

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

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 50. Income [AMENDED]

SUMMARY:

As part of the Commission's ongoing review of its rules, proposed amendments to the existing rules have been made to implement recent legislation. All legislative references are to the First Regular Session of the 55th Legislature (2015) unless otherwise indicated.

Section 710:50-3-21 has been amended to correct a scrivener's error.

Section 710:50-3-54 has been amended to update a form number reference to conform with the current form number.

Proposed amendments to **Subchapter 11, "Intercept of Refunds,"** have been made to implement the provisions of HB 1825 which for purposes of intercepting income tax refunds for purposes of payment of debts of certain entities defined a qualifying entity as a state agency, municipal court, district court, public housing authority operating pursuant to Section 1062 of Title 63 of the Oklahoma Statutes, district attorney seeking to collect unpaid court-ordered monetary obligations, or the designee of an above entity. As a result references to the above entities have been replaced with the singular "qualified entity" throughout Subchapter 11. [68:205.2]

Section 710:50-15-74 has been amended to implement the provisions of Senate Bill 502 to include the prohibition of claiming the Credit for investment / new jobs for any investment or job creation in electric power generation by means of wind as described by the North American Industry Classification System, No. 221119 effective January 1, 2017. [68:2357.4]

Section 710:50-15-114 has been amended to implement the provisions of HB 1693 to change the number of additional years of commitment from two (2) to one (1) for the additional amount of credit. [68:2357.206]

Section 710:50-17-51 has been amended to outline Commission policy relating to the application of expenses allocated to nontaxable income. [68:2358]

In addition, other rule changes may be made to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

AUTHORITY:

68 O.S. §203; Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to make written submissions may do so by **4:30 p.m., March 2, 2016**, to the Oklahoma Tax Commission, Tax Policy Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

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 are as follows: **March 4, 2016 at 12:30 p.m.** in the 4th floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. 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 Kali Walker at (405) 521-3133.

In order to facilitate entry into the building, those wishing to appear should contact Kali Walker 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 completed.

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, pursuant to 75 O.S. § 303(B)(6), business entities 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 **February 1, 2016**, from the same source listed above for obtaining copies of proposed rules.

CONTACT PERSON:

Christy Caesar, Liaison; Phone: 405-521-3133; FAX: 405-522-0063; Email: ccaesar@tax.ok.gov

CHAPTER 50. INCOME

SUBCHAPTER 3. RETURNS AND REPORTS

PART 3. LIABILITY; PENALTIES

710:50-3-21. Penalty for filing insufficient or spurious information; no response to impermissible inquiries

(a) For the purposes of this Subchapter, a return shall be considered to be in "**not processible form**" if it does not contain sufficient information to properly determine the accuracy and correctness of any and all claims. This is intended to include all applicable schedules from Federal Income Tax Returns, or any other documentary evidence deemed necessary by the Tax Commission to properly administer or enforce any state tax law. This may also include any statements or claims that the taxpayer is not subject to tax, that Federal Reserve Notes do not carry the same value as dollars, assertions of 5th Amendment Rights, the substitution of the word "Object" or "Objection" for any number required on any income tax form, or any other similar claim or scheme.

(b) It shall be the policy of the Tax Commission to not respond to telephone ~~inquires~~ inquiries or correspondence from a taxpayer which contains questions of a nature, or state a position, which, if included in, or on, an Income Tax Return, would subject the taxpayer to penalty imposed by Statute. [See: 68 O.S. §247]

PART 7. OTHER REQUIRED REPORTING

710:50-3-54. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

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

(1) "**Member**" means:

- (A) A shareholder of an S-Corporation;
- (B) A partner in a general partnership;
- (C) A partner in a limited partnership;
- (D) A partner in a limited liability partnership;
- (E) A member of a limited liability company; or,
- (F) A beneficiary of a trust.

