

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2450

By: Seikel

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 2803, 2808, 2837, 2838, 2844, 2847, 2848, 2857, 2858, 2859, 2860, 2867, 2881, as amended by Section 3, Chapter 360, O.S.L. 1992 and 2884, as amended by Section 4, Chapter 360, O.S.L. 1992 (68 O.S. Supp. 1993, Sections 2881 and 2884), which relate to the Ad Valorem Tax Code; providing for certain additional classification of property for purposes of ad valorem taxation; modifying definition to include cogeneration facility; modifying definition of transportation company; providing that railroad and air carrier property be valued and assessed; clarifying statutory language relating to centrally assessed property; permitting counties, cities, towns and school districts to intervene in certain tax protest; deleting determination of amount of ad valorem taxes which may be paid under protests of valuation or assessment of property; providing for apportionment of certain taxes under protest; permitting Oklahoma Tax Commission to consider certain costs in determining fair cash value; permitting Oklahoma Tax Commission to disregard certain entities in determining fair cash value; providing for

codification; 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 2803, is amended to read as follows:

Section 2803. A. The Legislature, pursuant to authority of Article X, Section 22 of the Oklahoma Constitution, hereby classifies the following types of property for purposes of ad valorem taxation:

1. Real property;
2. Personal property; ~~and~~
3. Public service corporation property; and
4. Railroad and air carrier property.

B. Valuation of each class of subjects shall be made by a method appropriate for each class or any subclass thereof, as established by the Ad Valorem Division of the Oklahoma Tax Commission.

C. Classification as provided by this section shall require uniform treatment of each item within a class or any subclass as provided in Article X, Section 5 of the Oklahoma Constitution.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 2808, is amended to read as follows:

Section 2808. A. The term public service corporation, as used in the Ad Valorem Tax Code, shall include all transportation companies, transmission companies, all gas, electric, light, heat and power companies ~~and~~, all waterworks and water power companies and all cogeneration facilities, and all persons authorized to exercise the right of eminent domain or to use or occupy any

right-of-way, street, alley, or public highway, along, over or under the same in a manner not permitted to the general public. The term cogeneration facilities means a facility which produces electric power and steam or forms of useful energy which are used for industrial, commercial, heating or cooling purposes.

B. As used in the Ad Valorem Tax Code the term transportation company shall include any company, corporation, trustee, receiver, or any other person owning, leasing or operating for hire, a ~~railroad,~~ street railway, canal, steamboat line, and also any sleeping car company, parlor car company and express company, ~~all air carriers, as defined under federal law, of scheduled passenger service and/or freight,~~ and any other company, trustee, or person in any way engaged in such business as a common carrier. As used in the Ad Valorem Tax Code, the term transportation company shall not include any railroad or any air carrier. However, all railroad and air carrier property shall continue to be valued and assessed by the State Board of Equalization for purposes of ad valorem taxation.

C. The term transmission company shall include any company, corporation, trustee, receiver, or other person owning, leasing or operating for hire any telegraph or telephone line or radio broadcasting system.

D. The term person as used in the Ad Valorem Tax Code shall include individuals, partnerships, associations, and corporations in the singular as well as plural number.

E. As used in the Ad Valorem Tax Code, the terms transmission company and public service corporation shall not be construed to include cable television companies.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 2837, is amended to read as follows:

Section 2837. All corporations organized, existing or doing business in this state, other than ~~railroad~~ railroads, air carriers and public service corporations assessed by the State Board of

Equalization, and other than national banks, state banks, trust companies, and building and loan associations, shall be assessed upon the value of their real property and personal property as listed separately by such corporation and less the value of any property which may be relieved of ad valorem taxation by the payment of an in lieu tax.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 2838, is amended to read as follows:

Section 2838. A. All corporations organized, existing or doing business in this state, other than ~~railroad~~ railroads, air carriers and public service corporations assessed by the State Board of Equalization, and other than national banks, state banks and trust companies, and building and loan associations, shall, on or before March 15th of each year, return sworn lists or schedules of their taxable property within each county, to the county assessor of such county, and such property shall be listed with reference to amount, kind and value, on the first day of January of the year in which it is listed; and said property shall be subject to taxation for county, municipal, public school and other purposes to the same extent as the real and personal property of private persons, in the taxing districts in which such property is located. Any real estate owned by such corporation shall be assessed annually at the same time and in the same manner as real estate belonging to private persons. In making such sworn lists, all corporations shall itemize their property in the same manner and to the same extent as required by railroads, air carriers and public service corporations.

