CHAPTER 90. WITHHOLDING

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CHAPTER 90. WITHHOLDING

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-1. Purpose

The provisions of this Chapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to the withholding, reporting, and remitting of Oklahoma Income taxes.

710:90-1-2. Definitions

Oklahoma Statutes provide that any term used in the Oklahoma Income Tax Code shall have the same meaning as when used in a comparable context in the Internal Revenue Code, unless a different meaning is clearly required. The terms used in this Chapter are subject to control by the Oklahoma Statutes, and therefore subject to the interpretation and application provided by the Internal Revenue Code. [**See:** 68 O.S. Sections 2353, 2385.1] In addition, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Employee", as described in this Section, means a "resident individual," performing services for an employer whether such services are performed within or without the State of Oklahoma, or both, and any "nonresident individual" performing services within the State of Oklahoma.

(A) The term **"employee"** includes every individual performing services if the relationship between him and the person for whom services are performed is the legal relationship of employer and employee, as follows:

(i) Generally, the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.

(ii) An employee is subject to the will and control of the employer, not only as to what shall be done, but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. In general, if the individual is subject to the control or direction of another merely as to the result to be accomplished by the work, and not as to the means and methods for accomplishing the result, he is not an employee.

(iii) The existence of an employer-employee relationship shall be determined, when in doubt, by an examination of the particular facts of each case.

(iv) If an employer-employee relationship exists, the designation or

description of the relationship by the parties as anything other than that of employer and employee is immaterial.

(v) It is of no consequence that an employee is designated as a partner, coadventurer, agent, independent contractor, contract labor, or the like. It also does not matter how payments are made, what they are called or whether the service is performed full or part-time.

(B) Generally, persons who follow an independent trade, business, or profession, in which they offer their services to the public, such as physicians, attorneys, dentists, veterinarians, contractors and others, are not "**employees**."

(C) Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who performs no services in this capacity or only minor services, and who neither receives nor is entitled to receive, directly or indirectly, any remuneration, is not considered to be an employee of the corporation.

(D) All classifications or grades of employees are included within the employer-employee relationship. Superintendents, managers and other supervisory personnel are employees. A director of a corporation in his capacity as such, is not an employee of the corporation. Officers of a Subchapter S Corporation are subject to these same provisions.

(E) An officer, employee or elected official of the United States, a state, a territory, the District of Columbia, or any agency, instrumentality, or political subdivision is considered an employee subject to Withholding Tax.

(F) Although an individual may be an employee, the services performed may be of such a nature or be performed under such circumstance that the remuneration paid does not constitute wages within the meaning of 68 O.S. Section 2385.1(e) or the Internal Revenue Code.

"Employer" means any person transacting business or deriving any income from sources within the State of Oklahoma for whom an individual performs or performed any services, of whatever nature, as the employee of such person.

"Employer" does not include nonresident employers who have no place of business in Oklahoma and whose transactions are limited to the solicitation of orders for merchandise filled outside Oklahoma and shipped directly to a purchaser in Oklahoma.

(A) An **"employer"** may be an individual, a corporation, a partnership, a trust, a joint-stock company, an association; or a syndicate, group, pool, joint venture, or other unincorporated organization, group or entity.

(B) The term **"employer"** means not only individuals and organizations engaged in trade or business, but also organizations exempt from Income Tax, such as religious and charitable organizations, educational institutions, clubs, social organizations and societies.

(C) The term **"employer"** includes the governments of the United States,

the States, the Territories, the District of Columbia, their agencies, instrumentalities and political subdivisions.

(D) If the person for whom the services are or were performed does not have legal control of the payment of wages for such services, the term **"employer"** means the person having such control.

(E) The term **"employer"** includes an officer or employee of a partnership who is under a duty to act for a corporation or partnership to withhold and remit.

(F) The word **"employer"** also means any person paying wages on behalf of a nonresident alien individual as defined by the Internal Revenue Code.

"Nonresident individual" means any individual other than a resident individual as defined by this Section. This includes "nonresident aliens" as defined by the Internal Revenue Code.

"Resident individual" means a natural person domiciled in Oklahoma who spends a total of more than seven (7) months of the taxable year within Oklahoma. Such person is presumed to be a resident in absence of proof to the contrary.

"Wages" means all remuneration (other than fees to public officials) for services performed by an employee for his employer unless specifically exempted.

(A) Generally, the medium in which remuneration is paid is immaterial. The term **"wages"** includes the cash value of all remuneration paid in any medium other than cash, such as stocks, bonds, or tangible property.

(B) The name by which remuneration is designated is also immaterial. Remuneration such as salaries, tips, fees, bonuses, commission on sales or on insurance premiums, pensions, and retired pay are considered wages if paid as compensation for services performed by the employee for his employer, unless specifically exempted as wages not subject to Withholding Tax by Oklahoma Statutes or the Internal Revenue Code.

(C) The basis upon which the remuneration is paid is immaterial. It may be paid on the basis of piecework, or as a percentage of profits, and may be paid hourly, daily, weekly, monthly, or annually.

(D) Remuneration for services performed constitutes wages subject to Income Tax Withholding, even though paid at a time after the employer-employee relationship no longer exists.

(E) Authorized fees to public officials such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are not subject to Withholding Tax. However salaries paid such officials by the government or by a government agency or instrumentality are subject to withholding.