(2) "**Non-resident**" means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) "**Pass-through entity**" means:

- (A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;
- (B) A general partnership;
- (C) A limited partnership;
- (D) A limited liability partnership;
- (E) A trust; or,
- (F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust.

(e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:

- (1) Persons, other than individuals, who are exempt from federal income tax;
- (2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;
- (3) Insurance companies subject to the Oklahoma Gross Premiums Tax and therefore exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and
- (4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC* 710:50-19-1 and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

- (1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;
- (2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;
- (3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;
- (4) When a pass-through entity is making distributions subject to the withholding requirements for non-resident attorneys set out in 5 O.S.Supp.2004, § 1.6 and Commission rule 710:95-13-1, and the pass-through entity is withholding accordingly;

(5) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;

(6) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars (\$500.00); or,

(7) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars (\$500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form OW-9-EW is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars (\$500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-B, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form ~~OW-9-E~~ WTP10003) on or before the due date of the pass-through entity's income tax return, including extensions.

(3) Each non-resident member must enclose a copy of OTC Form 500-B to the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - Audit Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - Audit Division.

SUBCHAPTER 11. INTERCEPT OF REFUNDS

710:50-11-4.1. Definition of a qualifying entity

For purposes of this subchapter, a qualifying entity shall mean a:

- (1) State agency;
- (2) Municipal court;
- (3) District court;
- (4) Public housing authority operating pursuant to Section 1062 of Title 63 of the Oklahoma Statutes;
- (5) District attorney seeking to collect unpaid court-ordered monetary obligations; or
- (6) The designee of an entity described in paragraphs 1 through 5 of this rule. [See: 68 O.S. §205.2(A)]

710:50-11-5. Refunds shall be intercepted

Prior to payment of any refund, the Tax Commission shall deduct from any state refund due to a taxpayer the amount of delinquent state tax, penalty, and interest thereon, which the taxpayer owes pursuant to any state tax law. [See: 68 O.S. § 205.2(E)(F)]

710:50-11-6. Priority of claims; procedures

(a) ~~The Tax Commission shall have first priority over all other agencies, municipal courts, district courts or public housing authorities~~ qualified entities when the Tax Commission is collecting a debt, municipal fines and cost, or final judgment. Subsequent to the Tax Commission priority, a claim filed by the Department of Human Services for the collection of child support and spousal support shall have priority over all other claims filed pursuant to this Subchapter. Priority in multiple claims by ~~other agencies, authorities, municipal courts, or district courts~~ qualified entities pursuant to the provisions of this Section shall be in the order in which the Tax Commission receives the claim from the ~~agencies, authorities, municipal courts, and district courts~~ qualified entities required by (b) of this Section. [See: 68 O.S. § 205.2(F)(G)]

(b) ~~A state agency, municipal court, district court, or public housing authority~~ qualified entity operating pursuant to Section 1062 of Title 63 of the Oklahoma Statutes seeking to collect a debt,

unpaid fines and cost, or final judgment of at least Fifty Dollars (\$50.00) from an individual who has filed a state income tax return may file a claim with the Tax Commission, requesting that the amount owed to the ~~agency, municipal court, district court, or public housing authority~~ qualified entity be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security Number of the debtor. [Sec: 68 O.S. § 205.2(A)(B)]

(c) Upon receiving a claim from a ~~state agency, municipal court, district court, or public housing authority~~ qualified entity, the Tax Commission shall deduct the claim amount, plus collection expenses as provided in *OAC 710:50-11-11*, from the tax refund due the debtor and transfer the amount to the ~~municipal court, the district court, the agency, or the public housing authority~~ qualified entity. Provided, the Tax Commission need not report available funds of less than Fifty Dollars (\$50.00).

(d) The Tax Commission has established a central computerized record keeping system to implement the identification of such debtors and may, upon the proper establishment of a claim by a referring agency, intercept a taxpayer's Oklahoma Income Tax Refund and deliver over the proceeds to the referring agency to satisfy the debtor's or municipal court defendant's obligations.

