TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Returns and Reports
Part 5. Filing Status; Elections; Accounting Periods and Methods
710:50-3-35. Filing status and elections [AMENDED]
Subchapter 9. Refunds
710:50-9-3. Interest on refunds [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-50. Deductions [AMENDED]
Part 7. Credits against Tax
710:50-15-74. Credit for investment/new jobs [AMENDED]
710:50-15-76. Oklahoma coal credits [AMENDED]
710:50-15-90. Oklahoma earned income tax credit [AMENDED]
710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures [AMENDED]
710:50-15-104. Credit for construction of energy efficient residential property [AMENDED]

AUTHORITY:

68 O.S. §§ 203, 2357.11, 2357.46, and 2357.104; Oklahoma Tax Commission

DATES:

Adoption:

August 24, 2016 (Commission Order No. 2016-08-23-08)

Effective:

Immediately upon Governor's approval

Expiration:

Effective through September 14, 2017, unless superseded by another rule or disapproval by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Several statutory changes made by the 55th Legislature, 2nd Regular Session (2016) are effective for the 2016 tax year. Therefore, an emergency exists in which emergency rules need to be put in effect in order for the Oklahoma Tax Commission to implement these new provisions in the law.

ANALYSIS:

Sections 710:50-3-35 and 710:50-15-50 have been amended to implement the provisions of Senate Bill 1606 which requires state and local income taxes or sales taxes included in itemized deductions be added back to calculate Oklahoma taxable income (by subtracting them from itemized deductions) effective for tax year 2016. **68:2358**

Section 710:50-9-3 has been amended to implement the provisions of House Bill 2775 (effective July 1, 2016) which requires the Tax Commission to pay interest on refunds claimed on returns filed electronically if those refunds are not paid within forty-five (45) days. **68:217**

Section 710:50-15-74 has been amended to implement the provisions of Senate Bill 1582 which relates to the Investment/New Jobs Income Tax Credit, by limiting the amount of credit for various periods by implementing a $25,000,000 annual cap for tax years beginning on or after January 1, 2016 and ending on or before December 31, 2018. **68:2357.4**

Section 710:50-15-76 has been amended to implement the provisions of Senate Bill 1614 which relates to the Coal Credit, by limiting this credit to seventy-five percent 75% of the amount allowed under current law, effective January 1, 2016. **68:2357.11**

Section 710:50-15-90 has been amended to implement the provisions of Senate Bill 1604 which relates to the Oklahoma Earned Income Credit, by eliminating the refundable aspect of this credit beginning with tax year 2016. **68:2357.43**

Section 710:50-15-103 has been amended to implement the provisions of House Bill 3204, which relates to the Credit for Railroad Modernization, by reducing this credit by twenty-five percent (25%) for tax years beginning on or after January 1, 2016. **68:2357.104**

Section 710:50-15-104 has been amended to implement the provisions of Senate Bill 1603, which relates to Credit for the Construction of Energy Efficient Homes, by eliminating this credit for any period on or after July 1, 2016. **68:2357.46**

CONTACT PERSON:

Lisa Haws, OBA #12695, Tax Policy Analyst; (405) 521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR:

SUBCHAPTER 3. RETURNS AND REPORTS

PART 5. FILING STATUS; ELECTIONS; ACCOUNTING PERIODS AND METHODS

710:50-3-35. Filing status and elections

For the purpose of determining any income tax liability, a taxpayer's filing status, and any elections, such as itemized deductions (subject to the limitations in *OAC* 710:50-15-50), shall be the same as on the Federal Income Tax Return. In cases where no return has been filed, any information made available by the I.R.S., whether a Revenue Agents Report (R.A.R.), or other related return information, shall constitute the filing status and elections for the purpose of the determination, assessment, and collection of any Oklahoma Income Tax liability.

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, 2016**. For returns filed on or after 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, 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) **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 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)]

~~(e)~~ (f) **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 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 15. OKLAHOMA TAXABLE INCOME

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-50. Deductions

(a) Oklahoma itemized deductions to income will be the same as Federal itemized deductions, subject to the limitation in (i) of this Section. In the event the standard deduction is used on the Federal Return, the Oklahoma standard deduction must be used.

