

1 **SENATE FLOOR VERSION**

2 February 8, 2022

3 SENATE BILL NO. 1305

By: Rader

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

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

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

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

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

4 1. Current or permanent residents of Oklahoma;

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

7 3. Any charitable institution;

8 4. Any federally recognized Indian tribe; or

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

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

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

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

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

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

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

23 B. A pass-through entity may make quarterly estimated payments
24 for the taxable year and a pass-through entity shall be required to

1 make quarterly estimated payments for the taxable year if the amount
2 that must be withheld from all nonresident members for the taxable
3 year can reasonably be expected to exceed Five Hundred Dollars
4 (\$500.00). The estimated tax payments shall be paid in equal
5 quarterly installments on or before the last day of the month
6 succeeding the calendar quarter. The total of quarterly estimated
7 payments required to be paid by a pass-through entity for the
8 taxable year shall be the lesser of:

- 9 1. Seventy percent (70%) of the withholding tax that must be
10 withheld from all its nonresident members for the taxable year; or
- 11 2. One hundred percent (100%) of the withholding tax that had
12 to be withheld from all of its nonresident members for the preceding
13 taxable year.

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

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

19 D. A pass-through entity shall not be required to withhold
20 income tax from an entity exempt pursuant to subsection C of Section
21 2359 of this title or Section 501(c)(3) of the Internal Revenue
22 Code, 26 U.S.C., Section 501(c)(3).

23 E. Every pass-through entity required pursuant to this section
24 to withhold income tax shall furnish to its nonresident member and

1 to the Tax Commission annually, but not later than the due date of
2 the pass-through entity's income tax return for the taxable year
3 including extensions, a written statement of the amount of taxable
4 income upon which withholding was based and of the tax withheld on
5 behalf of the nonresident member on forms prescribed by the Tax
6 Commission. The written statement shall show the name of the
7 member, the applicable social security number or federal
8 identification number, the amount of the nonresident member's share
9 of Oklahoma taxable income upon which withholding was based, the
10 amounts withheld, and any such information as may be required by the
11 Tax Commission.

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

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

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

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

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
19 February 8, 2022 - DO PASS
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