STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 369 By: Snyder

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 2355, as last amended by Section 2, Chapter 427, O.S.L. 1998, Section 3, Chapter 427, O.S.L. 1998 and Section 5011, as last amended by Section 6, Chapter 427, O.S.L. 1998 (68 O.S. Supp. 2000, Sections 2355, 4001 and 5011), which relate to income taxes, duties of the State Board of Equalization and the Sales Tax Relief Act; modifying amount of income tax due on certain capital gains; providing procedure for adjustment of such amount for certain tax years; deleting obsolete language; making certain contingent provisions of the Sales Tax Relief Act permanent; modifying and specifying duties of State Board of Equalization; and providing effective dates.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 2355, as last amended by Section 2, Chapter 427, O.S.L. 1998 (68 O.S. Supp. 2000, Section 2355), is amended to read as follows:

Section 2355. A. Individuals. Except as otherwise provided in ~~Section 3 of this act~~ subsection F of this section, for all taxable years beginning after December 31, 1998, a tax is hereby imposed upon the Oklahoma taxable income of every resident or nonresident individual, which tax shall be computed at the option of the taxpayer under one of the two following methods:

1. METHOD 1.

a. Single individuals and married individuals filing separately not deducting federal income tax:

(1) 1/2% tax on first $1,000.00 or part thereof,

(2) 1% tax on next $1,500.00 or part thereof,

(3) 2% tax on next $1,250.00 or part thereof,

(4) 3% tax on next $1,150.00 or part thereof,

(5) 4% tax on next $1,300.00 or part thereof,

(6) 5% tax on next $1,500.00 or part thereof,

(7) 6% tax on next $2,300.00 or part thereof, and

(8) ~~(a)~~ for taxable years beginning after December 31, 1998, 6.75% tax on the remainder~~, or~~

~~(b) for taxable years beginning after December 31, 1999, for which the State Board of Equalization suspends the provisions of subdivision (a) of this division pursuant to the provisions of Section 3 of this act, 7% tax on the remainder~~.

b. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code not deducting federal income tax:

(1) 1/2% tax on first $2,000.00 or part thereof,

(2) 1% tax on next $3,000.00 or part thereof,

(3) 2% tax on next $2,500.00 or part thereof,

(4) 3% tax on next $2,300.00 or part thereof,

(5) 4% tax on next $2,400.00 or part thereof,

(6) 5% tax on next $2,800.00 or part thereof,

(7) 6% tax on next $6,000.00 or part thereof, and

(8) ~~(a)~~ for taxable years beginning after December 31, 1998, 6.75% tax on the remainder~~, or~~

~~(b) for taxable years beginning after December 31, 1999, for which the State Board of Equalization suspends the provisions of subdivision (a) of this division pursuant to~~

~~the provisions of Section 3 of this act, 7% tax on the remainder~~.

2. METHOD 2.

a. Single individuals and married individuals filing separately deducting federal income tax:

(1) 1/2% tax on first $1,000.00 or part thereof,

(2) 1% tax on next $1,500.00 or part thereof,

(3) 2% tax on next $1,250.00 or part thereof,

(4) 3% tax on next $1,150.00 or part thereof,

(5) 4% tax on next $1,200.00 or part thereof,

(6) 5% tax on next $1,400.00 or part thereof,

(7) 6% tax on next $1,500.00 or part thereof,

(8) 7% tax on next $1,500.00 or part thereof,

(9) 8% tax on next $2,000.00 or part thereof,

(10) 9% tax on next $3,500.00 or part thereof, and

(11) 10% tax on the remainder.

b. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code deducting federal income tax:

(1) 1/2% tax on the first $2,000.00 or part thereof,

(2) 1% tax on the next $3,000.00 or part thereof,

(3) 2% tax on the next $2,500.00 or part thereof,

(4) 3% tax on the next $1,400.00 or part thereof,

(5) 4% tax on the next $1,500.00 or part thereof,

(6) 5% tax on the next $1,600.00 or part thereof,

(7) 6% tax on the next $1,250.00 or part thereof,

(8) 7% tax on the next $1,750.00 or part thereof,

(9) 8% tax on the next $3,000.00 or part thereof,

(10) 9% tax on the next $6,000.00 or part thereof, and

(11) 10% tax on the remainder.

