STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1983 By: Bonny

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 221 and 226, which relate to the Uniform Tax Procedure Code; permitting taxpayer to appeal under certain procedure; excluding penalty and interest under certain circumstances; deleting reference to certain limitation; providing for payment of tax under protest and excluding penalty and interest; deleting certain notice requirement; modifying certain jurisdictional requirements; excluding penalty and interest upon certain payment; providing that certain court decisions are precedential; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 221, is amended to read as follows:

Section 221. ~~(a)~~ A. If any taxpayer shall fail to make any report or return as required by any state tax law, the Tax Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period.

If a report or return has been filed, the Tax Commission shall examine such report or return and make such audit or investigation as it may deem necessary. If, in cases where no report or return has been filed, the Tax Commission determines that there is a tax due for the taxable period, or if, in cases where a report or return has been filed, the Tax Commission shall determine that the tax disclosed by such report or return is less than the tax disclosed by its examination, it shall in writing propose the assessment of taxes or additional taxes, as the case may be, and shall mail a copy of the proposed assessment to the taxpayer at ~~his~~ the last-known address. Proposed assessments made in the name of the "Oklahoma Tax Commission" by its authorized agents shall be considered as the action of the Tax Commission.

~~(b)~~ B. Any assessment, correction or adjustment made as a result of an office audit shall be presumed to be the result of an audit of the report or return only, and ~~such~~ the office audit shall not be deemed a verification of any item in ~~said~~ the report or return unless ~~said~~ the item shall have been made the subject of a hearing before the Tax Commission, and the correctness and amount of such item determined at ~~such~~ the hearing; and ~~such~~ the office audit shall not preclude the Tax Commission from subsequently making further adjustment, correction or assessment as a result of a field audit of the books and records of the taxpayer, wherever located, or upon disclosures from any source other than the return. In cases where no report or return has been filed, the assessment of the tax on any information available shall in no event preclude the assessment at any time on subsequently disclosed information.

~~(c)~~ C. Within thirty (30) days after the mailing of the ~~aforesaid~~ proposed assessment, the taxpayer may proceed under Section 226 of this title or file with the Tax Commission a written protest under oath, signed by ~~himself~~ the taxpayer or ~~his~~ a duly authorized agent, setting out therein:

~~(1)~~ 1. A statement of the amount of deficiency as determined by the Tax Commission, the nature of the tax and the amount thereof in controversy;

~~(2)~~ 2. A clear and concise assignment of each error alleged to have been committed by the Tax Commission;

~~(3)~~ 3. The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in such hearing, or on appeal, to the arguments and legal authorities contained and cited in ~~said~~ the application;

~~(4)~~ 4. A statement of relief sought by the taxpayer; and

~~(5)~~ 5. A verification by the taxpayer or ~~his~~ a duly authorized agent that the statements and facts contained therein are true.

~~(d)~~ D. If in ~~such~~ the written protest the taxpayer shall request an oral hearing, the Tax Commission shall grant ~~such~~ the hearing, and shall, by written notice, advise the taxpayer of a date, which shall not be less than ten (10) days from the date of mailing of ~~such~~ the written notice, when ~~such~~ the taxpayer may appear before the Tax Commission and present arguments and evidence, oral or written, in support of ~~his~~ the protest. Hearings shall be held as soon as practicable. In the event an oral hearing is not requested, the Tax Commission shall proceed without further notice to examine into the merits of the protest and enter an order in accordance with its findings. Upon request of any taxpayer and upon proper showing that the principle of law involved in the assessment of any tax is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the decision of the court, may pay the tax, excluding penalty and interest, so assessed under protest and such protest shall be resolved in accordance with the agreement to abide.

~~(e)~~ E. If the taxpayer fails to file a written protest within the ~~thirty-days'~~ thirty-day period herein provided for or within the

period as extended by the Commission, or if the taxpayer fails to file the notice required by Section 226 of this title within thirty (30) days from the date of mailing of an assessment, then the proposed assessment, without further action of the Tax Commission, shall become final and absolute at the expiration of thirty (30) days from the date same is mailed to the taxpayer or, in cases in which an extension has been granted for filing a protest pursuant to this section, at the expiration of the period as extended by the Tax Commission. A taxpayer who fails to file a protest to an assessment of taxes within the time period prescribed by this section may, within one (1) year of the date the assessment becomes final, request the Oklahoma Tax Commission to adjust or abate the assessment if the taxpayer can demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous. If the Commission determines that the proper showing has been made, the assessment or portion thereof determined to be clearly erroneous shall be deemed not to have become final and absolute. No hearing to adjust or abate a clearly erroneous assessment may be granted after the Commission's denial of such a request. An order of the Commission denying a taxpayer's request to adjust or abate an assessment alleged to be clearly erroneous is not an appealable order under Section 225 of this title. No proceeding instituted by the Oklahoma Tax Commission to collect a tax liability may be stayed because of a request made by a taxpayer to adjust or abate an assessment alleged to be clearly erroneous.

