

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1338

By: Begley

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 2881, as last amended by Section 7, Chapter 358, O.S.L. 1995 (68 O.S. Supp. 1996, Section 2881), which relates to increase of valuation of property of railroads, air carriers, and public service corporations; modifying time period in which to file certain complaint; modifying time period in which to file answer; requiring State Board of Equalization to give certain notice; permitting Attorney General to appear in certain actions; modifying burden of proof upon hearing of complaint; modifying certain notice of appeal; providing for precedence to be given by Oklahoma Court of Civil Appeals to certain appeal; providing that assessed valuation becomes final upon expiration of certain time period; providing for transfer of certain cases; providing that notice has certain force and effect; amending 68 O.S. 1991, Section 2884, as last amended by Section 2, Chapter 325, O.S.L. 1995 (68 O.S. Supp. 1996, Section 2884), which relates to payment and appeal of protested taxes; providing that certain taxes be paid to Oklahoma Tax Commission or county treasurer; requiring certain notice upon appeal of taxes; requiring county treasurers to hold certain taxes; requiring Oklahoma Tax Commission to deposit certain taxes to certain fund; providing for apportionment of taxes not paid under protest; determining apportionment of certain taxes to school districts; providing for reimbursement of certain monies; providing for proportionate distribution under certain circumstances; providing limitations; providing for certain certification; providing for refund to taxpayer; providing for reduction of certain monies based on certain reimbursement; deleting reference to certain payment procedure; creating the Protested Ad Valorem Tax Escrow Fund and the Education Cash Flow Fund; providing for expenditure of monies in funds; providing for certain appropriation; providing exception; amending 68 O.S. 1991, Section 3024, as last amended by Section 20, Chapter 97, O.S.L. 1996 (68 O.S. Supp. 1996, Section 3024), which relates to the Court of Tax Review; re-creating Court of Tax Review; modifying membership of Court of Tax Review; providing for designation of certain judges; providing terms of office; providing for Oklahoma Supreme Court to monitor certain caseload; providing for promulgation of certain rules of procedure and practice; requiring certain scheduling conference; providing for certain mediation; providing for certain judge to hear certain cases; requiring Court of Tax Review to sit in certain city; providing for clerk of Court of Tax Review; deleting requirement to pay certain expenses; providing

for certain court existence to cease; providing for codification; providing for recodification; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 2881, as last amended by Section 7, Chapter 358, O.S.L. 1995 (68 O.S. Supp. 1996, 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, which shall clearly be marked with the date upon which ~~the notice~~ it was prepared. ~~Such notice,~~ shall be mailed within one (1) working day of such date. The taxpayer shall have ~~twenty (20)~~ thirty (30) calendar days from the date of ~~such~~ the notice in which to file, with the Clerk of the Court of Tax Review, a written complaint on a form prescribed by the ~~Oklahoma~~ Tax Commission, specifying grievances, ~~and~~ with 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. The complaint shall ~~specify~~ include the amount of Oklahoma assessed valuation protested and the grounds for the protest. The taxpayer shall be required to send a copy of the complaint to the ~~Oklahoma~~ Tax Commission.

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)~~ forty (40) 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~~ the complaint, and

for that purpose, ~~is authorized to~~ may 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. The State Board of Equalization shall notify, in writing and by certified mail, the Attorney General and all affected school districts and other interested parties of the complaint provided for by this section within ten (10) days of the filing of the complaint.

D. The Attorney General may appear in all actions to enforce the valuation and assessment of property by the State Board of Equalization and the collection of ad valorem tax which is the subject of the complaint filed pursuant to this section.

E. At the time of hearing upon a complaint filed pursuant to this section, the State Board of Equalization shall bear the burden of proof to show that the State Board followed applicable constitutional and statutory law and applicable rules regarding the valuation and assessment of railroads, air carriers, and public service corporations. Upon such showing, the taxpayer shall then bear the burden to show in what respect the action of the State Board of Equalization shall bear the burden of proof of supporting its action which is the subject matter of the complaint is incorrect.

~~D.~~ F. 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)~~ thirty (30) calendar days of the date the final decision is ~~rendered~~ sent to the parties. Appeal shall be ~~made to~~ brought in the Oklahoma Supreme Court which in the same manner as provided for other appeals from the Court of Tax Review. The Supreme Court shall give precedence to such appeals and affirm the decision of the Court of Tax Review if supported by competent evidence. If the Oklahoma Supreme Court assigns the appeal to the Oklahoma Court of Civil Appeals, the Oklahoma Court of Civil Appeals shall

give precedence to the appeal and affirm the decision of the Court of Tax Review if supported by competent evidence.

