

CHAPTER 50. INCOME

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CHAPTER 50. INCOME

SUBCHAPTER 1. GENERAL PROVISIONS

710:50-1-1. Purpose

The provisions of this Chapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to income.

710:50-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Commission**" means the Oklahoma Tax Commission.

"**OTC**" means the Oklahoma Tax Commission.

"**OTC Form**" means a form required by the Oklahoma Income Tax Code.

710:50-1-3. Taxpayer assistance

The Tax Commission will assist taxpayers in completing their Oklahoma returns at the Tax Commission office. Taxpayers must provide a properly completed Federal return when requesting this assistance. The Tax Commission will answer specific questions on the phone, but will not assist in the completion of a tax return over the telephone due to limited phones and resources.

710:50-1-4. Confidentiality

(a) **Inquiry.** Information can be given only to the taxpayer/taxpayers named on the return.

(b) **Address correction.** A written notification is required from the taxpayer/taxpayers for an address correction.

(c) **Social Security Number correction.** If an incorrect Social Security Number has been used in filing an individual return, a written statement is required from the taxpayer showing the correct Social Security Number and the taxpayer's name.

710:50-1-5. Public records

The annual list of persons making and filing an Income Tax Return shall be made available for public inspection in the Taxpayer Assistance Division during the normal working hours of the Tax Commission. Mechanically reproduced copies of specific information contained in this listing may be obtained from the Taxpayer Assistance Division at a cost to be determined by the Commission, and posted therein. Complete copies of microfiche are available from the Management Information Systems Division of the Tax Commission. That Division should be contacted for details and costs. [See: 68 O.S. §§205(d), 2385.20]

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98]

710:50-1-6. Requests for copies of income tax returns and associated documents

The Taxpayer Assistance Division will provide, to any taxpayer or to his designated representative, copies of the taxpayer's return and/or accompanying documents in accordance with

the procedures set out in this Section.

- (1) Requests shall be made either in writing or in person.
- (2) If the request is in writing it must be signed by the taxpayer involved, or if the request is from a taxpayer's representative it must be accompanied by an authorization signed by the taxpayer.
- (3) If the request is in person the taxpayer must have a valid identification, or in the case of a taxpayer's representative the representative must have an authorization signed by the taxpayer.

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98]

710:50-1-7. Copying fees

- (a) Copies of returns will cost the following:
 - (1) One or two years - \$2.00
 - (2) Three years - \$2.75
 - (3) Four years - \$3.50
 - (4) Five years - \$4.25
- (b) Copies of additional returns will cost 25 cents per item.
- (c) Remittance shall be made payable to the Oklahoma Tax Commission.

SUBCHAPTER 3. RETURNS AND REPORTS

PART 1. GENERAL INFORMATION

710:50-3-1. Who must file; "taxpayer" defined

All taxpayers must file Oklahoma Income Tax Returns. "**Taxpayer**" means any person subject to income tax imposed by Oklahoma Statutes, or whose income is in whole or in part, subject to income tax imposed by any provision of the Oklahoma Statutes.

710:50-3-2. Verification of joint reports or returns

Pursuant to Sections 245 and 2368(H) of the Oklahoma Statutes, Income Tax Returns filed jointly must be signed by both parties.

710:50-3-3. Due dates; timely filing of returns

- (a) Income Tax Returns of individuals are due on the 15th day of the fourth month following the close of the taxable year unless the returns are filed electronically. If the individual income tax returns are filed electronically, the returns are due on the 20th day of the fourth month following the close of the taxable year. This change to the due date will be effective for tax year 2007 returns and subsequent tax years.
- (b) If the Internal Revenue Code provides for a later due date for returns of individual filers, the Oklahoma income tax returns may be filed by the later due date and will be considered timely filed. This change to the due date will be effective for tax year 2007 returns and subsequent tax years.
- (c) Income Tax Returns of corporations are due on the 15th day of the third month following the close of the taxable year.
- (d) To be considered timely filed, Income Tax Returns are to be filed with and received by the Oklahoma Tax Commission at 2501 Lincoln Blvd., Oklahoma City, Ok. 73194-0009 on or before the statutory filing date. However, dates placed on returns by the Oklahoma Tax Commission

corresponding to postmarks that indicate timely mailing will be accepted as timely filed. In the case of electronically filed returns, any payment of taxes due on the 20th day of the fourth month following the close of the taxable year must also be remitted electronically in order to be considered timely paid. If balances due on electronically filed returns are not remitted to the Oklahoma Tax Commission electronically, penalty and interest will accrue from the 15th day of the fourth month following the close of the taxable year

[Source: Amended at 19 Ok Reg 2056, eff 7-1-08]

710:50-3-4. Extension of time for filing returns

(a) A valid extension of time in which to file a Federal Income Tax Return automatically extends the due date of the Oklahoma Income Tax Return, unless an Oklahoma liability is owed. A copy of the Federal extension must be attached to the Oklahoma Return. If the due date for filing the Federal Return is not extended or if an Oklahoma liability is owed, an extension of time to file the Oklahoma Return may be granted only by OTC Form 504. Ninety percent (90%) of the tax liability must be paid by the original due date for the return to avoid penalty charges for late payment. Interest will be charged from the original due date of the return.

(b) A corporate extension may exceed, upon written request, the approved Federal extension by one month.

710:50-3-5. Withholding certificate

(a) Where the W-2 shows Oklahoma wages and withholding in error, the taxpayer must attach a letter, from the person or entity that issued the W-2, stating the correct Oklahoma wages and withholding.

(b) When the taxpayer is unable to obtain the original W-2 from the employer, a copy of the Federal substitute wage statement filed with the Federal Return shall be filed with the Oklahoma Return. This statement shall show Oklahoma withholdings. [See: 68 O.S. §2385.17]

710:50-3-6. Amended returns for individuals

(a) If a resident taxpayer is required or elects to file an Individual **Amended** Oklahoma Income Tax Return, OTC Form 511X must be submitted. Items listed in (1) through (3) of this subsection, should be attached or an explanation if the item is not applicable:

(1) A copy of the Amended Federal Income Tax Return, or a copy of the Federal Form 1040X, or Federal Form 1045,

(2) Proof that Internal Revenue Service has accepted the claim, such as a copy of the statement of adjustment, any correspondence from Internal Revenue Service, or a copy of the deposit slip of the Federal refund,

(3) Supporting documents for any adjustments to Federal Adjusted Gross Income (OTC Form 511X Line 1) to support each **final** adjusted amount.

(b) Part-year residents and nonresidents must use OTC Form 511NR and indicate that the return is an amended return by marking the appropriate box,

(c) When an individual taxpayer wishes to file or is required to file amended returns for more than one year, an amended return must be completed for each year an amendment is made. No amended return may encompass more than one single year. [See: 68 O.S. 2368]

[Source: Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 16 Ok Reg 2646, eff 6-25-99; Amended at 18 Ok

Reg 2810, eff 6-25-01, Amended at 22 Ok Reg 1534, eff 6-11-05]

710:50-3-7. Duplicate returns

If a refund is not processed in a reasonable amount of time, a duplicate Income Tax Return should not be filed until the taxpayer is advised to do so by a representative of the Oklahoma Tax Commission.

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-3-8. Adjustments by the Internal Revenue Service

(a) If any taxpayer's Federal Income Tax Return is adjusted, an Amended Oklahoma Income Tax Return must be filed within one year. All supporting documentation must be enclosed with an Oklahoma Amended Income Tax Return for the tax year involved. Upon request, the taxpayer must furnish a complete copy of the Federal Income Tax Return, including all schedules, to enable the Tax Commission to determine the correct Oklahoma tax.

(b) The Commission has two (2) years from the date the return or notice was filed to make an assessment or refund and not thereafter, unless a waiver is agreed to and signed by the Commission and the taxpayer.

(c) In the event of failure by a taxpayer to comply with the requirement set out in (a) of this Section, the statute of limitations is tolled until the Amended Oklahoma Income Tax Return is actually furnished.

(d) When the Internal Revenue Service changes the Federal Income Tax Return by issuing its final determination, the Tax Commission shall have the authority to audit each and every item of income, deduction, credit or any other matter related to the return, where such items or matters relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, even if such items or matters were not affected by revisions made in such final determination. Where such items or matters do not relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, the Tax Commission shall be bound by the revisions made in such final determination. [See: 68 O.S. § 2375]

[Source: Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 13 Ok Reg 3105, eff 7-11-96; Amended at 18 Ok Reg 2810, eff 6-25-01, Amended at 22 Ok Reg 1534, eff 6-11-05]

PART 3. LIABILITY; PENALTIES

710:50-3-20. Person liable; definition

The phrase "**Any person, or any member of any firm or association, or any official, agent or employee of any corporation...**" shall include, but not be limited to, the person who, in the normal course of business, is responsible for the daily accounting or recordkeeping, reporting, preparation of financial statements, custodian of records, or who has supervisory responsibility for any of the persons or duties described. These terms shall also include all officers or directors involved to any extent in the daily operation of the business, or in any way with the management of the business or financial decision making process. It shall also include any person filing an Oklahoma Income Tax Return, or, in the determination of a filing requirement, any person who the Commission has reason to believe is required to file an Oklahoma Income Tax Return. [See: 68 O.S. §§206, 243]

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 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]

710:50-3-22. Commission may compel information, books, records

The Tax Commission may request or demand, and the taxpayer, or its duly authorized agent or representative, shall furnish, any information the Tax Commission shall deem necessary to determine the amount of any income tax liability or the requirement to file any tax return, whether such return shall indicate an amount of tax due or not. [See: 68 O.S. §248]

710:50-3-23. Penalty for fraud

(a) The 50% penalty for fraud imposed by statute is computed on the amount of tax determined to be due, and is in addition to any other penalties which may be imposed by law.

(b) The following action or inaction by the taxpayer may result in the imposition of a penalty of 50% for fraud:

- (1) Continued failure to file Oklahoma Income Tax Returns;
- (2) Filing false tax returns;
- (3) Filing frivolous tax returns;
- (4) Other action or inaction tending to evidence an intent to defraud the State or evade tax.

However, evidence of fraud by the taxpayer is not limited to the factors listed in this Section.

(c) In cases where a return has not been filed, and an assessment is based on information furnished to the Commission by the Internal Revenue Service indicating the imposition of a penalty for Negligence, Fraud, Failure to File, or Substantial Understatement of Income, the taxpayer's failure to file an Oklahoma Income Tax Return is evidence of fraud with the intent to evade tax. [See: 68 O.S. §2375(E)]

710:50-3-24. Failure to file; evidence of fraud; criminal prosecution

(a) Failure to file an Oklahoma Income Tax Return, when the files and records of the Commission indicate a prior knowledge of the requirement to file an Income Tax Return, shall be evidence of intent to defraud the state and evade the payment of taxes.

(b) Any attempt by the Commission to collect any tax, penalty or interest which may be due in a case where a return which was required to be filed, and which was not filed within the time required, shall not be deemed to be an action taken in lieu of prosecution, but rather an action taken in addition

to any prosecution for the violation of state tax laws.

(c) In cases where the Commission deems it appropriate, violators of the state tax laws may be prosecuted as provided by law. [See: 68 O.S. §§240.1, 241, 260, 2377]

710:50-3-25. Additional penalty for criminal violations

The penalty imposed by statute for a criminal violation of the Oklahoma Income Tax Code shall be based on the amount of tax, penalties, and interest determined in criminal action to be due. For collection purposes, this penalty shall not be recomputed as additional interest continues to accrue, but shall remain the same as was computed at the time it was imposed. [See: 68 O.S. §259]

PART 5. FILING STATUS; ELECTIONS; ACCOUNTING PERIODS AND METHODS

710:50-3-35. Filing status and elections

For the purpose of determining any income tax liability, a taxpayer's filing status, and any elections, such as itemized deductions, shall be the same as on the Federal Income Tax Return. In cases where no return has been filed, any information made available by the I.R.S., whether a Revenue Agents Report (R.A.R.), or other related return information, shall constitute the filing status and elections for the purpose of the determination, assessment, and collection of any Oklahoma Income Tax liability.

710:50-3-36. Residency

(a) An Oklahoma resident is a person domiciled in this state. "**Domicile**" is the place established as a person's true, fixed, and permanent home. A domicile, once established, remains until a new one is established.

(b) One is presumed to retain his Oklahoma residency if he has:

- (1) An Oklahoma Homestead Exemption;
- (2) His family remains in Oklahoma;
- (3) He retains an Oklahoma drivers license;
- (4) He intends to return to Oklahoma; or
- (5) He has not abandoned his Oklahoma residence.

[Source: Amended at 14 Ok Reg 2699, eff 6-26-97]

710:50-3-37. Military residency

If a taxpayer was a resident of Oklahoma at the time of entrance into military service, assignment to duty outside Oklahoma does not, of itself, change the state of residence. An Oklahoma Income Tax Return should be filed as a resident of Oklahoma until such time as a permanent residence in another state is established.

710:50-3-38. Nonresidents; who must file

(a) A nonresident is required to file an Oklahoma Income Tax Return Form 511NR if \$1,000.00 of gross receipts is from Oklahoma sources.

(b) A return is required to establish a loss year, even though gross receipts may be less than \$1,000.00.

(c) Employees of interstate carriers (including railroads) are only subject to state income tax of the

state of residence of said employee. [See: 49 U.S.C.A. §§ 11502 and 14503]

[Source: Amended at 17 Ok Reg 2669, eff 6-25-00]

710:50-3-39. Part-year resident

An Oklahoma Income Tax Return Form 511NR must be completed and filed by those individuals who move into or out of the State of Oklahoma during the year.

[Source: Amended at 17 Ok Reg 2669, eff 6-25-00]

710:50-3-40. Husbands and wives

(a) **Filing methods of married taxpayers, where one is resident and the other is non-resident.** Married taxpayers who file a joint federal return, where one spouse is an Oklahoma resident (civilian or military), and the other is a nonresident civilian (non-military), must file using one of the following methods:

(1) **File as Oklahoma residents, married, filing separately.** The Oklahoma resident, filing a joint Federal return with a nonresident civilian spouse, may file their Oklahoma return as "married, filing separately". If the nonresident civilian spouse has an Oklahoma filing requirement, OTC Form 511NR is to be utilized for filing purposes, using "married, filing separately" rate charts, and reporting only the nonresident civilian's income and deductions. The resident spouse will file on OTC Form 511, using the "married, filing separately" rates, and reporting only his or her income and deductions. OTC Form 574 "Allocation of Income and Deductions" must be filed with the return(s).

(2) **File as though both spouses were residents.** The spouses may file as if both the resident and the nonresident civilian were Oklahoma residents, on OTC Form 511, using the "married, filing jointly" filing status, and reporting all the income. A tax credit (OTC Form 511TX) may be used to claim credit for taxes paid to the other state, if applicable, under this method. A statement should be attached to the return stating that the nonresident is filing as a resident for tax purposes only.

(b) **When (a)(1) and (a)(2) do not apply.** The filing methods described in (a) of this Section do not apply if either spouse is a **part-year resident**, or an Oklahoma resident (civilian or military) files a joint Federal return with a nonresident **military** spouse. In these instances, they must use the same filing status as used on the Federal income tax return. In these instances, OTC Form 511NR shall be completed and must include all Oklahoma source income of both spouses in the "Oklahoma" amount column.

[Source: Amended at 17 Ok Reg 2669, eff 6-25-00; Amended at 21 Ok Reg 2571, eff 6-25-04]

710:50-3-41. Deceased taxpayer

If a taxpayer died during the tax year (or following year before filing a return for the tax year), the executor, administrator or surviving spouse must file an Oklahoma Income Tax Return for the decedent. Enter the date of death following the first name of decedent.

710:50-3-42. Exempt organizations

Generally an organization exempt from Federal income taxation is exempt from Oklahoma income taxation. [See: 68 O.S. §2359]

710:50-3-43. Charitable organization and solicitor registration [REVOKED]

[Source: Revoked at 14 Ok Reg 2699, eff 6-26-97]

710:50-3-44. Accounting periods and methods

The taxpayer must use the same accounting periods and methods as used for Federal Income Tax purposes. There must be an Oklahoma Income Tax Return filed for every Federal Return filed, using the same period as used on the Federal Return. The taxpayer may not combine two or more Federal short periods into one Oklahoma Return.

710:50-3-45. Verification of signatures on electronically-filed returns

(a) **General provisions.** Section 2368(H) of the Oklahoma Statutes requires that any return must be verified by a written declaration that it is made under penalties of perjury and further, authorizes the Tax Commission to promulgate rules to provide procedures for verification of signatures on returns which are filed electronically.

(b) **Authentication.** For purposes of authenticating a signature for electronic filing, entry of the Taxpayer's Personal Identification Number (PIN) in the electronic filing process operated by the Internal Revenue Service shall serve as an "electronic signature" to sufficiently identify and link the taxpayer to a particular return, pursuant to the Oklahoma Income Tax Code. Entry of the taxpayer's PIN as signature will only be allowed on a joint federal/state return or a linked electronically-filed return. Use of a PIN will not be allowed on a state-only or unlinked return.

(c) **Verification.** For purposes of verifying the information provided by a taxpayer filing electronically, as required by Section 2368(H) of the Oklahoma Income Tax Code, completion of the electronic filing process operated by the Internal Revenue Service, including entry of the Taxpayer's PIN shall serve as verification of the information provided by the taxpayer during the transmission.

[Source: Added at 17 Ok Reg 2669, eff 6-25-00; Amended at 27 Ok Reg 2281, eff 7-11-2010]

710:50-3-46. Electronic filing requirement for tax return preparers

(a) **Definitions.** For purposes of this Section, *"tax return preparer"* means any person who prepares, for compensation, any return of tax imposed under Title 68 of the Oklahoma statutes, including any claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes. The term *"tax return preparer"* also includes any person who employs one or more persons to prepare, for compensation, any return of tax imposed under Title 68 of the Oklahoma Statutes, including any claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes. The preparation of a substantial part of a return or a claim for refund is deemed to be the preparation of the entire return or claim for refund.

(b) **General provisions.** Any tax return preparer who prepared more than fifty (50) Oklahoma tax returns for the previous tax year must file Oklahoma income tax returns prepared for the current year by electronic means. The requirement to file returns electronically applies only to those income tax returns for which the Tax Commission is set up to accept by electronic means, and does not apply to any return on which the taxpayer has indicated a desire that the return **not** be filed electronically.

(c) **Check-off box.** Oklahoma Income Tax Returns will have a check-off box for use by those

taxpayers who wish to designate that their income tax return **not** be electronically filed. [68 O.S.Supp.2003, § 2385]

[Source: Added at 21 Ok Reg 2571, eff 6-25-04]

PART 7. OTHER REQUIRED REPORTING

710:50-3-50. Reports required from persons making payments to taxpayers

(a) Oklahoma law requires persons making payments totaling \$750 or more annually, to taxpayers to file a report. The required report is to include payments required to be reported by the Internal Revenue Service, unless specifically excluded by the Commission. [See: 68 O.S. § 2369(A)]

(b) Reports may be required in the case of payments of interest upon bonds which are exempt from Federal Taxation, but which are not specifically excluded from Oklahoma Taxation. Any broker transacting any business for any person or individual subject to Oklahoma tax may be required to report the name and address of each person or individual transacting business, a description of the business transacted, and such specific details as the Tax Commission shall deem necessary to determine the true tax liability of any taxpayer. Such reports shall be in a form and manner as the Tax Commission shall require. [See: 68 O.S. §§ 2358(A)(1), 2369(B)]

(c) Reports are required for production payments as follows:

(1) Although reports for production payments may not have been made previously, they may be required for any time period, regardless of any recordkeeping requirements. [See: 68 O.S. § 2369(D)(4)]

(2) Requirements for the method of reporting production payments shall be set by the Commission as it deems appropriate. Failure of the Commission to notify any person or corporation of its obligation to make a report required by statute shall not relieve that person or corporation of its obligation to do so.

(3) For the purposes of 68 O.S. 2369(D)(4), a report shall be defined as that required for each recipient of payments as defined in 710:50-3-52.

(4) Income taxes withheld pursuant to 68 O.S. § 2385.26 shall be reported to the taxpayer on either IRS Form 1099 or Oklahoma Tax Commission Form 500-A.

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-3-51. Production payments

(a) Amounts of production payments necessitating the reporting requirements of 68 O.S. 2369 may be determined by the Commission as it deems appropriate. Under no circumstances shall this amount be less than that required by the Internal Revenue Service.

(b) Reports of production payments shall be made in such a form as the Commission shall prescribe and shall be due to the Oklahoma Tax Commission no later than February 28 for reporting production payments for the preceding calendar year.

(c) Prior to the issuance of an order to withhold production payments, the Commission shall notify any taxpayer deemed to be delinquent that they are required to file an Income Tax Return and that the records of the Commission do not indicate that a return has been filed. This notice shall be deemed to be a demand for the filing of an Oklahoma Income Tax Return. [See: 68 O.S. § 2369(D)]

(d) Failure of the taxpayer to file a return as required by 710:50-3-50 shall result in an assessment

against the taxpayer of an amount determined by information furnished by persons making payments to the taxpayer. This assessment shall be made in accordance with the provisions of the Uniform Tax Procedure Code, and mailed to the address of the taxpayer, as reported by the persons making payments to the taxpayer. In the event the taxpayer does not protest this assessment or pay the taxes due within the time allowed, a tax warrant shall be issued. [See: 68 O.S. § 221]

(e) At such time as an assessment becomes final, a notice shall be mailed to the taxpayer. [See: 68 O.S. § 2369(D)(3)]

[Source: Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-3-52. "Reports," "records" defined

(a) For the purposes of assessing penalties set out for refusal or failure to file, the "**reports**" required by statute from persons making production payments means each record, containing the information concerning each individual recipient of payments.

(b) The term "**record**" shall mean each document, if reported on Oklahoma Form 500-A, as amended, or Federal Form 1099, or each individual recipient, if reported on magnetic media or listed on a "**computer listing**".

(c) The term "**report**" or "**record**" does not refer cumulatively to all payments made, if made to more than one single recipient. Furthermore, each corporation, if a part of a consolidated group, must separately report for purposes of this subsection, regardless of their filing status for Income Tax Returns.

[Source: Amended at 16 Ok Reg 2646, eff 6-25-99; Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-3-53. 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.

[Source: Added at 18 Ok Reg 2810, eff 6-25-01; Amended at 19 Ok Reg 2433, eff 6-27-02; Amended at 24 Ok Reg 2359, eff 6-25-07]

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 therefor 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* 710:50-17-17 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-Bs, 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-C) 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.

[Source: Added at 21 Ok Reg 2571, eff 6-25-04, Amended at 22 Ok Reg 1534, eff 6-11-05]

PART 9. "INNOCENT SPOUSE" RELIEF PROCEDURE

710:50-3-60. Relief of spouse from Oklahoma Income Tax liability on joint Oklahoma Income Tax Return

If a joint Oklahoma Income Tax Return was filed on which there is, or there is subsequently determined to be, a liability attributable to income or activity for one spouse, the other spouse may be relieved of the liability for the Oklahoma Income Tax, including interest and penalty, if the spouse requesting relief can establish, by a preponderance of the evidence, that:

- (1) The liability is attributable to the income or business activity of the non-requesting spouse; and
- (2) It would be inequitable to hold the requesting spouse liable for the tax liability. Factors, not all-inclusive, which may be considered in determining whether it would be inequitable to hold the requesting spouse liable are:
 - (A) Whether the requesting spouse received a benefit, such as a lavish gift, increased standard of living or additional money from the nonpayment of tax;
 - (B) Whether the spouse requesting relief has been deserted, divorced, separated, or widowed;
 - (C) Business background or education of the requesting spouse;
 - (D) Involvement of the requesting spouse in the financial affairs of the family; and
 - (E) Involvement of the requesting spouse in the business or transaction giving rise to the tax liability.

[Source: Added at 13 Ok Reg 51, eff 10-2-95 (emergency); Added at 13 Ok Reg 3105, eff 7-11-96]

710:50-3-61. Docketing of request for relief

All requests for relief of one spouse from income tax attributable to a joint Oklahoma Income Tax Return shall be forwarded to the Office of the General Counsel. The General Counsel's office will assign a case number to a request for relief, create a file, assign an attorney, and notify the

requesting spouse of the assignment.

[Source: Added at 13 Ok Reg 51, eff 10-2-95 (emergency); Added at 13 Ok Reg 3105, eff 7-11-96]

710:50-3-62. Initial review, determination of recommendation

The General Counsel or a designee will review the request and supporting documentation submitted and will make a recommendation that the Tax Commission grant the requested relief if the documentation has established that the liability is attributable to the income or business activity of the non-requesting spouse and that to hold the requesting spouse liable for the deficiency for the tax year involved would be inequitable.

[Source: Added at 13 Ok Reg 51, eff 10-2-95 (emergency); Added at 13 Ok Reg 3105, eff 7-11-96]

710:50-3-63. Procedure upon adverse recommendation

If the General Counsel does not intend to recommend that the Commission grant the requesting spouse relief, the General Counsel shall notify the requesting spouse of the recommendation. The notification letter shall state prominently that should the applicant wish to pursue the request, the applicant should do so by contacting the General Counsel's office, in writing, within thirty days of the mailing of the notification. Failure of the applicant to pursue the request within thirty days of the mailing of the notification shall constitute grounds for the denial of relief.

[Source: Added at 13 Ok Reg 51, eff 10-2-95 (emergency); Added at 13 Ok Reg 3105, eff 7-11-96]

710:50-3-64. Presentation of relief request to Commission

(a) All requests for relief, whether recommended or not, shall be presented to the Commission at a regularly scheduled meeting. The assigned attorney shall set forth the facts in writing, have the request placed on the Commission's docket, and notify the applicant of the day the request will be heard by the Commission. The applicant may appear before the Commission and present documentary evidence and testimony in the form of affidavit(s).

(b) No hearing other than the appearance at a regularly scheduled meeting of the Commission will be held. No transcript of the appearance before the Commission will be prepared.

(c) Should the applicant desire a transcription or recording of taxpayer's appearance before the Commission, the applicant will need to contact a certified court reporter, and make the necessary arrangements for the presence of the reporter at the Commission meeting, and the cost thereof. The cost of transcribing will be borne by the applicant, who must furnish the original of the transcript to the Commission.

[Source: Added at 13 Ok Reg 51, eff 10-2-95 (emergency); Added at 13 Ok Reg 3105, eff 7-11-96]

710:50-3-65. "Preponderance of the evidence" defined

For purposes of implementing Section 2361 of Title 68 of the Oklahoma Statutes and the rules set out in this Part, "**preponderance of the evidence**" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[Source: Added at 13 Ok Reg 51, eff 10-2-95 (emergency); Added at 13 Ok Reg 3105, eff 7-11-96]

SUBCHAPTER 5. AUDIT AND ASSESSMENT

PART 1. AUDITS

710:50-5-1. Oklahoma travel law on out-of-state audits [REVOKED]

[Source: Revoked at 16 Ok Reg 2646, eff 6-25-99]

PART 3. ASSESSMENTS

710:50-5-10. Assessment procedure; assessment based upon information derived from Internal Revenue Service

(a) Assessments shall be made in accordance with the Uniform Tax Procedure Code. The income information furnished by the I.R.S. shall be that upon which any tax liability is computed. Unless otherwise indicated in the Revenue Agent's Report (R.A.R.), all income is considered to be from Oklahoma sources, as are all deductions and credit, to the extent that they are allowed by Oklahoma Statute. The taxpayer is considered to be, or to have been an Oklahoma resident during the year or years examined by the I.R.S. by virtue of the fact that the results of the examination are disclosed to the Commission by the I.R.S. The assessment shall be mailed to the address shown on the R.A.R. or the last known address of the taxpayer.

