

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 305

BY: GILES

AS INTRODUCED

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1981, SECTION 226, AS LAST AMENDED BY SECTION 16, CHAPTER 339, O.S.L. 1990 (68 O.S. SUPP. 1990, SECTION 226), WHICH RELATES TO THE UNIFORM TAX PROCEDURE CODE; CLARIFYING LANGUAGE RELATED TO INTEREST RATE ON CERTAIN TAXES; REQUIRING PAYMENT OF CERTAIN LITIGATION EXPENSES IF TAXPAYER PREVAILS IN PROCEEDING; SPECIFYING COUNTY IN WHICH CERTAIN RIGHT OF ACTION BE BROUGHT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 68 O.S. 1981, Section 226, as last amended by Section 16, Chapter 339, O.S.L. 1990 (68 O.S. Supp. 1990, Section 226), is amended to read as follows:

Section 226. (a) In addition to the right to a protest of a proposed assessment as authorized by Section 221 of this title, a right of action is hereby created to afford a remedy to a taxpayer aggrieved by the provisions of this article or of any other state tax law, or who resists the collection of or the enforcement of the

rules or regulations of the Tax Commission relating to the collection of any state tax; ~~however, such remedy shall be limited as prescribed by subsection (c) of this section.~~

(b) Within thirty (30) days from the date of mailing to the taxpayer of an assessment for taxes or additional taxes pursuant to Section 221 of this title by the Tax Commission, any such taxpayer shall pay the tax to the Tax Commission, and at the time of making such payment shall give notice to the Tax Commission of his intention to file suit for recovery of such tax. The taxpayer shall not be required to file suit within such thirty-day period in order to prosecute an action as authorized by this section; however, failure to file such suit within one (1) year from the date of mailing of the assessment shall result in the assessment becoming final and absolute. If the taxpayer prevails the Tax Commission shall, by cash voucher drawn by the Tax Commission upon its official depository clearing account or special refund reserve account with the State Treasurer, refund to the taxpayer the amount of tax determined not to be due pursuant to the final judgment of the court having jurisdiction, together with interest on such amount at the rate ~~applicable to that~~ money judgments in civil cases matters bear from the date of payment by the taxpayer to the date of the refund by the Tax Commission. The refunds paid shall be payable as provided in subsection (d) of Section 225~~(d)~~ of this title. If the taxpayer prevails and the court determines that the position of the Tax Commission in the proceeding was not substantially justified, the court shall award the taxpayer a judgment for reasonable litigation costs, including but not limited to court costs, attorney fees, reasonable expenses of expert witnesses in connection with the proceeding and reasonable costs of any study, analysis, engineering report, test or project which is found by the court to be necessary for the preparation of the taxpayer's case.

(c) This section shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and the subject matter. ~~It shall be construed to provide a legal remedy in the state or federal courts by action at law only in cases where the taxes complained of are claimed to be an unlawful burden on interstate commerce, or the collection thereof violative of any Congressional Act or provision of the Federal Constitution, or in cases where jurisdiction is vested in any of the Courts of the United States~~ The right of action created hereby shall be brought in the county of residence of the taxpayer or in the county in which the administrative proceedings of the taxpayer's estate are pending or could be instituted, or in the county in which the taxpayer's principal place of business is located, if the taxpayer is other than an individual or estate. In all actions brought hereunder service of process upon the Chairman of the Tax Commission shall be sufficient service, and the Tax Commission shall be the sole, necessary and proper party defendant in any such suit, and the State Treasurer shall not be a necessary or proper party thereto.

(d) Upon request of any taxpayer and upon proper showing that the principle of law involved in the assessment of any tax is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the decision of the court, may pay the tax so assessed under protest, but need not file a suit.

SECTION 2. This act shall become effective September 1, 1991.

43-1-090

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