

1 **SENATE FLOOR VERSION**

2 March 22, 2016

3 **AS AMENDED**

4 ENGROSSED HOUSE  
5 BILL NO. 2775

6 By: McCall of the House

7 and

8 Smalley of the Senate

9 [ revenue and taxation - refunds of income tax -  
10 filing of electronic returns - fiscal years -  
11 business entities - estates and trusts -  
12 reconciliation reports - ~~effective date~~ -  
13 ~~emergency~~ ]

14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 68 O.S. 2011, Section 217, as  
16 amended by Section 1, Chapter 274, O.S.L. 2014 (68 O.S. Supp. 2015,  
17 Section 217), is amended to read as follows:

18 Section 217. A. If any amount of tax imposed or levied by any  
19 state tax law, or any part of such amount, is not paid before such  
20 tax becomes delinquent, there shall be collected on the total  
21 delinquent tax interest at the rate of one and one-quarter percent  
(1 1/4%) per month from the date of the delinquency until paid.

22 B. Interest upon any amount of state tax determined as a  
23 deficiency, under the provisions of Section 221 of this title, shall  
24 be assessed at the same time as the deficiency and shall be paid  
upon notice and demand of the Oklahoma Tax Commission at the rate of

1 one and one-quarter percent (1 1/4%) per month from the date  
2 prescribed in the state tax law levying such tax for the payment  
3 thereof to the date the deficiency is assessed.

4 C. If any tax due under state sales, use, tourism, mixed  
5 beverage gross receipts, or motor fuel tax laws, or any part  
6 thereof, is not paid within fifteen (15) days after such tax becomes  
7 delinquent a penalty of ten percent (10%) on the total amount of tax  
8 due and delinquent shall be added thereto, collected and paid.  
9 However, the Tax Commission shall not collect the penalty assessed  
10 if the taxpayer remits the tax and interest within sixty (60) days  
11 of the mailing of a proposed assessment or voluntarily pays the tax  
12 upon the filing of an amended return.

13 D. If any tax due under any state tax law other than those  
14 specified in subsection C of this section, or any part thereof, is  
15 not paid within thirty (30) days after such tax becomes delinquent a  
16 penalty of ten percent (10%) on the total amount of tax due and  
17 delinquent shall be added thereto, collected and paid. However, the  
18 Tax Commission shall not collect the penalty assessed if the  
19 taxpayer remits the tax and interest within sixty (60) days of the  
20 mailing of a proposed assessment or voluntarily pays the tax upon  
21 the filing of an amended return.

22 E. If any part of any deficiency, arbitrary or jeopardy  
23 assessment made by the Tax Commission is based upon or occasioned by  
24 the taxpayer's negligence or by the failure or refusal of any

1 taxpayer to file with the Tax Commission any report or return, as  
2 required by this title, or by any state tax law, within ten (10)  
3 days after a written demand for such report or return has been  
4 served upon any taxpayer by the Tax Commission by letter, the Tax  
5 Commission may assess and collect, as a penalty, twenty-five percent  
6 (25%) of the amount of the assessment. For purposes of this  
7 subsection, "negligence" shall mean the consistent understatement of  
8 income, consistent understatement of receipts or a system of  
9 recordkeeping by the taxpayer that consistently results in an  
10 inaccurate reporting of tax liability.

11 F. If any part of any deficiency is due to fraud with intent to  
12 evade tax, then fifty percent (50%) of the total amount of the  
13 deficiency, in addition to such deficiency, including interest as  
14 herein provided, shall be added, collected and paid.

15 G. All penalties or interest imposed by this title, or any  
16 state tax law, shall be recoverable by the Tax Commission as a part  
17 of the tax with respect to which they are imposed, the penalties  
18 bearing interest as provided in this section for the tax, and all  
19 penalties and interest shall be apportioned as provided for the  
20 apportionment of the tax on which such penalties or interest are  
21 collected.

22 H. 1. Whenever an income tax refund is not paid to the  
23 taxpayer within ninety (90) days after the return is filed or due,  
24 whichever is later, with all documents as required by the Tax

1 Commission, entitling the taxpayer to a refund, then the Tax  
2 Commission shall pay interest on the refund, at the same rate  
3 specified for interest on delinquent tax payments. The payment of  
4 interest on refunds provided for by this section shall apply to tax  
5 year 1987 and subsequent tax years. The Tax Commission shall not be  
6 required to pay interest on an income tax refund which is applied,  
7 in whole or in part, to a prior year tax liability pursuant to  
8 Section 2385.17 of this title or upon an income tax refund applied,  
9 in whole or in part, to satisfy a debt owed to the Internal Revenue  
10 Service of the United States or to a state agency, including the  
11 Oklahoma Tax Commission, as provided by Section 205.2 of this title.

