An Act

ENROLLED HOUSE
BILL NO. 2775

By: McCall of the House

and

Smalley of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 217, as amended by Section 1, Chapter 274, O.S.L. 2014, 2368 and 2385.3, as last amended by Section 3, Chapter 273, O.S.L. 2014 (68 O.S. Supp. 2015, Sections 217 and 2385.3), which relate to income taxation; modifying time period related to refunds of income tax; modifying period of time related to filing of electronic returns; modifying provisions related to individual income tax returns for fiscal years; modifying due dates with respect to certain income tax returns of business entities; modifying due dates with respect to estates and trusts; requiring reconciliation reports with respect to withholding taxes; providing an effective date; and declaring an emergency.

SUBJECT: Income tax

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 217, as amended by Section 1, Chapter 274, O.S.L. 2014 (68 O.S. Supp. 2015, Section 217), is amended to read as follows:

Section 217. A. If any amount of tax imposed or levied by any state tax law, or any part of such amount, is not paid before such tax becomes delinquent, there shall be collected on the total delinquent tax interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

B. Interest upon any amount of state tax determined as a deficiency, under the provisions of Section 221 of this title, shall be assessed at the same time as the deficiency and shall be paid upon notice and demand of the Oklahoma Tax Commission at the rate of one and one-quarter percent (1 1/4%) per month from the date prescribed in the state tax law levying such tax for the payment thereof to the date the deficiency is assessed.

C. If any tax due under state sales, use, tourism, mixed beverage gross receipts, or motor fuel tax laws, or any part thereof, is not paid within fifteen (15) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax and interest within sixty (60) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

D. If any tax due under any state tax law other than those specified in subsection C of this section, or any part thereof, is not paid within thirty (30) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax and interest within sixty (60) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

E. If any part of any deficiency, arbitrary or jeopardy assessment made by the Tax Commission is based upon or occasioned by the taxpayer's negligence or by the failure or refusal of any taxpayer to file with the Tax Commission any report or return, as required by this title, or by any state tax law, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by letter, the Tax Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. For purposes of this subsection, "negligence" shall mean the consistent understatement of income, consistent understatement of receipts or a system of recordkeeping by the taxpayer that consistently results in an inaccurate reporting of tax liability.

F. If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the

deficiency, in addition to such deficiency, including interest as herein provided, shall be added, collected and paid.

G. All penalties or interest imposed by this title, or any state tax law, shall be recoverable by the Tax Commission as a part of the tax with respect to which they are imposed, the penalties bearing interest as provided in this section for the tax, and all penalties and interest shall be apportioned as provided for the apportionment of the tax on which such penalties or interest are collected.

H. 1. Whenever an income tax refund is not paid to the taxpayer within ninety (90) days after the return is filed or due, whichever is later, with all documents as required by the Tax Commission, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund, at the same rate specified for interest on delinquent tax payments. The payment of interest on refunds provided for by this section shall apply to tax year 1987 and subsequent tax years. The Tax Commission shall not be required to pay interest on an income tax refund which is applied, in whole or in part, to a prior year tax liability pursuant to Section 2385.17 of this title or upon an income tax refund applied, in whole or in part, to satisfy a debt owed to the Internal Revenue Service of the United States or to a state agency, including the Oklahoma Tax Commission, as provided by Section 205.2 of this title.

2. For tax returns filed after January 1, 2004, and before January 2, 2010, whenever an income tax refund is not paid to the taxpayer within the following number of days after the income tax return is filed with all documents as required by the Tax Commission or after the income tax return is due, whichever is later, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund at the same rate specified for interest on delinquent tax payments:

a. for returns filed electronically, thirty (30) days, and

b. for all other returns, one hundred fifty (150) days.

3. For tax returns filed after January 1, 2010, whenever an income tax refund is not paid to the taxpayer within the following number of days after the income tax return is filed with all documents as required by the Tax Commission entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the

refund at the same rate specified for interest on delinquent tax payments:

a. for returns filed electronically, ~~twenty (20)~~ forty-five (45) days, and

b. for all other returns, ninety (90) days.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 2368, is amended to read as follows:

Section 2368. A. The following individuals shall each make a return stating specifically the taxable income and, where necessary, the adjusted gross income and the adjustments provided in Section 2351 et seq. of this title to arrive at Oklahoma taxable income and, where necessary, Oklahoma adjusted gross income:

1. Every resident individual having a gross income, or gross receipts, for the taxable year in an amount sufficient to require the filing of a federal income tax return, if single, or if married and not living with husband or wife; and

2. Every resident individual having a gross income, or gross receipts, for the taxable year in an amount sufficient to require the filing of a federal income tax return, if married and living with husband or wife.

