

Taxation Law Section

2016 Oklahoma Tax Legislation

By Sheppard F. Miers Jr.

The following is a summary of some of the changes in Oklahoma tax law enacted by the Oklahoma Legislature in 2016.

INCOME TAX

Investment/New Jobs Credit, \$25 Million Cap, 2016-2018

The income tax credit for investment in manufacturing facilities or increasing jobs was amended to provide that, for tax years beginning on or after Jan. 1, 2016, and ending on or before Dec. 31, 2018, the total amount of credits used to offset income tax shall be adjusted annually to limit the amount of annual credits to \$25 million. The Tax Commission shall annually calculate and publish a percentage by which credits shall be reduced so the total amount of credits used to offset income tax does not exceed \$25 million per year. The formula for the percentage adjustment shall be \$25 million divided by the credits used to offset income tax in the second preceding year. If the total credits exceed \$25 million in any calendar year the Tax Commission shall permit any excess over \$25 million but shall factor such excess into the percentage adjustment formula for subsequent years.¹

Deduction of State and Local Taxes Eliminated

The Oklahoma income tax code was amended to provide that for taxable years beginning on or after Jan. 1, 2016, Oklahoma taxable income shall be increased by any amount of state and local sales or income taxes deducted by a taxpayer on the taxpayer's federal income tax return. If the amount of state and local taxes deducted on the federal return is limited, taxable income on the Oklahoma state return shall be increased only by the amount actually deducted after any such limitations are applied.²

Child Care Service Credit Repealed

The income tax credit allowed to entities primarily engaged in the business of providing child care services was amended to provide that the credit may not be claimed for any event, transaction, investment or expenditure occurring on or after Jan. 1, 2016.³

Oklahoma Earned Income Credit Repealed

The Oklahoma state earned income tax credit of 5 percent of the earned income tax credit allowed under the Internal Revenue Code was amended to provide that the credit is only allowed for tax years which begin before Jan. 1, 2016.⁴

Energy Efficient Construction Credit Repealed

The income tax credit for eligible expenditures by a contractor in construction of energy efficient residential property was amended to provide that the credit may not be claimed for any transaction, investment or expenditure occurring on or after July 1, 2016.⁵

Oklahoma Coal Credit Reduced

The income tax credit allowed for utilities and manufacturers for purchase of Oklahoma-mined coal and for persons in Oklahoma primarily engaged in coal mining, production and extraction, was amended to provide that for activities occurring on or after Jan. 1, 2016, the amount of credit allowed shall be equal to 75 percent of the amount otherwise provided.⁶

Railroad Reconstruction Credit Reduced

The income tax credit allowed for qualified railroad reconstruction or replacement expenditures was amended to provide that the credit shall be reduced by 25 percent for any taxable year which begins on or after Jan. 1, 2016. The reduction shall not be applicable to tax credits

carried forward from any tax year which began prior to Jan. 1, 2016.⁷

Credit for SBA Loan Guaranty Fee Extended

The credit allowed to banks and credit unions, for the amount of the guaranty fee paid to the U. S. Small Business Administration pursuant to its loan guaranty program, was extended to be allowed for payments made before Jan. 1, 2019.⁸

Income Tax Refund Check-Off Contribution to General Revenue Fund Added

The Oklahoma income tax code was amended to add a provision requiring that each Oklahoma state individual income tax return and each Oklahoma state corporate income tax return (for tax years beginning after Dec. 31, 2016), shall contain provisions to allow a donation from a tax refund or a direct donation for the benefit of the General Revenue Fund of the State of Oklahoma.⁹

Refund Timing, Return Due Dates Changed

The time period related to refunds of income tax was amended to provide that whenever an income tax refund is not paid to a taxpayer, for a return filed electronically within 45 days, the Tax Commission shall pay interest to the taxpayer at the same rate specified for interest on delinquent tax payments. All individual income tax returns made on the basis of a fiscal year shall be due on or before the 15th day of the fourth month following the close of the fiscal year.

Calendar year corporation returns shall be due no later than 30 days after the due date established under the Internal Revenue Code. Fiscal year corporation returns shall be due no later than 30 days after the due date established under the Internal Revenue Code. Partnership returns shall be due no later than 30 days after the due date established under the Internal Revenue Code.

All estate and trust returns made on the basis of the calendar year shall be due on or before the 15th day of April following the close of the taxable year. All estate and trust returns made on the basis of a fiscal year shall be due on or before the 15th day of the fourth month following the close of the fiscal year. Every employer required to deduct and withhold income tax from wages shall furnish to the Tax Commission, on or before Feb. 28 of the succeeding year, an annual reconciliation statement and

other information as the Tax Commission may require pursuant to its electronic data interchange program.¹⁰

SALES AND USE TAX

Oklahoma Retail Protection Act of 2016; Internet Sales; Taxable Nexus

The Oklahoma Sales Tax Code was amended by enactment of the Oklahoma Retail Protection Act of 2016, to add provisions requiring the reporting and payment of state and local sales tax by out-of-state vendors making sales of tangible personal property to customers in Oklahoma, including sales tax on purchases and sales made via the Internet. The law attributes taxable nexus and/or physical presence in the state to such an out-of-state vendor based on it having certain relationships and arrangements with other persons that have a physical presence in the state.

