

BILL SUMMARY
2nd Session of the 58th Legislature

Bill No.:	HB 3849
Version:	INT
Request Number:	8596
Author:	Rep. Boatman
Date:	2/24/2022
Impact:	Tax Commission:

Unknown Potential Decrease in Income Tax Revenue

Research Analysis

HB3849, as introduced, allows certain corporations with property that has an investment cost of \$200 million or more to elect to compute state taxable income using two different methods effective tax year 2023.

The two methods are:

100 percent single sales factor apportionment formula; or
Three factor apportionment formula, consisting of the average of property, payroll and sales.

All other corporations will be required to use the 100 percent sales factor apportionment formula to compute state taxable income effective tax year 2023.

Prepared By: Quyen Do

Fiscal Analysis

Analysis provided by the Tax Commission:

For all taxable years beginning on or after January 1, 2023, for corporations whose property has an initial investment cost equaling or exceeding \$200 million and such investment is made on or after January 1, 2023, or for corporations which expand their property or facilities or which make improvements or upgrades or any combination of such expenditures in this state and such expansion, improvements or upgrades have an investment cost equaling or exceeding \$200 million over a period not to exceed 3 years, and such expansion, improvements or upgrades, or any combination of such expenditures is commenced on or after January 1, 2021, the corporation has the option to continue using the three-factor formula or use a single factor (single sales factor).

This measure also would eliminate the "throwback rule" for corporate income tax calculation purposes effective for tax year² 2022.

The “throwback rule” is part of the calculation used by Oklahoma concerning the apportionment of income by corporations conducting a business of a unitary nature for income tax purposes. Oklahoma uses an apportionment formula consisting of property, payroll, and sales factors to apportion income of a unitary business, equally weighted. The throwback rule determines what are considered Oklahoma sales in determining apportionment. Under existing law, a taxpayer is required to include sales of tangible personal property if the property is shipped from an office, store, warehouse, factory, or other place of storage in Oklahoma and the taxpayer is not doing business in the state of the destination of the shipment. Stated differently, sales to states which are untaxed (because the taxpayer is not subject to tax in that state) are recaptured and placed in the Oklahoma sales factor.

If the throwback rule is eliminated, companies subject to corporate income tax in Oklahoma will no longer be required to include these sales in their Oklahoma sales factor.

Corporate taxpayer apportionment data is unavailable, so the revenue impact of this measure is unknown. Single sales factor apportionment tends to benefit some taxpayers while burdening others.³

² The tax year is not specified for the throwback rule elimination; this measure is effective November 1, 2022

³ *Single Sales Factor Apportionment May Be Inevitable, But Is It Fair?* Cara Griffith, Tax Analysts
<https://www.forbes.com/sites/taxanalysts/2014/09/18/single-sales-factor-apportionment-may-be-inevitable-but-is-it-fair/#77d4553d131c>

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Other Considerations

None.