

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

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

**PROPOSED RULES:**

Subchapter 1. General Provisions

710:90-1-6 [AMENDED]

Subchapter 3. Returns and Payments

710:90-3-10 [AMENDED]

**SUMMARY:**

Section 710:90-1-6 has been amended to delete an obsolete reference to "Method 1" tax.

Section 710:90-3-10 has been amended to conform to current statutory authority regarding the rate of withholding on royalty payments on or after July 1, 2006.

**AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. § 203

**COMMENT PERIOD:**

Persons wishing to make written submissions may do so by 4:30 p.m., February 24, 2009, 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 Pat McDonald 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 25, 2009, 10:00 a.m. in the 4<sup>th</sup> floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. In order to facilitate entry into the building, those wishing to appear should contact Pat McDonald 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 4<sup>th</sup> 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 has been determined 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 viewed online at

www.oktax.state.ok.us or obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

**RULE IMPACT STATEMENT:**

A Rule Impact Statement will be prepared and will be available for review from and after January 30, 2009, from the same source listed above for obtaining copies of proposed rules.

**CONTACT PERSON:**

Lisa R. Haws, Agency Liaison. Phone: 405-521-3133; FAX: 405-522-0063; Email: lhaws@oktax.state.ok.us

## CHAPTER 90. WITHHOLDING

### SUBCHAPTER 1. GENERAL PROVISIONS

#### **710:90-1-6. Supplemental wages**

(a) **Treatment of supplemental wages combined with regular wages.** An employer who pays supplemental wages combined with regular wages and does not specify or separate the amount of each should withhold Income Tax as if the total payment were a single payment for a regular payroll period. Supplemental wages include bonuses, commissions, overtime pay, vacation pay, sick leave pay, back pay, retroactive wage increases or payment for nondeductible moving expenses.

(b) **Treatment of supplemental wages paid separately or combined in single payment.**

Supplemental wages which are paid separately or combined in a single payment and the amount of each is specified, are subject to withholding according to one of the following methods:

(1) If you withhold tax from the regular wages use one of these two methods for supplemental wages:

(A) Withhold at the highest applicable rate set out in ~~Section 2355(A)(1), Method 4-68~~ O.S. Section 2355(B)(1) for Oklahoma Income Taxes for the taxable year, or;

(B) Add the supplemental and regular wages for the most recent payroll period. Calculate the tax as if the total constitutes a single payment. Subtract the tax already withheld from the regular wages. Withhold the remaining tax from the supplemental wages.

(2) If tax was not withheld from an employee's regular wages, the provisions set out in (1)(B) of this subsection should be used. This situation would occur, for example, when the value of the employee's withholding allowances claimed on Form W-4 is more than the wages.

(c) **Treatment of overtime, vacation, and sick pay.** Overtime pay, vacation pay, and sick pay are subject to Withholding Tax as if a regular wage payment. If paid in addition to the regular wage, it is considered a supplemental wage.

### SUBCHAPTER 3. RETURNS AND PAYMENTS

#### **710:90-3-10. Income tax withholding - oil and gas royalties**

(a) Effective for royalty payments made on or after October 1, 2000 and before July 1, 2006, any remitter who distributes revenue to a non-resident royalty interest owner is required to deduct and withhold Oklahoma income tax from each payment being made with respect to production of oil and gas in Oklahoma. The amount of income tax to be withheld is six and three-fourth's percent (6.75%) of the gross royalty amount paid. Effective for royalty payments made on or after July 1, 2006, the rate of withholding for any remitter who distributes revenue to a non-resident royalty interest owner is five percent (5%) with respect to production of oil and gas in Oklahoma

(b) For purposes of this Section, "**remitter**" means any person who distributes revenue to royalty interest owners; "**gross royalty**" means that amount which is reported for federal income tax purposes on IRS Form 1099; "**non-resident royalty interest owner**" means any person who is not a current or permanent resident of Oklahoma who retains a non-working interest in oil or gas production; and "**oil**" and "**gas**" shall have the meaning as the terms are defined in 68 O.S. § 1001.2.

(c) Remitters are required to file an Oklahoma Tax Commission Form OW-9B and pay the

Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

- (1) For royalty payments made during January, February, and March, the amount withheld is due no later than April 30;
  - (2) For royalty payments made during April, May, and June, the amount withheld is due no later than July 30;
  - (3) For royalty payments made during July, August, and September, the amount withheld is due no later than October 30; and
  - (4) For royalty payments made during October, November, and December, the amount withheld is due no later than January 30 of the following year.
- (d) The remitter is also required to provide non-resident individual royalty owners and the Oklahoma Tax Commission an annual written statement showing the name of the remitter, to whom the royalty was paid, the amount of the royalty payment and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the royalty owner's name, address, and social security number or Federal Employer Identification Number. This annual filing with the Oklahoma Tax Commission may be done separately, or in conjunction with the annual reporting requirement under 68 O.S. § 2369, if applicable to the remitter.
- (e) Any non-resident royalty interest owner 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 royalty interest owner will be entitled to a refund of the amount of the overpayment.