A vendor making sales of tangible personal property from outside Oklahoma, for use in the state that is not required to collect use tax, shall be required by Feb. 1 of each year to provide a statement to each customer to whom tangible personal property was delivered in the state. The statement must include the total sales made by the vendor to the customer during the preceding calendar year, the sales price, that the customer may owe Oklahoma use tax on the customer's purchases from the vendor during the previous year and information about reporting and payment of the use tax by the customer. The statement must not contain any other information that would indicate or identify the class, type, description or name of the products purchased.¹¹

Two Year Statute of Limitation for Sales Tax Claims for Refund

The statute of limitation for filing a claim for refund, for sales and use tax, was amended to require filing of a verified claim for refund within two years from the date of payment of the tax.¹²

New Printed Material Manufacturing Exemption

A sales tax exemption was enacted for sale of paper stock and other raw materials which are manufactured into commercial printed material in Oklahoma primarily for use and delivery outside the state, including magazines, catalogs, retail inserts and direct mail.¹³

*County Sales Tax Voter Approval
"One Subject" Requirement*

The statute authorizing levy of county sales tax that is submitted to county voters for approval and providing that it embrace one subject was amended and clarified.¹⁴

AD VALOREM TAX

*Refurbishment Costs Qualify for Manufacturing
Facility Exemption*

The *ad valorem* tax five-year new manufacturing facility exemption was amended to provide that investment cost shall include capital expenditures for direct replacement, refurbishment, repair or maintenance of existing machinery and equipment that qualifies for depreciation and/or amortization, pursuant to the Internal Revenue Code and such expenditures shall be eligible as a part of an expansion that otherwise qualifies for the exemption.¹⁵

*Valuation of Inventory Related to Sale of Building
Materials*

The statutory requirements for valuation and assessment of tangible personal property for *ad valorem* tax purposes were amended to provide for a method for assessment, at the average value of the inventory of persons primarily engaged in selling lumber and other building materials, including cement and concrete, except for certain home centers, with such inventory to be assessed each year at the average value of the inventory on hand as of Jan. 1 of each year and the value of inventory on hand as of Dec. 31 of the same year.¹⁶

*County Board of Equalization Member
Continuing Training*

The requirement that the county board of equalization members complete specified training on the duties of the board was amended to make the requirement apply to subsequent terms to which a member is appointed.¹⁷

*Grandfathering of Manufacturing Exemption
for Wind Farms Amended*

Multiple versions of the statute limiting the *ad valorem* tax five-year new manufacturing facility exemption to wind farms completed and placed in initial qualifying use prior to Jan. 1, 2017, were amended and repealed.¹⁸

*Low Income Household Exemption
Definition Amendment*

The additional homestead exemption for low income households was amended to provide that the gross household income for purposes of eligibility shall not include any veterans' disability compensation payments.¹⁹

GROSS PRODUCTION TAX

*Economically At-Risk Oil or Gas Lease
Exemption; \$12.5 Million Cap*

The gross production tax exemption allowed for economically at-risk oil and gas leases was amended and reduced. The definition of an "economically at-risk oil or gas lease," for years on or after Jan. 1, 2015, was amended to mean any lease with one or more producing wells with an average production volume per well of 10 barrels of oil or 60 MCF of natural gas per day or less, operated at a net loss or at a net profit less than the total gross production tax remitted for such lease during the previous calendar year. For exempt production in the calendar year ending Dec. 31, 2016 and each year thereafter, a refund shall be claimed before July 1 of the year following the year of production; and the Tax Commission shall not accept or pay any claim for refund filed on or after July 1 of each year following the year of production. For oil and gas produced from qualifying leases in calendar years 2015 through 2020, the total amount of refunds authorized for each calendar year shall not exceed \$12.5 million. If the amount of claims exceeds \$12.5 million the Tax Commission shall determine the percentage of the refund which establishes the proportionate share of the refund which may be claimed by any taxpayer so that the maximum authorized exemption is not exceeded.²⁰

*Oil Recovered from Streams and Lakes,
Royalty Claims; Transporter Reporting*

The gross production tax code was amended to provide that upon providing of proof of mineral ownership within 12 months of the time of payment to the Tax Commission of payments collected by it for oil recovered from streams, lakes, ponds, ravines and other depressions to which oil has escaped, or for oil reported produced without disclosure of the actual source, the Tax Commission will pay rightful royalty interest owners their proper interests. The reporting by transporters of crude oil or gas was amended to provide that it must be made upon request of the Tax Commission. The statute providing for apportion-

ment of gross production tax, for which the source of the oil or gas or casinghead gas is not determined at the expiration of 6 months from the date of payment was repealed.²¹

Oil and Gas Excise Tax Rates Extended

The statutory imposition and apportionment of an excise tax on oil and gas in addition to the gross production tax at the current rates was extended until June 30, 2021.²²

