ENGROSSED SENATE
BILL NO. 727

By: Hendrick of the Senate

and

Vaughn of the House

[revenue and taxation - amending 68 O.S. 1991 - Uniform Tax Procedure Code - income tax returns - judgments - notice - effective date]

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 205.2, as last amended by Section 1, Chapter 29, O.S.L. 1994 (68 O.S. Supp. 1995, Section 205.2), is amended to read as follows:

Section 205.2 A. A state agency or a district court seeking to collect a debt <u>or judgment</u> of at least Fifty Dollars ($50.00) from an individual who has filed a state income tax return may file a 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 be in a form prescribed by the Oklahoma Tax Commission and 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 a district court, the Tax Commission shall notify the agency or the district court whether there are funds available to pay the claim. Provided<u>,</u> the Tax Commission need not report available funds of less than Fifty Dollars ($50.00).

2. The state agency or the district court 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 when seeking to collect a debt not reduced to judgment. The notice shall be signed for by the addressee or ~~his~~ the addressee's agent at ~~said~~ that address. The state agency or the district court shall send notice to the judgment debtor by first class mail at the last-known address of the judgment debtor as shown by the records of the Tax Commission when seeking to collect a judgment. 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 district court has applied to the Tax Commission for any portion of the tax refund due to the debtor which would satisfy the debt or judgment 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 district court 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~~ the debtor shall be deemed to have waived his or her 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 or judgment at the hearing or upon failure of the debtor to request a hearing, and

f. if the taxpayer settles the outstanding debt or judgment with the agency or district court before the thirty (30) days expire, the agency or the district

court shall notify the Tax Commission in writing or by electronic media that ~~said~~ the 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 or judgment is claimed, ~~and~~

b. the fact that a debt or judgment is not claimed against ~~said~~ the taxpayer, ~~and~~

c. the fact that ~~said~~ the taxpayer is entitled to receive a refund if it is due regardless of the debt or judgment asserted against the debtor, ~~and~~

d. that in order to obtain the refund due, ~~said~~ the taxpayer must apply, in writing, for a hearing with the district court or the agency named in the notice within thirty (30) days after the date of the mailing of the notice, and

e. if ~~said~~ the taxpayer against whom no debt or judgment is claimed fails to apply in writing for a hearing within thirty (30) days after the mailing of ~~said~~ the notice, ~~said~~ the taxpayer shall have waived his or her right to a refund.

B. If the district court or agency asserting the claim receives a written request from the debtor or taxpayer against whom no debt or judgment is claimed requesting a hearing, the agency or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, ~~Sections~~ Section 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 or judgment asserted by the district court or the agency, no action shall be taken in furtherance of the collection of the debt or judgment. 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 judgment or upon failure of the debtor or taxpayer against whom no debt or judgment is claimed to request such a hearing, the district court or the agency shall submit in the manner prescribed by the Tax Commission notification 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 district court or the agency. However, if the tax refund due is inadequate to pay the collection expense and debt or judgment, the balance due the state agency or the district court shall be a continuing debt or judgment until paid in full.

D. Upon receipt of notification 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 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 judgment or so much thereof as is available to the state agency or 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 or judgment.

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 or judgment 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 claim 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 district court from the Tax Commission pursuant to the provisions of this section shall be used only to aid in collection of the debt or judgment 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 2. This act shall become effective November 1, 1996.

Passed the Senate the 28th day of February, 1996.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1996.

Speaker of the House of Representatives