

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1041

By: Monson

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, 225, as last amended by Section 26, Chapter 293, O.S.L. 1999, 2385.6, as amended by Section 11, Chapter 385, O.S.L. 1998, and 2385.13, as amended by Section 1, Chapter 42, O.S.L. 1996 (68 O.S. Supp. 1999, Sections 217, 225, 2385.6 and 2385.13), which relate to the Uniform Tax Procedure Code and income taxes; modifying rate of interest required to be paid in connection with certain refunded amounts and certain delinquent 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. 1999, 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%) per month~~ an annualized rate as reported by the State Treasurer to the Oklahoma Tax Commission based on an average of the interest rate for thirty-day time deposits of state funds during the last calendar quarter of the last preceding fiscal year 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%) per month~~ an annualized rate as

reported by the State Treasurer to the Tax Commission based on an average of the interest rate for thirty-day time deposits of state funds during the last calendar quarter of the last preceding fiscal year 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%) 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%) 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 Tax Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. 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, 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 Tax 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 225, as last amended by Section 26, Chapter 293, O.S.L. 1999 (68 O.S. Supp. 1999, Section 225), is amended to read as follows:

Section 225. A. Any taxpayer aggrieved by any order, ruling, or finding of the Oklahoma Tax Commission directly affecting the taxpayer or aggrieved by a final order of the Tax Commission issued pursuant to subsection ~~(g)~~ G of Section 221 of this title may appeal therefrom directly to the Supreme Court of Oklahoma.

B. Within thirty (30) days after the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer desiring to appeal shall:

1. File a petition in error in the office of the Clerk of the Supreme Court;

2. Make cash payment of any tax, additional tax, penalty, and interest involved to the Tax Commission, or in lieu of this payment, file a bond for payment with the Tax Commission or a performance bond, if applicable, as and to the extent required in the case and as specified in subsections C, F, and G of this section; and

3. Request that the Tax Commission prepare for filing with the Supreme Court, within thirty (30) days, the record of the appeal, certified by the Secretary of the Tax Commission, and consisting of any citations, findings, judgments, motions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings, and evidence as the appealing parties and the Tax Commission may agree to be sufficient to present fully to the Court the questions involved.

C. Upon request of the taxpayer, the Tax Commission shall furnish the taxpayer a copy of the proceedings had in connection with the matter complained of.

D. If the appeal is from an order of the Tax Commission assessing a tax or an additional tax, a penalty, or interest, then within thirty (30) days from the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer filing the

appeal shall pay to the Tax Commission the amounts of tax, additional tax, any penalty assessed, and interest accrued through the date of the payment, and the payment by the taxpayer to the Tax Commission within that thirty-day period ~~is~~ shall be a condition precedent to the right of the taxpayer to make and prosecute an appeal, and a jurisdictional prerequisite to the Supreme Court having jurisdiction to hear and determine the appeal. If, upon a final determination of the appeal, the order assessing a tax, penalty, or interest is reversed or modified and it is determined that the tax or part thereof was erroneously or illegally assessed, the amounts paid by the taxpayer, together with the interest thereon at the same rate of three percent (3%) per annum of interest assessed upon delinquent taxes, shall be refunded to the taxpayer by the Tax Commission.

E. If the appeal is from an order of the Tax Commission or a district court denying a refund of taxes previously paid and if upon final determination of the appeal, the order denying the refund is reversed or modified, the taxes previously paid, together with interest thereon from the date of the filing of the petition in error at the same rate of three percent (3%) per annum of interest assessed upon delinquent taxes, shall be refunded to the taxpayer by the Tax Commission.

F. Such refunds and interest thereon shall be paid by the Tax Commission out of monies in the Tax Commission clearing account from subsequent collections from the same source as the original tax assessment; provided that in the event there are insufficient funds for refunds from subsequent collections from the same source, the refund shall be paid by the Tax Commission from monies appropriated by the Legislature to the special refund reserve account for such purposes as hereinafter provided. There is hereby created within the official depository of the State Treasury an agency special account for the Tax Commission for the purpose of making such

refunds as may be required under this section, not otherwise provided. This account shall consist of monies appropriated by the Legislature for the purpose of making refunds under this section.

G. In lieu of the cash payment provided for in subsection C of this section, the taxpayer may file with the Tax Commission, pursuant to Section 210 of this title, a bond in double the amount of the tax, additional tax, penalties and interest so assessed, conditioned that the taxpayer will faithfully and diligently prosecute such appeal to a final determination, and in the event the order of the Tax Commission be affirmed on appeal, will pay such tax, additional tax, penalties and interest, and costs so assessed against the taxpayer. Any bond submitted pursuant to this subsection must be approved by the Tax Commission as to form and amount and accepted within the time prescribed for filing an appeal.