(b) In cases where returns have not been previously filed by the taxpayer, the Tax Commission may, in its discretion and in the alternative to assessing taxes, demand that the taxpayer file a return as required. For the purpose of this Section, the determination that the taxpayer was, in fact, required to file an Oklahoma Tax Return shall be based on the information furnished by the I.R.S.

710:50-5-11. Protests of assessments

Protests of an income tax assessment may be made in accord with the requirements of the Uniform Tax Procedure Code. [See: 68 O.S. §§221 et seq.]

710:50-5-12. Limitation of time for assessment

(a) There shall be no assessment of any income tax after the expiration of 3 years from the date the return was required to be filed or the date the return was filed, whichever period expires latest. To determine when a return was filed, the Commission shall rely on its files and records, unless the taxpayer can furnish satisfactory evidence that the return was, in fact, filed.

(b) When no return has been filed, or where it is determined that a false or fraudulent report or return has been filed, the Commission may, at any time, compute, determine, and assess the estimated amount of tax due from any information in its possession.

710:50-5-13. Exceptions to statute of limitations

(a) When the Internal Revenue Service and the Taxpayer have consented in writing to an extension prior to the time allowed in 68 O.S. §223, the Tax Commission may assess or refund income tax, as imposed under Title 68, any time prior to the expiration of time agreed upon.

(b) The Oklahoma Tax Commission may make assessment or refund after the expiration of time allowed in 68 O.S. §223 if corrections or changes are made by the Internal Revenue Service. The

taxpayer shall notify the Oklahoma Tax Commission within one (1) year after such change or correction is made by the Internal Revenue Service and the Oklahoma Tax Commission shall, within two (2) years from the date of notification by the taxpayer, make such assessment or refund, unless a waiver between the taxpayer and the Oklahoma Tax Commission has been agreed to and signed. Failure to notify the Oklahoma Tax Commission of such changes shall cause the statute of limitations to be tolled.

(c) The Commission shall have the authority to audit each and every item of taxable income, expense, credit or any other matter related to the return where such items are matters of allocation and/or apportionment between Oklahoma and some other state even if such items were not affected by revisions made by the Internal Revenue Service. Where items are not matters of allocation and/or apportionment between Oklahoma and some other state, the Commission shall be bound by the consequences of the assessment of income tax or refund of income tax made by the Internal Revenue Service after the amount of such net income has been finally ascertained.

(d) Certain claims of military personnel, under conditions described in 68 O.S. §2358(D)(5) may not be barred by the 3-year limitation.

(e) There is no statute of limitation for paying an established liability or for a liability on an unfiled return.

[Source: Amended at 10 Ok Reg 3837, eff 7-12-93; Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94]

SUBCHAPTER 7. REMITTANCES

710:50-7-1. Payment of tax

Individuals filing a joint Oklahoma Income Tax Return are both jointly and individually liable for the payment of any taxes due. [See: 26 U.S.C.A §6013]

710:50-7-2. Application of payments

Any income tax payments received without designation shall be applied to the oldest outstanding liability first. Payments are first applied to tax, then interest and penalty.

SUBCHAPTER 9. REFUNDS

710:50-9-1. Refunds

If the total of amounts withheld and/or Oklahoma estimated tax payments exceeds the figure computed for Oklahoma Income Tax liability, a refund may be due the taxpayers.

710:50-9-2. When a refund is barred by statute of limitations

When an original return has not been filed, the Commission will not issue a refund on an original Individual Income Tax Return filed 3 years after the original due date of the return. A refund that is "barred by statute" cannot be used as payment on any delinquent account or applied to estimated tax. Exceptions to the statute of limitations set out in 710:50-5-13 also apply to certain refund situations. [See: 68 O.S. §2373]

710:50-9-3. Interest on refunds

- (a) **Returns filed prior to January 1, 2004.** For returns filed on or after January 1, 1987, and before January 1, 2004, interest will be paid on income tax refunds that are not processed within ninety (90) days from the date a processible return is filed or due, whichever is later, at the same rate of interest specified for delinquent tax payments.
- (b) **Returns filed on or after January 1, 2004 and before January 2, 2010.** In the case of returns filed on or after January 1, 2004 and before January 2, 2010, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:
- (1) For electronically-filed returns, thirty (30) days; and,
 - (2) For all other returns, one hundred fifty (150) days.
- (c) **Returns filed after January 1, 2010.** For returns filed after January 1, 2010, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:
- (1) For electronically-filed returns, twenty (20) days, and
 - (2) For all other returns, ninety (90) days.
- (d) **Definitions.** For purposes of this Section, time periods shall be determined from the date a processible return is filed or due, whichever is later. To be "**processable**", all information on the return, including the computations, must be correct and all documents required by the Tax Commission must be included. In the case of an Amended Oklahoma Income Tax Return with a federal adjusted gross income change, the return must be accompanied by documentation to substantiate that the I.R.S. accepted the requested change. [See: 68 O.S. § 217(H)]
- (e) **Exceptions.** Alternative statutory provisions apply in the following instances:
- (1) Interest will not be paid on refunds that are intercepted for state or federal agencies. See provisions of Subchapter 11 of this Chapter. [See: 68 O.S. § 217(H)]
 - (2) In the event of litigation, interest will be paid in accordance with 68 O.S. §2374.
 - (3) In the case of refunds made to recover taxes illegally collected on bonus payments from oil and gas leases located on tax exempt Indian lands interest at 6 percent (6%) per annum will be calculated from the date of payment by the taxpayer, until the date the refund is issued. [See: 68 O.S. § 2373]

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 16 Ok Reg 2646, eff 6-25-99, Amended at 22 Ok Reg 1536, eff 6-11-05; Amended at 27 Ok Reg 2281, eff 7-11-2010]

710:50-9-4. Refunds returned by postal service

The Taxpayer Assistance Division will receive refund vouchers returned by the Postal Service. Upon receipt of a written request signed by the taxpayer(s) the voucher will be remailed.

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-9-5. Distribution of refunds [REVOKED]

[Source: Revoked at 15 Ok Reg 2811, eff 6-25-98]

710:50-9-6. Refunds less than \$1.00

The Commission will not issue refund vouchers for income tax overpayments of less than \$1.00. The Commission likewise will not enforce the collection of a tax due of less than \$1.00.

710:50-9-7. Refund vouchers void after 90 days

- (a) Refunds issued for overpayment of income tax become void ninety (90) days after issuance. In the case of an income tax refund warrant which has not been presented for payment within the ninety (90) days, a reissue of the refund warrant may be requested from the Tax Commission. Such an income tax refund warrant may be reissued for a like amount up to three (3) years from the date of the issuance of the original warrant. [See: 68 O.S. § 2385.16]
- (b) Refunds not claimed at the end of three years from the date of issuance will be turned over to the Unclaimed Property section of the State Treasurer's Office.

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01, Amended at 22 Ok Reg 1537, eff 6-11-05]

710:50-9-8. Reissued vouchers for deceased taxpayer refunds or lost, stolen or forged vouchers

- (a) Income tax refunds which are issued in the name of a deceased taxpayer who is not represented by an executor or executrix may be returned to the Refund Section of the Taxpayer Assistance Division for reissuance in the name of the claimant, upon a determination that the claimant is the proper recipient. OTC Form 507, along with a separate letter setting out the facts and signed by the claimant, must accompany any such claim.
- (b) Claims for refunds that have been lost in the clearing process may be submitted to the State Treasurer's Office for reissue. Upon notification by the State Treasurer, the Refund Section of the Taxpayer Assistance Division will reissue the voucher in the name of the taxpayer and forward to the holder in due course.
- (c) Refund vouchers which have become lost, stolen or forged will be reissued by the Refund Section of the Taxpayer Assistance Division after the taxpayer has properly executed an affidavit setting out the facts, and upon approval by the State Treasurer's office.

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 26 Ok Reg 2330, eff June 25, 2009]

710:50-9-9. Different spouse refunds [REVOKED]

[Revoked at 22 Ok Reg 1534, eff 6-11-05]

710:50-9-10. Check-off program

- (a) **Check-off program.** The Oklahoma Income Tax Check-Off Program provides a taxpayer with the opportunity to make a financial gift to a variety of Oklahoma organizations from a tax refund due.
- (b) **Termination of a check-off category.** If, on September 1, of any year, the total contributions to any one of the categories established by the Income Tax Check-Off Program do not equal or exceed Fifteen Thousand Dollars (\$15,000.00) for each of the last three consecutive calendar years, the category will be removed from Oklahoma Income Tax Returns for the following and all subsequent years. Any contribution to the removed category after September 1 shall be refunded to the taxpayer. [See: 68 O.S. § 2368.2]

[Added at 22 Ok Reg 1537, eff 6-11-05]

SUBCHAPTER 11. INTERCEPT OF REFUNDS

710:50-11-1. Refunds may be intercepted [REVOKED]

[Revoked at 22 Ok Reg 1537, eff 6-11-05]

710:50-11-2. Notice to taxpayer [REVOKED]

[Source: Amended at 21 Ok Reg 2571, eff 6-25-04, Revoked at 22 Ok Reg 1537, eff 6-11-05]

710:50-11-3. Notice of protest [REVOKED]

[Source: Amended at 21 Ok Reg 2571, eff 6-25-04, Revoked at 22 Ok Reg 1537, eff 6-11-05]

710:50-11-4. Joint returns intercept [REVOKED]

[Revoked at 22 Ok Reg 1537, eff 6-11-05]

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)]

[Added at 22 Ok Reg 1537, eff 6-11-05]

710:50-11-6. Tax Commission shall have priority over all other agencies or district courts

(a) The Tax Commission shall have first priority over all other agencies or district courts when the Tax Commission is collecting a debt or final judgment. Priority in multiple claims by other agencies or district courts pursuant to the provisions of this Section shall be in the order in which the Tax Commission receives the claim from the agencies and district courts required by (b) of this Section. [See: 68 O.S. § 205.2(F)]

(b) A state agency or a district court seeking to collect a debt 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 or district court 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. [See: 68 O.S. § 205.2(A)]

(c) Upon receiving a claim from a state agency or a district court, the Tax Commission shall notify the agency or district court whether there are funds available to pay the claims. 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 obligations.

[Added at 22 Ok Reg 1538, eff 6-11-05]

710:50-11-7. Notice to taxpayer

(a) The referring agency to whom a debt is owed must notify the taxpayer/debtor of an income tax refund intercept.

(b) The state agency or a district court 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 Tax Commission, state agency, or the district court shall send notice to the judgment debtor by first class mail at the last-known address of the judgment debtor as shown by the records of the Tax Commission when seeking to collect a final judgment.

The notice shall state:

(1) That a claim has been filed;

(2) The basis for the claim;

(3) That such state agency or district court has applied to the Tax Commission for any portion of the tax refund due to the debtor which would satisfy the debt or final judgment in full or part;

(4) That the debtor has the right to contest the claim by sending a written request to the Tax Commission, state agency, or the district court for a hearing to protest the claim and if the debtor fails to apply for a hearing within sixty (60) days after the receipt of the notice, the debtor shall be deemed to have waived the opportunity to contest the claim; and,

(5) That a collection expense of five percent (5%) of the gross proceeds owed to the state agency or district court shall be charged to the debtor and withheld from the refund upon final determination of the debt or final judgment at the hearing or upon failure of the debtor to request a hearing.

(c) If the taxpayer settles the outstanding debt or final judgment with the agency or district court before the sixty (60) days expire, the agency or the district court shall notify the Tax Commission in writing or by electronic media that the claim has been released. [See: 68 O.S. § 205.2(A)(2)]

[Added at 22 Ok Reg 1538, eff 6-11-05]

710:50-11-8. Post intercept notice

The referring agency must notify the Tax Commission of the status of a debtor's account within ninety (90) days of the initial notice of refund intercept by the Tax Commission, whether or not any protest proceeding has been completed. Intercepts not updated due to the referring agency's failure to provide status reports will be purged from the Warrant Intercept System and funds will be released to the taxpayer.

[Added at 22 Ok Reg 1538, eff 6-11-05]

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 or final judgment is claimed;

(2) The fact that a debt 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 or final judgment asserted against debtor; and,

(4) That in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the Tax Commission or referring agency named in the notice within sixty (60) 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 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. [See: 68 O.S. § 205.2(A)(3)]

[Added at 22 Ok Reg 1538, eff 6-11-05]

710:50-11-10. Nondebtor spouse protest

If the district court or agency asserting the claim receives a written request from the debtor or taxpayer against whom no debt or final judgment is claimed requesting a hearing, the agency or the district court 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 or final judgment asserted by the district court or the agency, no action shall be taken in furtherance of the collection of the debt 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)]

[Added at 22 Ok Reg 1538, eff 6-11-05]

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 or final judgment, or upon failure of the debtor or taxpayer against whom no debt or final judgment is claimed to request such a hearing, the district court or the agency shall submit in a manner prescribed by the Tax Commission, notification of the action taken on the claim and a request that the amount owed, including the collection expense, be deducted from the tax refund due to the debtor and transferred to the district court or the agency. However, if the tax refund due is inadequate to pay the collection expense and debt or final judgment, the balance due the state agency or the district court shall be a continuing debt or final judgment until paid in full.

(b) Upon receipt of notification provided in this Section, the Tax Commission shall:

- (1) Deduct from the refund five percent (5%) of the gross proceeds owed to the state agency or district court and distribute it by retaining two percent (2%) and transferring three percent to the district court or the state agency 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 debt or final judgment or so much thereof as is available to the state agency or the district court;
- (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 or final judgment. [See: 68 O.S. § 205.2(C) and (D)]

[Added at 22 Ok Reg 1539, eff 6-11-05]

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)]

[Added at 22 Ok Reg 1539, eff 6-11-05]

SUBCHAPTER 12. TREASURY OFFSET PROGRAM

710:50-12-1. Purpose

The provisions in this Subchapter have been promulgated to implement and administer, in conjunction with the Internal Revenue Service, the Treasury Offset Program, "TOP" authorized by 26 U.S.C. § 6402(e) and 31 C.F.R. § 285.8.

[Added at 22 Ok Reg 1539, eff 6-11-05]

710:50-12-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Debt**" means past-due, legally enforceable State income tax obligation unless other indicated.

"**Debtor**" means a person who owes a state income tax obligation.

"**IRS**" means the Internal Revenue Service, a bureau of the U.S. Department of the Treasury.

"**Past-due, legally enforceable State income tax obligation**" means a debt which resulted from:

(A) A judgment rendered by a court of competent jurisdiction, which has determined an amount of State income tax to be due;

(B) A determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review; or,

(C) A State income tax assessment (including a self-assessment) which has become final in accordance with State law but not collected, and which has not been delinquent for more than 10 years.

"**Tax refund offset**" means withholding or reducing a tax refund overpayment by an amount necessary to satisfy a debt owed by the payee(s).

"**Tax refund payment**" means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits for any liabilities for any Federal tax on the part of the person who made the overpayment.

[Added at 22 Ok Reg 1539, eff 6-11-05]

710:50-12-3. Address on federal tax return

TOP will only offset a tax refund payment if the address shown on the Federal tax return for the taxable year of the overpayment is an address within the State seeking the offset.

[Added at 22 Ok Reg 1539, eff 6-11-05]

710:50-12-4. Advance notification to debtor

(a) The State is required to provide a written notification to the debtor by certified mail, return receipt requested, informing the debtor that the State intends to refer the debt for collection by tax

refund offset. The notice must also give the debtor at least 60 days to present evidence, in accordance with procedures established by the State, that all or part of the debt is not past-due or not legally enforceable.

(b) The State must, in accordance with procedures established by the State, consider any evidence presented by a debtor in response to the notice described in (a) of this Section and determine whether an amount of such debt is past-due and legally enforceable.

(c) Prior to submitting a debt to TOP for collection by tax refund offset, the State must make reasonable efforts to collect the debt. Reasonable efforts include making written demand on the debtor for payment and complying with any other prerequisites to offset established by the State.

[Added at 22 Ok Reg 1539, eff 6-11-05]

710:50-12-5. Post-offset notice

(a) When an offset occurs, TOP shall notify the debtor in writing of the following:

(1) The amount and date of the offset and that the purpose of the offset was to satisfy a past-due, legally enforceable State income tax obligation;

(2) The State to which this amount has been paid or credited; and,

(3) A contact point within the State that will handle concerns or questions regarding the offset.

(b) The notice shall also advise any non-debtor spouse who may have filed a joint return with the debtor of the steps which the non-debtor spouse may take in order to secure his or her proper share of the tax refund.

[Added at 22 Ok Reg 1540, eff 6-11-05]

710:50-12-6. Offsets on joint returns

If the person filing a joint return with a debtor who owes a past-due, legally enforceable State income tax obligation takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that TOP deduct that amount from future amounts payable to the State or that TOP otherwise obtain the funds back from the State. TOP, or the appropriate State, will adjust their debtor records accordingly.

[Added at 22 Ok Reg 1540, eff 6-11-05]

710:50-12-7. Fees paid to TOP

The State will pay a fee to TOP to cover the full cost of offsets taken. The fee will be established annually in such amount as TOP determines to be sufficient to reimburse TOP for the full cost of the offset procedure. TOP will deduct the fees from amount collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering TOP. The fee for 2004 is 1% of the offset.

[Added at 22 Ok Reg 1540, eff 6-11-05]

SUBCHAPTER 13. ESTIMATED TAX

710:50-13-1. Estimated tax

Taxpayers, resident and non-resident, who have income subject to Oklahoma Income Tax and tax is not withheld on that income, must report and pay Estimated Oklahoma Income Tax.

710:50-13-2. Payment of estimated tax

OTC Form OW-8ES should be used to report and pay Estimated Oklahoma Income Tax. Print or type taxpayer's name, address and the amount of the payment on each voucher. To ensure proper credit, taxpayer's social security number should be included on the check.

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-13-3. Who must make payments of estimated tax; due dates

(a) Payment of estimated income tax must be made by the following:

- (1) A single individual whose tax liability for the year is estimated to be \$500.00 or more in excess of taxes withheld from wages.
- (2) Married individuals whose combined tax liability for the year is estimated to be \$500.00 or more in excess of taxes withheld from wages.
- (3) A corporation or trust whose tax liability for the year is estimated to be \$500.00 or more.

(b) Initial payments of estimated tax should be made by:

- (4) Calendar-year taxpayers, no later than April 15th.
- (5) Fiscal-year taxpayers, by the fifteenth day of the fourth month following the beginning of the taxable year. [See: 68 O.S. § 2385.7]

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-13-4. Joint declaration of estimated tax [REVOKED]

[Source: Revoked at 18 Ok Reg 2810, eff 6-25-01]

710:50-13-5. Estates and farmers; estimated tax not required; farm income described

(a) Estates and farmers are not required to file an Estimated Tax Declaration. A **"farmer"** is an individual whose Farm Income for the taxable year is at least 2/3 of the individual's gross income for the taxable year. [See: 68 O.S. §2385.7]

(b) If an individual qualified as a **"farmer,"** pursuant to the definition set out in subsection (a) for the previous taxable year, that individual shall not be required to qualify for the current taxable year. In no event, however, shall the qualification for the previous taxable year be carried forward for more than one (1) year.

(c) Farm Income includes income received from cultivating the soil or raising or harvesting any agricultural commodity. This includes the income from the operation of a stock, dairy, poultry, fish, bee, fruit or truck farm, plantation, ranch or orchard.

(d) Farm Income does not include gain from sales or income from the lease of farm land and depreciable farm equipment; income received for custom machine work; or oil and gas income. Wages received as an employee of a farm will not be considered **"farm income."** This includes wages received from a farm corporation even if the taxpayer is a stockholder in the corporation.

(e) Persons qualifying for farm exception shall file OTC Form 511 and include a copy of their Federal Income Tax Return.

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98]

710:50-13-6. Payment of estimated tax

(a) The first installment of Oklahoma Estimated Income Tax is to be paid on April 15 of the taxable year. Other payments must be made by the dates shown on the vouchers or corresponding dates for fiscal-year filers. The filer's Social Security Number or Federal I.D. Number is to be written on the check and the check is to be attached to the completed voucher. The estimated tax is to be applied to the succeeding tax year's Oklahoma Income Tax liability, and may be claimed on the succeeding tax year's Oklahoma Income Tax Return.

(b) Refunds will be applied, at the taxpayer's request, to Oklahoma Estimated Income Tax for the following year, on the original Return only, and may not be adjusted, except as provided in this Section.

(c) Refunds applied to the following year's Oklahoma Estimated Income Tax (at the taxpayer's request) may not be adjusted except in the following case: When a taxpayer claims on the Oklahoma Income Tax Return, a total estimated tax in excess of the amount actually paid and requests the resultant refund be applied to the next year's estimated tax, this produces an erroneous estimated tax figure for the following tax year. In this instance, the amount of credit to be applied to the following year and/or the figure reported for total Oklahoma Estimated Tax for the current year, may be adjusted to the correct amounts.

(d) Provided, however, that when a refund is applied, at the Taxpayer's request, to the following year's Oklahoma Estimated Income Tax and either the Tax Commission or the Internal Revenue Service subsequently determines that additional tax is due for the original tax year, no delinquent interest shall be due on the difference between the original tax paid and the subsequently-determined amount of tax, so long as the refund applied exceeds the additional tax due and the taxpayer makes payment of the additional tax within sixty (60) days of the notice of assessment. In the event that the additional tax due exceeds the refund applied, delinquent interest shall be assessed on the amount of additional tax due from the date the original tax was due, until the total additional tax is paid.

(e) All estimated tax payments should be paid under the Social Security Number listed first on the Oklahoma Income Tax Return.

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01; Amended at 21 Ok Reg 2571, eff 6-25-04]

710:50-13-7. "Required annual payment" of estimated tax defined

(a) "Required annual payment", as used in this Section, means the lesser of:

- (1) Seventy percent (70%) of the tax shown on the return for the taxable year; or
- (2) One Hundred percent (100%) of the tax shown on the return for the preceding taxable year of twelve (12) months.

(b) Where income has not been earned evenly throughout the year, the required annual payment of estimated tax may also be computed pursuant to the provisions of 710:50-13-9, 68 O.S. § 2385.9(C), and applicable sections of the Internal Revenue Code.

(c) Interest is levied at 20% per annum, computed per quarter, on any underpayment of the required annual payment of estimated tax.

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-13-8. Interest on underpayment of estimated tax; exceptions

- (a) Interest is levied at 20% per annum, for the period of underpayment, on any underpayment of the "required annual payment" of estimated tax, as that term is defined by 68 O.S. § 2385.9(B) and 710:50-13-7.
- (b) The **amount** of the underpayment equals the excess of the required installment over the amount paid on or before the due date of the installment. The **period** of underpayment runs from the due date of the required installment to the earlier of the fifteenth day of the fourth month, or for corporations, the fifteenth day of the third month, following the close of the taxable year or the date on which the required installment is paid.
- (c) Provided, however, no interest will be added to the tax if:
- (1) The tax shown on the return for the taxable year is less than One Thousand Dollars (\$1,000.00); or
 - (2) The taxpayer was an Oklahoma resident throughout the preceding taxable year of twelve (12) months and did not have any liability for tax for the preceding taxable year.
- (d) OTC Form OW-8-P is a schedule provided for calculating interest for underestimating and also provides for an exception for fluctuations of income throughout the year.

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-13-9. Estimated tax using annualized income method

- (a) Corporate taxpayers whose Oklahoma Taxable Income was not earned evenly throughout the year may use the annualized method as described in this Section, or in the case of individual taxpayers, in accordance with the provisions of the Internal Revenue Code.
- (b) The interest for the underpayment of estimated tax is not applicable if the estimated tax paid at the respective installment dates is at least an amount equal to seventy percent (70%) of the tax for the taxable year, computed by placing, on an annualized basis, the Oklahoma taxable income:
- (1) For the first three months of the taxable year in the case of the installment due on the 15th day of the fourth month;
 - (2) For the first three months of the taxable year in the case of the installment due on the 15th day of the sixth month;
 - (3) For the first six months of the taxable year in the case of the installment due on the 15th day of the ninth month; and
 - (4) For the first nine months of the taxable year in the case of the installment due on the 15th day of the first month of the succeeding taxable year.
- (c) To annualize income, multiply the Oklahoma Taxable Income for the applicable period by 12 and divide by the number of months in the in the applicable period.

[Source: Added at 14 Ok Reg 390, eff 11-27-96 (emergency); Added at 14 Ok Reg 2699, eff 6-26-97; Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-13-10. The return for the taxable year

If an individual taxpayer files an amended return after filing the original return and before the due date for filing the original return, including any extensions, the amended return constitutes "**the return for the taxable year**" pursuant to 68 O.S. § 2385.13. The amount shown on the amended return is used to determine the amount of underpayment. If the amended return is filed after the due date it is not "the return for the taxable year" for purposes of Section 2385.13. In that case, the tax shown on the amended return will not be used to compute the amount of underpayment.

[Added at 22 Ok Reg 1540, eff 6-11-05]

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 1. GENERAL PROVISIONS

710:50-15-1. Oklahoma taxable income

Certain exemptions, deductions and adjustments must be made to Federal taxable income to arrive at Oklahoma taxable income.

710:50-15-2. Application of the Oklahoma Individual Income Tax to Native Americans

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

(1) **"Indian Country"** means and includes formal and informal reservations, dependent Indian communities, and Indian allotments, the Indian titles to which have not been extinguished, whether restricted or held in trust by the United States. [See: 18 U.S.C. § 1151]

(2) **"Informal reservations"** means and includes lands held in trust for a tribe by the United States and those portions of a tribe's original reservation which were neither allotted to individual Indians, nor ceded to the United States as surplus land, but were retained by the tribe for use as tribal lands.

(3) **"Dependent Indian communities"** means and refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy the following two requirements:

(A) They have been set aside by the federal government for the use of the Indians as Indian land; and,

(B) They are under federal superintendence.

(b) **Instances in which income is exempt.** The income of an enrolled member of a federally recognized Indian tribe shall be exempt from Oklahoma individual income tax when:

(1) The member is living within "Indian Country" under the jurisdiction of the tribe to which the member belongs; and, the income is earned from sources within "Indian Country" under the jurisdiction of the tribe to which the member belongs; or,

(2) The income is compensation paid to an active member of the Armed Forces of the United States, if the member was residing within his tribe's "Indian Country" at the time of entering the Armed Forces of the United States, and the member has not elected to abandon such residence.

(c) **Instances in which income is not exempt.** The income of an enrolled member of a federally recognized Indian tribe shall not be exempt from Oklahoma individual income tax when:

(1) The income is derived from sources outside of "Indian Country", regardless of the taxpayer's residence.

(2) The member resides in Oklahoma, but not within "Indian Country", regardless of the source of the income.

(3) Either the source of the income or the place of residence is under the jurisdiction of a tribe of which the taxpayer is not a member.

(4) The member claims residence within "Indian Country" primarily by virtue of various Indian health, social, educational, welfare and financial programs. Even though administered by the Tribe within its own service area, these are merely forms of general federal aid, and are not

sufficient to support a finding of "Indian Country" for purposes of this Section.

(5) The member claims residence on unrestricted, non-trust property, owned by an Indian Housing Authority. Such property does not fall within the definition of "Indian Country," nor does residence thereon constitute residence within a dependent Indian community.

(d) **Part-time residency.** If an enrolled member of a federally recognized Indian tribe resides within "Indian Country" for a portion of the year, and resides outside "Indian Country" for a portion of the year, such enrolled member shall be taxed based upon where such enrolled member resided when the income in question was earned.

