STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1305 By: Rader

AS INTRODUCED

An Act relating to withholding tax rate; amending 68 O.S. 2021, Sections 2385.26 and 2385.30, which relate to deduction from royalty payments and pass-through entities; matching the required withholding rate to the highest marginal individual income tax rate; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2021, Section 2385.26, is amended to read as follows:

Section 2385.26. A. Each remitter, except as otherwise provided in subsection B of this section, shall deduct and withhold from each payment being made to any royalty interest owner in respect to production of oil and gas in this state, but not including that to which the remitter is entitled, an amount equal to ~~five percent (5%)~~ <u>the highest Oklahoma marginal individual income tax rate pursuant to Section 2355 of this title</u> of the gross amount which would have otherwise been payable to the person entitled to the payment.

B. The obligation to deduct and withhold from payments as provided in subsection A of this section does not apply to those payments which are made to:

1. Current or permanent residents of Oklahoma;

2. The United States, this state or any state or federal agency or political subdivision;

3. Any charitable institution;

4. Any federally recognized Indian tribe; or

5. A publicly-traded partnership as defined by Section 7704 (b) of the Internal Revenue Code, 26 U.S. Code 7704 (b), that is treated as a partnership for federal tax purposes under Section 7704 (c) of the Internal Revenue Code, 26 U.S. Code 7704 (c), or its publicly-traded partnership affiliates. As used in this paragraph, "publicly-traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability member interests or limited partnership interests of which are owned directly or indirectly by the publicly-traded partnership.

The obligation to deduct and withhold from payments as provided in subsection A of this section does not apply if the remitter and the royalty interest owner are the same person.

C. Any royalty interest owner from whom an amount is withheld pursuant to the provisions of subsection A of this section, or if the royalty interest owner is not liable to ~~the State of Oklahoma~~

this state for income taxes, any person to whom a royalty interest owner subsequently distributes royalty payments with respect to which an amount is withheld pursuant to the provisions of subsection A of this section, and who files an income tax return with this state is entitled to a credit against the tax as shown on the return for the amount withheld by the remitter under subsection A of this section. If the amount withheld is greater than the tax due on the return, the person filing the return shall be entitled to a refund in the amount of the overpayment.

SECTION 2. AMENDATORY 68 O.S. 2021, Section 2385.30, is amended to read as follows:

Section 2385.30. A. A pass-through entity shall withhold income tax at the ~~rate of five percent (5%)~~ highest Oklahoma marginal individual income tax rate pursuant to Section 2355 of this title from a nonresident member's share of the Oklahoma share of income of the entity distributed to each nonresident member and pay the withheld amount on or before the due date of the pass-through entity's income tax return~~,~~ including extensions.

The pass-through entity shall file a return with each payment to the Oklahoma Tax Commission. The return, in a form prescribed by the Tax Commission, shall show the amount of the Oklahoma taxable income upon which withholding was based and the amount withheld.

B. A pass-through entity may make quarterly estimated payments for the taxable year and a pass-through entity shall be required to make quarterly estimated payments for the taxable year if the amount that must be withheld from all nonresident members for the taxable year can reasonably be expected to exceed Five Hundred Dollars ($500.00). The estimated tax payments shall be paid in equal quarterly installments on or before the last day of the month succeeding the calendar quarter. The total of quarterly estimated payments required to be paid by a pass-through entity for the taxable year shall be the lesser of:

1. Seventy percent (70%) of the withholding tax that must be withheld from all its nonresident members for the taxable year; or

2. One hundred percent (100%) of the withholding tax that had to be withheld from all of its nonresident members for the preceding taxable year.

The provisions of this subsection shall not relieve a pass-through entity from the requirement of remitting amounts to the Tax Commission that were actually withheld from distributions.

C. The amount of income tax withheld shall be allowed as a credit to the recipient of the income as income taxes paid.

D. A pass-through entity shall not be required to withhold income tax from an entity exempt pursuant to subsection C of Section 2359 of this title or Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3).

E. Every pass-through entity required pursuant to this section to withhold income tax shall furnish to its nonresident member and to the Tax Commission annually, but not later than the due date of the pass-through entity’s income tax return for the taxable year including extensions, a written statement of the amount of taxable income upon which withholding was based and of the tax withheld on behalf of the nonresident member on forms prescribed by the Tax Commission. The written statement shall show the name of the member, the applicable social security number or federal identification number, the amount of the nonresident member’s share of Oklahoma taxable income upon which withholding was based, the amounts withheld, and any such information as may be required by the Tax Commission.

F. If the Tax Commission, in any case, has justifiable reason to believe that the collection of the amount required in subsection A of this section is in jeopardy, the Tax Commission may require a pass-through entity to file a return and pay the withheld amounts at any time.

G. All amounts received by the Tax Commission pursuant to the provisions of Sections 2385.29 through 2385.31 of this title shall be deposited as provided by Section 2385.16 of this title.

H. Notwithstanding the provisions of subsection A of this section, a pass-through entity is not required to withhold tax for a nonresident member if:

1. The Tax Commission has determined, by rule, that the income of the nonresident member is not subject to withholding;

2. The nonresident member files an affidavit with the Tax Commission, in the form and manner prescribed by the Tax Commission, whereby such nonresident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes~~,~~ including estimated tax payments, together with any related interest and penalties. The Tax Commission may revoke an exemption granted by this subsection at any time it determines that the nonresident member is not abiding by the terms of the affidavit; or

3. The entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, which is treated as a partnership for the purposes of the Internal Revenue Code, and which has agreed to file an annual information return reporting the name, address, taxpayer identification number and other information requested by the Tax Commission of each unitholder with an income in the state in excess of Five Hundred Dollars ($500.00).

SECTION 3. This act shall become effective November 1, 2022.

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