B. Nonresident aliens. In lieu of the rates set forth in subsection A above, there shall be imposed on nonresident aliens, as defined in the Internal Revenue Code, a tax of eight percent (8%) instead of thirty percent (30%) as used in the Internal Revenue Code, with respect to the Oklahoma taxable income of such nonresident aliens as determined under the provision of the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection shall deduct and withhold from such amounts paid each payee an amount equal to eight percent (8%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or before January 31, of the succeeding year, a written statement showing the name of the payer, the name of the payee and his social security account number, if any, the total amount paid subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

C. Corporations. ~~For all taxable years beginning after December 31, 1989~~ Except as otherwise provided in subsection F of this section, a tax is hereby imposed upon the Oklahoma taxable income of every corporation doing business within this state or

deriving income from sources within this state in an amount equal to six percent (6%) thereof.

There shall be no additional Oklahoma income tax imposed on accumulated taxable income or on undistributed personal holding company income as those terms are defined in the Internal Revenue Code.

D. Certain foreign corporations. In lieu of the tax imposed in ~~the first paragraph of~~ subsection C of this section, ~~for all taxable years beginning after December 31, 1989,~~ there shall be imposed on foreign corporations, as defined in the Internal Revenue Code, a tax of six percent (6%) instead of thirty percent (30%) as used in the Internal Revenue Code, where such income is received from sources within Oklahoma, in accordance with the provisions of the Internal Revenue Code and the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection shall deduct and withhold from such amounts paid each payee an amount equal to six percent (6%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or before January 31, of the succeeding year, a written statement showing the name of the payer, the name of the payee and his social security account number, if any, the total amounts paid subject to taxation, the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein

required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

E. Fiduciaries. A tax is hereby imposed upon the Oklahoma taxable income of every trust and estate at the same rates as are provided in subsection A of this section for single individuals. Fiduciaries are not allowed a deduction for any federal income tax paid.

F. For all taxable years beginning after December 31, 2001, the amount of tax upon that portion of Oklahoma taxable income attributable to long-term capital gains, as such term is defined in the Internal Revenue Code, 26 U.S.C., Section 1 et seq., shall be computed by dividing the total amount of Oklahoma taxable income for the taxable year by the total amount of Oklahoma income tax due upon such income for the taxable year. The resulting quotient shall be multiplied by the amount of Oklahoma taxable income attributable to long-term capital gains for the taxpayer for that taxable year. The resulting product, which shall be the amount of tax upon that portion of Oklahoma taxable income attributable to long-term capital gains, shall be reduced as follows:

1. For the first year for which the State Board of Equalization makes a finding resulting in a reduction in the amount of long-term capital gains subject to Oklahoma income taxes as provided in Section 4001 of this title, eighty-seven and one-half percent (87.5%) of such amount shall be due as income taxes for that taxable year;

2. For the second year for which the Board makes a finding resulting in a reduction in the amount of long-term capital gains subject to Oklahoma income taxes as provided in Section 4001 of this title, seventy-five percent (75%) of such amount shall be due as income taxes for that taxable year;

3. For the third year for which the Board makes a finding resulting in a reduction in the amount of long-term capital gains

subject to Oklahoma income taxes as provided in Section 4001 of this title, sixty-two and one-half percent (62.5%) of such amount shall be due as income taxes for that taxable year;

4. For the fourth year for which the Board makes a finding resulting in a reduction in the amount of long-term capital gains subject to Oklahoma income taxes as provided in Section 4001 of this title, fifty percent (50%) of such amount shall be due as income taxes for that taxable year;

5. For the fifth year for which the Board makes a finding resulting in a reduction in the amount of long-term capital gains subject to Oklahoma income taxes as provided in Section 4001 of this title, thirty-seven and one-half percent (37.5%) of such amount shall be due as income taxes for that taxable year;

