



## **Oklahoma Tax Commission 2016 Proposed Administrative Rules Changes**

**February 8, 2016**

The Oklahoma Tax Commission ("Tax Commission") has published 2016 proposed changes to its administrative rules with respect to Oklahoma taxes ("OTC Rules").

The OTC Rules are formal statements of policy written by the Tax Commission as a state agency which have the effect of law. The Oklahoma Legislature enacts tax laws and responsibility for implementing those laws is with the Tax Commission. The OTC Rules are published in Title 710 of the Oklahoma Administrative Code pursuant to Article I of the Oklahoma Administrative Procedures Act. The Tax Commission considers the OTC Rules prima facie evidence of a proper interpretation of the law and presumed to be valid until declared otherwise by a court of competent jurisdiction. Proposed OTC Rules changes must be approved by the Oklahoma Legislature before being finally adopted by the Tax Commission.

Any interested person may submit written comments on the 2016 proposed OTC Rules to the Tax Commission during the comment period which is through March 2, 2016, 4:30 p.m. Comments may be sent to the Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194. Fax: 405-522-0063. All comments must be considered by the Tax Commission. A Tax Commission hearing will be held on each proposed OTC Rules change on March 4, 2016. Persons wishing to make oral comments at the public hearing should request placement on the docket in advance of the hearing date by calling for Kali Walker, (405) 521-3133.

Complete text of the 2016 proposed OTC Rules changes is available online at: [www.tax.ok.gov/rulesdec](http://www.tax.ok.gov/rulesdec). Some of the 2016 proposed OTC Rules changes are described in this summary. There are other OTC Rules changes in the full text published online by the Tax Commission.

### **Income Tax Title 710, Chapter 50, Oklahoma Administrative Code**

**. Tax Commission Policy on Expenses Allocated to Corporate Unitary Income.** The OTC Rules are proposed to be amended in Section 710:50-17-51, for determination of taxable corporate income to outline the Tax Commission policy relating to the application of expenses allocated to nontaxable income pursuant to 68 O. S. §2358(A)(4). The rules provide for allocation

of expenses between unitary business operation and all other activities that are separately allocable or do not produce unitary income. An asset based ratio is used to allocate expenses between unitary business operations and other activities that do not produce unitary income. An example is given to demonstrate application of the Tax Commission policy on this subject.

. **Wind Farms; Denial of Investment/New Jobs Credit, 2017.** The OTC Rules on administration of the Oklahoma income tax investment/new jobs credit under 68 O. S. §2357.4, are proposed to be amended to include the prohibition of claiming the credit for investment or job creation in electric power generation by means of wind, effective January 1, 2017, as enacted in 2015.

. **Additional Credit for Contributions to Scholarship Granting and Educational Improvement Organizations.** The OTC Rules applicable to Oklahoma income tax credits allowed for contributions to an eligible scholarship-granting organization and an eligible educational improvement grant organization are proposed to be amended to provide for the additional credit of 75% of the total amount of the contribution made during the taxable year for a taxpayer's written commitment to contribute the same amount for an additional year.

. **State Agency Intercept of Income Tax Refunds.** Proposed amendments to the OTC Rules are to be made to implement legislation enacted in 2015 to generally refer to state agencies and offices for which an income tax refund can be intercepted as a "qualified entity."

Comment Period: Through March 2, 2016, 4:30 p.m.

Public Hearing Date: March 4, 2016, 12:30 p.m.

## **Withholding Tax**

### **Title 710, Chapter 90, Oklahoma Administrative Code**

. **Withholding Tax; Registration of Employers** - The OTC Rules on withholding tax and the registration of employers are proposed to be amended with respect to the requirement that an employer's federal employer identification number must be provided.

Comment Period: Through March 2, 2016, 4:30 p.m.

Public Hearing Date: March 4, 2016, 1:30 p.m.

## **Sales and Use Tax**

### **Title 710, Chapter 65, Oklahoma Administrative Code**

. **Agricultural Exemption, Farmers Markets.** The OTC Rules on Oklahoma sales tax are proposed to be amended to clarify that the sales tax exemption afforded farmers possessing agricultural exemption permits for sales made at or from the farm extends to farmers markets and similar venues, but that such sales by agents and other third parties may not be made exempt from sale tax.

. **Museums Sales Tax Exemption.** The OTC Rules on Oklahoma sales tax are proposed to be amended as to an accrediting organization for purposes of the sales tax exemption afforded to qualified museums holding accreditation.

. **Charitable Games Equipment Sales to Charitable Healthcare Organizations.** The OTC Rules on Oklahoma sales tax are proposed to be amended to comply with legislation enacted in 2015 which exempts a 501(c)(3) charitable healthcare organization from sales tax on purchases of charitable games equipment.

. **OTC Policy on Drone Sales.** An addition to the OTC Rules on Oklahoma sales tax is proposed to outline the Tax Commission policy regarding the sales tax application to unmanned aerial vehicle sales. The application of the sales tax, or exemption from it, is dependent upon registration with the Federal Aviation Administration and application of the Oklahoma aircraft excise tax.

. **Sales Tax Treatment of Lease Agreements.** The OTC Rules on Oklahoma sales tax are proposed to be amended to clarify the sales tax treatment of lease agreements for apartments located in hotels and other similar entities; and that the sales tax does not apply to rental agreements which are governed by the Oklahoma Residential Landlord and Tenant Act.