[Source: Added at 20 Ok Reg 2811, eff 6-26-03 (emergency); Added at 21 Ok Reg 2571, eff 6-25-04]

PART 3. EXEMPTIONS

710:50-15-30. Additional exemption for 65 or older

(a) There shall be allowed an additional exemption on the Oklahoma Income Tax Return of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year, based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following status may claim this exemption if the federal adjusted gross income does not exceed:

- (1) Twenty-five Thousand Dollars (\$25,000.00) if married and filing jointly;
- (2) Twelve Thousand Five Hundred Dollars (\$12,500.00) if married and filing separately;
- (3) Fifteen Thousand Dollars (\$15,000.00) if single; and
- (4) Nineteen Thousand Dollars (\$19,000.00) if a qualifying head of household. [See: 68 O.S. § 2358(D)(2)]

(b) For taxable years beginning after December 31, 1999, amounts included in the calculation of federal adjusted gross income pursuant to the conversion of a traditional Individual Retirement Account to a Roth Individual Retirement Account shall be excluded from federal adjusted gross income for purposes of the income thresholds set out in paragraphs (a)(1) through (a)(4) of this Section.

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-15-31. Additional exemption for blind

A qualified blind taxpayer shall be allowed an additional exemption on his Oklahoma Income Tax Return. [See: 68 O.S. §2358(D)(1)]

710:50-15-32. Small business incubators incentive

(a) **General provisions.** Certain exemptions for the levy of Oklahoma income tax may be allowed for income earned by qualifying sponsors and tenants pursuant to the provisions of the Small Business Incubators Incentive Act (74 O.S. 1991, §5071 et seq.)

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

- (1) "**Act**" means the Small Business Incubators Incentives Act (74 O.S. 1991, §5071 et seq.).
- (2) "**Arms length basis**" means that standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction.

(c) **Exemption for sponsors.** Procedures applicable to sponsors under the Act are as follows:

- (1) An approved copy of the Small Business Incubator Incentives Program application must be submitted with the Oklahoma Income Tax Return when it is filed with the Oklahoma Tax Commission.
 - (2) The amount of exemption will be limited to the net income. If the sponsor is involved in other operations, allocations of overhead applicable to the income must be made on an arms length basis.
 - (3) An audit may be made to verify the income received and expenses relating to the business.
 - (4) An allowable Oklahoma NOL carryback or carryover shall not include any income or loss attributable to this Section.
 - (5) Income exempt from income tax is limited to that listed in the Act.
- (d) **Exemption for tenants.** Procedures applicable to tenants under the Act are as follows:
- (1) The amount of exemption will be limited to the net income. If the tenant is involved in other operations, allocations of overhead applicable to the income must be made on an arms length basis.
 - (2) An audit may be made to verify the income received and expenses relating to the business. If the tenant is organized as either a Subchapter S Corporation or a partnership, the exemption will flow through to the shareholder or partner, as applicable.
 - (3) An allowable Oklahoma NOL carryback or carryover shall not include any income or loss attributable to this Section which is the result of such operation. [See: 74 O.S. 1991, §§5075(B), 5078(B)]
 - (4) Effective November 1, 2001, the period of income exemption for income earned as a result of activities conducted as an occupant, for tenants of incubators is ten (10) years from the date of occupancy in the incubator. The tenant is not required to be an occupant of the incubator for the full ten (10) years to receive the exemption, however, the exemption period cannot exceed a total of ten years for any tenant. The exemption is applicable in years six (6) through ten (10) only if the tenant makes at least seventy-five percent (75%) of its gross sales to buyers located outside of Oklahoma, to buyers whose principal business activity is located outside of Oklahoma, to the federal government, or to buyers in this state if the product or service is resold to an out-of-state customer or buyer for ultimate use. In years six (6) through ten(10), failure of a tenant to achieve the qualifying percentage for the exemption in any single year will not result in disqualification for subsequent years. [See: 74 O.S. § 5078]

[Source: Added at 10 Ok Reg 3837, eff 7-12-93; Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 19 Ok Reg 2433, eff 6-27-02; Amended at 20 Ok Reg 2165, eff 6-26-03]

710:50-15-33. Exemption for employers participating in the Oklahoma Department of Labor Safety Pays Consultation Services

There is an annual deduction of One Thousand Dollars (\$1,000.00) for employers who participate in the Oklahoma Department of Labor's Safety Pays Consultation Service effective for tax year 2006. Employers may claim the exemption of One Thousand Dollars (\$1,000.00) on the appropriate Oklahoma income tax return. Employers must be able to substantiate their participation in the Oklahoma Department of Labor's Safety Pays Consultation Service upon request of the Oklahoma Tax Commission.

[Source: Added at 23 Ok Reg 2825, eff 6-25-06]

710:50-15-34. Exemption for death benefits of Emergency Medical Technicians

In taxable years beginning after December 31, 2008, death benefits received as a result of the death of an Emergency Medical Technician are exempt from Oklahoma income tax.

[Source: Added at 26 Ok Reg 2330, eff June 25, 2009]

710:50-15-35. Exemption for deceased members and spouses of the Armed Forces

(a) Any payment made by the United States Department of Defense as a result of the death of a member of the Armed Forces of the United States who has been killed in action in a United States Department of Defense designated combat zone shall be exempt from Oklahoma income tax during the taxable year in which the individual is declared deceased by the Armed Forces. (b)

Any income earned by the spouse of a member of the Armed Forces of the United States who has been killed in action in a United States Department of Defense designated combat zone shall be exempt from Oklahoma income tax during the taxable year in which the individual is declared deceased by the Armed Forces.

(c) In any case where income tax has been paid upon any income exempt pursuant to this Section, the tax paid shall be refunded to the person or personal representative of the person.

[Source: Added at 27 Ok Reg 2281, eff 7-11-2010]

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-47. Oklahoma military pay deduction

(a) For tax years beginning before January 1, 2010, individual taxpayers can subtract from Oklahoma adjusted gross income the first One Thousand Five Hundred Dollars (\$1,500.00) of salary or compensation earned as a member of any component of the Armed Forces of the United States.

(b) For salary or compensation earned on or after January 1, 2010 and before July 1, 2010 individual taxpayers can subtract from Oklahoma adjusted gross income the first One Thousand Five Hundred Dollars (\$1,500.00) of salary or compensation earned as a member of any component of the Armed Forces of the United States.

(c) For salary or compensation earned on or after July 1, 2010 individual taxpayers can subtract from Oklahoma adjusted gross income all salary or compensation earned as a member of any component of the Armed Forces of the United States.

(d) Salary or compensation under this Section does not include retirement benefits.

[Source: Added at 27 Ok Reg 2281, eff 7-11-2010]

710:50-15-48. Oklahoma source capital gain deduction

(a) **General provisions.** For tax years beginning on or after January 1, 2005, individual taxpayers can subtract from the Oklahoma adjusted gross income, gains reported on their Oklahoma income tax return and included in federal taxable income receiving capital treatment. The gain must be realized on or after January 1, 2005, in order to be eligible for the Oklahoma exclusion. Effective for tax years beginning on or after January 1, 2006 corporate taxpayers can subtract from the Oklahoma taxable income, gains reported on their Oklahoma income tax return and included in federal taxable income receiving capital treatment. For corporate taxpayers the

gain must be realized on or after January 1, 2006 in order to be eligible for the Oklahoma exclusion.

(b) **Qualifying gains receiving capital treatment.** As used in this Section, "**qualifying gains receiving capital treatment**" means the amount of net capital gains, as defined under Internal Revenue Code Section 1222(11), [IRC §1222(11)]. The gain must be included in the federal income tax return of the taxpayer.

(1) **Sale of real or tangible personal property.** To qualify for the Oklahoma deduction, the gain must be earned as a result of the sale of real or tangible personal property located within Oklahoma. Taxpayers must have held the asset for not less than five (5) uninterrupted years prior to the date of the transaction that created the capital gain.

(2) **Sale of stock or ownership interest.** To qualify for the Oklahoma deduction, the gain must be earned as a result of the sale of stock or ownership interest in an Oklahoma company, limited liability company, or partnership and the stock or ownership interest must have been held by the taxpayer for at least three (3) uninterrupted years prior to the date of the transaction that created the capital gain. For tax year 2006 and subsequent tax years, the stock or ownership interest must have been held by the individual taxpayer for at least two (2) uninterrupted years prior to the date of the transaction that created the capital gain. Non individual taxpayer's stock or ownership interest must have been held for at least three (3) uninterrupted years prior to the date of the transaction that created the capital gain.

(3) **Sale of real or tangible personal property by pass-through entities.** Net capital gains earned by member, partner, or shareholder of a pass-through entity as a result of the sale of real or tangible personal property located within Oklahoma, and included in the a taxpayer's federal taxable income is excludable, provided that the taxpayer has been a member of the pass-through entity for an uninterrupted period of five (5) years and that the pass-through entity has held the asset for not less than five (5) uninterrupted years prior to the date of the transaction that created the capital gain.

(4) **Sale of stock or ownership interests by pass-through entities.** Net capital gains earned by a member, partner, or shareholder of a pass-through entity as a result of the sale of stock or an ownership interest in an Oklahoma company, limited liability company, or partnership, is excludable, provided that the taxpayer has been a member of the pass-through entity for an uninterrupted period of three (3) years and that the pass-through entity has held the asset for not less than three (3) uninterrupted years prior to the date of the transaction that created the capital gain. For tax year 2006 and subsequent tax years, the stock or ownership interest must have been held by the individual taxpayer for at least two (2) uninterrupted years prior to the date of the transaction that created the capital gain. Non individual taxpayer's stock or ownership interest must have been held for at least three (3) uninterrupted years prior to the date of the transaction that created the capital gain.

(5) **Installment sales.** Qualifying gains included in an individual taxpayer's federal taxable income for years after December 31, 2004, or a corporate taxpayer's federal taxable income for years after December 31, 2005, which are derived from installment sales are eligible for exclusion, provided the appropriate holding periods are met.

(c) "**Oklahoma company**", "**limited liability company**", "**partnership**". An Oklahoma company, limited liability company, or partnership is one whose primary headquarters has been located in Oklahoma for at least three (3) years prior to the capital gain transaction. The Oklahoma company, limited liability company, or partnership must meet the three (3) year rule

for an uninterrupted period.

[Source: Added at 22 Ok Reg 1540, eff 6-11-05; Amended at 23 Ok Reg 2825, eff 6-25-06; Amended at 24 Ok Reg 2359, eff 6-25-07]

710:50-15-49. Deduction for retirement income

(a) General provisions applicable to Oklahoma or federal government retirement income.

Each individual taxpayer may deduct up to Five Thousand Five Hundred Dollars (\$5,500.00) of retirement benefits paid by the State of Oklahoma or by the federal government. Effective for tax years beginning on or after January 1, 2005, and ending before January 1, 2006, this deduction increases to Seven Thousand Five Hundred Dollars (\$7,500.00). Effective for tax year 2006 and subsequent tax years the deduction increases to Ten Thousand Dollars (\$10,000.00). This deduction cannot exceed the amount included in the taxpayer's Federal Adjusted Gross Income. The total exclusion from all government retirement benefit plans may not exceed Five Thousand Five Hundred Dollars (\$5,500.00), or for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred Dollars (\$7,500.00); or for tax years beginning on or after January 1, 2006, Ten Thousand Dollars (\$10,000.00), per individual.

(b) Qualifying Oklahoma or federal government retirement income defined. For purposes of this Section, "Oklahoma or federal government retirement income" means retirement income received from the following sources:

- (1) The Civil Service of the United States;
- (2) Any Component of the Armed Forces of the United States; [See special rule (g)]
- (3) The Oklahoma Public Employees' Retirement System;
- (4) The Oklahoma Teachers' Retirement System;
- (5) Oklahoma Law Enforcement Retirement System;
- (6) Oklahoma Firefighters' Pension and Retirement System;
- (7) Oklahoma Police Pension and Retirement System;
- (8) The Employee retirement systems created by counties pursuant to 19 O.S. §§951 et seq.
- (9) The Uniform Retirement System for Justices and Judges;
- (10) The Oklahoma Wildlife Conservation Department Retirement Fund;
- (11) The Oklahoma Employment Security Commission Retirement Plan; or,
- (12) The Employee retirement systems created by municipalities pursuant to 11 O.S. §§ 48-101 et seq.

(c) Disability income; state and federal government retirees. Disability retirement benefits received by an individual from sources listed in subsection (b) shall qualify for the retirement income deduction, without regard to the recipient's age.

(d) General provisions for other retirement income. Each individual taxpayer aged sixty-five (65) and over may deduct up to Five Thousand Five Hundred Dollars (\$5,500.00) of other retirement benefits received and included in Federal Adjusted Gross Income through tax year 2004. Effective for tax years beginning on or after January 1, 2005, this deduction increases to Seven Thousand Five Hundred Dollars (\$7,500.00) and the taxpayer is no longer required to be sixty-five (65) years of age. Effective for tax year 2006 and subsequent tax years the deduction increases to Ten Thousand Dollars (\$10,000.00). This deduction cannot exceed the amount included in the taxpayer's Federal Adjusted Gross Income. The total exclusion from all retirement benefit plans may not exceed Five Thousand Five Hundred Dollars (\$5,500.00) or, for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred Dollars (\$7,500.00), or for tax years beginning on or after January 1,

2006, Ten Thousand Dollars (\$10,000.00) per individual.

- (1) **Income eligibility levels for tax years through 2004.** In order to qualify for this exclusion, Oklahoma Adjusted Gross Income cannot exceed Twenty Five Thousand Dollars (\$25,000.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed Fifty Thousand Dollars (\$50,000.00) in order to qualify for the exclusion.
 - (2) **Income eligibility levels for tax years 2005 and 2006.** Effective for tax years beginning on or after January 1, 2005 and ending prior to January 1, 2007, Oklahoma Adjusted Gross Income cannot exceed Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed Seventy Five Thousand Dollars (\$75,000.00) in order to qualify for the exclusion.
 - (3) **Income eligibility levels for tax year 2007.** Effective for tax years beginning on or after January 1, 2007 and ending before January 1, 2008, Oklahoma Adjusted Gross Income cannot exceed Fifty Thousand Dollars (\$50,000.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed One Hundred Thousand Dollars (\$100,000.00) in order to qualify for the exclusion.
 - (4) **Income eligibility levels for tax year 2008.** Effective for tax years beginning on or after January 1, 2008 and ending before January 1, 2009, Oklahoma Adjusted Gross Income cannot exceed Sixty Two Thousand Five Hundred Dollars (\$62,500.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed One Hundred Twenty Five Thousand Dollars (\$125,000.00) in order to qualify for the exclusion.
 - (5) **Income eligibility levels for tax year 2009.** Effective for tax years beginning on or after January 1, 2009 and ending before January 1, 2010, Oklahoma Adjusted Gross Income cannot exceed One Hundred Thousand Dollars (\$100,000.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed Two Hundred Thousand Dollars (\$200,000.00) in order to qualify for the exclusion.
 - (6) **Income eligibility levels for tax year 2010 and subsequent years.** Effective for tax years beginning on or after January 1, 2010, there are no longer any income eligibility requirements to qualify for the exclusion.
- (e) **"Qualifying other retirement income" defined.** For purposes of this Section "other retirement income" must be received from the following and satisfy the requirements of the Internal Revenue Code (IRC):
- (1) An employee pension benefit plan under IRC Section 401;
 - (2) An eligible deferred compensation plan under IRC Section 457;
 - (3) An individual retirement account, annuity, or trust or simplified employee pension under IRC Section 408;
 - (4) An employee annuity under IRC Section 86; or,
 - (5) Lump-sum distributions from a retirement plan under IRC Section 402(e).

- (f) **Disability income; private sector retirees.** Disability retirement benefits received by an individual shall qualify for the retirement income deduction, without regard to the recipient's age.
- (g) **Special rule for certain retirement income from a component of the Armed Forces of the United States.** Effective for tax year 2006, the deduction for retirement income from any component of the Armed Forces of the United States is the greater of Ten Thousand Dollars (\$10,000.00) or fifty percent (50%) of the amount included in the taxpayer's Federal Adjusted Gross Income. Effective for tax year 2007 and subsequent tax years, the deduction for retirement income from any component of the Armed Forces of the United States is the greater of Ten Thousand Dollars (\$10,000.00) or seventy-five percent (75%) of the amount included in the taxpayer's Federal Adjusted Gross Income.
- (h) **Special rule for Federal civil service retirement income.** Beginning with tax year 2007, retirement benefits received by Federal civil service retirees, including survivor annuities paid in lieu of Social Security benefits, are allowed to be excluded from Oklahoma taxable income to the extent such benefits are included in the taxpayer's Federal Adjusted Gross Income, pursuant to the provisions of Section 86 of the Internal Revenue Code. For tax year 2007, twenty percent (20%) of such taxable benefits will be excludable. For tax year 2008, forty percent (40%) of such taxable benefits will be excludable. For tax year 2009, sixty percent (60%) of such taxable benefits will be excludable. For tax year 2010, eighty percent (80%) of such taxable benefits will be excludable. For tax year 2011 and subsequent tax years, one hundred percent (100%) of such taxable benefits will be excludable.

[Source: Added at 20 Ok Reg 20, eff 10-8-02 (emergency); Added at 20 Ok Reg 2165, eff 6-26-03, Amended at 22 Ok Reg 1541, eff 6-11-05; Amended at 23 Ok Reg 2825, eff 6-25-06; Amended at 24 Ok Reg 2359, eff 6-25-07]

710:50-15-50. Deductions

- (a) Oklahoma itemized deductions to income will be the same as Federal itemized deductions. In the event the standard deduction is used on the Federal Return, the Oklahoma standard deduction must be used.
- (b) For tax year 2005 and prior, the standard deduction for Oklahoma is the larger of \$1,000.00 or 15% of Oklahoma Adjusted Gross Income not to exceed \$2,000.00 (if married filing separately, the larger of \$500.00 or 15% not to exceed \$1,000.00).
- (c) For tax year 2006, taxpayers filing as married joint, head of household or surviving spouse will have a standard deduction for Oklahoma of \$3,000.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$2,000.00.
- (d) For tax year 2007, taxpayers filing as married joint or surviving spouse will have a standard deduction for Oklahoma of \$5,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$2,750.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$4,125.00.
- (e) For tax year 2008, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of \$6,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$3,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$4,875.00.
- (f) For tax year 2009, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of \$8,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$4,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$6,375.00.

(g) For tax year 2010 and subsequent tax years, taxpayers will have a standard deduction for Oklahoma equal to the standard deduction allowed by the Internal Revenue Code of 1986 based upon the amount and filing status prescribed by the Code for purposes of filing federal individual income tax returns.

(h) Taxpayers will be required to add back the "qualified motor vehicle taxes" which were allowed as an itemized deduction on the Federal return under the provisions of the American Recovery and Reinvestment Act of 2009.

[Source: Amended at 23 Ok Reg 2826, eff 6-25-06; Amended at 24 Ok Reg 2359, eff 6-25-07; Amended at 27 Ok Reg 2281, eff 7-11-2010]

710:50-15-51. Military pay of non-residents

Military pay earned in Oklahoma by non-resident personnel, stationed in Oklahoma while on active duty, shall be exempt from Oklahoma Income Tax. These earnings are treated as "out-of-state" income. This exemption applies only to military pay earned in Oklahoma, and income from the performance of a service other than military duty is subject to Oklahoma Income Tax. Non-military earnings of a spouse are similarly taxable. [See: 50 U.S.C.A. § 574]

710:50-15-52. Out-of-state income

(a) For residents, "out-of-state income" consists of income from real or tangible personal property or business income in another state. Any amount deducted must be substantiated with the appropriate Federal schedule which sets out the Oklahoma portion.

(b) Losses sustained from property owned or from a business located outside the State of Oklahoma must be added to Federal adjusted gross income to arrive at Oklahoma adjusted gross income.

(c) Out-of-State income is limited to the net income from real or tangible personal property or net business income in another state. [See: 68 O.S. §2358(A)(4)]

[Source: Amended at 17 Ok Reg 2669, eff 6-25-00]

710:50-15-53. Oklahoma net operating loss for individual returns

(a) Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal Revenue Code and will be calculated utilizing Oklahoma Form 511-NOL Schedule A for resident individuals and Form 511-NR-NOL Schedule A for nonresident and part-year individuals.

(b) The years to which such losses may be carried shall be determined by reference to Section 172 of the Internal Revenue Code, as follows:

(1) For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss carryback shall be for a period of three (3) years;

(2) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss carryback shall be for a period of two (2) years;

(3) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss carryback shall be for a period of one (1) year;

(4) For net operating losses incurred for tax years beginning after December 31, 1995, no loss carryback shall be allowed; and

- (5) For net operating losses incurred for tax years beginning on or after January 1, 2001, and before December 31, 2006, the loss carryback shall be for a period as allowed in the Internal Revenue Code.
- (6) For net operating losses incurred for tax years beginning on or after January 1, 2007, and before December 31, 2007 the loss carryback shall be for a period of two (2) years.
- (c) Resident individuals will use Oklahoma Form 511-NOL Schedule B to compute the amount of the loss absorbed in each intervening year. Nonresident and part-year resident individuals will use Oklahoma Form 511-NR-NOL Schedule B to compute the amount of loss absorbed in each intervening year.
- (d) Taxpayers who incur a net operating loss from farming, allowed under IRC. 172 (b)(G), in tax years beginning after December 31, 1999, will be allowed to carry that loss back, in accordance with the carryback provisions of the Internal Revenue Code. However, the amount of the farm net operating loss available for carryback is limited to the lesser of Sixty Thousand Dollars (\$60,000) or the loss shown on Federal Schedule F of the Internal Revenue Service Form 1040, reduced by fifty percent (50%) of the income from all other sources, except those included on Federal Schedule F.

[Source: Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 17 Ok Reg 2669, eff 6-25-00; Amended at 19 Ok Reg 2433, eff 6-27-02; Amended at 27 Ok Reg 2281, eff 7-11-2010]

710:50-15-54. Federal tax deduction

Federal Income Tax Deduction shall include Federal Income tax, Foreign Income tax, surtaxes imposed on income or excess profits taxes, less any credits allowed by the Internal Revenue Service. The deduction for Federal Income Taxes allowed on the Oklahoma Income Tax Return is computed as though the taxpayer were on the accrual basis of accounting. [See: 68 O.S. §2358(D)(8)(c)]

710:50-15-55. Depletion

- (a) The Oklahoma depletion deduction from income for oil and gas produced in Oklahoma is twenty-two percent (22%) of the gross income from the property, provided that for tax years beginning on or after January 1, 1997, and ending on or before December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, in the case of major oil companies, as defined by 52 O.S. §288.2, the allowance may not exceed fifty percent (50%) of the net income from the property computed without the allowance for depletion. During years not specified herein, for all taxpayers, the allowance shall not exceed fifty percent (50%) of the net income from the property (computed without allowance for depletion). This allowance is allowable in the amount so computed minus the Federal depletion claimed. The applicable Federal schedule and a detailed depletion schedule must be enclosed.
- (b) Lease bonus depletion of 22% is allowable; any such depletion claimed must be restored to income in the case of non-producing properties upon expiration of the lease. Individuals claiming lease bonus depletion may be required to furnish a copy of the lease and division order. [See: 68 O.S. §2353(10)]

[Source: Amended at 14 Ok Reg 2699, eff 6-26-97; Amended at 19 Ok Reg 2433, eff 6-27-02; Amended at 21 Ok Reg 2571, eff 6-25-04; Amended at 24 Ok Reg 2359, eff 6-25-07]

710:50-15-56. Interest on U.S. Government obligations

- (a) An "**obligation of the United States**" is defined as a credit instrument characterized by:
- (1) Written document;
 - (2) The bearing of interest;
 - (3) A binding promise of the United States to pay specified sums at specified dates; and
 - (4) Issued pursuant to specific congressional authorization which also pledges the full faith and credit of the United States in support of the promise to pay.
- (b) If the interest on a U.S. Government obligation is paid through a regulated investment company the taxpayer requesting the exclusion must furnish a detailed schedule of the obligations that the fund has invested in and the amount or percentage of the interest from each investment. [See: 68 O.S. §2358(A)(2)]

710:50-15-57. Adjustment for state and local obligations

- (a) Income received on obligations issued by any state or political subdivision which is exempt from Federal taxation but not specifically exempt from state taxation by Federal or Oklahoma Statute shall be added to Federal Adjusted Gross Income.
- (b) Income from obligations issued by the State of Oklahoma or any political subdivision is exempt if so provided by the statute authorizing issuance of the obligation OR if it is a local governmental obligation issued **after** July 1, 2001, for a purpose **other** than to provide financing for nonprofit corporate projects.
- (c) For purposes of this Section, "**local governmental obligations**" includes, but is not limited to, bonds or notes issued by, or on behalf of, or for the benefit of, Oklahoma educational institutions, cities, towns, or counties, or by public trusts of which any of the foregoing is a beneficiary.
- (d) All income from obligations issued by any state or political subdivision of a state other than Oklahoma is taxable. [See: 68 O.S. § 2358(A)(1)]

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-15-58. Adjustment for municipal interest

Due to the fact that income earned on obligations of a state or political subdivision is exempt from federal taxation, an Oklahoma Income Tax Return may be required under some circumstances, even though no Federal Return is due. [See: 68 O.S. § 2368]

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-15-59. Compensation paid to precollege mathematics or science teachers [REVOKED]

[Source: Revoked at 15 Ok Reg 2811, eff 6-25-98]

710:50-15-60. Inventors assistance income exclusion

- (a) Royalty earned by an inventor from a product developed and manufactured in this State shall be exempt from Oklahoma Income Tax for a period of seven (7) years, from January 1, of the first year in which the royalty is received, as long as the manufacturer remains in the State.
- (b) An investment/new jobs credit may be available to the manufacturer of new inventions when manufactured in this State. [See: OAC 710:50-15-74]
- (c) In addition, the manufacturer may exclude from Oklahoma taxable income sixty-five percent

(65%) of the cost of depreciable property purchased and utilized directly in manufacturing the product. The maximum exclusion shall not exceed Five Hundred Thousand Dollars (\$500,000.00). If the exclusion exceeds the Oklahoma taxable income, the excess may be carried forward for a period not to exceed four (4) years. "**Depreciable property**" means machinery, fixtures, equipment, buildings, or substantial improvements placed in service in this State during the taxable year.

(d) Requirements for qualification, certification and records required are as follows:

- (1) A copy of the Fee Agreement between the inventor and the Oklahoma Center for the Advancement of Science and Technology (OCAST) must be provided to the Commission by the inventor or owner of the rights.
- (2) A certification by the Division Director or designee of the Technology Development Programs Division of OCAST must be provided to the Commission, specifying the certification date, product/process or service, inventor, manufacturer, and contract numbers.
- (3) A certification by the Division Director or designee of the Technology Development Programs of OCAST must be provided to the Commission, specifying the date of first commercial product sale.
- (4) The inventor must furnish annually a schedule of all income inuring to the benefit of the inventor attributable to the certified product/process or service.
- (5) Manufacturers in this State must furnish annually a copy of the contract with the inventor and a schedule of all payments, disbursements, salaries, wages, benefits, and anything else of value paid, distributed or transferred to the inventor.
- (6) Manufacturers in this State must furnish a schedule of receipts and expenses, including any overhead properly attributable to the product/process or service.
- (7) Commission auditors will be available to assist in determining if the terms of the contracts are being fulfilled if requested by OCAST. [See: 74 O.S. Sections 5064.1 et seq.]

[Source: Amended at 16 Ok Reg 2646, eff 6-25-99; Amended at 21 Ok Reg 2571, eff 6-25-04]

710:50-15-61. Medical savings account deduction

- (a) **General provisions.** There shall be allowed a deduction to arrive at Oklahoma Taxable Income for contributions made to and interest earned on Medical Savings Accounts (MSA).
- (b) **Eligibility.** In order to be eligible for this deduction, contributions must be made to a MSA program approved by either the State Department of Health or by the Insurance Commissioner.
- (c) **Procedure for claiming deduction.** In order to claim the deduction, a statement of the contributions made and interest earned on the MSA must be provided by the administrator of the Plan, and enclosed as part of the income tax return filed for the applicable period.
- (d) **Limitation.** In no event shall contributions that are made and excluded from taxable income under Section 125 of the Internal Revenue Code be allowed to be deducted under this Section.
- (e) **Eligibility of specific plans.** Contributions made to and interest earned on a MSA program offered by the State and Education Employees Group Insurance Benefit Board may be eligible for the deduction.

