

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1354

By: Herbert

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 205, as last amended by Section 37, Chapter 10, O.S.L. 1999 (68 O.S. Supp. 1999, Section 205), which relates to the Uniform Tax Procedure Code; authorizing State Treasurer to sell, transfer or assign certain state tax indebtedness and lien; specifying restrictions thereon; requiring Oklahoma Tax Commission to provide certain information to State Treasurer; prohibiting inclusion of certain information; specifying certain duties of Tax Commission; providing that term of tax liens not to be extended; prohibiting collection or attempt to collect indebtedness which has been sold, transferred or assigned; providing procedures for sale, transfer or assignment; granting certain remedies and rights to purchaser, transferee or assignee; providing that penalties and interest continue to accrue; authorizing Tax Commission to provide certain information to purchaser, transferee or assignee; subjecting such persons and employees thereof to certain provisions and requiring certain affidavit; requiring lien release to be filed under certain circumstances; providing for apportionment of proceeds received by State Treasurer from sale, transfer or assignment; authorizing State Treasurer and Tax Commission to promulgate certain rules; prohibiting legal recourse against state for certain damages; allowing political subdivision to contract with State Treasurer to perform certain duties; modifying information required by law to be kept confidential; 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 255.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The State Treasurer shall have the authority to sell, transfer or assign all right, title and interest in state tax indebtedness and lien represented by any certificate of indebtedness, tax warrant, order of attachment or other instrument

authorized by law to be imposed against any person pursuant to any assessment of taxes, including penalties and interest thereon, as provided herein. The State Treasurer may make such sales, transfer or assignment to any person for a fair, adequate and reasonable consideration pursuant to the provisions of this section.

B. The Oklahoma Tax Commission shall provide to the State Treasurer a list of state tax indebtedness and lien which has remained uncollected for a period of not less than two (2) years from the date the assessment became final, and a list of taxpayers from whom such indebtedness is due. An assessment shall be deemed to be final if it is not subject to further protest or appeal pursuant to the provisions of the Uniform Tax Procedure Code, Section 201 et seq. of Title 68 of the Oklahoma Statutes. No taxpayer shall be included on such list until the Tax Commission has notified the taxpayer, by first class mail, of the liability and has made reasonable efforts to collect the debt.

C. The provisions of this section shall not operate to extend the term of any tax lien which is specified by law.

D. Neither the Tax Commission nor any debt collection agency or other person with which the Tax Commission has entered into a contract for collection of delinquent taxes shall collect or attempt to collect tax indebtedness which has been sold, transferred or assigned by the State Treasurer pursuant to the provisions of this section.

E. All sales, transfers or assignments of indebtedness and liens represented by any certificate of indebtedness, tax warrant, order of attachment or other instrument authorized by law to be imposed against any person pursuant to any assessment of taxes, shall be to the highest bidder after public advertisement for bids therefor. Specifications and invitations for bids shall permit such full and free competition as is consistent with what will be most advantageous to the state based upon a present value analysis,

taking into account such factors as the State Treasurer, with the assistance of the Tax Commission, may determine. Notice for bids shall be in such manner selected by the State Treasurer as will best give notice thereof to bidders and shall be sufficiently in advance of the sales, transfers or assignments to promote competitive bidding. Any or all bids may be rejected if the State Treasurer determines that it is in the public interest to do so.

F. The purchaser, transferee or assignee of any state tax indebtedness and lien represented by a certificate of indebtedness, tax warrant, order of attachment or other instrument authorized by law to be imposed against any person pursuant to any assessment of taxes, shall be entitled to exercise all the remedies and may take all of the proceedings for the collection of the indebtedness represented that are available pursuant to the laws of this state to any judgment creditor, and shall be entitled to the same priority as the state may have respecting any certificate of indebtedness, tax warrant, order of attachment or other instrument and underlying indebtedness and lien. Penalties and interest shall continue to accrue upon such indebtedness under the terms and conditions provided by law.

G. The Tax Commission may, at the time of sale, provide the purchaser, transferee or assignee of the certificate of indebtedness, tax warrant, order of attachment or other instrument and lien represented such taxpayer information as it has available to assist the purchaser, transferee or assignee in collection of the indebtedness represented if such disclosure is not contrary to the provisions of Section 205 of Title 68 of the Oklahoma Statutes or any other state or federal law. Such purchaser, transferee or assignee and its employees shall be specifically subject to the provisions of Section 205 of Title 68 of the Oklahoma Statutes and the purchaser, transferee or assignee shall furnish to the Tax Commission an affidavit of each of its officers and employees

acknowledging receipt of a copy of the provisions of Section 205 of Title 68 of the Oklahoma Statutes, and the provisions of any penalties provided by law for violation thereof, and acknowledging his or her obligation and agreement to maintain the confidentiality of taxpayer information and awareness of the penalties of violation thereof.

H. The purchaser, transferee or assignee of the indebtedness and lien shall promptly file a release of any lien purchased, transferred or assigned with the county clerk upon payment or settlement of the indebtedness by the taxpayer.

I. All proceeds received by the State Treasurer from the sale, transfer or assignment of state tax indebtedness and lien as provided herein shall be apportioned as collections of the tax due.

J. The State Treasurer and the Tax Commission are hereby authorized to promulgate rules to implement the provisions of this section.

K. Under no circumstances shall any purchaser, transferee or assignee have any legal recourse against the state or its officers or employees for any damages of any sort whatsoever that may arise on account of or in connection with any sale, transfer, or assignment made or proposed to be made pursuant to the provisions of this section.