TAX ON COIN-OPERATED MUSIC AND AMUSEMENT DEVICES

Compliance Requirements Amended

Provisions related to taxation and coin-operated music and amusement devices were amended with respect to certain decal issuance refusals, notices, fine amounts and seizure of devices.²³

TAX ADMINISTRATION, PRACTICE AND PROCEDURE

Tax Commission Enforcement Enhancement Directed

The Tax Commission was directed by the Legislature to enhance agency efforts to discover and reduce fraud and abuse of sales and use tax exemptions and the non-filing and underreporting of sales and use taxes, through enhanced auditing with technology systems to identify underreporting of sales and use taxes and the electronic reporting of information of exempt sales. The Tax Commission was directed to increase its audit staff to conduct audits of individual, corporate and partnership income tax returns; and the Tax Commission may utilize its increased staff to audit and issue proposed assessments against non-filing and underreporting taxpayers detected through enhanced technology. The Tax Commission was directed to enhance agency efforts to ensure the proper reporting and collection of gross production taxes, to include the use of enhanced technology to ensure that all production is accurately reported and the auditing of claims for refund or rebates to verify the accuracy of claims filed.²⁴

Confidential Nature of Records and Files of Tax Commission Amendments

Multiple versions of the statute governing the confidential nature of records and files of the Tax Commission were amended, merged, consolidated and repealed.²⁵

TAX AND FISCAL POLICY

Revenue Stabilization Fund Created

A Revenue Stabilization Fund was created. Provisions were enacted for the deposit of gross production tax and corporate income tax revenues into the fund.²⁶

1. SB 1582, amending 68 O. S. Supp. 2015, §2357.4; effective Nov. 1, 2016.
2. SB 1606, amending 68 O. S. Supp. 2015, §2358; effective Nov. 1, 2016.
3. SB 1605, amending 68 O. S. Supp. 2015, § 2357.27; effective Nov. 1, 2016.
4. SB 1604, amending 68 O. S. 2011, §2357.43; effective Nov. 1, 2016.
5. SB 1603, amending 68 O. S. 2011, §2357.46; effective Aug. 26, 2016.
6. SB 1614, amending 68 O. S. Supp. 2015, §2357.11; effective Nov. 1, 2016.
7. HB 3204, amending 68 O. S. 2011, §2357.104; effective Jan. 1, 2016.
8. HB 2536, amending 68 O. S. Supp. 2015, §2370.1; effective Nov. 1, 2016.
9. SB 1085, adding 68 O. S. Supp. 2016, §2368.28; effective Jan. 1, 2017.
10. HB 2775, amending 68 O. S. 2011, §2368 and 68 O. S. Supp. 2015, §§217, 2385.3; effective July 1, 2016.
11. HB 2531, amending 68 O. S. 2011, §§1352, 1401, 1407.2 and 1407.3; repealing 68 O. S. 2011, §§1354.1-1354.6; adding 68 O. S. Supp. 2016, §1406.2; effective Nov. 1, 2016.
12. HB 3205, amending 68 O. S. Supp. 2015, §227; effective Aug. 26, 2016.
13. SB 1282, amending 68 O. S. Supp. 2015, §1359; effective Nov. 1, 2016.
14. HB 2248, amending 68 O. S. Supp. 2015, §1354.36; effective Nov. 1, 2016.
15. SB 1282, amending 68 O. S. Supp. 2015, §2902; effective Jan. 1, 2016.
16. SB 1455, amending 68 O. S. Supp. 2015, §2817, effective Jan. 1, 2017.
17. HB 2526, amending 68 O. S. 2011, §2862; effective Nov. 1, 2016.
18. HB 3201, amending and repealing multiple versions of 68 O. S. Supp. 2015, §2902; effective April 26, 2016.
19. HB 2349, amending 68 O. S. 2011, §2890, effective Nov. 1, 2016.
20. SB 1577, amending 68 O. S. Supp. 2015, §1001.3a; effective July 1, 2016.
21. HB 2774, amending 68 O. S. 2011, §§1003, 1005; repealing 68 O. S. 2011, §1016; effective July 1, 2016.
22. HB 2303, amending 68 O. S. 2011, §§1101, 1102; 68 O. S. Supp. 2015, §1103; effective April 26, 2016.
23. HB 2932, amending 68 O. S. 2011, §§1504, 1506, 1507; repealing 68 O. S. 2011, §1508; effective Nov. 1, 2016.
24. SB 1579, enacting non-codified provisions and amending 68 O. S. 2011, §1002, effective Aug. 26, 2016; SB 1282, enacting non-codified provisions; effective Nov. 1, 2016.
25. HB 3201, amending and repealing multiple versions of 68 O. S. Supp. 2015, §205; effective April 26, 2016.
26. HB 2763, adding 62 O. S. Supp. 2016, §§34.102-34.104 and amending 68 O. S. 2011, §§1004 and 68 O. S. Supp. 2015, §2352; effective Nov. 1, 2016.

ABOUT THE AUTHOR

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