G. If the taxpayer fails to file a written complaint within the thirty-day period provided for in this section, then the assessed valuation stated in the notice, without further action of the State Board of Equalization, shall become final and absolute at the expiration of thirty (30) days from the date the notice is mailed to the taxpayer.

H. All cases pending in the Court of Tax Review as it existed prior to November 1, 1997, shall be transferred to the Court of Tax Review as it exists after November 1, 1997, for disposition.

I. In all instances where the notice of assessed valuation certified by the State Board of Equalization has been permitted to become final, such notice shall have the same force and be subject to the same law as a judgment of the district court.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 2884, as last amended by Section 2, Chapter 325, O.S.L. 1995 (68 O.S. Supp. 1996, 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.~~ If at the time such taxes or any part thereof become delinquent, ~~and~~ any such appeal is pending, it shall abate and be dismissed upon a showing that ~~such~~ the taxes have not been paid. Taxes paid under the provisions of this subsection by railroads, air carriers, and public service corporations shall be remitted to the Oklahoma Tax Commission. Taxes paid under the provisions of this subsection by property owners other than railroads, air carriers, and public service corporations shall be remitted to the appropriate county treasurer.

B. When such taxes are paid, the persons paying the same shall give notice to the Tax Commission, if the taxes are paid by railroads, air carriers, or public service corporations, or to the county treasurer, if the taxes are paid by other property owners,

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, air carriers, 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~~

C. For taxpayers other than railroads, air carriers, and public service corporations, it shall be the duty of ~~such~~ the county 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~~ the 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~~ the protested taxes upon final determination of the appeal. For railroads, air carriers, and public service corporations, the Tax Commission shall deposit taxes paid under protest to the Protested Ad Valorem Tax Escrow Fund created in Section 3 of this act. Any portion of such taxes not paid under protest shall be apportioned as provided by law.

D. As soon as practicable after the Tax Commission determines the total amount of ad valorem taxes of railroads, air carriers,

or public service corporations paid under protest pursuant to the provisions of subsection B of this section, the Tax Commission shall determine the amount of such taxes that would have been apportioned to each school district and each vocational-technical school district of this state if the protest had not been made. The Tax Commission shall reimburse such amount to each school district and vocational-technical school district from monies in the Education Cash Flow Fund created in Section 4 of this act. If the Education Cash Flow Fund does not contain sufficient monies to make all the reimbursements, the available monies shall be distributed proportionally among the school districts and vocational-technical school districts. However, the Tax Commission shall not reimburse such amount to each school district and vocational-technical school district from the Education Cash Flow Fund if the ad valorem taxes being protested, which are directly attributable to an affected school district and vocational-technical school district, do not exceed Two Thousand Dollars (\$2,000.00).

E. 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 Tax Commission, if the taxpayer is a railroad, air carrier, or public service corporation, or to the county assessor, if the taxpayer is not a railroad, air carrier, or public service corporation, in accordance with the decision of the court, and shall send a copy of such certificate to the county treasurer, if the taxpayer is not a railroad, air carrier, or public service corporation, or to the Tax Commission, if the taxpayer is a railroad, air carrier, or public service corporation. 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~~ the taxpayer. ~~The~~ For taxpayers other than railroads, air carriers, and public service corporations, 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. For railroads, air carriers, and public service corporations, the difference between the amount paid and the correct amount payable, with accrued interest, shall be refunded by the Tax Commission to the taxpayer upon the taxpayer filing a proper verified claim therefor. The remainder paid under protest, with accrued interest, shall be apportioned as provided by law. The Tax Commission shall reduce the amount paid from the Protested Ad Valorem Tax Escrow Fund to a school district or vocational-technical school district which has received a reimbursement pursuant to subsection D of this section by the amount of the reimbursement and shall transfer the amount to the Education Cash Flow Fund.

~~C.~~ F. 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.~~ G. 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 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2884.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Protested Ad Valorem Tax Escrow Fund". The fund shall consist of ad valorem taxes paid under protest by railroads, air carriers, or public service corporations pursuant to the provisions of Section 2884 of Title 68 of the Oklahoma Statutes. All monies accruing to the credit of the fund may be expended by the Oklahoma Tax Commission for the purpose of apportioning ad valorem taxes paid under protest, with accrued interest, after the correct amounts payable have been determined as provided by law.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2884.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Education Cash Flow Fund". The fund shall consist of monies appropriated thereto. All monies accruing to the credit of the fund may be expended by the Tax Commission for the purpose of making payments to school districts or vocational-technical school districts in the event of protests of ad valorem taxes by railroads, air carriers, or public service corporations. Unless otherwise appropriated by the Legislature, the first One Hundred Thirty-five Thousand Dollars (\$135,000.00) appropriated to this fund each fiscal year shall be utilized by the Tax Commission for the purpose of administering and hearing complaints and appeals pursuant to Section 2881 of Title 68 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 3024, as last amended by Section 20, Chapter 97, O.S.L. 1996 (68 O.S. Supp. 1996, Section 3024), is amended to read as follows:

