CS for SB 396

THE STATE SENATE
Tuesday, February 23, 1999

Committee Substitute for
Senate Bill No. 396

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 396 - By: LAUGHLIN of the Senate and MADDUX of the House.

[revenue and taxation - Uniform Tax Procedure Code - release or extinguishment of certain tax liens -

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 Oklahoma 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 taxpayer's 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 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~~ the taxpayer's 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~~ the taxpayer's 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. 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.

~~(c)~~ 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 Tax 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 Tax 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 Tax Commission's denial of such a request. An order of the Tax 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 Tax Commission shall make the order available for public inspection and shall publish those orders the Tax 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. Such lien is hereby released and extinguished upon the payment of such assessment, or upon the expiration of ten (10) years after the date upon which the assessment was filed in the office of the court clerk; provided, the Tax Commission may, prior to the release and extinguishment of such lien, re-file the assessment in the office of the court clerk. An assessment so re-filed shall continue the lien until payment of the assessment, or upon the expiration of ten (10) years after the date upon which the assessment was re-filed in the office of the court clerk. 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~~ the refund provisions shall be without application to taxes where the amount thereof has been determined by an assessment, other than ~~as~~ an assessment designated as an "office audit", that has become final.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 230, as amended by Section 1, Chapter 66, O.S.L. 1992 (68 O.S. Supp. 1998, Section 230), is amended to read as follows:

Section 230. The Oklahoma Tax Commission may issue to the county clerk of any county of the state a certificate certifying that the person therein named is indebted to the state for a specified state tax in the amount stated. The county clerk shall immediately record and index such certificate using the name of the delinquent taxpayer, the amount certified as being due, a short name of the tax, and the date and time of the filing for record. Such recording shall have the same force and effect as a judgment and shall constitute and be evidence and notice of the state's lien upon the title to any interest in any real property of the taxpayer named in such certificate. Such lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of such unpaid tax, penalty, interest and costs, and such lien shall be paramount and superior to all other liens of whatsoever kind or character attaching to any of said property subsequent to the date of such recording and shall be in addition to any lien provided by Section 234 of this title. Such lien is hereby released and extinguished upon the payment of the tax, penalty, interest and costs, or upon the expiration of ten (10) years after the date upon which such certificate was recorded and indexed by the county clerk;

provided, the Tax Commission may, prior to the release and extinguishment of such lien, re-issue the certificate of indebtedness to the county clerk. A certificate so re-issued shall continue the lien until payment of the tax, penalty, interest and costs, or upon the expiration of ten (10) years after the date upon which the certificate was re-recorded and indexed by the county clerk.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 231, as last amended by Section 12, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1998, Section 231), is amended to read as follows:

Section 231. A. If any tax, imposed or levied by any state tax law, or any portion of ~~said~~ such tax, ~~be~~ is not paid before the same becomes delinquent, the Oklahoma Tax Commission may immediately issue a warrant under its official seal. A tax warrant directed to the sheriff of any county of the state shall command ~~him~~ the sheriff to levy upon and sell without any appraisement or valuation any real or personal property of the taxpayer found within ~~his~~ the county for the payment of the delinquent tax, interest and penalties, and the cost of executing the warrant, and to return such warrant to the Tax Commission, and to pay to it any monies collected by virtue thereof, by a time to be therein specified, not more than sixty (60) days from the date of the warrant.

B. The Tax Commission shall, immediately upon issuance of the warrant, file with the county clerk of the county for which the warrant was issued a copy thereof, and thereupon the county clerk shall record and index such warrant in the same manner as judgments using the name of the taxpayer named in the warrant, a short name for the tax, the amount of the tax or portion thereof, and interest and penalties for which ~~said~~ the warrant was issued, and the date and time when such copy was filed. The filing of ~~said~~ the warrant in the office of the county clerk of ~~said~~ the county, shall constitute and be evidence and notice of the state's lien upon any interest in any real property of the taxpayer against whom such warrant is issued, until such tax, penalty and interest accruing thereon is paid. Such lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of ~~said~~ the unpaid tax, penalty, interest and costs, and such lien shall be paramount and superior to all other liens of whatsoever kind or character, attaching to any of said property subsequent to the date and time of such filing and shall be in addition to any lien provided by Section 234 of this title. The Tax Commission shall, immediately upon issuance of the warrant, mail, by regular mail, a copy of the warrant to the last-known address of the delinquent taxpayer. Such lien is hereby released and extinguished upon the payment of such tax, penalty, interest and costs, or upon