B. It shall be the duty of each corporation to make, under oath, and deliver to the county assessor of the county where its principal business is transacted, a statement on forms prescribed by the Oklahoma Tax Commission, of its authorized capital stock and the amount of capital paid thereon, the amount of its outstanding bonded and other indebtedness, the total amount of its invested capital

within and without Oklahoma, and such other financial information as may be deemed necessary to enable the county assessor to determine the value of real or personal property owned by any such corporation; and each corporation shall also deliver to the county assessor of the county where its principal business is located, a copy of all lists or schedules of property filed in every other county in this state.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 2844, is amended to read as follows:

Section 2844. A. If any real, personal, railroad, air carrier or public service corporation property is omitted in the assessment of any prior year or years, and the property thereby escapes just and proper taxation, at any time and as soon as such omission is discovered, the county assessor or the county board of equalization, or the State Board of Equalization in the case of public service corporation property or railroad and air carrier property, whose duty it is to assess the class of property which has been omitted, shall at any time cause such property to be entered on the assessment rolls and tax rolls for the year or years omitted, not to exceed the last fifteen (15) years as to real property and the last three (3) years as to personal property, and shall, after reasonable notice to the parties affected, in order that they be heard, assess such omitted property for said periods and cause to be extended against the same on the tax rolls for the current year all arrearage of taxes properly accruing against it, including therein interest thereon at the rate of twelve percent (12%) per annum from the time such tax should have become delinquent.

B. If any tax on property subject to taxation is prevented from being collected for any year or years by reason of any erroneous proceedings, or failure to give notice, or otherwise, the amount of such tax which such property should have paid or should have been paid thereon shall be added to the tax on such property for the

current year, and if for want of sufficient time or for any cause such assessment cannot be entered, and the tax thereon extended on the tax rolls for the current year, the same shall be done the following year.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 2847, is amended to read as follows:

Section 2847. A. The property of all ~~railroad~~ railroads, air carriers and public service corporations shall be assessed annually by the State Board of Equalization at its fair cash value estimated at the price it would bring at a fair voluntary sale.

B. Taxable values of real and personal property of all ~~railroad~~ railroads, air carriers and public service corporations shall be established in accordance with the requirements of Article X, Section 8 of the Oklahoma Constitution. The State Board of Equalization shall determine the taxable value of all taxable property that the Board is required by law to assess and value, and shall determine such taxable value in accordance with the requirements of Article X, Section 8 of the Oklahoma Constitution.

C. The percentage of fair cash value for real and personal property of railroads, air carriers and public service corporations required by the Oklahoma Constitution to be taxable, if less than one hundred percent (100%), shall be selected by the State Board of Equalization and, subject to the requirements of federal law, uniformly applied to calculate the taxable values of public service corporation property within the state for the applicable assessment year.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 2848, is amended to read as follows:

Section 2848. A. Every railroad, air carrier and public service corporation organized, existing, or doing business in this state, shall, on or before April 15 of each year, return sworn lists or schedules of its taxable property to the Oklahoma Tax Commission

as provided by law, or as may be required by the Commission; and such property shall be listed with reference to the amount, kind, and value as of the first day of January of the year in which it is listed; and said property shall be subject to taxation for county, municipal, public school and other purposes to the same extent as the real and personal property of individuals.

B. The Oklahoma Tax Commission may request certain financial data be included on any statement or schedule including, but not limited to:

1. The amount of capital stock authorized, and the number of shares into which such capital stock is divided;
2. The amount of capital stock paid up;
3. The market value of such stock, or if no market value, then the actual value of the shares of stock; and
4. The total amount of bonded indebtedness.