710:50-11-7. Notice to taxpayer

(a) The referring agency, municipal court, district court, or public housing authority to whom a debt is owed must notify the taxpayer/debtor of an income tax refund intercept.

(b) The ~~state agency, municipal court, district court, or public housing authority~~ qualified entity shall send notice to the debtor by regular mail at the last-known address of the debtor as shown by the records of the Tax Commission when seeking to collect a debt not reduced to final judgment. The ~~state agency, municipal court, district court, or public housing authority~~ qualified entity shall send notice to the judgment debtor or municipal court defendant by first class mail at the last-known address of the judgment debtor or municipal court defendant as shown by the records of the Tax Commission when seeking to collect a final judgment or unpaid municipal fines and cost. The Tax Commission shall provide in an agreed electronic format to the Department of Human Services the amount withheld by the Tax Commission, the home address and the Social Security number of the taxpayer. The notice shall state:

- (1) That a claim has been filed with the Tax Commission for any portion of the tax refund due to the debtor or municipal court defendant which would satisfy the debt, unpaid municipal fines and cost, or final judgment in full or in part;
- (2) The basis for the claim;
- (3) That the Tax Commission has deducted an amount from the refund and remitted it to ~~such state agency, municipal court, district court, or public housing authority~~ the qualified entity;
- (4) That the debtor or municipal court defendant has the right to contest the claim by sending a written request to the ~~Tax Commission, state agency, municipal court, district court, or the public housing authority~~ qualified entity for a hearing to protest the claim and if the debtor or municipal court defendant fails to apply for a hearing within sixty (60) days of the date of mailing of the notice, the debtor or municipal court defendant shall be deemed to have waived the opportunity to contest the claim. If the claim was filed by the Department of Human Services, the notice shall state that the debtor must contest the claim by sending a written request to the Department within thirty (30) days after the date of mailing of the notice; and,
- (5) That a collection expense of five percent (5%) of the gross proceeds owed to the ~~state agency, municipal court, district court, or public housing authority~~ qualified entity has been charged to the debtor or municipal court defendant and withheld from the refund.

(c) If the ~~state agency, municipal court, district court, or public housing authority~~ qualified entity determines that a refund is due to the taxpayer, the ~~state agency, municipal court, district court, or public housing authority~~ qualified entity shall reimburse the amount claimed plus the five percent (5%) collection expense to the taxpayer. The ~~state agency, municipal court, district court, or public housing authority~~ qualified entity may request reimbursement of the two percent (2%) collection expense retained by the Tax Commission. The request shall be made within ninety (90) days of the reimbursement to the taxpayer. If timely requested, the Tax Commission will make reimbursement to the ~~state agency, municipal court, district court, or public housing authority~~ qualified entity within ninety (90) days of the request.

710:50-11-9. Joint returns intercept

(a) The Tax Commission will intercept a refund from a Joint Income Tax Return to offset a past due obligation if either spouse is legally responsible for the past due obligation.

(b) In the case of a joint return, the notice shall state:

(1) The name of the taxpayer named in the return, against whom no debt, no unpaid fines and cost, or final judgment is claimed;

(2) The fact that a debt, unpaid municipal fines and cost, or final judgment is not claimed against the taxpayer;

(3) The fact that the taxpayer is entitled to receive a refund if it is due, regardless of the debt, municipal fines and cost, or final judgment asserted against debtor or municipal court defendant; and,

(4) That in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the ~~Tax Commission, municipal court, district court, referring agency, or public housing authority~~ qualified entity named in the notice within sixty (60) days after the date of the mailing of the notice. If the claim was filed by the Department of Human Services, the notice shall state that the taxpayer must apply, in writing, for a hearing with the Department within thirty (30) days after the date of the mailing of the notice. Tax Commission Form 505 can only be used to claim the refund when the Tax Commission is the agency claiming that a debt is owed.