(b) For tax year 2005 and prior, the standard deduction for Oklahoma is the larger of $1,000.00 or 15% of Oklahoma Adjusted Gross Income not to exceed $2,000.00 (if married filing separately, the larger of $500.00 or 15% not to exceed $1,000.00).

(c) For tax year 2006, taxpayers filing as married joint, head of household or surviving spouse will have a standard deduction for Oklahoma of $3,000.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $2,000.00.

(d) For tax year 2007, taxpayers filing as married joint or surviving spouse will have a standard deduction for Oklahoma of $5,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $2,750.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of $4,125.00.

(e) For tax year 2008, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of $6,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $3,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of $4,875.00.
(f) For tax year 2009, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of $8,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $4,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of $6,375.00.
(g) For tax year 2010 and subsequent tax years, taxpayers will have a standard deduction for Oklahoma equal to the standard deduction allowed by the Internal Revenue Code of 1986 based upon the amount and filing status prescribed by the Code for purposes of filing federal individual income tax returns.
(h) Taxpayers will be required to add back the "qualified motor vehicle taxes" which were allowed as an itemized deduction on the Federal return under the provisions of the American Recovery and Reinvestment Act of 2009.
(i) For tax year 2016 and subsequent tax years, taxpayers shall add back state and local sales or income taxes which were allowed as an itemized deduction on the Federal income tax return.

PART 7. CREDITS AGAINST TAX

710:50-15-74. Credit for investment/new jobs

(a) **For tax years 1981 through 1987.** For tax years 1981 through 1987 the Oklahoma Investment/New Jobs Credit is allowed for Oklahoma Income Tax purposes only on investment in qualified depreciable property which directly results in a net increase in the number of employees engaged in manufacturing or processing in this state.
(b) **For 1988, and later years.** For 1988, and later years, the Oklahoma Investment/New Jobs Credit may be calculated on the investment or new employees when other qualifications are met. (See OTC Form 506).
(c) **Examples.** A company engaged in the process of cooking hamburgers for sale to the general public does not qualify for the Investment/New Jobs Credit. The Oklahoma Supreme Court determined, in the case **McDonald's Corp. vs. Oklahoma Tax Commission**, 563 P.2d 635 (Okla. 1977), that a company engaged in retail sales or a service organization (laundry, transportation, oil & gas production, drilling, restaurant, repair services, etc.) does not qualify for Oklahoma Investment/New Jobs Credit. [**See:** 68 O.S. §§ 2357.4, 2357.5]
(d) **"Processing" defined.** For purposes of this Section, **"processing"** means the preparation of tangible personal property for market. "Processing" begins when the form, context, or condition of the tangible personal property is changed with the intent of eventually transforming the property into a saleable product. "Processing" ends when the property being processed is in the form in which it is ultimately intended to be sold at retail. A business that has the majority of its emphasis on the retail side of business does not qualify as a processor or a manufacturer for purposes of this credit.
(e) **Leasing of employees by manufacturing or processing entity for purposes of the new jobs credit.** A company that engages in manufacturing or processing may still qualify for the Oklahoma New Jobs Credit pursuant to 68 O.S. § 2357.4 even though they lease their employees through an employee leasing company. The leased employees must still meet the requirements of 68 O.S. § 2357.4 for full-time equivalent employees and there must exist an employer-employee relationship between the leased employees and the employer who seeks the new jobs credit pursuant to 68 O.S. § 2357.4. Whether the employer-employee relationship exists between the employer manufacturing

or processing entity and an employee who is leased will be determined on a case by case basis by considering the following factors:

(1) The right of the employer to control the details of the employees work;

(2) The employer furnishing the tools and the workplace;

(3) The employee having taxes, worker's compensation and unemployment insurance funds withheld and the employer being liable for these items;

(4) The employer's right to discharge the employee; and

(5) The permanency of the employer-employee relationship.

(f) **Transfer of employees.** The transfer of employees to or from a leasing company cannot generate any additional credit, nor will any transfer of employees extend the period of time in which a current credit may be claimed.

(g) **Carryover.** Any credits allowed based on assets placed into service prior to January 1, 2000, or an increase in employment but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, in order, to each of the fifteen (15) years following the initial five-year period. Credits allowed for assets placed into service after December 31, 1999, but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, to any year following the initial five-year period.

