



Oklahoma Tax Commission 2017 Proposed Rules Changes

Sheppard F. Miers, Jr.

February 14, 2017

The Oklahoma Tax Commission has published 2017 proposed changes and additions to its rules governing administration of Oklahoma taxes. Tax Commission rules are adopted and published as part of the Oklahoma Administrative Code (“OAC”).

The proposed changes include amendment of Tax Commission rules to implement the limit of or “cap” on the investment/new jobs credit and limits to other income tax credits and deductions enacted in 2016. The rules are changed with respect to Oklahoma sales and use tax on interstate sales to customers in Oklahoma by out-of-state vendors as provided for in the Oklahoma Retail Protection Act of 2016. The rules changes also implement the limitation of gross production tax refunds for economically at risk oil and gas leases which was enacted in 2016.

This summary describes some of the 2017 proposed changes to the Tax Commission rules. The complete text of the 2017 proposed changes to the Tax Commission rules is available online at www.ok.gov/tax/.

Income Tax

- Provisions are added to the rules for administration and interpretation of the annual state-wide cap of \$25 Million on the investment/new jobs credit in 2016 through 2018, enacted by SB 1582 (2016). OAC § 710:50-15-74.
- The rules are changed to provide that the coal credit is reduced to 75% of the amount under prior law, as provided for in SB 1614 (2016). OAC § 710:50-15-76.
- The rules are amended to reflect that the refundable earned income credit is eliminated, pursuant to SB 1604 (2016). OAC § 710:50-15-90.
- The rules are changed to provide that the credit for railroad modernization is reduced by 25% for tax years beginning in 2016, as provided for in HB 3204 (2016). OAC § 710:50-15-103.

- The rules changes provide that the credit for construction of energy efficient homes is eliminated effective July 1, 2016, pursuant to SB 1603 (2016). OAC § 710:50-15-104.
- The rules are changed to provide that state and local income taxes or sales tax included in itemized deductions for federal income tax purposes must be added back to calculate Oklahoma taxable income in order to disallow double deduction of state taxes, pursuant to changes enacted by SB 1606 (2016). OAC §§710:50-3-35, 710:50-15-50.
- The changes of due dates of income tax returns enacted in 2016 by HB 2775 (2016) are reflected in the rules. OAC §§ 710:50-3-3, 710:50-3-4.
- The rule for the policy governing electronic signature methods on an electronically-filed Oklahoma income tax return is amended. OAC § 710:50-3-45.
- The rules are amended to provide that an amendment and re-computation of federal adjusted gross income for a prior year on an Oklahoma income tax return will be recognized for a taxpayer that has a claim of right adjustment and credit under Internal Revenue Code section 1341. OAC §§ 710:50-3-8, 710:50-3-9.
- The rules are amended to provide the Tax Commission will be required to pay interest on refunds on returns filed electronically if not paid within 45 days, pursuant to changes enacted in House Bill 2775 (2016). OAC § 710:50-9-3.

Sales Tax and Use Tax

- The definition of “maintaining a place of business” in the rules for purposes of the Oklahoma Sales Tax Code is amended to implement and administer provisions enacted by HB 2531 (2016), the Oklahoma Retail Protection Act of 2016. The changes relate to attributing nexus to out-of-state vendors for purposes of the requirement to collect and remit Oklahoma sales tax based on actions and operation of affiliated businesses, or relationships to other activities, in the state. OAC § 710:65-1-8.
- The additional requirements placed on non-collecting retailers with respect to providing statements to customers in Oklahoma as to their owing Oklahoma use tax are added to the use tax rules of the Tax Commission for changes in law enacted by HB 2531. OAC § 710:65-21-8.
- The rules include the state policy, in accordance with Oklahoma's participation in the Streamlined Sales and Use Tax system, regarding information which must be obtained by a vendor from a purchaser claiming a resale exemption for sales tax purposes in order to be relieved from liability to collect sales tax. OAC § 710:65-7-8.
- The procedure provided for credit/refund requests by a purchaser stated in the rules is amended for clarification. OAC § 710: 65-11-1.
- Provisions in the rules governing refunds to contractors due to change of sales tax rate are amended. OAC § 710:65-13-70.