~~(f)~~ F. The Tax Commission may in its discretion extend the time for filing a protest for any period of time not to exceed an additional ninety (90) days. Any extension granted shall not extend the period of time within which the notice required by Section 226 of this title may be filed.

~~(g)~~ G. Within a reasonable time after the hearing herein provided for, the Tax Commission shall make and enter an order in

writing in which it shall set forth the disposition made of the protest and a copy of such order shall forthwith be mailed to the taxpayer. The order shall contain findings of fact and conclusions of law. After removing the identity of the taxpayer, the Commission shall make the order available for public inspection and shall publish those orders the Commission deems to be of precedential value. The taxpayer may within the time and in the manner provided for by Section 225 of this ~~Code~~ title, appeal to the Supreme Court, but in the event ~~he~~ the taxpayer fails to so proceed, the order shall within thirty (30) days from the date a certified copy thereof is mailed to the taxpayer, become final. The provisions of Section 226 of this ~~Code~~ title, shall not apply where a proposed assessment or an assessment of taxes has been permitted to become final.

~~(h)~~ H. In all instances where the proposed assessment or the assessment of taxes or additional taxes has been permitted to become final, a certified copy of the assessment may be filed in the office of the court clerk of any county in this state, and upon being so filed, the court clerk shall enter same upon the judgment docket in the same manner as provided for in connection with judgments of district courts. When an assessment is so filed and docketed, it shall have the same force and be subject to the same law as a judgment of the district court, and accordingly it shall constitute a lien on any real estate of the taxpayer located in the county wherein filed; and execution may issue and proceedings in aid of execution may be had the same as on judgments of district courts. The remedies provided in this paragraph shall be in addition to other remedies provided by law.

~~(i)~~ I. In order to make more definite the intention of the Legislature in connection with the applicability or lack of applicability of the refund provisions of the tax statutes to those treating with proposed assessments and assessments that have become final, the Legislature being cognizant of the fact that such intent

has been questioned, it is declared to be the intent of the Legislature that ~~said~~ the refund provisions shall be without application to taxes where the amount thereof has been determined by an assessment, other than as assessment designated as an "office audit", that has become final.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 226, is amended to read as follows:

Section 226. ~~(a)~~ A. In addition to the right to a protest of a proposed assessment as authorized by Section 221 of this title, a right of action is hereby created to afford a remedy to a taxpayer aggrieved by the provisions of this article or of any other state tax law, or who resists the collection of or the enforcement of the rules ~~or regulations~~ of the Tax Commission relating to the collection of any state tax~~; however, such remedy shall be limited as prescribed by subsection (c) of this section~~.

~~(b)~~ B. Within thirty (30) days from the date of mailing to the taxpayer of an assessment for taxes or additional taxes pursuant to Section 221 of this title by the Tax Commission, any such taxpayer shall pay the tax, excluding penalty and interest, under protest to the Tax Commission~~, and at the time of making such payment shall give notice to the Tax Commission of his intention to file suit for recovery of such tax~~. The taxpayer shall not be required to file suit within such thirty-day period in order to prosecute an action as authorized by this section~~; however~~. However, failure to file such suit within one (1) year from the date of mailing of the assessment shall result in the assessment becoming final and absolute. If the taxpayer prevails the Tax Commission shall, by cash voucher drawn by the Tax Commission upon its official depository clearing account or special refund reserve account with the State Treasurer, refund to the taxpayer the amount of tax determined not to be due pursuant to the final judgment of the court having jurisdiction, together with interest on such amount at the

rate applicable to money judgments in civil cases from the date of payment by the taxpayer to the date of the refund by the Tax Commission. The refunds paid shall be payable as provided in Section 225(d) of this title. If the taxpayer prevails and the court determines that the position of the Tax Commission in the proceeding was not substantially justified, the court shall award the taxpayer a judgment for reasonable attorney fees, reasonable expenses of expert witnesses in connection with the proceeding and reasonable costs of any study, analysis, engineering report, test or project which is found by the court to be necessary for the preparation of the taxpayer's case.

~~(c) This section shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and the subject matter. It shall be construed to provide a legal remedy in the state or federal courts by action at law only in cases where the taxes complained of are claimed to be an unlawful burden on interstate commerce, or the collection thereof violative of any Congressional Act or provision of the Federal Constitution, or in cases where jurisdiction is vested in any of the Courts of the United States~~ C. The district court of Oklahoma County shall be the proper court for filing an action pursuant to this section. In all actions brought hereunder service of process upon the Chairman of the Tax Commission shall be sufficient service, and the Tax Commission shall be the sole, necessary and proper party defendant in any such suit, and the State Treasurer shall not be a necessary or proper party thereto.

~~(d)~~ D. Upon request of any taxpayer and upon proper showing that the principle of law involved in the assessment of any tax is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the decision of the court, may pay the tax, excluding penalty and interest, so assessed under protest, but need not file a suit.

E. Decisions pursuant to this section by the district court shall be precedential.

SECTION 3. This act shall become effective November 1, 1995.

45-1-5680 JAF