



# Oklahoma Economic Report™

News and analysis of Oklahoma's economy



A publication of the Office of the State Treasurer • Treasurer Ken Miller, Ph.D.

## Getting in line with online taxes

The blossoming growth in online sales has been a growing challenge for states and municipalities.

Sales taxes are routinely collected from retail outlets within the cities and states, but collecting what is due from online sales has proven much more difficult.

The loss in revenue nationwide has been estimated in the tens of billions of dollars. The reason for the lost revenue is that under a 1992 U.S. Supreme Court decision online businesses with no physical presence within a state were not required to

collect tax on purchases by residents in that state.

The responsibility for paying what is known as use tax, the sales tax due on out-of-state purchases, has been on the buyers.

Many consumers are either unaware or choose to ignore state laws requiring use tax be paid. Several years ago, Oklahoma added a

section to income tax forms to allow

calculation and payment of use tax for online purchases, and while a growing number of taxpayers are using it, the tax on many online sales are still not being paid.

But now, thanks to a new U.S. Supreme Court decision issued in late June, the

situation is about to change. Under

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“States can now require online retailers to collect and remit use tax even if they have no physical presence within that state.”

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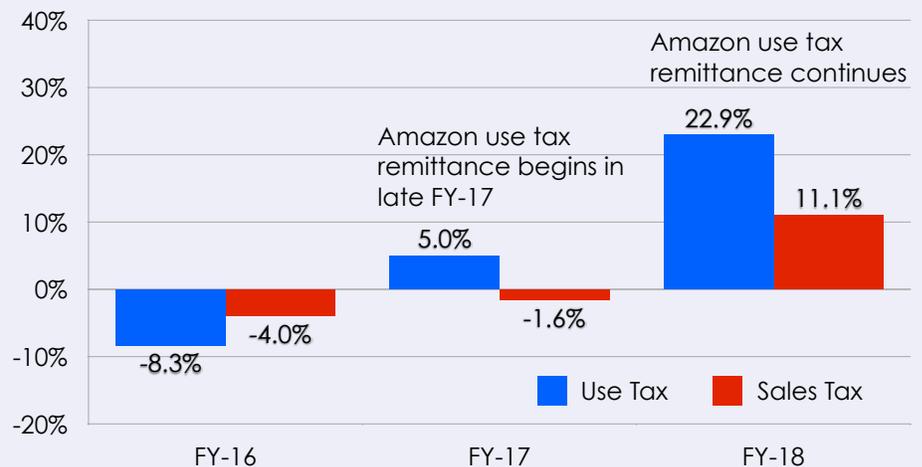
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#### Editor

Tim Allen, Deputy Treasurer for Communications and Program Administration

### Online Sales Boost Use Tax Collections

Percentage change from prior year collections



Source: Oklahoma Tax Commission



## Guest Commentary

By Clark Jolley, Oklahoma Tax Commissioner/  
Cabinet Secretary of Finance, Administration  
& Information Technology



### Life after Wayfair

The Supreme Court decision in *South Dakota v. Wayfair* has significantly changed the landscape of taxation of goods over the Internet.

#### Quill's Holding

To understand the importance of the case, you should know the reason the case is a big deal. First, the Supreme Court had previously ruled in *Quill Corp. v. North Dakota* that in order to have the ability to require a vendor to remit taxes, you had to have a physical nexus to that state. For example, North Dakota didn't have the ability to force Quill Corporation (who at that time only sold office products via catalogs) to remit taxes on those products sold and distributed in North Dakota because Quill maintained no office, no warehouse, no physical local whatsoever in that state. Since almost all Internet-based retailers have physical locations in only one or two states, they were required to remit taxes only in those states.