(h) **Limitations.**

(1) No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act) or Section 3911 et seq. of the Oklahoma Statutes (21st Century Quality Jobs Incentive Act) shall be eligible to receive the credit described in this Section in connection with the activity and establishment for which incentive payments have been, or are being received. Effective January 1, 2010, this limitation does not apply to the investment / new jobs credit earned under 68 O.S. § 2357.4 (which requires a $40 million investment within a three (3) year time period). Further, the entity must pay an annualized wage which equals or exceeds the state average wage. The qualifying entity must also obtain a determination letter from the Oklahoma Department of Commerce that the business activity of the entity will result in a positive net benefit rate. [**See:** 68 O.S. §§ 3607, 3909 and 3919]

(2) Business entities that benefit from proceeds of obligations issued by the Oklahoma Development Finance Authority from the Economic Development Pool may not claim any investment tax credits during the period of time that withholding taxes attributable to the payroll of said entity are being paid to the Community Economic Development Pooled Finance Revolving Fund or in any manner used for the payment of principal, interest or other costs associated with any obligations issued by the Oklahoma Development Finance Authority pursuant to the provisions Oklahoma Community Economic Development Pooled Finance Act.

(3) Effective for tax years beginning on or after January 1, 2016 and ending on or before December 31, 2018, no more than Twenty-five Million Dollars ($25,000,000.00) of credit may be allowed as an offset in a taxable year. The formula to be used for the percentage adjustment shall be Twenty-five Million Dollars ($25,000,000.00) divided by the amount of credits used to offset tax in the second preceding year. [68 O.S. § 2357.4(L)] The Tax Commission shall determine the percentage which may be claimed as a credit no later than September 1 of each calendar year. Any credits carried over into or earned during the 2016, 2017, and 2018 tax years but which are not allowed to be offset against income tax due to the application of the Twenty-

five Million Dollar ($25,000,000.00) cap may be carried over as outlined in subsection (g) and will be available to offset income tax in subsequent tax years.

(i) **Tax credit moratorium.**

(1) Credits based on assets placed in service or jobs created prior to July 1, 2010 are not affected by the tax credit moratorium and may be claimed as provided under 68 O.S. § 2357.4.

(2) No credit may be claimed for assets placed in service or new jobs created on or after July 1, 2010 through June 30, 2012. Credits generated during this time period are deferred, and may be claimed beginning with tax year 2012 returns, subject to the following limitations:

(A) Credits accrued during the period from July 1, 2010 through June 30, 2012, shall be limited to a period of two (2) taxable years.

(B) Only fifty percent (50%) of the total amount of the credit generated between July 1, 2010 and June 30, 2012 may be claimed each taxable year.

(C) Amended returns shall not be filed after July 1, 2012 to claim the credits generated between July 1, 2010 and June 30, 2012 for tax years prior to tax year 2012.

(3) For example, a calendar year taxpayer places qualifying assets of $150,000.00 in service in August 2010 which generates $1,500.00 of credit for investment/new jobs per tax year for a five (5) year period (tax year 2010 through 2014) for a total of $7,500.00. This results in the taxpayer generating $3,000.00 of tax credits between July 1, 2010 and June 30, 2012. The taxpayer can initially claim $1,500.00 in tax year 2012 and $1,500.00 in tax year 2013 of credits generated during the moratorium. Taxpayer may also claim an additional $1,500.00 of credits in both tax year 2012 and 2013. Final $1,500.00 of credits can be claimed in tax year 2014.

710:50-15-76. Oklahoma coal credits

(a) **General provisions applicable to qualifying business entities purchasing Oklahoma-mined coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for legal business entities purchasing Oklahoma-mined coal for qualifying purposes. In order to qualify for the Oklahoma Coal Credit, the business entity must either furnish water, heat, light, or power to the citizens or to the State of Oklahoma, or burn coal to generate heat, light, or power for use in manufacturing operations in Oklahoma. [**See:** 68 O.S. § 2357.11; **Wyoming v. Oklahoma**, 112 S.Ct. 789 (1992)]

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Two Dollars ($2.00) per ton of Oklahoma-mined coal purchased. For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Two Dollars and eighty-five cents ($2.85) per ton of Oklahoma-mined coal purchased, except as provided in (h) of this Section.

