

ENGROSSED HOUSE  
BILL NO. 2211

BY: STEIDLEY

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68  
O.S. 1991, SECTIONS 230, 231 AND 231.1, WHICH  
RELATE TO DELINQUENT TAX WARRANTS; PROVIDING THAT  
CERTAIN CERTIFICATES OF INDEBTEDNESS SHALL NOT  
BECOME DORMANT; AUTHORIZING THE OKLAHOMA TAX  
COMMISSION TO FILE SUCH WARRANTS WITH THE COUNTY  
CLERK; MODIFYING PROCEDURE FOR EXECUTING SUCH  
WARRANTS; MODIFYING AMOUNT OF CERTAIN ADDITIONAL  
PENALTY AND PROCEDURES RELATED THERETO; AMENDING 68  
O.S. 1991, SECTION 205.2, WHICH RELATES TO CLAIMS  
BY STATE AGENCIES AGAINST INCOME TAX REFUNDS;  
ADDING ENTITY THAT MAY FILE A CLAIM WITH THE  
OKLAHOMA TAX COMMISSION TO COLLECT A DEBT;  
PROVIDING FOR ANY STATE TAX REFUND DUE A TAXPAYER  
TO BE USED TO PAY SUCH TAXPAYERS DELINQUENT TAXES,  
INTEREST AND PENALTIES; PROVIDING AN EFFECTIVE  
DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 230, is  
amended to read as follows:

Section 230. The Tax Commission may issue to the county clerk  
of any county of the state a certificate certifying that the person  
therein named is indebted to the state for a specified state tax in  
the amount stated. The county clerk shall immediately record and

index such certificate using the name of the delinquent taxpayer, the amount certified as being due, a short name of the tax, and the date and time of the filing for record. Such recording shall have the same force and effect as a judgment and shall constitute and be evidence and notice of the state's lien upon the title to any interest in any real property of the taxpayer named in such certificate. Such lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of such unpaid tax, penalty, interest and costs, and such lien shall be paramount and superior to all other liens of whatsoever kind or character attaching to any of said property subsequent to the date of such recording and shall be in addition to any lien provided by Section 234 of this ~~Code~~ title.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 231, is amended to read as follows:

Section 231. (a) If any tax, imposed or levied by any state tax law, or any portion of said tax, be not paid before the same becomes delinquent, the Tax Commission may immediately issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell without any appraisalment or valuation any real or personal property of the taxpayer found within his county for the payment of the delinquent tax, interest and penalties, and the cost of executing the warrant, and to return such warrant to the Tax Commission, and to pay to it any monies collected by virtue thereof, by a time to be therein specified, not more than sixty (60) days from the date of the warrant.

(b) The ~~sheriff~~ Tax Commission shall, immediately upon ~~receipt~~ issuance of the warrant, file with the county clerk of ~~his~~ the county for which the warrant was issued a copy thereof, and thereupon the county clerk shall record and index such warrant in the same manner as judgments using the name of the taxpayer named in the warrant, a short name for the tax, the amount of the tax or

portion thereof, and interest and penalties for which said warrant was issued, and the date and time when such copy was filed. The filing of said warrant in the office of the county clerk of said county, shall constitute and be evidence and notice of the state's lien upon any interest in any real property of the taxpayer against whom such warrant is issued, until such tax, penalty and interest accruing thereon is paid. ~~When a copy of a tax warrant has been filed in the office of the county clerk and the sheriff's return on the tax warrant is "no property found", the Tax Commission shall have all of the remedies and may take all of the proceedings thereon for the collection thereof which may be had or taken upon a judgment recovered in the district court in an action at law.~~ Such lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of said unpaid tax, penalty, interest and costs, and such lien shall be paramount and superior to all other liens of whatsoever kind or character, attaching to any of said property subsequent to the date and time of such filing and shall be in addition to any lien provided by Section 234 of this title.

