

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME**

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

710:50-1-5 [AMENDED]

Subchapter 3. Returns and Reports

Part 1. General Information

710:50-3-6 [AMENDED]

Part 5. Filing Status; Elections; Accounting Periods and Methods

710:50-3-46 [AMENDED]

Subchapter 15. Oklahoma Taxable Income

710:50-15-30 [AMENDED]

Part 7. Credits against Tax

710:50-15-75 [AMENDED]

710:50-15-76 [AMENDED]

710:50-15-80 [REVOKED]

710:50-15-81 [AMENDED]

710:50-15-91 [AMENDED]

710:50-15-97 [AMENDED]

710:50-15-99 [AMENDED]

710:50-15-105 [AMENDED]

710:50-15-112 [AMENDED]

Subchapter 17. Oklahoma Taxable Income for Corporations

Part 5. Determination of Taxable Corporate Income

710:50-17-51 [AMENDED]

AUTHORITY:

68 O.S. §§ 203; 2357.11; 2357.22; 2368; Oklahoma Tax Commission

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n/a

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n/a

ANALYSIS:

Section 710:50-1-5 has been amended to remove language providing for the copying and distribution of taxpayer lists. [68:205(D)]

Section 710:50-3-6 has been amended to reflect a change in policy. For tax years 2013 and subsequent tax years, if a resident taxpayer is required or elects to amend an individual Oklahoma income tax return, OTC Form 511 must be used and the appropriate box indicating that the return is an amended return must be marked.

Section 710:50-3-46 has been amended to reflect legislative changes made in 2010 (House bill 3166, Second Regular Session of the 52nd Legislature). [68:2385]

Section 710:50-15-30 has been amended to update a statutory citation. [68:2358(E)(1)(c)]

Section 710:50-15-75 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for investments in equipment used for recycling, reuse, or source reduction of hazardous waste, effective January 1, 2014. [27A:2-11-303]

Section 710:50-15-76 has been amended to implement the provisions of Senate Bill 343, amending the Oklahoma coal credits. [68:2357.11]

Section 710:50-15-80 has been revoked to implement the provisions of House Bill 2308, which repealed the income tax credit for wind or photovoltaic systems, effective January 1, 2014. [68:2357.32]

Section 710:50-15-81 has been amended to reflect the provisions of House Bill 2005, which amended the Qualified Clean-Burning Motor Vehicle Fuel Property Credit by removing obsolete language regarding qualified electric motor vehicle property and extending the sunset date to December 31, 2019. [68:2357.22]

Section 710:50-15-91 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for employers providing child care services, effective January 1, 2014. [68:2357.26]

Section 710:50-15-97 has been amended to reflect the provisions of House Bill 1248, which repealed the income tax credit for breeders of specially trained canines. [68:2357.203]

Section 710:50-15-99 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for cost of purchase of a dry fire hydrant, effective January 1, 2014. [68:2357.102]

Section 710:50-15-105 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for research and development, effective January 1, 2014. [68:54006]

Section 710:50-15-112 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for electric motor vehicle manufacturers, effective January 1, 2014. [68:2357.402]

Section 710:50-17-51 has been amended to reflect the provisions of Senate Bill 166 which reinstated the net income limiter for the allowance of percentage depletion in computing Oklahoma taxable income for major oil companies effective for tax year 2014. [68:2353]

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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

710:50-1-5. Public records

The annual list of persons making and filing an Income Tax Return shall be made available for public inspection in the Taxpayer Assistance Division during the normal working hours of the Tax Commission. ~~Mechanically reproduced copies of specific information contained in this listing may be obtained from the Taxpayer Assistance Division at a cost to be determined by the Commission, and posted therein. Complete copies of microfiche are available from the Management Information Systems Division of the Tax Commission. That Division should be contacted for details and costs.~~ [See: 68 O.S. §§~~205(d)~~ 205(D), 2385.20]

SUBCHAPTER 3. RETURNS AND REPORTS

PART 1. GENERAL INFORMATION

710:50-3-6. Amended returns for individuals

(a) If a resident taxpayer is required or elects to file an ~~Individual Amended~~ individual amended Oklahoma Income Tax Return income tax return for tax years prior to 2013, OTC Form 511X must be submitted. For tax years 2013 and subsequent, if a resident taxpayer is required or elects to amend an individual Oklahoma income tax return, OTC Form 511 must be used and the appropriate box indicating that the return is an amended return must be marked. Items listed in (1) through (3) of this subsection, should be attached or an explanation if the item is not applicable:

(b) Part-year residents and nonresidents must use OTC Form 511NR and indicate the return is an amended return by marking the appropriate box.