(2) **Extended basic credit.** For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Two Dollars and fifteen cents ($2.15) per ton of Oklahoma-mined coal purchased. The extended basic credit may not be claimed or transferred prior to January 1, 2008, except as provided in (h) of this Section.

(3) **Additional credit for large quantity purchasers.** For tax years beginning on or after January 1, 1995, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, there shall be allowed, in addition to the credit described in (1) of this subsection, a **supplemental** credit of Three Dollars ($3.00) per ton of

Oklahoma-mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.

(b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2021, there shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, **so long as** the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than Sixty-eight Dollars ($68.00) per ton.

(1) **Basic credit.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Ninety-five Cents ($0.95) per ton and for the period of July 1, 2006 through December 31, 2006, and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Five Dollars ($5.00) for each ton of coal mined, produced, or extracted in, on, under, or through a permit in this state, <u>except as provided in (h) of this Section.</u>

(2) **Additional credit for thin seam coal.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period of January 1, 2006 through June 30, 2006, there shall be allowed, in addition to that described in (1) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents ($0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state, **so long as** the purchaser of the thin seam coal purchases less than Seven Hundred Fifty Thousand (750,000) tons of Oklahoma coal per year.

(3) **Extended credit for thin seam coal.** For tax years beginning on or after January 1, 2005 and ending on or before December 31, 2005, for the period of January 1, 2006, through June 30, 2006, there shall be allowed, in addition to that described in (1) and (2) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents ($0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state on or after July 1, 2005.

(c) **Transferability.** The coal credits allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** means *any taxpayer subject to the tax imposed by Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.* [**See:** 68 O.S. § 2357.11(H)] Pursuant to the statutory definition, an "eligible transferee" taxpayer may be an individual, as well as a legal business entity.

(2) **Written transfer agreement requirements.** The business entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.

(3) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(4) **Limitation of transferability**. Credits earned after December 31, 2013, shall not be transferable.

(d) **Application of credit election.** Any coal credit may, upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax, or a payment of estimated tax for purposes of Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable. Coal credits shall not be used to lower the price of any Oklahoma-mined coal sold that is produced by a subsidiary of the person receiving a tax credit under this section to other buyers of the Oklahoma-mined coal.

(e) **Carryover provisions.** Any coal credit earned prior to January 1, 2014, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability for credits earned prior to January 1, 2014.

(f) **Refund of tax credits**. Credits earned on or after January 1, 2014, but not used, shall be refunded to the taxpayer at eighty-five percent (85%) of the face amount of the credits. If the taxpayer is a pass-through entity and does not file a claim for a direct refund, the pass-through entity shall allocate the credit to one or more of the shareholders, partners or members of the pass-through entity. The total amount of credits refunded or allocated shall not exceed the amount of the credit or refund to which the pass-through entity is entitled.

(g) **Tax credit moratorium**. No credit may be claimed for coal purchased, mined, produced or extracted during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for Oklahoma-mined coal for qualifying purposes purchased, mined, produced or extracted on or after July 1, 2012.

(h) **Tax credit limitation**. For any credits calculated pursuant to (a)(1) or (a)(2), or (b)(1) of this Section for activities occurring on or after January 1, 2016, the amount of credit allowed shall be equal to seventy-five percent (75%) of the amount otherwise provided. [68 O.S. § 2357.11(N)]

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 for resident and part year resident individuals.

(b) The Oklahoma Earned Income Tax Credit 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. Effective for tax year 2016 and subsequent tax years, 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. The Oklahoma Earned Income Tax Credit 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 ~~are~~ 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%).

710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures

(a) **General provisions**. For tax years beginning after ~~12/31/05~~ December 31, 2005 there is a credit allowed against the tax imposed by Section 2355 of Title 68 equal to 50% of an eligible taxpayer's qualified railroad reconstruction or replacement expenditures.

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

(1) **"Eligible taxpayer"** means any railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(2) **"Qualified railroad reconstruction or replacement expenditures"** means expenditures for reconstruction or replacement of railroad infrastructure. This includes track, roadbed, bridges, industrial leads and track-related structures owned or leased by a Class II or Class III railroad as of January 1, 2006. Qualified railroad reconstruction or replacement expenditures can also include new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by a Class II or Class III railroad.