(c) ~~Such~~ The Tax Commission shall forward the filed warrant to the sheriff of the county in which the warrant was filed. Upon receipt of the warrant, such sheriff shall thereupon proceed to execute said tax warrant in the same manner prescribed by law for executions against property upon judgment of a court of record; and such sheriff shall execute and deliver to the purchaser a bill of sale or deed, as the case may be. When the sheriff's return on the tax warrant is "no property found", the Tax Commission shall have all of the remedies and may take all of the proceedings thereon for the collection thereof which may be had or taken upon a judgment recovered in the district court in an action of law.

(d) Prior to, and continuing after, the time the sheriff must return the warrant to the Tax Commission as provided for in this

section, the Tax Commission may levy upon and sell without any appraisal or valuation any real or personal property of any taxpayer identified by the warrant. The Tax Commission may execute said tax warrant in the same manner prescribed by law for executions against property upon judgment of a court of record and may execute and deliver to the purchaser a bill of sale or deed, as the case may be.

(e) Any purchaser, other than the State of Oklahoma, shall be entitled, upon application to the court having jurisdiction of the property, to have confirmation (the procedure for which shall be the same as is now provided for the confirmation of a sale of property under execution) of such sale prior to the issuance of a bill of sale or deed. The State of Oklahoma shall be authorized to make bids at any such sale to the amount of tax, penalty and costs accrued. In the event such bid is successful, the sheriff shall issue proper muniment of title to the Oklahoma Tax Commission which Commission shall hold such title for the use and benefit of the State of Oklahoma; and any taxpayer, or transferee of such taxpayer, shall have the right, at any time within one (1) year from the date of such sale, to redeem such property, upon the payment of all taxes, penalties and costs accrued to the date of redemption. Such applicant shall not be entitled to a credit upon such taxes, penalties and costs, by reason of revenue that might have accrued to the State of Oklahoma or other purchaser under sale, prior to such redemption. After the expiration of the period of redemption herein provided, the Tax Commission acting for the State of Oklahoma may sell such property at public auction, upon giving thirty (30) days' notice, published in a newspaper of general circulation in the county where such property is located, to the highest and best bidder for cash; and upon a sale had thereof, or when a redemption is made, the Tax Commission, for and on behalf of the State of Oklahoma, shall issue its bill of sale or quit claim deed, as the

case may be, to the successful bidder or to the redemptioner. Such muniment of title shall be executed by the Tax Commission, and attested by its secretary, with the seal of the Tax Commission affixed. The sheriff shall be entitled to the same fee for his services in executing the warrant, as he would be entitled to receive if he were executing an execution issued by the court clerk of said county upon a judgment of a court of record.

~~(f) In case of the failure of any sheriff to file a copy of any warrant with the county clerk, as herein prescribed, a certified copy thereof filed by the Tax Commission with the county clerk shall operate with the same force and effect as if it had been filed by said sheriff.~~

~~(g) If any sheriff or other officer shall refuse or neglect to file a copy of any warrant issued by the Tax Commission, within the proper time, or shall neglect or refuse to record and index as prescribed by this section, or shall refuse or neglect to levy upon and sell any real or personal property of any taxpayer as directed by any warrant issued by the Tax Commission, or shall refuse or neglect, on demand, to pay over to the Tax Commission, its agents or attorneys, all monies by him collected or received under any warrant issued by the Tax Commission, at any time after collecting or receiving the same, such sheriff or other officer shall, upon motion of the Tax Commission in court, and after thirty (30) days' notice thereof, in writing, be amerced in the amount for which any such warrant was issued by the Tax Commission, together with all penalties and costs and with an additional penalty of ten percent (10%) thereon, to and for the use of the State of Oklahoma. Every surety of any sheriff or officer shall be made a party to the judgment rendered as aforesaid against the sheriff or other officer.~~

~~(h)~~ (g) The Tax Commission may expend funds from the Oklahoma Tax Commission Fund in the State Treasury to reimburse the sheriff for travel and administrative costs actually and necessarily

incurred while performing duties required by this section. Such costs shall be assessed against the delinquent taxpayer, shall be added to the amount necessary to satisfy the tax warrant, and upon collection thereof shall be deposited in the Oklahoma Tax Commission Fund.