(c) Whenever an individual Oklahoma income tax return is amended, items listed in (1) through (3) of this subsection should be attached or an explanation if the item is not applicable:

(1) A copy of the Amended Federal Income Tax Return amended federal income tax return, or a copy of the Federal Form 1040X, or Federal Form 1045,

(2) Proof that Internal Revenue Service has accepted the claim, such as a copy of the statement of adjustment, any correspondence from Internal Revenue Service, or a copy of the deposit slip of the Federal federal refund,

(3) Supporting documents for any adjustments to Federal Adjusted Gross Income federal adjusted gross income (OTC Form 511X Line 1) to support each **final** adjusted amount.

~~(b) Part-year residents and nonresidents must use OTC Form 511NR and indicate that the return is an amended return by marking the appropriate box,~~

~~(e) (d)When an individual taxpayer wishes to file or is required to file amended returns for more than one year, an amended return must be completed for each year an amendment is made. No amended return may encompass more than one single year. [See: 68 O.S. 2368]~~

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

710:50-3-46. Electronic filing requirement for tax return preparers

~~(a) Definitions. For purposes of this Section, "tax return preparer" means any person who~~

~~prepares, for compensation, any return of tax imposed under Title 68 of the Oklahoma statutes, including any claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes. The term "tax return preparer" also includes any person who employs one or more persons to prepare, for compensation, any return of tax imposed under Title 68 of the Oklahoma Statutes, including any claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes. All individual income tax returns, prepared by a specified tax return preparer and filed after December 31, 2010, shall be filed electronically. The term "specified tax return preparer" has the same meaning as provided in Section 6011 of the Internal Revenue Code of 1986, as amended. The preparation of a substantial part of a return or a claim for refund is deemed to be the preparation of the entire return or claim for refund.~~

~~(b) **General provisions.** Any tax return preparer who prepared more than fifty (50) Oklahoma tax returns for the previous tax year must file Oklahoma income tax returns prepared for the current year by electronic means. The requirement to file returns electronically applies only to those income tax returns for which the Tax Commission is set up to accept by electronic means, and does not apply to any return on which the taxpayer has indicated a desire that the return **not** be filed electronically.~~

~~(c) **Check-off box.** Oklahoma Income Tax Returns will have a check-off box for use by those taxpayers who wish to designate that their income tax return **not** be electronically filed. [68 O.S. Supp. 2003, § 2385]~~

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 3. EXEMPTIONS

710:50-15-30. Additional exemption for 65 or older

(a) There shall be allowed an additional exemption on the Oklahoma Income Tax Return of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year, based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following status may claim this exemption if the federal adjusted gross income does not exceed:

- (1) Twenty-five Thousand Dollars (\$25,000.00) if married and filing jointly;
- (2) Twelve Thousand Five Hundred Dollars (\$12,500.00) if married and filing separately;
- (3) Fifteen Thousand Dollars (\$15,000.00) if single; and
- (4) Nineteen Thousand Dollars (\$19,000.00) if a qualifying head of household. [See: 68 O.S. § 2358~~(D)~~(2) (E)(1)(c)]

(b) For taxable years beginning after December 31, 1999, amounts included in the calculation of federal adjusted gross income pursuant to the conversion of a traditional Individual Retirement Account to a Roth Individual Retirement Account shall be excluded from federal adjusted gross income for purposes of the income thresholds set out in paragraphs (a)(1) through (a)(4) of this Section.

