RULEMAKING ACTION:
   Notice of proposed PERMANENT rulemaking.
PROPOSED RULES:
   Chapter 50. Income [AMENDED]

SUMMARY:
As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to implement recent legislation. All legislative references are to the First Regular Session of the 58th Legislature (2021) unless otherwise indicated.

The proposed amendment to Section 710:50-3-53 reflects changes to the individual income tax rate for tax year 2022. [68:2355]

The proposed amendment to Section 710:50-3-54 reflects changes to the individual income tax rate for tax year 2022 and changes to filing format for the Nonresident Member Withholding Exemption Affidavit; the format for filing the affidavit on 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. [68:2355]

The proposed amendment to Section 710:50-9-3 implements the provisions of Senate Bill 601 which provides that if an income tax refund is not paid to the taxpayer within a certain number of days after the income tax return is filed or due, whichever is later, the Tax Commission must pay interest on the refund. [68:217]

The proposed amendments to Subchapter 11. Intercept of Refunds implement the provisions of Senate Bill 343 which clarifies that a qualified entity seeking to collect unpaid municipal and district court fines and costs from an individual who has filed a state income tax return, may file a claim with the Tax Commission requesting that the amount owed be deducted from the individual's state income tax refund. [68:205.2]

The proposed amendment to Section 710:50-13-8 implements the provisions of Senate Bill 601 which provides that the period of underpayment be consistent with 68 O.S. § 2368; the underpayment due date of both individual income tax and corporate income tax is 30 days after the due date for returns established under the Internal Revenue Code. [68:2385.13]

The proposed amendment to Section 710:50-15-90 implements the provisions of House Bill 2962; the earned income tax credit was made refundable and the amount of the credit will be computed using the same requirements for computing the earned income tax credit for federal income tax purposes in effect for the 2020 income tax year. [68:2357.43]

The proposed amendment to Section 710:50-15-109 implements the provisions of Senate Bill 893 which amended the definition of “qualified employee” to include engineers licensed as a Professional Engineer, and the definition of “qualified program” to mean both the undergraduate and graduate programs of the same discipline of engineering at an institution shall be part of the qualified program if either program is ABET accredited. [68:2357.301]

The proposed amendments to Sections 710:50-15-114 and 710:50-15-115 and
the promulgation of new Section 710:50-15-115.1 implement the provisions of Senate Bill 1080 relating to the Oklahoma Equal Opportunity Education Scholarship Act. [68:2357.206]

The proposed amendments to Section 710:50-17-5, Section 710:50-17-51 and Appendix A. Computation of Tax Accrual When Tax Credits Are Allowable implement the provisions of House Bill 2960 which reduced the corporate income tax rate from 6% to 4% beginning with tax year 2022. [68:2355]

Other sections may be amended to clarify policy, improve readability, correct scrivener’s errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references.

AUTHORITY:
68 O.S. §§ 203, 205.2, and 2357.206; Oklahoma Tax Commission

COMMENT PERIOD:
Persons wishing to present their views in writing may do so by 4:30 p.m., February 22, 2022, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or by email to lhaws@tax.ok.gov.

PUBLIC HEARING:
A public hearing is scheduled for 1:30 p.m. on Wednesday, February 23, 2022, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date by calling Lakesha Mackie at (405) 521-3133. Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:
Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed Rules.

COPIES OF PROPOSED RULES:
Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency’s website at http://www.tax.ok.gov.

RULE IMPACT STATEMENT:
Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency’s website at http://www.tax.ok.gov.
CONTACT PERSON:
Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194. Telephone number: 405-521-3133; Email: lhaws@tax.ok.gov
CHAPTER 50. INCOME

SUBCHAPTER 3. RETURNS AND REPORTS

PART 7. OTHER REQUIRED REPORTING

710:50-3-53. 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 five percent (5%) 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. Oil and gas royalty payments made to publicly-traded partnerships as defined by Section 7704 (b) of the Internal Revenue Code that are treated as partnerships for federal tax purposes or its publicly-traded partnership affiliates are not subject to the withholding requirement in subsection (a).

(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.

710:50-3-54. 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 of five percent (5%) 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 Corporation or the partnership.

(d) Trusts. For trusts, withholding of five percent (5%) 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 therefore 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 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 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);

(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; or

(7) When a pass-through entity that is required to file either an Oklahoma partnership income tax return or an Oklahoma Subchapter S corporate 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. 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 the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(l) **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 diskette or CD with the Oklahoma Tax Commission – Audit Services Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or 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 diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission – Audit Services Division, Oklahoma City, Oklahoma 73194.

