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2018 legislative changes to Oklahoma tax law

By Mike Miers, CPA, and Brent Watson, CPA

Through special sessions in 2017 and the regular session in 2018, the Oklahoma Legislature enacted changes in the Oklahoma tax laws.

INCOME TAX

- HB 1011 placed a limit on the net amount of itemized deductions allowed on an Oklahoma individual income tax return. Itemized deductions shall not exceed $17,000. An exception to this limit applies to itemized deductions for charitable contributions and medical expenses that are deductible for federal income tax purposes and those shall be excluded from the $17,000 limit. This change is effective Jan. 1, 2018.
- SB 893 amended the Oklahoma income tax credit allowed for the generation of electricity by zero-emission facilities to limit allowance of the credit for non-wind generation facilities, including water, sun and geothermal energy, to tax years ending no later than 2021. For tax years beginning on or after Jan. 1, 2019, the total amount of such credits shall be annually limited to $500,000 per year.
- HB 1034 amended and limited the Oklahoma income tax credit allowed for the use and consumption of coal in furnishing water, heat, light or power or for manufacturing. For tax years beginning on and after Jan. 1, 2018, the total amount of such coal credits shall be limited annually to $5,000,000 per year.
- HB 1036 amended and limited the Oklahoma income tax railroad reconstruction and repair credit. For tax years beginning on and after Jan. 1, 2018, the total amount of such credits shall be limited to $2,000,000 per year.
- SB 1585 enacted Oklahoma income tax credits intended to be an incentive for new motor vehicle manufacturing in the state. Oklahoma income tax credits will be allowed to qualified employers and qualified employees involved in motor vehicle manufacturing in Oklahoma. A qualified employer generally means an employer whose principal business activity involves motor vehicle manufacturing placed in operation after Nov. 1, 2018. A qualified employer shall be allowed Oklahoma income tax credits for tuition reimbursement and compensation paid to qualified employees. Qualified employees shall be allowed Oklahoma income tax credits of up to $5,000 annually for five years, with carryover for five years. The total amount of credits allowed to qualified employers and to qualified employees will be limited annually to $3,000,000 and $2,000,000, respectively.
- HB 3715 enacted an allowance of installment payments of Oklahoma income tax for a taxpayer that elects to make installment payments of federal income tax on repatriated foreign income pursuant to the provisions of section 965(h) of the Internal Revenue Code.
- The Oklahoma income tax legislation enacted in 2018 also included reauthorization of Oklahoma income tax checkoff refund contributions for the Oklahoma Pet Overpopulation Fund, Court Appointed Special Advocates and the Public Schools Classroom Support Revolving Fund, and enactment of an income tax checkoff refund contribution for an Oklahoma AIDS Care Revolving Fund.

SALES TAX

House Bill 1019 – E-commerce and Remote Sellers: This bill requires any remote seller, marketplace facilitator or referrer with aggregate sales in the state of at least $10,000 to do one of two things: Obtain a sales or use tax account and begin to collect and remit tax for the sales made or comply with notice and reporting requirements similar to 1099 federal tax requirements.

Marketplace facilitators contract to provide services to third-party sellers to promote, facilitate and/or fulfill sale of products through the marketplace (example: Amazon). As a result, a company is deemed to be a marketplace facilitator for third party sales facilitated through websites. This legislation requires the facilitator to collect the sales or use tax due on a sale by a third-party seller in the marketplace.

The definition of a "referrer" is lengthy and complicated, but they are basically companies to aggregate orders for a seller and pass along the information to the seller and are similar to marketplace facilitators.

In order to comply with the notification requirements, three elements must be met:

1. At the time of the sale, the seller:
   - Cannot make a statement that no sales tax is due;
   - Must state that tax is not being collected;
   - Provide a statement that the purchaser may be required to remit use tax directly to the Oklahoma Tax Commission; and
   - Provide instructions for obtaining more information from the OTC regarding how to remit use tax.

2. By January 31 annually, the seller must provide to each customer:
   - A statement that the remote seller or marketplace facilitator did not collect sales or use tax in connection with the purchaser's transactions with the remote seller or marketplace facilitator and that the purchaser may be required to remit use tax to the OTC;
   - A list, by date, indicating the type and purchase price of each product purchased or leased by the purchaser from the remote seller or marketplace facilitator and delivered to a location within Oklahoma;
   - Instructions for obtaining additional information from the OTC regarding whether and how to remit use tax to the OTC; and
   - A statement that the remote seller or marketplace facilitator is required to submit a report to the OTC that includes the name of the purchaser and the aggregate dollar amount of the purchaser's purchases from the remote seller or marketplace facilitator.

3. By January 31 annually, the seller must provide to the OTC:
   - The purchaser's name;
   - The purchaser's billing address and, if different, the purchaser's last-known mailing address;
   - The address within Oklahoma to which products were delivered to the purchaser;
   - The aggregate dollar amount of the purchaser's purchases from the remote seller or marketplace facilitator; and
   - The name and address of the remote seller, marketplace facilitator or marketplace seller that made the sales to the purchaser.

This statute imposes a punitive penalty for non-compliance in an amount which is the lesser of $20,000 or 20 percent of total sales in Oklahoma during the previous 12 months.

GROSS PRODUCTION TAX

HB 1085 amended the oil and gas gross production tax with respect to a reduced incentive rate of 4 percent levied on production from certain wells drilled prior to July 1, 2015. The reduced incentive rate of 4 percent for such production was increased to the 7 percent regular rate effective for production in December 2017. The 60-month incentive term period for a lower rate was eliminated.

HB 1010 subsequently amended the gross production tax incentive rate of 2 percent to increase the incentive rate to 5 percent. The new 5 percent rate applies for all new and existing wells that qualified for the prior incentive rate of 2 percent, effective for the production month of July 2018. The 5 percent incentive rate applies for the first 36 months of production. After the 36-month period, the rate increases to the regular 7 percent rate.

TOBACCO TAX

HB 1010 amended the tobacco tax by providing that an additional tax is levied on the sale, use, possession or consumption of cigarettes at the rate of 50 mills per cigarette (an increase of $1.00 per pack of 20 cigarettes). A tax at the same rate as is levied on cigarettes is levied upon little cigars.

MOTOR FUEL TAX

HB 1010 amended the motor fuel tax to levy a new additional tax of three cents ($0.03) per gallon on all gasoline used or consumed in Oklahoma, and a new additional tax of six cents ($0.06) per gallon on all diesel fuel used or consumed in Oklahoma.

TAX ADMINISTRATION AND PROCEDURE

HB 3156 amended the requirement that a Tax Commission agreement to settle a tax controversy must be approved by the district court of Oklahoma County. Such court approval is now required only if the amount of tax involved exceeds $25,000. Similarly, a previous rule requiring Tax Commission authority to abate tax liability, interest and penalty on the grounds of probable bankruptcy, insolvency, actions beyond control of the taxpayer, or non-payment of trust fund taxes (withholding, vendor collected sales tax) is subject to approval by the district court of Oklahoma County was amended to provide that such court approval is now required only if the tax liability involved exceeds $25,000. The previous threshold requiring court approval in such cases was $10,000.