SECTION 8. AMENDATORY 68 O.S. 1991, Section 2857, is amended to read as follows:

Section 2857. Should any railroad, air carrier or public service corporation doing business in this state fail or refuse to make the statements or schedules to the Oklahoma Tax Commission within the time and manner required by law, it shall be the duty of the State Board of Equalization to ascertain from the best information obtainable the value of the property of such company, and as a mandatory penalty shall add amounts as follows: If listed or assessed after April 15 but on or before May 15, ten percent (10%) of the assessed value; if listed or assessed after May 15, twenty percent (20%) of the assessed value. The Oklahoma Tax Commission may grant an extension without penalty, upon written request of the taxpayer and for a good cause, of not to exceed fifteen (15) days for the filing of the returns as required by the Ad Valorem Tax Code.

SECTION 9. AMENDATORY 68 O.S. 1991, Section 2858, is amended to read as follows:

Section 2858. A. The Oklahoma Tax Commission shall make its findings as to the assessment of all railroad, air carrier and public service corporation property; and such findings shall, on or before the third Monday of June of each year, be presented to the State Board of Equalization as recommendations for its final action under Section 21 of Article X of the Oklahoma Constitution. A copy of the Oklahoma Tax Commission's letter of transmittal of its findings shall, at such time, be furnished each member of said Board.

B. All duties, powers and authority of all officers and agencies of the state, relating to the assessment of railroad, air carrier and public service corporation property, which have been conferred upon them and vested in them, by law, are hereby transferred to, conferred upon and vested in, the Oklahoma Tax Commission; excepting only the duties, powers and authority of the State Board of Equalization, as fixed and defined by Section 21 of Article X of the Oklahoma Constitution.

C. In the performance of its duties, as prescribed by this section, the Oklahoma Tax Commission, or any duly authorized representative thereof, shall have the power to administer oaths, to conduct hearings and to compel the attendance of witnesses and the production of the books, records and papers of any person, firm, association, or corporation, and to enter any business or commercial premises and inspect the property of the taxpayer.

D. Prior to entering the business or commercial premises of any taxpayer for purposes of discovering personal property, the Oklahoma Tax Commission shall request permission to enter the business or commercial premises and shall state the reason for the inspection. If access to the business or commercial premises is denied, the Oklahoma Tax Commission shall be required to obtain a search warrant

in order to conduct an inspection of the interior of the business or commercial premises. A search warrant may be obtained upon a showing of probable cause that personal property located within particularly described business or commercial premises is subject to ad valorem taxation, but not listed or assessed for ad valorem taxation as required by law.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 2859, is amended to read as follows:

Section 2859. A. The returns of ~~railroad~~ railroads, air carriers and public service corporations shall not be conclusive as to the value or amount of any property. The State Board of Equalization shall have the authority and it shall be its duty to raise or lower the returned value:

1. Of any personal property, to conform to the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale; or

2. Of any real property at not to exceed its fair cash value for the highest and best use for which such property is actually used or classified for use.

B. It shall be the duty of the State Board of Equalization, with the assistance of the Oklahoma Tax Commission, to do all things necessary to enable it to assess and value all taxable property of ~~railroad~~ railroads, air carriers and public service corporations, discover omitted property, and determine the taxable status of any property which is claimed to be exempt from ad valorem taxation for any reason.

C. In the performance of its duties, as prescribed by this section, the State Board of Equalization, or any duly authorized representative thereof, shall have the power to administer oaths, to conduct hearings, and to compel the attendance of witnesses and the production of the books, records and papers of any person, firm,

association, or corporation; and to enter any business or commercial premises and inspect the property of the taxpayer.

D. Prior to entering the business or commercial premises of any taxpayer for purposes of discovering personal property, the State Board of Equalization shall request permission to enter the business or commercial premises and shall state the reason for the inspection. If access to the business or commercial premises is denied, the State Board of Equalization shall be required to obtain a search warrant in order to conduct an inspection of the interior of the business or commercial premises. A search warrant may be obtained upon a showing of probable cause that personal property located within particularly described business or commercial premises is subject to ad valorem taxation, but not listed or assessed for ad valorem taxation as required by law.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 2860, is amended to read as follows:

Section 2860. A. The State Board of Equalization, after having assessed all property of ~~railroad~~ railroads, air carriers and public service corporations in this state according to the provisions of the Ad Valorem Tax Code, shall cause the assessed valuations to be certified by the State Auditor and Inspector to the county assessors of each county in which any portion of the property of any such railroad, air carrier or public service corporation may be located. Such certificates of assessment shall show the various portions of the property of such corporations located and taxable in each county, and in every city, town, school district or other municipal subdivision thereof, and shall include a full statement of all property of such corporations located in each of the said several subdivisions, together with the assessed value thereof. Said valuations shall be certified by the State Auditor and Inspector to the assessors of the several counties wherein such property is located on or before the third Monday of June of each year.