**SUBCHAPTER 9. REFUNDS**

710:50-9-3. Interest on refunds

(a) **Returns filed prior to January 1, 2004.** For returns filed on or after January 1, 1987, and before January 1, 2004, interest will be paid on income tax refunds that are not processed within ninety (90) days from the date a processible return is filed or due, whichever is later, at the same rate of interest specified for delinquent tax payments.

(b) **Returns filed on or after January 1, 2004 and before January 2, 2010.** In the case of returns filed on or after January 1, 2004 and before January 2, 2010, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

1. For electronically-filed returns, thirty (30) days from the date a processible return is filed or due, whichever is later; and,
2. For all other returns, one hundred fifty (150) days from the date a
processible return is filed or due, whichever is later.

(c) **Returns filed after January 1, 2010 and before July 1, 2016.** For returns filed after January 1, 2010 and before July 1, 2016, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

- (1) For electronically-filed returns, twenty (20) days from the date a processible return is filed, and
- (2) For all other returns, ninety (90) days from the date a processible return is filed.

(d) **Returns filed on or after July 1 June 30, 2016 and before May 7, 2021.** For returns filed on or after July 1 June 30, 2016, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

- (1) For electronically-filed returns, forty-five (45) days from the date a processible return is filed, and
- (2) For all other returns, ninety (90) days from the date a processible return is filed.

(e) **Returns filed after May 6, 2021.** For returns filed after May 6, 2021, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

- (1) For electronically-filed returns, forty-five (45) days from the date a processible return is filed or due, whichever is later, and
- (2) For all other returns, ninety (90) days from the date a processible return is filed or due, whichever is later.

(f) **Processible return.** To be "processible", all information on the return, including the computations, must be correct and all documents required by the Tax Commission must be included. In the case of an amended Oklahoma Income Tax Return income tax return with a federal adjusted gross income change, the return must be accompanied by documentation to substantiate that the I.R.S. accepted the requested change. [See: 68 O.S. § 217(H)]

(g) **Exceptions.** Alternative statutory provisions apply in the following instances:

- (1) Interest will not be paid on refunds that are intercepted for state or federal agencies. See provisions of Subchapter 11 of this Chapter. [See: 68 O.S. § 217(H)]
- (2) In the event of litigation, interest will be paid in accordance with 68 O.S. §2374.
- (3) In the case of refunds made to recover taxes illegally collected on bonus payments from oil and gas leases located on tax exempt Indian lands interest at 6 six percent (6%) per annum will be calculated from the date of payment by the taxpayer, until the date the refund is issued. [See: 68 O.S.§ 2373]

**SUBCHAPTER 11. INTERCEPT OF REFUNDS**

710:50-11-6. Priority of claims; procedures
(a) The Tax Commission shall have first priority over all qualified entities when the Tax Commission is collecting a debt, municipal court fines and cost costs, or final judgment. Subsequent to the Tax Commission priority, a claim filed by the Department of Human Services for the collection of child support and spousal support shall have priority over all other claims filed pursuant to this Subchapter. Priority in multiple claims by other qualified entities pursuant to the provisions of this Section shall be in the order in which the Tax Commission receives the claim from the qualified entities required by (b) of this Section. [See: 68 O.S. § 205.2(G)]

(b) A qualified entity seeking to collect a debt, unpaid court fines and cost costs, or final judgment of at least Fifty Dollars ($50.00) from an individual who has filed a state income tax return may file a claim with the Tax Commission, requesting that the amount owed to the qualified entity be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security Number of the debtor. [See: 68 O.S. § 205.2(B)]

(c) Upon receiving a claim from a qualified entity, the Tax Commission shall deduct the claim amount, plus collection expenses as provided in OAC 710:50-11-11, from the tax refund due the debtor and transfer the amount to the qualified entity. Provided, the Tax Commission need not report available funds of less than Fifty Dollars ($50.00).

(d) The Tax Commission has established a central computerized record keeping system to implement the identification of such debtors and may, upon the proper establishment of a claim by a referring agency, intercept a taxpayer's Oklahoma Income Tax Refund and deliver over the proceeds to the referring agency to satisfy the debtor's or municipal court defendant's obligations.

710:50-11-7. Notice to taxpayer

(a) The referring qualified entity to whom a debt is owed must notify the taxpayer/debtor of an income tax refund intercept.