6. For the sixth year for which the Board makes a finding resulting in a reduction in the amount of long-term capital gains subject to Oklahoma income taxes as provided in Section 4001 of this title, twenty-five percent (25%) of such amount shall be due as income taxes for that taxable year;

7. For the seventh year for which the Board makes a finding resulting in a reduction in the amount of long-term capital gains subject to Oklahoma income taxes as provided in Section 4001 of this title, twelve and one-half percent (12.5%) of such amount shall be due as income taxes for that taxable year; and

8. For the eighth year for which the Board makes a finding resulting in a reduction in the amount of long-term capital gains subject to Oklahoma income taxes as provided in Section 4001 of this title, and for subsequent taxable years, no tax shall be imposed pursuant to the provisions of this section on long-term capital gains.

G. Tax rate tables. ~~For all taxable years beginning after December 31, 1991, in~~ In lieu of the tax imposed by subsection A of this section, there is hereby imposed for each taxable year on the

taxable income of every individual, whose taxable income for such taxable year does not exceed the ceiling amount, a tax determined under tables, applicable to such taxable year which shall be prescribed by the Tax Commission and which shall be in such form as it determines appropriate. In the table so prescribed, the amounts of the tax shall be computed on the basis of the rates prescribed by subsection A of this section. For purposes of this subsection, the term "ceiling amount" means, with respect to any taxpayer, the amount determined by the Tax Commission for the tax rate category in which such taxpayer falls.

SECTION 2. AMENDATORY Section 3, Chapter 427, O.S.L. 1998 (68 O.S. Supp. 2000, Section 4001), is amended to read as follows:

Section 4001. A. ~~In addition to any other duties prescribed by law, at the meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held in December 1999, the State Board of Equalization shall determine for fiscal year 2001;~~

~~1. The amount of funds available for appropriation if the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes are not in effect; and~~

~~2. The amount by which such funds will be reduced if such provisions are in effect.~~

~~If the amount determined pursuant to the provisions of paragraph 1 of this subsection less the amount of funds available for appropriation for fiscal year 2000 is greater than the amount determined pursuant to the provisions of paragraph 2 of this subsection, the Board shall make a finding that economic growth in the state warrants the taking effect of the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes and such provisions shall be effective for the following calendar year. If the amount determined pursuant to the provisions of paragraph 1 of this subsection less the amount of funds available for appropriation~~

~~for fiscal year 2000 is less than the amount determined pursuant to the provisions of paragraph 2 of this subsection, but the amount determined pursuant to the provisions of paragraph 1 of this subsection is greater than the amount of funds available for appropriation for fiscal year 2000, the Board shall make a finding that economic growth in the state does not warrant the taking effect of the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes and the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsection B of Section 5011 of Title 68 of the Oklahoma Statutes shall remain in effect for the following calendar year and the Board shall proceed pursuant to the provisions of subsection D of this section. If the amount determined pursuant to the provisions of paragraph 1 of this subsection is less than the amount of funds available for appropriation for fiscal year 2000, the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and the provisions of subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes shall be suspended for the calendar year 2000 and the Board shall proceed pursuant to the provisions of subsection C of this section.~~

~~B.~~ In addition to any other duties prescribed by law, at each meeting required by paragraph ~~1~~ 3 of Section 23 of Article X of the Oklahoma Constitution ~~to be held following a meeting at which the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes are not suspended pursuant to the provisions of this section~~, the State Board of Equalization shall determine the amount of funds available for appropriation for the following fiscal year. If such amount is greater than the amount of funds available for appropriations for the then-current fiscal year, the Board shall make a finding that

economic conditions in the state warrant ~~the continuation of the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes and such provisions~~ a reduction in the amount of tax due on long-term capital gains as provided in subsection F of Section 2355 of this title and such reduction shall be effective for the following calendar year. If such finding is not made, ~~such provisions shall be suspended for the following calendar year and the Board shall proceed pursuant to the provisions of subsection C of this section.~~

~~C. In addition to any other duties prescribed by law, at the meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held in December of any calendar year for which the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsection C of Section 5011 of Title 68 of the Oklahoma Statutes are suspended pursuant to the provisions of subsection B of this section, the State Board of Equalization shall determine for the following fiscal year:~~

