

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING**

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

710:90-1-3 [AMENDED]

Subchapter 3. Returns and Payments

710:90-3-6 [AMENDED]

710:90-3-7 [AMENDED]

710:90-3-17 [AMENDED]

AUTHORITY:

68 O.S. § 203; Oklahoma Tax Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 19, 2013

COMMENT PERIOD:

January 15, 2014 to February 17, 2014

PUBLIC HEARING:

February 18, 2014

ADOPTION:

March 13, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 14, 2014

LEGISLATIVE APPROVAL:

n/a

LEGISLATIVE DISAPPROVAL:

n/a

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:

June 19, 2014

EFFECTIVE:

September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Section 710:90-1-3 has been amended to update a statutory citation.

Proposed amendments to Subchapter 3, "*Returns and Payments*" have been made to implement the provisions of House Bill 2576 [2012] which modified certain withholding tax remitters reporting requirements and changed the date late payment penalty is imposed for wage, royalty and pass through withholding. [68:2385.3, 2385.6, 2385.28, 2385.31]

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-3. Registration of employers

(a) Every employer required to deduct and withhold tax as required under 68 O.S. §2355(B) and 68 O.S. ~~§2385~~ 2385.2 shall register with the Commission for purposes of withholding, reporting, and remitting such tax. An employer must register on the prescribed Commission Business Registration Form and shall furnish such information as required by said form to include the following:

- (1) How the business is owned;
- (2) Federal Employer Identification Number; (If a Federal Employer Identification Number has been applied for but not received, indicate "applied for" in the space provided.)
- (3) Business phone;
- (4) Ownership information consisting of:
 - (A) Name of legal owner, social security number, if applicable, and mailing address;
 - (B) Name of partners or corporate officers, social security numbers, titles, and residential mailing address;
- (5) Withholding Tax information:
 - (A) Is tax withheld;
 - (B) Date Withholding Tax was or is expected to commence;
 - (C) Is the amount withheld greater than \$500.00 per quarter;
- (6) Name of officer, partner, employee, or agent responsible for the remittance of Withholding Tax, social security number, title, and residential mailing address;
- (7) Other information required to include but not limited to: Location information, previous owner information, etc.;
- (8) Signature of sole owner, partner, officer or agent and the date thereof.

(b) All taxes withheld must be reported and paid when due.

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-6. Employer overpayment of withholding tax not withheld

(a) Any employer who pays to the Commission more than the correct amount of tax **not deducted or withheld from employees wages**, may adjust the overpayment by entering the amount as a deduction on any future report. The report on which the adjustment is entered shall have attached:

- (1) A written statement setting forth in detail the grounds and facts relied on in support of the adjustment;
- (2) The report period in which the error occurred;
- (3) Sufficient documentary evidence in support of the adjustment.

(b) Alternatively, an employer may submit a claim for refund resulting from either the overpayment of tax not deducted or withheld or the overwithholding of tax repaid or reimbursed to any employee. Such claim for refund should not be made with any ~~monthly~~ or quarterly report. Refund claims shall include:

- (1) A written statement setting forth in detail the grounds and facts relied on in support of the

refund request;

- (2) The report period in which the overpayment occurred;
- (3) Sufficient documentation to substantiate that the overpaid amount was not withheld or deducted from employee's wages; and,
- (4) A written statement from each employee showing Social Security Number, date and amount of repayment or reimbursement, if applicable.

710:90-3-7. Employer repayment of tax erroneously withheld from any employee

(a) If during any ~~monthly or~~ quarterly report period an employer withholds more than the correct amount of tax from an employee, the employer shall not include on any report or pay over to the Commission the amount overwithheld if:

- (1) The employer repays the amount overwithheld before the report for such period is filed and before the end of the calendar year in which the overcollection was made; and
- (2) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of repayment.

(b) Any amount not repaid to and receipted for by the employee or required in (a) of this Section shall be reported and paid with the report for the period in which overcollection occurred.

(c) An employer may repay or reimburse an employee for tax overwithheld in any subsequent report period in either the same calendar year or in a subsequent calendar year. The employer may reimburse the employee by applying the amount overwithheld against the tax required to be withheld from wages paid the employee in a subsequent period.

(d) If the employee is repaid, the employer must obtain and keep as part of the records the written receipt of the employee showing the date and amount of repayment.

(e) If an employer repays or reimburses an employee for the overcollection of tax, the employer may adjust the overcollection by entering the amount as a deduction on the return for the report period in which the employer repays or reimburses the employee. The return on which the adjustment is entered shall have attached the following information:

- (1) A written statement explaining in detail the adjustment and the facts relied on in support of the adjustment; and
- (2) The return period in which the error occurred,
- (3) If from a previous calendar year:
 - (A) A written statement from each employee that the amount of overcollection repaid or reimbursed has not been refunded or claimed;
 - (B) A copy of the written receipt of each employee showing the date and amount of repayment or reimbursement;
 - (C) Each employee's social security number; and,
 - (D) The report period in which the error occurred.

710:90-3-17. Penalty and interest

(a) If an employer fails to file a return or to pay the Commission the Withholding Tax when due, there shall be imposed on such employer a penalty of ten percent (10%) of the amount of tax, or ten percent (10%) of the amount of the underpayment of tax, if such failure is not corrected ~~on or before the last day of the month when due~~ within fifteen (15) days after the tax becomes delinquent.

- (1) There is also imposed upon the employer interest at the rate of one and one-quarter percent (1 1/4%) per month.
- (2) If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty percent (50%) shall be assessed.

(b) At the discretion of the Commission, the interest or penalty may be waived, provided the taxpayer's failure to file a report or return or to pay the tax is satisfactorily explained or provided the taxpayer can demonstrate that the failure to pay the tax resulted from a mistake by the taxpayer of either law or fact or inability to pay such interest or penalty resulting from insolvency. Requests for waiver must be made in writing to the Account Maintenance Division and must include all pertinent facts to support the request.