

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 2165

By: Bonny

AS INTRODUCED

An Act relating to revenue and taxation; creating the Distressed Agricultural Property Tax Deferral Act; providing short title; defining terms; allowing certain individuals to defer property taxes on agricultural property by filing certain claim; stating qualifications; providing procedures for such claims; stating effect of property tax deferral; allowing guardian, conservator or trustee to act for individuals under certain circumstances; providing for certain construction; providing for appeal upon denial of claim; specifying requirements for property; providing procedures for filing of claims and requiring certain attachment; providing that Oklahoma Tax Commission has lien on tax-deferred property and specifying amount and procedures therefor; requiring county assessor to designate tax-deferred property on property tax rolls; providing procedure for processing of tax statements and for accrual of interest; providing for recording of list of tax-deferred properties; exempting Tax Commission from certain fees; requiring Tax Commission to pay county amount of deferred taxes less certain deduction; requiring

certain notice and specifying contents thereof;
providing procedures for estimate of lien amount;
providing for lien foreclosure under certain
circumstances; providing for crediting of receipts;
allowing taxpayer to limit amount of lien;
specifying time when deferred property taxes become
payable and providing procedures in such event;
allowing spouse to continue deferred tax status
under certain circumstances and providing
procedures for such continuation; allowing
extension of time for filing claim under certain
conditions; specifying duties of Tax Commission;
requiring payments of deferred taxes to be made to
Tax Commission and specifying procedures therefor;
providing for application of payment; providing
that taxes unpaid prior to deferral remain as lien
against property and providing procedures in such
event; providing exceptions; providing for accrual
of certain interest; providing procedures for delay
of foreclosure; providing for extension of time for
payment of deferred taxes; providing for certain
construction of act; prohibiting mortgage
instrument from prohibiting application for
deferral; providing for codification; and providing
an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2950 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Distressed Agricultural Property Tax Deferral Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2951 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Agricultural property" means real property used for agricultural purposes and valued for agricultural use pursuant to Section 2817 of Title 68 of the Oklahoma Statutes;
2. "Commission" means the Oklahoma Tax Commission;
3. "Disaster area" means an area within this state which the Governor has named and declared to be a disaster as a result of a flood, drought, fire, wind, earthquake, storm, or other catastrophe;
4. "Taxpayer" means an individual or individuals who have filed a claim for property tax deferral pursuant to Section 3 of this act; and
5. "Tax-deferred property" means the property on which taxes are deferred pursuant to this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2952 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to Section 4 of this act, an individual, or two or more individuals jointly, may elect to defer the property taxes on any real property classified or used as agricultural land owned by such persons by filing a claim for deferral with the county assessor after January 1 and on or before March 15 of the first year in which deferral is claimed if the agricultural property is within a disaster area, which disaster has resulted in at least a fifty

percent (50%) loss of the farming, ranching, or agricultural operation or production.

B. The county assessor shall forward each claim filed under this section to the Oklahoma Tax Commission which shall determine if the property is eligible for deferral.

C. When the taxpayer elects to defer property taxes for any year by filing a claim for deferral under subsection A of this section, it shall have the effect of:

1. Deferring the payment of the property taxes levied on the agricultural land for the fiscal year beginning on July 1 of such year;

2. Continuing the deferral of the payment by the taxpayer of any property taxes deferred under this act for previous years which have not become delinquent pursuant to Section 13 of this act; or

3. Continuing the deferral of the payment by the taxpayer of any future property taxes for as long as the provisions of Section 4 of this act are met.

D. If a guardian or conservator has been appointed for an individual otherwise qualified to obtain deferral of taxes under this act, the guardian or conservator may act for such individual in complying with the provisions of this act.

E. If a trustee of an inter vivos trust which was created by and is revocable by an individual, who is both the trustor and a beneficiary of the trust and who is otherwise qualified to obtain a deferral of taxes under this act, owns the fee simple estate under a recorded instrument of sale, the trustee may act for the individual in complying with the provisions of this act.

F. Nothing in this section shall be construed to require a spouse of an individual to file a claim jointly with the individual even though the spouse may be eligible to claim the deferral jointly with the individual.