[Source: Added at 14 Ok Reg 2699, eff 6-26-97]

710:50-15-62. Agricultural commodity processing facility income/investment exclusion

- (a) **General provisions.** Owners of agricultural commodity processing facilities may exclude from

Oklahoma Taxable Income, or in the case of individuals, from Oklahoma Adjusted Gross Income, a portion of their investment costs in any new or expanded agricultural commodity processing facility located in this state.

(1) **For investments made on or after January 1, 1997, but before December 31, 1998.** Owners of agricultural commodity processing facilities may exclude fifteen percent (15%), of their investment cost in a new or expanded agricultural commodity processing facility located in Oklahoma.

(2) **For investments made on or after January 1, 1999.** If the exclusion for investment in agricultural processing facilities results in the reduction in total Oklahoma Income Tax in excess of one million dollars (\$1,000,000.00) in any previous calendar year, the percentage of investment subject to exclusion will be adjusted. The adjusted percentage allowable will be determined by dividing \$1,000,000.00 by six percent, then further dividing the result by the total previous year's investment subject to exclusion.

(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Agricultural commodities"** means a farm or ranch product, including but not limited to, wheat, corn, soybeans, cotton, timber, cattle, hogs, sheep, horses, poultry, animals of the families bovidae, cervidae, and antilocapridae, or birds of the ratite group, produced in farming or ranching operations, or a product of such crop or livestock in its unmanufactured state, such as ginned cotton, wool-dip, maple syrup, milk, and eggs, or any other commodity listed under any Industry Group Number under Major Group 20, Division D, of the Standard Industrial Classification Manual.

(2) **"Agricultural commodity processing facility"** means building, structures, fixtures and improvements used or operated primarily for the processing or production of marketable products from agricultural commodities. Effective November 1, 2000, the term shall also mean a dairy operation that requires a depreciable investment of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) and which produces milk from dairy cows. The term does not include a facility that provides only, and nothing more than, storage, cleaning, drying or transportation of agricultural commodities. [See: 68 O.S.Supp.2000, § 2358(A)(6)(a)]

(3) **"Facility"** means each part of the facility which is used in a process primarily for:

(A) The processing of agricultural commodities, including receiving or storing agricultural commodities, or, effective November 1, 2000, the production of milk at a dairy operation, [See: 68 O.S.Supp.2000, § 2358(A)(6)(b)]

(B) Transporting the agricultural commodities or product before, during or after the processing, or

(C) Packaging or otherwise preparing the product for sale or shipment.

(c) **Qualification.** In order to qualify for the exclusion, the agricultural commodity processing facility must be operated primarily for the processing or production of agricultural commodities to marketable products.

(d) **Limitations.** This exclusion from income is to be taken in the taxable year when the investment is made. For purposes of this exclusion, the investment is deemed to be made when the property is placed in service. Under no circumstances shall this exclusion from income lower claimant's Oklahoma Taxable Income below zero. In the event the exclusion does exceed income, any unused portion may be carried forward for a period not to exceed six (6) years from the initial year of qualification. If the exclusion from income amount is determined based on the percentage allowable

but not used, the amount shall not change based on subsequent change in percentage allowable to be excluded. In no event will the exclusion percentage exceed fifteen percent (15%).

(e) **Information return required.** Owners who intend to claim the exclusion for investment costs described in this Section must file, on a form prescribed by the Commission, an information return, reporting the amount of qualified property placed in service during the preceding calendar year. The information return must be submitted by January 31.

[Source: Added at 14 Ok Reg 2699, eff 6-26-97; Amended at 18 Ok Reg 2810, eff 6-25-01]

710:50-15-63. Deduction for nonrecurring adoption expenses

(a) **General provisions.** In taxable years beginning after December 31, 1995, and ending before January 1, 2003, a deduction is allowed to resident individual taxpayers for nonrecurring adoption expenses, not to exceed ten thousand dollars (\$10,000.00) per calendar year, paid in connection with the adoption of a minor, or proposed adoption of a minor which did not result in a decreed adoption.

Effective for taxable years beginning after December 31, 2002, the deduction for nonrecurring adoption expenses shall not exceed Twenty Thousand Dollars (\$20,000.00) per calendar year.

(b) **Allowable expenses.** For purposes of this Section "**nonrecurring adoption expenses**" means and includes:

- (1) Adoption fees;
- (2) Court costs;
- (3) Medical expenses;
- (4) Attorney fees;
- (5) Expenses directly related to the legal process of the adoption of a child and are not reimbursed by other sources, to include, but not limited to costs related to:
 - (A) The adoption study;
 - (B) Health and psychological examinations;
 - (C) Transportation and reasonable costs of food and lodging for the child or adoptive parents which are incurred to complete the adoption process. Transportation expense by either commercial or private means may be claimed based upon actual unreimbursed costs incurred, or in the case of travel by private means, the mileage rate allowed pursuant to the Internal Revenue Code for determining business travel expense may be elected.
- (6) Costs associated with physical remodeling, renovation, or alteration of the adoptive parents home or property, if incurred in conjunction with the adoption of a special needs child, as authorized by the court.

(c) "**Nonrecurring adoption expenses**" shall not mean or include:

- (1) Costs reimbursed by other sources.
- (2) Attorney fees incurred from and after the commencement of an action involving a contest of an adoption.
- (3) Costs associated with physical remodeling, renovation, or alteration of the adoptive parent's home or property, with the exception noted in (b)(6) of this Section.

(d) **Verification.** A schedule describing the expenses claimed must be enclosed and filed with the claimant's tax return. Receipts supporting the claimed expenses are not required to be submitted with the tax return and descriptive schedule, but must be retained and be available upon request by the Commission.

[Source: Added at 14 Ok Reg 2699, eff 6-26-97; Amended at 20 Ok Reg 2165, eff 6-26-03]

710:50-15-64. Elections for individuals engaged in a farming business

(a) For tax years beginning after December 31, 2000, an individual engaged in a farming business may elect to determine the tax imposed by 68 O.S. § 2355 as the sum of:

- (1) A tax computed under Section 2355, on taxable income, reduced by elected farm income; and
- (2) The increase in tax imposed by 68 O.S. § 2355 which would result if taxable income for each of the three (3) prior taxable years were increased by an amount equal to one-third (1/3) of the elected farm income.

(b) An adjustment under this Section for any taxable year shall be taken into account in applying the provisions of this Section for any subsequent taxable year.

(c) For purposes of this Section, "**elected farm income**" means so much of the taxable income for the taxable year which is attributable to any farming business, and which is specified in the election under subsection (a) of this Section. For purposes of this subsection, a gain from the sale or other disposition of property, other than land, regularly used by the taxpayer in a farming business for a substantial period shall be treated as attributable to the farming business;

(d) "**Individual**" shall not mean or include any estate or trust.

(e) "**Farming business**" shall have the same meaning as the term is defined in 26 U.S.C. § 263A(e)(4).

[Source: Added at 18 Ok Reg 2810, eff 6-25-01]

710:50-15-65. Discharge of indebtedness - individuals engaged in production agriculture

For taxable years beginning after December 31, 1999, individuals engaged in production agriculture who filed a Schedule F form with the taxpayer's federal income tax return for such taxable year, may exclude from Oklahoma taxable income, any amount that was included in federal taxable income or federal adjusted gross income, which consisted of the discharge of an obligation by a creditor of the taxpayer incurred to finance the production of agricultural products. [See: 68 O.S. § 2358(D)(17)]

[Source: Added at 18 Ok Reg 2810, eff 6-25-01]

710:50-15-66. Deduction for contributions to an Oklahoma College Savings Plan

(a) For tax years beginning after December 31, 2001 and ending before December 31, 2004, individuals may deduct up to Two Thousand Five Hundred Dollars (\$2,500.00) of contributions made to an Oklahoma 529 College Savings Plan Account, established pursuant to the Oklahoma College Savings Act, in arriving at Oklahoma taxable income. If contributions are made to more than one account, the deduction for each contributor is limited to Two Thousand Five Hundred Dollars (\$2,500.00) for each account.

(b) Effective for tax years beginning after December 31, 2004, for contributions made to an Oklahoma 529 College Savings Plan (established pursuant to the Oklahoma College Savings Act) a maximum of Ten Thousand Dollars (\$10,000.00) may be deducted in arriving at Oklahoma Taxable income [Twenty Thousand Dollars (\$20,000.00) if filing an income tax return using married filing joint filing status].

(c) Contributions made to other states' college savings plans, the Coverdell Education Savings Account, or transfers from one Oklahoma College Savings Plan Account to another may not be

deducted.

(d) Any contribution, to the extent not deducted, may be carried over as a deduction from income for the succeeding five (5) years.

(e) For taxable years beginning after December 31, 2005, deductions may be taken for contributions and rollovers made during a taxable year and up to April 15th of the succeeding year, or the due date of a taxpayer's state income tax return excluding extensions, whichever is later. Provided a deduction for the same contribution may not be taken for two (2) different taxable years.

(f) For tax years beginning on or after January 1, 2007, taxpayers who elect the five-year carryforward election and take a rollover or have a non-qualified withdrawal during the five-year carryforward period, must reduce the otherwise available tax deduction by the amount which is equal to the rollover or non-qualified withdrawal.

(g) For tax years beginning on or after January 1, 2007, taxpayers who elect to take a rollover or non-qualified withdrawal within the same tax year in which a contribution was made to the taxpayer's account must reduce the otherwise available tax deduction by the amount which is equal to the rollover or non-qualified withdrawal.

(h) For tax years beginning on or after January 1, 2007 taxpayers who elect to take a rollover within one year of the date of contribution for which a deduction has been taken must include the amount of the rollover in their adjusted gross income the taxable year of the rollover.

(i) For tax years beginning on or after January 1, 2007 taxpayers who make a non-qualified withdrawal of contributions for which a deduction was taken must include the amount of the non-qualified withdrawal and any earnings thereon in their adjusted gross income in the taxable year of the withdrawal

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

(1) "**Non-qualified withdrawal**" means a withdrawal from an Oklahoma College Savings Plan account that is not:

(A) a qualified withdrawal;

(B) a withdrawal made as a result of the death or disability of the designated beneficiary of an account;

(C) a withdrawal that is made on the account of a scholarship or the allowance or payment described in Section 135(d)(1)(B) or (C) of Title 26 of the Internal Revenue Code, received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment; and

(D) a rollover or change of designated beneficiary as permitted by subsection F of Section 3970.7 of Title 70 of Oklahoma Statutes.

(2) "**Rollover**" means any transfer of funds from an Oklahoma College Savings plan to any other plan under Section 529 of the Internal Revenue Code.

[Source: Added at 20 Ok Reg 2165, eff 6-26-03; Amended at 23 Ok Reg 2827, eff 6-25-06; Amended at 24 Ok Reg 2359, eff 6-25-07; Amended at 19 Ok Reg 2056, eff 7-1-08]

710:50-15-67. Deduction for living organ donation

(a) Oklahoma resident individuals (or their dependents) who donate one or more human organs while living, may deduct up to Ten Thousand Dollars (\$10,000.00) of un-reimbursed expenses from Oklahoma adjusted gross income to arrive at Oklahoma taxable income.

(b) "**Human organs**" mean all or part of a liver, pancreas, kidney, intestine, lung, or bone

marrow.

(c) The deduction is allowed only one time and may be claimed only for un-reimbursed expenses that are incurred by the individual and related to the organ donation of the individual in the taxable year in which the transplant occurs.

[Source: Added at 19 Ok Reg 2056, eff 7-1-08]

710:50-15-68. General provisions applicable to unemployment compensation

For tax years beginning on or after January 1, 2009, unemployment compensation exempted under Section 85 (c) of the Internal Revenue Code, 26 U.S.C., Section 85(c)(2009) must be included in Oklahoma taxable income.

[Source: Added at 27 Ok Reg 2281, eff 7-11-2010]

PART 7. CREDITS AGAINST TAX

710:50-15-70. Credits from Oklahoma income tax

Certain credits against the initial Oklahoma Income Tax liability may be taken to arrive at the final amount of Oklahoma Income Tax due.

710:50-15-71. Credit for child care/child tax credit

(a) For tax years beginning before January 1, 2008, resident individuals, part-year resident individuals or nonresident individual members of the Armed Forces may claim a credit against the tax imposed by 68 O.S. § 2355 equal to twenty percent (20%) of the credit for child care expenses allowed under the Internal Revenue Code of the United States.

(b) For tax years beginning after December 31, 2007, resident individuals, part-year resident individuals or nonresident individual members of the Armed Forces may claim a credit against the tax imposed by 68 O.S. § 2355 equal to the greater of twenty percent (20%) of the credit for child care expenses allowed under the Internal Revenue Code of the United States or five percent (5%) of the child tax credit allowed under the Internal Revenue Code, whichever amount is greater. If federal adjusted gross income is greater than One Hundred Thousand Dollars (\$100,000.00), no credit is allowed.

(c) Taxpayers must attach a completed copy of the Federal child care schedule to the Oklahoma Income Tax Return to receive a child care credit.

[Source: Amended at 19 Ok Reg 2056, eff 7-1-08]

710:50-15-72. Credit for taxes paid other states

(a) OTC Form 511 TX shall be used by residents and part-year residents who work in other states after becoming an Oklahoma resident and who are required to file Income Tax Returns with those states.

(b) This credit is available only on taxes paid in another state for wages and compensation for personal service. For this credit, retirement income and the proceeds from gambling are considered compensation for personal services.

(c) A copy of the Income Tax Return for each state in which a return was required to be filed must be filed and attached to a completed OTC Form 511 TX. A separate OTC Form 511 TX must be

filed for each state. [See: 68 O.S. § 2357(B)(1)]

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01; Amended at 21 Ok Reg 2571, eff 6-25-04]

710:50-15-73. Credit for use of solar energy and passive solar system [REVOKED]

[Source: Revoked at 18 Ok Reg 2810, eff 6-25-01]

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 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 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.

[Source: Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 13 Ok Reg 3105, eff 7-11-96; Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 18 Ok Reg 2810, eff 6-25-01; Amended at 21 Ok Reg 2571, eff 6-25-04; Amended at 27 Ok Reg 2281, eff 7-11-2010]

710:50-15-75. Recycling, reuse and source reduction incentives

(a) An Oklahoma Income Tax credit of 20% of the net investment costs of equipment and installation of facilities for the recycling, reuse, or source reduction of controlled industrial waste or deleterious substances is allowed.

(b) The Oklahoma Tax Commission will receive certifications from the Department of Environmental Quality. Allowed credits will be based on these certifications. The taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return. The credit must be taken within three (3) years of installation or actual use.

(c) The credit can not exceed the amounts certified by the Department of Environmental Quality or Fifty Thousand Dollars (\$50,000.00), which ever is greater, and may be reduced on audit to actual costs.

(d) 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) or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer 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. [See: 68 O.S. §§ 3607, 3909]

(e) The Oklahoma Tax Commission will provide certification assistance when requested. [See: 27A O.S.Supp.1993, §§2-11-301 through 2-1-307]

[Source: Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 15 Ok Reg 2811, eff 6-25-98]

710:50-15-76. Oklahoma coal credits

(a) **General provisions applicable to qualifying business entities purchasing Oklahoma-mined coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for legal business entities purchasing Oklahoma-mined coal for qualifying purposes. In order to qualify for the Oklahoma Coal Credit, the business entity must either furnish water, heat, light, or power to the citizens or to the State of Oklahoma, or burn coal to generate heat, light, or power for use in manufacturing operations in Oklahoma. [See: 68 O.S. § 2357.11; **Wyoming v. Oklahoma**, 112 S.Ct. 789 (1992)]

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Two Dollars (\$2.00) per ton of Oklahoma-mined coal purchased. For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2012, the credit shall be Two Dollars and eighty-five cents (\$2.85) per ton of Oklahoma-mined coal purchased.

(2) **Extended basic credit.** For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2012, the credit shall be Two Dollars and fifteen cents (\$2.15) per ton of Oklahoma-mined coal purchased. The extended basic credit may not be claimed or transferred prior to January 1, 2008.

(3) **Additional credit for large quantity purchasers.** For tax years beginning on or after January 1, 1995, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, there shall be allowed, in addition to the credit described in (1) of this subsection, a **supplemental** credit of Three Dollars (\$3.00) per ton of Oklahoma-mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.

(b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, **so long as** the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than Sixty-eight Dollars (\$68.00) per ton.

(1) **Basic credit.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Ninety-five Cents (\$0.95) per ton and for the period of July 1, 2006 through December 31, 2006, and for tax years beginning on or after January 1, 2007, the credit shall be

Five Dollars (\$5.00) for each ton of coal mined, produced, or extracted in, on, under, or through a permit in this state.

(2) **Additional credit for thin seam coal.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period of January 1, 2006 through June 30, 2006, there shall be allowed, in addition to that described in (1) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state, **so long as** the purchaser of the thin seam coal purchases less than Seven Hundred Fifty Thousand (750,000) tons of Oklahoma coal per year.

(3) **Extended credit for thin seam coal.** For tax years beginning on or after January 1, 2005 and ending on or before December 31, 2005, for the period of January 1, 2006, through June 30, 2006, there shall be allowed, in addition to that described in (1) and (2) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state on or after July 1, 2005.

(c) **Transferability.** The coal credits allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** means *any taxpayer subject to the tax imposed by Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.* [See: 68 O.S. § 2357.11(G)] Pursuant to the statutory definition, an "eligible transferee" taxpayer may be an individual, as well as a legal business entity.

(2) **Written transfer agreement requirements.** The business entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.

(3) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(d) **Application of credit election.** Any coal credit may, upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax, or a payment of estimated tax for purposes of Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable. Coal credits shall not be used to lower the price of any Oklahoma-mined coal sold that is produced by a subsidiary of the person receiving a tax credit under this section to other buyers of the Oklahoma-mined coal.

(e) **Carryover provisions.** Any coal credit, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

[Source: Amended at 10 Ok Reg 3837, eff 7-12-93; Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 14 Ok Reg 2699, eff 6-26-97; Amended at 17 Ok Reg 2669, eff 6-25-00; Amended at 20 Ok Reg 2165, eff 6-26-03; Amended at 23 Ok Reg 2827, eff 6-25-06; Amended at 24 Ok Reg 2359, eff 6-25-07]

710:50-15-77. Venture capital company credit

- (a) Each qualified Venture Capital Company, as defined in Section 2357.7 of Oklahoma Income Tax statutes, shall file a complete annual report with the Tax Commission and list all funds invested in such company which may qualify for the tax credit allowed by the act. The report shall state the amount of funds the Venture Capital Company invested in each business during the taxable year, the name of such business and its Taxpayer/Employer Identification Number (EIN), date of investment and type of investment.
- (b) Each qualified Venture Capital Company shall furnish to each investor in the Company during the preceding year, a written statement showing the name and EIN number of the Venture Capital Company, the name and Taxpayer/Employer Identification Number of the investor and the total amount of the investment of the investor. This statement will be furnished no later than January 31st of the year following the year of their investment in the Venture Capital Company. A copy of this statement is to be attached to the Oklahoma Income Tax Return of the investor in order to qualify for the tax credit.
- (c) The credit may be used in the year of the original investment in the Venture Capital Company and for the three succeeding years. This is a non-refundable credit and may not be carried back to a year prior to obtaining the credit.
- (d) The original investor may transfer the credit without any limitation. This credit may also be transferred by the transferee at any time during the period that the credit is available for use. The transferred credit may only be used from the time of the transfer forward and is limited to the original qualifying period. [See: 68 O.S. § 2357.7]
- (e) An example of the application of the venture capital company credit is as follows:
Example: A makes an investment in a Qualified Venture Capital Plan in 1989 of \$20,000.00, receiving a tax credit of \$4,000.00. In 1989, A utilizes \$1,000 of the tax credit, and has available \$3,000.00 for the succeeding three years. In 1990, A transfers to B \$1,000.00 of the remaining credit, leaving A with a remaining credit of \$2,000.00, which can be utilized in 1990 - 1992. In 1990, B utilizes \$250.00 of the \$1,000.00 credit. (B cannot use any of the credit for a prior year, however, B may now transfer this credit to C or to any other taxpayer if B is unable to utilize the remaining credit.) B may use the remaining \$750.00 credit only in the years 1991 and 1992, the remainder of the original qualifying period. A may utilize or transfer all or any portion of A's remaining credit in the years 1990 - 1992.

[Source: Amended at 9 Ok Reg 3031, eff 7-13-92]

710:50-15-78. Qualification as a venture capital company

- (a) The venture capital credit is an income tax credit for the investment in qualified venture capital companies.
- (b) To qualify as a venture capital company, capitalization must be at a level of at least five million dollars. Capitalization may consist of cash and/or property or debt obligations. Each venture capital company claiming something other than cash to meet the qualification will be closely examined for compliance with statute and with the Rules of the Oklahoma Tax Commission. Effective for capitalization after January 1, 1999, seventy-five percent (75%) of a Venture Capital Company's funds must be invested in Oklahoma business ventures.
- (c) The tax credit allowed shall be twenty percent (20%) of the cash amount invested; for example: Investors contribute three million in cash and use debt obligation of two million to qualify as a venture capital company. The tax credit will be limited to twenty percent (20%) of three million, or \$600,000.00.

(d) 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), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer 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. [See: 68 O.S. §§3607, 3909]

[Source: Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 16 Ok Reg 2646, eff 6-5-99]

710:50-15-79. Health insurance tax credit [REVOKED]

[Source: Added at 10 Ok Reg 3837, eff 7-12-93; Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 15 Ok Reg 2811, eff 6-25-98; Revoked at 19 Ok Reg 2433, eff 6-27-02]

710:50-15-80. Credit for wind or photovoltaic energy systems

(a) For purposes of this Section, the term "**photovoltaic**" means utilizing, or relating to the generation of an electromagnetic force when radiant energy (as light) falls on the boundary between certain dissimilar substances in close contact.

(b) For purposes of this Section, a "**photovoltaic cell**" means a cell having a photovoltaic element mounted for exposure to light and provided with terminals for connection with a sensitive motor.

(c) For purposes of this Section, "**renewable energy resource**" means photovoltaic or wind energy systems.

(d) For tax years 1993 through 1995 a tax credit for wind and photovoltaic (solar) energy equipment installed on residential or business property will be allowed. The credit must be certified to national standards and carry at least a three-year warranty.

(e) A credit is allowed on total costs directly related to the energy system itself. These costs include the purchase, installation, and construction of the system, less rebates and remunerations of any type resulting from the installations.

(f) Upon filing a claim, taxpayer must submit an itemized accounting of costs directly related to the energy system and an affidavit to be provided to the taxpayer by the energy equipment supplier. A diagram of the energy system should also be furnished.

(g) For residential systems, total costs, for purposes of computing the credit, shall not exceed \$25,000.00. The credit allowed is based on a percentage of expenditures (costs) incurred in the following tax years:

- (1) For tax year 1993, up to forty percent (40%);
- (2) For tax year 1994, up to forty percent (40%); and
- (3) For tax year 1995, up to thirty percent (30%).

(h) For non-residential systems, total cost, for purposes of computing the credit, shall not exceed \$150,000.00. An affidavit is required to attest that more than 50% of the energy produced from the energy system was actually utilized on the premises of the installation. The credit allowed is based on a percentage of expenditures (costs) incurred in the following tax years:

- (1) For tax year 1993, up to thirty percent (30%);
- (2) For tax year 1994, up to thirty percent (30%); and
- (3) For tax year 1995, up to twenty percent (20%).

(i) The unused portion of any credit described in this Section may be carried forward as a credit

against subsequent Oklahoma Income Tax liability for a period not to exceed five (5) years.

(j) Renewable energy resource assessment equipment also qualifies for this credit if used solely for the purpose of determining the feasibility of installing renewable energy systems.

(k) The seller (supplier) of the energy system must provide the following items to the purchaser:

- (1) An itemized accounting of the costs attributable to the energy system; and
- (2) An affidavit attesting to the costs itemized in (1) of this subsection.

[Source: Added at 11 Ok Reg 555, eff 11-10-93 (emergency); Added at 11 Ok Reg 3497, eff 6-26-94]

710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property

(a) **Definitions.** For purposes of the clean-burning motor vehicle fuel property credit, "**motor vehicle**" includes forklifts and other similar self-propelled vehicles. "**Vehicle**" shall not mean conveyor belts or other similar items. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit. Property on which the credit has previously been claimed is ineligible for the credit.

(b) **Limitations of eligibility.** 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), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S. §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]

(c) **Electric vehicle property.** For vehicles placed in service after December 31, 1995, the credit shall also be available for qualified electric vehicle property. "**Qualified electric vehicle property**" means a motor vehicle originally equipped to be propelled **only** by electricity or one which is also equipped with an internal combustion engine. For "qualified electric vehicle property" propelled only by electricity, the basis for the credit is the full purchase price of the vehicle. For vehicles also equipped with an internal combustion engine, the basis for the credit is limited to the portion of the basis of such motor vehicle which is attributable to the propulsion of the vehicle by electricity. The credit does not apply to vehicles known as "golf carts", "go-carts", or other motor vehicles which are manufactured principally for use off the streets and highways.

(d) **Sunset date.** This credit will only be available through tax years beginning before January 1, 2015.

[Source: Added at 11 Ok Reg 555, eff 11-10-93 (emergency); Added at 11 Ok Reg 3497, eff 6-26-94; Amended at 13 Ok Reg 3105, eff 7-11-96; Amended at 14 Ok Reg 2699, eff 6-26-97; Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 21 Ok Reg 2571, eff 6-25-04; Amended at 26 Ok Reg 2330, eff June 25, 2009]

710:50-15-82. Amendment and repeal of certain tax credit provisions; preservation of certain claims under repealed law

(a) **Certain tax credits amended and recodified.** Credit provisions dealing with hazardous wastes under the Recycling, Reuse, and Ultimate Destruction Incentive Act (68 O.S. §§2357.14 - 2357.20) have been amended and recodified as the **Recycling, Reuse, and Source Reduction Incentive Act** (27A O.S.Supp.1993, §§2-11-301 through 2-11-307).

(b) **Certain tax credits no longer available after July 1, 1993.** The following statutes were

repealed, effective July 1, 1993:

- (1) 68 O.S. §2357.21, which dealt with the retroactive application of certain provisions of the Recycling, Reuse, and Ultimate Destruction Incentive Act described in subsection (a) of this Section;
- (2) 68 O.S. §2357.23, which provided a credit for qualified clean-burning train locomotive fuel property; and
- (3) 68 O.S. §§2357.51 through 2357.58, which provided credits pursuant to the Manufacturer Recycling Incentive Act.