(c) **Limitations.**

(1) The amount of the credit may not exceed the product of Five Hundred Dollars ($500.00) for tax year 2007 and Two Thousand Dollars ($2,000.00) for tax years 2008 and the number of miles of railroad track owned or leased within this state by the eligible taxpayer as of the close of the taxable year. In tax year 2009 and subsequent tax years, an eligible taxpayer may elect to increase the limit for tax year 2008 to an amount equal to three times the amount specified. However, the taxpayer may only claim one third (1/3) of the credit in any one taxable period. An eligible taxpayer who elects to increase the limitation on the credit will not be granted additional credits during the period of such election.

(2) Effective for tax years beginning on or after January 1, 2016, the credit is limited to seventy-five percent (75%) of the otherwise allowable credit. [68 O.S. § 2357.104(H)]

(d) **Transferability.** The credits allowed pursuant to this Section that are not used are freely transferable by written agreement, to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** shall be any taxpayer subject to the tax imposed by Section 2355 of Title 68.

(2) **Written transfer agreement requirements.** The person originally allowed the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring person, and the tax year or years for which the credit may be claimed.

(e) **Carryover provisions.** Any credit allowed pursuant to the provisions of this Section, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification.

(f) **Tax credit moratorium**. No credit may be claimed for qualified railroad reconstruction or replacement expenditures occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. Qualified railroad reconstruction or replacement expenditures occurring before July 1, 2010 will qualify for the tax credit regardless of when the Department of Transportation issues the certificate of verification of completion of the project. This credit may be claimed for tax year 2012 and subsequent tax years, for qualified railroad reconstruction or replacement expenditures on or after July 1, 2012.

710:50-15-104. Credit for construction of energy efficient residential property

(a) **General provisions.** Effective for ~~tax~~ the time period beginning on or after January 1, 2006,

and ending on or before July 1, 2016 ~~year 2006~~, a credit is available for contractors who construct either energy efficient residential property or energy efficient manufactured homes. The credit is dollar for dollar based on the cost of certain eligible expenditures.

(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Contractor"** is the taxpayer who actually constructed the residential property or manufactured home. In cases if more than one person qualifies as the contractor, the primary contractor.

(2) "**Eligible energy efficient residential property**" means a newly constructed residential property or manufactured home property located in the State of Oklahoma. Further the home cannot exceed two thousand (2,000) square feet in order to be eligible for the credit. The eligible energy efficient residential property must be substantially complete after December 31, 2005.

(3) **"Eligible expenditure"** includes the cost of energy efficient heating or cooling systems, insulation material specifically designed to reduce the heat gain or loss of a residential property, exterior windows, exterior doors or metal roofs with appropriate pigmented coatings designed to reduce the heat gain which meets Energy Star program requirements.

(4) "**Home energy ratings**" means a confirmed rating involving an on-site inspection of a home by a residential energy efficiency professional trained and certified by a Residential Energy Services Network accredited home energy rater.

(5) "**Residential energy services network provider**" means an accredited home energy inspector certified by Residential Energy Services Network.

(6) **"Residential property"** means a single dwelling unit, duplex, or townhouse with three stories or less, that provides independent living and could be sold or leased as separate property. The term does not include Group R-2 and R-4 residential buildings as defined in the International Energy Conservation Code.

(7) "**Substantially complete**" means the residential property or manufactured home has a certificate of occupancy issued if located in a municipality. For residential property or manufactured home in non-metropolitan area, the property will be substantially complete after passing the appropriate inspections required under the applicable County Building Codes permitted under 19 O.S. § 863.44.

(c) **Amount of credit.**

(1) The credit is capped at Four Thousand Dollars ($4,000) for those residential properties that are certified at forty percent (40%) or above of the International Energy Conservation Code 2003 and any supplement in effect at the time of completion. If the residential property is certified between twenty percent (20%) and thirty-nine (39%) of the International Energy Conservation Code of 2003 and any supplement in effect at the time of completion, the credit is limited to Two Thousand Dollars ($2,000.00).

(2) The credit is not available if the residential property is in excess of Two Thousand (2,000) square feet.

(d) **Carryover provisions.** Any credit allowed pursuant to the Section, to the extent not used, may be carried over in order to each of the four (4) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

(e) **Transfer of the credit.** Effective for credits earned on or after August 25, 2006, the credit for construction of energy efficient residential property may be transferred.

