

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1438

By: Paxton

6 AS INTRODUCED

7 An Act relating to income tax; amending 68 O.S. 2011,
8 Section 2353, as amended by Section 4, Chapter 401,
9 O.S.L. 2013 (68 O.S. Supp. 2017, Section 2353), which
10 relates to definitions; modifying definition to limit
11 time period during which certain treatment of income
12 is permitted; and declaring an emergency.

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

13 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2353, as
14 amended by Section 4, Chapter 401, O.S.L. 2013 (68 O.S. Supp. 2017,
15 Section 2353), is amended to read as follows:

16 Section 2353. For the purpose of and when used in the Oklahoma
17 Income Tax Act, unless the context otherwise requires:

18 1. "Tax Commission" means the Oklahoma Tax Commission;

19 2. "Internal Revenue Code" means the United States Internal
20 Revenue Code, as the same may be amended or adopted from time to
21 time applicable to the taxable year; and other provisions of the
22 laws of the United States relating to federal income taxes, as the
23 same may be or become effective at any time or from time to time
24 applicable to the taxable year;

1 3. Any term used in the Oklahoma Income Tax Act shall have the
2 same meaning as when used in a comparable context in the Internal
3 Revenue Code, unless a different meaning is clearly required. For
4 all taxable periods covered by the Oklahoma Income Tax Act, the tax
5 status and all elections of all taxpayers covered by the Oklahoma
6 Income Tax Act shall be the same for all purposes material hereto as
7 they are for federal income tax purposes except when the Oklahoma
8 Income Tax Act specifically provides otherwise;

9 4. "Resident individual" means a natural person who is
10 domiciled in this state, and any other natural person who spends in
11 the aggregate more than seven (7) months of the taxable year within
12 this state shall be presumed to be a resident for purposes of the
13 Oklahoma Income Tax Act in absence of proof to the contrary. A
14 natural person who resides less than seven (7) months of the taxable
15 year within this state is presumed to be a "part-year resident
16 individual" for purposes of the Oklahoma Income Tax Act, in absence
17 of proof to the contrary. A "nonresident individual" means an
18 individual other than a resident individual or a part-year resident
19 individual.

20 For all tax years beginning after December 31, 1981, a
21 nonresident individual, with respect to foreign earned income and
22 deductions, shall include an individual who:
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- a. during any period of twenty-four (24) consecutive months is out of the United States at least five hundred fifty (550) days,
- b. during such period referred to in subparagraph a of this paragraph is not present in this state for more than ninety (90) days during any taxable year,
- c. during any period of less than an entire taxable year, which period is contained within the period referred to in subparagraph a of this paragraph, is not present in this state for a number of days in excess of an amount which bears the same ratio to ninety (90) days as the number of days contained in the period of less than an entire taxable year bears to three hundred sixty-five (365), and
- d. during such period referred to in subparagraph a of this paragraph does not maintain a permanent place of abode in this state at which the spouse of the individual, unless such spouse is legally separated, or minor children of the individual are present for more than one hundred eighty (180) days;

5. "Resident estate" means the estate of a decedent who at death was domiciled in this state. "Nonresident estate" means an estate other than a resident estate;

6. "Resident trust" means:

1 a. a trust, or a portion of a trust, consisting of
2 property transferred by will of a decedent domiciled
3 in this state at death, or a trust, or a portion of a
4 trust, consisting of the property of a person
5 domiciled in this state if such trust is not
6 irrevocable, and

7 b. a trust, or portion of a trust, consisting of property
8 of a person domiciled in this state at the time such
9 property was transferred to the trust if such trust or
10 portion was then irrevocable or a person domiciled in
11 this state at the time such trust or portion became
12 irrevocable. A trust, or portion of a trust, is
13 irrevocable if it is not subject to a power
14 exercisable solely by the transferor of such property,
15 at any time, to revest title in the transferor.

16 "Nonresident trust" means a trust other than a
17 resident trust;

18 7. "Resident partner" means a partner who is a resident
19 individual, a resident estate, a resident trust or a resident
20 corporation. "Nonresident partner" means a partner other than a
21 resident partner;

22 8. "Resident beneficiary" means a beneficiary of an estate or
23 trust which beneficiary is a resident individual, a resident estate,
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1 a resident trust or a resident corporation. "Nonresident
2 beneficiary" means a beneficiary other than a resident beneficiary;

3 9. "Resident corporation" means a corporation whose principal
4 place of business is located within the State of Oklahoma.

5 "Nonresident corporation" means any corporation other than a
6 resident corporation;

7 10. "Taxable income" with respect to any taxpayer means the
8 "taxable income", "life insurance company taxable income", "mutual
9 insurance company taxable income", "(regulated) investment company
10 taxable income", "real estate investment trust taxable income", and
11 "cooperatives' taxable income" and any other "taxable income" as
12 defined in the Internal Revenue Code as applies to such taxpayer or
13 any other income of such taxpayer including, but not limited to,
14 lump sum distributions as defined by the Internal Revenue Code of
15 1986, as amended; provided, in the case of income derived from oil
16 and gas well production, any taxpayer, at his or her option, may
17 deduct as an allowance for depletion, in lieu of other calculation
18 of depletion based on the cost of the oil and gas deposit, twenty-
19 two percent (22%) of the gross income derived from the properties
20 during ~~the~~ a taxable year which ends on or before December 31, 2018.

21 Provided further, for tax years beginning on or after January 1,
22 2001, and ending on or before December 31, 2011, and for tax years
23 beginning on or after January 1, 2014, and ending on or before
24 December 31, 2018, for major oil companies as defined in Section

288.2 of Title 52 of the Oklahoma Statutes, such allowance shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property. During taxable years other than those specified herein if the allowance is authorized by statute, for all taxpayers, such allowance shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property. If a depletion allowance is allowed as a deduction in arriving at the adjusted gross income in the case of an individual, or taxable income for corporations and trusts, or distributable income of partnerships by the Internal Revenue Service, the percentage depletion so calculated shall in no event be a duplication of depletion allowed on the Federal Income Tax Return;

11. "Adjusted gross income" means "adjusted gross income" as defined in the Internal Revenue Code;

12. "Oklahoma taxable income" means "taxable income" as reported (or as would have been reported by the taxpayer had a return been filed) to the federal government, and in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided;

13. "Oklahoma adjusted gross income" means "adjusted gross income" as reported to the federal government (or as would have been reported by the taxpayer had a return been filed), or in the event

1 of adjustments thereby by the federal government as finally
2 ascertained under the Internal Revenue Code, adjusted further as
3 hereinafter provided;

4 14. "State" means any state of the United States, the District
5 of Columbia, the Commonwealth of Puerto Rico, any territory or
6 possession of the United States or any political subdivision
7 thereof; and

8 15. "Taxpayer" means any person subject to a tax imposed by
9 this Article, or whose income is, in whole or in part, subject to a
10 tax imposed by any provision of this article.

11 SECTION 2. It being immediately necessary for the preservation
12 of the public peace, health or safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

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