(b) The qualified entity shall send notice to the debtor by regular mail at the last-known address of the debtor as shown by the records of the Tax Commission when seeking to collect a debt not reduced to final judgment. The qualified entity shall send notice to the judgment debtor or municipal court defendant by first class mail at the last-known address of the judgment debtor or municipal court defendant as shown by the records of the Tax Commission when seeking to collect a final judgment or unpaid municipal court fines and cost costs. The Tax Commission shall provide in an agreed electronic format to the Department of Human Services the amount withheld by the Tax Commission, the home address and the Social Security number of the taxpayer. The notice shall state:

1. That a claim has been filed with the Tax Commission for any portion of the tax refund due to the debtor or municipal court defendant which would satisfy the debt, unpaid municipal court fines and cost costs, or final judgment in full or in part;
2. The basis for the claim;
(3) That the Tax Commission has deducted an amount from the refund and remitted it to the qualified entity;

(4) That the debtor or municipal court defendant has the right to contest the claim by sending a written request to the qualified entity for a hearing to protest the claim and if the debtor or municipal court defendant fails to apply for a hearing within sixty (60) days of the date of mailing of the notice, the debtor or municipal court defendant shall be deemed to have waived the opportunity to contest the claim. If the claim was filed by the Department of Human Services, the notice shall state that the debtor must contest the claim by sending a written request to the Department within thirty (30) days after the date of mailing of the notice; and,

(5) That a collection expense of five percent (5%) of the gross proceeds owed to the qualified entity has been charged to the debtor or municipal court defendant and withheld from the refund.

(c) If the qualified entity determines that a refund is due the taxpayer, the qualified entity shall reimburse the amount claimed plus the five percent (5%) collection expense to the taxpayer. The qualified entity may request reimbursement of the two percent (2%) collection expense retained by the Tax Commission. The request shall be made within ninety (90) days of the reimbursement to the taxpayer. If timely requested, the Tax Commission will make reimbursement to the qualified entity within ninety (90) days of the request.

710:50-11.9. Joint returns intercept

(a) The Tax Commission will intercept a refund from a Joint Income Tax Return to offset a past due obligation if either spouse is legally responsible for the past due obligation.

(b) In the case of a joint return, the notice shall state:

(1) The name of the taxpayer named in the return, against whom no debt, no unpaid court fines and costs, or final judgment is claimed;
(2) The fact that a debt, unpaid municipal court fines and costs, or final judgment is not claimed against the taxpayer;
(3) The fact that the taxpayer is entitled to receive a refund if it is due, regardless of the debt, municipal court fines and costs, or final judgment asserted against debtor or municipal court defendant; and,
(4) That in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the qualified entity named in the notice within sixty (60) days after the date of the mailing of the notice. If the claim was filed by the Department of Human Services, the notice shall state that the taxpayer must apply, in writing, for a hearing with the Department within thirty (30) days after the date of the mailing of the notice. Tax Commission Form 505 can only be used to claim the refund when the Tax Commission is the agency claiming that a debt is owed.

(c) If the taxpayer against whom no debt, no unpaid municipal court fines and costs, or final judgment is claimed fails to apply in writing within sixty (60) days after the mailing of the notice, the taxpayer shall have waived his or her right to a refund. If the claim was filed by the Department of Human Services, the notice must state that if the taxpayer fails to apply in
writing for a hearing with the Department within thirty (30) days after the date of the mailing of the notice, the taxpayer shall have waived his or her right to a refund. [See: 68 O.S. § 205.2(B)(4)]

710:50-11-10. Nondebtor spouse protest
If the qualified entity asserting the claim receives a written request for hearing from the debtor or taxpayer against whom no debt, no municipal court fines and cost costs, or final judgment is claimed, the qualified entity shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt, unpaid court fines and cost costs, or final judgment asserted by the qualified entity, no action shall be taken in furtherance of the collection of the debt, unpaid court fines and cost costs, or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act. [See: 68 O.S. § 205.2(C)]

710:50-11-11. Notification after final determination at hearing
(a) Upon final determination at a hearing, as provided for in 710:50-11-10, of the amount of the debt, unpaid court fines and cost costs, or final judgment, or upon failure of the debtor or taxpayer against whom no debt, no unpaid court fines and cost costs, or final judgment is claimed to request such a hearing, the qualified entity shall apply the amount of the claim to the debt owed. Any amounts held by the qualified entity in excess of the final determination of the debt and collection expense must be refunded by the qualified entity to the taxpayer. However, if the tax refund due is inadequate to pay the collection expense and debt, unpaid court fines and cost costs, or final judgment, the balance due the qualified entity shall be a continuing debt or final judgment until paid in full.
(b) Upon receipt of a claim as provided in OAC 710:50-11-6 the Tax Commission shall:
   (1) Deduct from the refund five percent (5%) of the gross proceeds owed to the qualified entity and distribute it by retaining two percent (2%) and transferring three percent (3%) to the qualified entity as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Tax Commission Fund;
   (2) Transfer the amount of the claimed debt, unpaid court fines and cost costs, or final judgment or so much thereof as is available to the qualified entity;
   (3) Notify the debtor in writing as to how the refund was applied; and,
   (4) Refund to the debtor any balance remaining after deducting the collection expense and debt, unpaid court fines and cost costs, or final judgment. [See: 68 O.S. § 205.2(D) and (E)]