~~1. The amount of funds available for appropriation if the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and the provisions of subsection B of Section 5011 of Title 68 of the Oklahoma Statutes are not in effect; and~~

~~2. The amount by which such funds will be reduced if such provisions are in effect.~~

~~If the amount determined pursuant to the provisions of paragraph 1 of this subsection less the amount of funds available for appropriation for the then-current fiscal year is greater than the amount determined pursuant to the provisions of paragraph 2 of this subsection, the Board shall make a finding that economic growth in~~

~~the state warrants the taking effect of the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and of subsection B of Section 5011 of Title 68 of the Oklahoma Statutes and such provisions shall be effective for the following calendar year. If such finding is not made, such provisions and the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes shall be suspended for the following calendar year and the Board shall again proceed pursuant to the provisions of this subsection.~~

~~D. In addition to any other duties prescribed by law, at the first meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution to be held following a meeting at which the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsection B of Section 5011 of Title 68 of the Oklahoma Statutes are not suspended pursuant to the provisions of subsection C of this section, the Board shall determine for the following fiscal year:~~

~~1. The amount of funds available for appropriation for the following fiscal year if the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes are not in effect; and~~

~~2. The amount by which such funds will be reduced if such provisions are in effect.~~

~~If the amount determined pursuant to the provisions of paragraph 1 of this subsection less the amount of funds available for appropriation for the then-current fiscal year is greater than the amount determined pursuant to the provisions of paragraph 2 of this subsection, the Board shall make a finding that economic growth in the state warrants the taking effect of the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes and such provisions shall be effective for the following calendar year. If the amount determined pursuant to the provisions of paragraph 1 of~~

~~this subsection less the amount of funds available for appropriation for the then-current fiscal year is less than the amount determined pursuant to the provisions of paragraph 2 of this subsection, but the amount determined pursuant to the provisions of paragraph 1 of this subsection is greater than the amount of funds available for appropriation for the then-current fiscal year, the Board shall make a finding that economic growth in the state does not warrant the taking effect of the provisions of subsection C of Section 5011 of Title 68 of the Oklahoma Statutes and the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and subsection B of Section 5011 of Title 68 of the Oklahoma Statutes shall remain in effect for the following calendar year and the Board shall again proceed pursuant to the provisions of this subsection. If the amount determined pursuant to the provisions of paragraph 1 of this subsection is less than the amount of funds available for appropriation for the then-current fiscal year, the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 and the provisions of subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes shall be suspended for the following calendar year and the Board shall proceed pursuant to the provisions of subsection C of this section.~~

~~E. Upon the suspension of the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and the provisions of subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes, the provisions of subdivision (b) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of the Oklahoma Statutes and the provisions of subsection A of Section 5011 of Title 68 of the Oklahoma Statutes shall be in effect for the following calendar year. At its next meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution following~~

~~a meeting at which the provisions of subdivision (a) of division (8) of subparagraph a of paragraph 1 of subsection A of Section 2355 of Title 68 of the Oklahoma Statutes and the provisions of subsections B and C of Section 5011 of Title 68 of the Oklahoma Statutes are suspended, the Board shall proceed pursuant to the provisions of subsection C of this section~~ the amount of tax due on long-term capital gains shall not be reduced.

~~F.~~ B. As used in this section, "funds available for appropriation" means the amount certified as available for appropriation for the next fiscal year as determined by the State Board of Equalization at the meeting required by paragraph 1 of Section 23 of Article X of the Oklahoma Constitution. Such term shall not include:

1. Any appropriation of bond proceeds;

2. Appropriations from or amounts to be deposited to the Constitutional Reserve Fund;

3. Appropriations from or amounts to be deposited to the Education Reform Revolving Fund;

4. Appropriations from or amounts to be deposited to revolving funds;

5. Appropriations from or amounts to be deposited to the State Transportation Fund;

6. Federal funds;

~~6.~~ 7. Appropriations from or amounts to be deposited to the Cash Flow Reserve Fund;