G. Any person aggrieved by the denial of a claim for deferral of agricultural property taxes or disqualification from deferral of agricultural property taxes may appeal to the county equalization board in the manner provided by Section 2877 of Title 68 of the Oklahoma Statutes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2953 of Title 68, unless there is created a duplication in numbering, reads as follows:

In order to qualify for tax deferral under this act, the property shall meet all the following requirements when the claim is filed and thereafter so long as the payment of taxes by the taxpayer is deferred:

1. The property must be agricultural property of the individual or individuals who filed the claim for deferral;

2. The person claiming the deferral must, by himself or herself or together with his or her spouse, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument of sale, or two or more persons must together own or be purchasing the fee simple estate with rights of survivorship under a recorded instrument of sale if all owners apply for the deferral jointly; and

3. There must be no prohibition to the deferral of property taxes contained in any provision of federal law, rule or regulation applicable to a mortgage, trust deed, land sale contract or conditional sale contract for which the agricultural land is security.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2954 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A taxpayer's claim for deferral under Section 3 of this act shall be in writing on a form supplied by the Oklahoma Tax Commission and shall:

1. Describe the agricultural property;

2. Recite facts establishing the eligibility for the deferral under the provisions of this act; and

3. Have attached any documentary proof required by the Commission to show that the requirements of this act have been met.

B. There shall be annexed to the claim a statement verified by a written declaration of the applicant making the claim to the effect that the statements contained in the claim are true.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2955 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Tax Commission shall have a lien against the tax-deferred property for the payment of the deferred taxes plus interest thereon and any fees paid to the county clerk by the Commission in connection with the recording, release or satisfaction of the lien. The liens for deferred taxes shall attach to the property on July 1 of the year in which the taxes were assessed. The deferred property tax liens shall have the same priority as other real property tax liens except that the lien of mortgages or trust deeds which are recorded prior in time to the attachment of the lien for deferred taxes shall be prior to the liens for deferred taxes.

B. The lien may be foreclosed by the Commission as if it were a purchase money mortgage. Reasonable attorney fees at trial and on appeal and costs may be granted the Commission in a suit for foreclosure of its lien.

C. Receipts from foreclosure proceedings shall be credited in the same manner as other repayments of deferred property taxes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2956 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If eligibility for deferral of agricultural property is established as provided in this act, the Oklahoma Tax Commission

shall notify the county assessor, and the county assessor shall show on the current ad valorem assessment and tax roll which property is tax-deferred property by an entry clearly designating such property as tax-deferred property.

B. When requested by the Commission, the county treasurer shall send to the Commission, as soon as the taxes are extended upon the roll, the tax statement for each tax-deferred property.

C. Interest shall accrue on the actual amount of taxes advanced to the county for the tax-deferred property at the rate of six percent (6%) per annum.

D. The state liens provided by Sections 6 and 11 of this act and recorded under Section 8 of this act shall be for the actual amount of taxes advanced to the counties and not for the gross amount of taxes for which the property would be liable as shown on the tax statement for each tax-deferred property.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2957 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In each county in which there is tax-deferred property, the Oklahoma Tax Commission shall cause to be recorded in the mortgage records of the county, a list of tax-deferred properties of that county. The list shall contain a description of the property as listed on the assessment roll together with the name of the owner listed thereon.

B. Except as provided in Section 11 of this act, the recording of the tax-deferred properties under subsection A of this section is notice that the Commission claims a lien against those properties in the amount of the deferred taxes plus interest together with any fees paid to the county clerk in connection with the recording, release or satisfaction of the lien, even though the amount of taxes, interest or fees is not listed.

C. The Commission shall not be required to pay any filing, indexing or recording fees to the county in connection with the recording, release or satisfaction of liens against tax-deferred properties of that county in advance or at the time entry is made. Payment of the fees shall be made in the same manner as provided for the payment of fees for recording and making entry of warrants or orders in the county clerk lien record.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2958 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Upon determining the amount of deferred taxes on tax-deferred property for the tax year, the Oklahoma Tax Commission shall pay to the respective county treasurers an amount equivalent to the deferred taxes less three percent (3%) thereof.

B. The Commission shall maintain accounts for each deferred property and shall accrue interest only on the actual amount of taxes advanced to the county.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2959 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. On or before December 15 of each year, the Oklahoma Tax Commission shall send a notice to each taxpayer who has claimed deferral of property taxes for the current tax year. The notice shall:

1. Inform the taxpayer that the property taxes have or have not been deferred in the current year;

2. Show the total amount of deferred taxes remaining unpaid since initial application for deferral and the interest accruing therein to November 15 of the current year;

3. Inform the taxpayer that voluntary payment of the deferred taxes may be made at any time to the Commission; and

4. Contain any other information that the Commission considers necessary to facilitate administration of the agricultural property tax deferral program.