12 2. For tax returns filed after January 1, 2004, and before  
13 January 2, 2010, whenever an income tax refund is not paid to the  
14 taxpayer within the following number of days after the income tax  
15 return is filed with all documents as required by the Tax Commission  
16 or after the income tax return is due, whichever is later, entitling  
17 the taxpayer to a refund, then the Tax Commission shall pay interest  
18 on the refund at the same rate specified for interest on delinquent  
19 tax payments:

- 20 a. for returns filed electronically, thirty (30) days,
- 21 and
- 22 b. for all other returns, one hundred fifty (150) days.

23 3. For tax returns filed after January 1, 2010, whenever an  
24 income tax refund is not paid to the taxpayer within the following

1 number of days after the income tax return is filed with all  
2 documents as required by the Tax Commission entitling the taxpayer  
3 to a refund, then the Tax Commission shall pay interest on the  
4 refund at the same rate specified for interest on delinquent tax  
5 payments:

6 a. for returns filed electronically, ~~twenty (20)~~ forty-  
7 five (45) days, and

8 b. for all other returns, ninety (90) days.

9 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2368, is  
10 amended to read as follows:

11 Section 2368. A. The following individuals shall each make a  
12 return stating specifically the taxable income and, where necessary,  
13 the adjusted gross income and the adjustments provided in Section  
14 2351 et seq. of this title to arrive at Oklahoma taxable income and,  
15 where necessary, Oklahoma adjusted gross income:

16 1. Every resident individual having a gross income, or gross  
17 receipts, for the taxable year in an amount sufficient to require  
18 the filing of a federal income tax return, if single, or if married  
19 and not living with husband or wife; and

20 2. Every resident individual having a gross income, or gross  
21 receipts, for the taxable year in an amount sufficient to require  
22 the filing of a federal income tax return, if married and living  
23 with husband or wife.

24

1        Provided however, every resident individual who does not meet  
2 the requirements sufficient to file a federal return, but has  
3 Oklahoma withholding, may file a claim for refund for all Oklahoma  
4 income taxes withheld and shall not be subject to the provisions of  
5 Section 2358 of this title; and

6        3. Every nonresident individual having Oklahoma gross income  
7 for the taxable year of One Thousand Dollars (\$1,000.00) or more.

8        B. If a husband and wife, living together, have an aggregate  
9 gross income or gross receipts, for such year, in an amount  
10 sufficient to require the filing of a federal income tax return:

11        1. Each shall make a return; or

12        2. The income of each shall be included in a single joint  
13 return, in which case the tax shall be computed on the aggregate net  
14 income.

15        C. If an individual is unable to make his or her own return,  
16 the return shall be made by a duly authorized agent or by the  
17 guardian or other person charged with the care of the person or  
18 property of such individual.

19        D. Every partnership shall make a return for each taxable year,  
20 stating the taxable income and the adjustments to arrive at Oklahoma  
21 income. The Oklahoma return shall include a schedule showing the  
22 distribution to partners of the various items of income as per the  
23 federal return and the adjustments required by Section 2351 et seq.  
24 of this title for Oklahoma. The return shall be signed by one of

1 the partners. If a partnership has elected pursuant to the  
2 provisions of Section 761 of the Internal Revenue Code, or any  
3 provision comparable thereto, not to file partnership income tax  
4 returns, that partnership shall not be required to file an Oklahoma  
5 partnership return. The Oklahoma Tax Commission shall promulgate  
6 rules for purposes of partnership returns when multiple partners  
7 would otherwise be required to file a nonresident return. The rules  
8 shall provide a specific number of partners in a partnership above  
9 which a composite return may be filed. The return shall be in such  
10 form as prescribed by the Tax Commission.

11 E. Every corporation shall make a return for each taxable year  
12 stating the taxable income and the adjustments provided in Section  
13 2351 et seq. of this title to arrive at Oklahoma taxable income. In  
14 addition, corporations electing subchapter S treatment pursuant to  
15 the Internal Revenue Code and Section 2351 et seq. of this title,  
16 shall include a schedule showing the distribution to shareholders of  
17 the various items of income as per the federal return and the  
18 adjustments for Oklahoma. All corporation returns shall be signed  
19 by the president, vice president, or other principal officer and the  
20 corporate seal impressed. In cases where receivers, trustees in  
21 bankruptcy, or assignees are operating the property or business of  
22 corporations, such receivers, trustees, or assignees shall make a  
23 return for such corporations in the same manner and form as  
24 corporations are required to make returns. Any tax due on the basis

1 of such returns made by receivers, trustees, or assignees shall be  
2 collected in the same manner as if collected from the corporations  
3 of whose business or property they have custody and control.