SUBCHAPTER 13. ESTIMATED TAX

710:50-13-8. Interest on underpayment of estimated tax; exceptions
(a) Interest is levied at 20% per annum, for the period of underpayment, on any underpayment of the "required annual payment" of estimated tax, as that term is defined by 68 O.S. § 2385.9(B) and 710:50-13-7.

(b) The amount of the underpayment equals the excess of the required installment over the amount paid on or before the due date of the installment. The period of underpayment runs from the due date of the required installment to the earlier of the fifteenth day of the fourth month, or for corporations, the fifteenth day of the third month after the date of the return established under the Internal Revenue Code, following the close of the taxable year or the date on which the required installment is paid.

(c) Provided, however, no interest will be added to the tax if:

1. The tax shown on the return for the taxable year is less than One Thousand Dollars ($1,000.00); or
2. The taxpayer was an Oklahoma resident throughout the preceding taxable year of twelve (12) months and did not have any liability for tax for the preceding taxable year.

(d) OTC Form OW-8-P is a schedule provided for calculating interest for underestimating and also provides for an exception for fluctuations of income throughout the year.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 7. CREDITS AGAINST TAX

710:50-15-90. Oklahoma earned income tax credit

(a) Effective for tax years beginning on or after January 1, 2002, there shall be an Oklahoma Earned Income Tax Credit (EITC) for resident and part year resident individuals.

(b) The Oklahoma Earned Income Tax Credit EITC shall be an amount equal to five percent (5%) of the Federal Earned Income Tax Credit allowed under Section 32 of the Internal Revenue Code.

(1) Effective for tax years 2016 and subsequent tax years through 2021, if the credit exceeds the tax imposed by Section 2355 of Title 68, the excess amount shall not be refunded to the taxpayer, nor shall any amount be carried forward to a subsequent tax year.

(2) For tax years beginning on or after January 1, 2022:

(A) If the credit exceeds the tax imposed by Section 2355 of Title 68, the excess amount shall be refunded to the taxpayer.

(B) The credit shall be computed using the same requirements, other than the five percent (5%) amount to compute the credit as prescribed by this section which shall remain constant, in effect for computation of the earned income tax credit for federal income tax purposes for the 2020 income tax year. [68 O.S. § 2357.43]

(3) The Oklahoma Earned Income Tax Credit EITC may not be paid in advance and must be claimed on the individual income tax return when filed.

(c) The credit is to be prorated on the ratio that Oklahoma Adjusted Gross Income bears to Federal Adjusted Gross Income, not to exceed one hundred
percent (100%). When the Oklahoma Adjusted Gross Income or the Federal Adjusted Gross Income is negative the ratio will be determined as follows:

1. When the Oklahoma Adjusted Gross Income is negative and is less than the Federal Adjusted Gross Income, the ratio shall be 0%. (For example: Oklahoma Adjusted Gross Income is negative $1,000 and the Federal Adjusted Gross Income is negative $500, the ratio shall be 0%).

2. When the Federal Adjusted Gross Income is negative and is equal to or less than the Oklahoma Adjusted Gross Income, the ratio will be 100%. (For example: Oklahoma Adjusted Gross Income is negative $500 and the Federal Adjusted Gross Income is negative $1,000 the ratio is 100%).

710:50-15-109. Credit for qualified employers and employees of the aerospace sector

(a) General provisions. For tax years beginning after December 31, 2008 and before January 1, 2026, three (3) credits are allowed against the tax imposed by Section 2355 of Title 68 for the employment of qualified employees in the aerospace sector. The three (3) credits are as follows:

1. Credit for qualified employers for tuition reimbursement to qualified employees.

2. Credit for qualified employers for compensation paid to qualified employees.

3. Credit for qualified employees.

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

1. "Aerospace sector" is a private or public organization that is:
   (A) a manufacturer of aerospace or defense hardware and/or software;
   (B) provides aerospace maintenance, repair or overhaul;
   (C) supplies parts to the aerospace industry;
   (D) provides services and/or support relating to the aerospace industry;
   (E) provides research and development of aerospace technology and systems, or
   (F) provides education or training of aerospace personnel.