the expiration of ten (10) years after the date upon which the warrant was filed with the county clerk; provided, the Tax Commission may, prior to the release and extinguishment of such lien, re-file the warrant in the office of the county clerk. A warrant so re-filed shall continue the lien until payment of the tax, penalty, interest and costs, or upon the expiration of ten (10) years after the date upon which the warrant was re-filed and indexed by the county clerk.

C. Except as otherwise provided in subsection D of this section, the Tax Commission shall forward the filed warrant to the sheriff of the county in which the warrant was filed. Upon receipt of the warrant, such sheriff shall thereupon proceed to execute ~~said~~ the tax warrant in the same manner prescribed by law for executions against property upon judgment of a court of record; and such sheriff shall execute and deliver to the purchaser a bill of sale or deed, as the case may be.

D. The Tax Commission shall not direct or forward to the sheriff of any county any tax warrant issued pursuant to collection by the Tax Commission. The Tax Commission shall promulgate rules pertaining to tax warrants issued under this section.

E. The Tax Commission may levy upon and sell without any appraisement or valuation any real or personal property of any taxpayer identified by a filed tax warrant. The Tax Commission may

execute ~~said~~ the tax warrant in the same manner prescribed by law for executions against property upon judgment of a court of record and may execute and deliver to the purchaser a bill of sale or deed, as the case may be.

F. Any purchaser, other than the State of Oklahoma, shall be entitled, upon application to the court having jurisdiction of the property, to have confirmation ~~(~~, the procedure for which shall be the same as is now provided for the confirmation of a sale of property under execution~~)~~, of such sale prior to the issuance of a bill of sale or deed. The State of Oklahoma shall be authorized to make bids at any such sale to the amount of tax, penalty and costs accrued. In the event such bid is successful, the sheriff shall issue proper muniment of title to the ~~Oklahoma~~ Tax Commission which ~~Commission~~ shall hold such title for the use and benefit of the State of Oklahoma; and any taxpayer, or transferee of such taxpayer, shall have the right, at any time within one (1) year from the date of such sale, to redeem such property, upon the payment of all taxes, penalties and costs accrued to the date of redemption. Such applicant shall not be entitled to a credit upon such taxes, penalties and costs, by reason of revenue that might have accrued to the State of Oklahoma or other purchaser under sale, prior to such redemption. After the expiration of the period of redemption herein provided, the Tax Commission acting for the State of Oklahoma may

sell such property at public auction, upon giving thirty (30) days' notice, published in a newspaper of general circulation in the county where such property is located, to the highest and best bidder for cash; and upon a sale had thereof, or when a redemption is made, the Tax Commission, for and on behalf of the State of Oklahoma, shall issue its bill of sale or quit claim deed, as the case may be, to the successful bidder or to the redemptioner. Such muniment of title shall be executed by the Tax Commission, and attested by its secretary, with the seal of the Tax Commission affixed. The sheriff shall be entitled to the same fee for ~~his~~ services in executing the warrant, as ~~he~~ the sheriff would be entitled to receive if he or she were executing an execution issued by the court clerk of ~~said~~ the county upon a judgment of a court of record.