B. The Commission shall give the notice required under subsection A of this section by an unsealed postcard or other form of mail sent to the residence address of the taxpayer as shown in the claim for deferral or as otherwise determined by the Commission to be the correct address of the taxpayer.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2960 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. At the time that the taxpayer elects to defer property taxes under this act, the Oklahoma Tax Commission shall estimate the amount of property taxes that will be deferred for tax years beginning on or after January 1, 1998, interest thereon and any fees paid to the county clerk by the Commission in connection with lien recording, release or satisfaction. Thereafter, the Commission shall have a lien in the amount of the estimate.

B. The lien created under subsection A of this section shall attach to the property to which the election to defer relates on January 1 of the tax year of initial deferral or on January 1, 1998, whichever is applicable.

C. The lien created under subsection A of this section in the amount of the estimate shall have the same priority as other real property tax liens except that the lien of mortgages or trust deeds which are recorded prior in time to the attachment of the lien for deferred taxes shall be prior to the liens for deferred taxes.

D. If during the period of tax deferment, the amount of taxes, interest and fees exceeds the estimate, the Commission shall have a lien for the amount of the excess. The liens for the excess shall attach to the property on January 1 of the tax year in which the excess occurs. The lien for the excess shall have the same priority

as other real property tax liens, except that the lien of mortgages or trust deeds recorded prior in time to the date that the Commission records an amendment to its estimate to reflect its lien for the excess shall be prior to the lien for the excess.

E. Despite subsection B of Section 8 of this act, the notice of lien for deferred taxes recorded as provided in subsections A and B of Section 8 of this act shall list the amount of the estimate of deferred taxes, interest and fees made by the Commission under subsection A of this section and any amendment to the notice to reflect a lien for excess, as described under subsection D of this section, shall list the amount of the excess that the Commission claims as lien. If notice of lien with respect to any agricultural property has been recorded as provided under subsections A and B of Section 8 of this act, and the lien has not been released or satisfied, the Commission shall cause a further notice of lien to be recorded in the mortgage records of the county. The further notice of lien shall list the amount of estimate of deferred taxes and interest made by the Commission under subsection A of this section and any amendment to the notice to reflect a lien for excess, described under subsection D of this section, and shall list the amount of the excess that the Commission claims as lien.

F. A lien created under this section may be foreclosed by the Commission as if it were a purchase money mortgage. Reasonable attorney fees at trial and on appeal and costs may be granted the Commission in a suit for foreclosure of its lien.

G. Receipts from foreclosure proceedings shall be credited in the same manner as other repayments of deferred property taxes.

H. By means of voluntary payment made as provided under Section 15 of this act, the taxpayer may limit the amount of the lien for deferred taxes created under this section. If the taxpayer desires that the limit be reflected in the records of the county, the taxpayer must request, subject to any rules adopted by the

Commission, that the Commission cause a partial satisfaction of the lien to be recorded in the county. Upon receipt of such a request, the Commission shall cause a partial satisfaction, in the amount of the voluntary payment, to be so recorded. Nothing in this subsection shall affect the priority of the liens of the Commission, as originally created under subsections A and D of this section.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2961 of Title 68, unless there is created a duplication in numbering, reads as follows:

Subject to Section 14 of this act, all deferred property taxes, including accrued interest, become payable as provided in Section 13 of this act when:

1. The taxpayer who claimed deferment of collection of property taxes on the agricultural property dies or, if there was more than one claimant, the survivor of the taxpayers who originally claimed deferment of collection of property taxes under Section 3 of this act dies;

2. The property with respect to which deferment of collection of taxes is claimed is sold, or a contract to sell is entered into, or some person other than the taxpayer who claimed the deferment becomes the owner of the property; or

3. The tax-deferred property is no longer classified for ad valorem taxation purposes as agricultural property of the taxpayer who claimed the deferral, except in the case of a taxpayer required to be absent from such tax-deferred property by reason of health.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2962 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Whenever any of the circumstances listed in Section 12 of this act occurs:

1. The deferral of taxes for the assessment year in which the circumstance occurs shall continue for such assessment year; and

2. The amounts of deferred property taxes, including accrued interest, for all years shall be due and payable to the Oklahoma Tax Commission August 15 of the year following the calendar year in which the circumstance occurs, except as provided in Section 14 or 19 of this act.