2. "Compensation" includes salary or other remuneration, wages subject to withholding tax paid to either a part time employee or full time employee and payments in the form of contract labor for which the payor is required to provide a Form 1099 to the person paid. Compensation does not include any employer provided benefits, including but not limited to retirement, medical or health-care benefits; reimbursement for travel, meals, lodging or any other expense.

3. "Institution" is any institution included within The Oklahoma State System of Higher Education or any other public or private college or university that is accredited by a national accrediting body.

4. "Qualified employer" is an entity whose principal business activity involves the aerospace sector. This includes sole proprietors, general partnerships, limited partnerships, limited liability companies,
corporations, or any other legally recognized business entity, or public entity.

(5) "Qualified employee" is any person, regardless of the date of hire by the qualified employer, newly employed by or contracting with a qualified employer in Oklahoma on or after January 1, 2009. Further, the person must have been awarded an undergraduate or graduate degree from a qualified program by an institution. Qualified employee does not include a person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer. Qualified employee may include a person who was employed in the aerospace sector, but not as a full-time engineer, prior to being awarded an undergraduate or graduate degree from a qualified program by an institution or any person who has been awarded an undergraduate or graduate degree from a qualified program by an institution and is employed by a professional staffing company and assigned to work in the aerospace sector in this state.

(A) Any person, regardless of the date of hire by the qualified employer, who is newly employed by or contracting with a qualified employer in Oklahoma on or after January 1, 2009.

(B) A person who has been either:
   (i) Awarded an undergraduate or graduate degree from a qualified program by an institution, or
   (ii) Licensed as a Professional Engineer by the State Board of Licensure for Professional Engineers and Land Surveyors pursuant to Section 475.15 of Title 59 of the Oklahoma Statutes and employed as a qualified employee in the aerospace sector by a qualified employer on or after November 1, 2021.

(C) Qualified employee does not include a person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer, unless,
   (i) The employee was employed in the aerospace sector, but not as a full-time engineer, prior to being awarded a degree, or
   (ii) The employee has been awarded a degree and is employed by a professional staffing company and assigned to work in the aerospace sector in Oklahoma.

(6) "Qualified program" is any program that awards undergraduate or graduate degrees and has been accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET). Effective November 1, 2021, a qualified program includes both undergraduate and graduate programs of the same discipline of engineering at an institution if either program is ABET accredited.

(7) "Tuition" is the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program. Tuition does not include the cost of books, any other fees or the cost of room and board.

(3) "Aerospace sector", "compensation", "institution", "qualified employer" and "tuition" shall be defined as in Section 2357.301 of Title 68 of the Oklahoma Statutes.
(c) **Credit for tuition reimbursement.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes based on the amount of tuition reimbursed to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for tuition reimbursement may only be claimed if the qualified employee has been awarded an undergraduate or graduate degree within one (1) year of starting employment with the qualified employer. The undergraduate or graduate degree must be from a qualified program.

(3) The credit for tuition reimbursement is equal to fifty percent (50%) of the tuition reimbursed to a qualified employee and may be claimed for the first through fourth years of employment with the qualified employer. The credit is only allowed to be claimed in the tax year that the tuition was reimbursed to the qualified employee and may not exceed in any taxable year fifty percent (50%) of the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program at a public institution in Oklahoma.

(4) The credit for tuition reimbursement may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for tuition reimbursement may not be claimed after the fourth year of employment of the qualified employee.

(d) **Credit for compensation paid.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for compensation paid to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for compensation paid equals:

   (A) Ten percent (10%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located in this state.

   (B) Five percent (5%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located outside this state.

(3) The credit for compensation paid cannot exceed Twelve Thousand Five Hundred Dollars ($12,500.00) for each qualified employee annually.

(4) The credit for compensation paid may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for compensation paid may not be claimed after the fifth year of employment.

(e) **Credit for qualified employees.**

(1) For taxable years beginning after December 31, 2008, a qualified employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes of up to Five Thousand Dollars ($5,000.00) per year for a period of time not to exceed five (5) years.
(2) The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).
(3) Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.

