OKLAHOMA TAX COMMISSION

REVENUE IMPACT STATEMENT
FIRST REGULAR SESSION, FIFTY-NINTH OKLAHOMA LEGISLATURE

DATE OF IMPACT STATEMENT: March 21, 2023

BILL NUMBER: HB 1375 **STATUS AND DATE OF BILL:** Engrossed 3/13/2023

AUTHORS: House Boatman & Kendrix Senate Rader

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

PROPOSAL: Amendatory

HB 1375 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, 2023

REVENUE IMPACT:

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

FY 23: -0-
FY 24: Unknown potential decrease in income tax collections.

March 22, 2023	Rick Miller	mk
DATE	DIVISION DIRECTOR	
3/22/2023	Huan Gong	
DATE	HUAN GONG, ECONOMIST	
3/22/2023	Joseph P Gappa	
DATE	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 1375 [Engrossed] Prepared 3/21/23

HB 1375 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, 2024, qualifying corporations may elect to use a single sales factor apportionment comprising sales as 100% of the apportionment or the corporation may elect to compute Oklahoma taxable income using the three factor apportionment methodology in which each of the three factors is equally weighted and an arithmetical average of the three factors is determined.

A qualifying corporation is:

- A corporation whose property for purposes of the tax imposed by Section 2355 has an initial cumulative investment cost equaling or exceeding $100 million over three years and such investment is made on or after January 1, 2018, or
- A corporation which expands their property or facilities or which makes improvements or upgrades or any combination of such expenditures[2] in this state equaling or exceeding $100 million over a period not to exceed three years, and such expansion, improvements, upgrades, or any combination of such expenditures is commenced on or after January 1, 2018.

For any other corporation, for taxable years beginning on or after January 1, 2024, Oklahoma taxable income shall be computed using a single sales factor comprising 100% of the apportionment and the corporation shall not use an arithmetic average of the three factors consisting of property, payroll, and sales.

This measure would also eliminate the "throwback rule" which determines whether income earned from the sale of tangible personal property in another state is included in the Oklahoma sales factor for apportionment purposes effective for tax year[3] 2023.

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[1] The revenue forecast for corporate income tax for FY24 is $473,218,000. Oklahoma Tax Commission - *Revenue Forecast for F.Y.2024* – February 13, 2023.

[2] Eligible expenditures include expenditures for intangible drilling costs, as defined under IRC § 263(c), 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, or property received in a transaction that qualifies as an IRC § 332 liquidation; the investment period for such property shall be the original investment period of the liquidating corporation.

[3] The tax year is not specified for the throwback rule elimination; this measure is effective November 1, 2023.

ATTACHMENT TO REVENUE IMPACT – HB 1375 [Engrossed] Prepared 3/21/23 (continued)

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 whether income earned from the sale of tangible personal property in another state is included in the Oklahoma sales factor for apportionment purposes. Under existing law, a taxpayer is required to include the income from 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, untaxed income from sales to a state where they do not have nexus, are "thrown back" into its sales factor in Oklahoma.

If the throwback rule is eliminated, taxpayers subject to Oklahoma corporate income tax will no longer be required to include the income from 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] With this measure being effective for tax year 2024, changes to estimated tax payments could result in a potential decrease in Oklahoma corporate income tax collections as early as FY24.

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[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-apportionment-may-be-inevitable-but-is-it-fair/#77d4553d131c