(c) If the taxpayer against whom no debt, no unpaid municipal fines and cost, or final judgment is claimed fails to apply in writing for a hearing within sixty (60) days after the mailing of the notice, the taxpayer shall have waived his or her right to a refund. If the claim was filed by the Department of Human Services, the notice must state that if the taxpayer fails to apply in writing for a hearing with the Department within thirty (30) days after the date of the mailing of the notice, the taxpayer shall have waived his or her right to a refund. [See: 68 O.S. § 205.2(A)(B)(4)]

710:50-11-10. Nondebtor spouse protest

If the ~~municipal court, district court, agency, or public housing authority~~ qualified entity asserting the claim receives a written request for hearing from the debtor or taxpayer against whom no debt, no municipal fines and cost, or final judgment is claimed, the ~~agency, municipal court, district court, or the public housing authority~~ qualified entity shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt, unpaid fines and cost, or final judgment asserted by the ~~municipal court, district court, agency, or the public housing authority~~ qualified entity, no action shall be taken in furtherance of the collection of the debt, unpaid fines and cost, or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act. [See: 68 O.S. § 205.2(B)(C)]

710:50-11-11. Notification after final determination at hearing

(a) Upon final determination at a hearing, as provided for in 710:50-11-10, of the amount of the debt, unpaid fines and cost, or final judgment, or upon failure of the debtor or taxpayer against whom no debt, no unpaid fines and cost, or final judgment is claimed to request such a hearing, the ~~municipal court, district court, agency, or the public housing authority~~ qualified entity shall apply the amount of the claim to the debt owed. Any amounts held by the ~~municipal court, district court, agency, or public housing authority~~ qualified entity in excess of the final determination of the debt and collection expense must be refunded by the ~~municipal court, district court, agency, or public housing authority~~ qualified entity to the taxpayer. However, if the tax refund due is inadequate to pay the collection expense and debt, unpaid fines and cost, or final judgment, the balance due the ~~state agency, the municipal court, district court, or public housing authority~~ qualified entity shall be a continuing debt or final judgment until paid in full.

(b) Upon receipt of a claim as provided in *OAC* 710:50-11-6 the Tax Commission shall:

- (1) Deduct from the refund five percent (5%) of the gross proceeds owed to the ~~state agency, municipal court, district court, or public housing authority~~ qualified entity and distribute it by retaining two percent (2%) and transferring three percent to the ~~municipal court, district court, state agency, or the public housing authority~~ qualified entity as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Tax Commission Fund;
- (2) Transfer the amount of the claimed debt, unpaid fines and cost, or final judgment or so much thereof as is available to the ~~state agency, municipal court, district court, or the public housing authority~~ qualified entity;
- (3) Notify the debtor in writing as to how the refund was applied; and,
- (4) Refund to the debtor any balance remaining after deducting the collection expense and debt, unpaid fines and cost, or final judgment. [See: 68 O.S. § 205.2~~(C)~~(D) and ~~(D)~~(E)]

710:50-11-12. Debts owed to the Internal Revenue Service

The Tax Commission may employ the procedures provided by Section 205.2 of Title 68 in order to collect a debt owed to the Internal Revenue Service. [See: 68 O.S. § 205.2~~(I)~~(J)]

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

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 generate, accrue or otherwise 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) Beginning January 1, 2017, except with respect to tax credits allowed from investment or job creation occurring prior to January 1, 2017, the credits authorized by 68 O.S. § 2357.4 shall not be allowed for investment or job creation in electric power generation by means of wind as described by the North American Industry Classification System No. 221119.

(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.

710:50-15-114. Credit for contributions to a scholarship-granting organization

(a) **General provisions.** An income tax credit is available for contributions to an eligible scholarship-granting organization. [68 O.S. § 2357.206]

(b) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars (\$1,000) for each taxpayer or Two Thousand Dollars (\$2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars (\$100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars (\$1,000.00) for single individuals or limited to Two Thousand Dollars (\$2,000.00) for married persons filing a joint return.