(F) The term **"wages"** does not include any remuneration for services performed by an employee for his employer which is specifically exempt from wages under 68 O.S. Section 2385.1(e) or the Internal Revenue Code. Any exception attaches to the remuneration for services performed by an

employee and not to the employee as an individual. Remuneration for services performed which is specifically excepted from the definition of wages to which a voluntary withholding agreement is in effect are deemed to be wages for purposes of administering the provisions of the Oklahoma Income Tax Withholding Act.

(G) Oklahoma Statutes provide that any term used in the Oklahoma Income Tax Code shall have the same meaning as when used in a comparable context in the Internal Revenue Code, unless a different meaning is clearly required. The terms used in this Chapter are subject to control by the Oklahoma Statutes, and therefore subject to the interpretation and application provided by the Internal Revenue Code. Therefore, any remuneration paid for services performed by an employee for his employer not specifically exempted by Oklahoma Statute or specifically named in this Section as wages shall be subject to Oklahoma Income Tax Withholding if subject to Income Tax Withholding as required by the Internal Revenue Code. [**See:** 68 O.S. Section 2353]

[**Source:** Amended at 16 Ok Reg 2674, eff 6-25-99]

710:90-1-3. Registration of employers

(a) Every employer required to deduct and withhold tax as required under 68 O.S. § 2355(C) and 68 O.S. § 2385.2 shall register with the Commission for purposes of withholding, reporting, and remitting such tax. An employer must register on the prescribed Commission Business Registration Form and shall furnish such information as required by said form to include the following:

(1) How the business is owned;
(2) Federal Employer Identification Number;
(3) Business phone;
(4) Ownership information consisting of:
  (A) Name of legal owner, social security number, if applicable, and mailing address;
  (B) Name of partners or corporate officers, social security numbers, titles, and residential mailing address;
(5) Withholding Tax information:
  (A) Is tax withheld;
  (B) Date Withholding Tax was or is expected to commence;
  (C) Is the amount withheld greater than $500.00 per quarter;
(6) Name of officer, partner, employee, or agent responsible for the remittance of Withholding Tax, social security number, title, and residential mailing address;
(7) Other information required to include but not limited to: Location information, previous owner information, etc.;
(8) Signature of sole owner, partner, officer or agent and the date thereof.

(b) All taxes withheld must be reported and paid when due.

710:90-1-4. Taxpayer identification number; consolidated returns

(a) The employer's identification number for Oklahoma Withholding Tax purposes will be the same number assigned by the Internal Revenue Service for reporting Federal employment taxes. Every employer must have a Federal Employer Identification Number.

(b) Commission files will be maintained by the taxpayer identification number (Federal Employer Identification Number); any correspondence relating to withholding should refer to this number to expedite the processing of returns and the crediting of payments.

(c) Only one valid taxpayer identification number may be assigned to an employer. A new Federal Employer Identification Number should be obtained and registered with the Commission when any of the following changes occur:

(1) A sole proprietorship incorporates;

(2) A sole proprietorship takes in a partner and operates as an partnership;

(3) A partnership incorporates;

(4) A partnership is taken over by one of the partners and is operated as a sole proprietorship;

(5) A corporation changes to a partnership or to a sole proprietorship;

(6) A sole proprietorship purchases or inherits an existing business (the employer identification number of the former owner cannot be used even if he or she is a spouse);

(7) A partnership is terminated and a new one is begun; or

(8) An estate operates a business after the owner's death.

(d) Consolidated returns of two or more employers representing separate legal entities are not permitted unless written approval has been granted by the Tax Commission even though one employer may own a controlling interest in another.

(e) An employer whose operation consists of multiple locations or payroll centers may request permission to report separately when centralized reporting causes undue hardship. Approval will result in the assignment of a unique taxpayer identification number consisting of the Federal Employer Identification Number and a three digit control number. Until an employer receives written approval to report as either "consolidated" or "separately," any returns should be filed as otherwise required.

710:90-1-5. Employee's withholding allowance certificate

The marital status and number of withholding allowances an employee may claim in determining Oklahoma Income Tax to be withheld shall be the same as that claimed on a valid employee's withholding allowance certificate (Federal Form W-4) as required by the Internal Revenue Service, provided Federal Form W-4 was executed prior to March 1, 2018. If changes to Oklahoma withholding should be made, or employment begins after February 28, 2018, employees shall submit a completed Oklahoma Form W-4 to their employer.

[**Source:** Amended at 35 Ok Reg 623, eff 4-18-18 (emergency); Amended at 36 Ok Reg 1247, eff 8-11-19]

710:90-1-6. Supplemental wages

(a) **Treatment of supplemental wages combined with regular wages.** An employer who pays supplemental wages combined with regular wages and does not specify or separate the amount of each should withhold Income Tax as if the total payment were a single payment for a regular payroll period. Supplemental wages include bonuses, commissions, overtime pay, vacation pay, sick leave pay, back pay, retroactive wage increases or payment for nondeductible moving expenses.

