

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 85. VARIOUS TAX INCENTIVES**

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 85. Various Tax Incentives [AMENDED]

SUMMARY:

Section **710:85-7-3** has been amended to comply with Section 14 of Senate Bill 318 [2009] which requires a production company to either have already filed or will file any Oklahoma tax return or tax document which may be required by law in order to be eligible for a rebate payment. [68:3624]

Sections **710:85-1-8, 710:85-1-13, 710:85-3-34, 710:85-3-57, 710:85-5-11, 710:85-9-4** and **710:85-11-7** have been amended, changing *Rules of Practice and Procedure before the Oklahoma Tax Commission* to *Rules of Practice and Procedure before the Office of the Administrative Law Judges* and also updating the internal cross-references.

In addition, other rule changes may be made to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and insure 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., February 20, 2015**, to the Oklahoma Tax Commission, Tax Policy and Research 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 are as follows: **February 23, 2015, 1:30 p.m.** in the office of the Oklahoma Tax Commission, 2501 Lincoln Blvd., 4th Floor, 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 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 it has been determined that the promulgation of these rules is not expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that 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, record keeping, 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 viewed online at www.oktax.state.ok.us.

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:

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CHAPTER 85. VARIOUS TAX INCENTIVES

SUBCHAPTER 1. OKLAHOMA QUALITY JOBS PROGRAM

710:85-1-8. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

- (1) Name of qualified establishment;
- (2) Identification number of qualified establishment;
- (3) Period for which claim is filed;
- (4) Actual number of new direct jobs during period of claim;
- (5) Gross payroll of new direct jobs during period of claim;
- (6) Net benefit rate; and
- (7) Amount claimed for period.

(b) **Deadline for filing first claim.** For establishments that were approved after October 31, 2001, *in no event shall the first claim for incentive payments be filed later than three (3) years from the start date designated by the Oklahoma Department of Commerce.*

(c) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [See: 68 O.S. §2385.6]

(d) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. All participating companies are required to retain documentation to verify the quality jobs employees and rebate amounts claimed. Documents retained shall include all employee names, both base and new employees, social security numbers, original hire dates, termination dates, individual wages drawn for each month, and copies of claim forms for the duration of the contract. Baseline employees must be filled by active employees as of the last business day of each month. If an employee in the baseline group is terminated or retires prior to the last business day of the month, the qualified establishment must replace the employee with a quality jobs employee or a newly hired employee. These records shall be retained in both hard copy form and in an electronic format approved by the Commission for a minimum of three (3) years after the final rebate payment is received by the company. In the event the Commission is unable to verify the gross payroll, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(e) **Payment of claim.** Except as provided in 710:85-1-11, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed the net benefit rate multiplied by the actual gross payroll for new direct jobs for the calendar quarter for which the claim is filed.

(f) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

- (1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent setting out:
 - (A) a statement of the action by the Commission that is protested;
 - (B) a statement of the qualified establishment's disagreement with such action; and

- (C) supporting documentation relied on by the qualified establishment in support of its claim.
- (2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.
- (3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49.

710:85-1-13. Qualified establishment may protest suspension of incentive payments

The following procedures shall apply if the Commission ceases or suspends a qualified establishment's incentive payment(s):

- (1) **Filing of protest.** The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or his duly authorized agent setting out:
 - (A) a statement of action as determined by the Commission;
 - (B) a statement of the qualified establishment's disagreement with such action; and
 - (C) supporting documentation relied on by the qualified establishment in support of its claim.
- (2) **Result of failure to file protest.** If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.
- (3) **Rules of procedure to govern.** A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49.

SUBCHAPTER 3. SAVING QUALITY JOBS PROGRAM

PART 3. PREMIUM PAYMENT PROGRAM

710:85-3-34. Procedure for filing claim, verification, payment, protest

- (a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:
 - (1) Name of qualified establishment;
 - (2) Identification number of qualified establishment;
 - (3) Period for which claim is filed;
 - (4) Actual number of new direct jobs or at risk jobs during period of claim;
 - (5) Gross payroll of new direct jobs or at risk jobs during period of claim;
 - (6) Premium benefit rate; and
 - (7) Amount claimed for period.
- (b) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [See: 68 O.S. §2385.6]
- (c) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.
- (d) **Payment of claim.** The qualified establishment whose claim has been approved will receive the amount claimed for the "Saving Quality Job" premium payment and the "Quality Job" incentive payment in one warrant. The combined premium payment and quality job payment cannot exceed

five percent (5%) of the gross payroll of the establishment.

(e) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:

(A) a statement of action as determined by the Commission;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the Commission Office of the Administrative Law Judges set out in 710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49.

PART 5. HIGH IMPACT PROJECTS

710:85-3-57. Qualified establishment may protest suspension of payments

The following procedures shall apply if the Commission ceases or suspends a qualified establishment's payment(s):

(1) **Filing of protest.** The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:

(A) a statement of action as determined by the Commission;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) **Result of failure to file protest.** If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) **Rules of procedure to govern.** A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the Commission Office of the Administrative Law Judges set out in 710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49.