Comment Period: Through March 2, 2016, 4:30 p.m.

Public Hearing Date: March 4, 2016, 1:00 p.m.

## **Gross Production Tax**

### **Title 710, Chapter 45, Oklahoma Administrative Code**

. **Mandatory Electronic Filing.** The OTC Rules administering the Oklahoma gross production tax are proposed to be amended to outline the mandatory electronic filing requirement for gross production tax remitters.

Comment Period: Through March 2, 2016, 4:30 p.m.

Public Hearing Date: March 4, 2016, 11:00 a.m.

## **Ad Valorem Tax**

### **Title 710, Chapter 10, Oklahoma Administrative Code**

. **Wind Farms Ineligible for Five Year New Manufacturing Facility Exemption in 2017.** The OTC Rules administering the five year ad valorem tax exemption for new manufacturing facilities are proposed to be amended to reflect removal of wind electric power generation facilities from eligibility for the exemption beginning in 2017, based on legislation enacted in 2015. The proposed regulations provide that while facilities which qualified for exemption pursuant to filing of an exemption application before 2018 will be allowed to claim the exemption for any periods remaining in the five years provided all qualification requirements are met, no initial application for exemption shall be filed by or accepted from an entity engaged in electric power generation by means of wind on or after January 1, 2018.

. **Five Year New Manufacturing Facility Exemption Payroll Requirements.** The OTC Rules on ad valorem tax are proposed to be amended with respect to the requirement for additional payroll to qualify for the five year new manufacturing facilities ad valorem tax exemption to conform to legislation enacted in 2015. The proposed amendments contain provisions regarding exclusion from payroll of payments of compensation made to owners of at least 10% of an entity and of nonrecurring bonuses, stock options or rights or other nonrecurring extraordinary items.

. **County Assessor Notice Requirements Assessment Ratio Decrease.** The OTC Rules on ad valorem tax are proposed to be amended to conform to legislation enacted in 2015 that prohibits county assessors from decreasing the ad valorem tax assessment ratio used to compute the taxable value of real or personal property without written notice of intent to decrease it being provided to other county officials and published, and public meetings being held, prior to the decrease taking effect.

. **Disabled Veterans Tax Relief.** Amendments to the OTC Rules on ad valorem tax are proposed regarding the application of the “portability” provision applicable to the property tax exemption afforded 100% disabled veterans.

. **Surviving Spouses of Persons Military Personnel Relief.** Amendments to the OTC Rules on ad valorem tax are also proposed regarding the application of the portability provision relating to the property tax exemption allowed to unremarried surviving spouses of persons who died in the line of military duty.

Comment Period: Through March 2, 2016, 4:30 p.m.

Public Hearing Date: March 4, 2016, 9:30 p.m.

## **Motor Vehicles**

### **Title 710, Chapter 60, Oklahoma Administrative Code**

. **Administration of Motor Vehicle Rules.** The OTC Rules regarding motor vehicle registration, titles, fees, insurance, license agent duties and reporting, and related subjects are proposed to be updated and modified.

Comment Period: Through March 2, 2016, 4:30 p.m.

Public Hearing Date: March 4, 2016, 2:30 p.m.

## **Charity Games Tax**

### **Title 710, Chapter 23, Oklahoma Administrative Code**

. **Charitable Healthcare Organization Exemption.** The OTC Rules are proposed to be amended to implement legislation enacted in 2015 providing for an exemption from charity games tax for 501(c)(3) charitable healthcare organizations.

Comment Period: Through March 2, 2016, 4:30 p.m.  
Public Hearing Date: March 4, 2016, 10:30 a.m.

## **Administrative Procedure Title 710, Chapter 1, Oklahoma Administrative Code**

. **Revocation of Criminal Prosecution Rule.** Section 710:1-5-14 of the OTC Rules, applicable to criminal prosecutions conducted by the Tax Commission special enforcement unit, is proposed to be revoked based upon a prior statutory repeal.

Comment Period: Through March 2, 2016, 4:30 p.m.  
Public Hearing Date: March 4, 2016, 9:00 a.m.

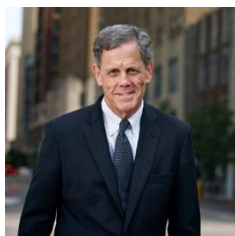
## **Miscellaneous Areas of Regulatory and Administrative Authority Title 710, Chapter 95, Oklahoma Administrative Code**

. **Employer Identification Number Exemption for Disaster Responders.** The OTC Rules are proposed to be amended to implement an exception to the requirement of possessing a Tax Commission, Oklahoma Employment Security Commission, Internal Revenue Service and Social Security Administration employer identification number for out-of-state businesses that conduct operations within the state for purposes of performing work or services related to a declared state disaster or emergency during the disaster response period.

Comment Period: Through March 2, 2016, 4:30 p.m.  
Public Hearing Date: March 4, 2016, 2:00 p.m.

***If you have questions, please contact any attorney you know at Gable Gotwals or Sheppard F. Miers, Jr., [smiers@gablelaw.com](mailto:smiers@gablelaw.com), 918-595-4834.***

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