

OKLAHOMA TAX COMMISSION

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

DATE OF IMPACT STATEMENT: March 21, 2023

BILL NUMBER: HB 1645 **STATUS AND DATE OF BILL:** Engrossed 3/13/2023

AUTHORS: House Maynard & Kendrix Senate Howard

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

PROPOSAL: Amendatory

HB 1645 proposes to amend 68 O.S. § 2358 relating to adjustments to income by amending the apportionment method to compute Oklahoma corporate income tax. This measure would 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 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 21, 2023

DATE

Rick Miller

DIVISION DIRECTOR

mk

3/22/2023

DATE

Huan Gong

HUAN GONG, ECONOMIST

3/22/2023

DATE

Joseph P Gappa

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 1645 [Engrossed] Prepared 3/21/23

HB 1645 proposes to amend 68 O.S. § 2358 relating to adjustments to income by amending the apportionment method to compute Oklahoma corporate income tax.¹ This measure would 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.²

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.

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 is unknown. With this measure being effective November 1, 2023, a decrease in Oklahoma corporate income tax collections is expected in FY24 due to a decrease in estimated tax payments and final payments when the 2023 tax returns are filed in 2024.

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