#### Wiring around the physical nexus

To be able to create a physical nexus argument and be able to get

after the elusive online sales taxes, states got creative. The State of Massachusetts, for example, said any cookie an online vendor placed on the physical hard drive of a customer's computer represented a physical presence by virtue of having a piece of code written onto the memory of the device. Oklahoma's solution was to require

**“Because we already have made huge strides in collecting taxes from the major retailers, Oklahoma will likely not see a huge influx of cash.”**

vendors to send their customers individual letters letting them know use tax may be owed on their purchases. Rather than deal with the paperwork and postage cost, most vendors decided it was easier to just collect and pay the taxes. Other states have also tried to figure out ways to not be tied to the physical presence requirement because there are billions of dollars which aren't being remitted to the

states because of sales from online vendors.

#### Kennedy's Invitation and South Dakota's Acceptance

In a concurring opinion written by Justice Anthony Kennedy in *Direct Marketing Association v. Brohl*, he indicated to the states that *Quill* was improperly decided and he thought the Court might be interested in overturning its own precedence, something rare for the Court to ever do. South Dakota, who is heavily reliant on Sales Tax for its state's operational revenue, passed a bill that was blatantly unconstitutional per the *Quill* decision in hopes it could get appealed to the Supreme Court quickly for a decision to overturn the precedent.

#### Not a Tax Increase, but a Tax Compliance Issue

Almost every state has a sales tax  
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## Jolley

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on goods and services purchased within their borders. Almost every state also has a use tax on goods and services purchased outside their borders but being used inside their borders. The use tax is self-reported by the purchaser and, therefore, not always remitted. Oklahoma has one of the higher use tax participation rates in the country - at just 4% compliance among Oklahoma taxpayers.

The problem for use tax is that it is almost impossible to determine any amount due. Without demanding credit card statements, checking account records and scouring over each transaction, we have to rely on the honesty and good faith compliance of the taxpayer. Having the tax collected as a sales tax instead of as a use tax doesn't increase the tax or create a new one; it simply shifts compliance from the end user to the entity

making the sale.

### Streamlined Sales Tax and a Fiscal (not Physical) Impact

Oklahoma has already made giant strides to be ready for the world of commerce post-*Wayfair*. Eighteen years ago, Oklahoma was one of the leaders in the creation of the Streamlined Sales Tax (SST) initiative. By being a member state of SST, Oklahoma and 23 other states are ready to accept sales tax registrations. By registering with SST, sellers are registering to comply with the taxing authorities in all participating states.

States retain their autonomy on what to tax and at what rates, but they work together to make sure definitions and applications are the same from state to state. Thousands of vendors are already registered through the SST and are remitting taxes using the correct tax rate to

the taxing authorities in each state.

In efforts to collect more revenue owed to the state, Oklahoma has made agreements with several online retailers, including Amazon and Walmart, to remit taxes voluntarily on sales made directly by themselves. With the passage of HB1019XX in this last Legislative session, Oklahoma's law of requiring vendors to send notification letters was extended to include third-party sellers. As a result, more vendors agreed to voluntarily remit the tax in lieu of having to send the letters out to everyone. Because we already have made huge strides in collecting taxes from the major retailers, Oklahoma will likely not see a huge influx of cash, probably an initial estimated amount of \$20 Million. But the amount that will be collected will only increase as more people shop from their couch rather than from Main street.

## Online Taxes

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the new ruling, states can require, within reasonable parameters, that online retailers collect and remit use tax even if they have no physical presence within that state.

### ***South Dakota v. Wayfair, Inc.***

In its 5-4 decision, issued June 21, 2018, the Supreme Court set new

precedent by overturning the 1992 decision in *Quill Corp. v. North Dakota*, the ruling that required a physical presence for use tax collection.

The majority opinion, written by Justice Anthony Kennedy, offers three reasons for why the physical presence rule was abandoned. "First, the physical presence rule is not a necessary interpretation of

the requirement that a state must be 'applied to an activity with a substantial nexus with the taxing State' Second, *Quill* creates rather than resolves market distortion. And third, *Quill* imposes the sort of arbitrary, formalistic distinction that the Court's modern Commerce Clause precedents disavow."

### SEE ONLINE TAXES PAGE 4

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## Online Taxes

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The dissenting opinion, written by Chief Justice John Roberts, would have left Congress to act, but Justice Kennedy wrote the Court should be “vigilant” in correcting its error.