Provided however, every resident individual who does not meet the requirements sufficient to file a federal return, but has Oklahoma withholding, may file a claim for refund for all Oklahoma income taxes withheld and shall not be subject to the provisions of Section 2358 of this title; and

3. Every nonresident individual having Oklahoma gross income for the taxable year of One Thousand Dollars ($1,000.00) or more.

B. If a husband and wife, living together, have an aggregate gross income or gross receipts, for such year, in an amount sufficient to require the filing of a federal income tax return:

1. Each shall make a return; or

2. The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate net income.

C. If an individual is unable to make his or her own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such individual.

D. Every partnership shall make a return for each taxable year, stating the taxable income and the adjustments to arrive at Oklahoma income. The Oklahoma return shall include a schedule showing the distribution to partners of the various items of income as per the federal return and the adjustments required by Section 2351 et seq. of this title for Oklahoma. The return shall be signed by one of the partners. If a partnership has elected pursuant to the provisions of Section 761 of the Internal Revenue Code, or any provision comparable thereto, not to file partnership income tax returns, that partnership shall not be required to file an Oklahoma partnership return. The Oklahoma Tax Commission shall promulgate rules for purposes of partnership returns when multiple partners would otherwise be required to file a nonresident return. The rules shall provide a specific number of partners in a partnership above which a composite return may be filed. The return shall be in such form as prescribed by the Tax Commission.

E. Every corporation shall make a return for each taxable year stating the taxable income and the adjustments provided in Section 2351 et seq. of this title to arrive at Oklahoma taxable income. In addition, corporations electing subchapter S treatment pursuant to the Internal Revenue Code and Section 2351 et seq. of this title, shall include a schedule showing the distribution to shareholders of the various items of income as per the federal return and the adjustments for Oklahoma. All corporation returns shall be signed by the president, vice president, or other principal officer and the corporate seal impressed. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make a return for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

F. Every resident estate and trust shall make a return for each taxable year stating the taxable income and the adjustments to arrive at Oklahoma taxable income. Every nonresident estate or trust having Oklahoma taxable income as provided in Section 2362 of

this title~~,~~ shall make a return for each taxable year stating the taxable income and the adjustments to arrive at Oklahoma taxable income. The Oklahoma return shall include a schedule showing the distribution to beneficiaries, if any, of the various items of income as per the federal return and the adjustments for Oklahoma. The fiduciary shall be responsible for making the return and the return shall be signed by the fiduciary, or by one fiduciary if there is more than one. The Tax Commission shall promulgate rules for purposes of estate and trust returns when multiple returns would otherwise be required of nonresident beneficiaries of estates or trusts. The return shall be in such form as prescribed by the Tax Commission.

G. 1. All individual returns, except ~~corporate returns and~~ individual returns filed electronically, made on the basis of the calendar year shall be ~~made~~ due on or before the fifteenth day of April following the close of the taxable year. Provided, if the Internal Revenue Code provides for a later due date for returns of individuals, the Tax Commission shall accept returns filed by individuals by such date and such returns shall be considered as timely filed.

2. All individual returns filed electronically, made on the basis of the calendar year, shall be due on or before the twentieth day of April following the close of the taxable year.

3. ~~Calendar~~ All individual returns made on the basis of a fiscal year shall be due on or before the fifteenth day of the fourth month following the close of the fiscal year.

4. For tax years beginning before January 1, 2016, calendar year corporation returns shall be due on or before the fifteenth day of March following the close of the taxable year. For tax years beginning on or after January 1, 2016, calendar year corporation returns shall be due no later than thirty (30) days after the due date established under the Internal Revenue Code.

~~4. All returns, except corporation returns, made on the basis of a fiscal year shall be made on or before the fifteenth day of the fourth month following the close of the fiscal year.~~

5. ~~Fiscal~~ For tax years beginning before January 1, 2016, fiscal year corporation returns shall be ~~made~~ due on or before the fifteenth day of the third month following the close of the fiscal year. For tax years beginning on or after January 1, 2016, fiscal

year corporation returns shall be due no later than thirty (30) days after the due date established under the Internal Revenue Code.

6. For tax years beginning before January 1, 2016, partnership returns shall be due on or before the fifteenth day of April following the close of the taxable year. For tax years beginning on or after January 1, 2016, partnership returns shall be due no later than thirty (30) days after the due date established under the Internal Revenue Code.

7. All estate and trust returns made on the basis of the calendar year shall be due on or before the fifteenth day of April following the close of the taxable year. All estate and trust returns made on the basis of a fiscal year shall be due on or before the fifteenth day of the fourth month following the close of the fiscal year.