~~(i)~~ (h) A tax warrant issued and filed under authority of this section shall:

1. Constitute and be evidence and notice of the state's lien upon real property; and

2. Not be subject to the provisions of any dormancy statute which would limit the enforceability, effect or operation of the lien.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 231.1, is amended to read as follows:

Section 231.1 An additional penalty of Fifteen Dollars (\$15.00) or an amount equal to ten percent (10%), but not to exceed Two Hundred Dollars (\$200.00), of the total amount of tax, penalty and interest collected in the execution or return of a tax warrant by a sheriff or deputy sheriff of any county or the Oklahoma Tax Commission, whichever amount is greater, is hereby imposed upon each tax debtor who neglects, refuses or fails to pay delinquent taxes. The additional penalty shall be added to and become a part of the total tax debt due the state and may be collected in the same manner as provided by law for collection of delinquent taxes. Provided, however, the penalty imposed pursuant to this section shall not be assessed or collected more than once for the execution of a tax warrant in each county.

Upon collection of the additional penalty imposed herein, the Oklahoma Tax Commission shall transmit the revenue to the State Treasurer to be deposited in the Oklahoma Tax Commission Fund. The revenue from the additional penalty ~~herein~~ collected ~~during the time prior to the time~~ by the sheriff is ~~required to return the warrant~~

~~to the Oklahoma Tax Commission~~ shall be apportioned by the Oklahoma Tax Commission to the various county treasurers to be deposited in the appropriate fund of the county sheriff's department to be used by such department to increase efforts to locate tax debtors and their property, to execute upon tax warrants, and to collect delinquent taxes. The revenue from the additional penalty ~~herein collected after the time the sheriff is required to return the warrant to the~~ by the Oklahoma Tax Commission shall be apportioned to the Oklahoma Tax Commission Fund to be used by the Oklahoma Tax Commission to enhance its efforts to collect delinquent taxes. The additional penalty is imposed as a fee for the ~~execution of a tax warrant and the~~ collection of delinquent taxes by the sheriff, undersheriff ~~or~~, deputy sheriff or Tax Commission. Said penalty is in addition to the reimbursement of actual and necessary travel and costs authorized in Section 231 of this title and any other fees which may be allowed by the district court.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 205.2, is amended to read as follows:

Section 205.2 A. A state agency or the Administrative Director of the Courts on behalf of a district court seeking to collect a debt of at least Fifty Dollars (\$50.00) from an individual who has filed a state income tax return may file a written claim with the Oklahoma Tax Commission requesting that the amount owed to the agency or a district court be deducted from any state income tax refund due to that individual. The claim shall contain information necessary to identify the person owing the debt, including the full name and Social Security number of the debtor.

1. Upon receiving a claim from a state agency or the Administrative Director of the Courts, the Tax Commission shall notify the agency or the Administrative Director of the Courts in writing or by electronic media whether there are funds available to

pay the claim. Provided the Tax Commission need not report available funds of less than Fifty Dollars (\$50.00).

2. The state agency or the Administrative Director of the Courts shall send notice to the debtor by certified mail, return receipt requested at the last-known address of the debtor as shown by the records of the Tax Commission. The notice shall be signed for by the addressee or his agent at said address. The notice shall state:

- a. that a claim has been filed, and
- b. the basis for the claim, and
- c. that such state agency or the Administrative Director of the Courts has applied to the Tax Commission for any portion of the tax refund due to the debtor which would satisfy the debt in full or in part, and
- d. that the debtor has the right to contest the claim by sending a written request to the state agency or the Administrative Director of the Courts for a hearing to protest the claim and if the debtor fails to apply for a hearing within thirty (30) days after the receipt of the notice, he shall be deemed to have waived his opportunity to contest the claim, and
- e. that a collection expense of five percent (5%) of the gross proceeds owed to the state agency or district court shall be charged to the debtor and withheld from the refund upon final determination of the debt at the hearing or upon failure of the debtor to request a hearing, and
- f. if the taxpayer settles the outstanding debt with the agency or district court before the thirty (30) days expire, the agency or the Administrative Director of the Courts shall notify the Tax Commission in writing

or by electronic media that said claim has been released.

