph shall apply to all taxable years ending after December 31, 1978.

9. Retirement benefits not to exceed Five Thousand Five Hundred Dollars ($5,500.00) <u>for the 2004 tax year and Seven Thousand Five Hundred Dollars ($7,500.00) for the 2005 tax year and all subsequent tax years</u>, which are received by an individual from the civil service of the United States, any component of the Armed Forces of the United States, the Oklahoma Public Employees Retirement System, the Teachers' Retirement System of Oklahoma, the Oklahoma Law Enforcement Retirement System, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the employee retirement systems created by counties pursuant to Section 951 et seq. of Title 19 of the Oklahoma Statutes, the Uniform Retirement System for Justices and Judges, the Oklahoma Wildlife Conservation Department Retirement Fund, the Oklahoma

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

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

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

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

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

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

(1) the adoption of a minor, or

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

may be deducted from the Oklahoma adjusted gross income.

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

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

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

15. In taxable years beginning ~~after December 31, 1996,~~ before January 1, 2005, retirement benefits not to exceed the amounts specified in this paragraph, which are received by an individual sixty-five (65) years of age or older and whose Oklahoma adjusted gross income is Twenty-five Thousand Dollars ($25,000.00) or less if the filing status is single, head of household, or married filing separate, or Fifty Thousand Dollars ($50,000.00) or less if the filing status is married filing joint or qualifying widow, shall be exempt from taxable income. In taxable years beginning after December 31, 2004, retirement benefits not to exceed the amounts specified in this paragraph, which are received by an individual whose Oklahoma adjusted gross income is Thirty-seven Thousand Five Hundred Dollars ($37,500.00) or less if the filing status is single, head of household, or married filing separate, or Seventy-Five Thousand Dollars ($75,000.00) or less if the filing status is married filing jointly or qualifying widow, shall be exempt from taxable income. For purposes of this paragraph, "retirement benefits" means the total distributions or withdrawals from the following:

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

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

c. 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,

d. 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),

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

f. 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).

The amount of the exemption provided by this paragraph shall be limited to ~~One Thousand One Hundred Dollars ($1,100.00) for the 1997 tax year; Two Thousand Two Hundred Dollars ($2,200.00) for the 1998 tax year; Three Thousand Three Hundred Dollars ($3,300.00) for the 1999 tax year; Four Thousand Four Hundred Dollars ($4,400.00) for the 2000 tax year; and~~ Five Thousand Five Hundred Dollars ($5,500.00) for the 2004 tax year and Seven Thousand Five Hundred Dollars ($7,500.00) for the 2005 tax year 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 and Seven Thousand Five Hundred Dollars ($7,500.00) for the 2005 tax year and 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. In taxable years beginning after December 31, 2001, 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.

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

2. As used in this subsection:

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

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

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

b. "holding period" means an uninterrupted period of time, and

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

SECTION 15. AMENDATORY 68 O.S. 2001, Section 5011, is amended to read as follows:

Section 5011. A. Except as otherwise provided by this section, beginning with the calendar year 1990 and for each calendar year through 1998, and for ~~years in which the State Board of Equalization suspends subsection B or C of this section pursuant to the provisions of Section 3 of this act~~ calendar year 2003, any individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made and whose gross household income for such year does not exceed Twelve Thousand Dollars ($12,000.00) may file a claim for sales tax relief.

B. For calendar ~~year~~ years 1999, ~~and for all other years for which the requirements of Section 3 of this act may apply~~ 2002 and 2004, any individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made may file a claim for sales tax relief if the gross household income for such year does not exceed the following amounts:

1. For an individual not subject to the provisions of paragraph 2 of this subsection and claiming no allowable personal exemption other than the allowable personal exemption for that individual or the spouse of that individual, Fifteen Thousand Dollars ($15,000.00); or

2. For an individual claiming one or more allowable personal exemptions other than the allowable personal exemption for that

individual or the spouse of that individual, an individual with a physical disability constituting a substantial handicap to employment, or an individual who is sixty-five (65) years of age or older at the close of the tax year, Thirty Thousand Dollars ($30,000.00).

C. ~~Except as otherwise may be provided in Section 3 of this act, for~~ For calendar ~~year~~ years 2000, ~~and for all other years for which the requirements of Section 3 of this act may apply~~ 2001, 2005 and following, an individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made may file a claim for sales tax relief if the gross household income for such year does not exceed the following amounts:

1. For an individual not subject to the provisions of paragraph 2 of this subsection and claiming no allowable personal exemption other than the allowable personal exemption for that individual or the spouse of that individual, Twenty Thousand Dollars ($20,000.00); or

2. For an individual claiming one or more allowable personal exemptions other than the allowable personal exemption for that individual or the spouse of that individual, an individual with a physical disability constituting a substantial handicap to employment, or an individual ~~whose~~ who is sixty-five (65) years of age or older at the close of the tax year, Fifty Thousand Dollars ($50,000.00).

