

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1402

By: Nance

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 217, as last amended by Section 2, Chapter 385, O.S.L. 1998, and 2375, as last amended by Section 10, Chapter 385, O.S.L. 1998 (68 O.S. Supp. 1998, Section 217 and 2375), which relate to interest and penalties on delinquent taxes; reducing interest rate on delinquent taxes; modifying certain penalties; eliminating certain penalty on delinquent income taxes; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 217, as last amended by Section 2, Chapter 385, O.S.L. 1998 (68 O.S. Supp. 1998, Section 217), is amended to read as follows:

Section 217. A. If any amount of tax imposed or levied by any state tax law, or any part of such amount, is not paid before such tax becomes delinquent, there shall be collected on the total delinquent tax interest at the rate of one ~~and one-quarter percent~~ ~~(1-1/4%)~~ percent (1%) per month from the date of the delinquency until paid.

B. Interest upon any amount of state tax determined as a deficiency, under the provisions of Section 221 of this title, shall be assessed at the same time as the deficiency and shall be paid upon notice and demand of the Tax Commission at the rate of one ~~and one-quarter percent~~ ~~(1-1/4%)~~ percent (1%) per month from the date prescribed in the state tax law levying such tax for the payment thereof to the date the deficiency is assessed.

C. If any tax due under state sales, use, tourism, mixed beverage gross receipts, or motor fuel tax laws, or any part

thereof, is not paid within fifteen (15) days after such tax becomes delinquent a penalty ~~of ten percent (10%)~~ in an amount as set forth in the Internal Revenue Code, 26 U.S.C., Section 6651 on the total amount of tax due and delinquent shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax within thirty (30) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

D. If any tax due under any state tax law other than those specified in subsection C of this section, or any part thereof, is not paid within thirty (30) days after such tax becomes delinquent a penalty ~~of ten percent (10%)~~ in an amount as set forth in the Internal Revenue Code, 26 U.S.C., Section 6651 on the total amount of tax due and delinquent shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax within thirty (30) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

E. If any part of any deficiency, arbitrary or jeopardy assessment made by the Tax Commission, is based upon or occasioned by the taxpayer's negligence or by the failure or refusal of any taxpayer to file with the Tax Commission any report or return, as required by this title, or by any state tax law, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by letter, the Commission may assess and collect, as a penalty, ~~twenty-five percent (25%)~~ of the amount of the assessment set forth in the Internal Revenue Code, 26 U.S.C., Section 6651. For purposes of this subsection, "negligence" shall mean the consistent understatement of income, consistent understatement of receipts or a system of recordkeeping by the taxpayer that consistently results in an inaccurate reporting of tax liability.

F. If any part of any deficiency is due to fraud with intent to evade tax, then ~~fifty percent (50%) of the total amount of the deficiency, in addition to such deficiency, including interest as herein provided,~~ the amount set forth in the Internal Revenue Code, 26 U.S.C., Section 6651 regarding fraudulent failure to file shall be added, collected and paid.

G. All penalties or interest imposed by this title, or any state tax law, shall be recoverable by the Tax Commission as a part of the tax with respect to which they are imposed, the penalties bearing interest as provided in this section for the tax, and all penalties and interest shall be apportioned as provided for the apportionment of the tax on which such penalties or interest are collected.

H. Whenever an income tax refund is not paid to the taxpayer within ninety (90) days after the return is filed or due, whichever is later, with all documents as required by the Commission, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund, at the same rate specified for interest on delinquent tax payments. The payment of interest on refunds provided for by this section shall apply to tax year 1987 and subsequent tax years. The Tax Commission shall not be required to pay interest on an income tax refund which is applied, in whole or in part, to a prior year tax liability pursuant to Section 2385.17 of this title or upon an income tax refund applied, in whole or in part, to satisfy a debt owed to the Internal Revenue Service of the United States or to a state agency, including the Oklahoma Tax Commission, as provided by Section 205.2 of this title.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 2375, as last amended by Section 10, Chapter 385, O.S.L. 1998 (68 O.S. Supp. 1998, Section 2375), is amended to read as follows:

Section 2375. A. At the time of transmitting the return required hereunder to the Tax Commission, the taxpayer shall remit

therewith to the Tax Commission the amount of tax due under the applicable provisions of this article. Failure to pay such tax on or before the date the return is due shall cause the tax to become delinquent. If the return is filed electronically, the amount of the tax due pursuant to the provisions of this article shall be due on or before the 15th day of April following the close of the taxable year regardless of when the return is electronically filed. The tax shall be deemed delinquent if unpaid after the 15th day of April if the return is electronically filed.