(b) **Treatment of supplemental wages paid separately or combined in single payment.** Supplemental wages which are paid separately or combined in a single payment and the amount of each is specified, are subject to withholding according to one of the following methods:

(1) If tax was withheld from an employee's regular wages, use one of these two methods for supplemental wages:

(A) Withhold at the highest applicable rate set out in 68 O.S. Section 2355(B)(1) for Oklahoma Income Taxes for the taxable year, or;

(B) Add the supplemental and regular wages for the most recent payroll period. Calculate the tax as if the total constitutes a single payment. Subtract the tax already withheld from the regular wages. Withhold the remaining tax from the supplemental wages.

(2) If tax was not withheld from an employee's regular wages, the provisions set out in (1)(B) of this subsection should be used. This situation would occur, for example, when the value of the employee's withholding allowances claimed is more than the wages.

(c) **Treatment of overtime, vacation, and sick pay.** Overtime pay, vacation pay, and sick pay are subject to Withholding Tax as if a regular wage payment. If paid in addition to the regular wage, it is considered a supplemental wage.

[**Source:** Amended at 10 Ok Reg 3873, eff 7-12-93; Amended at 11 Ok Reg 3529, eff 6-26-94; Amended at 16 Ok Reg 2674, eff 6-25-99; Amended at 19 Ok Reg 801, eff 2-19-02 (emergency); Amended at 19 Ok Reg 2445, eff 6-27-02; Amended at 26 Ok Reg 2376, eff 6-25-09; Amended at 35 Ok Reg 623, eff 4-18-18 (emergency); Amended at 36 Ok Reg 1247, eff 8-11-19]

710:90-1-7. Computation of tax to be withheld

(a) Every employer making payment of wages subject to withholding shall deduct and withhold from the wages paid each employee, a tax in an amount determined in accordance with the table fixing graduated rates of tax to be withheld, unless otherwise provided. However, if the computer formula is used, the amounts for the personal exemption and for the Oklahoma standard deduction may be updated as necessary.

(b) Available to all employers filing Withholding Tax Returns are withholding tables:

(1) An optional table for married persons who file joint returns and both spouses work; and,

(2) A general table for all other categories of filing status. The Oklahoma Withholding Tax tables are based on gross wages and the standard deduction.

(c) If an employee determines that his or her Oklahoma Income Tax liability for the year will be more than the amount to be withheld, the employee may authorize an employer, if agreed, to withhold more tax than is required. This must be in writing and may be in any form.

(d) Married persons with working spouses may elect to have Oklahoma Income Tax withheld based on the optional tables devised for such persons.

(e) An employer has a duty to inform all employees of the measures and options available to ensure sufficient tax is withheld.

(f) If an employee fails to provide the employer an Oklahoma Form W-4, the employer must withhold tax as if the employee were a single person who has claimed no withholding allowances.

[**Source:** Amended at 15 Ok Reg 2424, eff 6-11-98; Amended at 35 Ok Reg 623, eff 4-18-18 (emergency); Amended at 36 Ok Reg 1247, eff 8-11-19]

710:90-1-8. Nonresident aliens

Every employer or payer of Oklahoma taxable income to nonresident aliens shall deduct and withhold tax equal to eight percent (8%) of such amounts paid. [**See:** 68 O.S. §2355]

710:90-1-9. Annual reconciliation report [REVOKED]

[**Source:** Amended at 10 Ok Reg 3873, eff 7-12-93; Revoked at 15 Ok Reg 2424, eff 6-11-98]

710:90-1-10. Reporting to employees

(a) Every employer required to deduct and withhold Oklahoma tax from employee wages shall furnish the employee a written statement, each calendar year, showing:

(1) The name of the employer;

(2) The name of the employee;

(3) The last four digits of the employee's social security number, shown in the format XXX-XX-1234 or ***-**-1234, if any;

(4) The total amount of wages subject to taxation that were paid during the year;

(5) The total amount deducted and withheld as tax, and;

(6) Any other such information as the Commission may require.

(b) The statement shall be furnished with the information in (a) of this Section as relating to the individual employee to whom taxable wages were paid, and each employee to whom taxable wages were paid shall be furnished such a statement containing his individual information. The statement shall be furnished to the employee on or before January 31st of the year following the year for which the information is provided.

(c) If an employee's employment is terminated before the close of a calendar

year, said written statement must be furnished within thirty (30) days of the date of which the last payment of wages was made.
(d) Any employer who willfully fails to furnish an employee the required statement shall be guilty of a misdemeanor and upon conviction shall receive a fine not to exceed One Hundred Dollars ($100.00), or be imprisoned for not more than six (6) months in county jail, or both, for each offense.

710:90-1-11. Records
(a) Required records described in this Section shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable the Commission to determine whether liability for tax is incurred, and if so, the amount thereof.
(b) An employer must maintain required records for at least four years after the due date of such withholding tax for the return period to which the records relate, or the date the tax is paid, whichever is the later.
(c) The specific records required to be kept are:
(1) The employer's identification number;
(2) Copies of all returns, reports, and other documents concerning Oklahoma Withholding Tax to include the business registration, employer's return of tax withheld, annual reconciliation and appropriate wage and tax statements;
(3) Copies of Internal Revenue Service Forms 940 and 941, Oklahoma Employers Quarterly Contribution Report (OESC) and Oklahoma Quarterly Wage Withholding Tax Return (OTC);
(4) The dates and amounts of Oklahoma Withholding Tax payments made and copies of cancelled checks;
(5) Each employee's name, address, occupation, social security number, and periods of employment;
(6) The total amount of and date of each wage payment and the period of time the payment covers;
(7) For each wage payment, the amount subject to withholding;
(8) The amount of Withholding Tax collected on each payment and the date it was collected;
(9) The employee's withholding allowance certificate (Federal Form W-4 executed prior to March 1, 2018 or Oklahoma Form W-4) filed by each employee;
(10) Any agreement between the employer and the employee for the voluntary withholding of additional amounts of tax or of amounts which are not required to be withheld;
(11) A chart of accounts;
(12) Copies of filed Federal and State Income Tax Returns and supporting schedules; and