(c) **Two Additional year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for ~~two~~ (2) ~~an~~ additional consecutive

~~years year~~, the credit shall be seventy-five percent (75%) of the total amount of the contribution ~~the first year, and fifty percent (50%) of the amount of the contributions the following two (2) years made during the taxable year.~~ The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(d) **Registration.** An eligible scholarship-granting organization is required to register with the Tax Commission (OTC Form 80002).

(e) **Limitation of credit.** If total credits claimed exceed \$3,500,000 annually the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year per (f)(2) of this Section. At least once each taxable year, the eligible scholarship-granting organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(f) **Annual notification.**

(1) By January 10 each year, the scholarship-granting organization shall provide electronically to the Tax Commission:

(A) The scholarship-granting organization's account number;

(B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;

(C) The date and amount of each contribution; and

(D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The scholarship-granting organizations shall notify contributors of that amount annually.

(g) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible scholarship-granting organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(h) **When credits may be claimed.** Any tax credits which are earned by a taxpayer during the time period beginning on August 26, 2011 through December 31, 2012, may not be claimed for any taxable year beginning before January 1, 2013 and may not be used to file an amended tax return for any taxable year beginning before January 1, 2013.

(i) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years. The credit is not transferable.

710:50-15-115. Credit for contributions to an educational improvement grant organization

(a) **General provisions.** An income tax credit is available for contributions to an eligible educational improvement grant organization. [68 O.S. § 2357.206]

(b) **Application.** An educational improvement grant organization shall submit an application to the Tax Commission (OTC Form 80001). The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.

(c) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars (\$1,000) for each taxpayer or Two Thousand Dollars (\$2,000) for married taxpayers filing jointly or One Hundred Thousand Dollars (\$100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are

only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars (\$1,000.00) for single individuals or limited to Two Thousand Dollars (\$2,000.00) for married persons filing a joint return.

(d) **Two Additional year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for ~~two (2) an~~ additional consecutive years year, the credit shall be seventy-five percent (75%) of the total amount of the contribution ~~the first year, and fifty percent (50%) of the amount of the contributions the following two (2) years~~ made during the taxable year. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(e) **Limitation of credit.** If total credits claimed exceed \$1,500,000 annually, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year per (f)(2) of this Section. At least once each taxable year, the educational improvement grant organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(f) **Annual notification.**

(1) By January 10 each year, the educational improvement grant organization shall provide electronically to the Tax Commission:

- (A) The educational improvement grant organization's account number;
- (B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;
- (C) The date and amount of each contribution; and
- (D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The educational improvement grant organization shall notify contributors of that amount annually.

(g) **Annual report.** In order to maintain eligibility, an educational improvement grant organization shall annually report the following information to the Tax Commission, on forms prescribed by the Tax Commission, on or before September 1 of each year:

- (1) *The name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year,*
- (2) *A description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements,*
- (3) *The names of the public school and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented,*
- (4) *Where the organization collects information on a county-by-county basis, and*
- (5) *The total number and total amount of grants made during the immediately preceding school year for innovative educational programs at public school by each county in which the organization made grants.*

(h) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible educational improvement grant organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(i) **When credits may be claimed.** Any tax credits which are earned by a taxpayer during the time period beginning on August 26, 2011 through December 31, 2012, may not be claimed for any taxable year beginning before January 1, 2013 and may not be used to file an amended tax return for any taxable year beginning before January 1, 2013.

(j) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years. The credit is not transferable.

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~~ Deductions should be allocated to assets that may produce nontaxable income attributable to items separately allocable shall be allocated on the same basis as those items.