(c) **Preservation of certain claims under repealed law.** Any person, firm, corporation, partnership or other legal entity which has made application or filed an information report on forms prescribed by the Oklahoma Tax Commission for credit under 68 O.S. 2357.23, 2357.51, 2357.52, 2357.53, 2357.54, 2357.55, 2357.56, 2357.57, or 2357.58, on or before July 1, 1993, shall qualify to receive any such credit provided all other statutory requirements have been met. [See: 68 O.S.Supp. 1993, §2357.59]

[Source: Added at 11 Ok Reg 555, eff 11-10-93 (emergency); Added at 11 Ok Reg 3497, eff 6-26-94]

710:50-15-83. Limitation of credits allowed by the Oklahoma Quality Jobs Program, the Small Employer Quality Jobs Incentive Acts and the 21st Century Quality Jobs Incentive Act

No establishment which qualifies under the terms of 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) and has received or is receiving incentive payments pursuant to those Acts, nor its contractors or subcontractors, shall be eligible to receive, in connection with the activity and establishment for which incentive payments have been, or are being received, the credits described as follows:

- (1) The investment credit provided for by 68 O.S. §2357.4. [See: 710:50-15-74]
- (2) The credit for investments in qualified venture capital companies provided for by 68 O.S. §2357.7. [See: 710:50-15-77 and 710:50-15-78]
- (3) The credit for recycling, reuse, or ultimate destruction of controlled industrial waste or deleterious substances, provided for by 68 O.S. §2357.16. (Amended and recodified at 27A O.S. §§2-11-301 through 2-11-307.) [See: 710:50-15-75]
- (4) The credit for clean-burning motor vehicle fuel property, provided for by 68 O.S. §2357.22. [See: 710:50-15-81]
- (5) The credit for certain qualified health care plans, provided for by 68 O.S. §2357.31. [See: 710:50-15-79]
- (6) The credits provided pursuant to the Oklahoma Research and Development Incentives Act, 68 O.S. §§54003, 54006

[Source: Added at 11 Ok Reg 555, eff 11-10-93 (emergency); Added at 11 Ok Reg 3497, eff 6-26-94; Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 27 Ok Reg 2281, eff 7-11-2010]

710:50-15-84. Recycling facility credit

(a) **General provisions.** There shall be allowed a credit against the tax imposed by 68 O.S. § 2355 and 36 O.S. § 624 for investments made in qualified recycling facilities. This is to be a non-

refundable credit to offset tax, and is not transferable.

(b) **Definitions.** "**Qualified recycling facilities**" means buildings, land, improvements, machinery, and equipment located in Oklahoma that manufacture a finished, marketable product or component thereof. The finished product must consist of ninety percent (90%) materials which have been separated from the waste stream and incorporated into the finished product.

(c) **Qualification.** In order to qualify for the credit, the conditions and criteria set out in this subsection must be met.

(1) The entity (person, firm, corporation, partnership, or other legal entity) or its successor claiming the credit must have filed a properly executed application with the Oklahoma Tax Commission on or before July 1, 1993.

(2) Construction or on-site installation of the qualified recycling facility must start on or after July 1, 1996 and before December 31, 1999.

(3) The total cost of the qualified recycling facility must be greater than Twenty Million Dollars (\$20,000,000.00).

(4) The new recycling facility must employ at least Seventy-five (75) new full-time equivalent employees. For purposes of this Section, "**full-time equivalent employees**" means those employees who earn at least Seven Thousand Dollars (\$7,000.00) annually.

(d) **Computation of credit.** Upon qualification, the allowed credit shall be equal to fifteen percent (15%) of the investment in the new recycling facility.

(e) **Limitations.** The credit for investments made in qualified recycling facilities is subject to the limitations described in this subsection.

(1) The credit shall not reduce the income tax liability by more than fifty percent, calculated on the net income of the recycling facility.

(2) The credit shall be allowed in the tax year that the recycling facility is placed in service. If the credit allowed is greater than can be utilized in the initial tax year of qualification, the credit may be carried forward to each of the nine (9) following tax years.

(3) No qualified entity, 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 Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible for the credit described in this Section in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]

[Source: Added at 14 Ok Reg 2699, eff 6-26-97; Amended at 15 Ok Reg 2811, eff 6-25-98]

710:50-15-85. Credit for investment in Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association

(a) **General provisions.** Oklahoma agricultural producers may claim an income tax credit for direct investment in an Oklahoma producer-owned agricultural processing entity which is designed to develop and enhance the production, processing, handling, and marketing of Oklahoma agricultural commodities. This credit will be available for the tax year in which the qualified investment is made.

(1) **For qualified investments made on or after January 1, 1997 but before December 31, 1998.** The credit for qualified investments will be thirty percent (30%).

(2) **For qualified investments made on or after January 1, 1999.** If the total credit allowed for qualified investments results in the reduction in total Oklahoma income tax of more than One

Million Dollars (\$1,000,000.00) in any previous calendar year, the percentage of the credit for qualified investment will be adjusted. The adjusted percentage allowable will be determined by multiplying thirty percent 30% times One Million Dollars (\$1,000,000.00), then dividing the result by the credits claimed in the preceding calendar years.

(3) **For qualified investments made on or after January 1, 2006.** If the total credit allowed for qualified investments results in the reduction in total Oklahoma income tax of more than Two Million Dollars (\$2,000,000.00) in any previous calendar year, the percentage of the credit for qualified investment will be adjusted. The adjusted percentage allowable will be determined by multiplying thirty percent (30%) times Two Million Dollars (\$2,000,000.00), then dividing the result by the credits claimed in the preceding calendar years.

(b) **Definitions. "Qualified investment"**, for purposes of this Section, means and is limited to, direct investments by Oklahoma agricultural producers in Oklahoma producer-owned agricultural processing cooperatives, Oklahoma producer-owned agricultural processing ventures, Oklahoma producer-owned agricultural processing marketing associations, and Oklahoma owned and based corporations and partnerships. [See: 68 O.S. Section 2357.25(F)]

(c) **Limitations.** Under no circumstances will the credit percentage exceed thirty percent (30%). If the credit should exceed the amount of income tax due, any unused credit may be carried forward and applied against subsequent income tax liabilities for a period not to exceed six (6) years. In the event of credits being carried forward, the amount of credit, once established, shall not be reduced in the event of credit percentage reduction in subsequent years. This credit shall not be available to any taxpayer in years in which claimant received incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Saving Quality Jobs Act.

(d) **Information return required.** Oklahoma producer-owned agricultural processing entities must file an information return, on a form prescribed by the Commission, reporting the amount of direct investment made during the preceding calendar year. The information return must be filed by January 31.

[Source: Added at 14 Ok Reg 2699, eff 6-26-97; Amended at 18 Ok Reg 2810, eff 6-25-01; Amended at 23 Ok Reg 2828, eff 6-25-06]

710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits

(a) **Qualified Small Business Capital Company.** A qualified Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to companies in this state. The principal place of business of the qualified Small Business Capital Company must be located within Oklahoma. The capitalization of the qualified Small Business Capital Company must be at least One Million Dollars (\$1,000,000.00). [See: 68 O.S. § 2357.61 for further details on capitalization] The qualified Small Business Capital Company cannot invest more than twenty percent (20%) of its funds in any one company.

(1) **Credit available.** For taxable years beginning after December 31, 1997, and before January 1, 2012, there is a credit available against Oklahoma Income Tax (68 O.S. § 2355) and the tax levied on state and national banking associations and credit unions (68 O.S. §2370) for investments in a qualified Small Business Capital Company. The credit is also available against the insurance premiums tax. [See: 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to twenty percent (20%) of the qualified investment in a qualified Small Business Capital Company, and may only be claimed in the tax year in which the qualified Small Business Capital Company invests funds in an Oklahoma Small Business Venture. The credit is limited to the amount of the qualified investment which is subsequently invested in an Oklahoma small business venture by the qualified Small Business Capital Company.

(3) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward subject to the following limitations:

(A) The credit may be carried forward for a period not to exceed three (3) years for investments made on or after November 1, 2006.

(B) The credit may be carried forward for a period not to exceed ten (10) years for investments made prior to June 7, 2006.

(C) The credit may be carried forward for a period not to exceed ten (10) years for investments made on or after June 7, 2006 and prior to November 1, 2006, provided the following conditions are met:

(i) The person or entity claiming the credit obtained a favorable determination letter from the Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize the tax credits;

(ii) The qualified investment satisfies a legitimate business purpose of the entity receiving the investment;

(iii) The investor's funds were at risk; and

(iv) The investment was not made chiefly for the purpose of generating tax credits.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Small Business Capital Company is used by an Oklahoma Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified small business capital company.

Further, the credit is not available for investments in which the Rural Small Business Capital Credit has been claimed.

(b) **Oklahoma Small Business Ventures.** An Oklahoma Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, or must intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further, the Oklahoma Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or to provide working capital for the active conduct of the trade or business. The Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in conjunction with Qualified Small Business Capital Company Investment.** Investors in a Qualified Small Business Capital Company may also make

an investment in an Oklahoma Small Business Venture, in conjunction with the investment by the Qualified Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to twenty percent (20%) of the qualified investment in an Oklahoma Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Small Business Venture.

(2) **Credit non-refundable, nontransferable; carryover provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed three (3) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified small business:

(A) The investment must be made by a shareholder, member or a partner of the qualified Small Business Capital Company that has made a qualified investment in an Oklahoma Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in an Oklahoma Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with Qualified Small Business Capital Companies is limited to the lesser of two hundred percent (200%) of the taxpayer's qualified investment in the qualified Small Business Capital Company or two hundred percent (200%) of the qualified investment made by the qualified Small Business Capital Company in the Oklahoma Small Business Venture.

(d) **Reporting requirements.** Each qualified Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Small Business Capital Company in Oklahoma Small Business Ventures.

(e) **Recordkeeping.** Each qualified Small Business Capital Company shall also make a written information report available to all investors in the qualified Small Business Capital Company. This information report shall show the name of the qualified Small Business Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Small Business Capital Formation Incentive Act. [68 O.S. § 2357.63A]*

[Source: Added at 15 Ok Reg 2811, eff 6-25-98; Amended at 16 Ok Reg 2646, eff 6-25-99; Amended at 18 Ok Reg 2810, eff 6-25-01; Amended at 19 Ok Reg 2433, eff 6-27-02, Amended at 22 Ok Reg 1541, eff 6-11-05; Amended at 24 Ok Reg 2359, eff 6-25-07; Amended at 26 Ok Reg 2330, eff June 25, 2009; Amended at 27 Ok Reg 2281, eff 7-11-2010]

710:50-15-86.1. Letter rulings pursuant to the Small Business Capital Formation Incentive Act

The Oklahoma Tax Commission will only issue letter rulings pursuant to the Small Business Capital Formation Incentive Act (68 O.S. §§2357.61 et seq.) as provided herein:

(1) A person or entity may request a ruling to determine whether a company meets the definition of a "qualified small business capital company". The requesting party must provide sufficient information to demonstrate that the company meets the following requirements for a qualified small business capital company:

(A) *A C Corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law;*

(B) The capital company is organized to provide the direct investment of equity and near-equity funds to companies within the state of Oklahoma as outlined in its organizational instrument, bylaws, articles of incorporation, or other agreement responsible for the governance of the capital company;

(C) The principal place of business of the capital company is located within this state;

(D) The capitalization of the capital company is not less than One Million Dollars (\$1,000,000.00); and

(E) No more than twenty percent (20%) of the capital company's capitalization is invested in any one company at any time during the calendar year of the capital company. [68 O.S. Supp 2006, §2357.61(7)(a)-(d)]

(2) A qualified small business capital company may request a letter ruling to determine whether a business in which it intends to invest meets the definition of an "Oklahoma small business venture". The capital company must give sufficient information to show the small business venture meets the following requirements:

(A) Within one hundred eighty (180) days after a qualified investment is made by a qualified small business capital company, at least fifty percent (50%) of the business's employees or assets are in the state of Oklahoma;

(B) *Needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services;*

(C) *Is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:*

(i) *Major Group 1 of Division A, and*

(ii) *Major Group 2 of Division A;*

(D) *Qualifies as a small business as defined by the federal Small Business Administration; and*

(E) Intends to expend within eighteen (18) months of the qualified investment at least fifty percent (50%) of the proceeds of the investment to provide working capital for the active conduct of the trade or business or for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph (D) of paragraph 2 was made. [68 O.S. Supp 2006, §2357.61(5)(a)-(e)]

(3) A person or entity may request whether a transfer of funds meets the definition of a

"qualified investment" under the Small Business Capital Formation Incentive Act. The requesting party must provide sufficient information to establish that the transfer of funds meets the definition of qualified investment under the Act.

(4) Requests for letter rulings issued pursuant to this Section are limited to paragraphs (1), (2) and (3) above. [68 O.S. §2357.63D]

(5) All other requests for rulings with respect to the Small Business Capital Formation Incentive Act should be submitted separately and shall be issued pursuant to OAC 710:1-3-73.

[Source: Added at 24 Ok Reg 2359, eff 6-25-07; Amended at 19 Ok Reg 2056, eff 7-1-08; Amended at 26 Ok Reg 2330, eff June 25, 2009]

710:50-15-87. Oklahoma Rural Small Business Capital Company / Rural Small Business Venture credits

(a) **Qualified Rural Small Business Capital Company.** A Qualified Rural Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Rural Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to rural small business entities in this state. The principal place of business of the qualified Rural Small Business Capital Company must be located within Oklahoma and the capitalization must be at least Five Hundred Thousand Dollars (\$500,000.00). The qualified Rural Small Business Capital Company cannot invest more than twenty-five percent (25%) of its funds in any one rural small business entity.

(1) **Credit available.** For taxable years beginning after December 31, 2000, and before January 1, 2008, there is a credit available against the Oklahoma Income Tax levied by 68 O.S. § 2355, and the tax levied on state and national banking associations and credit unions by 68 O.S. § 2370, for investments in a qualified Rural Small Business Capital Company. The credit is also available against the insurance premiums tax. [See: 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to thirty percent (30%) of the qualified investment in a qualified Rural Small Business Capital Company, and may only be claimed in the tax year in which the capital company invests funds in an Oklahoma Rural Small Business Venture. The credit is limited to the amount of the qualified investment which is subsequently invested in an Oklahoma rural small business venture by the qualified Rural Small Business Capital Company, and is unavailable for investments made in qualified Rural Small Business Capital Companies made **prior** to January 1, 2001.

(3) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward subject to the following limitations:

(A) The credit may be carried forward for a period not to exceed three (3) years for investments made on or after November 1, 2006.

(B) The credit may be carried forward for a period not to exceed ten (10) years for investments made prior to June 7, 2006.

(C) The credit may be carried forward for a period not to exceed ten (10) years for investments made on or after June 7, 2006 and prior to November 1, 2006, provided the following conditions are met:

- (i) The person or entity claiming the credit obtained a favorable determination letter from the Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize the tax credits;
 - (ii) The qualified investment satisfies a legitimate business purpose of the entity receiving the investment;
 - (iii) The investor's funds were at risk; and
 - (iv) The investment was not made chiefly for the purpose of generating tax credits.
- (4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Rural Small Business Capital Company is used by an Oklahoma Rural Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified Rural Small Business Capital Company. Further, the credit is not available for investments in which the Small Business Capital Credit has been claimed.
- (b) **Oklahoma Rural Small Business Ventures.** An Oklahoma Rural Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Rural Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, and must provide or intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further the Rural Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or to provide working capital for the active conduct of the trade or business. The Rural Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.
- (c) **Credit for investments made in Oklahoma Rural Small Business Ventures in conjunction with investment by qualified Rural Small Business Capital Company.** Shareholders or partners in a qualified Rural Small Business Capital Company may also make an investment in an Oklahoma Rural Small Business Venture, in conjunction with the investment by the qualified Rural Small Business Capital Company.
- (1) **General provisions.** The credit shall be equal to thirty percent (30%) of the qualified investment in an Oklahoma Rural Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Rural Small Business Venture.
 - (2) **Credit non-refundable, nontransferable; carryover provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed three (3) taxable years.
 - (3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified Rural Small Business Capital Company:
 - (A) The investment must be made by a shareholder, member or a partner of the qualified Rural Small Business Capital Company that has made a qualified investment in an Oklahoma Rural Small Business Venture.
 - (B) Funds must be invested to purchase equity or near equity in the Rural Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Rural Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with qualified Rural Small Business Capital Companies is limited to the lesser of two hundred percent (200%) of the taxpayer's qualified investment in the qualified Rural Small Business Capital Company, or two hundred percent (200%) of the qualified investment made by the qualified Rural Small Business Capital Company in the Rural Small Business Venture.

(d) **Reporting requirements.** Each qualified Rural Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Rural Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Rural Small Business Capital Company in Oklahoma Rural Small Business Ventures.

(e) **Recordkeeping.** Each qualified Rural Venture Capital Company shall also make a written information report available to all investors in the qualified Rural Venture Capital Company. This information report shall show the name of the qualified Rural Venture Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Rural Venture Capital Formation Incentive Act.* [68 O.S. § 2357.74A]

[Source: Added at 18 Ok Reg 2810, eff 6-25-01; Amended at 19 Ok Reg 2433, eff 6-27-02; Amended at 24 Ok Reg 2359, eff 6-25-07; Amended at 26 Ok Reg 2330, eff June 25, 2009; Amended at 27 Ok Reg 2281, eff 7-11-2010]

710:50-15-87.1. Letter rulings pursuant to the Rural Venture Capital Formation Incentive Act

The Oklahoma Tax Commission will only issue letter rulings pursuant to the Rural Venture Capital Formation Incentive Act (68 O.S. §§ 2357.71 et seq.) as provided herein:

(1) A person or entity may request a ruling to determine whether a company meets the definition of a "qualified rural small business capital company". The requesting party must provide sufficient information to demonstrate that the company meets the following requirements for a qualified rural small business capital company:

(A) *A C Corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law;*

(B) The capital company is organized to provide the direct investment of equity and near-equity funds to companies within the state of Oklahoma as outlined in its organizational instrument, bylaws, articles of incorporation, or other agreement responsible for the governance of the capital company;

(C) The principal place of business of the capital company is located within this state;

- (D) The capitalization of the capital company is not less than Five Hundred Thousand Dollars (\$500,000.00); and
- (E) No more than twenty-five percent (25%) of the capital company's capitalization is invested in any one company at any time during the calendar year of the capital company. [68 O.S. Supp 2006, §2357.72(8)(a)-(d)]
- (2) A qualified rural small business capital company may request a letter ruling to determine whether a business in which it intends to invest meets the definition of an "Oklahoma rural small business venture". The capital company must give sufficient information to show the rural small business venture meets the following requirements:
- (A) *Has or will have within one hundred eighty (180) days after a qualified investment is made by a qualified small business capital company, at least fifty percent (50%) of its employees or assets in Oklahoma;*
- (B) *Needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services;*
- (C) *Is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:*
- (i) *Major Group 1 of Division A, and*
- (ii) *Major Group 2 of Division A;*
- (D) *Qualifies as a small business as defined by the federal Small Business Administration;*
- (E) *Intends to expend within eighteen (18) months of the qualified investment at least fifty percent (50%) of the proceeds of the investment to provide working capital for the active conduct of the trade or business or for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph (D) of this paragraph 2 was made, and*
- (F) *Has its principal place of business within a nonmetropolitan area of the state and conducts the activity resulting in at least seventy-five percent (75%) of its gross annual revenue from a nonmetropolitan area of the state.* [68 O.S. Supp 2006, §2357.72(6)(a)-(f)]
- (3) A person or entity may request whether a transfer of funds meets the definition of a "qualified investment" under the Rural Venture Capital Formation Incentive Act. The requesting party must provide sufficient information to establish that the transfer of funds meets the definition of qualified investment under the Act.
- (4) Requests for letter rulings issued pursuant to this Section are limited to paragraphs (1), (2) and (3) above. [68 O.S.2357.74D]
- (5) All other requests for rulings with respect to the Rural Venture Capital Formation Incentive Act should be submitted separately and shall be issued pursuant to OAC 710:1-3-73.

[Source: Added at 24 Ok Reg 2359, eff 6-25-07; Amended at 19 Ok Reg 2056, eff 7-1-08; Amended at 26 Ok Reg 2330, eff June 25, 2009]

710:50-15-88. Tourism attraction project credit [RESERVED]

[Source: Reserved at 18 Ok Reg 2810, eff 6-25-01]

710:50-15-89. Oklahoma coal production credit [REVOKED]

[Source: Added at 19 Ok Reg 2433, eff 6-27-02; Revoked at 20 Ok Reg 2165, eff 6-26-03]

710:50-15-90. Oklahoma earned income tax credit

(a) Effective for tax years beginning on or after January 1, 2002, there shall be an Oklahoma Earned Income Tax Credit for resident and part year resident individuals.

(b) The Oklahoma Earned Income Tax Credit shall be an amount equal to five percent (5%) of the Federal Earned Income Tax Credit allowed under Section 32 of the Internal Revenue Code. The Oklahoma Earned Income Tax Credit may not be paid in advance and must be claimed on the individual income tax return when filed.

(c) The credit is to be prorated on the ratio that Oklahoma Adjusted Gross Income bears to Federal Adjusted Gross Income, not to exceed one hundred percent (100%). When the Oklahoma Adjusted Gross Income or the Federal Adjusted Gross Income are negative the ratio will be determined as follows:

(1) When the Oklahoma Adjusted Gross Income is negative and is less than the Federal Adjusted Gross Income, the ratio shall be 0%. (For example: Oklahoma Adjusted Gross Income is negative \$1,000 and the Federal Adjusted Gross Income is negative \$500, the ratio shall be 0%).

(2) When the Federal Adjusted Gross Income is negative and is equal to or less than the Oklahoma Adjusted Gross Income, the ratio will be 100%. (For example: Oklahoma Adjusted Gross Income is negative \$500 and the Federal Adjusted Gross Income is negative \$1,000 the ratio is 100%).

[Source: Added at 19 Ok Reg 2433, eff 6-27-02; Amended at 23 Ok Reg 2828, eff 6-25-06]

710:50-15-91. Credit for employers incurring expenses for the provision of child care services

(a) **General Provisions.** There shall be a non-refundable tax credit against the tax imposed by 68 O.S. § 2355 for employers, as defined by 68 O.S. § 2357.26(B)(2), incurring eligible expenses in the connection with providing child care services for children of their employees. The credit is based on the amount of eligible expenses and shall be twenty percent (20%) of the eligible expense subject to limits based on the type of expense. The credit is effective for tax years beginning after December 31, 2001.

(b) **Eligible expenses subject to the \$3,100.00 cap.** Eligible expenses subject to the \$3,100.00 cap per employee-child are those amounts paid for the purchase of childcare services for children of employees at a facility licensed by the Department of Human Services and rated at least two stars.

(c) **Eligible expenses subject to the \$50,000.00 cap.** Eligible expenses subject to the \$50,000.00 cap are those expenses associated with providing a child care center. These include expenses associated with planning, preparing, constructing, or expanding a child care center; equipment for a child care center; or maintenance and operating expenses of a child care center, including direct administrative and staff costs.

(d) **Eligible expenses subject to the \$5,000.00 cap.** Eligible expenses subject to the \$5,000.00 cap are those expenses for fees and grants to child care resource and referral organizations doing business within Oklahoma.

(e) **Credit is in lieu of expense deduction.** The credit for employers incurring expenses for the provision of child care services shall be in lieu of a deduction of eligible expenses used in computing

Oklahoma taxable income. If the credit is claimed or generated, then none of the expenses on which the credit is based shall be allowed as deduction in calculating Oklahoma taxable income.

(f) **Carryforward allowed.** Credits generated but not used are allowed to be carried forward four (4) years following the year generated.

[Source: Added at 20 Ok Reg 2165, eff 6-26-03]

710:50-15-92. Credit for manufacturers of advanced small wind turbines

(a) **General provisions.** Oklahoma manufacturers of advanced small wind turbines may claim an Oklahoma income tax credit for manufacturing advanced small wind turbines in this state. This credit is available for advanced small wind turbines manufactured between January 1, 2003 and December 31, 2012.

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

(1) **"Advanced small wind turbines (ASWT)"** are upwind, furling wind turbines that have a rated capacity of at least one kilowatt (1kw) but no more than fifty kilowatts (50kw). The wind turbine must also incorporate advanced technologies such as new airfoils, new generators, new power electronics, and variable speed. In order to qualify as an advanced small wind turbine, at least one unit of each model must have undergone testing at the United States Department of Energy National Wind Technology Center and must comply with appropriate interconnection safety standards of the Institute of Electrical and Electronics Engineers as are applicable to small wind turbines.

(2) **"Rotor Swept Area"** means an area calculated by using the formula $\pi \times D^2$ divided by 4, (D being the rotor diameter in feet, $\pi = 3.1416$).

(3) **"Oklahoma manufacturer"** means, for purposes of this Section, a manufacturer who operates facilities that have the capability of manufacturing small wind turbine products in this state.

(4) **"Small wind turbine products"** means and includes rotor blades and alternator fabrication.

(c) **Computation of the credit.** The credit is based on the square footage of the rotor swept area of the advanced small wind turbine manufactured in Oklahoma. For ASWT manufactured between January 1, 2003, and December 31, 2003, the credit is Twenty-five Dollars (\$25.00) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2004, and December 31, 2004, the credit is Twelve Dollars and Fifty Cents (\$12.50) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2005, and December 31, 2007, the credit is Twenty-five Dollars (\$25.00) per square foot of the rotor swept area.

(d) **Transfer of the credit.** Effective for tax year 2004, the credit for manufacturers of advanced small wind turbines may be transferred.

[Source: Added at 20 Ok Reg 2165, eff 6-26-03; Amended at 23 Ok Reg 2828, eff 6-25-06; Amended at 24 Ok Reg 2359, eff 6-25-07]

710:50-15-93. Credit for qualified Oklahoma space transportation vehicle providers

(a) **General provisions.** There shall be allowed a transferable credit against the tax imposed by 68 O.S. § 2355 or 36 O.S. §§624 or 628, for an investment in qualifying Space Transportation Vehicle Providers ("Providers"). In order to qualify for the credit Providers must meet certain eligibility requirements.

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

(1) **"Eligible investment"** means an unencumbered investment in a qualified Space Transportation Vehicle Provider made between January 1, 2001, and December 31, 2003.

(2) **"Equity capitalization"** means assets minus liabilities.

(3) **"Qualified space transportation vehicle provider"** means *any commercial provider organized under the laws of this state as a corporation or a limited liability company and engaged in designing, developing, producing, or operating commercial space transportation vehicles in this state.* [68 O.S. § 2357.42(C)(2)]

(4) **"Space transportation vehicles"** means *all types of vehicles or orbital or suborbital spacecraft, whether now in existence, developed in the future, or currently under design, development, construction, reconstruction, or reconditioning, constructed in this state and owned by a qualified space transportation vehicle provider, for the purpose of operating in, or transporting a payload to, from, or within, outer space, or in suborbital trajectory, and includes any component of such vehicle or spacecraft not specifically designed or adapted for a payload.* [68 O.S. § 2357.42(C)(3)]

(5) **"Subsequently refunded or returned"**, *when used in reference to an eligible investment, means an actual redemption by the qualified space transportation vehicle provider of the securities or other indicia of ownership in the qualified space transportation vehicle provider received by the investor from the investor's investment.* [68 O.S. § 2357.42(C)(4)]

(c) **Eligibility requirements.** In order to qualify for the credit, application must be made to the Oklahoma Tax Commission, along with supporting documentation outlining certain minimum qualifications. The Tax Commission must certify that the applicant meets the following minimum qualifications:

(1) The applicant must be headquartered in this state or ultimately controlled by an entity headquartered in this state;

(2) The applicant must have been pre-approved by the Oklahoma Department of Commerce to receive incentive payments under the Quality Jobs Program Act or the Former Military Facility Development Act as a basic industry. Determination of eligibility under the Quality Jobs Programs Act or the Former Military Facility Development Act is under the discretion of the Oklahoma Department of Commerce.

(3) The applicant must have at least Ten Million Dollars (\$10,000,000) in equity capitalization.

(4) The applicant must have received a commitment from a local governmental entity in the aggregate amount of Fifteen Million Dollars (\$15,000,000) under the terms outlined in 68 O.S. Section 2357.42(C)(1)(b)(3).

(d) **Certification process.** Upon a written request, the Tax Commission will certify, in writing, to an authorized agent or representative of a qualified provider that the eligibility requirements for the credit set out in Subsection (c) have been met. The Tax Commission, through its General Counsel, will review the documents submitted, which will vary on a case-by-case basis. Determination of the adequacy and sufficiency of all documentation provided to determine eligibility for the credit pursuant to this Section is at the discretion of the Office of the General Counsel.