PART 7. CREDITS AGAINST TAX

710:50-15-75. Recycling, reuse and source reduction incentives

(a) On or before December 31, 2013, there is allowed an ~~An Oklahoma Income Tax~~ income tax credit of 20% of the net investment costs of equipment and installation of facilities for the recycling, reuse, or source reduction of controlled industrial waste or deleterious substances ~~is allowed.~~

(b) The Oklahoma Tax Commission will receive certifications from the Department of

Environmental Quality. Allowed credits will be based on these certifications. The taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return. The credit must be taken within three (3) years of installation or actual use.

(c) The credit cannot exceed the amounts certified by the Department of Environmental Quality or Fifty Thousand Dollars (\$50,000.00), whichever is greater, and may be reduced on audit to actual costs.

(d) 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) or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer 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. [See: 68 O.S. §§ 3607, 3909]

(e) The Oklahoma Tax Commission will provide certification assistance when requested. [See: 27A O.S. §§ 2-11-301, 2-11-302 and 2-11-304 through 2-11-307]

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, ~~2014~~ 2021, the credit shall be Two Dollars and eighty-five cents (\$2.85) per ton of Oklahoma-mined coal purchased.

(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, ~~2014~~ 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.

(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 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.

(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(G) 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.

710:50-15-80. Credit for wind or photovoltaic energy systems [REVOKED]

~~(a) For purposes of this Section, the term "**photovoltaic**" means utilizing, or relating to the generation of an electromagnetic force when radiant energy (as light) falls on the boundary between certain dissimilar substances in close contact.~~

~~(b) For purposes of this Section, a "**photovoltaic cell**" means a cell having a photovoltaic element mounted for exposure to light and provided with terminals for connection with a sensitive motor.~~

~~(c) For purposes of this Section, "**renewable energy resource**" means photovoltaic or wind energy systems.~~

~~(d) For tax years 1993 through 1995 a tax credit for wind and photovoltaic (solar) energy equipment installed on residential or business property will be allowed. The credit must be certified to national standards and carry at least a three-year warranty.~~

~~(e) A credit is allowed on total costs directly related to the energy system itself. These costs include the purchase, installation, and construction of the system, less rebates and remunerations of any type resulting from the installations.~~

~~(f) Upon filing a claim, taxpayer must submit an itemized accounting of costs directly related to the energy system and an affidavit to be provided to the taxpayer by the energy equipment supplier. A diagram of the energy system should also be furnished.~~

~~(g) For residential systems, total costs, for purposes of computing the credit, shall not exceed \$25,000.00. The credit allowed is based on a percentage of expenditures (costs) incurred in the following tax years:~~

- ~~(1) For tax year 1993, up to forty percent (40%);~~
- ~~(2) For tax year 1994, up to forty percent (40%); and~~
- ~~(3) For tax year 1995, up to thirty percent (30%).~~

~~(h) For non residential systems, total cost, for purposes of computing the credit, shall not exceed \$150,000.00. An affidavit is required to attest that more than 50% of the energy produced from the energy system was actually utilized on the premises of the installation. The credit allowed is based on a percentage of expenditures (costs) incurred in the following tax years:~~

- ~~(1) For tax year 1993, up to thirty percent (30%);~~
- ~~(2) For tax year 1994, up to thirty percent (30%); and~~
- ~~(3) For tax year 1995, up to twenty percent (20%).~~

~~(i) The unused portion of any credit described in this Section may be carried forward as a credit against subsequent Oklahoma Income Tax liability for a period not to exceed five (5) years.~~

~~(j) Renewable energy resource assessment equipment also qualifies for this credit if used solely for the purpose of determining the feasibility of installing renewable energy systems.~~

~~(k) The seller (supplier) of the energy system must provide the following items to the purchaser:~~

- ~~(1) An itemized accounting of the costs attributable to the energy system; and~~
- ~~(2) An affidavit attesting to the costs itemized in (1) of this subsection.~~

710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property ~~and qualified electric vehicle property~~

(a) **Definitions.** For purposes of the clean-burning motor vehicle fuel property credit, "**motor vehicle**" includes forklifts and other similar self-propelled vehicles. "**Vehicle**" shall not mean conveyor belts or other similar items. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit. Property on which the credit has previously been claimed is ineligible for the credit.