(f) **Tax credit moratorium.** No credit may be claimed for any expenditure made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. A credit will be allowed for eligible expenditures made prior to July 1, 2010 regardless of when

the property is substantially complete. This credit may be claimed for tax year 2012 and subsequent tax years, for eligible expenditures made on or after July 1, 2012, by contractors who construct either energy efficient residential property or energy efficient manufactured homes.

(g) **Termination of the credit**. No credit may be claimed for any expenditure made on or after July 1, 2016 for which the credit would otherwise be allowable. The credit shall be allowed for eligible expenditures made prior to July 1, 2016; however, the property must be substantially complete before January 1, 2017.

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. INCOME
710:50-3-35 and 710:50-15-50 [AMENDED]

(a.) **Purpose of the Proposed Rule:** The new rules are needed to implement the provisions of Senate Bill 1606 of the 55th Legislature, 2nd Regular Session (2016), which requires state and local income taxes or sales taxes included in itemized deductions be added back to calculate Oklahoma taxable income (by subtracting them from itemized deductions) effective for tax year 2016.

(b.) **Classes Affected:** All taxpayers who claim itemized deductions on their federal income tax return.

(c.) **Persons Benefited:** All taxpayers who claim itemized deductions on their federal income tax return.

(d.) **Probable Economic Impact:**

1. **On Affected Classes:** The promulgation of this rule implements legislation; the rule is not intended or expected to have any economic impact separate and apart from the underlying legislation.

2. **On Political Subdivision:** No economic impact separate and apart from the underlying legislation on political subdivisions.

3. **Fees:** This rulemaking action does not levy or implement a fee, nor does it increase an existing fee.

(e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.

(f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.

(g.) **Small Business Impact:** With reference to Sections 303(A)(4) and 303(B)(6) of Title 75 of the Oklahoma Statutes it is believed that the proposed rule will have no adverse impact upon small business.

(h.) **Alternative Methods and Costs of Compliance:** The purpose of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods.

(i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, public safety, or the environment. The rule is not being implemented to reduce risks.

(j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.

(k.) **Date:** August 16, 2016 **Date Modified:**

(l.) **Prepared By:** Lisa R. Haws **Phone Number:** 521-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. INCOME
710:50-9-3 [AMENDED]

(a.) **Purpose of the Proposed Rule:** This new rule is needed to implement the provisions of House Bill 2775 of the 55th Legislature, 2nd Regular Session (2016), which requires the Tax Commission to pay interest on refunds claimed on returns filed electronically if those refunds are not paid within forty-five (45) days.

(b.) **Classes Affected:** All taxpayers who claim a refund on their electronically-filed income tax return.

(c.) **Persons Benefited:** All taxpayers who claim a refund on their electronically-filed income tax return.

(d.) **Probable Economic Impact:**

1. **On Affected Classes:** The promulgation of this rule implements legislation; the rule is not intended or expected to have any economic impact separate and apart from the underlying legislation.

2. **On Political Subdivision:** No economic impact separate and apart from the underlying legislation on political subdivisions.

3. **Fees:** This rulemaking action does not levy or implement a fee, nor does it increase an existing fee.

(e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.

(f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.

(g.) **Small Business Impact:** With reference to Sections 303(A)(4) and 303(B)(6) of Title 75 of the Oklahoma Statutes it is believed that the proposed rule will have no adverse impact upon small business.

(h.) **Alternative Methods and Costs of Compliance:** The purpose of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods.

(i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, public safety, or the environment. The rule is not being implemented to reduce risks.

(j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.

(k.) **Date:** August 16, 2016 **Date Modified:**

(l.) **Prepared By:** Lisa R. Haws **Phone Number:** 521-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. INCOME
710:50-15-74 [AMENDED]

(a.) **Purpose of the Proposed Rule:** This rule is needed to implement the provisions of Senate Bill 1582 of the 55th Legislature, 2nd Regular Session (2016), which relates to the Investment/New Jobs Income Tax Credit, by limiting the amount of credit for various periods by implementing a $25,000,000 annual cap for tax years beginning on or after January 1, 2016 and ending on or before December 31, 2018.

