

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 602 By: Rader of the Senate
3 and
4 Fetgatter of the House
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7 An Act relating to tax returns; amending 68 O.S.
8 2021, Sections 2373 and 2375, which relate to payment
9 of refunds, extensions, and delinquency and
10 deficiency of payments; requiring certain claims be
11 made in the form prescribed by the Oklahoma Tax
12 Commission; limiting claims made to within a period
13 of certain date; prohibiting refund for claims made
14 after certain period; providing exception; modifying
15 limitation on certain amount of refund to taxes paid
16 in certain preceding period; deleting requirement
17 that certain information filed constitutes a claim;
18 prohibiting application of limitation to certain
19 claims filed; modifying date requiring taxpayer to
20 remit income tax due; excluding extensions from date
21 taxes become delinquent; updating statutory language;
22 and providing an effective date.

23 AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill
24 and insert:

25 "An Act relating to revenue and taxation; amending
26 Section 1, Chapter 343, O.S.L. 2022 (68 O.S. Supp.
27 2022, Section 2358.6a), which relates to bonus
28 depreciation; clarifying application of depreciation;
29 clarifying procedure for claiming depreciation;
30 authorizing filing of amended tax return under
31 certain conditions; prohibiting Oklahoma Tax

Commission from assessing penalties or interest under certain conditions; and providing an effective date.

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

SECTION 1. AMENDATORY Section 1, Chapter 343, O.S.L. 2022 (68 O.S. Supp. 2022, Section 2358.6a), is amended to read as follows:

Section 2358.6a A. As used in this section:

1. "Internal Revenue Code" means Title 26 of the United States Code also known as the federal Internal Revenue Code of 1986, as amended;

2. "Tax Cuts and Jobs Act" means Public Law No. 115-97 (115th Congress Public Law 97);

3. "Qualified property" shall have the same meaning as in Internal Revenue Code Section 168(k) as the Code existed on January 1, 2021, and shall apply to property placed in service after December 31, 2021;

4. "Qualified improvement property" shall have the same meaning as in Internal Revenue Code Section 168(e)(6) as the Code existed on January 1, 2021, and shall apply to property placed in service after December 31, 2021; and

5. "Full expensing" or "one hundred percent (100%) bonus depreciation" means a method for taxpayers to recover costs for certain expenditures in research and experimentation and depreciable

1 business assets by immediately deducting the full cost of such
2 expenditures in the tax year in which the cost is incurred or the
3 property is placed in service.

4 B. Taxpayers shall have the option for immediate and full
5 expensing for qualified property and qualified improvement property
6 as follows:

7 1. For purposes of computing income tax for taxable years
8 beginning after December 31, 2021, the cost of expenditures for
9 business assets that are qualified property or qualified improvement
10 property covered under Section 168 of the Internal Revenue Code
11 shall be eligible for one hundred percent (100%) bonus depreciation
12 and may be deducted as an expense incurred by the taxpayer during
13 the taxable year during which the property is placed in service,
14 notwithstanding any changes to federal law related to amortization
15 of cost recovery beginning on or after January 1, 2023, and shall
16 permanently remain fully and immediately deductible as an expense in
17 the tax year in which the property is placed in service for purposes
18 of calculating the taxpayer's income; ~~and~~

19 2. If a taxpayer elects immediate and full expensing of
20 qualified property or qualified improvement property, any
21 depreciation calculated and claimed pursuant to this section shall
22 in no event be a duplication of any depreciation or bonus
23 depreciation allowed or permitted on the federal income tax return
24 of the taxpayer. For income tax returns filed on or after January

1, 2023, federal taxable income shall be increased by the amount of depreciation received under the Internal Revenue Code for the qualified property or qualified improvement property for which the election has been made to immediately and fully expense the asset on the Oklahoma income tax return for the year in which the property was placed in service. A taxpayer filing a return for which federal taxable income is not increased as provided for in this section prior to October 1, 2023, shall file an amended return reflecting such increase not later than June 30, 2024. The Tax Commission shall not assess penalties or interest with respect to the failure to reflect such increase if a correct amended return is filed as required herein; and

3. The taxpayer's decision to recover investment costs through immediate expensing in the year the investment cost is incurred, or amortized over an amortization schedule, is irrevocable unless specifically allowed for by the Oklahoma Tax Commission.

C. 1. To conform to Section 179 of the Internal Revenue Code, taxpayers shall be allowed to immediately deduct as an expense the cost of certain depreciable business assets in the tax year in which the property is placed in service.

2. For purposes of computing income tax for taxable years beginning after December 31, 2021, taxpayers may elect to treat the cost of any Section 179 of the Internal Revenue Code property as an expense which is not chargeable to the capital account. Any cost so

1 treated shall be allowed as a deduction for the taxable year in
2 which the Section 179 Internal Revenue Code property is placed in
3 service.

4 D. The Oklahoma Tax Commission shall, within sixty (60) days of
5 the effective date of this act, promulgate rules for implementation
6 of this act which shall conform to the Internal Revenue Code of 1986
7 and must be consistent with the Internal Revenue Service's rules.
8 The provisions of this section shall supersede to the extent of any
9 inconsistency with any administrative rule.