B. If the amounts falling due as provided in this section are not paid on the indicated due date, or as extended under Section 19 of this act, such amounts shall be deemed delinquent as of that date and the property shall be subject to foreclosure as provided in Section 6 or 11 of this act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2963 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Despite Section 12 of this act, when one of the circumstances listed in paragraphs 1, 2 and 3 of Section 12 of this act occurs, the spouse who was not eligible to or did not file a claim jointly with the taxpayer may continue the property in its deferred tax status by filing a claim within the time and in the manner provided under Section 3 of this act if the property is the agricultural property of the spouse of the taxpayer and meets the requirements of paragraph 2 of Section 4 of this act.

B. Despite that Section 3 of this act requires that a claim be filed no later than April 15, if the Oklahoma Tax Commission determines that good and sufficient cause exists for the failure of a spouse to file a claim under this section on or before April 15, the claim may be filed within one hundred eighty (180) days after notice of taxes due and payable under Section 13 of this act is mailed or delivered by the Commission to the taxpayer or spouse.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2964 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. All payments of deferred taxes shall be made to the Oklahoma Tax Commission.

B. Subject to subsection C of this section, all or part of the deferred taxes and accrued interest may at any time be paid to the Commission by:

1. The taxpayer or the spouse of the taxpayer; or

2. The next of kin of the taxpayer, heir at law of the taxpayer, child of the taxpayer or any person having or claiming a legal or equitable interest in the property.

C. A person listed in paragraph 2 of subsection B of this section may make such payments only if no objection is made by the taxpayer within thirty (30) days after the Commission deposits in the mail notice to the taxpayer of the fact that such payment has been tendered.

D. Any payment made under this section shall be applied first against accrued interest and any remainder against the deferred taxes. Such payment does not affect the deferred tax status of the property. Unless otherwise provided by law, such payment does not give the person paying the taxes any interest in the property or any claim against the estate, in the absence of a valid agreement to the contrary.

E. When the deferred taxes and accrued interest are paid in full and the property is no longer subject to deferral, the Commission shall prepare and record in the county in which the property is located a satisfaction of deferred property tax lien.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2965 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Despite any provision of the Oklahoma Income Tax Code to the contrary and paragraph 1 of Section 20 of this act, upon compliance with Section 17 of this act, taxes, not in excess of One Thousand Dollars (\$1,000.00), assessed against a tax-deferred agricultural

property for any tax year beginning on or after July 1, 1998, that were unpaid as of July 1 of the tax year for which agricultural property tax deferral was initially granted under this act, and remain unpaid, shall remain a lien and shall become delinquent as otherwise provided by law, but shall not be subject to foreclosure until August 15 of the calendar year following the calendar year in which one of the circumstances listed in Section 12 of this act occurs.

B. If the property to which subsection A of this section applies has been included on a foreclosure list, or a decree of foreclosure entered, and taxes in excess of One Thousand Dollars (\$1,000.00) assessed against the property for the earliest year are paid, the property shall be removed from the foreclosure list, or decree vacated, unless the proceeding against the property involves delinquent taxes other than those described in subsection A of this section.

C. Upon removal from the foreclosure list, or upon vacation of the decree, no penalty shall be imposed. In lieu thereof, the penalty is abated, or if the penalty has been paid, upon application made to the county assessor on or before July 1 of the year immediately following the year of vacation or removal, the penalty shall be refunded.

D. Within sixty (60) days after approval of an application under Section 17 of this act, with respect to any property to which this section applies, the county assessor shall make the proper entries on the tax roll and shall remove the property from the foreclosure list and proceeding.

E. If a decree has been entered foreclosing liens for delinquent taxes against any property which is the subject to an application filed under Section 17 of this act, and the delinquent taxes include only those taxes described in subsection A of this section, or taxes in excess of those described in subsection A of

this section are paid, the decree shall be null and void and of no effect and the county assessor shall make the proper entries on the assessment and tax rolls to reflect the vacation of the decree and to acknowledge the subsisting liens.

