

ENROLLED SENATE
BILL NO. 135

By: Williams (Don) of the
Senate

and

Begley, Langmacher and
Crocker of the House

An Act relating to revenue and taxation and public finance; amending 68 O.S. 1991, Sections 205, as last amended by Section 23 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, and 2884, as last amended by Section 2 of Enrolled Senate Bill No. 390 of the 1st Session of the 45th Oklahoma Legislature, which relate to the Uniform Tax Procedure Act and ad valorem taxes; modifying information which may be disclosed by Oklahoma Tax Commission; requiring certain report and specifying date and requirements thereof; allowing Tax Commission to request assistance of other state agencies; deleting certain provision for apportionment of ad valorem tax revenues paid under protest; requiring agencies responsible for collection of certain monies to provide certain information to Director of State Finance; requiring Tax Commission to make certain reports; requiring Tax Commission to provide electronic access to certain data and reports to certain entities; providing procedure for Tax Commission upon receipt of written requests for certain information from certain persons; 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 205, as last amended by Section 23 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 205. A. The records and files of the Tax Commission concerning the administration of this article or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person.

B. Neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of

any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of this article or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of this article or of any state tax law.

C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to a taxpayer or his duly authorized representative of a copy of any report or any other paper filed by him pursuant to the provisions of this article or of any state tax law;

2. The Oklahoma Tax Commission from entering into reciprocal agreements with other state agencies or agencies of the federal government to exchange any information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.;

3. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

4. The examination of said records and files by the State Auditor and Inspector or his duly authorized agents;

5. The disclosing of information or evidence to the Attorney General or any district attorney when said information or evidence is to be used by said officials to prosecute violations of the criminal provisions of this article or of any state tax law. Said information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission;

7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by said records or files to any official person or body of this state, any other state or of the United States who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States;

8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to said requesting agencies;

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section ~~2454~~ 2858 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections ~~2433~~ 2838 and ~~2434~~ 2839 of this title on behalf of a corporation other than a public service corporation;

10. The furnishing of information requested by any member of the general public and stated in the findings of the Oklahoma Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section ~~2462~~ 2865 of this title and Section 21 of Article X of the Oklahoma Constitution;

11. The furnishing of information to an Oklahoma wholesaler of nonintoxicating beverages, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase nonintoxicating beverages in this state or the furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state;

12. The furnishing of information as to the issuance or revocation of any tax permit, license or exemption by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued said permit, license or exemption, the name of the business entity authorized to engage in business pursuant to said permit, license or exemption, the address of said business entity, and the grounds for said revocation;

13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued said permit or license, the name of the business entity authorized to engage in business pursuant to said permit or license, the address of said business entity, and the grounds for said revocation;

14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law;

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

16. The disclosure of information necessary to complete the performance of any contract authorized by Sections 255 and 262 of this title to any person with whom the Oklahoma Tax Commission has contracted;

17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be made upon such form as the Commission may prescribe;

18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title;

19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title;

20. The disclosure to a plaintiff of a corporation's last-known address shown on the records of the Franchise Tax Division of the Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

21. The disclosure to any person as determined by the Commission to be necessary if, pursuant to the provisions of Section 510 of this title, a distributor of motor fuel and diesel fuel is required to sell such fuel on a tax-paid basis;

22. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. Said disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness;

23. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Said disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body;

24. The furnishing of information regarding incentive payments made pursuant to the provisions of Sections 3601 through 3609 of this title or incentive payments made pursuant to the provisions of Sections 3501 through 3508 of this title;

25. The furnishing to a prospective purchaser of any business, or his authorized representative, of information relating to any liabilities, delinquencies, assessments or warrants of the prospective seller of the business which have not been filed of record, established, or become final and which relate solely to the seller's business. Any disclosure under this paragraph shall only be allowed upon the presentment by the prospective buyer, or his authorized representative, of the purchase contract and a written authorization between the parties; ~~or~~

26. The notification to the suppliers of a motor fuel distributor who has been required by the Tax Commission to sell motor fuel or diesel fuel on a tax-paid basis pursuant to the provisions of subsection (c) of Section 510 of this title; or

27. The furnishing of information as to the amount of state revenue affected by the issuance or granting of any tax permit, license, exemption, deduction, credit or other tax preference by the Tax Commission as provided for by law. Such information shall be limited to the type of permit, license, exemption, deduction, credit or other tax preference issued or granted, the date and duration of such permit, license, exemption, deduction, credit or other tax preference and the amount of such revenue. The provisions of this paragraph shall not authorize the disclosure of the name of the person issued such permit, license, exemption, deduction, credit or other tax preference, or the name of the business entity authorized to engage in business pursuant to said permit, license, exemption, deduction, credit or other tax preference.

D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of said list.

E. The Tax Commission shall prepare or cause to be prepared an annual report on all provisions of state tax law that reduce state revenue through exclusions, deductions, credits, exemptions,

deferrals or other preferential tax treatments. The report shall be prepared not later than November 1 of each year and shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Tax Commission may prepare and submit supplements to the report at other times of the year if additional or updated information relevant to the report becomes available. The report shall include, for the previous fiscal year, the Tax Commission's best estimate of the amount of state revenue that would have been collected but for the existence of each such exclusion, deduction, credit, exemption, deferral or other preferential tax treatment allowed by law. The Tax Commission may request the assistance of other state agencies as may be needed to prepare the report.

F. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

~~F.~~ G. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both said fine and imprisonment, and the offender shall be removed or dismissed from office.

~~G.~~ H. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as said offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of said district attorney its records and files pertinent to said prosecutions, and said records and files shall be fully admissible as evidence for the purpose of said prosecutions.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 2884, as last amended by Section 2 of Enrolled Senate Bill No. 390 of the 1st Session of the 45th Oklahoma Legislature, 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. The notice shall be on a form prescribed by the Oklahoma Tax Commission. 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. For railroads and public service corporations, the amount of taxes

protested shall not exceed the amount of tax calculated on the protested assessed valuation specified in the complaint filed pursuant to the provisions of subsection A of Section 2881 of this title. Except as otherwise provided by subsection E of this section, it shall be the duty of such treasurer to hold taxes paid under protest separate and apart from other taxes collected. 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 the treasurer 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 the taxpayer 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.

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. Taxes paid under protest on property of railroads and public service corporations for an appeal upon a question of assessment of the property shall be apportioned as provided by law. The county treasurer shall notify each recipient of such taxes in writing that the taxes are being paid under protest and that repayment of the taxes and interest thereon will be required if the court finds in favor of the taxpayer upon final determination of the appeal. If upon final determination of any appeal, the court shall find in favor of the taxpayer, the State Board of Equalization shall compute and certify the correct amount of taxes payable by the taxpayer in accordance with the decision of the court. The difference between the amount paid and the correct amount payable, with accrued interest computed pursuant to the provisions of Section 727 of Title 12 of the Oklahoma Statutes, shall be refunded by the county treasurer to the taxpayer upon the taxpayer filing a proper verified claim therefor. The refund shall be made within eighteen (18) months of the date of the final determination of the appeal.~~

~~F. 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. The procedures for apportionment, escrow and refunds of taxes paid under protest as~~

~~provided in this section, as amended, shall be applicable to any taxes paid on or after July 1, 1995; provided, the provisions of subsection E of this section shall be applicable to taxes paid under protest on or after July 1, 1994, and such taxes shall be apportioned as provided by law within thirty (30) days of the effective date of this act.~~

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 41.7b of Title 62, unless there is created a duplication in numbering, reads as follows:

A. In accordance with duties assigned to the State Board of Equalization in Section 23 of Article X of the Constitution of the State of Oklahoma, agencies responsible for the collection of monies deposited to the credit of the General Revenue Fund and each of the Special Revenue Funds shall, upon request of the Director of State Finance, provide the Director in the manner and form established by the Director, an itemized estimate of funds expected to accrue to the General Revenue Fund and each of the Special Revenue Funds for the ensuing fiscal year. Each of these agencies must also provide to the Director of State Finance, as requested, a written explanation of the methodology and relevant assumptions used in developing the revenue estimates submitted in compliance with this section, a statement of prior year actual revenue collections and a projection of current year revenue collections.

B. In addition to providing the information listed above, the Oklahoma Tax Commission shall also provide to the Director of State Finance a comprehensive economic report no later than two weeks prior to each of the meetings of the State Board of Equalization pursuant to paragraphs 1 and 3 of Section 23 of Article X of the Constitution of the State of Oklahoma. The report shall include a summary of recent national and state economic performance and a forecast of national and state economic performance for both the current and the upcoming fiscal year. This report shall be considered a basis upon which the itemized revenue estimates of the Commission are developed. The report shall include an analysis of the relative accuracy of the economic forecast on which the previous and current fiscal years' revenue estimates were based.

C. The Tax Commission shall also provide all estimates, explanations, statements, projections, reports and other documents required by this section to the President Pro Tempore of the Senate and the Speaker of the House of Representatives at the same time that such documents are provided to the Director of State Finance.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 117 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission, upon request, shall provide the Office of State Finance, the Oklahoma State Senate and the Oklahoma State House of Representatives electronic access to any aggregate data and reports used by the Oklahoma Tax Commission in developing revenue estimates and economic forecasts. The aggregate data and reports which will be made accessible pursuant to the provisions of this section shall not include any records or other information required by law to be kept confidential.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 118 of Title 68, unless there is created a duplication in numbering, reads as follows:

Upon receipt of a written request from a member or employee of the Legislature, the Oklahoma Tax Commission shall provide:

1. A written estimate of the revenue gain or loss to the state as a result of an actual or proposed change to a state tax law; and

2. A written statement of the Tax Commission's recommendation to the State Board of Equalization as to the change in the amount certified as available for appropriation by the Legislature as a result of an actual or proposed change to a state tax law.

The Tax Commission shall provide such estimate and statement within two (2) weeks of the date the request was received unless the member or employee of the Legislature specifies an earlier date. If the Tax Commission determines that it is unable to provide such estimate and statement within the time period required by this section, it shall provide a written explanation and date by which the estimate and statement will be provided to the member or employee.

SECTION 6. This act shall become effective July 1, 1995.

SECTION 7. 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 25th day of May, 1995.

President of the Senate

Passed the House of Representatives the 26th day of May, 1995.

Speaker of the House of Representatives