

SHORT TITLE: Child support; requiring Oklahoma Tax Commission to collect certain claims regarding child support in certain manner; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 751

By: Leftwich

AS INTRODUCED

An Act relating to child support; amending 43 O.S.

1991, Section 137, as amended by Section 4, Chapter 307, O.S.L. 1993 (43 O.S. Supp. 1993, Section 137), which relates to payment of past due child support, and 68 O.S. 1991, Section 205.2, as amended by Section 4, Chapter 66, O.S.L. 1992 (68 O.S. Supp. 1993, Section 205.2), which relates to claims by state agencies against income tax refunds; requiring Oklahoma Tax Commission to collect certain claims regarding child support in certain manner; requiring Department of Human Services to file certain claims with the Oklahoma Tax Commission at certain times; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 1991, Section 137, as amended by Section 4, Chapter 307, O.S.L. 1993 (43 O.S. Supp. 1993, Section 137), is amended to read as follows:

Section 137. A. Any payment or installment of child support ordered pursuant to any order, judgment or decree of the district court or administrative order of the Department of Human Services is on and after the date it becomes past due a judgment by operation of law. Such judgments for past due support shall:

1. Have the full force and effect of any other judgment of this state, including the ability to be enforced by any method available under the laws of this state to enforce and collect money judgments; and

2. Be entitled to full faith and credit as a judgment in this state and any other state.

B. Such judgments shall be subject to collection action only after the child support obligor has been given notice and opportunity for a court or administrative hearing to determine the amount that is past due, provided that if the obligor has been given a hearing in some other proceeding to contest the amount past due, he shall not be entitled to another hearing to determine whether amounts are past due for the same time period.

C. Unless execution is issued and filed within five (5) years from date of judgment or last execution on said judgment as required by law, a judgment for past due child support shall become dormant for all purposes except for enforcement of the judgment by:

1. An income or wage assignment initiated pursuant to the laws of this state or any other state;

2. Periodic payments from the judgment debtor by order of the district court or of the Department of Human Services; or

3. Referral of the past due amount to the Internal Revenue Service and, if appropriate, to the Oklahoma Tax Commission or another state's taxation agency for interception of the judgment debtor's annual state and federal tax refund in cases being enforced by the Department of Human Services. When a claim is filed by the Department of Human Services with the Oklahoma Tax Commission pursuant to the provisions of Section 205.3 of Title 68 of the Oklahoma Statutes for the collection of child support, the Oklahoma Tax Commission shall collect the claim in the same manner as a tax, fee, interest or penalty pursuant to the provisions of subsection (a) of Section 215 of Title 68 of the Oklahoma Statutes. The

Department of Human Services shall file claims for unpaid child support which are at least one hundred eighty (180) days overdue with the Oklahoma Tax Commission on a quarterly basis.

An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due.

D. An arrearage payment schedule set by a court or administrative order shall not exceed three (3) years, unless imposition of such a payment schedule would be unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making such determination, reasonable support obligations of either parent as to other children in the custody of said parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting such action shall be made.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 205.2, as amended by Section 4, Chapter 66, O.S.L. 1992 (68 O.S. Supp. 1993, 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), except when a claim is filed pursuant to Section 205.3 of this title of the Oklahoma Statutes, the Oklahoma Tax Commission shall collect the claim in the same manner as a tax, fee, interest or penalty pursuant to the provisions of subsection (a) of Section 215 of Title 68 of the Oklahoma Statutes.

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 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 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 3. This act shall become effective September 1, 1994.

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