710:50-15-114. Credit for contributions to a scholarship-granting organization
(a) General provisions. An income tax credit is available for contributions to an eligible scholarship-granting organization. [68 O.S. § 2357.206]
(b) Credit. The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000) for each taxpayer or Two Thousand Dollars ($2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars ($100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars ($1,000.00) for single individuals or limited to Two Thousand Dollars ($2,000.00) for married persons filing a joint return.
(c) Additional year commitment. For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for an additional year, the credit shall be seventy-five percent (75%) of the total amount of the contribution made during the taxable year. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.
(d) Registration. An eligible scholarship-granting organization is required to register with the Tax Commission.
(e) Limitation of credit.
(1) If total credits claimed exceed the caps established pursuant to 68 O.S. § 2357.206(D), 2357.206(E), the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year. [See: 68 O.S. § 2357.206(H), 2357.206(I)]
(2) At least once each taxable year, the eligible scholarship-granting organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.
(f) Annual notification.
(1) By January 10 each year, the scholarship-granting organization shall provide electronically to the Tax Commission:
   A) The scholarship-granting organization's account number;
   B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;
   C) The date and amount of each contribution; and
   D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.
(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the
Tax Commission's website. The scholarship-granting organizations shall notify contributors of that amount annually.

(g) **Annual report.** In order to maintain registration, a scholarship granting organization shall file an annual report with the Oklahoma Tax Commission on or before September 1 of each year. [See 68 O.S. § 2357.206(M)(1)]

(h) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible scholarship-granting organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(h) (i) **Limitations.**

(1) The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years.

(2) The credit is not transferable.

(3) For tax year 2016 and subsequent tax years, credits earned but not allowed due to the application of statewide caps will be considered suspended and authorized to be used in the next immediate tax year and applied to the next year's statewide cap.

710:50-15-115. **Credit for contributions to an educational improvement grant organization**

(a) **General provisions.** An income tax credit is available for contributions to an eligible educational improvement grant organization. [68 O.S. § 2357.206]

(b) **Application.** An educational improvement grant organization shall submit an application to the Tax Commission. The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.

(c) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000) for each taxpayer or Two Thousand Dollars ($2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars ($100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars ($1,000.00) for single individuals or limited to Two Thousand Dollars ($2,000.00) for married persons filing a joint return.

(d) **Additional year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for an additional year, the credit shall be seventy-five percent (75%) of the total amount of the contribution made during the taxable year. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(e) **Limitation of credit.**
(1) If total credits claimed exceed the caps established pursuant to 68 O.S. § 2357.206(D), 2357.206(E), the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year. [See: 68 O.S. § 2357.206(H) 2357.206(I)]

(2) At least once each taxable year, the educational improvement grant organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(f) Annual notification.

(1) By January 10 each year, the educational improvement grant organization shall provide electronically to the Tax Commission:
   (A) The educational improvement grant organization's account number;
   (B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;
   (C) The date and amount of each contribution; and
   (D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The educational improvement grant organization shall notify contributors of that amount annually.

(g) Annual report. In order to maintain eligibility, an educational improvement grant organization shall annually file an annual report with the Tax Commission, on forms prescribed by the Tax Commission, on or before September 1 of each year: [See 68 O.S. § 2357.206(L)(3)]

   (1) The name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year;
   (2) A description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements;
   (3) The names of the public school and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented;
   (4) Where the organization collects information on a county-by-county basis, and
   (5) The total number and total amount of grants made during the immediately preceding school year for innovative educational programs at public school by each county in which the organization made grants.

(h) Ninety percent (90%) requirement Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible educational improvement grant organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(i) Limitations.

   (1) The credit will not reduce the tax liability of the taxpayer to less than
zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years.
(2) The credit is not transferable.
(3) For tax year 2016 and subsequent tax years, credits earned but not allowed due to the application of statewide caps will be considered suspended and authorized to be used in the next immediate tax year and applied to the next year's statewide cap.

710:50-15-115.1. Credit for contributions to a public school foundation or public school district
(a) General provisions. For contributions made on or after January 1, 2022, an income tax credit is available for contributions to an eligible public school foundation or public school district. [68 O.S. § 2357.206]
(b) Application. An eligible public school foundation or public school district shall submit an application to the Oklahoma Tax Commission. The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.
(c) Credit. The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000) for each taxpayer or Two Thousand Dollars ($2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars ($100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars ($1,000.00) for single individuals or limited to Two Thousand Dollars ($2,000.00) for married persons filing a joint return.
(d) Additional year commitment. For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for an additional year, the credit shall be seventy-five percent (75%) of the total amount of the contribution made during the taxable year. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.
(e) Limitation of credit.
   (1) If total credits claimed exceed the caps established pursuant to 68 O.S. § 2357.206(E), the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year. [See: 68 O.S. § 2357.206(I)]
   (2) At least once each taxable year, the public school foundation or public school district shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.
(f) Annual notification.
   (1) By January 10 each year, the public school foundation or public school district shall provide electronically to the Tax Commission:
      (A) The public school foundation or public school district's federal employer identification number;
(B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;
(C) The date and amount of each contribution; and
(D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.
(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission’s website. The public school foundation or public school district shall notify contributors of that amount annually.