H. If the appeal be from an order, judgment, finding, or ruling of the Tax Commission other than one assessing a tax and from which a right of appeal is not otherwise specifically provided for in ~~this article~~ the Uniform Tax Procedure Code, any aggrieved taxpayer may appeal from that order, judgment, finding, or ruling as provided in this section and may supersede the effect of such order, judgment, ruling, or finding by filing with the Tax Commission a bond in an amount fixed by the Tax Commission payable to the State of Oklahoma conditioned that the appeal will faithfully and diligently be prosecuted to a final determination, and in the event the order, judgment, ruling, or finding of the Tax Commission be affirmed on appeal, that such person will immediately conform thereto.

I. This section shall be construed to provide to the taxpayer a legal remedy by action at law in any case where a tax, or the method of collection or enforcement thereof, or any order, ruling, finding, or judgment of the Tax Commission is complained of, or is sought to be enjoined in any action in any court of this state or the United States of America.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 2385.6, as amended by Section 11, Chapter 385, O.S.L. 1998 (68 O.S. Supp. 1999, Section 2385.6), is amended to read as follows:

Section 2385.6 A. If an employer fails to file a return or to pay to the Oklahoma Tax Commission the withholding tax within the time prescribed by this article, there shall be imposed on ~~him~~ such employer a penalty equal to five percent (5%) of the amount of tax, or five percent (5%) of the amount of the underpayment of tax, if such failure is not corrected on or before the last day of the month when due, with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) in the aggregate. There shall also be imposed on ~~such~~ the employer interest at ~~the rate of one and one-quarter percent (1 1/4%) per month~~ an annualized rate as reported by the State Treasurer to the Tax Commission based on an average of the interest rate for thirty-day time deposits of state funds during the last calendar quarter of the last preceding fiscal year during the period ~~such~~ the underpayment exists. For the purposes of this ~~paragraph~~ subsection, "underpayment" shall mean the excess of the amount of the tax required to be paid over the amount thereof actually paid on or before the date prescribed therefor. ~~Such~~ The penalty and interest shall be added to and become a part of the tax assessed. 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.

B. Any employer who is required under the provisions of Section 2385.3 of this title to furnish a statement to an employee, but who willfully fails to furnish ~~such~~ the statement to the employee ~~the statement required by said section~~, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding One Hundred Dollars (\$100.00), or by imprisonment for not more than six

(6) months in the county jail, or by both such fine and imprisonment for each such offense.

C. The provisions of subsections A and B of this section shall also apply to every person making payments of winnings subject to withholding.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 2385.13, as amended by Section 1, Chapter 42, O.S.L. 1996 (68 O.S. Supp. 1999, Section 2385.13), is amended to read as follows:

Section 2385.13 Every taxpayer required under the provisions of Section 2385.7 of this title to make a declaration of estimated tax shall make the declaration at the time provided in Section 2385.8 of this title, for the amount the taxpayer expects to owe for the current year. The estimate so made may be amended by either increasing or decreasing the amount originally estimated on either of the dates provided for the making of installment payments on estimates, and the estimates at the respective dates shall be not less than seventy percent (70%) of the amount of tax due as indicated by the taxpayer's records or information on the respective dates. For purposes of determining the amount of tax due on any of the respective dates, taxpayers with Oklahoma taxable income of at least One Million Dollars (\$1,000,000.00) in at least one of the preceding three (3) taxable years may compute the tax by placing taxable income on an annualized basis as prescribed by rules promulgated by the Tax Commission which rules shall be in accordance with the annualization provisions of the Internal Revenue Code. The provisions allowed in this section for computing estimated taxes on an annualized basis shall only be permitted for a taxable year of twelve (12) months. Should a taxpayer fail to make an estimate on any quarterly due date equivalent to at least seventy percent (70%) of the amount so indicated to be due, a penalty of five percent (5%) of the amount of the underpayment and interest thereon at ~~the rate of one and one-quarter percent (1 1/4%) per month, or fraction~~

~~thereof~~ an annualized rate as reported by the State Treasurer to the Tax Commission based on an average of the interest rate for thirty-day time deposits of state funds during the last calendar quarter of the last preceding fiscal year, for the period of the underpayment, shall be added thereto and paid. The penalty and interest provided by this section shall not be applicable where the amount of Oklahoma income tax withheld during the current year and/or payments made on the estimated tax for the current year is an amount which is equal to or greater than the amount shown to be due by the return for the preceding taxable year of twelve (12) months.

SECTION 5. This act shall become effective November 1, 2000.

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