TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

RULEMAKING ACTION:
Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:
Chapter 90. Withholding [AMENDED]

SUMMARY:
The proposed amendments to 710:90-1-13 and 710:90-3-10 reflect changes to the individual income tax rate for tax year 2022. [68:2355]
The proposed amendment to Section 710:90-3-11 reflects changes to the 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.
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; 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 90. WITHHOLDING

SUBCHAPTER 1. GENERAL PROVISIONS

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, should be treated as if they were a payment of wages for Oklahoma Income Tax Withholding purposes. The payor of any periodic or non-periodic payment should inform recipients who are or become Oklahoma residents of the need to withhold if:
   (1) The recipient has not chosen the election of "no federal withholding," provided by Section 3405 of the Internal Revenue Code, or
   (2) The recipient elects to have Oklahoma Income Tax withheld irrespective of any election to not withhold federal income tax.
(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 an employee may claim in determining the tax to be withheld shall be the same as that claimed on Form W-4P, Withholding Certificate for Pension or Annuity Payments, or a similar form provided by the payer.
   (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.** Tax will be withheld at a five percent (5%) the highest Oklahoma marginal individual income tax rate on any non-periodic payments.
   (1) The recipient cannot use Form W-4P to determine the amount to be withheld, since withholding allowances or marital status are not taken into consideration.
   (2) The recipient can use Form W-4P to specify an additional amount to be withheld.
   (3) The recipient can also use Form W-4P to choose not to have tax withheld.
(d) **Employer contributions.** Employer contributions to qualified cash or deferred arrangements are not subject to Oklahoma Withholding Tax.

SUBCHAPTER 3. RETURNS AND PAYMENTS

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 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.

(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.

710:90-3-11. 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 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 Corporations 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 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 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.
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 90 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: The proposed amendments to 710:90-1-13 and 710:90-3-10 reflect changes to the individual income tax rate for tax year 2022.

The proposed amendment to Section 710:90-3-11 reflects changes to the 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.

CLASSES AFFECTED: All taxpayers and tax preparers may be affected by the proposed changes.

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