Requiring an online retailer to collect use tax for a state and its municipalities still would require a “substantial nexus” based on the “economic and virtual contact” a business has within the state.

### An already improving picture in Oklahoma

Even before the Court’s new opinion, the picture in Oklahoma regarding collection of use tax on online purchases had been improving, thanks primarily to an agreement with Amazon.com.

Beginning in April 2017, Amazon and some other online retailers began collecting and remitting use tax on directly-sold merchandise to Oklahomans.

To date, use tax is not collected on items sold through the Amazon website on behalf of third-party vendors.

While privacy laws prohibit the tax commission from releasing specific information on the amounts remitted by online retailers, a look at the overall growth in gross use tax collections compared to gross sales tax collections provides some perspective.

During FY-16, the year prior to online use tax remittance, total gross use tax shrank by 8.3 percent from the prior year. At the same time, gross sales tax

collections shrank by 4 percent.

While payment of online use tax didn’t begin until the final three months of FY-17, gross use tax grew by 5 percent, while gross sales tax was down by 1.6 percent.

During the just completed fiscal year, FY-18, with some online use tax remittance continuing, gross use tax collections were up by almost 23 percent. Gross sales tax collections also grew, but by 11.1 percent – less than half the growth rate of use tax.

For perspective, however, gross use tax collections are but a fraction of the amount collected from gross sales taxes. While FY-18 sales taxes total almost \$4.7 billion, use taxes total slightly more than \$500 million.

### More changes coming

During the second special session of the Oklahoma Legislature, House Bill 1019XX, the Marketplace Sales Act, was enacted.

The act requires businesses conducting sales through a website that are currently not collecting and remitting use tax to either collect and remit the tax or provide tax responsibility notices to purchasers and report details to the tax commission.

The tax commission estimates the new law will generate about \$20 million per year in increased state use tax.

The potential fiscal impact of changes resulting from the recent Supreme Court ruling is much more difficult to estimate, but the tax commission has

said it will result in the collection of “tens of millions of dollar per year.”

The commission is also offering to provide to online retailers a database it has compiled listing the more than 500 different tax rates in Oklahoma, searchable by individual addresses.

### Impact on the cities

The state’s municipalities depend exclusively on sales and use taxes for operating revenue, so the Oklahoma Municipal League (OML) welcomes the Court’s decision. OML Executive Director Mike Fina said, “we expect Oklahoma to be in a great position to capture the funds from the *Wayfair* decision with little adjustment to the current system. It will take some effort on municipalities and vendors to help the (Oklahoma Tax) Commission identify those who should be remitting the tax, a task Oklahoma municipalities will gladly embrace.”

Fina estimates the ruling could annually result in as much as \$112 million in additional revenue for municipalities.

“There are a tremendous number of unknown variables when it comes to online sales. Many vendors have worked for years to avoid these additional costs to the customer and have become very proficient in not reporting data back to the states,” Fina said.

“Time will best determine the overall financial impact of the *Wayfair* decision, but the U.S. Supreme Court did open avenues to Oklahoma municipalities to collect sales tax that were once closed.”



## May Gross Receipts to the Treasury & General Revenue compared

May Gross Receipts to the Treasury totalled \$970.9 million, while the General Revenue Fund (GRF), as reported by the Office of Management and Enterprise Services, received \$497.8 million, or 51.3%, of the total.

The GRF received between 33.5% and 54.5% of monthly gross receipts during the past 12 months.

From May gross receipts, the GRF received:

- Individual income tax: 57.6%
- Corporate income tax: 21%
- Sales tax: 45.4%
- Gross production-Gas: 72%
- Gross production-Oil: 34%
- Motor vehicle tax: 28.6%
- Other sources: 61.4%

May GRF allocations were above the estimate by 19.8 percent. Fiscal-year-to-date collections are ahead of the estimate by 6.5 percent.

May insurance premium taxes totalled \$12.3 million, an increase of \$8.7 million, or 237.9%, from the prior year.