10 SECTION 2. This act shall become effective November 1, 2023."

11 Passed the House of Representatives the 25th day of April, 2023.

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14 Presiding Officer of the House of
Representatives

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16 Passed the Senate the ____ day of _____, 2023.

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18
19 Presiding Officer of the Senate

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2 BILL NO. 602

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18 claims filed; modifying date requiring taxpayer to
19 remit income tax due; excluding extensions from date
20 taxes become delinquent; updating statutory language;
21 and providing an effective date.

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

23 SECTION 3. AMENDATORY 68 O.S. 2021, Section 2373, is
24 amended to read as follows:

Section 2373. A. Any claim for refund filed pursuant to this
section must be made on a return, in the form prescribed by the
Oklahoma Tax Commission.

B. Any claim for refund of an overpayment of any tax imposed by
Section 2355 of this title must be made within three (3) years from
the due date of the return, including the period of any extension of

1 time for filing a return, or two (2) years from the payment of the
2 tax liability, whichever period expires later, or, if no return was
3 filed by the taxpayer, within two (2) years from the time the tax
4 was paid.

5 C. Except as provided in subsection H of Section 2375 of this
6 title, no refund shall be allowed or made after the expiration of
7 the period of limitation prescribed in subsection B of this section
8 for the filing of a claim for refund. If a claim for refund is
9 filed during the period prescribed in subsection B of this section,
10 the amount of the refund, if any, shall not exceed the amount of tax
11 paid within the period, immediately preceding the filing of the
12 claim, equal to three (3) years plus the period of any extension of
13 time for filing a return. If the claim was not filed within the
14 three-year period prescribed in subsection B of this section, the
15 refund shall not exceed the portion of the tax paid during the two
16 (2) years immediately preceding the filing of the claim.

17 D. If, upon any revision or adjustment, including overpayment
18 or illegal payment on account of income derived from tax-exempt
19 Indian land, any refund is found to be due any taxpayer, it shall be
20 paid out of the "Income Tax Withholding Refund Account", created by
21 Section 2385.16 of this title, in the same manner as refunds are
22 paid pursuant to such section. ~~The information filed, reflecting~~
23 ~~the revision or adjustment, shall constitute the claim for refund.~~

1 E. ~~Except as provided in subsection H of Section 2375 of this~~
2 ~~title, the amount of the refund shall not exceed the portion of the~~
3 ~~tax paid during the three (3) years immediately preceding the filing~~
4 ~~of the claim, or, if no claim was filed, then during the three (3)~~
5 ~~years immediately preceding the allowance of the refund. However,~~
6 ~~this~~ The three-year limitation set forth in subsection C of this
7 section shall not apply to the amount of refunds payable upon claims
8 filed by members of federally recognized Indian tribes or the United
9 States on behalf of its Indian wards or former Indian wards, to
10 recover taxes illegally collected from tax-exempt lands. In the
11 case of any refund to a member of a federally recognized Indian
12 tribe or to the United States on behalf of its Indian wards or
13 former Indian wards, to recover taxes illegally collected on bonus
14 payments from oil and gas leases located on tax-exempt Indian lands
15 pursuant to this section, the Tax Commission shall pay interest on
16 all refunds issued after January 1, 1996, at the rate of six percent
17 (6%) per annum from the date of payment by the taxpayer to the date
18 of the refund.

19 F. In cases where the Tax Commission and the taxpayer have
20 signed a consent, as provided by law, extending the period during
21 which the tax may be assessed, the period during which the taxpayer
22 may file a claim for refund or during which an allowance for a
23 refund may be made shall be automatically extended to the final date
24 fixed by such consent plus thirty (30) days.

1 G. The Oklahoma Tax Commission may authorize the use of direct
2 deposit in lieu of refund checks for electronically filed income tax
3 returns.

4 SECTION 4. AMENDATORY 68 O.S. 2021, Section 2375, is
5 amended to read as follows:

6 Section 2375. A. ~~At the time of transmitting the return~~
7 ~~required hereunder to the Oklahoma Tax Commission~~ On the original
8 due date of the return, not including any extensions, the taxpayer
9 shall remit ~~therewith~~ to the Tax Commission the amount of tax due
10 under the applicable provisions of Section 2351 et seq. of this
11 title. Failure to pay such tax on or before the date the return is
12 due, not including any extensions, shall cause the tax to become
13 delinquent. If the return is filed electronically, the amount of
14 the tax due pursuant to the provisions of this article shall be due
15 on or before the twentieth day of April following the close of the
16 taxable year regardless of when the return is electronically filed.
17 The tax shall be deemed delinquent if unpaid after the twentieth day
18 of April if the return is electronically filed. Provided, if the
19 Internal Revenue Code provides for a later due date for returns of
20 individuals, the Tax Commission shall accept payments made with
21 returns filed by individuals by such date and such payments shall be
22 considered as timely paid.