(A) An adjustment is required when ~~When~~ a corporation has an investment in assets which produce income which is non-unitary, or separately allocable. Such items may include, but are not limited to, investments in ~~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.~~

(B) A ratio is used to allocate expenses between unitary business operations and all other activities that do not produce unitary 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 allocable, by the average of total assets. This result percentage is then applied to certain expenses claimed on the return to arrive at the amount of expenses related to non-unitary business, and the resulting amount is added back to federal taxable income.

(C) Generally, interest expense is the only expense against which the this adjustment described in subsection (B) 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)]

Example: Assume a non-Oklahoma domiciled taxpayer has the following beginning of and end of year balance sheets (assets only):

	<u>BOY</u>	<u>EOY</u>	
<u>Cash</u>	<u>5,000</u>	<u>10,000</u>	
<u>Accounts Receivable</u>	<u>100,000</u>	<u>150,000</u>	<u>These assets are the result of the sales of the products sold by the unitary business</u>
<u>Inventory</u>	<u>80,000</u>	<u>120,000</u>	<u>These assets are the products on hand to be sold by the unitary business</u>
<u>US Government Obligations (A)</u>	<u>25,000</u>	<u>50,000</u>	<u>These assets generate interest income from US government obligations not taxable in Oklahoma</u>
<u>Other Current Assets</u>	<u>8,000</u>	<u>10,000</u>	<u>These assets relate to the unitary business</u>
<u>Investments in Subsidiaries (A)</u>	<u>500,000</u>	<u>600,000</u>	<u>These assets may generate dividend income or gain (loss) on sale that is allocated to the taxpayer's domiciliary situs (commercial domicile)</u>
<u>Investments in Corporate Stock (A)</u>	<u>5,000</u>	<u>5,000</u>	<u>These assets may generate dividend income or gain (loss) on sale that is allocated to the taxpayer's domiciliary situs (commercial domicile)</u>
<u>Investments in Partnerships (A)</u>	<u>100,000</u>	<u>120,000</u>	<u>These assets generate partnership income (loss) that is allocated to the state (s) where the partnership has business operations or gain (loss) on sale that is allocated to the taxpayer's domiciliary situs (commercial domicile)</u>
<u>Fixed Assets (Net)</u>	<u>1,000,000</u>	<u>1,500,000</u>	<u>These assets are used in the unitary business to produce the products sold</u>
<u>Intangible Assets (Net)</u>	<u>500,000</u>	<u>600,000</u>	<u>These assets are used in the unitary business to produce the products sold</u>

<u>Long Term Notes Receivable (A)</u>	<u>100,000</u>	<u>100,000</u>	<u>These assets generate interest income not related to working capital that is allocated to the taxpayer's domiciliary situs (commercial domicile)</u>
<u>Other Assets</u>	<u>50,000</u>	<u>50,000</u>	<u>These assets relate to the unitary business</u>
<u>Total Assets</u>	<u>2,473,000</u>	<u>3,315,000</u>	

The taxpayer incurs interest expense on borrowed funds necessary to operate their overall business. Oklahoma utilizes an asset based ratio to allocate the interest expense incurred between the unitary business operations and all other activities that do not produce unitary income as follows:

	<u>BOY</u>	<u>EOY</u>	
<u>Assets that may produce allocable or nontaxable income [sum of (A)]</u>	<u>730,000</u>	<u>875,000</u>	
<u>Average assets that may produce allocable or nontaxable income</u>		<u>802,500</u>	<u>73,000 plus 875,000 divided by 2</u>
<u>Average total assets</u>		<u>2,894,000</u>	<u>2,473,000 plus 3,315,000 divided by 2</u>
<u>Ratio of assets that may produce allocable or nontaxable income to total assets</u>		<u>0.27729786</u>	

(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 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.