(g) Annual report. In order to maintain eligibility, the public school foundation or public school district shall submit an annual report to the Tax Commission, on or before September 1 of each year. [See 68 O.S. § 2357.206(L)(3)]

(h) Limitations.

(1) The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years.
(2) The credit is not transferable.
(3) Credits earned but not allowed due to the application of statewide caps will be considered suspended and authorized to be used in the next immediate tax year and applied to the next year’s statewide cap.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 1. GENERAL PROVISIONS

710:50-17-5. Tax rate for corporations
(a) For all taxable years beginning after December 31, 1984, the corporate tax rate is five percent (5%).
(b) For all taxable years beginning after December 31, 1984, the corporate tax rate is five percent (5%).
(c) For all taxable years beginning after December 31, 1989, the corporate tax rate is six percent (6%).
(d) For all taxable years beginning after December 31, 2021, the corporate tax rate is four percent (4%).

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations
The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [See: 68 O.S. § 2358]

(1) Taxes based on income. [See: 68 O.S. § 2358(A)(5)]
   (A) Taxes based on or measured by income shall not be allowed as a deduction.
   (B) Type of taxes that are based on or measured by income are:
(i) State and Local Income Taxes,
(ii) Foreign Income Taxes, and
(iii) some Franchise Taxes that are based on or measured by income.

(2) Federal income taxes. Federal Income Taxes are not deductible.

(3) Federal loss carryback/carryforward. A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) Oklahoma net operating loss carryback/carryover. An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) Oklahoma net operating loss. [See: 68 O.S. § 2358(A)(3)]
   (i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.
   (I) For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2007, the loss carryback shall be for a period as allowed in the Internal Revenue Code; and
   (II) For tax years beginning after December 31, 2007, and ending before January 1, 2009, the loss carryback period shall be for a period of two (2) years; and
   (III) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.
   (ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981. The following shall apply to Oklahoma net operating loss before January 1, 1981:
   (i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)
   (ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) Oklahoma accrued income tax.
(A) Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.667 shall be used as follows:

(i) Divide the Oklahoma Net Income by the number 26 for tax years beginning before January 1, 1985.
(ii) Divide the Oklahoma Net Income by the number 21 for tax years beginning after December 31, 1984 and ending before January 1, 1990.
(iii) Divide the Oklahoma Net income by the number 17.667 for tax years beginning after December 31, 1989 and ending before January 1, 2022.
(iv) Divide the Oklahoma Net Income by the number 26 for tax years beginning after December 31, 2021.

(B) There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [See: 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income.

(A) An adjustment is required when a corporation has an investment in assets which produce income which is non-unitary, or separately allocable. Such items may include, but are not limited to, investments in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income.

(B) A ratio is used to allocate expenses between unitary business operations and all other activities that do not produce unitary income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is allocable, by the average of total assets. This percentage is then applied to certain expenses claimed on the return to arrive at the amount of expenses related to non-unitary business, and the resulting amount is added back to federal taxable income.

(C) Generally, interest expense is the only expense against which the adjustment described in subparagraph (B) of this paragraph is applied. However, facts and circumstances may indicate that other expenses
should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)] [See example in Appendix E of this Chapter]

(7) **Interest income.**

(A) **U.S. obligations.** Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [See: 68 O.S. § 2358(A)(4)(b)]

(A) For purposes of calculating Oklahoma taxable income, foreign earnings deemed repatriated pursuant to 26 U.S.C. § 965 shall be considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(i) To the extent such income is not included in the calculation of a taxpayer's federal taxable income due to inclusion on an IRC 965 Transition Tax Statement rather than the income tax return, the income shall be included on the Oklahoma return as an addition to net taxable income.

(ii) If a taxpayer elects to make installment payments of tax pursuant to the provisions 26 U.S.C. § 965, such election may also apply to the payment of Oklahoma income tax, attributable to the income upon which such installment payments are based.