(b) **Limitations of eligibility.** 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), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S. §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]

(c) ~~**Electric vehicle property.** For vehicles placed in service after December 31, 1995 and before June 30, 2010, the credit shall also be available for qualified electric vehicle property. "**Qualified electric vehicle property**" means a motor vehicle originally equipped to be propelled **only** by electricity or one which is also equipped with an internal combustion engine. For "qualified electric vehicle property" propelled **only** by electricity, the basis for the credit is the full purchase price of the vehicle. For vehicles also equipped with an internal combustion engine, the basis for the credit is limited to the portion of the basis of such motor vehicle which is attributable to the propulsion of the vehicle by electricity. The credit does not apply to vehicles known as "golf carts", "go carts", or other motor vehicles which are manufactured principally for use off the streets and highways.~~

(d) **Hydrogen fuel cell.** The credit for equipment installed on a vehicle propelled by a hydrogen fuel cell shall only be eligible for tax year 2010.

(e) ~~(d)~~ **Sunset date.** This credit will only be available through tax years beginning before January 1, 2015-2020.

710:50-15-91. Credit for employers incurring expenses for the provision of child care services

(a) **General Provisions.** There shall be a non-refundable tax credit against the tax imposed by 68 O.S. § 2355 for employers, ~~as defined by 68 O.S. § 2357.26(B)(2)~~, incurring eligible expenses in the connection with providing child care services for children of their employees. The credit is based on the amount of eligible expenses incurred prior to January 1, 2014, and shall be twenty percent (20%) of the eligible expense subject to limits based on the type of expense. The credit is effective for tax years beginning after December 31, 2001.

(b) **Eligible expenses subject to the \$3,100.00 cap.** Eligible expenses subject to the \$3,100.00 cap per employee-child are those amounts paid for the purchase of childcare services for children of employees at a facility licensed by the Department of Human Services and rated at least two stars.

(c) **Eligible expenses subject to the \$50,000.00 cap.** Eligible expenses subject to the \$50,000.00 cap are those expenses associated with providing a child care center. These include expenses associated with planning, preparing, constructing, or expanding a child care center; equipment for a child care center; or maintenance and operating expenses of a child care center, including direct administrative and staff costs.

(d) **Eligible expenses subject to the \$5,000.00 cap.** Eligible expenses subject to the \$5,000.00 cap are those expenses for fees and grants to child care resource and referral organizations doing business within Oklahoma.

(e) **Credit is in lieu of expense deduction.** The credit for employers incurring expenses for the

provision of child care services shall be in lieu of a deduction of eligible expenses used in computing Oklahoma taxable income. If the credit is claimed or generated, then none of the expenses on which the credit is based shall be allowed as deduction in calculating Oklahoma taxable income.

(f) **Carryforward allowed.** Credits generated but not used are allowed to be carried forward four (4) years following the year generated.

(g) **Tax credit moratorium.** No credit may be claimed for any expenditure occurring 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 eligible expenditures occurring on or after July 1, 2012.

710:50-15-97. Credit for qualified direct costs of a business enterprise of specially trained canines

(a) **General provisions.** An Oklahoma ~~Income Tax~~ income tax credit of fifty percent (50%) of the qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines is allowed, for expenditures made before November 1, 2013. In order to qualify for the credit the business enterprise must meet certain eligibility requirements.

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

(1) **"Nonqualified operating expenditures"** means labor costs, salary and other compensation, whether direct or indirect, paid to directors, officers, limited liability company members, limited liability company managers, partners or other principals or employees of the business entity ~~{68 O.S. § 2357.203(A)(1)}~~;

(2) **"Qualified direct costs"** means expenditures, other than nonqualified operating expenditures, to construct dog kennels, fences, pens, training areas for canines, structures for office space or other improvements to real property necessary for the proper training of a specially trained canine, including the cost of food, water, veterinary expenses and other costs directly related to the operation of the training facility ~~{68 O.S. § 2357.203(A)(2)}~~; and

(3) **"Specially trained canines"** means dogs that are raised by a person who is officially licensed as a dog breeder by the United States Department of Agriculture. ~~{68 O.S. § 2357.203(A)(3)}~~

(c) **Qualification.** In order to qualify for the credit, applicant must have:

(1) An official copy of the United States Department of Agriculture dog breeder license; and
(2) Documentation showing that the business enterprise's principal purpose is the rearing of specially trained canines. Also, a written description of the services of the organization, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the business enterprise.