B. The county assessor shall enter on his assessment roll in its appropriate place the assessed valuation of each railroad, air carrier and public service corporation, and at the proper time, place such assessment on the proper tax roll of his county, subject to the levies as provided by law.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 2867, is amended to read as follows:

Section 2867. A. As soon as practicable after the assessment rolls are corrected and adjusted by the county board of equalization through the first Monday in June, the county assessor shall make out an abstract thereof, containing the total amount of property listed under the various classifications appearing on the blank forms for the listing and assessment of property, and the total value of each class, and it shall be the mandatory duty of the county assessor under the penalties as outlined pursuant to Section ~~143~~ 2943 of this ~~act~~ title, to transmit this abstract to the Oklahoma Tax Commission not later than June 15 of each year ~~on~~ or the first working day thereafter, unless delayed by court action or other causes beyond his control.

B. It is hereby specifically provided that where any county assessor fails to comply with the provisions of this section by the time herein required, the Oklahoma Tax Commission shall immediately notify the chairman of the board of county commissioners and the county clerk of such county and neither such county assessor nor any of his deputies or employees shall be paid any remuneration, compensation or salary for the month of June and each succeeding month thereafter until such abstract is transmitted to the Oklahoma Tax Commission. This penalty provision shall be cumulative to the penalty provisions and requirements of Section ~~143~~ 2943 of this ~~act~~ title.

C. It shall be the duty of the Oklahoma Tax Commission to furnish the necessary forms for such abstract, which forms shall be subject to approval by the State Auditor and Inspector.

D. Within ten (10) days after the county assessor of each county receives from the State Board of Equalization the certificates of assessment of all ~~railroad~~ railroads, air carriers and public service corporations, and the equalized value of real and personal property of such county, it shall be the duty of the county assessor to prepare and file with the county excise board an abstract of the assessed valuations of the county and each municipal subdivision thereof as shown by his records through that date; and said abstract shall show separately the valuations of all personal property, real property, railroad and air carrier property and public service corporation property, in each municipality, and shall be properly totaled and balanced.

SECTION 13. AMENDATORY 68 O.S. 1991, Section 2881, as amended by Section 3, Chapter 360, O.S.L. 1992 (68 O.S. Supp. 1993, Section 2881), is amended to read as follows:

Section 2881. A. The secretary of the State Board of Equalization shall notify all railroads, air carriers and public service corporations of the ad valorem tax assessments rendered by the State Board, including the valuation, assessment ratio and total amount of assessment. The notice shall clearly be marked with the date upon which the notice was prepared. Such notice shall be mailed within one (1) working day of such date. The taxpayer shall have twenty (20) calendar days from date of such notice in which to file, with the Clerk of the Court of Tax Review, a written complaint, specifying his grievances, and the pertinent facts in relation thereto in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended.

B. After the filing of a complaint as provided for in subsection A of this section the State Board of Equalization shall have fifteen (15) days within which to file an answer. The Court of Tax Review shall set a date of hearing, conduct such hearing and render its decision within sixty (60) days of the date of the notice which caused the filing of the complaint. The Court of Tax Review shall be authorized and empowered to take evidence pertinent to said complaint, and for that purpose, is authorized to compel the attendance of witnesses and the production of books, records and papers by subpoena, and to confirm, correct or adjust the valuation, as required by law.

C. At the time of hearing upon a complaint filed pursuant to this section, the State Board of Equalization shall bear the burden of proof of supporting its action which is the subject matter of the complaint.

D. Either the State Board of Equalization or the party filing a complaint pursuant to this section may appeal the decision of the Court of Tax Review by filing a notice of intent to appeal with the Clerk of the Court of Tax Review within ten (10) calendar days of the date the final decision is rendered. Appeal shall be made to the Oklahoma Supreme Court which shall give precedence to such appeals and affirm the decision of the Court of Tax Review if supported by competent evidence.