(B) For purposes of calculating Oklahoma taxable income, global intangible low-taxed income included in federal income pursuant to 26 U.S.C. § 951A shall be considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [See: 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from 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. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]
(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, and for tax years beginning on or after January 1, 2014, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. [See: 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [See: 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [See: 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [See: 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma’s own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on
the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [See: 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [See: 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal Job Creation and Workers Assistance Act of 2002, the provisions of the federal Economic Stimulus Act of 2008 or the federal American Recovery and Reinvestment Act of 2009) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal Job Creation and Workers Assistance Act of 2002, the federal Economic Stimulus Act of 2008 or the federal American Recovery and Reinvestment Act of 2009). Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

(22) **Add-back of applicable Section 179 expenses.** For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars ($175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as provided in the federal American Recovery and Reinvestment Act of 2009 must be added back to Oklahoma taxable income.
APPENDIX A. COMPUTATION OF TAX ACCRUAL WHEN TAX CREDITS ARE ALLOWABLE

COMPUTATION OF TAX ACCRUAL WHEN TAX CREDITS ARE ALLOWABLE

1. Oklahoma Income before tax accrual
   __________

2. Allowable Oklahoma credits
   __________

COMPUTATION OF ACCRUED TAX ALLOWED

A. Oklahoma Income (Line 1 above) __________
   
B. Amount from Line 2, above, divided by 6% 4% __________
   
   C. Subtract Line B from Line A __________
      
   D. Divide Line C by 17.6667 26 __________
      (If Line D is less than 0, enter 0)

3. Subtract Line D from Line 1 above __________
   
   (Enter Line 3 above on Line 1, Page 1, of your Oklahoma Corporation Income Tax Form 512.)

TOTAL TAX DUE __________

TAX ACCRUAL ALLOWED __________

TAX CREDIT ALLOWED __________
RULE IMPACT STATEMENT

Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 50 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: The proposed amendment to Section 710:50-3-53 reflects changes to the individual income tax rate for tax year 2022.

The proposed amendment to Section 710:50-3-54 reflects changes to the individual income tax rate for tax year 2022 and changes to filing format for the Nonresident Member Withholding Exemption Affidavit; the format for filing the affidavit on 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.

The proposed amendment to Section 710:50-9-3 implements the provisions of Senate Bill 601 which provides that if an income tax refund is not paid to the taxpayer within a certain number of days after the income tax return is filed or due, whichever is later, the Tax Commission must pay interest on the refund.

The proposed amendments to Subchapter 11. Intercept of Refunds implement the provisions of Senate Bill 343 which clarifies that a qualified entity seeking to collect unpaid municipal and district court fines and costs from an individual who has filed a state income tax return, may file a claim with the Tax Commission requesting that the amount owed be deducted from the individual’s state income tax refund.

The proposed amendment to Section 710:50-13-8 implements the provisions of Senate Bill 601 which provides that the period of underpayment be consistent with 68 O.S. § 2368; the underpayment due date of both individual income tax and corporate income tax is 30 days after the due date for returns established under the Internal Revenue Code.

The proposed amendment to Section 710:50-15-90 implements the provisions of House Bill 2962; the earned income tax credit was made refundable and the amount of the credit will be computed using the same requirements for computing the earned income tax credit for federal income tax purposes in effect for the 2020 income tax year.

The proposed amendment to Section 710:50-15-109 implements the provisions of Senate Bill 893 which amended the definition of “qualified employee” to include engineers licensed as a Professional Engineer, and the definition of “qualified program” to mean both the undergraduate and graduate programs of the same discipline of engineering at an institution shall be part of the qualified program if either program is ABET accredited.

The proposed amendments to Section 710:50-17-5, Section 710:50-17-51 and Appendix A. Computation of Tax Accrual When Tax Credits Are Allowable implement the provisions of House Bill 2960 which reduced the corporate income tax rate from 6% to 4% beginning with tax year 2022.

**CLASSES AFFECTED:** All individual income taxpayers and corporate income taxpayers, including but not limited to entities seeking to collect unpaid municipal and district court fines and costs from taxpayers’ income tax refunds, taxpayers claiming the aerospace income tax credit and taxpayers claiming the Oklahoma Equal Opportunity Education Scholarship tax credits.

**PERSONS BENEFITED:** All taxpayers and tax preparers will benefit from increased clarity of Oklahoma tax laws and Tax Commission procedures.

**PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS:** There are no anticipated increase to costs associated with the proposed rule changes.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** The rulemaking action does not levy, implement, or increase an existing fee.

**PROBABLE COSTS TO THE AGENCY:** Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

**ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule changes at this time.

**SMALL BUSINESS IMPACT:** After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

**ALTERNATIVE METHODS AND COSTS OF COMPLIANCE:** There are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of this proposed rules. No formalized compliance cost minimization measures have been pursued.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

**DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED:** The agency does not anticipate any detrimental effect
on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

**DATE PREPARED:** December 15, 2021