(3) Evidence of qualification must be provided to the Oklahoma Tax Commission upon request.

(d) **Computation of credit.** The taxpayer must attach a schedule showing qualified direct costs to the Oklahoma Income Tax Return. The allowed credit is equal to fifty (50%) of the "qualified direct costs". Receipts for all "qualified direct costs" must be provided to the Oklahoma Tax Commission upon request.

(e) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and

any credit allowed but not used any tax year may be carried over, in order, to each of the five (5) subsequent taxable years. The credit is also not transferable.

(f) **Tax credit moratorium.** No credit may be claimed for any expenditure occurring 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 expenditures occurring on or after July 1, 2012 for qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines

710:50-15-99. Dry fire hydrant credit

(a) **General provisions.** For tax years beginning after December 31, 2005, there is allowed a credit against the tax imposed by 68 O.S. Section 2355 for the cost of the purchase of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma, purchased before January 1, 2014.

(b) **Definitions.** *"Dry fire hydrant" means nonpressurized pipes permanently installed in lakes, farm ponds, and streams that provide a ready means of drawing water.*

(c) **Qualification.** In order to qualify for the credit, the dry fire hydrants or new water storage facilities must meet the following criteria:

(1) Each body of water or water storage structure must be able to provide two hundred fifty (250) gallons per minute for a continuous two-hour period during a fifty-year drought or freeze at a vertical lift of eighteen (18) feet for each body of water or water storage structure.

(2) Each dry fire hydrant must be located within twenty-five (25) feet of an all-weather roadway and accessible to fire protection equipment.

(3) Dry fire hydrants must be located at a reasonable distance from other dry or pressurized hydrants.

(d) **Certification.** The Oklahoma Tax Commission will receive certifications from The State Fire Marshall's Office. Allowed credits will be based on these certifications. The Taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return.

(e) **Computation of credit.** Upon certification, the allowed credit shall be equal to fifty percent (50%) of the purchase price of a dry fire hydrant or the actual expenditure for the new water storage construction, equipment, development and installation of the dry hydrant or new water storage facility.

(f) **Limitations.** The amount of credit allowed pursuant to this Section shall not exceed \$5,000.00 for each taxpayer and any credit allowed but not used in any tax year may be carried over, in order, to each of the four (4) years following the year of qualification.

(g) **Tax credit moratorium.** No credit may be claimed for purchases occurring 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 purchases on or after July 1, 2012 of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma.

710:50-15-105. Credit for research and development

(a) **General provisions.** For taxable years beginning after December 31, 1992, and before January 1, 2003, and for taxable years beginning after December 31, 2005, there is an income tax credit for a net increase in the number of full-time-equivalent employees of a qualifying computer services, data processing or research and development entity occurring before January 1, 2014.

(b) **Definitions.** Qualifying computer services, data processing or research and development

entities are those who are primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372, 7373, 7374 and 7375 of the SIC Manual (latest revision) and those entities which are primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC Manual (latest revision).

(c) **Qualifications.** In order to qualify for the credit, entities primarily engaged in computer services and data processing (as defined under Industrial Group Number 7374 of the SIC Manual [latest revision]) must also have a minimum of One Hundred Thousand Dollars (\$100,000.00) in purchases of computers, data processing equipment, related peripherals, telephone, telegraph, or telecommunications service or telecommunications equipment. All qualified entities must derive fifty percent (50%) of revenues from out-of-state buyers or consumers. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be sales to an out-of-state buyer or consumer. All qualified entities must also annually file an affidavit with the Oklahoma Tax Commission stating that the business so qualifies and such other information as required by the Commission.