(13) Books of original entry, ledgers, and any other information necessary to substantiate the amount of tax withheld and paid or to support any reason the employer may have for not withholding Income Tax.

[**Source:** Amended at 35 Ok Reg 623, eff 4-18-18 (emergency); Amended at 36 Ok Reg 1247, eff 8-11-19]

710:90-1-12. Protest of proposed assessment

(a) Where a person does not acquiesce in a proposed assessment (described in subsections (a) of 710:90-5-3 and 710:90-7-1), the taxpayer may file a protest within the period specified in the letter of proposed assessment (or within any extensions allowable by Statute that have been granted by the Division). If, after a review of his protest, the Division is unable to reach agreement with taxpayer, the taxpayer's file will be forwarded to the Office of the Administrative Law Judge where the taxpayer will have an opportunity to have a hearing before an Administrative Law Judge. The Administrative Law Judge will notify such person of the date set for the hearing.

(b) If the taxpayer does not desire a hearing, an order will be issued by the Commission within a reasonable time. If a hearing before the Administrative Law Judge is requested and granted, order will not be issued until such time as the Administrative Law Judge has submitted Findings, Conclusions and Recommendations and the Commission has made a final determination.

(c) The issuance of an order by the Commission constitutes a final determination. The person filing the return has thirty (30) days from the date of the order in which to directly appeal to the Oklahoma Supreme Court, if desired.

[Source: Amended at 32 Ok Reg 1411, eff 8-27-15]

710:90-1-13. Pensions, annuities, and certain other deferred income

(a) **Treatment of designated distributions.** Designated distributions, as defined by the Internal Revenue Code (IRC), Section 3405, whether periodic or non-periodic, may be subject to Oklahoma income tax withholding.

(b) **Treatment of periodic payments**. The amount to be withheld from a periodic payment is determined as if it were a payment of wages. The marital status and number of withholding allowances a recipient may claim in determining the tax to be withheld shall be claimed on Form OK-W-4-P, Withholding Certificate for Pension or Annuity Payments.

(1) If the recipient has not provided a withholding certificate, tax will be withheld as if the recipient were married and claiming three (3) withholding allowances.

(2) The recipient can choose not to have tax withheld, regardless of how much tax is owed for the previous year, or is expected to be owed in the current year.

(c) **Treatment of non-periodic payments.** Recipients of non-periodic payments use Form OK-W-4-R, Withholding Certificate for Nonperiodic

Payments and Eligible Rollover Distributions, to make their withholding election. Recipients may:

(1) Elect to have income tax withheld at the top marginal individual income tax rate;.

(2) Elect to have income tax withheld at the top marginal individual income tax rate plus an additional specified amount; or

(3) Elect to have no income tax withheld.

(d) **Employer contributions.** Employer contributions to qualified cash or deferred arrangements are not subject to Oklahoma withholding tax.

[**Source:** Amended at 10 Ok Reg 3873, eff 7-12-93; Amended at 11 Ok Reg 3529, eff 6-26-94; Amended at 16 Ok Reg 2674, eff 6-25-99; Amended at 39 Ok Reg 2300, eff 9-11-22; Amended at 40 Ok Reg 1290, eff 8-11-23; Amended at 43 Ok Reg, Number 20, effective 7-11-26]

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-1. Information required on return

Employers are required to file Oklahoma Income Tax Withholding Returns when due, regardless of whether an application for employer's identification number has been made or whether such number has been received. Such return should be a written statement to include the following information:

(1) Date the FEI number was applied for with "FEI applied for" written on such return.

(2) The employer name and address as it appears on the Application for Federal Employer Identification Number, Federal Form SS-4;

(3) The period covered;

(4) The due date;

(5) The amount of wages paid;

(6) Tax withheld;

(7) Penalty due;

(8) Interest due;

(9) Total due;

(10) Number of employees;

(11) Signature and title or capacity of person signing the return;

(12) Date signed.

710:90-3-2. Execution of returns

(a) Any Withholding Tax return or report required under statute or by the provisions of this Subchapter, together with any prescribed copies or supporting data shall be prepared and filed in accordance with the forms, instructions, and rules provided. The return or report shall include, but not be limited to the following:

(1) Employers taxpayer identification number;

(2) Period covered;

(3) Due date;

(4) Filing frequency;

(5) Wages paid;
(6) Tax withheld;
(7) Adjustments;
(8) Penalty Due;
(9) Interest Due;
(10) Total Due;
(11) Number of employees and/or W-2's issued;
(12) Signature and title of person signing the return;
(13) Date return is prepared and signed;
(14) Such other reasonable information as the Commission may require.