G. If any sheriff shall refuse or neglect to levy upon and sell any real or personal property of any taxpayer as directed by any warrant issued by the Tax Commission, or shall refuse or neglect, on demand, to pay over to the Tax Commission, its agents or attorneys, all monies ~~by him~~ collected or received under any warrant issued by the Tax Commission, at any time after collecting or receiving the same, such sheriff or other officer shall, upon motion of the Tax Commission in court, and after thirty (30) days' notice thereof, in writing, be amerced in the amount for which any such warrant was

issued by the Tax Commission, together with all penalties and costs and with an additional penalty of ten percent (10%) thereon, to and for the use of the State of Oklahoma. Every surety of any sheriff or officer shall be made a party to the judgment rendered as aforesaid against the sheriff or other officer.

H. The Tax Commission may expend funds from the Oklahoma Tax Commission Fund in the State Treasury to reimburse the sheriff for travel and administrative costs actually and necessarily incurred while performing duties required by this section. Such costs shall be assessed against the delinquent taxpayer, shall be added to the amount necessary to satisfy the tax warrant, and upon collection thereof shall be deposited in the Oklahoma Tax Commission Fund.

I. A tax warrant issued and filed under authority of this section shall:

1. Constitute and be evidence and notice of the state's lien upon real property; and

2. Not be subject to the provisions of any dormancy statute which would limit the enforceability, effect or operation of the lien<u>, except as otherwise provided in this section</u>.

J. After July 1, 1993, the Tax Commission shall not issue any certificates of indebtedness pursuant to the provisions of Section 230 of this title.

K. When a tax warrant has been issued and filed as provided in this section, the Tax Commission shall have all of the remedies and may take all of the proceedings thereon for the collection thereof which may be had or taken upon a judgment of the district court.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 234, as amended by Section 10, Chapter 294, O.S.L. 1997 (68 O.S. Supp. 1998, Section 234), is amended to read as follows:

Section 234. A. All taxes, interest and penalties imposed by the provisions of Section 201 et seq. of this ~~article~~ title, or any state tax law, are hereby declared to constitute a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person owing the tax, whether such property is employed by such person in the prosecution of business, or is in the hands of an assignee, trustee or receiver for the benefit of creditors, from the date ~~said~~ the taxes are due and payable under the provisions of the state tax laws levying such taxes. The lien shall be in addition to any lien accrued by the filing of a tax warrant or tax certificate as provided by Sections 230 and 231 of this title. The lien shall be prior, superior and paramount to all other liens, claims, or encumbrances on the property of whatsoever kind or character, except those of any bona fide mortgagee, pledgee, judgment creditor, or purchaser, whose right shall have attached prior to the date of the

filing and indexing in the office of the county clerk in the county in which the property is located, of the notice of the lien of the state under a tax certificate~~,~~ as provided by Section 230 of this title, or under a tax warrant as provided by Section 231 of this title, and who have filed or recorded ~~said~~ the mortgages and conveyances in the office of the county clerk of the county in which the property is located. Such taxes, penalties and interest shall at all times, constitute a prior, superior and paramount claim as against the claims of unsecured creditors. The lien of the state shall continue until the amount of the tax and penalty due and owing, and interest subsequently accruing thereon, is paid, or upon the expiration of ten (10) years after the date of the filing and indexing in the office of the county clerk in the county in which the property is located, of the notice of the lien of the state under a tax certificate as provided by Section 230 of this title, or under a tax warrant as provided by Section 231 of this title; provided, the Oklahoma Tax Commission may, prior to the expiration of the ten-year period provided for herein, re-file the notice of the lien with the county clerk. A notice so re-filed shall continue the lien until payment of the tax, penalty, interest and costs, or upon the expiration of ten (10) years after the date upon which the notice was re-filed.

B. In any action affecting the title to real estate or the ownership or right to possession of personal property, the State of Oklahoma may be made a party defendant, for the purpose of determining its lien upon the property involved therein only in cases where notice of the lien of the state has been filed and indexed as provided in Sections 230 and 231 of this title. In any such action, service of summons upon the Oklahoma Tax Commission, by serving any member thereof, shall be sufficient service and binding upon the State of Oklahoma. In all such actions or suits, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and the identifying number evidencing the lien.

SECTION 5. This act shall become effective November 1, 1999.

COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-16-99 - DO PASS, As Amended and Coauthored.