

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

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 90. Withholding [AMENDED]

SUMMARY:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to implement recent legislation. All legislative references unless otherwise indicated are to the 54th Legislature, 2nd Regular Session (2014).

Section **710:90-1-12** has been amended to update references and remove obsolete language.

Section **710:90-5-3** amendments have been made to implement the provisions of SB 1228 by outlining the parameters under which a person will be deemed personally liable for the nonpayment of withholding tax. [68:253]

AUTHORITY:

68 O.S. §§ 203, Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to make written submissions may do so by **4:30 p.m. February 20, 2015**, to the Oklahoma Tax Commission, Tax Policy Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, by calling Emmily Hood at (405) 521-3133.

PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules. Time, date and place of the hearing is as follows: **February 23, 2015, 9:00 a.m.**, in the 4th floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. In order to facilitate entry into the building, those wishing to appear should contact Emmily Hood at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. Entry to the M.C. Connors building must be made through the doors located on the east side of the building. In order to gain access to the 4th floor hearing room, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification. A name badge and floor access card will be issued once registration is complete.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action is expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that any business entity affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be reviewed online at www.tax.ok.gov

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after January 30, 2015, from the same source listed above for obtaining copies of proposed rules.

CONTACT PERSON:

Lisa Haws, Liaison; Phone: 405-521-3133; FAX: 405-522-0063; Email: lhaws@tax.ok.gov

CHAPTER 90. WITHHOLDING

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-12. Protest of proposed assessment

(a) Where a person does not acquiesce in a proposed assessment (described in ~~subsection~~ subsections (a) of 710:90-5-3 and 710:90-7-1), ~~he~~ the taxpayer may file a protest within the period specified in the letter of proposed assessment (or within any extensions allowable by Statute that have been granted by the Division). If, after a review of his protest, the ~~Business Tax~~ Division is unable to reach agreement with taxpayer, the taxpayer's file will be forwarded to the Office of the Administrative Law Judge where the taxpayer will have an opportunity to have a hearing before an Administrative Law Judge. The Administrative Law Judge will notify such person of the date set for the hearing.

(b) If the taxpayer does not desire a hearing, an order will be issued by the Commission within a reasonable time. If a hearing before the Administrative Law Judge is requested and granted, order will not be issued until such time as the Administrative Law Judge has submitted Findings, Conclusions and Recommendations and the Commission has made a final determination.

(c) The issuance of an order by the Commission constitutes a final determination. The person filing the return has thirty (30) days from the date of the order in which to directly appeal to the Oklahoma Supreme Court, if desired.

SUBCHAPTER 5. LIABILITY AND PENALTIES

710:90-5-3. Personal liability and issuance of withholding tax assessments

~~(a) Any employer who is under a duty to withhold and remit Oklahoma Withholding Taxes shall be personally and individually liable for the failure to withhold or pay to the Commission any sums required. Withholding tax assessments will be issued against the legal entity as well as against other person(s) who may be liable for the tax pursuant to law. Any person shall be liable for the payment of withholding tax if during the period of time for which the assessment was made the person was responsible for withholding and remittance of taxes or had direct control, supervision or responsibility for filing returns and making payments of the tax due the State of Oklahoma.~~

~~(b) Any officer or individual listed on the Business Registration filed by an employer who is designated as responsible for Oklahoma Income Tax Withholding and its remittance, may be held personally liable until such name is removed or information is received or becomes available to the contrary. [See: 68 O.S. §2385.3(d)]~~ Personal liability for withholding tax shall be determined in accordance with the standards for determining liability for payment of federal withholding tax pursuant to the Internal Revenue Code of 1986, as amended, or regulations promulgated pursuant to such section.

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 90. Withholding

RULE IMPACT STATEMENT: This statement is provided in conjunction with the following rulemaking action(s):

Subchapter 5. Liability and Penalties

710:90-5-3. Personal liability and issuance of withholding tax assessments. [Amended]

- (a.) **Purpose of the Proposed Rule:** This rulemaking is undertaken to implement the provisions of SB 1228 [2014] by outlining the parameters under which a person will be deemed personally liable for the nonpayment of withholding tax.
- (b.) **Classes Affected:** Persons responsible to withhold Oklahoma income tax from employee wages and remit same to the Oklahoma Tax Commission.
- (c.) **Persons Benefited:** Persons responsible to withhold Oklahoma income tax from employee wages and remit same to the Oklahoma Tax Commission.
- (d.) **Probable Economic Impact:**
1. **On Affected Classes:** No economic impact based on this rule change is anticipated.
 2. **On Political Subdivision:** The amendment is not expected to adversely impact other political subdivisions of the State.
 3. **Fees:** The rulemaking action does increase an existing fee.
- (e.) **Probable Costs to the Agency:** Costs to promulgate and enforce the proposed rule will be funded through normal agency budget. No measurable impact on State revenues is anticipated.
- (f.) **Will the Rule Impact Political Subdivisions?** No economic impact on or need for cooperation from political subdivisions is anticipated.
- (g.) **Small Business Impact:** After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rule will have no adverse impact upon Small Business.
- (h.) **Alternative Methods and Costs of Compliance:** There are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of this proposed rule. No formalized compliance cost minimization measures have been pursued.
- (i.) **Public Health/Safety/Environmental Concerns:** The proposed rules are not anticipated to have any effect on public health, safety, or the environment –either beneficial or otherwise.
- (j.) **Effect of Non-Implementation on Environment:** If the proposed rules are not promulgated, no effect on the public health, safety, or the environment will result.
- (k.) **Date:** December 9, 2014 **Date Modified:** N/A
- (l.) **Prepared by:** Christy Caesar **Phone Number:** 521-3133