

ENGROSSED SENATE
BILL NO. 435

By: Cole and Muegge of the
Senate

and

Seikel of the House

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 231, as amended by Section 2, Chapter 66, O.S.L. 1992, 250 and 2702 (68 O.S. Supp. 1992, Section 231), which relate to the Uniform Tax Procedure Code and municipal taxes; modifying procedures upon issuance of certain tax warrants; requiring Oklahoma Tax Commission to promulgate certain rules; prohibiting issuance of certificates of indebtedness after certain date; requiring Tax Commission to establish and maintain certain register; making certain register public record; requiring Tax Commission to remit one-half of certain fee to municipality under certain conditions; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 231, as amended by Section 2, Chapter 66, O.S.L. 1992 (68 O.S. Supp. 1992, Section 231), is amended to read as follows:

Section 231. ~~(a)~~ 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~~7~~. A tax warrant directed to the sheriff of any county of the state~~7~~, ~~commanding~~ shall command 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)~~ B. The Tax Commission shall, immediately upon issuance of the warrant, file with the county clerk of 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. 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)~~ The C. Except as otherwise provided in subsection D of this section, 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)~~ D. The Tax Commission shall not direct or forward to the sheriff of any county any tax warrant issued pursuant to collection by the Tax Commission. The Tax Commission shall promulgate rules pertaining to tax warrants issued under this section.

E. 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)~~ F. 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)~~ G. If any sheriff 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.

~~(g)~~ H. 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.

~~(h)~~ I. 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.

J. After July 1, 1993, the Tax Commission shall not issue any certificates of indebtedness pursuant to the provisions of Section 230 of this title.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 250, is amended to read as follows:

Section 250. The Oklahoma Tax Commission shall establish and maintain a register of tax warrants filed pursuant to the provisions of the Uniform Tax Procedure Code, Sections 201 through 260 of this title. The Tax Commission shall establish and maintain a separate register of tax warrants filed pursuant to the provisions of subsection D of Section 231 of this title. Said ~~register~~ registers shall be public ~~record~~ records which shall be open to public inspection.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 2702, is amended to read as follows:

Section 2702. The governing body of any incorporated city or town and the Oklahoma Tax Commission are authorized and empowered to enter into contractual agreements whereby the Oklahoma Tax Commission shall have authority to assess, to collect and to enforce any taxes or, penalties or interest thereon, levied by such incorporated city or town, and remit the same to such municipality. Said assessment, collection, and enforcement authority shall apply to any taxes, penalty or interest liability existing at the time of contracting. Upon contracting, the Oklahoma Tax Commission shall have all the powers of enforcement in regard to such taxes, penalties and interest as are granted to or vested in the contracting municipality. Such agreement shall provide for the assessment, collection, enforcement, and prosecution of such municipal tax, penalties and interest, in the same manner as and in accordance with the administration, collection, enforcement, and prosecution by the Oklahoma Tax Commission of any similar state tax except as provided by agreement. The municipality shall agree to refrain from any assessment, collection, or enforcement of the municipal tax except as specified in the agreement. Such agreement shall authorize the Oklahoma Tax Commission to retain an amount not to exceed one and three-fourths percent (1 3/4%) as a retention fee of municipal tax collected for services rendered in connection with such collections; provided, if a municipality files an action resulting in collection of delinquent state and municipal taxes, the Tax Commission shall remit one-half (1/2) of the retention fee applied to the amount of such taxes to the municipality to be apportioned as are other sales tax revenue. All funds retained by the Oklahoma Tax Commission for the collection services to municipalities shall be deposited in the Oklahoma Tax Commission Revolving Fund in the State Treasury.

The Oklahoma Tax Commission shall place all sales taxes, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of this section and all use taxes, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of Section 1411 of this title in the Sales Tax Remitting Account as provided in Section 1373 of this title.

Provided that the Oklahoma Tax Commission and the governing body of any incorporated city or town may enter into contractual agreements whereby the municipality would be authorized to implement or augment the enforcement, collection and prosecution of the municipal tax in those contracting municipalities and to provide for the satisfaction of refunds or credits to taxpayers. Such agreements shall and are hereby authorized to provide that the municipality and the Oklahoma Tax Commission may exchange necessary information to effectively carry out the terms of such agreements. The municipality, its officers and employees shall preserve the confidentiality of such information in the same manner and be subject to the same penalties as provided by Section 205 of this title, provided that the municipal prosecutor and other municipal enforcement personnel may receive all information necessary to implement or augment the enforcement and prosecution of municipal sales tax ordinances. Any sum or sums collected or required to be collected pursuant to a municipal sales tax levy shall be deemed to be held in trust for the municipality, and, as trustee, the collecting vendor shall have a fiduciary duty to the municipality in regards to such sums and shall be subject to the trust laws of this state. Any vendor who fails to remit the municipal sales tax after the tax has been collected from the consumer, and appropriates the tax held in trust to his own use, or to the use of any person not entitled thereto, without authority of law, shall be guilty of embezzlement.

SECTION 4. 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 Senate the 22nd day of February, 1993.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1993.

Speaker of the House of Representatives