(e) **Maximum credit.** The maximum amount of investment eligible for the credit is Thirty Million Dollars (\$30,000,000). If more than one applicant is certified as eligible by the Tax Commission:

(1) Investors in the first approved qualified space transportation vehicle provider will be

eligible for a credit based on the lesser of:

- (A) Their eligible investment; or,
- (B) Thirty Million Dollars (\$30,000,000).

(2) Investors in the second and subsequent qualified space transportation vehicle providers approved will be eligible for the credit based on the lesser of:

- (A) Their eligible investment; or,
- (B) The difference between the total investments in previously approved Providers and Thirty Million Dollars (\$30,000,000).

(f) **Amount of credit.** The credit will be available as a percentage of the eligible investment, as follows:

(1) In the first tax year after the eligible investment, ten and six-tenths of one percent (10.6 percent) of the eligible investment may be claimed and is redeemable.

(2) In the second tax year after the eligible investment, eleven and two-hundred-thirty-six one thousandths of one percent (11.236 percent) of the eligible investment may be claimed and is redeemable.

(3) In the third tax year after the eligible investment, eleven and ninety-one hundredths of one percent (11.91 percent) of the eligible investment may be claimed and is redeemable.

(4) In the fourth tax year after the eligible investment, twelve and six-hundred-twenty-four-one-thousandths of one percent (12.624 percent) of the eligible investment may be claimed and is redeemable.

(5) In the fifth tax year after the eligible investment, thirteen and three-hundred-eighty-one-one-thousandths of one percent (13.381 percent) of the eligible investment may be claimed and is redeemable.

(g) **Record retention.** Any qualified space transportation vehicle provider must maintain a record of the investments made in the qualifying space transportation vehicles between January 1, 2001, and December 31, 2003. Qualifying space transportation vehicle providers must submit to the Tax Commission the amount of total investment for this period not later than January 31, 2003. Qualifying space transportation vehicle providers must notify the Tax Commission in writing of any amounts refunded or returned to an investor. Such notification must include the amounts refunded, the recipient and the recipient's tax identification number.

(h) **Transferability.** The credit provided shall be freely transferable and failure to allow the tax credits or the recapture of the tax credits shall not affect the validity of the tax credits in the hands of a transferee of the initial investor or subsequent transferees.

[Source: Added at 21 Ok Reg 353, eff 12-10-03 (emergency); Added at 21 Ok Reg 2571, eff 6-25-04]

710:50-15-94. Volunteer firefighter credit

(a) **General provisions.** An income tax credit of two hundred dollars (\$200.00) is available for a volunteer firefighter who has completed at least twelve (12) hours toward the Volunteer Firefighter Practices program offered by Oklahoma State University Fire Service Training. After the initial year, an additional two hundred dollar (\$200.00) income tax credit is allowed each year the volunteer firefighter has completed an additional six (6) hours of Fire Service Training Volunteer Firefighter Practices program until such program or its equivalent is completed.

(b) **Advanced training credit.** An income tax credit of four hundred dollars (\$400.00) each year is available for a volunteer firefighter who, after completing at least thirty (30) hours of instruction, and having completed the Volunteer Firefighter Practices program:

- (1) Attends and receives certification for annual chemical, biological, radiological, and nuclear (CBRN) response training; and weapons of mass destruction (WMD) training of at least one (1) hour per subject;
- (2) Completes at least six (6) hours of continuing education each year until the firefighter completes certification as a Firefighter I or its equivalent;
- (3) Provides documentation from the fire chief of the applicable department that the firefighter has participated in all annual training as required by federal and state authorities; and,
- (4) Provides documentation from the fire chief of the applicable department that the volunteer firefighter has met the requirements under the fire department's constitution and bylaws and is a member in good standing of the department together with a record of the total number of years of service in good standing with such department.

[Added at 22 Ok Reg 1542, eff 6-11-05]

710:50-15-95. Poultry litter credit

- (a) **General provisions.** Effective for tax year beginning on or after January 1, 2005, and ending on or before December 31, 2009 an income tax credit is established for the purchase and transportation of poultry litter. The credit is five dollars (\$5.00) per ton of poultry litter purchased and transported. Any unused credit may be carried over for up to five (5) years.
- (b) **Qualification.** In order to qualify for the credit the poultry litter must:
 - (1) Be purchased from a registered, Oklahoma-based poultry operation located within an environmentally sensitive and nutrient-limited watershed;
 - (2) Be used or spread in a watershed that is not environmentally sensitive and nutrient-limited; and,
 - (3) Be applied by a certified poultry waste applicator and in a manner consistent with the Animal Waste Management Plan.
- (c) **Limitation.** The sum total of all such credits claimed cannot exceed Three Hundred Seventy-five Thousand Dollars (\$375,000.00) annually, for all claimers of the credit.

[Added at 22 Ok Reg 1543, eff 6-11-05; Amended at 26 Ok Reg 2330, eff June 25, 2009]

710:50-15-96. Sales tax relief credit

- (a) **General provisions.** Eligible individual taxpayers may claim an income tax credit for "Sales Tax Relief" pursuant to 68 O.S. § 5011. The credit is forty dollars (\$40.00) multiplied by the number of allowable personal exemptions the taxpayer is entitled to claim under the Oklahoma Income Tax Act.
- (b) **Eligible taxpayers.** For purposes of this Section, "**Eligible Taxpayer**" means an individual who is a resident of, and domiciled in Oklahoma, for the entire calendar year.
- (c) **Gross Household Income.** For purposes of this Section "**Gross Household Income**" is the gross income of every type received by all persons occupying the same household. It includes, but is not limited to, pensions, annuities, federal social security benefits, unemployment payments, veterans disability compensation, loss-of-time insurance payments, capital gains, and any other type of income. It is not relevant whether or not the income is taxable for state or federal income tax purposes. "**Gross Household Income**" does not include gifts, or income that is considered deferred.
- (d) **Eligibility for tax year 2004.** To be eligible to claim this credit, the following Gross Household Income limits apply for tax year 2004:

- (1) For those taxpayers that can claim no allowable personal exemption other than themselves or their spouse, Gross Household Income cannot exceed Fifteen Thousand Dollars (\$15,000.00).
 - (2) For those taxpayers who can claim a personal exemption other than themselves or their spouse; who are at least 65 years of age; or, who have a physical disability that is a substantial handicap to employment, Gross Household Income cannot exceed Thirty Thousand Dollars (\$30,000.00).
- (e) **Eligibility for tax year 2005 and following years.** To be eligible to claim this credit, the following Gross Household Income limits apply for tax year 2005 and following years:
- (1) For those taxpayers that can claim no allowable personal exemption other than themselves or their spouse, Gross Household Income cannot exceed Twenty Thousand Dollars (\$20,000.00).
 - (2) For those taxpayers who can claim a personal exemption other than themselves or their spouse; who are at least 65 years of age; or, who have a physical disability that is a substantial handicap to employment, Gross Household Income cannot exceed Fifty Thousand Dollars (\$50,000.00).
- (f) **Filing Requirements.** Procedures for claiming the "Sales Tax Relief" credit are:
- (1) For tax years beginning before January 1, 2007:
 - (A) If the claim for sales tax relief is taken as a direct credit against the income taxes owed by the taxpayer, the claim must be filed by April 15 as part of the regular income tax return, using Oklahoma Tax Commission Form 538S (OTC Form 538S). Extensions of time to file an Oklahoma income tax return will **not** extend the time to file for the Sales Tax Relief Credit.
 - (B) If the claim for sales tax relief is not taken as a direct credit against income taxes owed by the taxpayer, the claim must be filed by June 30 for the preceding calendar year, using Form 538S as a stand-alone refund claim.
 - (2) For tax years beginning on or after January 1, 2007:
 - (A) If the taxpayer has an income tax filing requirement, the claim must be filed by April 15 as part of the regular income tax return in the year following the close of the taxable year, unless the taxpayer has been granted a valid extension of time to file said income tax return (including the April 20th due date for electronically filed returns). In the case where a valid extension of time to file has been granted, the claim for sales tax relief may be filed with the income tax return pursuant to the extension granted. In all cases taxpayers must attach Oklahoma Tax Commission Form 538S (OTC Form 538S) to their regular income tax return in order to claim the sales tax relief credit.
 - (B) If the taxpayer does not have an income tax filing requirement the claim must be filed by June 30 for the preceding calendar year, using Form 538S.
- (g) **Exceptions and exclusions.** The exceptions and exclusions set out in this subsection apply to the "Sales Tax Relief" credit.
- (1) Persons who have received temporary assistance for needy families (TANF) for any month during the tax year are not eligible for the sales tax refund under this Section, but shall receive sales tax relief as a part of their monthly TANF benefit. [See: 68 O.S. § 5013(B)]
 - (2) The Oklahoma Department of Human Services will issue the sales tax refund to persons who have continuously received aid to the aged, blind, disabled or Medicaid payments for nursing home care for the tax year. [See: 68 O.S. §5013(C),(D)]
 - (3) A person convicted of a felony shall not be permitted to file a claim for sales tax relief for any year for which that person is an inmate in the custody of the Department of Corrections for any

part of that year. [See: 68 O.S. § 5011(E)]

(4) Alien individuals living in Oklahoma under a temporary or restricted status do not qualify for the sales tax relief credit. [See: 8 U.S. § 1101(a)(15)(B) and § 1101(a)(15)(F)(i)]

(5) If a taxpayer or spouse died during the tax year, the sales tax credit cannot be claimed for the deceased. However, if the death occurred after the close of the tax year, but before the claim for sales relief was filed, the sales tax credit or refund for the deceased will be issued to the deceased's estate. [See: 68 O.S. § 5011]

[Added at 22 Ok Reg 1543, eff 6-11-05; Amended at 19 Ok Reg 2056, eff 7-1-08]

710:50-15-97. Credit for qualified direct costs of a business enterprise of specially trained canines

(a) **General provisions.** An Oklahoma Income Tax credit of fifty percent (50%) of the qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines is allowed. In order to qualify for the credit the business enterprise must meet certain eligibility requirements.

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

(1) **"Nonqualified operating expenditures"** means *labor costs, salary and other compensation, whether direct or indirect, paid to directors, officers, limited liability company members, limited liability company managers, partners or other principals or employees of the business entity* [68 O.S. § 2357.201(A)(1)];

(2) **"Qualified direct costs"** means *expenditures, other than nonqualified operating expenditures, to construct dog kennels, fences, pens, training areas for canines, structures for office space or other improvements to real property necessary for the proper training of a specially trained canine, including the cost of food, water, veterinary expenses and other costs directly related to the operation of the training facility* [68 O.S. § 2357.201(A)(2)]; and

(3) **"Specially trained canines"** means *dogs that are raised by a person who is officially licensed as a dog breeder by the United States Department of Agriculture.* [68 O.S. § 2357.201(A)(3)]

(c) **Qualification.** In order to qualify for the credit, applicant must have:

(1) An official copy of the United States Department of Agriculture dog breeder license; and

(2) Documentation showing that the business enterprise's principal purpose is the rearing of specially trained canines. Also, a written description of the services of the organization, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the business enterprise.

(3) Evidence of qualification must be provided to the Oklahoma Tax Commission upon request.

(d) **Computation of credit.** The taxpayer must attach a schedule showing qualified direct costs to the Oklahoma Income Tax Return. The allowed credit is equal to fifty (50%) of the "qualified direct costs". Receipts for all "qualified direct costs" must be provided to the Oklahoma Tax Commission upon request.

(e) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used any tax year may be carried over, in order, to each of the five (5) subsequent taxable years. The credit is also not transferable.

[Source: Added at 23 Ok Reg 2829, eff 6-25-06]

710:50-15-98. Credits for biodiesel production

(a) **General provisions.** For tax years beginning after December 31, 2004 and before January 1, 2013, there is an income tax credit for biodiesel production at certain biodiesel facilities.

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

(1) **"Biodiesel"** is any diesel-equivalent biofuel made from renewable materials such as vegetable oils or animal fats.

(2) **"Biodiesel facility"** is a plant or facility primarily engaged in the production of biodiesel derived from animal fats, grain components, coproducts, or byproducts. The facility must be located within the State of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of a biodiesel facility. Capacity must be specified as gallons of biodiesel produced per year.

(c) **Basic credit.** Any biodiesel facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of biodiesel, on or before December 31, 2008 is eligible for a credit in the amount of twenty cents (\$0.20) per gallon of biodiesel produced for the first sixty (60) months provided the biodiesel facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents (\$0.20) per gallon of biodiesel produced expires for production after December 31, 2013.

(d) **Excess production credit.** Any biodiesel facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents (\$0.20) per gallon of biodiesel produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after July 1, 2005 and before December 31, 2008. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2013.

(e) **Credit for production after December 31, 2013.** For production of biodiesel after December 31, 2013 a biodiesel facility may receive an income tax credit in the amount of seven and one-half cents (\$0.075) per gallon of biodiesel, for new production for a period not to exceed thirty-six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2011, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2012, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2012, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of biodiesel production at a biodiesel facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits

are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2012.

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the biodiesel production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Biodiesel Production Facilities is only allowed for biodiesel that is produced at a plant at which all biodiesel esterification takes place.

(2) Not more than twenty-five million (25,000,000) gallons of biodiesel produced annually at a biodiesel facility shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2011.

(3) Not more than ten million (10,000,000) gallons of biodiesel produced during any twelve-consecutive-month period at a biodiesel facility shall be eligible for credit for production after December 31, 2011. The credit for production after December 31, 2011 may only be claimed by a producer for production that occurs on or before December 31, 2014.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

(g) **Carryover.** Any credits allowed under this Section but not used may be carried forward as a credit against subsequent income tax liability for a period not exceeding five (5) years, beginning July 1, 2009.

[Source: Added at 23 Ok Reg 2829, eff 6-25-06; Amended at 19 Ok Reg 2056, eff 7-1-08; Amended at 26 Ok Reg 2330, eff June 25, 2009]

710:50-15-99. Dry fire hydrant credit

(a) **General provisions.** For tax years beginning after December 31, 2005, there is allowed a credit against the tax imposed by 68 O.S. Section 2355 for the cost of the purchase of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma.

(b) **Definitions.** *"Dry fire hydrant" means nonpressurized pipes permanently installed in lakes, farm ponds, and streams that provide a ready means of drawing water.*

(c) **Qualification.** In order to qualify for the credit, the dry fire hydrants or new water storage facilities must meet the following criteria:

(1) Each body of water or water storage structure must be able to provide two hundred fifty (250) gallons per minute for a continuous two-hour period during a fifty-year drought or freeze at a vertical lift of eighteen (18) feet for each body of water or water storage structure.

(2) Each dry fire hydrant must be located within twenty-five (25) feet of an all-weather roadway and accessible to fire protection equipment.

(3) Dry fire hydrants must be located at a reasonable distance from other dry or pressurized hydrants.

(d) **Certification.** The Oklahoma Tax Commission will receive certifications from The State Fire Marshall's Office. Allowed credits will be based on these certifications. The Taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return.

(e) **Computation of credit.** Upon certification, the allowed credit shall be equal to fifty percent (50%) of the purchase price of a dry fire hydrant or the actual expenditure for the new water storage construction, equipment, development and installation of the dry hydrant or new water storage facility.

(f) **Limitations.** The amount of credit allowed pursuant to this Section shall not exceed \$5,000.00 for each taxpayer and any credit allowed but not used in any tax year may be carried over, in order, to each of the four (4) years following the year of qualification.

[Source: Added at 23 Ok Reg 2830, eff 6-25-06]

710:50-15-100. Credit for qualified wages, capital expenditures, and training expenses

(a) **General provisions.** A refundable credit is available for qualified capital expenditures, wages and training expenses incurred by a business enterprise whose principal activity is either:

- (1) data processing services, computer systems design services or other computer related services; or
- (2) the manufacture of wing components for large commercial aircraft and other aerospace structures and components for commercial and government aerospace products.

(b) **Credit for data processing services, computer systems design services and other computer related services.** Effective for tax years beginning on or after January 1, 2006 and ending before January 1, 2014 the credit is equal to fifteen percent (15%) of the qualified business enterprises qualified capital expenditures, qualified wages and qualified training expenses as defined below. The credit is refundable and must be claimed by filing Oklahoma Tax Commission Form 580.

(1) **Definitions.** The following words and terms, when used regarding the credit for data processing services and other computer related services, shall have the following meaning, unless the context clearly indicates otherwise:

(A) **"Qualified business enterprise"** means an entity (or affiliated group of entities electing to file a consolidated Oklahoma income tax return):

- (i) that is organized as either a corporation, partnership, limited liability company or other entity having limited liability pursuant to the laws of the state of Oklahoma or the laws of another state, if the entity is registered to do business within the state of Oklahoma, and
- (ii) the principal business activities are described by the North American Industry Classification System (1997 edition) by Industry No. 514210, 541512 or 541519, and
- (iii) that makes at least 75% of its sales to out-of-state customers or buyers determined in the same manner as provided for purposes of the Oklahoma Quality Jobs Program Act, and
- (iv) that is a high-speed processing facility located in the state of Oklahoma that utilizes systems such as TPF, zTPF or other advanced technical systems, and
- (v) that maintained an Oklahoma annual payroll of at least \$85,000,000.00 and an Oklahoma labor force of 1,000 or more persons on July 1, 2005.

(B) **"Qualified capital expenditures"** are those costs incurred by the qualified business enterprise for acquisition of tangible personal property that is used in the business operations within the state of Oklahoma that qualifies for either depreciation or amortization per the

Internal Revenue Code of 1986, as amended. The property must be acquired during the taxable year for which the credit is being claimed. Capital expenditures as used in this section, also includes costs incurred to refurbish, repair or maintain any existing personal property located within the state.

(C) "**Qualified wages**" are compensation paid to full-time or part-time employees of the qualified business enterprise, including any employer-paid health care benefits, provided such employees are full-time residents of the state of Oklahoma.

(D) "**Qualified training expenses**" are those costs incurred to locate, interview, hire and educate an employee of the enterprise who has not previously been employed by the enterprise and who is a resident of the state.

(2) **Computation of the credit.** The maximum credit allowed for the Fiscal Year ending June 30, 2007 is Three Hundred Fifty Thousand Dollars (\$350,000.00). The maximum credit allowed for the Fiscal Year ending June 30, 2008 is Three Hundred Fifty Thousand Dollars (\$350,000.00). The maximum credit allowed for the Fiscal Year ending June 30, 2009 and for all subsequent fiscal years ending before June 30, 2013 is Three Hundred Fifty Thousand Dollars (\$350,000.00) per fiscal year. No additional credits are allowed after the Fiscal Year ending June 30, 2013.

(c) **Credit for aircraft parts and auxiliary equipment manufacturers.** Effective for tax years beginning on or after January 1, 2006 and ending before January 1, 2009 the credit is equal to fifteen percent (15%) of the qualified business enterprises qualified capital expenditures, qualified wages and qualified training expenses as defined below. The credit is refundable and must be claimed by filing Oklahoma Tax Commission Form 581.

(1) **Definitions.** The following words and terms, when used regarding the credit for aircraft parts and auxiliary equipment manufacturers shall have the following meaning, unless the context clearly indicates otherwise:

(A) "**Qualified business enterprise**" means an entity:

(i) organized as a corporation, partnership, limited partnership, limited liability company, business trust or other entity, if such entity is registered to do business within the state, or is otherwise lawfully conducting business within the state, and

(ii) whose principal business activity in Oklahoma is described by the North American Industry Classification System (1997 edition) by Industry No. 336413 and is engaged in the manufacture of wing components for large commercial aircraft and other aerospace structures and components for commercial and government aerospace products, and

(iii) that makes at least 75% of its sales to out-of-state customers or buyers determined in the same manner as provided for purposes of the Oklahoma Quality Jobs Program Act.

(B) "**Qualified expenditures**" means:

(i) those costs incurred by the qualified business enterprise for acquisition of tangible personal property that is used in the business operations within the state of Oklahoma that qualifies for either depreciation or amortization per the Internal Revenue Code of 1986, as amended. The property must be acquired during the taxable year for which the credit is being claimed, or

(ii) any costs incurred during the taxable year to refurbish, repair or maintain any existing personal property located within the state whether or not such costs are

capitalized by the taxpayer.

(C) **"Qualified wages"** are compensation paid to full-time or part-time employees of the qualified business enterprise, including any employer-paid health care benefits, provided such employees are full-time residents of the state of Oklahoma as of the time the services for which such qualified wages are received or are performed.

(D) **"Qualified training expenses"** are those costs incurred during the taxable year to locate, interview, hire and train employees and prospective employees of the qualified business enterprise who have not previously been employed as employees by the qualified business enterprise either full-time or part-time, at any time within the five prior taxable years and are full-time residents of the state as of the end of the taxable year for which the credit is claimed. The cost does not have to be deductible as a business expense pursuant to the Internal Revenue Code of 1986, as amended.

(2) **Computation of the credit.** The maximum credit allowed for the Fiscal Year ending June 30 2007 is One Hundred Fifty Thousand Dollars (\$150,000.00). The maximum credit allowed for the Fiscal Year ending June 30 2008 is One Hundred Fifty Thousand Dollars (\$150,000.00). The maximum credit allowed for the Fiscal Year ending June 30 2009 is One Hundred Fifty Thousand Dollars (\$150,000.00). No additional credits are allowed after this time period.

[Source: Added at 23 Ok Reg 2830, eff 6-25-06; Amended at 26 Ok Reg 2330, eff June 25, 2009]

710:50-15-101. Twenty-five percent (25%) Film and Music Profit Reinvestment Credit

(a) **General provisions.** There shall be allowed against the tax imposed by 68 O.S. § 2355, a credit equal to twenty-five percent (25%) of the profit from the investment in an existing Oklahoma film or music project with a production company to pay for production costs that is reinvested by the taxpayer with a production company for a new Oklahoma film or music project.

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

(1) **"Film"** means *a professional single media, multimedia program or feature, which is not child pornography as defined in subsection A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene material as defined in paragraph 1 of subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes including, but not limited to, national advertising messages that are broadcast on a national affiliate or cable network, fixed on film or digital video, which can be viewed or reproduced and which is exhibited in theaters, licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for home viewing markets; [68 O.S. § 2357.101 (D)(1)]*

(2) **"Music project"** means *a professional recording released on a national or international level, whether via traditional manufacturing or distributing or electronic distribution, using technology currently in use or future technology including, but not limited to, music CDs, radio commercials, jingles, cues, or electronic device recordings; [68 O.S. § 2357.101 (D)(2)]*

(3) **"Production company"** means *a person who produces a film or music project for exhibition in theaters, on television or elsewhere; [68 O.S. § 2357.101(D)(3)]*

(4) **"Total production cost"** includes, but is not limited to:

(A) *wages or salaries of persons who have earned income from working on a film or music project in this state, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62(a)(A) of the Internal Revenue Code,*

- (B) *the cost of construction and operations, wardrobe, accessories and related services,*
 - (C) *the cost of photography, sound synchronization, lighting and related services,*
 - (D) *the cost of editing and related services,*
 - (E) *rental of facilities and equipment, and*
 - (F) *other direct costs of producing of a film or music project.* [68 O.S. § 2357.101(D)(4)]
- (5) **"Profit"**, when used in reference to an eligible investment, means the amount made by the taxpayer to be determined as follows:
- (A) *the gross revenues less gross expenses, including direct production, distribution and marketing costs and an allocation of indirect overhead costs, of the film or music project shall be multiplied by,*
 - (B) *a ratio, the numerator of which is Oklahoma production costs as defined in paragraph 6 of this subsection, and the denominator of which is total production costs, as defined in paragraph 4 of this subsection, which shall be multiplied by,*
 - (C) *the percent of the taxpayer's taxable income allocated to Oklahoma in a taxable year, and*
 - (D) *subtract from the result of the formula calculated pursuant to subparagraphs A through C of this paragraph the profit made by a taxpayer from investment in an existing Oklahoma film or music project in previous taxable years. Profit shall include either a net profit or net loss.*
- (6) **"Oklahoma production cost"** means that portion of total production costs which are incurred with any qualified vendor.
- (7) **"Qualified vendor"** means an Oklahoma entity which provides goods or services to a production company and:
- (A) fifty percent (50%) of more of the vendor's employees are Oklahoma residents, and
 - (B) fifty percent (50%) or more of gross wages, as reported on IRS Form W-2 or Form 1099, are paid to Oklahoma residents.
 - (C) For purposes of paragraph 7, an employee shall include a self-employed individual reporting income from a qualified vendor on IRS Form 1040.
- (8) **"Investment"** means costs associated with the original production company. Film or music projects acquired from an original production company do not qualify as investment under subsection (a) of this section.
- (9) **"Reinvestment"** means the taxpayer invests twenty-five percent (25%) of the profit received from an existing Oklahoma film to pay for the production cost of the production company for a new Oklahoma film or music project.
- (10) **"Existing Oklahoma film or music production"** means an existing Oklahoma Film or Music Project as determined by the Oklahoma Film or Music Office.
- (11) **"New Oklahoma film or music project"** is a film or music project that has commenced production in Oklahoma after June 6, 2005 as certified by the Oklahoma Film or Music Office.
- (c) **Eligibility requirements.** In order to qualify for the film and music production twenty-five percent (25%) profit reinvestment tax credit, a film or music production company must first be approved by the Oklahoma Film and Music Office. After approval, the company may apply for the credit by submitting a completed Oklahoma Tax Commission Form 562 to the Oklahoma Tax Commission with their income tax return. Supporting documentation listed below must be provided to the Oklahoma Tax Commission upon request.
- (1) A copy of the approval from the Film and Music Office.

(2) A copy of the final cost-accounting summary for the project with a breakout of Oklahoma costs for each line item.

(3) The name, address, social security number and amount paid to every resident of Oklahoma for whom the company wishes to claim credit for wages/salaries.

(4) Other documents that the Tax Commission may require ascertaining the validity of the credit.

(d) **Transferability.** The credit provided is not transferable.

[Source: Added at 23 Ok Reg 2832, eff 6-25-06; Amended at 24 Ok Reg 2359, eff 6-25-07]

710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures

(a) **General provisions.** For tax years beginning after 12/31/05 there is a credit allowed against the tax imposed by Section 2355 of Title 68 equal to 50% of an eligible taxpayer's qualified railroad reconstruction or replacement expenditures.

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

(1) **"Eligible taxpayer"** means any railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(2) **"Qualified railroad reconstruction or replacement expenditures"** means expenditures for reconstruction or replacement of railroad infrastructure. This includes track, roadbed, bridges, industrial leads and track-related structures owned or leased by a Class II or Class III railroad as of January 1, 2006. Qualified railroad reconstruction or replacement expenditures can also include new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by a Class II or Class III railroad.

(c) **Limitations.** The amount of the credit may not exceed the product of Five Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars (\$2,000.00) for tax years 2008 and the number of miles of railroad track owned or leased within this state by the eligible taxpayer as of the close of the taxable year. In tax year 2009 and subsequent tax years, an eligible taxpayer may elect to increase the limit for tax year 2008 to an amount equal to three times the amount specified. However, the taxpayer may only claim one third (1/3) of the credit in any one taxable period. An eligible taxpayer who elects to increase the limitation on the credit will not be granted additional credits during the period of such election.

(d) **Transferability.** The credits allowed pursuant to this Section that are not used are freely transferable by written agreement, to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** shall be any taxpayer subject to the tax imposed by Section 2355 of Title 68.

(2) **Written transfer agreement requirements.** The person originally allowed the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring person, and the tax year or years for which the credit may be claimed.

(e) **Carryover provisions.** Any credit allowed pursuant to the provisions of this Section, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification.