(d) **Amount of credit.** The credit allowed is Five Hundred Dollars (\$500.00) for each new employee, but in no event may the total annual credit exceed fifty new employees. The credit is allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. However the credit is allowed in each of the eight (8) subsequent years only if the level of new employees is maintained in the subsequent year and if the credit is taken for taxable years beginning after December 31, 2005. *In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Thirty-five Thousand Dollars (\$35,000.00) during each year the credit is claimed shall be included in the calculation. The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.*

(e) **Limitations.** This credit is not transferable. Unused credits 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 initial four (4) years in order to each of the following five (5) years.

(f) **Tax credit moratorium.** No credit may be claimed for jobs created 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 new jobs created on or after July 1, 2012.

710:50-15-112. Credit for electric motor vehicle manufacturers

(a) **General provisions.** Electric motor vehicle manufacturers may claim a one-time income tax credit for electric motor vehicles, medium-speed electric motor vehicles and low-speed electric motor vehicles manufactured after June 30, 2010, and before January 1, 2014.

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

(1) "**Electric motor vehicle**" means a new motor vehicle originally equipped to be propelled only by electricity and that may be legally operated on both interstate highways and turnpikes in this state and that is eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act. The term does not include medium-speed electric motor vehicles, or low-speed electric motor vehicles;

(2) "**Electric motor vehicle manufacturer**" means an entity that has received a manufacturer exemption permit pursuant to the provisions of 68 O.S. § 1359.2. Adding modifications to

existing electric motor vehicles, existing medium-speed electric motor vehicles or existing low-speed electric motor vehicles shall not be considered manufacturing for purposes of this section;

(3) "**Low-speed electric motor vehicle**" means a new four-wheeled electrical vehicle that is powered by an electric motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour but not greater than twenty-five (25) miles per hour and is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act; and

(4) "**Medium-speed electric motor vehicle**" means any self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one (1) mile is more than thirty (30) miles per hour but not greater than thirty-five (35) miles per hour and, other than the speed requirement, is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act.

(c) **Computation of credit.**

(1) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of Two Thousand Dollars (\$2,000.00) for an electric motor vehicle;

(2) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of One Thousand Dollars (\$1,000.00) for a medium-speed electric motor vehicle; and

(3) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of Five Hundred Dollars (\$500.00) for a low-speed electric motor vehicle.

(d) **Limitations.** The credit shall not be claimed with respect to any one vehicle based upon multiple definitions as set out in this Section even if such vehicle would otherwise qualify for tax credits based upon qualification pursuant to more than one definition.

(e) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds a taxpayer's liability, unused credits may be carried over for five (5) succeeding years.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [See: 68 O.S. § 2358]

(1) **Taxes based on income.** [See: 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

(ii) Foreign Income Taxes, and

(iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [See: 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2007, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code; and

(II) For tax years beginning after December 31, 2007, and ending before January 1, 2009, the loss carryback period shall be for a period of two (2) years; and

(III) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [See: 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for

which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)]

(7) **Interest income.**

(A) **U.S. obligations.** Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [See: 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [See: 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For ~~tax years beginning January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011,~~ and for tax years beginning on or after January 1, 2014, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

- (B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.
- (C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. [See: 68 O.S. § 2353(10)]
- (12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:
- (A) Net Rental Income is separately allocated. [See: 68 O.S. § 2358(A)(4)]
- (B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).
- (13) **Royalties; patents; copyrights.** [See: 68 O.S. § 2358(A)(5)]
- (A) Income from patent or copyright royalties is apportionable.
- (B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.
- (14) **Capital gains or loss - 4797 gains or loss.**
- (A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [See: 68 O.S. § 2358(A)(5)]
- (B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.
- (15) **Partnership income or loss from corporate partners.**
- (A) Partnership income or loss shall be separately allocated. [See: 68 O.S. § 2358(A)(4)]
- (B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.
- (16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [See: 68 O.S. § 2366]
- (17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.
- (18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [See: 68 O.S. § 2358(A)(4)]
- (19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.
- (20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [See: 68 O.S. § 2358(A)(5)]
- (21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the provisions of the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.
- (A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job*

Creation and Workers Assistance Act of 2002, the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*). Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

(22) Add-back of applicable Section 179 expenses. For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars (\$175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as provided in the federal *American Recovery and Reinvestment Act of 2009* must be added back to Oklahoma taxable income.