(b.) **Classes Affected:** All taxpayers who claim the Investment/New Jobs tax credit on their Oklahoma income tax return.

(c.) **Persons Benefited:** All taxpayers who claim the Investment/New Jobs tax credit on their Oklahoma income tax return.

(d.) **Probable Economic Impact:**

1. **On Affected Classes:** The promulgation of this rule implements legislation; the rule is not intended or expected to have any economic impact separate and apart from the underlying legislation.

2. **On Political Subdivision:** No economic impact separate and apart from the underlying legislation on political subdivisions.

3. **Fees:** This rulemaking action does not levy or implement a fee, nor does it increase an existing fee.

(e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.

(f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.

(g.) **Small Business Impact:** With reference to Sections 303(A)(4) and 303(B)(6) of Title 75 of the Oklahoma Statutes it is believed that the proposed rule will have no adverse impact upon small business.

(h.) **Alternative Methods and Costs of Compliance:** The purpose of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods.

(i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, public safety, or the environment. The rule is not being implemented to reduce risks.

(j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.

(k.) **Date:** August 16, 2016 **Date Modified:**

(l.) **Prepared By:** Lisa R. Haws **Phone Number:** 521-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. INCOME
710:50-15-76 [AMENDED]

(a.) **Purpose of the Proposed Rule:** This rule is needed to implement the provisions of Senate Bill 1614 of the 55th Legislature, 2nd Regular Session (2016), which relates to the Coal Credit, by limiting this credit to seventy-five percent 75% of the amount allowed under current law, effective January 1, 2016.

(b.) **Classes Affected:** All taxpayers who claim the Coal Credit on their Oklahoma income tax return.

(c.) **Persons Benefited:** All taxpayers who claim the Coal Credit on their Oklahoma income tax return.

(d.) **Probable Economic Impact:**

1. **On Affected Classes:** The promulgation of this rule implements legislation; the rule is not intended or expected to have any economic impact separate and apart from the underlying legislation.

2. **On Political Subdivision:** No economic impact separate and apart from the underlying legislation on political subdivisions.

3. **Fees:** This rulemaking action does not levy or implement a fee, nor does it increase an existing fee.

(e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.

(f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.

(g.) **Small Business Impact:** With reference to Sections 303(A)(4) and 303(B)(6) of Title 75 of the Oklahoma Statutes it is believed that the proposed rule will have no adverse impact upon small business.

(h.) **Alternative Methods and Costs of Compliance:** The purpose of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods.

(i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, public safety, or the environment. The rule is not being implemented to reduce risks.

(j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.

(k.) **Date:** August 16, 2016 **Date Modified:**

(l.) **Prepared By:** Lisa R. Haws **Phone Number:** 521-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. INCOME
710:50-15-90 [AMENDED]

(a.) **Purpose of the Proposed Rule:** This rule is needed to implement the provisions of Senate Bill 1604 of the 55th Legislature, 2nd Regular Session (2016), which relates to the Oklahoma Earned Income Credit, by eliminating the refundable aspect of this credit beginning with tax year 2016.

(b.) **Classes Affected:** All taxpayers who claim the Oklahoma Earned Income Credit on their Oklahoma income tax return.

(c.) **Persons Benefited:** All taxpayers who claim the Oklahoma Earned Income Credit on their Oklahoma income tax return.

(d.) **Probable Economic Impact:**

1. **On Affected Classes:** The promulgation of this rule implements legislation; the rule is not intended or expected to have any economic impact separate and apart from the underlying legislation.

2. **On Political Subdivision:** No economic impact separate and apart from the underlying legislation on political subdivisions.

3. **Fees:** This rulemaking action does not levy or implement a fee, nor does it increase an existing fee.

(e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.

(f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.

(g.) **Small Business Impact:** With reference to Sections 303(A)(4) and 303(B)(6) of Title 75 of the Oklahoma Statutes it is believed that the proposed rule will have no adverse impact upon small business.

(h.) **Alternative Methods and Costs of Compliance:** The purpose of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods.

(i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, public safety, or the environment. The rule is not being implemented to reduce risks.

(j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.