F. Nothing in this section shall remove or release property to which this section applies from the lien of any unpaid tax thereon, but the unpaid taxes shall remain valid and subsisting liens as though the foreclosure proceeding had not been instituted or as though the foreclosure proceeding had not been instituted and a decree entered.

G. Nothing in this section shall affect a foreclosure proceeding instituted, or a decree entered, to foreclose liens for delinquent taxes against properties subject to foreclosure if the delinquent taxes include taxes other than those described under subsection A of this section. Such foreclosure proceedings shall be instituted or continued without regard to this section and such decree shall be of full force and effect as if this section did not exist.

H. Interest on taxes to which this section applies shall be determined from the same dates, in the same manner and until paid as for other property taxes remaining unpaid upon the due dates, upon preparation of the foreclosure list in accordance with Section 217 of Title 68 of the Oklahoma Statutes and subsection A of this section and upon entry and following a decree of foreclosure.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2966 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The owner of tax-deferred agricultural property desiring delay in foreclosure on account of delinquent taxes as provided in Section 16 of this act shall make application for the delay to the county assessor prior to the date the period of redemption expires. The application shall contain or be accompanied by a verified

statement of gross household income of the owner for the calendar year immediately preceding the calendar year in which the application is made.

B. Upon receipt of an application under subsection A of this section, the county assessor shall approve or deny the application. If the application is denied, the owner may appeal to the district court in the county where the tax-deferred agricultural property is located within ninety (90) days after notice in writing of the denial is mailed to the owner by the county assessor. Orders of the district court in an appeal taken under this subsection may be appealed to the Court of Tax Review.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2967 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. At the time the property is deeded over to the county at the conclusion of the foreclosure proceedings, the court shall order the county treasurer to pay to the Oklahoma Tax Commission the amount of deferred taxes and interest which were not collected.

B. Immediately upon payment, the county treasurer shall notify the county assessor of the amount paid to the Commission for the property which has been deeded to the county.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2968 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If the taxpayer who claimed agricultural property tax deferral dies, or if a spouse who continued the deferral under Section 14 of this act dies, the Oklahoma Tax Commission may extend the time for payment of the deferred taxes and interest accruing with respect to the taxes becoming due and payable under paragraph 2 of subsection A of Section 13 of this act if:

1. The agricultural property becomes property of an individual or individuals:

- a. by inheritance or devise, or
- b. if the individual or individuals are heirs or devisees in the course of settlement of the estate;

2. The individual or individuals commence farming, ranching, or agricultural operations of the property on or before August 15 of the calendar year following the calendar year of death; and

3. The individual or individuals make application to the Commission for an extension of time for payment of the deferred taxes and interest prior to August 15 of the calendar year following the calendar year of death.

B. Subject to subsection C of this section, an extension granted under this section shall be for a period not to exceed five (5) years after August 15 of the calendar year following the calendar year of death. The terms and conditions under which the extension is granted shall be in accordance with a written agreement entered into by the Commission and the individual or individuals.

C. An extension granted under this section shall terminate immediately if:

1. The agricultural property is sold or otherwise transferred by any party to the extension agreement; or

2. All of the heirs or devisees who are parties to the extension agreement cease to conduct farming, ranching, or agricultural operations on the property.

D. If the Commission has reason to believe that the agricultural property is not sufficient security for the deferred taxes and interest, the Commission may require the individual or individuals to furnish a bond conditioned upon payment of the amount extended in accordance with the terms of the extension. The bond shall not exceed in amount double the taxes with respect to which tax extension is granted.

E. During the period of extension, and until paid, the deferred taxes shall continue to accrue interest in the same manner and at

the same rate as provided under subsection C of Section 7 of this act. No interest shall accrue upon interest.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2969 of Title 68, unless there is created a duplication in numbering, reads as follows:

Nothing in this act is intended to or shall be construed to:

1. Prevent the collection, by foreclosure, of property taxes which become a lien against tax-deferred property;

2. Defer payment of special assessments to benefited property which assessments do not appear on the assessment and tax roll; or

3. Affect any provision of any mortgage or other instrument relating to land requiring a person to pay property taxes.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2970 of Title 68, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any mortgage trust deed or land sale contract to contain a clause or statement which prohibits the owner from applying for the benefits of the deferral of agricultural property taxes provided in this act. Any such clause or statement in a mortgage trust deed or land sale contract executed after January 1, 1998, shall be void.

SECTION 22. This act shall become effective January 1, 1998.

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