[Source: Added at 23 Ok Reg 2833, eff 6-25-06; Amended at 24 Ok Reg 2359, eff 6-25-07; Amended at 26 Ok Reg 2330, eff June 25, 2009]

710:50-15-104. Credit for construction of energy efficient residential property

(a) **General provisions.** Effective for tax year 2006, a credit is available for contractors who construct either energy efficient residential property or energy efficient manufactured homes. The credit is dollar for dollar based on the cost of certain eligible expenditures.

(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Contractor"** is the taxpayer who actually constructed the residential property or manufactured home. In cases if more than one person qualifies as the contractor, the primary contractor.

(2) **"Eligible energy efficient residential property"** means a newly constructed residential property or manufactured home property located in the State of Oklahoma. Further the home cannot exceed two thousand (2,000) square feet in order to be eligible for the credit. The eligible energy efficient residential property must be substantially complete after December 31, 2005.

(3) **"Eligible expenditure"** includes the cost of energy efficient heating or cooling systems, insulation material specifically designed to reduce the heat gain or loss of a residential property, exterior windows, exterior doors or metal roofs with appropriate pigmented coatings designed to reduce the heat gain which meets Energy Star program requirements.

(4) **"Home energy ratings"** means a confirmed rating involving an on-site inspection of a home by a residential energy efficiency professional trained and certified by a Residential Energy Services Network accredited home energy rater.

(5) **"Residential energy services network provider"** means an accredited home energy inspector certified by Residential Energy Services Network.

(6) **"Residential property"** means a single dwelling unit, duplex, or townhouse with three stories or less, that provides independent living and could be sold or leased as separate property. The term does not include Group R-2 and R-4 residential buildings as defined in the International Energy Conservation Code.

(7) **"Substantially complete"** means the residential property or manufactured home has a certificate of occupancy issued if located in a municipality. For residential property or manufactured home in non-metropolitan area, the property will be substantially complete after passing the appropriate inspections required under the applicable County Building Codes permitted under 19 O.S. § 863.44.

(c) **Amount of credit.**

(1) The credit is capped at Four Thousand Dollars (\$4,000) for those residential properties that are certified at forty percent (40%) or above of the International Energy Conservation Code 2003 and any supplement in effect at the time of completion. If the residential property is certified between twenty percent (20%) and thirty-nine (39%) of the International Energy Conservation Code of 2003 and any supplement in effect at the time of completion, the credit is limited to Two Thousand Dollars (\$2,000.00).

(2) The credit is not available if the residential property is in excess of Two Thousand (2,000) square feet.

(d) **Carryover provisions.** Any credit allowed pursuant to the Section, to the extent not used, may be carried over in order to each of the four (4) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

(e) **Transfer of the credit.** Effective for credits earned on or after August 25, 2006, the credit for construction of energy efficient residential property may be transferred.

[Source: Added at 23 Ok Reg 2833, eff 6-25-06; Amended at 24 Ok Reg 2359, eff 6-25-07]

710:50-15-105. Credit for research and development

(a) **General provisions.** For taxable years beginning after December 31, 1992, and before January 1, 2003, and for taxable years beginning after December 31, 2005, there is an income tax credit for a net increase in the number of full-time-equivalent employees of a qualifying computer services, data processing or research and development entity.

(b) **Definitions.** Qualifying computer services, data processing or research and development entities are those who are primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372, 7373, 7374 and 7375 of the SIC Manual (latest revision) and those entities which are primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC Manual (latest revision).

(c) **Qualifications.** In order to qualify for the credit, entities primarily engaged in computer services and data processing (as defined under Industrial Group Number 7374 of the SIC Manual [latest revision]) must also have a minimum of One Hundred Thousand Dollars (\$100,000.00) in purchases of computers, data processing equipment, related peripherals, telephone, telegraph, or telecommunications service or telecommunications equipment. All qualified entities must derive fifty percent (50%) of revenues from out-of-state buyers or consumers. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be sales to an out-of-state buyer or consumer. All qualified entities must also annually file an affidavit with the Oklahoma Tax Commission stating that the business so qualifies and such other information as required by the Commission.

(d) **Amount of credit.** The credit allowed is Five Hundred Dollars (\$500.00) for each new employee, but in no event may the total annual credit exceed fifty new employees. The credit is allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. However the credit is allowed in each of the eight (8) subsequent years only if the level of new employees is maintained in the subsequent year and if the credit is taken for taxable years beginning after December 31, 2005. *In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Thirty-five Thousand Dollars (\$35,000.00) during each year the credit is claimed shall be included in the calculation. The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.*

(e) **Limitations.** This credit is not transferable. Unused credits 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

initial four (4) years in order to each of the following five (5) years.

[Source: Added at 23 Ok Reg 2834, eff 6-25-06]

710:50-15-106. Credits for ethanol production

(a) **General provisions.** For tax years beginning after December 31, 2003 and before January 1, 2013, there is an income tax credit for ethanol production at certain ethanol facilities.

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

(1) **"Ethanol"** is a blend of gasoline and ethyl alcohol consisting of not more than fifteen percent (15%) ethyl alcohol by volume.

(2) **"Ethanol facility"** is a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from grain components, coproducts, or byproducts. The facility must be located within the state of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of an ethanol facility. Capacity must be specified as gallons of ethanol produced per year.

(c) **Basic credit.** Any ethanol facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of ethanol, on or before December 31, 2010 is eligible for a credit in the amount of twenty cents (\$0.20) per gallon of ethanol produced for the first sixty (60) months provided the ethanol facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents (\$0.20) per gallon of ethanol produced expires for production after December 31, 2012.

(d) **Excess production credit.** Any ethanol facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents (\$0.20) per gallon of ethanol produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after the July 1, 2003 and before December 31, 2008. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2012.

(e) **Credit for production after December 31, 2012.** For production of ethanol after December 31, 2012, an ethanol facility may receive an income tax credit in the amount of seven and one-half cents (\$0.075) per gallon of ethanol before denaturing, for new production for a period not to exceed thirty-six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2012, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2013, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2011, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2013

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the ethanol production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Ethanol Production Facilities is only allowed for ethanol that is produced at a plant at which all ethanol fermentation, distillation, and dehydration takes place. No credit will be given for ethanol produced or sold for use in the production of distilled spirits.

(2) Not more than twenty-five million (25,000,000) gallons of ethanol produced annually at any single ethanol facility nor more than seventy-five million (75,000,000) gallons of ethanol produced annually at all ethanol facilities shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2012.

(3) Not more than ten million (10,000,000) gallons of ethanol produced during any twelve-consecutive-month period at any single ethanol facility nor more than thirty million (30,000,000) gallons produced annually at all ethanol facilities shall be eligible for credit for production after December 31, 2012. The credit for production after December 31, 2012 may only be claimed by a producer for production that occurs on or before December 31, 2015.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

[Source: Added at 23 Ok Reg 2834, eff 6-25-06; Amended at 19 Ok Reg 2056, eff 7-1-08]

710:50-15-107. Eligible wage and modification expenses credits

(a) **General provisions regarding credit based on wages.** Effective for tax year 2006 a credit of ten percent (10%) is available to employers based on wages paid for employees returning to work in restricted duties. The credit is based on eligible gross wages paid for a 90-day period. Eligible wages are those that are compensable under the Workers Compensation Act and are paid upon the employees return to work under restricted duty. The credit may not exceed five thousand dollars for any employee, and may not exceed twenty-five thousand dollars (\$25,000) for any employer in a taxable year.

(1) **Definitions.** The following words and terms, when used regarding the eligible wage credit, shall have the following meaning, unless the context clearly indicates otherwise:

(A) **"Eligible wages"** are gross wages paid by an employer to an employee who is injured as a result of an injury which is compensable under the Workers' Compensation Act. The wages must be paid beginning when the employee returns to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement. Wages paid after ninety (90) days or when the employee has reached maximum medical improvement are not eligible wages.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and "wages"** shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed five thousand dollars for any employee, and may not exceed twenty-five thousand dollars (\$25,000) for any employer in a taxable year. This

credit is not transferable.

(b) **General provisions for credit based on modification expenses.** Effective for tax year 2006 a credit of fifty percent (50%) is available for eligible modification expenses that enable an injured worker to return to work under restricted duty.

(1) **Definitions.** The following words and terms, when used regarding the credit based on modification expenses, shall have the following meaning, unless the context clearly indicates otherwise.

(A) **"Eligible modification expenses"** are expenses incurred by an employer to modify a workplace, tools or equipment or to obtain new tools or equipment which are incurred by an employer solely to enable a specific injured employee who is injured as a result of an injury which is compensable under the Workers' Compensation Act to return to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement, and which workplace, tools or equipment are used primarily by the injured employee.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and "wages"** shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed one thousand dollars (\$1,000) for any employee, and may not exceed ten thousand dollars (\$10,000) for any employer in a taxable year. This credit is not transferable.

[Source: Added at 23 Ok Reg 2835, eff 6-25-06; Amended at 19 Ok Reg 2056, eff 7-1-08]

710:50-15-108. Credit for qualified rehabilitation expenditures

(a) **General Provisions.** The Credit for Qualified Rehabilitation Expenditures is one hundred percent (100%) of the allowable federal rehabilitation credit provided for in Section 47 of Title 26 of the United States Code. All rehabilitation work to which the Credit for Qualified Rehabilitation Expenditures may be applied must be reviewed by the State Historic Preservation Office. The State Historic Preservation Office will forward the information to the National Park Service for certification in accordance with 36 C.F.R., Part 67. A certified historic structure may be rehabilitated for any lawful use or uses, including without limitation mixed uses and still retain eligibility for the credit provided for in this section.

(b) **Definitions.**

(1) **"Certified historic hotel or historic newspaper plant building"** means a hotel or newspaper plant building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to 68 O.S. § 2357.41.

(2) **"Certified historic structure"** means a building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to this section or a building located in Oklahoma which is certified by the State Historic Preservation Office as contributing to the historic significance of a certified historic district listed on the National Register of Historic Places, or a local district that has been certified by the State Historic Preservation Office as eligible for listing in the National Register of Historic Places.

(3) **"Qualified rehabilitation expenditures"** means capital expenditures that qualify for the federal rehabilitation credit provided in Section 47 of Title 26 of the United States Code and that were paid after December 31, 2000. Qualified rehabilitation expenditures do not include capital expenditures for nonhistoric additions except an addition that is required by state

or federal regulations that relate to safety or accessibility. In addition, qualified rehabilitation expenditures do not include expenditures related to the cost of acquisition of the property.

(c) **Provisions for tax years beginning after December 31, 2000 and ending before January 1, 2006.** Only certified historic hotel or historic newspaper plant buildings located in an increment or incentive district created pursuant to the Local Development Act (62 O.S. §§ 850 et. seq.) are eligible for the Credit for Qualified Rehabilitation Expenditures.

(d) **Provisions for tax years beginning on or after before January 1, 2006.** The Credit for Qualified Rehabilitation Expenditures is available for qualified rehabilitation expenditures incurred after January 1, 2006 in connection with any certified historic structure.

(e) **Provisions for claiming the credit.** Generally, the first year the Credit for Qualified Rehabilitation Expenditures is eligible to be claimed is the first tax year that the federal rehabilitation credit, provided for in Section 47 of Title 26 of the United States Code, is eligible to be claimed. For carryover of the credit, see carryover provisions below. Further the Credit for Qualified Rehabilitation Expenditures may only be claimed after the relevant local governmental body responsible for doing so issues a certificate of occupancy or other document that is a precondition for the applicable use of the building or structure that is the basis upon which the credit is claimed. All requirements with respect to qualification for the credit authorized by Section 47 of Title 26 of the United States Code shall be applicable to the Credit for Qualified Rehabilitation Expenditures.

(f) **Carryover.** If the Credit for Qualified Rehabilitation Expenditures exceeds the amount of income taxes due or if there are no state income taxes due, the amount of the credit allowed but not used in any taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years following the qualified expenditures.

(g) **Transferability.** The Credit for Qualified Rehabilitation Expenditures allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(h) **Written transfer agreement requirements.** The entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. Subsequent transfers will require the transferor and transferee to jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed as well as a representation by the transferor that the transferor has neither claimed such credits for its own behalf nor conveyed said credits to any other transferee. Such filing of the written credit transfer agreement with the Oklahoma Tax Commission will perfect said transfer.

(i) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(j) **Repayment of disallowed credit.** Effective January 1, 2009, if the Credit for Qualified Rehabilitation Expenditures has been transferred and is subsequently reduced as the result of an adjustment by the Internal Revenue Service, the Oklahoma Tax Commission, or any other applicable government agency, only the transferor originally allowed the credit will be held liable to repay any amount of disallowed credit. Any subsequent transferee of the credit is not liable to repay the amount of disallowed credit.

[Source: Added at 24 Ok Reg 2359, eff 6-25-07; Amended at 26 Ok Reg 2330, eff June 25, 2009]

710:50-15-109. Credit for qualified employers and employees of the aerospace sector

(a) **General provisions.** For tax years beginning after December 31, 2008 three (3) credits are allowed against the tax imposed by Section 2355 of Title 68 for the employment of qualified employees in the aerospace sector. The three (3) credits are as follows:

- (1) Credit for qualified employers for tuition reimbursement to qualified employees.
- (2) Credit for qualified employers for compensation paid to qualified employees.
- (3) Credit for qualified employees.

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

(1) "**Aerospace sector**" is a private or public organization that is:

- (A) a manufacturer of aerospace or defense hardware and/or software;
- (B) provides aerospace maintenance, repair or overhaul;
- (C) supplies parts to the aerospace industry;
- (D) provides services and/or support relating to the aerospace industry;
- (F) provides research and development of aerospace technology and systems, or
- (G) provides education or training of aerospace personnel.

(2) "**Compensation**" includes salary or other remuneration, wages subject to withholding tax paid to either a part-time employee or full-time employee and payments in the form of contract labor for which the payor is required to provide a Form 1099 to the person paid. Compensation does not include any employer-provided benefits, including but not limited to retirement, medical or health-care benefits; reimbursement for travel, meals, lodging or any other expense.

(3) "**Institution**" is any institution included within The Oklahoma State System of Higher Education or any other public or private college or university that is accredited by a national accrediting body.

(4) "**Qualified employer**" is an entity whose principal business activity involves the aerospace sector. This includes sole proprietors, general partnerships, limited partnerships, limited liability companies, corporations, or any other legally recognized business entity, or public entity.

(5) "**Qualified employee**" is any person newly employed by or contracting with a qualified employer on or after January 1, 2009 employed in Oklahoma. Further, the person must have been awarded an undergraduate or graduate degree from a qualified program by an institution. Qualified employees do not include person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer.

(6) "**Qualified program**" is any program that awards undergraduate or graduate degrees and has been accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET)

(7) "**Tuition**" is the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program. Tuition does not include the cost of books, any other fees or the cost of room and board.

(c) **Credit for tuition reimbursement.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section

2355 of Title 68 of the Oklahoma Statutes based on the amount of tuition reimbursed to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for tuition reimbursement may only be claimed if the qualified employee has been awarded an undergraduate or graduate degree within one (1) year of starting employment with the qualified employer. The undergraduate or graduate degree must be from a qualified program.

(3) The credit for tuition reimbursement is equal to fifty percent (50%) of the tuition reimbursed to a qualified employee and may be claimed for the first through fourth years of employment with the qualified employer. The credit is only allowed to be claimed in the tax year that the tuition was reimbursed to the qualified employee and may not exceed in any taxable year fifty percent (50%) of the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program at a public institution in Oklahoma.

(4) The credit for tuition reimbursement may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for tuition reimbursement may not be claimed after the fourth year of employment of the qualified employee.

(d) Credit for compensation paid.

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for compensation paid to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for compensation paid equals:

(A) Ten percent (10%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located in this state.

(B) Five percent (5%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located outside this state.

(3) The credit for compensation paid cannot exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) for each qualified employee annually.

(4) The credit for compensation paid may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for compensation paid may not be claimed after the fifth year of employment.

(e) Credit for qualified employees.

(1) For taxable years beginning after December 31, 2008, a qualified employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes of up to Five Thousand Dollars (\$5,000.00) per year for a period of time not to exceed five (5) years.

(2) The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

(3) Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 1. GENERAL PROVISIONS

710:50-17-1. Corporate returns

- (a) Any corporation doing business within or deriving income from sources within Oklahoma is required to file an Oklahoma Corporation Income Tax Return, whether or not a tax is due.
- (b) Any corporation is subject to Oklahoma income taxes if it has "nexus" with Oklahoma. The purpose of this Subchapter is to provide guidelines for determining what constitutes "**nexus**", that is, what business activities are needed for any corporation to be subject to Oklahoma Income Taxes.

710:50-17-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Business location" means a location which includes, but is not limited to: a repair shop, parts department, purchasing office, employment office, warehouse, meeting place for directors, sales office, permanent sample or display room, research facility or a recreational facility for use of employees or customers. A residence of an employee or representative is not ordinarily considered a "**business location**" of the employer unless the facts indicate otherwise. It could be considered a business location under one or more of the following conditions:

- (A) a portion of the residence is used exclusively for the business of the employer;
- (B) the employee's phone is listed in the business pages of a telephone directory under the name of the employer;
- (C) the employee used supplies, equipment or samples furnished by the employer; or,
- (D) the space is used by the employee to interview prospective employees, hold sales meetings, or discuss business with customers.

"Representative" does not include an independent contractor. A person may be considered a representative even though he or she may not be considered an employee for other purposes such as the withholding of income tax from commissions. If a person is subject to the direct control of the corporation, he or she may not qualify as an independent contractor under Public Law 86-272. **Herff Jones Company vs. State Tax Commission**, Oregon Supreme Court, 430 P.2d 998 (Ore. 1967).

"Solicitation" must be limited to the acts which lead to the placing of an order. The term does not include those acts which follow as a natural result of the placing of an order.

710:50-17-3. What constitutes "Nexus"

- (a) If a corporation has one or more of the following activities in Oklahoma, it is considered to have "**nexus**" and shall be subject to Oklahoma income taxes:
- (1) Maintenance of any business location in Oklahoma, including any kind of office.
 - (2) Ownership of real estate in Oklahoma.
 - (3) Ownership of a stock of goods in a public warehouse or on consignment in Oklahoma.
 - (4) Ownership of a stock of goods in the hands of a distributor or other non-employee representative in Oklahoma, if used to fill orders for the owner's account.

(5) Usual or frequent activity in Oklahoma by employee or representative soliciting orders with authority to accept them.

(6) Usual or frequent activity in Oklahoma by employee or representative engaged in a purchasing activity or in the performance of services (including construction, installation, assembly, or repair of equipment).

(7) Operation of mobile stores in Oklahoma (such as trucks with driver-salespersons), regardless of frequency.

(8) Other miscellaneous activities by employees or representatives in Oklahoma such as credit investigations, collection of delinquent accounts, conducting training classes or seminars for customer personnel in the operation, repair and maintenance of its products.

(9) Leasing of tangible property and licensing of intangible rights for use in Oklahoma.

(10) The sale of other than tangible personal property such as real estate, services and intangibles in Oklahoma.

(11) The performance of construction contracts or service contracts in Oklahoma.

(b) The guidelines expressed in (a) of this Section as to what activities constitute "nexus" should not be considered all-inclusive. Questions may be sent to the Oklahoma Tax Commission, Audit Division, 2501 Lincoln Blvd., Oklahoma City, Oklahoma 73194.

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 23 Ok Reg 2836, eff 6-25-06]

710:50-17-4. Federal limitations on taxation of foreign corporations

(a) Under Federal law a state may not impose its income tax on a business selling tangible personal property, if the only activity of that business is the solicitation of orders by its salesman or representative which orders are sent outside the state for approval or rejection, and are filled by delivery from a point outside the state. The activity must be limited to solicitation. If there is any activity which exceeds solicitation, the immunity from taxation is lost.

(b) Immunity from income taxation by states under Federal law does not extend to:

- (1) Those businesses which sell services, real estate or intangibles in more than one state;
- (2) Domestic Corporations;
- (3) Foreign nation corporations, i.e., those not incorporated in the United States.

(c) If the only activities in Oklahoma of a corporation selling tangible personal property are those described below, the corporation is not subject to Oklahoma Income Taxes.

- (1) Usual or frequent activity in Oklahoma by employees or representatives soliciting orders for tangible personal property, which orders are sent outside this state for approval or rejection.
- (2) Solicitation activity by non-employee independent contractors, conducted through their own office or business location in Oklahoma. [See: 15 U.S.C.A. § 381]

710:50-17-5. Tax rate for corporations

(a) For all taxable years beginning after December 31, 1984 the corporate tax rate is five percent (5%).

(b) For all taxable years beginning before January 1, 1985 the corporate tax rate is four percent (4%).

(c) For all taxable years beginning after December 31, 1989, the corporate tax rate is six percent (6%).

710:50-17-6. Filing requirements for corporations

- (a) Every corporation doing business in Oklahoma shall file an OTC Form 512 to report taxable income or loss for each period in which a Federal Tax Return is required. Every return shall be properly prepared, showing the name of corporation, address, identification number and bearing an authorized signature. Page one of the return shall also be completed with all pertinent information entered on appropriate lines. (The returns will not process otherwise).
- (b) In the case of a complete liquidation or the dissolution of a corporation, the return shall be filed on or before the 15th day of the fourth month following the month in which the corporation is completely liquidated or dissolved.

[Source: Amended at 9 Ok Reg 3031, eff 7-13-92]

710:50-17-7. Amended income tax returns for corporations

In order to assist in the processing of a Corporation's Amended Income Tax Returns, corporations must use OTC Form 512X and attach the following information when applicable, or an explanation when not applicable:

- (1) Copy of the Federal Form 1120X or 1139;
- (2) Proof of disposition by the Internal Revenue Service;
- (3) Copy of complete Revenue Agent's Report; and,
- (4) Schedule of NOL carryback/carryover.

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01]

PART 3. CONSOLIDATED RETURNS

710:50-17-30. Consolidated returns

A consolidated Oklahoma Income Tax Return is required if a Federal Consolidated Return is filed, and each member of the consolidated group derives all of its income from sources within Oklahoma.

710:50-17-31. Filing a consolidated Oklahoma return

- (a) In filing a Consolidated Income Tax Return for Oklahoma, the Oklahoma taxable income for each corporation is computed separately on its own factors and then combined for one total income upon which the tax is computed.
- (b) A Consolidated Oklahoma Income Tax Return is generally recognized as a combined return.
- (c) A corporation's election to file a separate return or consolidated return is made with the timely filing of the return. Once the election is made, it is irrevocable for all future tax years unless the Oklahoma Tax Commission releases the affiliated group of corporations from such election.
- (d) When an election is made to file an Oklahoma Combined Return the following criteria must be met.
- (1) A federal consolidated returns must have been filed.
 - (2) All companies doing business in Oklahoma must be included in the Oklahoma Combination.
 - (3) Only those corporations included in the federal consolidation may be included in the Oklahoma combined return.
 - (4) The Parent Corporation name should be used for the Oklahoma return and all corporations must be included in one filing. Returns belonging to a Oklahoma Combination will not be

accepted if mailed in separately. [See: 68 O.S. §2367]

[Source: Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94]

710:50-17-32. When a consolidated return is not required

A Consolidated Oklahoma Income Tax Return is not required if two or more corporations file Federal Consolidated Returns, and one or more of such corporations derive a portion of their income from sources without Oklahoma; except, if such group files an appropriate election to file a Consolidated Oklahoma Income Tax Return, such a grouping will be allowed.

710:50-17-33. Examples of consolidated Oklahoma income tax returns

The following are examples of situations in which the corporations may file a Consolidated Oklahoma Income Tax Return:

- (1) Corporations A, B and C, filing a Federal Consolidated Return and all of their income is derived from Oklahoma sources, would be required to file an Oklahoma Consolidated Return.
- (2) Corporations A, B and D, filing a Federal Consolidated Return and any of them derives a portion of its income from without Oklahoma are not required, but may elect to file a Consolidated Oklahoma Return. This election may be made by attaching a statement to the return, stating the facts.
- (3) Corporations A, B and E filing a Federal Consolidated Return and any of them received all of its income from sources without Oklahoma are not required, but may elect to file an Oklahoma Consolidated Return.

710:50-17-34. Computation of Oklahoma taxable income on consolidated return

(a) To arrive at Oklahoma taxable income on a Consolidated Return, the group's consolidated income, loss or deductions shall be determined in accordance with the provisions of 68 O.S. § 2358 and 68 O.S. 2362. Therefore, each member of the group shall determine its Oklahoma net taxable income by whatever method is proper (direct accounting, unitary, etc.) and then, the net taxable income of each member shall be aggregated into a taxable total.

Example: The Federal Net Income reported for the following groups of corporations was as follows:

Corporation A	\$10,000.00
Corporation B	5,000.00
Corporation C	(14,000.00)
Corporation D	1,000.00
Corporation E	<u>6,000.00</u>
Consolidated Federal Net Income	\$8,000.00

Assume only corporations (A), (B) and (C) operate in Oklahoma. Also assume corporation (A) and (C) are unitary business while corporation (B) is not of a unitary nature and is on direct accounting. If, in this example, Oklahoma's portion, using the three factor formula, was 10% and 5% for corporations (A) and (C) respectively, and \$2,500.00 of Corporation (B) income was earned from sources in Oklahoma, the computation of Oklahoma's taxable income is as follows:

Corporation A (10% of 10,000.00)	\$1,000.00
Corporation B Direct	2,500.00
Corporation C (5% of (14,000.00))	<u>(700.00)</u>
Oklahoma Taxable Income	\$2,800.00 (On a Consolidated Basis)

- (b) The correct procedure for filing a combined return is as follows:
- (1) Only one (1) "page 1" of Form 512 will be used as the tax computation and transmittal page for the combined group.
 - (2) Immediately behind page 1 will be a summary schedule reflecting each member of the combined group's name, Federal Employer's Identification Number (EIN) and net Oklahoma taxable income or loss as computed on separate schedule A or B for each company as applicable. The net income or loss from the summary sheet will be the amount shown on line 1 page 1 of Form 512. The accrual of Oklahoma Income Tax, if any, will be computed on the combined net income as shown on the summary sheet.
 - (3) Supporting schedules such as Investment/New Jobs Credit and Gas Used In Manufacturing will follow the summary sheet. There will be a separate schedule for each company in the group with identifying name and EIN number. The total credit amounts, if any, will be combined and brought forward to the proper line on page 1 of the Form 512.
 - (4) Behind the supporting schedules will be a separate Schedule A or B, as applicable for each company in the group, for the Oklahoma Form 512. The amounts shown on the separate schedules A or B will be the amounts brought forward to the summary sheet. Each company's name and EIN number will be shown on each respective schedule A or B.
 - (5) Behind the Schedules A or B will be all other forms and schedules such as the Federal Form 1120 and supporting schedules for each company in the group.
- (c) If it is the Taxpayer's intention to file a combined return but a separate Form 512 for each company is filed, the returns will be treated as separate returns by the Tax Commission.
- (d) The taxpayer should state on the face of the Form 512 the following: **"This is a combined return-do not separate"**.

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-50. Computation of income attributable to Oklahoma

The starting point for computing Oklahoma taxable corporate income is the taxable income shown before the Net Operating Loss and Special Deduction Line of the Federal Income Tax Return. All adjustments provided for under Oklahoma Income Tax Statutes are made from the starting point of Federal taxable income. Federal taxable income is used for each separate corporation doing business in Oklahoma, whether a Consolidated Federal or a Consolidated Oklahoma Income Tax Return is filed.