4 F. Every resident estate and trust shall make a return for each  
5 taxable year stating the taxable income and the adjustments to  
6 arrive at Oklahoma taxable income. Every nonresident estate or  
7 trust having Oklahoma taxable income as provided in Section 2362 of  
8 this title~~7~~ shall make a return for each taxable year stating the  
9 taxable income and the adjustments to arrive at Oklahoma taxable  
10 income. The Oklahoma return shall include a schedule showing the  
11 distribution to beneficiaries, if any, of the various items of  
12 income as per the federal return and the adjustments for Oklahoma.  
13 The fiduciary shall be responsible for making the return and the  
14 return shall be signed by the fiduciary, or by one fiduciary if  
15 there is more than one. The Tax Commission shall promulgate rules  
16 for purposes of estate and trust returns when multiple returns would  
17 otherwise be required of nonresident beneficiaries of estates or  
18 trusts. The return shall be in such form as prescribed by the Tax  
19 Commission.

20 G. 1. All individual returns, except ~~corporate returns and~~  
21 individual returns filed electronically, made on the basis of the  
22 calendar year shall be ~~made~~ due on or before the fifteenth day of  
23 April following the close of the taxable year. Provided, if the  
24 Internal Revenue Code provides for a later due date for returns of



1 individuals, the Tax Commission shall accept returns filed by  
2 individuals by such date and such returns shall be considered as  
3 timely filed.

4 2. All individual returns filed electronically, made on the  
5 basis of the calendar year, shall be due on or before the twentieth  
6 day of April following the close of the taxable year.

7 3. ~~Calendar~~ All individual returns made on the basis of a  
8 fiscal year shall be due on or before the fifteenth day of the  
9 fourth month following the close of the fiscal year.

10 4. For tax years beginning before January 1, 2016, calendar  
11 year corporation returns shall be due on or before the fifteenth day  
12 of March following the close of the taxable year. For tax years  
13 beginning on or after January 1, 2016, calendar year corporation  
14 returns shall be due no later than thirty (30) days after the due  
15 date established under the Internal Revenue Code.

16 ~~4. All returns, except corporation returns, made on the basis~~  
17 ~~of a fiscal year shall be made on or before the fifteenth day of the~~  
18 ~~fourth month following the close of the fiscal year.~~

19 5. ~~Fiscal~~ For tax years beginning before January 1, 2016,  
20 fiscal year corporation returns shall be ~~made~~ due on or before the  
21 fifteenth day of the third month following the close of the fiscal  
22 year. For tax years beginning on or after January 1, 2016, fiscal  
23 year corporation returns shall be due no later than thirty (30) days  
24 after the due date established under the Internal Revenue Code.

1       6. For tax years beginning before January 1, 2016, partnership  
2 returns shall be due on or before the fifteenth day of April  
3 following the close of the taxable year. For tax years beginning on  
4 or after January 1, 2016, partnership returns shall be due no later  
5 than thirty (30) days after the due date established under the  
6 Internal Revenue Code.

7       7. All estate and trust returns made on the basis of the  
8 calendar year shall be due on or before the fifteenth day of April  
9 following the close of the taxable year. All estate and trust  
10 returns made on the basis of a fiscal year shall be due on or before  
11 the fifteenth day of the fourth month following the close of the  
12 fiscal year.

13       8. In the case of complete liquidation, or the dissolution, of  
14 a corporation the return of such corporation shall be made on or  
15 before the fifteenth day of the fourth month following the month in  
16 which the corporation is completely liquidated. A corporation which  
17 has terminated its business activities, satisfied or made provision  
18 for all of its liabilities or has distributed all of its assets,  
19 even though not formally dissolved under state law, is deemed to  
20 have completely liquidated for purposes of this subsection.

21       H. Returns by individuals, fiduciaries, partnerships,  
22 corporations or any other person or entity required, or that may  
23 hereafter be required to file a return, shall contain or be verified  
24 by a written declaration that such return is made under the

1 penalties of perjury and the fact that any individual's name is  
2 signed to a filed return shall be prima facie evidence for all  
3 purposes that the return was actually signed by that individual.  
4 Provided, the Tax Commission shall promulgate rules to provide  
5 procedures for verification of signatures on returns which are filed  
6 electronically.

7 I. Every return required by Section 2351 et seq. of this title  
8 shall be in such form as the Tax Commission may, from time to time,  
9 prescribe. Each return shall be filed with the Tax Commission and  
10 forms shall be furnished by the Tax Commission on application  
11 therefor, but failure to secure or receive the form of a return  
12 prescribed shall not relieve any taxpayer from the obligation of  
13 making and filing any return herein required.