Section 3024. A. There is hereby ~~created~~ re-created a Court of Tax Review. The Court of Tax Review shall be comprised of ~~one district judge from each judicial district in the state. The district judge representing each judicial district shall be~~

~~selected by the Justices of the Oklahoma Supreme Court. Each case brought before the Court of Tax Review pursuant to this subsection will be heard by a panel of three judges. The three judges assigned to hear each case will be selected by the Chief Justice of the Oklahoma Supreme Court and will be from congressional districts different from the congressional district in which the property or county which is the subject of the case is located. In the event that the property which is the subject of the case is located in each congressional district, then the case shall be heard by a panel of three judges of the Court of Civil Appeals, appointed by the Chief Justice of the Supreme Court to hear such case. A majority of the three-judge panel shall be required to render a decision in each case. The Oklahoma Supreme Court shall establish court rules for the Court of Tax Review and the Clerk of the Oklahoma Supreme Court shall serve as Clerk of the Court of Tax Review~~ three (3) judges of the Court of Appeals selected by the Chief Justice of the Oklahoma Supreme Court. One of those judges shall be designated as the principal judge of the Court of Tax Review who shall have primary responsibility for hearing cases. The other two judges shall be designated as alternates to be assigned cases when the principal judge is unavailable, or to meet the need of the Court of Tax Review to timely hear and dispose of cases brought before it. The terms of office of the judges on the Court of Tax Review shall be the same as their terms of office on the Court of Appeals. The duties and responsibilities of the judges with respect to the Court of Appeals caseload shall be monitored and reasonably reduced and moderated by the Oklahoma Supreme Court to allow necessary and appropriate time for disposition of cases to be heard by them in the Court of Tax Review.

B. The Court of Tax Review shall adopt and prescribe by rules the procedure of practice in the Court of Tax Review. In all cases regarding valuation of public service corporation property by the State Board of Equalization as provided by Section 2881 of this title, the rules of the Court of Tax Review shall require a scheduling conference within twenty (20) days of the answer filed

by the State Board of Equalization. The rules of the Court of Tax Review shall also require prompt nonbinding mediation by the parties prior to a trial de novo hearing of the merits of the case by the Court of Tax Review, with such mediation to be conducted simultaneously with the regular pretrial procedures. The trial of all cases brought before the Court of Tax Review shall be heard by a single judge of the Court of Appeals. Notwithstanding the foregoing, the rules of the Court of Tax Review may be modified as directed by the Oklahoma Supreme Court or by law.

C. The Court of Tax Review shall sit in Oklahoma City. The Clerk of the Oklahoma Supreme Court shall serve as Clerk of the Court of Tax Review.

D. The Court of Tax Review is hereby vested with jurisdiction over and shall hear complaints regarding valuation of public service corporation property by the State Board of Equalization as authorized by Section 2881 of this title, complaints regarding actions of the State Board of Equalization regarding either intracounty or intercounty property value equalization as authorized by Section 2882 of this title, and appeals as authorized by Section 2830 of this title concerning Category 2 or Category 3 noncompliance as determined by the Oklahoma Tax Commission. The Court of Tax Review shall determine if a county deemed to be in Category 3 noncompliance is required to reimburse the Oklahoma Tax Commission from the county assessor's budget for all costs incurred as a result of the assumption of the valuation function by the Commission.

~~B.~~ E. The Court of Tax Review shall prescribe procedures for the purpose of hearing properly filed protests against alleged illegal levies, as shown on the annual budgets filed with the State Auditor and Inspector. The Court shall reconvene as often as deemed necessary by the Court until final determination has been made as to all protested levies. ~~The judges shall be paid their traveling and living expenses while acting as members of the Court, out of the funds now provided by law for payment of district judges' expenses when holding court outside the counties of their residence.~~ Decisions of the Court of Tax Review

concerning alleged illegal levies shall be subject to the provisions of Sections 3025, 3026, 3027, 3028 and 3029 of this title.

F. The Court of Tax Review as it existed prior to November 1, 1997, shall cease to exist and all duties and responsibilities of such court, except as provided in this section, shall be transferred to the Court of Tax Review as re-created in this section.

SECTION 6. RECODIFICATION Section 2, Chapter 187, O.S.L. 1996 (68 O.S. Supp. 1996, Section 3106.1), shall be recodified as Section 3127.1 of Title 68 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 7. This act shall become effective November 1, 1997.

46-1-6984

JAF