Tribal gaming fees generated \$12.2 million during the month, up by \$617,119, or 5.3%, from May 2017.

## Gross Receipts to the Treasury reach all-time high

Gross Receipts to the Treasury during the past 12 months, at \$12.18 billion, are at an all-time high, State Treasurer Ken

Miller announced. In addition, at \$1.1 billion, gross receipts for the month also set a record high for June collections.

“It would appear Oklahoma’s economic engine is hitting on all cylinders,” Miller said.

“In addition to the revenue picture, leading and lagging economic

indicators paint a positive picture for the state’s economy.”

During just completed FY-18, Gross Receipts to the Treasury increased by \$1.2 billion, or 11.1 percent, compared to FY-17. Gross receipts for June are up by \$86.7 million, or 8.6 percent, compared

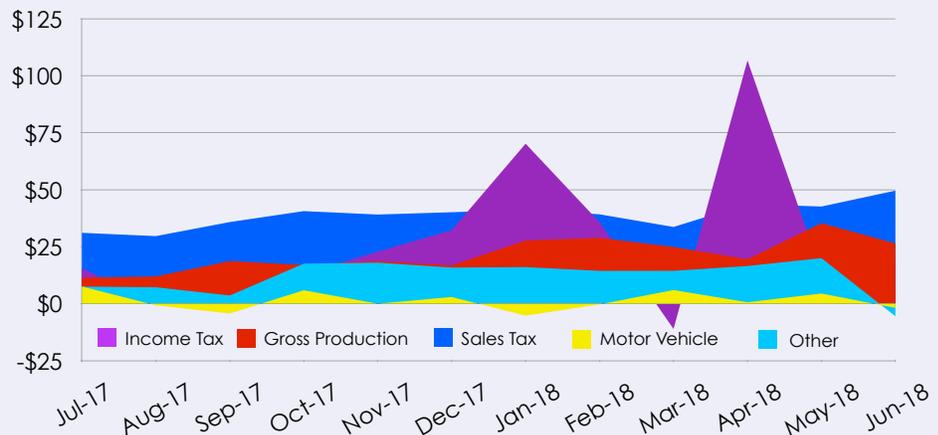
to June of last year.

The previous 12-month record high

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“It would appear Oklahoma’s economic engine is hitting on all cylinders.”

### Monthly Gross Receipts vs. Prior Year



(In \$ millions)	June-17	June-18	Variance From Prior Year	
Income Tax	371.7	389.7	18.0	4.8%
Gross Production	41.6	68.1	26.4	63.5%
Sales Tax (1)	373.5	423.1	49.6	13.3%
Motor Vehicle	69.3	67.5	(1.8)	-2.7%
Other Sources (2)	156.6	151.1	(5.5)	-3.5%
<b>TOTAL REVENUE</b>	<b>1,012.8</b>	<b>1,099.4</b>	<b>86.7</b>	<b>8.6%</b>

Dollar change (in millions) from prior year

Source: Office of the State Treasurer



## Revenue

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was reached in February 2015 and was set at \$12.1 billion. The new record is \$73 million higher. The most-recent 12-month low point was reached in March 2017 at \$10.76 billion.

Since then, 12-month receipts have climbed by \$1.4 billion, an increase of 13.1 percent.

June marked the 15<sup>th</sup> consecutive month of positive growth in monthly Gross Receipts to the Treasury compared to the prior year, and 12-month collections have been higher than the previous period for 11 months in a row.

The 12-month report shows growth in all major revenue streams. The report for June collections shows growth in individual and corporate income

taxes, along with sales tax and gross production taxes on crude oil and natural gas.

### New revenue collections

The tax commission attributes \$33.8 million in June to new revenue resulting from legislation enacted during 2017. The additional revenue comes primarily from changes in sales tax exemptions and gross production tax incentives.

The new revenue accounts for 3.1 percent of June gross receipts. Out of \$11.2 billion in gross collections since last August, \$308.5 million, or 2.7 percent, has resulted from last year's law changes.