(b) Returns which have not been properly prepared may not be accepted as meeting the requirements of the Commission.

(c) Prescribed return forms will, so far as possible, be regularly furnished employers by the Commission. An employer is not relieved from making and filing a return because no return form has been furnished or is otherwise not available. Employers are required to have returns prepared, verified and filed on or before the date due and it is their responsibility to do so.

(d) In the absence of a prescribed return form, a written statement by an employer furnishing the same information indicated above may be accepted as a return.

710:90-3-3. Signing returns

(a) Each withholding tax return requiring a signature must be signed by the President, Vice President, or other principal officer or employee who has the duty to withhold and remit Oklahoma Income Tax from the wages of employees, if the business is a corporation.

(b) If the business is not a corporation but is individually owned, returns must be signed by the owner of the business or employee who has the duty to withhold and remit Oklahoma Income Tax.

(c) Returns of a trust or receivership must be signed by the appropriate fiduciary authority or employee who has the duty to withhold and remit Oklahoma Income Tax.

(d) The official title or capacity of the person signing a return must be shown after their signature.

(e) The return may be signed by a responsible and duly authorized agent having knowledge of the employer's business affairs, providing an acceptable power of attorney is filed with the Commission.

(f) Individuals or employees who sign returns shall be deemed the responsible authorized agent in the absence of documentation to the contrary.

710:90-3-4. Payment of tax and filing of tax returns

(a) Every employer required to deduct and withhold Oklahoma Income Tax from employee wages shall pay over the amount so withheld to the Tax Commission pursuant to the schedule outlined in subsections (b), (c) and (e) of this Section.

Employers, regardless of date of remittance schedules, shall file a quarterly return on or before the twentieth (20th) day of the month following the close of each quarter. Quarterly returns shall be filed on a calendar year basis and not a fiscal year basis.

(b) Every employer owing an average of less than Five Hundred Dollars ($500.00) per quarter in taxes in the previous fiscal year must remit the amount withheld on or before the twentieth (20th) day of the month following the close of each succeeding quarter.

(c) Except as specified in subsection (e), if the amount of Oklahoma Income Tax withheld exceeds Five Hundred Dollars ($500.00) for any quarter, the employer is required to remit the taxes withheld monthly, for each monthly period after the quarter in which taxes withheld exceeded Five Hundred Dollars ($500.00). Such tax remittances shall be due on or before the twentieth (20th) day of each succeeding month.

(d) Every employer required to remit federal withholding under the Federal Semiweekly Deposit Schedule shall file returns pursuant to the Tax Commission's electronic data interchange program.

(e) Every employer required to remit federal withholding under the Federal Semiweekly Deposit Schedule, shall pay over the amount so withheld on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes.

(1) If a payment is required to be made on a day that is not a banking day, the payment is considered timely if it is made by the close of the next banking day. In addition to Federal and State bank holidays, Saturdays and Sundays are treated as non-banking days.

(2) Semiweekly schedule employers have at least three (3) banking days to make a payment. If any of the three (3) weekdays after the end of a semiweekly period is a banking holiday, the employer will have one (1) additional banking day for payment.

(f) Any returns and remittances not filed or paid on or before the date due shall be considered delinquent.

(g) Every employer registered with the Commission for purposes of reporting and remitting withheld taxes shall file a return for each reporting period required, whether or not wages subject to Oklahoma Withholding Taxes are paid, unless otherwise provided. On the return for such a reporting period, the employer should indicate that zero wages were paid and that no tax is due. [**See:** 68 O.S. Section 2385.3]

[**Source:** Amended at 16 Ok Reg 2674, eff 6-25-99; Amended at 17 Ok Reg 2716, eff 6-25-00; Amended at 23 Ok Reg 2871, eff 6-25-06; Amended at 27 Ok Reg 2360, eff 7-11-10; Amended at 30 Ok Reg1869, eff 7-11-13]

710:90-3-5. Overpayment of withholding tax

In general, any employer who pays the Commission more than the correct amount of tax required may file a claim for refund or may claim credit for such overpayment. However, no refund or credit to the employer shall be allowed for

the amount of any overpayment of tax which the employer deducted or withheld from any employee unless such overpayment is repaid or reimbursed to employee(s).

710:90-3-6. Employer overpayment of withholding tax not withheld

(a) Any employer who pays to the Commission more than the correct amount of tax **not deducted or withheld from employees wages**, may adjust the overpayment by entering the amount as a deduction on any future report. The report on which the adjustment is entered shall have attached:

(1) A written statement setting forth in detail the grounds and facts relied on in support of the adjustment;

(2) The report period in which the error occurred;

(3) Sufficient documentary evidence in support of the adjustment.

(b) Alternatively, an employer may submit a claim for refund resulting from either the overpayment of tax not deducted or withheld or the overwithholding of tax repaid or reimbursed to any employee. Such claim for refund should not be made with any quarterly report. Refund claims shall include:

(1) A written statement setting forth in detail the grounds and facts relied on in support of the refund request;

(2) The report period in which the overpayment occurred;

(3) Sufficient documentation to substantiate that the overpaid amount was not withheld or deducted from employee's wages; and,

(4) A written statement from each employee showing Social Security Number, date and amount of repayment or reimbursement, if applicable.