8. In the case of complete liquidation, or the dissolution, of a corporation the return of such corporation shall be made on or before the fifteenth day of the fourth month following the month in which the corporation is completely liquidated. A corporation which has terminated its business activities, satisfied or made provision for all of its liabilities or has distributed all of its assets, even though not formally dissolved under state law, is deemed to have completely liquidated for purposes of this subsection.

H. Returns by individuals, fiduciaries, partnerships, corporations or any other person or entity required, or that may hereafter be required to file a return, shall contain or be verified by a written declaration that such return is made under the penalties of perjury and the fact that any individual's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by that individual. Provided, the Tax Commission shall promulgate rules to provide procedures for verification of signatures on returns which are filed electronically.

I. Every return required by Section 2351 et seq. of this title shall be in such form as the Tax Commission may, from time to time, prescribe. Each return shall be filed with the Tax Commission and forms shall be furnished by the Tax Commission on application therefor, but failure to secure or receive the form of a return prescribed shall not relieve any taxpayer from the obligation of making and filing any return herein required.

SECTION 3. AMENDATORY 68 O.S. 2011, Section 2385.3, as last amended by Section 3, Chapter 273, O.S.L. 2014 (68 O.S. Supp. 2015, Section 2385.3), is amended to read as follows:

Section 2385.3 A. Every employer required to deduct and withhold taxes under Section 2385.2 of this title shall pay over the amount so withheld as taxes to the Oklahoma Tax Commission pursuant to the schedule outlined in paragraphs 1 through 3 of this subsection, and shall file a quarterly return in such form as the Tax Commission shall prescribe on or before the twentieth day of the month following the close of each calendar quarter:

1. Every employer required to remit federal withholding under the Federal Semiweekly Deposit Schedule shall pay over the amount so withheld under subsection A of this section on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes;

2. Every employer owing an average of Five Hundred Dollars ($500.00) or more per quarter in taxes in the previous fiscal year who is not subject to the provisions of paragraph 1 of this subsection shall pay over the amount so withheld on or before the twentieth day of each succeeding month; and

3. Every employer owing an average of less than Five Hundred Dollars ($500.00) per quarter in taxes in the previous fiscal year shall pay over the amount so withheld on or before the twentieth day of the month following the close of each succeeding quarterly period.

B. Every employer subject to the provisions of paragraph 1 of subsection A of this section shall file returns pursuant to the Tax Commission's electronic data interchange program.

C. Every employer required under Section 2385.2 of this title to deduct and withhold a tax from the wages paid an employee shall, as to the total wages paid to each employee during the calendar year, furnish to such employee, on or before January 31 of the succeeding year, a written statement showing the name of the employer, the name of the employee and the employee's ~~social security~~ Social Security account number, if any, the total amount of wages subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. If an employee's employment is terminated before the close of a calendar year, the written statement must be furnished within

thirty (30) days of the date of which the last payment of wages is made.

D. Every employer required under Section 2385.2 of this title to deduct and withhold a tax from the wages paid an employee shall furnish to the Oklahoma Tax Commission, on or before February 28 of the succeeding year, an annual reconciliation and such other information as the Tax Commission may require pursuant to the Tax Commission's electronic data interchange program.

E. If the Tax Commission, in any case, has justifiable reason to believe that the collection of the tax provided for in Section 2385.2 of this title is in jeopardy, the Tax Commission may require the employer to file a return and pay the tax at any time.

~~E.~~ F. Any sum or sums withheld in accordance with the provisions of Section 2385.2 of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the employer shall have a fiduciary duty to the State of Oklahoma in regard to such sums and shall be subject to the trust laws of this state.

~~F.~~ G. If any employer fails to withhold the tax required to be withheld by Section 2385.2 of this title and thereafter the income tax is paid by the employee, the tax so required to be withheld shall not be collected from the employer but such employer shall not be relieved from the liability for penalties or interest otherwise applicable because of such failure to withhold the tax.

~~G.~~ H. Every person making payments of winnings subject to withholding shall, for each monthly period, on or before the twentieth day of the month following the payment of such winnings pay over to the Tax Commission the amounts so withheld, and shall file a return, in a form as prescribed by the Tax Commission.

~~H.~~ I. Every person making payments of winnings subject to withholding shall furnish to each recipient on or before January 31 of the succeeding year a written statement in a form as prescribed by the Tax Commission. Every person making such reports shall also furnish a copy of such report to the Tax Commission in a manner and at a time as shall be prescribed by the Tax Commission.

SECTION 4. This act shall become effective July 1, 2016.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 1st day of March, 2016.

Presiding Officer of the House of Representatives

Passed the Senate the 5th day of April, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 6th day of April, 2016, at 2:25 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 11th day of April, 2016, at 4:30 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 11th day of April, 2016, at 5:05 o'clock P. M.

By: Chris Benge