~~B. If any tax due under this article, except a deficiency determined under Section 221 of this title, is not paid on or before the date such tax becomes delinquent, a penalty of five percent (5%) of the total amount of the tax due shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax within thirty (30) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.~~

~~C.~~ If any part of deficiency, arbitrary or jeopardy assessment made by the Tax Commission is based upon or occasioned by the refusal of any taxpayer to file with the Tax Commission any return as required by this article, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by registered letter with a return receipt attached, the Tax Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. In the exercise of the authority granted by subsection (c) of Section 223 and Section 224 of this title, the Oklahoma Tax Commission shall assess the tax as an estimated tax on the basis of its own determination of the Oklahoma taxable income of the taxpayer, to be adjusted if and when Oklahoma taxable income is ascertained under the provisions of this act.

~~D.~~ C. If any part of any deficiency was due to negligence or intentional disregard, without the intent to defraud, then ten percent (10%) of the total amount of the deficiency, in addition to such deficiency, including interest as authorized by law, shall be added, collected and paid.

~~E.~~ D. If any part of any deficiency was due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency, in addition to such deficiency, including interest as herein provided, shall be added, collected and paid.

~~F.~~ E. The provisions in this section for penalties shall supersede all other provisions for penalties on income taxes. The provisions in this section for penalties shall supersede the provisions in the Uniform Tax Procedure Code, Section 201 et seq. of this title, only to the extent of conflict between such provisions and the penalty provisions in this section.

~~G.~~ F. All taxes, penalties and interest levied under this article must be paid to the Tax Commission at Oklahoma City, in the form or remittance required by and payable to it.

~~H.~~ G. 1. The period of time prescribed in Section 223 of this title, in which the procedures for the assessment of income tax may be commenced by the Oklahoma Tax Commission, shall be tolled and extended until the amount of taxable income for any year of a taxpayer under the Internal Revenue Code has been finally determined under applicable federal law and for the additional period of time hereinafter provided in this subsection.

2. If, in such final determination, the amount of taxable income for any year of a taxpayer under the Internal Revenue Code is changed or corrected from the amounts included in the federal return of the taxpayer for such year and such change or correction affects the Oklahoma taxable income of the taxpayer for such year, the taxpayer, within one (1) year after such final determination of the corrected taxable income, shall file an amended return under this

article reporting the corrected Oklahoma taxable income, and the Tax Commission shall make assessment or refund within two (2) years from the date the return required by this paragraph is filed and not thereafter, unless a waiver is agreed to and signed by the Tax Commission and the taxpayer.

3. In the event of failure by a taxpayer to comply with the provisions of paragraph 2 of this subsection, the statute of limitations shall be tolled for a period of time equal to the time between the date the amended return under this subsection is required until such return is actually furnished.

4. In administering the provisions of this subsection, the Tax Commission shall have the authority to audit each and every item of income, deduction, credit or any other matter related to the return where such items or matters relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government even if such items or matters were not affected by revisions made in such final determination. Where such items or matters do not relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, the Tax Commission shall be bound by the revisions made in such final determination.

5. The provisions of this subsection shall be effective on September 1, 1993, and except in the case of tax years which are the subject of closing, settlement or resolution agreements entered into by taxpayers and the Tax Commission, keep open all tax years beginning after June 30, 1988, and all tax years beginning on or before June 30, 1988, for which extensions of the statute of limitations have been executed by the taxpayer, but only to the extent such extensions remain open on the date of enactment hereof.

SECTION 3. This act shall become effective January 1, 2000.

47-1-5336 JAF 6/12/15