710:90-3-7. Employer repayment of tax erroneously withheld from any employee

(a) If during any quarterly report period an employer withholds more than the correct amount of tax from an employee, the employer shall not include on any report or pay over to the Commission the amount overwithheld if:

(1) The employer repays the amount overwithheld before the report for such period is filed and before the end of the calendar year in which the overcollection was made; and

(2) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of repayment.

(b) Any amount not repaid to and receipted for by the employee or required in (a) of this Section shall be reported and paid with the report for the period in which overcollection occurred.

(c) An employer may repay or reimburse an employee for tax overwithheld in any subsequent report period in either the same calendar year or in a subsequent calendar year. The employer may reimburse the employee by applying the amount overwithheld against the tax required to be withheld from wages paid the employee in a subsequent period.

(d) If the employee is repaid, the employer must obtain and keep as part of the

records the written receipt of the employee showing the date and amount of repayment.

(e) If an employer repays or reimburses an employee for the overcollection of tax, the employer may adjust the overcollection by entering the amount as a deduction on the return for the report period in which the employer repays or reimburses the employee. The return on which the adjustment is entered shall have attached the following information:

(1) A written statement explaining in detail the adjustment and the facts relied on in support of the adjustment; and

(2) The return period in which the error occurred,

(3) If from a previous calendar year:

(A) A written statement from each employee that the amount of overcollection repaid or reimbursed has not been refunded or claimed;

(B) A copy of the written receipt of each employee showing the date and amount of repayment or reimbursement;

(C) Each employee's social security number; and,

(D) The report period in which the error occurred.

710:90-3-8. Tax Commission may require security

The Commission may require an employer who is or becomes delinquent in the withholding and remitting of Oklahoma Withholding Tax to furnish a surety bond to ensure the withholding and remitting of required taxes.

(1) The security so required may be in the form of a bond from a corporation, surety bond furnished by a surety licensed to do business in Oklahoma, cash bond, certificate of deposit, certificate of savings or U.S. Treasury bond, or an assignment of negotiable stocks or bonds, as agreed upon by the Commission and the person required to remit the tax.

(2) The amount of such security shall not be greater than three times the average quarterly liability of such employer after considering the estimated tax liability.

(3) Any bond secured shall remain in effect until released and discharged by the Commission. Any bond secured is a continuing instrument and constitutes a new obligation for each calendar year or portion thereof while the surety is in force unless specifically released and discharged by the Commission. [**See:** 68 O.S. §2385.23]

710:90-3-9. [RESERVED]

710:90-3-10. Income tax withholding - oil and gas royalties

(a) Effective for royalty payments made on or after October 1, 2000 and before July 1, 2006, any remitter who distributes revenue to a non-resident royalty interest owner is required to deduct and withhold Oklahoma income tax from each payment being made with respect to production of oil and gas in Oklahoma. The amount of income tax to be withheld is six and three-fourth's

percent (6.75%) of the gross royalty amount paid. Effective for royalty payments made on or after July 1, 2006, the rate of withholding for any remitter who distributes revenue to a non-resident royalty interest owner is the highest Oklahoma marginal individual income tax rate with respect to production of oil and gas in Oklahoma

(b) For purposes of this Section, **"remitter"** means any person who distributes revenue to royalty interest owners; **"gross royalty"** means that amount which is reported for federal income tax purposes on IRS Form 1099; **"non-resident royalty interest owner"** means any person who is not a current or permanent resident of Oklahoma who retains a non-working interest in oil or gas production; and **"oil"** and **"gas"** shall have the meaning as the terms are defined in 68 O.S. § 1001.2.

(c) Remitters are required to file an Oklahoma Nonresident Royalty Withholding Tax Return and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

(1) For royalty payments made during January, February, and March, the amount withheld is due no later than April 30;

(2) For royalty payments made during April, May, and June, the amount withheld is due no later than July 30;

(3) For royalty payments made during July, August, and September, the amount withheld is due no later than October 30; and

(4) For royalty payments made during October, November, and December, the amount withheld is due no later than January 30 of the following year.

(d) The remitter is also required to provide non-resident individual royalty owners and the Oklahoma Tax Commission an annual written statement showing the name of the remitter, to whom the royalty was paid, the amount of the royalty payment and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the royalty owner's name, address, and social security number or Federal Employer Identification Number. This annual filing with the Oklahoma Tax Commission may be done separately, or in conjunction with the annual reporting requirement under 68 O.S. § 2369, if applicable to the remitter.

(e) Any non-resident royalty interest owner from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident royalty interest owner will be entitled to a refund of the amount of the overpayment.

(f) If the non-resident royalty interest owner is a pass-through entity, the pass-through entity shall allocate the non-resident royalty withholding to its partners, shareholders or members in the same manner as the royalty income.