(k.) **Date:** August 16, 2016 **Date Modified:**

(l.) **Prepared By:** Lisa R. Haws **Phone Number:** 521-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. INCOME
710:50-15-103 [AMENDED]

(a.) **Purpose of the Proposed Rule:** This rule is needed to implement the provisions of House Bill 3204 of the 55th Legislature, 2nd Regular Session (2016), which relates to the Credit for Railroad Modernization, by reducing this credit by twenty-five percent (25%) for tax years beginning on or after January 1, 2016.

(b.) **Classes Affected:** All taxpayers who claim the Credit for Railroad Modernization on their Oklahoma income tax return.

(c.) **Persons Benefited:** All taxpayers who claim the Credit for Railroad Modernization on their Oklahoma income tax return.

(d.) **Probable Economic Impact:**

1. **On Affected Classes:** The promulgation of this rule implements legislation; the rule is not intended or expected to have any economic impact separate and apart from the underlying legislation.

2. **On Political Subdivision:** No economic impact separate and apart from the underlying legislation on political subdivisions.

3. **Fees:** This rulemaking action does not levy or implement a fee, nor does it increase an existing fee.

(e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.

(f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.

(g.) **Small Business Impact:** With reference to Sections 303(A)(4) and 303(B)(6) of Title 75 of the Oklahoma Statutes it is believed that the proposed rule will have no adverse impact upon small business.

(h.) **Alternative Methods and Costs of Compliance:** The purpose of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods.

(i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, public safety, or the environment. The rule is not being implemented to reduce risks.

(j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.

(k.) **Date:** August 16, 2016 **Date Modified:**

(l.) **Prepared By:** Lisa R. Haws **Phone Number:** 521-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. INCOME
710:50-15-104 [AMENDED]

(a.) **Purpose of the Proposed Rule:** This rule is needed to implement the provisions of Senate Bill 1603 of the 55th Legislature, 2nd Regular Session (2016), which relates to Credit for the Construction of Energy Efficient Homes, by eliminating this credit for any period on or after July 1, 2016.

(b.) **Classes Affected:** Contractors who construct energy efficient residential property.

(c.) **Persons Benefited:** All taxpayers who claim the Credit for the Construction of Energy Efficient Homes on their Oklahoma income tax return.

(d.) **Probable Economic Impact:**

1. **On Affected Classes:** The promulgation of this rule implements legislation; the rule is not intended or expected to have any economic impact separate and apart from the underlying legislation.

2. **On Political Subdivision:** No economic impact separate and apart from the underlying legislation on political subdivisions.

3. **Fees:** This rulemaking action does not levy or implement a fee, nor does it increase an existing fee.

(e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through the normal agency budget.

(f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.

(g.) **Small Business Impact:** With reference to Sections 303(A)(4) and 303(B)(6) of Title 75 of the Oklahoma Statutes it is believed that the proposed rule will have no adverse impact upon small business.

(h.) **Alternative Methods and Costs of Compliance:** The purpose of the rule cannot be achieved by less costly, less intrusive, or non-regulatory methods.

(i.) **Public Health/Safety/Environmental Concerns:** The proposed rule will have no effect on public health, public safety, or the environment. The rule is not being implemented to reduce risks.

(j.) **Effect of Non-Implementation on Environment:** There will not be a detrimental effect on public health, safety, or the environment if the proposed rule is NOT implemented.

(k.) **Date:** August 16, 2016 **Date Modified:**

(l.) **Prepared By:** Lisa R. Haws **Phone Number:** 521-3133

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of amendments to, **CHAPTER 50. INCOME** which were adopted by the Oklahoma Tax Commission on August 23, 2016, under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S. §§ 250 et seq.

I, the undersigned, do hereby attest that such rules were adopted in substantial compliance with the Administrative Procedures Act.

Lisa R. Haws OBA#12695
Tax Policy Analyst
Tax Policy Division
Oklahoma Tax Commission
August 24, 2016

2016-08-23-08

TRANSMITTAL SHEET

NAME OF AGENCY: Oklahoma Tax Commission
TYPE OF DOCUMENT: Adoption of emergency rules
LIAISON VERIFICATION:

I verify that I have reviewed the attached document and that it substantially conforms to filing and format requirements of the APA and the rules of the Secretary of State. Additional information may be obtained by contacting me at (405) 521-3133.

Lisa R. Haws OBA#12695
Tax Policy Analyst
Tax Policy Division
August 24, 2016, 2016