23 B. If any tax due under Section 2351 et seq. of this title,
24 except a deficiency determined under Section 221 of this title, is

1 not paid on or before the date such tax becomes delinquent, a
2 penalty of five percent (5%) of the total amount of the tax due
3 shall be added thereto, collected, and paid. However, the Tax
4 Commission shall not collect the penalty assessed if the taxpayer
5 remits the tax and interest within sixty (60) days of the mailing of
6 a proposed assessment or voluntarily pays the tax upon the filing of
7 an amended return.

8 C. If any part of deficiency, arbitrary, or jeopardy assessment
9 made by the Tax Commission is based upon or occasioned by the
10 refusal of any taxpayer to file with the Tax Commission any return
11 as required by Section 2351 et seq. of this title, within ten (10)
12 days after a written demand for such report or return has been
13 served upon any taxpayer by the Tax Commission by registered letter
14 with a return receipt attached, the Tax Commission may assess and
15 collect, as a penalty, twenty-five percent (25%) of the amount of
16 the assessment. In the exercise of the authority granted by
17 subsection C of Section 223 and Section 224 of this title, the Tax
18 Commission shall assess the tax as an estimated tax on the basis of
19 its own determination of the Oklahoma taxable income of the
20 taxpayer, to be adjusted if and when Oklahoma taxable income is
21 ascertained under the provisions of Section 2351 et seq. of this
22 title.

23 D. If any part of any deficiency was due to negligence or
24 intentional disregard, without the intent to defraud, then ten

1 percent (10%) of the total amount of the deficiency, in addition to
2 such deficiency, including interest as authorized by law, shall be
3 added, collected, and paid.

4 E. If any part of any deficiency was due to fraud with intent
5 to evade tax, then fifty percent (50%) of the total amount of the
6 deficiency, in addition to such deficiency, including interest as
7 herein provided, shall be added, collected, and paid.

8 F. The provisions in this section for penalties shall supersede
9 all other provisions for penalties on income taxes. The provisions
10 in this section for penalties shall supersede the provisions in the
11 Uniform Tax Procedure Code, Section 201 et seq. of this title, only
12 to the extent of conflict between such provisions and the penalty
13 provisions in this section.

14 G. All taxes, penalties, and interest levied under Section 2351
15 et seq. of this title must be paid to the Tax Commission at Oklahoma
16 City, in the form or remittance required by and payable to it.

17 H. 1. The period of time prescribed in Section 223 of this
18 title, in which the procedures for the assessment of income tax may
19 be commenced by the Tax Commission, shall be tolled and extended
20 until the amount of taxable income for any year of a taxpayer under
21 the Internal Revenue Code has been finally determined under
22 applicable federal law and for the additional period of time
23 hereinafter provided in this subsection.

1 2. If, in such final determination, the amount of taxable
2 income for any year of a taxpayer under the Internal Revenue Code is
3 changed or corrected from the amounts included in the federal return
4 of the taxpayer for such year and such change or correction affects
5 the Oklahoma taxable income of the taxpayer for such year, the
6 taxpayer, within one (1) year after such final determination of the
7 corrected taxable income, shall file an amended return under Section
8 2351 et seq. of this title reporting the corrected Oklahoma taxable
9 income, and the Tax Commission shall make assessment or refund
10 within two (2) years from the date the return required by this
11 paragraph is filed and not thereafter, unless a waiver is agreed to
12 and signed by the Tax Commission and the taxpayer.

13 3. In the event of failure by a taxpayer to comply with the
14 provisions of paragraph 2 of this subsection, the statute of
15 limitations shall be tolled for a period of time equal to the time
16 between the date the amended return under this subsection is
17 required until such return is actually furnished.

18 4. In administering the provisions of this subsection, the Tax
19 Commission shall have the authority to audit each and every item of
20 income, deduction, credit, or any other matter related to the return
21 where such items or matters relate to allocation or apportionment
22 between ~~the State of Oklahoma~~ this state and some other state or the
23 federal government even if such items or matters were not affected
24 by revisions made in such final determination. Where such items or

1 matters do not relate to allocation or apportionment between ~~the~~
2 ~~State of Oklahoma~~ this state and some other state or the federal
3 government, the Tax Commission shall be bound by the revisions made
4 in such final determination.

5 5. The provisions of this subsection shall be effective on
6 September 1, 1993, and except in the case of tax years which are the
7 subject of closing, settlement, or resolution agreements entered
8 into by taxpayers and the Tax Commission, keep open all tax years
9 beginning after June 30, 1988, and all tax years beginning on or
10 before June 30, 1988, for which extensions of the statute of
11 limitations have been executed by the taxpayer, but only to the
12 extent such extensions remain open on the date of enactment hereof.

13 SECTION 5. This act shall become effective November 1, 2023.

14 Passed the Senate the 2nd day of March, 2023.

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Presiding Officer of the Senate

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18 Passed the House of Representatives the ____ day of _____,
19 2023.

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Presiding Officer of the House
of Representatives

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