[**Source:** Added at 18 Ok Reg 2850, eff 6-25-01; Amended at 19 Ok Reg 2445, eff 6-27-02; Amended at 26 Ok Reg 2376, eff 6-25-09; Amended at 36 Ok Reg 1247, eff 8-11-19]; Amended at 39 Ok Reg 2300, eff 9-11-22]

710:90-3-11. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Member"** means:

(A) A shareholder of a Subchapter S Corporation;
(B) A partner in a general partnership;
(C) A partner in a limited partnership;
(D) A partner in a limited liability partnership;
(E) A member of a limited liability company; or,
(F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

(A) A corporation that is treated as a Subchapter S Corporation under the Internal Revenue Code;
(B) A general partnership;
(C) A limited partnership;
(D) A limited liability partnership;
(E) A trust; or,
(F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **Subchapter S Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of Subchapter S Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding is required on the Oklahoma portion of the taxable income distributed to each non-resident member at the highest Oklahoma marginal individual income tax rate. In the case of Subchapter S Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the Subchapter S Corporations or the partnership.

(d) **Trusts.** For trusts, withholding is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust at the highest Oklahoma marginal individual income tax rate.

(e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:

(1) Persons, other than individuals, who are exempt from federal income tax;

(2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;

(3) Insurance companies subject to the Oklahoma gross premium income tax and therefor exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and

(4) Non-resident members who have submitted a Nonresident Member Withholding Exemption Affidavit to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC* 710:50-19-1 and filing a Nonresident Member Withholding Exemption Affidavit, the inclusion of the partner's income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing a Nonresident Member Withholding Exemption Affidavit and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing a Nonresident Member Withholding Exemption Affidavit, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

(1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;

(2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;

(3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;

(4) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;

(5) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the

name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars ($500.00); or,

(6) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(7) When a pass-through entity that is required to file either an Oklahoma partnership income tax return or an Oklahoma S corporation income tax return makes an election to pay income tax at the entity level pursuant to the Pass-Through Entity Tax Equity Act of 2019. [(68 O.S. § 2355.IP-1 et seq.]

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars ($500.00) for the taxable year **must** make quarterly estimated tax payments. The Oklahoma Nonresident Distributed Income Estimated Withholding Tax Report is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars ($500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-B, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return on or before the due date of the pass-through entity's income tax return, including extensions.

(3) Each non-resident member must enclose a copy of OTC Form 500-B with the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.
(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.
(k) **Affidavit filing procedures.** Non-resident members who elect to file a Nonresident Member Withholding Exemption Affidavit agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having signed an affidavit. All pass-through entities are required to file the non-resident member affidavit information on a CD with the Oklahoma Tax Commission.
(2) **Format.** The format for filing the CD will be in either a spreadsheet format (i.e. Excel) or a database format (i.e. dbf or Access) or a Delimited Text File.
(3) **Waiver.** Pass-through entities may obtain a waiver from the CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a CD. Direct waiver requests to the Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194.

[**Source:** Added at 21 Ok Reg 311, eff 11-21-03, (emergency); Added at 21 Ok Reg 2623, eff 6-25-04; Amended at 22 Ok Reg 1590, eff 6-11-05; Amended at 23 Ok Reg 2872, eff 6-25-06; Amended at 29 Ok Reg 565, eff 5-11-12; Amended at 38 Ok Reg 1575. Eff 9-1-21; Amended at 39 Ok Reg 2300, eff 9-11-22]

710:90-3-12. [RESERVED]

710:90-3-13. [RESERVED]

710:90-3-14. [RESERVED]

710:90-3-15. Payments; due dates

Remittances covering the Oklahoma Withholding Tax liability payable to the Commission shall accompany the monthly or quarterly Withholding Tax Return, on or before the twentieth (20th) day of the month following the close of such monthly or quarterly reporting period. If an employer fails to file a return or to pay the Commission the tax when due, the tax will be considered delinquent and penalty and interest will be collected.

[**Source:** Amended at 23 Ok Reg 2873, eff 6-25-06]

710:90-3-16. Timely mailing treated as timely filing and paying

(a) Any report, claim, tax return, statement or other document required or authorized to be filed with, or any payment made, to the Commission, which document or payment is transmitted through the United States mail, will be deemed to have been filed with and received by the Commission on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. If mailed but not received by the Commission, or if received but with an illegible, erroneous, or omitted cancellation mark, the document or payment will be deemed to have been filed on the date it was mailed if the sender establishes by competent evidence that the document or payment was deposited in the United States mail on or before the date due for filing.

(b) If the envelope or other wrapper bears a postmark made by a private postage meter in addition to a legible postmark made by the United States Postal Service, the postmark not made by the United States Postal Service shall be disregarded. In the event of the Commission's failure to receive a document or payment, such document or payment will be deemed to have been received by the Commission on time if the sender files with the Commission a duplicate within thirty (30) days after written notification is given to the sender by the Commission of its failure to receive such document or payment, provided proof is furnished that the original of the document was deposited in the United States mail on or before the date due for filing.

(c) If any report, claim, tax return, statement, remittance or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Post Office of such registration, certificate or certificates shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed, and the date of registration, certification or certificate shall be considered to be the date of the postmark made by the United States Postal Service.

710:90-3-17. Penalty and interest

(a) If an employer fails to file a return or to pay the Commission the withholding tax when due, there shall be imposed on such employer a penalty of ten percent (10%) of the amount of tax, or ten percent (10%) of the amount of the underpayment of tax, if such failure is not corrected within fifteen (15) days after the tax becomes delinquent.

(1) There is also imposed upon the employer interest at the rate of one and one-quarter percent (1 1/4%) per month.

(2) If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty percent (50%) shall be assessed.

