

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3255

By: Bryant

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 207, 221 and 227, as amended by Section 11, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1997, Section 227), which relate to the Uniform Tax Procedure Code; placing certain burden of proof on the Oklahoma Tax Commission in certain hearings and court proceedings; providing for civil damages for certain unauthorized tax collections; providing that such actions are exclusive remedies; stating amount of damages which may be recovered; requiring exhaustion of administrative remedies; providing for reduction of certain damages; providing certain limitation period; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 207, is amended to read as follows:

Section 207. ~~(a)~~ A. Incidental to the performance of its duties in the administration of this article or any state tax law, any member of the Tax Commission shall have the power to administer oaths, conduct hearings, and compel by subpoena the attendance of

witnesses and the production of any books, records, or papers of any person, firm, or corporation. The Tax Commission may examine under oath any taxpayer, and the directors, officers, agents and employees of any taxpayer, as well as all other witnesses, relative to the business of such taxpayer in respect of any matter incident to the administration of this article or any state tax law.

~~(b)~~ B. The fees of witnesses required by the Tax Commission to attend any hearing shall be the same as those allowed to witnesses appearing before district courts of this state. Such fees shall be paid in the manner provided for the payment of other expenses incident to the administration of this article or of any state tax law.

~~(c)~~ C. Any person desiring a hearing before the Tax Commission shall file an application for such hearing, signed by ~~himself~~ such person or ~~his~~ a duly authorized agent, setting ~~out therein~~ forth:

~~(1)~~ 1. A statement of the nature of the tax, the amount thereof in controversy, and the action of the Tax Commission complained of;

~~(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.~~ However, 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 the relief sought by the taxpayer;

~~(5)~~ 5. A statement of the witnesses, so far as such witnesses are then known to the taxpayer, showing their names and addresses, and, if the taxpayer so desires, a request that such witnesses be subpoenaed; and

~~(6)~~ 6. A verification by such person, or ~~his~~ a duly authorized agent, that the statements and facts ~~therein contained~~ in the application are true.

~~(d)~~ D. If, in such application, the taxpayer shall request an oral hearing, the Tax Commission shall grant such 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 such written notice, when such taxpayer may appear before the Tax Commission and present argument and evidence, oral or written. The Tax Commission shall, as soon as practicable thereafter, hold a hearing upon the matter and, pursuant to such hearing, shall, as soon as practicable, make an order confirming, modifying or vacating its prior determination, and shall send to the parties appearing before it at such hearing immediately a copy of such order.

E. In any hearing before the Tax Commission or in any court proceeding as provided in the Uniform Tax Procedure Code, the Tax Commission shall have the burden of proof with respect to any factual issue relevant to ascertaining the tax liability of a taxpayer.

SECTION 2. 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 of such taxpayer. 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 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 hearing; and such 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 file with the Tax Commission a written protest under oath, signed by ~~himself~~ the taxpayer or ~~his~~ a duly authorized agent, setting ~~out therein~~ forth:

~~(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.~~ However, 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 written protest the taxpayer shall request an oral hearing, the Tax Commission shall grant such 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 written notice, when such taxpayer may appear before the Tax Commission and present arguments and evidence, oral or written, in support of ~~his~~ the protest. In any hearing before the Tax Commission as provided in this section, or in any appeal of such hearing as provided in Section 225 of this title, the Tax Commission shall have the burden of proof with respect to any factual issue relevant to ascertaining the tax liability of the taxpayer.

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 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' 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.~~ The 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~~ subsection 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 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 3. AMENDATORY 68 O.S. 1991, Section 227, as amended by Section 11, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1997, Section 227), is amended to read as follows:

Section 227. ~~(a)~~ A. Any taxpayer who has paid to the State of Oklahoma, through error of fact, or computation, or misinterpretation of law, any tax collected by the Tax Commission may, as hereinafter provided, be refunded the amount of such tax so erroneously paid, without interest.

~~(b)~~ B. Any taxpayer who has so paid any such tax may, within three (3) years from the date of payment thereof file with the Tax Commission a verified claim for refund of such tax so erroneously paid. The Tax Commission may accept an amended sales tax, withholding tax or other report or return as a verified claim for refund if the amended report or return establishes a liability less than the original report or return previously filed.

~~(c)~~ ~~Said~~ C. The claim so filed with the Tax Commission, except for an amended report or return, shall specify the name of the taxpayer, the time when and period for which ~~said~~ the tax was paid, the nature and kind of tax so paid, the amount of the tax which ~~said~~ the taxpayer claimed was erroneously paid, the grounds upon which a refund is sought, and such other information or data relative to such payment as may be necessary to an adjustment thereof by the Tax Commission. In any hearing before the Tax Commission or in any court proceeding permitted pursuant to this section or Section 228 of this title, the Tax Commission shall have the burden of proof with respect to any factual issue relevant to ascertaining the tax liability of a taxpayer. It shall be the duty of the Commission to determine what amount of refund, if any, is due as soon as practicable after such claim has been filed and advise the taxpayer about the correctness of his claim and the claim for refund shall be approved or denied by written notice to the taxpayer.

~~(d)~~ D. If the claim for refund is denied, the taxpayer may file a demand for hearing with the Commission. The demand for hearing must be filed on or before the thirtieth day after the date the notice of denial was mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred.

~~(e)~~ E. Upon the taxpayer's timely filing of a demand for hearing, the Commission shall set a date for hearing upon the claim for refund which date shall not be later than sixty (60) days from the date the demand for hearing was mailed. The taxpayer shall be notified of the time and place of the hearing. The hearing may be held after the sixty-day period provided by this subsection upon agreement of the taxpayer.

~~(f)~~ F. The provisions of this section shall not apply: ~~(1) to~~
1. To refunds of income tax erroneously paid, refunds of which tax shall be payable out of the income tax adjustment fund as provided by law; ~~(2) to~~

2. To estate tax because the payment of such tax is covered by an order of the Tax Commission and the estate and interested parties are given notice that Commission's position and computation of the tax will become final unless they protest and resist the payment thereof as provided by statute; ~~nor, (3) in or~~

3. In any case where the tax was paid after an assessment thereof was made by the Tax Commission which assessment became final under the law.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 264 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. With respect to a taxpayer, in connection with the collection of state taxes, if any officer or employee of the Oklahoma Tax Commission recklessly, intentionally, or by reason of negligence disregards any provision of the Oklahoma Tax Code or any other tax law, or any regulation promulgated under the Oklahoma Tax

Code or any other tax law, such taxpayer may bring a civil action for damages against the Oklahoma Tax Commission in a district court of this state. Except as may be provided by law, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

B. In any action brought under subsection A of this section, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of Five Hundred Thousand Dollars (\$500,000.00) or the sum of:

1. Actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless, intentional, or negligent actions of the officer or employee; and

2. The costs of the action.

C. 1. A judgment for damages shall not be awarded under subsection B of this section unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Oklahoma Tax Commission.

2. The amount of damages awarded under paragraph 1 of subsection B of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

3. Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within two (2) years after the date the right of action accrues.

SECTION 5. This act shall become effective November 1, 1998.

46-2-9300

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