3. In the case of a joint return, the notice shall state:
  - a. the name of any taxpayer named in the return against whom no debt is claimed, and
  - b. the fact that a debt is not claimed against said taxpayer, and
  - c. the fact that said taxpayer is entitled to receive a refund if it is due regardless of the debt asserted against the debtor, and
  - d. that in order to obtain the refund due, said taxpayer must apply, in writing, for a hearing with the Administrative Director of the Courts or the agency named in the notice within thirty (30) days after the date of the mailing of the notice, and
  - e. if said taxpayer against whom no debt is claimed fails to apply in writing for a hearing within thirty (30) days after the mailing of said notice, said taxpayer shall have waived his right to a refund.

B. If the Administrative Director of the Courts or agency asserting the claim receives a written request from the debtor or taxpayer against whom no debt is claimed requesting a hearing, the agency or the Administrative Director of the Courts shall grant a hearing according to the provisions of the Administrative Procedures Act, Sections ~~301~~ 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt asserted by the Administrative Director of the Courts on behalf of a district court or the agency, no action shall be taken in furtherance of the collection of the debt. Appeals from actions

taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act.

C. Upon final determination at a hearing, as provided for in subsection B of this section, of the amount of the debt or upon failure of the debtor or taxpayer against whom no debt is claimed to request such a hearing, the Administrative Director of the Courts or the agency shall submit to the Tax Commission a written report or notification by electronic media of the action taken on the claim and a request that the amount owed including the collection expense be deducted from the tax refund due to the debtor and transferred to the Administrative Director of the Courts or the agency. However, if the tax refund due is inadequate to pay the collection expense and debt, the balance due the state agency or the district court shall be a continuing debt until paid in full.

D. Upon receipt of the written report or notification by electronic media provided in subsection C of this section, the Tax Commission shall:

1. Deduct from the refund five percent (5%) of the gross proceeds owed to the state agency or district court and distribute it by retaining two percent (2%) and transferring three percent (3%) to the Administrative Director of the Courts on behalf of the district court or the state agency as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Oklahoma Tax Commission Fund; and

2. Transfer the amount of debt or so much thereof as is available to the state agency or the Administrative Director of the Courts on behalf of the district court; and

3. Notify the debtor in writing as to how the refund was applied; and

4. Refund to the debtor any balance remaining after deducting the collection expense and debt.

E. The Tax Commission shall deduct from any ~~income~~ state tax refund due to a taxpayer the amount of delinquent state tax, and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law prior to payment of such refund.

F. The Tax Commission shall have first priority over all other agencies or district courts when the Tax Commission is collecting a debt pursuant to the provisions of this section. Priority in multiple claims by other agencies or district courts pursuant to the provisions of this section shall be in the order in time, in which the Tax Commission receives the written claim or notification from the agencies and district courts required by the provisions of subsection A of this section.

G. The Tax Commission shall prescribe or approve forms and promulgate rules and regulations for implementing the provisions of this section.

H. The information obtained by an agency or by the Administrative Director of the Courts on behalf of a district court from the Tax Commission pursuant to the provisions of this section shall be used only to aid in collection of the debt owed to the agency or a district court. Disclosure of the information for any other purpose shall constitute a misdemeanor. Any agency or court employee or person convicted of violating this provision shall be subject to a fine not exceeding One Thousand Dollars (\$1,000.00) or imprisonment in the county jail for a term not exceeding one (1) year, or both said fine and imprisonment and, if still employed by the agency or the courts, shall be dismissed from employment.

I. The Oklahoma Tax Commission may employ the procedures provided by this section in order to collect a debt owed to the Internal Revenue Service if the Internal Revenue Service requires such procedure as a condition to providing information to the Commission concerning federal income tax.

SECTION 5. This act shall become effective July 1, 1992.

SECTION 6. 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 11th day of March, 1992.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1992.

President of the Senate