(b) At the discretion of the Commission, the interest or penalty may be waived, provided the taxpayer's failure to file a report or return or to pay the tax is satisfactorily explained or provided the taxpayer can demonstrate that the failure

to pay the tax resulted from a mistake by the taxpayer of either law or fact or inability to pay such interest or penalty resulting from insolvency. Requests for waiver must be made in writing to the Income Tax Accounts Division and must include all pertinent facts to support the request.

[**Source:** Amended at 23 Ok Reg 2874, eff 6-25-06; Amended at 31 Ok Reg 2451, eff 9-12-14]

710:90-3-18. Due date that falls on Saturday, Sunday or holiday

If the due date for any return or other report or payment falls on Saturday, Sunday or a Holiday, the due date shall be considered to be the next business day.

710:90-3-19. Inactivating or closing an account

(a) An employer required to make an Oklahoma Withholding Tax Return pursuant to Oklahoma Statute or the provisions of this Chapter, who in any return period discontinues business or changes ownership, shall file such return as a final return. Each return filed as a final return shall be marked "Final Return".
(b) Accompanying each final return shall be a written statement furnishing the following information:

(1) The date of the last payment of wages;
(2) The address at which the required records will be kept;
(3) The name of the person keeping such records; and,
(4) If the business has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or transfer occurred.

(c) An employer who remains in business, but who no longer has employees, or who has temporarily ceased to pay wages subject to withholding tax because of seasonal activities or for other reasons, shall not make a final return, but may make written request for status as that of an inactive employer. Such a request should include a description of the change in the business operation and a statement that no wages subject to withholding are being paid.
(d) It should be clearly understood that inactive status cannot be claimed until official permission from the Commission is received in writing. All returns or reports must be filed when due.

[**Source:** Amended at 16 Ok Reg 2674, eff 6-25-99]

SUBCHAPTER 5. LIABILITY AND PENALTIES

710:90-5-1. Liability for tax withheld

Any Oklahoma Income Tax withheld in accordance with Oklahoma Statutes or the provisions of this Chapter shall be deemed to be held in trust for the State of Oklahoma and as trustee, the employer is liable for the payment of such trust fund and is subject to the trust laws of this state. [**See:** 68 O.S. §2385.3]

710:90-5-2. Failure to withhold

In the event that an employer fails to withhold the tax required and thereafter the tax is paid by the employee, the tax required to have been withheld shall not be collected from the employer. Such payment does not relieve the employer of the liability for penalties or interest otherwise applicable because of such failure to withhold the tax. The employer will not be relieved of his liability for payment of the tax required to be withheld unless the employer can show that the tax of each employee in question has been paid. [**See:** 68 O.S. §2385.3]

710:90-5-3. Personal liability and issuance of withholding tax assessments

(a) Withholding tax assessments will be issued against the legal entity as well as against other person(s) who may be liable for the tax pursuant to law. Any person shall be liable for the payment of withholding tax if during the period of time for which the assessment was made the person was responsible for withholding and remittance of taxes or had direct control, supervision or responsibility for filing returns and making payments of the tax due the State of Oklahoma.

(b) Personal liability for withholding tax shall be determined in accordance with the standards for determining liability for payment of federal withholding tax pursuant to the Internal Revenue Code of 1986, as amended, or regulations promulgated pursuant to such section.

[**Source:** Amended at 32 Ok Reg 1411, eff 8-27-15]

SUBCHAPTER 7. AUDIT

710:90-7-1. Examination of return, adjustments, notices, and demands

(a) If, upon examination of the books of account and records of the person filing the withholding tax return, facts are obtained which, in the opinion of the Commission, warrant an adjustment of the tax liability reported, a proposed assessment report will be prepared and mailed to him. This report will contain an explanation of adjustments together with a recomputation of tax in accordance with such adjustments.

(b) The notice of adjustments and the demand for payment (if additional tax is due) or any other notice or demand upon the person filing the return required by law shall be sent to him at the address given on his return or to his last known address. In the alternative, the Commission may cause to be served upon such person a written statement of the computation of tax due.

(c) In the event the person filing the return acquiesces in the changes reflected on the proposed assessment, or fails to file a protest within the period specified in the letter of proposed assessment (or any extensions allowable by Statute that have been granted by the Division) the proposed assessment becomes final.

(d) If the Commission has reason to believe that the collection of any tax due under the Withholding Tax Act may be in jeopardy, the Commission may immediately terminate the reporting period of the person required to pay such tax. Thereupon, the Commission may assess a tax on the basis of information or knowledge available to him and demand immediate payment. If such payment

is not immediately made, the Commission may collect the tax by the use of any of the methods authorized by law.

710:90-7-2. Audits; auditors

(a) Any representative of the Commission holding a certificate of authority may make an examination or investigation of the place of business, tangible personal property, equipment and facilities, and the books, records, papers, vouchers, accounts and documents of any taxpayer. [**See:** 68 O.S. §206]
(b) It shall be the duty of every taxpayer and every director, officer, or employee of every taxpayer to exhibit to the Commission, or to the employees or agents of such Commission, the items mentioned in (a) of this Section.

710:90-7-3. Out-of-state audits [REVOKED]

[**Source:** Revoked at 21 Ok Reg 2623, eff 6-25-04]