14 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2385.3, as  
15 last amended by Section 3, Chapter 273, O.S.L. 2014 (68 O.S. Supp.  
16 2015, Section 2385.3), is amended to read as follows:

17 Section 2385.3 A. Every employer required to deduct and  
18 withhold taxes under Section 2385.2 of this title shall pay over the  
19 amount so withheld as taxes to the Oklahoma Tax Commission pursuant  
20 to the schedule outlined in paragraphs 1 through 3 of this  
21 subsection, and shall file a quarterly return in such form as the  
22 Tax Commission shall prescribe on or before the twentieth day of the  
23 month following the close of each calendar quarter:

24

1        1. Every employer required to remit federal withholding under  
2 the Federal Semiweekly Deposit Schedule shall pay over the amount so  
3 withheld under subsection A of this section on the same dates as  
4 required under the Federal Semiweekly Deposit Schedule for federal  
5 withholding taxes;

6        2. Every employer owing an average of Five Hundred Dollars  
7 (\$500.00) or more per quarter in taxes in the previous fiscal year  
8 who is not subject to the provisions of paragraph 1 of this  
9 subsection shall pay over the amount so withheld on or before the  
10 twentieth day of each succeeding month; and

11       3. Every employer owing an average of less than Five Hundred  
12 Dollars (\$500.00) per quarter in taxes in the previous fiscal year  
13 shall pay over the amount so withheld on or before the twentieth day  
14 of the month following the close of each succeeding quarterly  
15 period.

16       B. Every employer subject to the provisions of paragraph 1 of  
17 subsection A of this section shall file returns pursuant to the Tax  
18 Commission's electronic data interchange program.

19       C. Every employer required under Section 2385.2 of this title  
20 to deduct and withhold a tax from the wages paid an employee shall,  
21 as to the total wages paid to each employee during the calendar  
22 year, furnish to such employee, on or before January 31 of the  
23 succeeding year, a written statement showing the name of the  
24 employer, the name of the employee and the employee's ~~social~~

1 ~~security~~ Social Security account number, if any, the total amount of  
2 wages subject to taxation, and the total amount deducted and  
3 withheld as tax and such other information as the Tax Commission may  
4 require. If an employee's employment is terminated before the close  
5 of a calendar year, the written statement must be furnished within  
6 thirty (30) days of the date of which the last payment of wages is  
7 made.

8 D. Every employer required under Section 2385.2 of this title  
9 to deduct and withhold a tax from the wages paid an employee shall  
10 furnish to the Oklahoma Tax Commission, on or before February 28 of  
11 the succeeding year, an annual reconciliation and such other  
12 information as the Tax Commission may require pursuant to the Tax  
13 Commission's electronic data interchange program.

14 E. If the Tax Commission, in any case, has justifiable reason  
15 to believe that the collection of the tax provided for in Section  
16 2385.2 of this title is in jeopardy, the Tax Commission may require  
17 the employer to file a return and pay the tax at any time.

18 ~~E.~~ F. Any sum or sums withheld in accordance with the  
19 provisions of Section 2385.2 of this title shall be deemed to be  
20 held in trust for the State of Oklahoma, and, as trustee, the  
21 employer shall have a fiduciary duty to the State of Oklahoma in  
22 regard to such sums and shall be subject to the trust laws of this  
23 state.

24

1        ~~F.~~ G. If any employer fails to withhold the tax required to be  
2 withheld by Section 2385.2 of this title and thereafter the income  
3 tax is paid by the employee, the tax so required to be withheld  
4 shall not be collected from the employer but such employer shall not  
5 be relieved from the liability for penalties or interest otherwise  
6 applicable because of such failure to withhold the tax.

7        ~~G.~~ H. Every person making payments of winnings subject to  
8 withholding shall, for each monthly period, on or before the  
9 twentieth day of the month following the payment of such winnings  
10 pay over to the Tax Commission the amounts so withheld, and shall  
11 file a return, in a form as prescribed by the Tax Commission.

12        ~~H.~~ I. Every person making payments of winnings subject to  
13 withholding shall furnish to each recipient on or before January 31  
14 of the succeeding year a written statement in a form as prescribed  
15 by the Tax Commission. Every person making such reports shall also  
16 furnish a copy of such report to the Tax Commission in a manner and  
17 at a time as shall be prescribed by the Tax Commission.

18        ~~SECTION 4. This act shall become effective July 1, 2016.~~

19        ~~SECTION 5. It being immediately necessary for the preservation~~  
20 ~~of the public peace, health and safety, an emergency is hereby~~  
21 ~~declared to exist, by reason whereof this act shall take effect and~~  
22 ~~be in full force from and after its passage and approval.~~

23 COMMITTEE REPORT BY: COMMITTEE ON FINANCE  
24 March 22, 2016 - DO PASS AS AMENDED