L. Any political subdivision of this state may contract with the State Treasurer to perform the duties specified herein with respect to any indebtedness or lien arising from nonpayment of local taxes.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 205, as last amended by Section 37, Chapter 10, O.S.L. 1999 (68 O.S. Supp. 1999, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Oklahoma Tax Commission concerning the administration of the Uniform Tax Procedure Code or of any state tax law shall be considered

confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from the records or files or from any examination or inspection of the premises or property of any person.

B. Neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of the Uniform Tax Procedure Code or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of the Uniform Tax Procedure Code or of any state tax law.

C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to a taxpayer or a duly authorized representative of the taxpayer of a copy of any report or any other paper filed by the taxpayer pursuant to the provisions of the Uniform Tax Procedure Code or of any state tax law;

2. The exchange of information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.,

pursuant to reciprocal agreements entered into by the Tax Commission and other state agencies or agencies of the federal government;

3. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

4. The examination of records and files by the State Auditor and Inspector or the duly authorized agents of the State Auditor and Inspector;

5. The disclosing of information or evidence to the Attorney General, any district attorney, or agent of any federal law enforcement agency when the information or evidence is to be used by such officials to prosecute violations of the criminal provisions of the Uniform Tax Procedure Code or of any state tax law or of any federal crime committed against this state. Any information disclosed to the Attorney General, any district attorney, or agent of any federal law enforcement agency shall be kept confidential by such person and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state, and a violation by the Attorney General, district attorney, or agent of any federal law enforcement agency by otherwise releasing the information shall be a felony;

6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission;

7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by its records or files to any official person or body of this state, any other state, the United States, or foreign country who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States. The provisions of this paragraph shall include the furnishing of information by the Tax Commission to a county assessor to determine the amount of gross household income pursuant to the

provisions of Section 8C of Article X of the Oklahoma Constitution or Section 2890 of this title. The Tax Commission shall promulgate rules to give guidance to the county assessors regarding the type of information which may be used by the county assessors in determining the amount of gross household income pursuant to Section 8C of Article X of the Oklahoma Constitution or Section 2890 of this title. The provisions of this paragraph shall also include the furnishing of information to the State Treasurer for the purpose of administration of the Uniform Unclaimed Property Act;

8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to such requesting agencies;

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2858 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections 2838 and 2839 of this title on behalf of a corporation other than a public service corporation;

10. The furnishing of information requested by any member of the general public and stated in the findings of the Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2865 of this title and Section 21 of Article X of the Oklahoma Constitution;

11. The furnishing of information to an Oklahoma wholesaler of low-point beer, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase low-point beer in this state or the

furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state;

12. The furnishing of information as to the issuance or revocation of any tax permit, license or exemption by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued the permit, license or exemption, the name of the business entity authorized to engage in business pursuant to the permit, license or exemption, the address of the business entity, and the grounds for revocation;

13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued the permit or license, the name of the business entity authorized to engage in business pursuant to the permit or license, the address of the business entity, and the grounds for revocation;

14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law;

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

16. The disclosure of information necessary to complete the performance of any contract authorized by Sections 255 and 262 of this title to any person with whom the Tax Commission has contracted;

17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be made upon such form as the Tax Commission may prescribe;

18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title;

19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title;

20. The disclosure to a plaintiff of a corporation's last-known address shown on the records of the Franchise Tax Division of the Tax Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

21. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. Such disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness;

22. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Such disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body;

23. The furnishing of information regarding incentive payments made pursuant to the provisions of Sections 3601 through 3609 of

this title or incentive payments made pursuant to the provisions of Sections 3501 through 3508 of this title;

24. The furnishing to a prospective purchaser of any business, or his or her authorized representative, of information relating to any liabilities, delinquencies, assessments or warrants of the prospective seller of the business which have not been filed of record, established, or become final and which relate solely to the seller's business. Any disclosure under this paragraph shall only be allowed upon the presentment by the prospective buyer, or the buyer's authorized representative, of the purchase contract and a written authorization between the parties; ~~or~~

25. The furnishing of information as to the amount of state revenue affected by the issuance or granting of any tax permit, license, exemption, deduction, credit or other tax preference by the Tax Commission as provided for by law. Such information shall be limited to the type of permit, license, exemption, deduction, credit or other tax preference issued or granted, the date and duration of such permit, license, exemption, deduction, credit or other tax preference and the amount of such revenue. The provisions of this paragraph shall not authorize the disclosure of the name of the person issued such permit, license, exemption, deduction, credit or other tax preference, or the name of the business entity authorized to engage in business pursuant to the permit, license, exemption, deduction, credit or other tax preference;

26. The furnishing of information to the State Treasurer pursuant to the provisions of subsection B of Section 1 of this act;
or

27. The furnishing of information to a purchaser, transferee or assignee of a certificate of indebtedness, tax warrant, order of attachment or other instrument and lien represented pursuant to the provisions of subsection G of Section 1 of this act.

D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of the list.

E. The Tax Commission shall prepare or cause to be prepared a report on all provisions of state tax law that reduce state revenue through exclusions, deductions, credits, exemptions, deferrals or other preferential tax treatments. The report shall be prepared not later than October 1 of each even-numbered year and shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Tax Commission may prepare and submit supplements to the report at other times of the year if additional or updated information relevant to the report becomes available. The report shall include, for the previous fiscal year, the Tax Commission's best estimate of the amount of state revenue that would have been collected but for the existence of each such exclusion, deduction, credit, exemption, deferral or other preferential tax treatment allowed by law. The Tax Commission may request the assistance of other state agencies as may be needed to prepare the report.

F. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

G. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both such fine and imprisonment, and the offender shall be removed or dismissed from office.

H. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as the offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of the district attorney its records and files pertinent to prosecutions, and such records and files shall be fully admissible as evidence for the purpose of such prosecutions.

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

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