~~7.~~ 8. Prior year certified but unappropriated funds; or

~~8.~~ 9. Any cash on hand.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 5011, as last amended by Section 6, Chapter 427, O.S.L. 1998 (68 O.S. Supp. 2000, Section 5011), is amended to read as follows:

Section 5011. A. ~~Except as otherwise provided by this section, beginning with the calendar year 1990 and for each calendar year~~

~~through 1998, and for years in which the State Board of Equalization suspends subsection B or C of this section pursuant to the provisions of Section 3 of this act, any individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made and whose gross household income for such year does not exceed Twelve Thousand Dollars ($12,000.00) may file a claim for sales tax relief.~~

~~B.~~ For calendar year 1999, ~~and for all other years for which the requirements of Section 3 of this act may apply,~~ any individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made may file a claim for sales tax relief if the gross household income for such year does not exceed the following amounts:

1. For an individual not subject to the provisions of paragraph 2 of this subsection and claiming no allowable personal exemption other than the allowable personal exemption for that individual or the spouse of that individual, Fifteen Thousand Dollars ($15,000.00); or

2. For an individual claiming one or more allowable personal exemptions other than the allowable personal exemption for that individual or the spouse of that individual, an individual with a physical disability constituting a substantial handicap to employment, or an individual who is sixty-five (65) years of age or older at the close of the tax year, Thirty Thousand Dollars ($30,000.00).

~~C. Except as otherwise may be provided in Section 3 of this act, for~~ B. For calendar year 2000, and for ~~all other years for which the requirements of Section 3 of this act may apply~~ subsequent calendar years, an individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made may file a claim for sales tax relief if the gross household income for such year does not exceed the following amounts:

1. For an individual not subject to the provisions of paragraph 2 of this subsection and claiming no allowable personal exemption other than the allowable personal exemption for that individual or the spouse of that individual, Twenty Thousand Dollars ($20,000.00); or

2. For an individual claiming one or more allowable personal exemptions other than the allowable personal exemption for that individual or the spouse of that individual, an individual with a physical disability constituting a substantial handicap to employment, or an individual whose is sixty-five (65) years of age or older at the close of the tax year, Fifty Thousand Dollars ($50,000.00).

~~D.~~ C. The amount of the claim filed pursuant to the Sales Tax Relief Act shall be Forty Dollars ($40.00) multiplied by the number of allowable personal exemptions. As used in the Sales Tax Relief Act, "allowable personal exemption" means a personal exemption to which the taxpayer would be entitled pursuant to the provisions of the Oklahoma Income Tax Act, except for:

1. The exemptions such taxpayer would be entitled to pursuant to Section 2358 of this title if such taxpayer or spouse is blind or sixty-five (65) years of age or older at the close of the tax year;

2. An exemption for a person convicted of a felony if during all or any part of the calendar year for which the claim is filed such person was an inmate in the custody of the Department of Corrections; or

3. An exemption for a person if during all or any part of the calendar year for which the claim is filed such person resided outside of this state.

~~E.~~ D. A person convicted of a felony shall not be permitted to file a claim for sales tax relief pursuant to the provisions of Sections 5010 through 5016 of this title for the period of time during which the person is an inmate in the custody of the

Department of Corrections. Such period of time shall include the entire calendar year if the person is in the custody of the Department of Corrections during any part of the calendar year. The provisions of this subsection shall not prohibit all other members of the household of an inmate from filing a claim based upon the personal exemptions to which the household members would be entitled pursuant to the provisions of the Oklahoma Income Tax Act.

~~F. The Department of Corrections shall withhold up to fifty percent (50%) of any money inmates receive for claims made pursuant to the Sales Tax Relief Act prior to September 1, 1991, for costs of incarceration.~~

~~G.~~ E. For purposes of Section 139.105 of Title 17 of the Oklahoma Statutes, the gross household income of any individual who may file a claim for sales tax relief shall not exceed Twelve Thousand Dollars ($12,000.00).

SECTION 4. Section 1 of this act shall become effective January 1, 2002.

SECTION 5. Sections 2 and 3 of this act shall become effective November 1, 2001.

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