Tax increases on cigarettes, fuel and gross production signed into law in late March took effect on July 1 and

will have no impact on collections until next month.

### Other indicators

The Oklahoma Business Conditions Index, which summarizes several leading economic indicators, has topped growth neutral for 11 consecutive months. The June index slipped to 61.1, from 68.5 in May.

Numbers above 50 indicate anticipated economic growth during the next three to six months.

### June collections

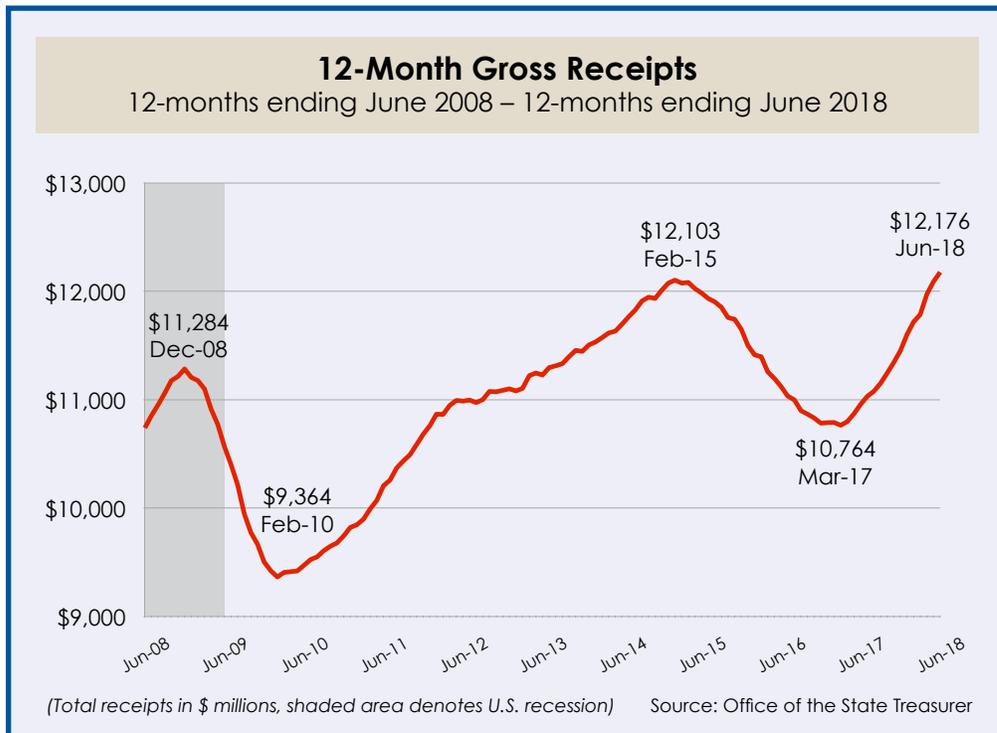
June gross collections total \$1.1 billion, up \$86.7 million, or 8.6 percent, from June 2017.

Gross income tax collections, a combination of individual and corporate income taxes, generated \$389.7 million, an increase of \$18 million, or 4.8 percent, from the previous June.

Individual income tax collections for the month are \$309.4 million, up by \$7.1 million, or 2.4 percent, from the prior year. Corporate collections are \$80.3 million, an increase of \$10.9 million, or 15.7 percent.

Sales tax collections, including remittances on behalf of cities and counties, total \$423.1 million in June. That is \$49.6 million, or 13.3 percent, more than June 2017.

Gross production taxes on oil and natural gas generated \$68.1 million in June, an increase of \$26.4 million, or 63.5 percent, from last June. Compared to May reports, gross



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## Revenue

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production collections are down by \$6 million, or 8.1 percent.

Motor vehicle taxes produced \$67.5 million, down by \$1.8 million, or 2.7 percent, from the same month of 2017.

Other collections, consisting of about 60 different sources including use taxes, along with taxes on fuel, tobacco, and alcoholic beverages, produced \$151.1 million during the month.