E. Any county, city, incorporated town, school district or any other jurisdiction which receives revenue from any millage or ad valorem tax levies which has an interest in the valuation of the property of any railroad, air carrier or public service corporation may intervene in any action before the Court of Tax Review upon notice to the State Board of Equalization and the railroad, air carrier or public service corporation.

SECTION 14. AMENDATORY 68 O.S. 1991, Section 2884, as amended by Section 4, Chapter 360, O.S.L. 1992 (68 O.S. Supp. 1993, Section 2884), is amended to read as follows:

Section 2884. A. The full amount of the taxes assessed against the property of any taxpayer who has appealed from a decision affecting the value or taxable status of such property as provided by law shall be paid at the time and in the manner provided by law; and if at the time such taxes or any part thereof become delinquent, any such appeal is pending, it shall abate and be dismissed upon a showing that such taxes have not been paid.

B. When such taxes are paid, the persons paying the same shall give notice to the county treasurer that an appeal involving such taxes has been taken and is pending, and that a specified portion of the tax amount is being paid under protest. If taxes are paid in two equal installments and the amount paid under protest does not exceed fifty percent (50%) of the full amount of assessed taxes, all protested taxes shall be specified in the second installment payment. If such amount does exceed fifty percent (50%) of the full amount of assessed taxes, then the portion of protested taxes that exceeds fifty percent (50%) of the full amount of assessed taxes shall be specified in the first installment payment and the entire second installment shall be specified to be paid under protest. The taxpayer shall attach to such notice a copy of the petition filed in the court or other appellate body in which the appeal was taken. ~~It~~ Except as provided in this section, it shall be the duty of such treasurer to hold such taxes so paid under protest separate and apart from other taxes collected by him. Any portion of such taxes not paid under protest shall be apportioned as provided by law. The treasurer shall invest such protested taxes in the same manner as he invests surplus tax funds not paid under protest, but shall select an investment medium which will permit prompt refund or apportionment of such protested taxes upon final determination of

the appeal. If upon the final determination of any such appeal, the court shall find that the property was assessed at too great an amount, the board of equalization from whose order the appeal was taken shall certify the corrected valuation of the property of such taxpayers to the county assessor, in accordance with the decision of the court, and shall send a copy of such certificate to the county treasurer. Upon receipt of the corrected certificate of valuation the county assessor shall compute and certify to the county treasurer the correct amount of taxes payable by such taxpayer. The difference between the amount paid and the correct amount payable with accrued interest shall be refunded by the treasurer to the taxpayer upon his filing a proper verified claim therefor, and the remainder paid under protest with accrued interest shall be apportioned as provided by law.

C. ~~If an appeal is upon a question of valuation of the property, then the amount paid under protest by reason of the question of valuation being appealed shall be limited to the amount of taxes assessed against the property for the year in question less the amount of taxes which would be payable by the taxpayer for that year if the valuation of the property asserted by the taxpayer in the appeal were determined by the court to be correct.~~ The full amount of the taxes paid under protest by a railroad, air carrier or public service corporation shall be apportioned as provided by law.

D. ~~If an appeal is upon a question of assessment of the property, then the amount paid under protest by reason of the question of assessment being appealed shall be limited to the amount of taxes assessed against the property for the year in question less the amount of taxes which would be payable by the taxpayer for that year if the assessment of the property asserted by the taxpayer in the appeal was determined by the court to be correct.~~

~~E.~~ The procedure for payment of taxes pending resolution of appeals as provided by this section shall be applicable to any such payment of taxes made on or after July 1, 1992.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2847.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

In determining the fair cash value of property estimated at the price it would bring at a fair voluntary sale, the Oklahoma Tax Commission shall consider the acquisition cost of such property. The Commission may also, in order to make a more fair determination of the fair cash value of property of any railroad, air carrier or public service corporation, disregard the separate business entities of such railroad, air carrier or public service corporation.

SECTION 16. This act shall become effective July 1, 1994.

SECTION 17. 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.

44-2-8144

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