

MEMORANDUM

OKLAHOMA TAX COMMISSION
TAX POLICY AND RESEARCH

DATE: February 27, 2018

SUBJECT: SB 1086 – Proposed Committee Substitute (Req. No. 3439)

TO: Rick Miller, Director

FROM: Joe Gappa, Deputy Director

The Proposed Committee Substitute for SB 1086 proposes to amend 68 O.S. §2358 as it relates to the Oklahoma capital gain deduction for corporations and individuals by disallowing the deduction effective for tax year 2018 and subsequent tax years.

Under current law, both corporate¹ and individual² taxpayers are allowed to deduct from Oklahoma taxable income for corporations and adjusted gross income for individuals one hundred percent (100%) of Oklahoma source capital gains³, provided certain holding periods are met.

This measure proposes to amend both 68 O.S. § 2358 (D) and 68 O.S. § 2358 (F) by eliminating the Oklahoma capital gain deduction in these subsections effective for tax year 2019. This measure further requires that for tax year 2018 the transaction resulting in the capital gain must occur before July 1, 2018.

For purposes of this analysis, Oklahoma capital gain deduction data for individual income tax filers⁴ for tax years 2005 through 2015 was analyzed. It is estimated the average⁵ annual tax expenditure is \$120.5 million.

No changes in withholding or estimated tax payments are anticipated. An unknown increase in income tax revenue is expected for FY19 when the 2018 income tax returns are filed and an estimated revenue increase of \$120.5 million occurring in FY20 when the 2019 income tax returns are filed.

¹ 68 O.S. § 2358 (D) Corporate taxpayers also includes estates or trusts.

² 68 O.S. § 2358 (F)

³ Oklahoma source capital gains generally means real or tangible personal property located in Oklahoma or the sale of stock or ownership interest in an Oklahoma company, limited liability company or partnership. Oklahoma company, limited liability company or partnership is an entity whose primary headquarters has been in Oklahoma at least three (3) uninterrupted years prior to the date of the transaction generating the capital gain.

⁴ Data for corporate capital gain exclusions is not available. It is likely that the impact for corporations is relatively small.

⁵ The average estimate for the 10 year period was used since capital gains can fluctuate. The highest estimated expenditure year was tax year 2007 (\$188.5 million) and the lowest was tax year 2009 (\$47.5 million).