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. Income

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

Subchapter 3. Returns and Reports

Part 7. Other Required Reporting

710:50-3-54. Income tax withholding for pass-through entities [Amended]

- (a.) **Purpose of the Proposed Rule:** This rulemaking action has been undertaken to update a form number reference to conform with the current form number.
- (b.) **Classes Affected:** Pass-through entities making distributions to non-resident members.
- (c.) **Persons Benefited:** Pass-through entities making distributions to non-resident members.
- (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:** January 30, 2016 **Date Modified:** N/A
- (l.) **Prepared by:** Christy Caesar **Phone Number:** 521-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. Income

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

Subchapter 11. Intercept of Refunds

- 710:50-11-4.1. Definition of qualifying entity [New]
- 710:50-11-5. Refunds shall be intercepted [Amended]
- 710:50-11-6. Priority of claims; procedures [Amended]
- 710:50-11-7. Notice to taxpayer [Amended]
- 710:50-11-9. Joint returns intercept [Amended]
- 710:50-11-10. Nondebtor spouse protest [Amended]
- 710:50-11-11. Notification after final determination at hearing [Amended]
- 710:50-11-12. Debts owed to the Internal Revenue Service [Amended]

- (a.) **Purpose of the Proposed Rule:** As a result of House Bill 1825 of the 2015 legislative session, the purpose of the rulemaking action is to define a qualifying entity as a state agency, municipal court, district court, public housing authority operating pursuant to Section 1062 of Title 63 of the Oklahoma Statutes, district attorney seeking to collect unpaid court-ordered monetary obligations, or the designee of an above entity. The rule also replaces the above entities with singular “qualified entity” term throughout Subchapter 11.
- (b.) **Classes Affected:** Taxpayers receiving income tax refunds that owe debts to a qualifying entity.
- (c.) **Persons Benefited:** Entities that are defined as a qualifying entity.
- (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 not levy, implement, or 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 16, 2015 **Date Modified:** N/A
- (l.) **Prepared By:** Morgan Lankford **Phone Number:** 522-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. Income

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

Subchapter 15. Oklahoma Taxable Income

Part 7. Credits Against Tax

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

- (a.) **Purpose of the Proposed Rule:** This rulemaking action was undertaken to implement the provisions of HB 1693 [2015] to include the prohibition of claiming the Credit for investment / new jobs for any investment or job creation in electric power generation by means of wind as described by the North American Industry Classification System, No. 221119 effective January 1, 2017.
- (b.) **Classes Affected:** Wind electric power generation facilities.
- (c.) **Persons Benefited:** Wind electric power generation facilities.
- (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 not levy, implement, or 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:** January 30, 2016 **Date Modified:** N/A
- (l.) **Prepared By:** Christy Caesar **Phone Number:** 522-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. Income

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

Subchapter 15. Oklahoma Taxable Income

Part 7. Credits Against Tax

710:50-15-114. Credit for contributions to a scholarship-granting organization [Amended]

710:50-15-115. Credit for contributions to an educational improvement grant organization [Amended]

- (a.) **Purpose of the Proposed Rule:** This rulemaking action was undertaken to implement the provisions of HB 1693 [2015] to change the number of additional years of commitment from two (2) to one (1) for the additional amount of credit.
- (b.) **Classes Affected:** Donors to Scholarship-Granting Organizations and Educational Improvement Grant Organizations.
- (c.) **Persons Benefited:** Donors to Scholarship-Granting Organizations and Educational Improvement Grant Organizations.
- (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 not levy, implement, or 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:** January 30, 2016 **Date Modified:** N/A
- (l.) **Prepared By:** Christy Caesar **Phone Number:** 522-3133

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 50. Income

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

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 [Amended]

- (a.) **Purpose of the Proposed Rule:** This rulemaking action was undertaken to outline Commission policy relating to the application of expenses allocated to nontaxable income.
- (b.) **Classes Affected:** Corporate income tax filers.
- (c.) **Persons Benefited:** Corporate income tax filers.
- (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 not levy, implement, or 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:** January 30, 2016 **Date Modified:** N/A
- (l.) **Prepared By:** Christy Caesar **Phone Number:** 522-3133