D. The amount of the claim filed pursuant to the Sales Tax Relief Act shall be Forty Dollars ($40.00) multiplied by the number of allowable personal exemptions. As used in the Sales Tax Relief Act, "allowable personal exemption" means a personal exemption to which the taxpayer would be entitled pursuant to the provisions of the Oklahoma Income Tax Act, except for:

1. The exemptions such taxpayer would be entitled to pursuant to Section 2358 of this title if such taxpayer or spouse is blind or sixty-five (65) years of age or older at the close of the tax year;

2. An exemption for a person convicted of a felony if during all or any part of the calendar year for which the claim is filed such person was an inmate in the custody of the Department of Corrections; or

3. An exemption for a person if during all or any part of the calendar year for which the claim is filed such person resided outside of this state.

E. A person convicted of a felony shall not be permitted to file a claim for sales tax relief pursuant to the provisions of Sections 5010 through 5016 of this title for the period of time during which the person is an inmate in the custody of the Department of Corrections. Such period of time shall include the entire calendar year if the person is in the custody of the Department of Corrections during any part of the calendar year. The provisions of this subsection shall not prohibit all other members of the household of an inmate from filing a claim based upon the personal exemptions to which the household members would be entitled pursuant to the provisions of the Oklahoma Income Tax Act.

F. The Department of Corrections shall withhold up to fifty percent (50%) of any money inmates receive for claims made pursuant to the Sales Tax Relief Act prior to September 1, 1991, for costs of incarceration.

G. For purposes of Section 139.105 of Title 17 of the Oklahoma Statutes, the gross household income of any individual who may file a claim for sales tax relief shall not exceed Twelve Thousand Dollars ($12,000.00).

SECTION 16. AMENDATORY 62 O.S. 2001, Section 41.29b, as amended by Section 2, Chapter 315, O.S.L. 2003 (62 O.S. Supp. 2003, Section 41.29b), is amended to read as follows:

Section 41.29b There is hereby created in the State Treasury a revolving fund for the State Department of Education to be designated the "Education Reform Revolving Fund". The said Education Reform Revolving Fund shall consist of any monies as apportioned by Sections 1353, 1403 and 2352 of Title 68 of the Oklahoma Statutes ~~and~~, such revenue as is apportioned pursuant to the provisions of Section 312.1 of Title 36 of the Oklahoma Statutes and any other funds designated by law for deposit thereto. The Education Reform Revolving Fund herein created may be expended for the purposes stated in Enrolled House Bill No. 1017 of the 1st Extraordinary Session of the 42nd Oklahoma Legislature, and in the same manner as appropriated funds.

SECTION 17. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The funds apportioned by this act shall be exempt from any budgetary limitations imposed upon the Oklahoma Health Care Authority, the Department of Mental Health and Substance Abuse Services and the State Health Department by law for the fiscal year ending June 30, 2005.

SECTION 18. REPEALER 68 O.S. 2001, Section 4001, is hereby repealed.

SECTION 19. This act shall become effective December 1, 2004.

SECTION 20. The Ballot Title for the proposed amendments as set forth in SECTIONS 2 through 19 of this act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. ____ State Question No. ____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

The measure places a tax on cigarettes. The tax will be 4 cents per cigarette. The measure places a tax on other tobacco products. Monies from both taxes will be given to counties, municipalities, and to several funds for various health-related needs. These needs include health care, building of a cancer center, trauma care, telemedicine, substance abuse, breast cancer, and aid to hospitals and ambulance services. The measure creates the Cigarette and Tobacco Tax Advisory Committee. The measure provides penalties for tribes that break

certain compacts. The measure modifies discount for buying tax stamp. The measure ends sales tax on cigarettes and other tobacco products. The measure makes the top income tax rate of 6.65% permanent. The measure increases the amount of certain retirement benefits not subject to income tax. The measure allows certain earnings of an individual to not be taxed. The measure removes the process that suspends certain tax laws when state monies are at a certain level. The taxes will begin on January 1, 2005.

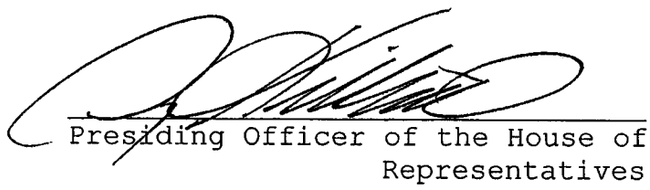
SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL – YES _____

AGAINST THE PROPOSAL – NO _____

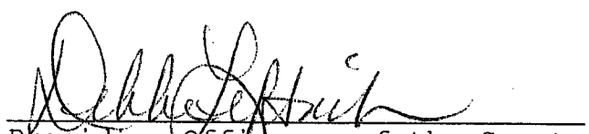
SECTION 21. The Chief Clerk of the House of Representatives, immediately after the passage of this act, shall prepare and file one copy thereof, including the Ballot Title set forth in SECTION 20 hereof, with the Secretary of State and one copy with the Attorney General.