- The rules governing protest procedures are amended. OAC § 710:65-13-155.
- The rules for sales tax treatment of sales of prosthetic devices for use by an individual are amended for clarification. OAC §§ 710:65-13-170,710: 65-13-171.
- The rule governing the form utilized to claim a sales or use tax refund is amended. OAC § 710:65-13-356.

Gross Production Tax

- The rules for gross production tax are amended to implement the provisions of SB 1577 (2016) which amends the definition of "economically at-risk oil or gas lease" and limits the amount of authorized refunds for each calendar year for 2015 through 2020 to \$12,500,000.00. OAC §§710:45-9-81 - 710:50-45-9-84.
- The rules are amended to implement the provisions of HB 2774 (2016) by removing the mandate that railroad, pipeline and transportation companies report to the Tax Commission all information related to the transportation of crude oil or gas subject to gross production tax; subject to reports being required to be provided if requested by the Tax Commission. OAC §§ 710:45-11-8,710:45-15-6.

Ad Valorem Tax

- The rules applicable to the five (5) year new manufacturing facilities ad valorem tax exemption are amended to include provisions related to enactment of SB 1282 (2016) which modified the definition of investment costs for purposes of qualification for the exemption. OAC §710:10-7-2.2.
- The rules with respect to a Business Personal Property Valuation Schedule of the Ad Valorem Division of the Tax Commission are amended to provide current information for obtaining access to the schedule and provide notice of participation in surveys to be conducted by the Ad Valorem Division. OAC §§710:10-2-1; 710:10-2-5.
- The rules for the five (5) year new manufacturing facilities ad valorem tax exemption as to what are qualified manufacturing facilities are amended to remove wind electric power generation facilities placed in operation after 2016, consistent with SB 498 (2015). OAC §710:10-7-2.2.
- The rules are amended for ad valorem tax exemption for oil and gas property upon which gross production tax has been paid to implement the provisions of SB 166 (2013) with respect to commercial disposal system equipment. OAC §710:10-8-2.
- The provisions of HB 2349 (2016) which removed veterans' disability income from the calculation of gross household income for purposes of qualification for the additional homestead exemption and senior valuation limitation, and procedures and form information for additional homestead exemption qualification are implemented by the rules. OAC §710:10-1-4.

- The rules are amended to update information to include orthophotographic aerials instead of Soil Conservation Service or Farm Service aerials for a source of additional data for use classifications. OAC §710:10-3-27.

Motor Fuel Tax

- The rules for motor fuel taxes are amended to require the electronic filing of motor fuel tax monthly reports. OAC §710:55-4-106.

Tax Commission Administrative Operations

- The administrative rules on payment of taxes were amended to provide that additional forms of payment (credit cards) will be accepted by the Tax Commission. OAC §710:1-3-48.

Comments on Proposed Rules

Any interested person may submit written comments on the proposed Tax Commission rules changes. The comment period is through 4:30 p.m., February 22, 2017. All comments must be considered by the Tax Commission. Comments may be sent to the Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194. Contact person: Lisa R. Haws, Telephone: 405-521-3133; Fax: 405-522-0063; email: lhaws@tax.ok.gov.

Tax Commission hearings on the proposed rule changes will be held at the Tax Commission, 2501 North Lincoln Blvd., Oklahoma City, OK, on February 23, 2017. Persons wishing to make oral comments at the public hearing should request placement on the docket in advance of the hearing date by calling the Tax Commission, Kali Walker, (405) 521-3133.

The Tax Commission rules are formal statements of policy written by the Tax Commission as a state agency which have the effect of law. The Tax Commission considers the rules to be *prima facie* evidence of a proper interpretation of the Oklahoma tax law and presumed to be valid until declared otherwise by a court of competent jurisdiction. Proposed Tax Commission rules, and changes to them, if adopted by the Tax Commission, are submitted for review to the Legislature and Governor and final adoption.

This article is provided for educational and informational purposes only and does not contain legal advice or create an attorney-client relationship. The information provided should not be taken as an indication of future legal results; and any information provided should not be acted upon without consulting legal counsel.



Sheppard F. Miers, Jr.
GableGotwals
1100 ONEOK Plaza
100 West Fifth Street, Suite 1100
Tulsa, Oklahoma 74103-4217
918-595-4834
Fax 918-595-4990
smiers@gablelaw.com