That is \$5.5 million, or 3.5 percent, less than last June.

### Fiscal Year 2018 collections

Gross revenue totals \$12.18 billion during FY-18. That is \$1.2 billion, or 11.1 percent, more than collections from the previous fiscal year.

Gross income taxes generated \$4.3 billion for the period, reflecting an

increase of \$334.8 million, or 8.5 percent, from the prior 12 months.

Individual income tax collections total \$3.8 billion, up by \$264.7 million, or 7.5 percent, from the prior fiscal year.

Corporate collections are \$470.8 million for the period, an increase of \$70 million, or 17.5 percent, over the previous period.

Sales taxes for the 12 months generated \$4.7 billion, an increase of \$466.4 million, or 11.1 percent, from the prior period.

Oil and gas gross production tax collections brought in \$699.9 million during the 12 months, up by \$257.2 million, or 58.1 percent, from the previous period.

Motor vehicle collections total \$768.7 million for the year. This is an increase of \$15.1 million, or 2 percent, from the trailing year.

Other sources generated \$1.8 billion, up by \$145.5 million, or 9 percent, from the previous fiscal year.

### About Gross Receipts to the Treasury

The Office of the State Treasurer has issued the monthly Gross Receipts to the Treasury report since March 2011 to provide a timely and broad view of the state's macro economy.

It is released in conjunction with the General Revenue Fund allocation report from the Office of Management and Enterprise Services, which provides important information to state agencies for budgetary planning purposes.

The General Revenue Fund receives less than half of the state's gross receipts with the remainder paid in rebates and refunds, remitted to cities and counties, and placed into off-the-top earmarks to other state funds.

## Oklahoma unemployment rate remains unchanged in May

Oklahoma's seasonally adjusted unemployment rate in May was unchanged from the two prior months at 4.0 percent, while the U.S. jobless rate dropped to 3.8 percent, one-tenth of a percentage point from April, according to figures released by the Oklahoma Employment Security Commission.

It marks only the fourth time since October 1990, and the second consecutive month, that Oklahoma's jobless rate has been higher than the U.S. rate.

Oklahoma Unemployment Report					
May 2018					
		Unemp. rate*	Labor force*	Employment*	Unemployment*
<b>May 2018</b>					
	<b>Oklahoma</b>	<b>4.0%</b>	<b>1,854,642</b>	<b>1,780,858</b>	<b>73,784</b>
	United States	3.8%	161,539,000	155,474,000	6,065,000
<b>OKLAHOMA</b>	April '18	4.0%	1,851,095	1,776,424	74,671
	Mar '18	4.0%	1,848,315	1,773,774	74,541
	Feb '18	4.1%	1,845,063	1,769,910	75,153
	Jan '18	4.1%	1,842,471	1,766,250	76,221
	Dec '17	4.1%	1,841,801	1,765,566	76,235
	May '17	4.3%	1,829,992	1,751,059	78,933