SUBCHAPTER 5. SMALL EMPLOYER QUALITY JOBS PROGRAM

710:85-5-11. Procedure when claim cannot be verified, is revised, or is denied

The procedures set out in this Section shall apply when a claim cannot be verified, or is revised, by the Commission:

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent, setting out:

(A) A statement of the action determined by the Commission;

(B) A statement of the qualified establishment's disagreement with such action; and

(C) Supporting documentation relied on by the qualified establishment in support of its claim.

- (2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.
- (3) A protest to the action of the Commission filed by a qualified establishment shall be governed by *OAC* 710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49.

SUBCHAPTER 7. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

710:85-7-3. Procedure upon qualification; payment

(a) **Procedures upon approval by Office.** Upon notification to the Commission of each approved claim by the Office, the Commission will verify:

- (1) That the claim of the production company contains an affidavit stating that the company has not received an exemption from sales taxes pursuant to the provisions of 68 O.S. § 1357(21); and,
- (2) ~~That an Oklahoma income tax return has been filed or will be filed by the claimant for the tax year in which the production expenses were made. The production company has filed or will file any Oklahoma tax return or tax document which may be required by law.~~

(b) **When repayment of taxes may be required.** If the facts set out in (a) of this Section cannot be verified, then the Commission shall require repayment of previously exempted sales taxes, and documentation that the taxes have been repaid shall be included in the claim.

(c) **Payment of claims.** Upon approval of the claim by the Office and processing by the Commission, the Commission shall issue payment for all approved claims from funds in the "Fund" on or after July 1, 2006, and on or after each July 1 thereafter following the fiscal year in which the documented expenditures were made. The amount of payments in any single fiscal year shall not exceed Five Million Dollars (\$5,000,000.00). If the amount of approved claims exceeds the amount specified in this Section in a fiscal year, then the payments will be made in the order in which claims are approved by the office and any remaining approved claims will be carried over to the next fiscal year, subject to the same limitations for that year as set out in this Section.

SUBCHAPTER 9. OKLAHOMA QUALITY INVESTMENT ACT

710:85-9-4. Procedure for filing claim, review determination

(a) **Contents of claim.** As soon as practicable after the end of a fiscal year, the qualified establishment shall file a claim for the payment with the commission for ten percent (10%) of the total amount of capital costs actually invested by the establishment during that fiscal year. The claim, on forms prescribed by the Commission, shall include:

- (1) Name of qualified establishment;
- (2) Identification number of qualified establishment;
- (3) Period for which claim is filed;
- (4) Total amount of capital costs invested during the period of claim;
- (5) Amount claimed for period.

(b) **Verification of claim.** The Commission shall verify the actual amount of capital costs and the actual tax benefit accrued or accruing to the State of Oklahoma utilizing information available to the Commission. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may reject the establishment's claim based upon analysis of actual capital costs incurred by the establishment.

(c) **Payment of claim.** Except as provided in 710:85-9-7, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed a total of One Millions

(\$1,000,000.00). If the amount of investment payment claimed exceeds \$1,000,000.00, the establishment may carry over the excess investment payment amount to any subsequent fiscal year during the term of the quality investment agreement and may be paid such amount if the combined amount of carryover and the investment payment claimed in that subsequent fiscal year do not exceed \$1,000,000.00. No more than Five Million Dollars (\$5,000,000.00) in total investment payments shall be payable or paid to a qualified establishment.

(d) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified and is rejected by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent setting out:

- (A) a statement of the action by the Commission that is protested;
- (B) a statement of the qualified establishment's disagreement with such action; and
- (C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through 710:1-5-48 710:1-5-49.

SUBCHAPTER 11. 21st CENTURY QUALITY JOBS PROGRAM

710:85-11-7. Procedure when claim cannot be verified, is revised, or is denied

The procedures set out in this Section shall apply when a claim cannot be verified, is revised, or denied by the Commission:

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent, setting out:

- (A) A statement of the action determined by the Commission;
- (B) A statement of the qualified establishment's disagreement with such action; and
- (C) Supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by *OAC* 710:1-5-21 through 710:1-5-48 710:1-5-49.

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 85 Various Tax Incentives

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

710:85-7-3. Procedure upon qualification; payment [AMENDED]

- (a.) **Purpose of the Proposed Rule:** The purpose of the rulemaking action is to comply with Section 14 of Senate Bill 318 [2009] which requires a production company to either have already filed or will file any Oklahoma tax return or tax document which may be required by law in order to be eligible for a rebate payment.
- (b.) **Classes Affected:** Production companies qualifying for the Oklahoma Film Enhancement Rebate Program.
- (c.) **Persons Benefited:** Production companies qualifying for the Oklahoma Film Enhancement Rebate Program.
- (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 17, 2014 **Date Modified:** N/A
- (l.) **Prepared By:** Lisa Haws **Phone Number:** 522-3133

