

OKLAHOMA TAX COMMISSION

**REVENUE IMPACT STATEMENT
SECOND REGULAR SESSION, FIFTY-EIGHTH OKLAHOMA LEGISLATURE**

DATE OF IMPACT STATEMENT: March 30, 2022

BILL NUMBER: HB 3849 **STATUS AND DATE OF BILL:** Engrossed Bill 3/23/2022

AUTHORS: House Boatman Senate Thompson

TAX TYPE (S): Income Tax **SUBJECT:** Other

PROPOSAL: Amendatory

HB 3849 proposes to amend 68 O.S. § 2358 relating to adjustments to income by amending the apportionment method to compute Oklahoma corporate income tax.

EFFECTIVE DATE: November 1, 2022

REVENUE IMPACT:

Insert dollar amount (plus or minus) of the expected change in state revenues due to this proposed legislation.

FY 23: Unknown potential decrease in income tax collections
FY 24: Unknown potential decrease in income tax collections

Mar. 30, 2022
DATE

Rick Miller
DIVISION DIRECTOR

mk

3/30/2022
DATE

Huan Gong
HUAN GONG, ECONOMIST

4/1/2022
DATE

Joseph P. Berry
FOR THE COMMISSION

The revenue impact provided herein is an estimate of the potential impact on the collection or apportionment of tax revenues affected by the proposed legislation. It is not intended to be an estimate of the overall fiscal impact on the state budget if the proposed legislation is enacted.

ATTACHMENT TO REVENUE IMPACT – HB 3849 [Engrossed] Prepared 3/30/2022

HB 3849 proposes to amend 68 O.S. § 2358 relating to adjustments to income by amending the apportionment method to compute Oklahoma corporate income tax.¹

Under current law, federal taxable income – subject to certain adjustments – is apportioned to arrive at Oklahoma taxable income based on the three-factor formula. The basis of the apportionment is the arithmetical average of three factors consisting of property, payroll and sales. The total within Oklahoma is divided by the total within and without Oklahoma to arrive at the percentage within Oklahoma.

For all taxable years beginning on or after January 1, 2023, “qualifying” corporations whose property has an initial investment cost equaling or exceeding \$100 million and such investment is made on or after January 1, 2017, 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 \$100 million over a period not to exceed 3 years, and such expansion, improvements or upgrades², or any combination of such expenditures is commenced on or after January 1, 2017, **may elect** to use single factor apportionment (single sales factor) to compute Oklahoma taxable income or has the option to continue using the three-factor formula. All other corporations would be **required** to use single factor apportionment (single sales factor).

This measure also would eliminate the "throwback rule" for corporate income tax calculation purposes effective for tax year³ 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.⁴

¹ The revenue forecast for corporate income tax for FY23 is \$361,031,000. Oklahoma Tax Commission - *Revenue Forecast for F.Y.2023* – February 15, 2022.

² Investments, improvements, or expenditures include but is not limited to expenditures for intangible drilling costs, as defined in Internal Revenue Code Section 263(c), without regard to whether such intangible drilling costs are capitalized or expensed for federal income tax purposes and track structure expenditures, as defined in Internal Revenue Procedure 2001-46, without regard to whether such track costs are capitalized or expensed for federal income tax purposes.

³ The tax year is not specified for the throwback rule elimination; this measure is effective November 1, 2022

⁴ *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-portionment-may-be-inevitable-but-is-it-fair/#77d4553d131c>