\* Data adjusted for seasonal factors

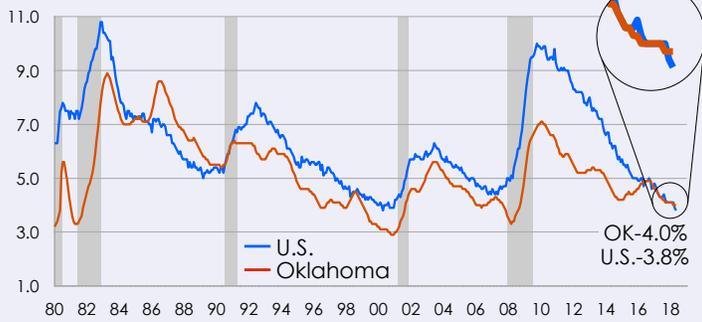
Source: OESC



## Economic Indicators

### Unemployment Rate

January 1980 – May 2018

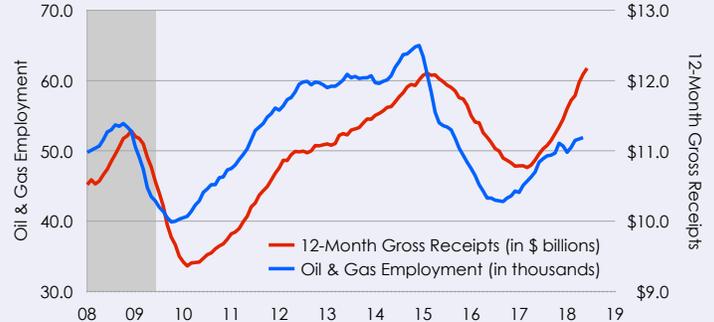


Shaded areas denote U.S. recessions

Source: Bureau of Labor Statistics

### Gross Receipts vs. Oil & Gas Employment

January 2008 – June 2018

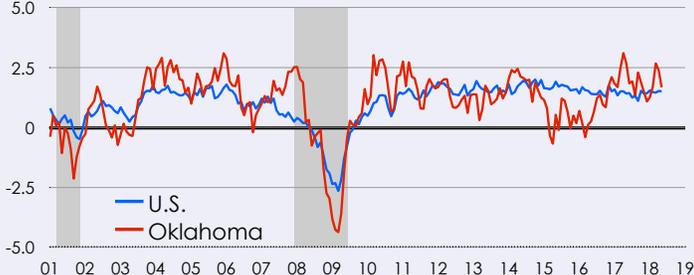


Shaded area denotes U.S. recession

Sources: Bureau of Labor Statistics & State Treasurer

### Leading Economic Index

January 2001 – May 2018



This graph predicts six-month economic movement by tracking leading indicators, including initial unemployment claims, interest rate spreads, manufacturing and earnings. Numbers above 0 indicate anticipated growth.

Shaded areas denote U.S. recessions

Source: Federal Reserve of Philadelphia

### Oklahoma Stock Index

Top capitalized state companies  
January 2009 – June 2018

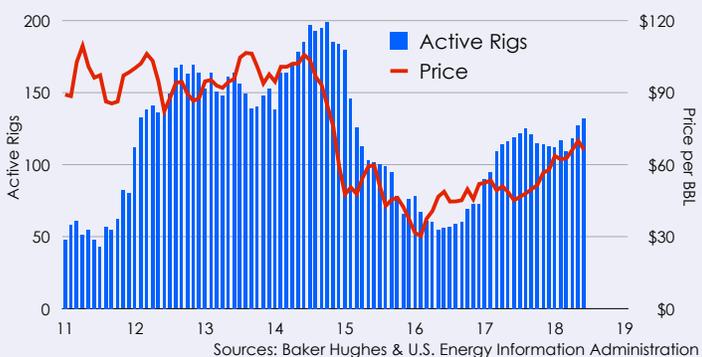


Shaded area denotes U.S. recession

Source: Office of the State Treasurer

### Oklahoma Oil Prices & Active Rigs

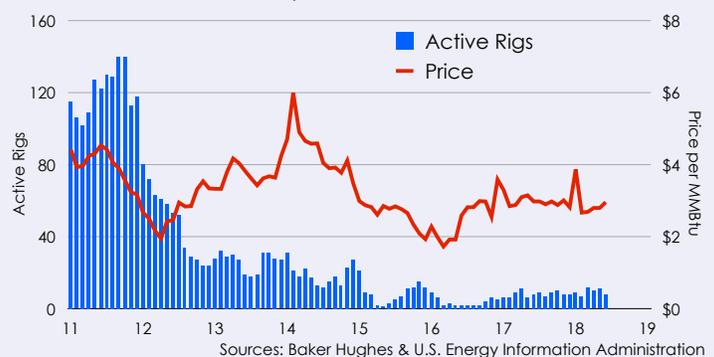
January 2011 – June 2018



Sources: Baker Hughes & U.S. Energy Information Administration

### Oklahoma Natural Gas Prices & Active Rigs

January 2011 – June 2018



Sources: Baker Hughes & U.S. Energy Information Administration