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 the years beginning after December 31, 1992, and before December 31, 1993, the loss **carryback** shall be for a period of three (3) years;

(II) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss **carryback** shall be for a period of two (2) years;

(III) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss **carryback** shall be for a period of one (1) year;

(IV) For net operating losses incurred for tax years beginning after December 31, 1995, and before January 1, 2001, no loss **carryback** shall be allowed; and

(V) For net operating losses incurred for tax years beginning on or after January 1, 2001, and before December 31, 2006 the loss **carryback** shall be for a period as allowed in the Internal Revenue Code.

(VI) For net operating losses incurred for tax years beginning on or after January 1, 2007, and before December 31, 2007 the loss **carryback** shall be for a period of two (2) years.

(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 should be allocated to assets that may produce nontaxable income. When a corporation has an investment 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. 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 by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this 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)]

(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 January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, 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.

[Source: Amended at 9 Ok Reg 3031, eff 7-13-92; Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94; Amended at 13 Ok Reg 3105, eff 7-11-96; Amended at 14 Ok Reg 2699, eff 6-26-97; Amended at 19 Ok Reg 2433, eff 6-27-02; Amended at 20 Ok Reg 320, eff 12-10-02 (emergency); Amended at 20 Ok Reg 2165, eff 6-26-03; Amended at 21 Ok Reg 2571, eff 6-25-04, Amended at 22 Ok Reg 1544, eff 6-11-05; Amended at 24 Ok Reg 2359, eff 6-25-07; Amended at 26 Ok Reg 2330, eff June 25, 2009; Amended at 27 Ok Reg 2281, eff 7-11-2010]

710:50-17-52. Payment of rents and interest to a captive Real Estate Investment Trust (REIT)

(a) **General provisions.** Taxpayers that make rent or interest payments to a captive real estate investment trust (REIT) must add back those expenses to arrive at Oklahoma taxable income. For purposes of this subsection, the constructive ownership rules of Section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by Section 856(d)(5) of the Internal Revenue Code of 1986, as amended, will apply in determining the ownership of stock, assets, or net profits of any person.

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

(1) "**Real estate investment trust**" or "REIT" is any entity as defined in Section 856 of the Internal Revenue Code of 1986, as amended, as a real estate investment trust.

(2) "**Captive real estate investment trust**" is any real estate investment trust that has shares or beneficial interests that are not regularly traded on an established securities market and in which more than 50% of the voting power or value of the beneficial interests or shares are owned or controlled, either directly or indirectly, by a single entity treated as an association taxable as a corporation under the Internal Revenue Code of

1986, as amended, and is not exempt from federal income tax pursuant to the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended. "Captive real estate investment trust" does not include real estate investment trusts that are intended to be regularly traded on an established securities market, and that satisfies the requirements of Section 856(a)(5) and (6) of the U.S. Internal Revenue Code by reason of Section 856(h)(2) of the Internal Revenue Code.

(3) "**Association taxable as a corporation**" does not include the following entities:

(A) real estate investment trusts as defined in subsection (b)(1) other than a "captive real estate investment trust";

(B) qualified real estate investment trust subsidiaries defined under Section 856(i) of the Internal Revenue Code of 1986, as amended, other than a qualified REIT subsidiary of a "captive real estate investment trust";

(C) Listed Australian Property Trusts (meaning an Australian unit trust registered as a "Managed Investment Scheme" under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market), or entities organized as a trusts, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, seventy-five percent (75%) or more of the voting power or value of the beneficial interests or shares of such trust;

(D) Qualified Foreign Entities, including corporations, trusts, associations or partnerships organized outside the laws of the United States and which satisfy the following criteria:

(i) at least seventy-five percent (75%) of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and U.S. Government securities,

(ii) the entity receives a dividend-paid deduction comparable to Section 561 of the Internal Revenue Code of 1986, as amended, or is exempt from entity level tax,

(iii) the entity is required to distribute at least eighty-five percent (85%) of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis,

(iv) not more than ten percent (10%) of the voting power or value in such entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

(v) the entity is organized in a country which has a tax treaty with the United States.

[Source: Added at 26 Ok Reg 2330, eff June 25, 2009]

PART 7. APPORTIONMENT AND ALLOCATION OF CORPORATE

INCOME AND EXPENSE

710:50-17-70. Unitary income; unitary business

"Unitary income" means income derived from the conduct of each separate business in more than one state, all the factors of which are essential to determining the ultimate gain derived from the business enterprise as a whole, and not from its component parts which are too closely connected and necessary to each other to justify division or separate allocation. Each corporation must calculate its own Oklahoma Taxable Income/Loss separately, even when included in a Consolidated Return.

710:50-17-71. Apportionment formula factors

Income or loss derived from a unitary business enterprise shall be apportioned to Oklahoma on the basis of the average of three factors consisting of property, payroll and sales or gross revenue. Notwithstanding the general rule on averaging of the three apportionment factors, for corporations that, on or after July 1, 1997, make an initial investment in property or expansion of their property or facilities in Oklahoma and such initial investment cost or expansion investment costs equals or exceed Two Hundred Million Dollars (\$200,000,000.00), the three factors shall be apportioned with property and payroll each comprising twenty-five percent (25%) and sales comprising fifty percent (50%). For such an initial investment or expansion investment occurring after January 1, 2000, a corporation shall qualify for use of the specially-weighted apportionment on or after the time it first incurs any amount or part of such investment cost, if the total amount thereof equals or exceeds Two Hundred Million (\$200,000,000.00) within a period not exceeding three (3) years. [See: 68 O.S. § 2358(A)(5)]

(1) Sales factor.

(A) **Sales factor.** The sales factor shall include only sales and does not include sales or revenue which are separately allocated. [See: 68 O.S. § 2358(A)(5)(c)]

(i) Oklahoma does not allow receipts from items other than sales to be included in the formula even though other types of income (royalties, interest, capital gains, and other income) are included in the apportioned income.

(ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. [See 68 O.S. § 2358(A)(5)]. A "**customer within Oklahoma**" means

(I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or

(II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A "**billing address**" means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed.

(iii) The provisions of (A), (A)(i) and (A)(ii) of this paragraph apply to the sales factor for most corporations with the exception of gross receipts being used as a basis for a financial organization or other organizations whose sales do not represent their principal activity.

(B) **Throwback of Oklahoma sales.** If taxpayer is not doing business in the destination state of the shipment, then those sales of tangible personal property are

considered to have a situs in Oklahoma if the property is shipped from an office, warehouse, factory or other place of storage in Oklahoma.

(C) **Railroad/railway.** The numerator of the fraction shall not be less than the allocation of revenues to this state as shown in its Annual Report to the Oklahoma Corporation Commission. [See: 68 O.S. § 2358(A)(5)(c)(2)]

(D) **Airline, truck or bus enterprise or freight car, tank car, refrigerator car or other railroad equipment enterprise.** The numerator of the fraction shall include a portion of revenue from interstate transportation in the proportion that interstate mileage traveled in Oklahoma bears to total interstate mileage traveled. [See: 68 O.S. § 2358(A)(5)(c)(3)]

(E) **Oil, gasoline or gas pipeline enterprise.** The numerator of the fraction shall be either the total of traffic units of the enterprise within Oklahoma or the revenue allocated to Oklahoma based on miles moved, at the option of the taxpayer, the denominator of which shall be the total of traffic units of the enterprise or the revenue of the enterprise everywhere as appropriate to the numerator. A "traffic unit" is defined as the transportation for a distance of one mile of one barrel of oil, one gallon of gasoline or one thousand cubic feet of natural or casinghead gas, as the case may be. [See: 68 O.S. § 2358(A)(5)(c)(4)]

(F) **Telephone or telegraph or other communication enterprise.** The numerator of the fraction shall include both income attributable to interstate operations, and income from intrastate operations. The determination of gross revenues are to be as prescribed by accounting systems and procedures promulgated by the Federal Communications Commission. [See: 68 O.S. § 2358(A)(5)(c)(5)]

(2) **Property factor.**

(A) **Original costs (average).** The property factor is the average value at original cost of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period to the total average of all real and tangible personal property owned or rented and used everywhere. [See: 68 O.S. § 2358(A)(5)(a)]

(B) **Rolling stock-buses, trucks, trailers, airplanes, automobiles, and other similar equipment.** The numerator of the fraction shall include a portion of the investment in transportation and other equipment having no fixed situs, in the proportion that miles traveled in Oklahoma by such equipment bears to total miles traveled. [See: 68 O.S. § 2358(A)(5)(a)(1)]

(C) **Rental property.** Rental property is valued at eight (8) times the net annual rent expense. [See: 68 O.S. § 2358(A)(5)(a)(2)]

(D) **Property separately allocated.** Property, the income from which is separately allocated in 68 O.S. § 2358(A)(4), shall not be included in determining the property factor. [See: 68 O.S. § 2358(A)(5)(a)(1)]

(3) **Payroll factor.**

(A) **Payroll factor.** The numerator is the total compensation for services rendered in the state during the tax period, and the denominator is the total compensation for services rendered everywhere during the tax period.

(B) **Prior to 1983.** Salaries, wages and other compensation properly classified as general and administrative, are not part of the computation of the payroll factor for years before 1983.

(C) **Officers.** Officers' salaries, wages and other compensation are not part of the computation of the payroll factor, for tax years beginning after December 31, 1982. [See: 68 O.S. § 2358(A)(5)(b)]

(D) **Transportation enterprises.** The numerator of the fraction shall include a portion of such expenditure in connection with employees operating equipment over a fixed route, such as trainmen, airline pilots, or bus drivers, in the proportion that mileage traveled in Oklahoma bears to total mileage traveled by such employees. [See: 68 O.S. § 2358(A)(5)(b)(1)]

(E) **Itinerant employees/traveling salesmen.** The numerator of the fraction shall include a portion of such expenditures in connection with itinerant employees in this state only a part of the time, in the proportion that time spent in Oklahoma bears to total time spent in furtherance of the enterprise by such employees. [See: 68 O.S. § 2358(A)(5)(b)(2)]

[Source: Amended at 15 Ok Reg 2811, eff 6-25-98; Amended at 18 Ok Reg 2810, eff 6-25-01; Amended at 27 Ok Reg 2281, eff 7-11-2010]

SUBCHAPTER 19. OKLAHOMA TAXABLE INCOME FOR PARTNERSHIPS

710:50-19-1. Partnership return

(a) **General provisions.** The Oklahoma distributive share of partnership income shall be the same portion of that reported for Federal Income Tax purposes. OTC Form 514 is used to report income. [See: 68 O.S. §§2358, 2362, 2363]

(1) **Oklahoma source income or loss.** When a partnership has source income or loss then that partnership must file a return showing the income or loss applicable to Oklahoma. The partnership shall also furnish a detailed schedule stating the amount of income distributable to each partner from Oklahoma sources.

(2) **Duty to file and report; determination of shares.** All resident partners must file individual income tax returns with Oklahoma if they are required to file individual Federal Income Tax Returns. All nonresident partners that have gross income of \$1,000.00 must file an Oklahoma Return even though their net may actually be a loss. The partnership income for Oklahoma may be apportioned using the three factor formula unless its operations are from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property; then the income or loss shall be allocated in accordance with the situs of such property. The partner's distributive share of Oklahoma income or loss shall be the same proportion to the partner's distributive share of income or loss shown on the Federal Partnership Return.

(3) **No credit for income taxes paid other jurisdictions.** Neither residents nor nonresidents are allowed a credit for income taxes paid to other jurisdictions on partnership income.

(4) **Composite returns.** Oklahoma will allow partnerships to file composite returns for nonresident partners as described in this paragraph. Any individual nonresident partner may be included in the composite return so long as the partner has no income from an Oklahoma source other than the partnership. Partners that are S-Corporations (or elect to be so treated) and partnerships, trusts, and C-Corporations generally may not be included in the composite return.

However, partners that are ineligible to be included in the composite return as outlined herein *may* be included in the composite return upon approval from the Oklahoma Tax Commission Audit Division.

- (A) **Individual partners and trust partners.** Compute each nonresident individual or trust partner's share of Oklahoma distributive income and income tax as follows:
- (i) Calculate the Oklahoma distributive share of each nonresident individual and trust partner's income as if all of the partnership income was earned in Oklahoma.
 - (ii) Deduct a standard deduction for each individual partner, to determine the taxable income for the partner. The standard deduction to be used is outlined in 68 O.S. § 2358.
 - (I) In determining taxable income of partners filing a composite return, no deductions for personal exemptions, federal income tax paid, or dependents is permitted.
 - (II) For trust partners, taxable income is each partner's share of the Oklahoma distributive income in (i) of this subparagraph.
 - (iii) Using the Oklahoma individual income tax rates and the partner's federal income tax filing status, compute a **base tax** for each partner, based on the taxable income from (ii) of this subparagraph. If the partner's federal filing status is not known, use the individual tax rates for single taxpayers.
 - (iv) Calculate the **actual** Oklahoma distributive share of income of each partner.
 - (v) The **base tax** determined from (iii) of this subparagraph is to be prorated to determine the Oklahoma income tax of each partner. Divide each partner's **actual** Oklahoma distributive share as determined in (iv) of this subparagraph, by each partner's distributive income from all sources as determined by (i) of this subparagraph. Multiply this percentage times the **base tax** to calculate the actual Oklahoma income tax of each partner. Nothing in this section shall be construed to allow for more than one hundred percent (100%) of a nonresident partner's income to be taxed.
- (B) **Corporate partners.** Compute each nonresident corporate partner's share of Oklahoma distributive income, using the partner's share of Oklahoma distributive income and the Oklahoma corporate income tax rates, to compute each partner's Oklahoma tax.
- (C) **Form.** The income and tax of all partners included in the composite return must be combined on Oklahoma Tax Commission Form 514.
- (D) **Schedule to be provided.** Oklahoma Tax Commission Form 514 PT must be enclosed with the Form 514 to show the computation of each nonresident partner's Oklahoma distributive income and Oklahoma tax. The schedule of nonresident partner's information may be provided on magnetic media, electronically, or in another format which meets Tax Commission guidelines.
- (b) **When electronic filing is required.** For tax years beginning on or after December 31, 2004, partnerships with more than one hundred (100) partners are required to electronically file their Schedule K-1's with the Oklahoma Tax Commission. The format for filing electronically will be in either a spreadsheet format, such as Lotus 1-2-3 or Excel); or a database format, such as DBF or Access. A partnership is deemed to have "**more than one hundred (100) partners**" if, over the course of the partnership's tax year, the partnership had more than one hundred (100) partners at any time.
- (c) **When electronic filing is not permitted.** Partnerships filing the following types of returns are not required to file Schedule K-1's electronically:
- (1) A non-calendar year return;

- (2) Returns with a non-U.S. address; or,
- (3) Amended returns.
- (d) **Waiver of electronic filing requirement for hardship.** Partnerships may also obtain a waiver from the electronic filing requirement if the partnership demonstrates that a hardship would result if it were required to file electronically.

[Source: Amended at 20 Ok Reg 2165, eff 6-26-03; Amended at 21 Ok Reg 2571, eff 6-25-04; Amended at 22 Ok Reg 1546, eff 6-11-05; Amended at 24 Ok Reg 2359, eff 6-25-07]

710:50-19-2. Amended return for partnerships

If after the partnership files its income tax return, it later becomes aware of any changes to be made to income, deductions, credits, etc.; or if corrected due to an Internal Revenue Service audit; the Partnership shall file OTC Form 514 labeled "Amended" at the top of page 1. Attach a copy of the Federal Amended 1065 or a copy of the Federal Audit Changes to the Oklahoma Amended Return. Each partner shall be given a corrected K-1, reflecting Oklahoma distributable income, as adjusted.

[Source: Amended at 9 Ok Reg 3031, eff 7-13-92]

710:50-19-3. Reporting the gain on the sale, exchange, or other disposition of property for which a Section 179 expense deduction was passed through to partners

(a) The gain on the sale, exchange, or other disposition of property for which a Section 179 expense deduction was passed through to partners is reported as Supplemental Information on the Federal K-1. For Oklahoma purposes, report such gain on OTC Form 514. Additional information is also required, as follows:

- (1) A description of the property;
 - (2) The date the property was acquired;
 - (3) The date the property was sold;
 - (4) The gross sales price;
 - (5) The cost or other basis, plus expense of sale, including the partnership's basis reduction in the property due to the Section 179 expense deduction;
 - (6) The depreciation allowed or allowable, excluding the Section 179 expense deduction; and,
 - (7) The amount of Section 179 expense deduction, if any, passed through to each partner for the property, and the partnership's tax year(s) in which the amount was passed through.
- (b) If the software used to prepare the return has already been programmed to report the gain on another line of Income, Part 2 or Part 3, of OTC Form 514, this method is also acceptable, but all information set out in subsection (a) must be provided.

[Added at 22 Ok Reg 1547, eff 6-11-05]

SUBCHAPTER 20. LIMITED LIABILITY COMPANIES

710:50-20-1. Limited liability companies

(a) A limited liability company (LLC) which registers with the Secretary of State shall file an income tax return in the same manner as required under the Internal Revenue Code as amended. All rulings as issued by the Internal Revenue Service shall be binding in regards to the filing of tax

returns and the reporting of income. A domestic limited liability company shall be treated the same and taxed as a domestic partnership and a foreign limited liability company shall be treated the same and taxed as a foreign partnership, provided that such domestic or foreign limited liability companies are classified as partnerships for federal purposes. [See: 68 O.S. §202]

(b) Income from the organization (LLC) shall be reported to Oklahoma as provided for under 68 O.S. §2358 and on the same form as prescribed under federal regulations.

(c) Operations carried on within and without the State of Oklahoma by an LLC shall be the same as for corporations, sub S corporations, partnerships, and any other organization which are covered under Public Law 86-272. The activities set out by Subsection A of 18 O.S. Supp. 1992, §2049 shall not be considered when determining the transaction of business for Oklahoma income tax purposes. [See: 18 O.S. §2049(C)]

[Source: Added at 10 Ok Reg 3837, eff 7-12-93; Amended at 11 Ok Reg 555, eff 11-10-93 (emergency); Amended at 11 Ok Reg 3497, eff 6-26-94]

SUBCHAPTER 21. OKLAHOMA TAXABLE INCOME FOR SUBCHAPTER "S" CORPORATIONS

710:50-21-1. Subchapter "S" corporations and 512S Oklahoma returns

(a) A corporation having an election in effect under Subchapter S of the Internal Revenue Code shall not be subject to the Oklahoma income tax on the corporation. However, if any of the shareholders of such corporation are nonresidents of Oklahoma during any part of the corporation's taxable year, the corporation shall be taxed for such year on the nonresident shareholder's distributive share of income, unless the corporation files with its return for such year an agreement executed by each nonresident stockholder stating that such nonresident will file an Oklahoma Income Tax Return reporting his portion of Oklahoma taxable income.

(b) The shareholders of a Subchapter "S" Corporation shall include in their taxable income their distributive share of such corporation's Federal income, subject to the modifications as set forth in 68 O.S. §2358 and 68 O.S. §2362.

(c) A Subchapter "S" corporation that files its return without including necessary nonresident shareholder agreements, shall be taxed on such nonresident(s) shareholders distributive share of income. The method of filing the return shall be irrevocable for each tax period once the return is filed. However, if a nonresident shareholder fails to file his individual Oklahoma Income Tax Return the corporation will be assessed the tax.

710:50-21-2. Amended return for subchapter "S" corporations

If after the Subchapter "S" Corporation files its income tax return, it later becomes aware of any changes it must make to income, deductions, credits, etc., or if corrected due to an Internal Revenue Service audit, the Subchapter "S" shall file OTC Form 512S labeled "Amended" at the top of page 1.

Attach a copy of the Federal Amended 1120S or a copy of the Federal Audit changes to the Oklahoma Amended Return. Each share holder shall be given a corrected K-1 reflecting Oklahoma Distributable Income as adjusted.

710:50-21-3. Reporting the gain on the sale, exchange, or other disposition of property for which a Section 179 expense deduction was passed through to shareholders

- (a) The gain on the sale, exchange, or other disposition of property for which a Section 179 expense deduction was passed through to shareholders is reported as Supplemental Information on the Federal K-1. For Oklahoma purposes, report such gain on OTC Form 512S. Additional information is also required, as follows:
- (1) A description of the property;
 - (2) The date the property was acquired;
 - (3) The date the property was sold;
 - (4) The gross sales price;
 - (5) The cost or other basis, plus expense of sale, including the partnership's basis reduction in the property due to the Section 179 expense deduction;
 - (6) The depreciation allowed or allowable, excluding the Section 179 expense deduction; and,
 - (7) The amount of Section 179 expense deduction, if any, passed through to each shareholder for the property, and the S-Corporation's tax year(s) in which the amount was passed through.
- (b) If the software used to prepare the return has already been programmed to report the gain on another line of Income, Part 2 or Part 3, of OTC Form 512S, this method is also acceptable, but all information set out in subsection (a) must be provided.

[Added at 22 Ok Reg 1547, eff 6-11-05]

SUBCHAPTER 23. FIDUCIARY REPORTING

710:50-23-1. Fiduciaries

(a) State income tax reporting requirements.

- (1) The Income tax period of an estate is initially established the day following the date of death and the estate representative may elect an annual closing period for the estate to be the last day of any month not to exceed twelve months. Once an estate tax period has been established, it will remain the same throughout the period of administration up to and including the final decree and court order for distribution.
- (2) During the period of the administration of an estate, the liability for the filing of an Oklahoma Income Tax Return for the estate and the payment of any tax due, shall be that of the representative of the estate.
- (3) Only that income properly paid, credited or distributed to the beneficiaries, pursuant to a court order or under the terms of the will, may be deducted from the income of the estate.
- (4) The Court Order for Final Decree is deemed to distribute both income and corpus, therefore the amounts of income generated during such final period must be shown on the final Oklahoma Income Tax Return of the estate as a distribution showing also the name, address and social security number of each beneficiary, as well as the amounts and types of income so distributed to each.
- (5) The representative of the estate, such as the administrator, executor or personal representative, is responsible for reporting the correct amount of income tax due for all years of the estate and must secure a certificate of clearance from the Oklahoma Tax Commission, disclaiming any further Oklahoma Income Taxes due or owing by the decedent or the estate for which the representative acts.
- (6) Wills and/or Trust Instruments shall be filed with the initial filing of Trust or Estate return, so the flow of income can be determined.
- (7) Returns of Trusts and Estates are due on the 15th day of the fourth month following the close

of the taxable year.

(b) **Certificate of clearance.** Prior to the issuance of a certificate of clearance, all taxes due from Decedent's prior years' returns must be paid.

(c) **Resident/nonresident.**

- (1) Domicile is the primary determining factor in interpretation.
- (2) A residence at death creates a resident estate throughout probate. A testamentary trust of such an estate is likewise a resident until distributed.
- (3) Grantor trusts follow the situs of the grantor.
- (4) Intervivos trust depends upon the trust language.
- (5) The residence of the executor, administrator or trustee has no bearing on the residence of the estate or trust.

(d) **Characteristics of income and deductions.** Income and deductions shall retain the same characteristics as reported to and allowed by the Internal Revenue Service (I.R.S.). Example: Personal service income reported to the I.R.S. shall be treated as personal service income to Oklahoma and not as business income or any other type of income.

(e) **Deductions on fiduciary return.** There is no deduction for state estate tax for income in respect of the decedent. There is no deduction for interest paid on payments for Federal Estate Tax, unless the election is made to deduct this interest on the Federal Fiduciary Income Tax Return. The election to deduct administration expenses and losses on the fiduciary return in lieu of the estate tax return; must follow the federal election, and a statement must be filed with the return waiving the right to deduct the expenses and losses on Oklahoma Estate Tax form 454. There is no deduction for Federal Income Tax paid in the fiduciary return.

[Source: Amended at 9 Ok Reg 3031, eff 7-13-92; Amended at 15 Ok Reg 2811, eff 6-25-98]

710:50-23-2. Amended return for fiduciaries

(a) If a fiduciary is required or elects to file a Fiduciary Amended Return, the Fiduciary shall file an OTC Form 513, write "Amended" on the face of the return and attach the following or attach an explanation if the following is not applicable:

- (1) A copy of the Amended Federal Fiduciary Return, Form 1041, or Federal Form 1045.
- (2) Proof that Internal Revenue Service has accepted the claim, such as a copy of the statement of adjustment, any correspondence from Internal Revenue Service, or a copy of the deposit slip of the Federal refund.
- (3) Supporting documents for any adjustments to Federal Taxable Income to arrive at the Oklahoma Taxable Income.
- (4) An explanation for the filing of a Fiduciary Amended Tax Return.

(b) If multiple years returns are filed, each year shall be filed under separate cover.

SUBCHAPTER 25. BANKRUPTCY

710:50-25-1. General provisions; bankruptcy

The Fiduciary must file OTC Form 513 for the Estate of an individual involved in bankruptcy proceedings, if a Federal Income Tax Return is required for the Bankruptcy Estate. Use OTC Form 513 as a transmittal for OTC Form 511. Complete the tax for the Bankruptcy Estate on the OTC Form 511, by using the instructions and tax rate schedules for a married person, filing separately.

Enter the computed tax on OTC Form 513, line 23, and remit payment of any tax due.

SUBCHAPTER 27. BANKS AND CREDIT UNIONS

710:50-27-1. Banks and credit unions subject to "in lieu" tax

(a) Every state banking association, national banking association and credit union organized under the laws of this State, located or doing business within the limits of the State of Oklahoma is subject to a privilege tax. The basis of the tax shall be United States taxable income as defined by 68 O.S. 2353(10) and any adjustments as determined pursuant to 68 O.S. 2358 and the adjustments under 68 O.S. 2370(D)(1) and 68 O.S. 2370(D)(2).

(b) State and national banks and state credit unions making a Federal Subchapter "S" election, shall not pay the "in lieu" tax. Rather, the income or loss in these cases shall be reported at the shareholder level, pursuant to the provisions of 68 O.S. §§2363 and 2370.2.

[Source: Amended at 18 Ok Reg 2810, eff 6-25-01]

APPENDIX A. COMPUTATION OF TAX ACCRUAL WHEN TAX CREDITS ARE ALLOWABLE

COMPUTATION OF TAX ACCRUAL WHEN TAX CREDITS ARE ALLOWABLE	
1. Oklahoma Income before tax accrual	_____
2. Allowable Oklahoma credits	_____
COMPUTATION OF ACCRUED TAX ALLOWED	
A. Oklahoma Income (Line 1 above)	_____
B. Amount from Line 2 , above, divided by 6%	_____
C. Subtract Line B from Line A	_____
D. Divide Line C by 17.6667 (If Line D is less than 0, enter 0)	_____
3. Subtract Line D from Line 1 above (Enter Line 3 above on Line 1 , Page 1 , of your Oklahoma Corporation Income Tax Form 512 .)	_____
TOTAL TAX DUE	_____
TAX ACCRUAL ALLOWED	_____
TAX CREDIT ALLOWED	_____

[See: 710:50-17-51. **Adjustments to arrive at Oklahoma taxable income for corporations**]

[Source: Added at 9 Ok Reg 3031, eff 7-13-92]

**APPENDIX B. COMPUTATION OF OKLAHOMA NET OPERATING LOSS [REVOKED]
N. O. L. SCHEDULE A [REVOKED]**

[Source: Added at 11 Ok Reg 3497, eff 6-26-94; Revoked at 17 Ok Reg 2669, eff 6-25-00]

**APPENDIX C. COMPUTATION OF OKLAHOMA NET OPERATING LOSS [REVOKED]
SCHEDULE B [REVOKED]**

[Source: Added at 11 Ok Reg 3497, eff 6-26-94; Revoked at 17 Ok Reg 2669, eff 6-25-00]

**APPENDIX D. OKLAHOMA NET OPERATING LOSS [REVOKED]
SCHEDULE C WORKSHEET [REVOKED]**

[Source: Added at 11 Ok Reg 3497, eff 6-26-94; Revoked at 17 Ok Reg 2669, eff 6-25-00]