Passed the House of Representatives the 20th day of May, 2004.



Presiding Officer of the House of Representatives

Passed the Senate the 21st day of May, 2004.



Presiding Officer of the Senate

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 21st **day of** May **20** 04, **at** 3:21 **o'clock** P. **M.**

By: M. Susan Savage

OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

June 10, 2004

M. Susan Savage, Secretary of State
Office of the Secretary of State
101 State Capitol Building
Oklahoma City, Oklahoma 73105

FILED
JUN 10 2004
OKLAHOMA SECRETARY
OF STATE

The Honorable Cal Hobson
President Pro Tempore
422 State Capitol Building
Oklahoma City, OK 73105

The Honorable Larry E. Adair
Speaker of the House of Representatives
401 State Capitol Building
Oklahoma City, OK 73105

Re: Ballot Title for State Question No. 713, Legislative Referendum No. 336

Dear Speaker Adair, President Pro Tempore Hobson, and Secretary Savage:

Having found that the suggested Ballot Title for the above-referenced State Question was not in harmony with the law, we have, in accordance with the provisions of 34 O.S.2001, § 9(C), prepared the following Substitute Ballot Title for filing. As a Title 34 Ballot Title review, the following does not constitute an Attorney General's Opinion on the merits or constitutionality of the underlying proposed change in the law. The Substitute Ballot Title reads as follows:

BALLOT TITLE

The measure ends sales tax on cigarettes and other tobacco products. The measure places a new tax on cigarettes. This tax will be 4 cents per cigarette. The measure places a new tax on other tobacco products. These taxes begin January 1, 2005.

Some monies from the new taxes will be given to state, county, and local government. Some monies from these taxes will be used for

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recycled paper

various health-related purposes. These purposes include health care, building a cancer center, trauma care, long-distance medical care, substance abuse, breast cancer, and aid to hospitals and ambulance services.

A committee is created to recommend rules regarding tobacco product taxes.

The measure provides penalties for Indian tribes that break tobacco tax compacts.

The measure makes several income tax changes. It makes the highest Method One individual income tax rate 6.65%. It increases the amount of certain retirement benefits not subject to income tax. It allows certain capital gains of an individual to not be subject to income tax.

The measure sets maximum income levels for individuals making claims under the Sales Tax Relief Act.

The measure makes other changes.

SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL—YES _____

AGAINST THE PROPOSAL—NO _____

Respectfully submitted,

W.A. DREW EDMONDSON
ATTORNEY GENERAL

Brad Henry
Governor

FILED
AUG 13 2004
OKLAHOMA SECRETARY
OF STATE

EXECUTIVE DEPARTMENT

EXECUTIVE PROCLAMATION

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the provisions of Section 3 of Article V of the Oklahoma Constitution, and Section 12 of Title 34 of the Oklahoma Statutes, and the referral by the Secretary of State do hereby declare that Legislative Referendum Number 336, State Question 713, be submitted to qualified electors of the State of Oklahoma for their approval or rejection at the general election to be held statewide on November 2, 2004.

The substance of the measure, as reflected in the Substitute Ballot Title prepared by the Attorney General is as follows:

> The measure ends sales tax on cigarettes and other tobacco products. The measure places a new tax on cigarettes. This tax will be 4 cents per cigarette. The measure places a new tax on other tobacco products. These taxes begin January 1, 2005.
>
> Some monies from the new taxes will be given to state, county, and local government. Some monies from these taxes will be used for various health-related purposes. These purposes include health care, building a cancer center, trauma care, long-distance medical care, substance abuse, breast cancer, and aid to hospitals and ambulance service.
>
> A committee is created to recommend rules regarding tobacco product taxes.
>
> The measure provides penalties for Indian tribes that break tobacco tax compacts.
>
> The measure makes several income tax changes. It makes the highest Method One individual income tax rate 6.65%. It increases the amount of certain retirement benefits not subject to income tax. It allows certain capital gains of an individual to not be subject to income tax.
>
> The measure sets maximum income levels for individuals making claims under the Sales Tax Relief Act.
>
> The measure makes other changes.

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Copies of this Executive Proclamation shall be delivered to the Secretary of State, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of the State Election Board.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 13TH day of August, 2004.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:

SECRETARY OF STATE