

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1448

By: Monson

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 221 and 225, which relate to the Uniform Tax Procedure Code; modifying time period within which certain filing may be made with Oklahoma Tax Commission; modifying date upon which proposed assessment by Tax Commission becomes final; modifying duties of taxpayer desiring to appeal from certain orders, rulings or findings of Tax Commission; modifying certain appeal procedures; modifying conditions precedent to right of appeal; modifying time period for submission of certain bonds; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 221, is amended to read as follows:

Section 221. 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 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. 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 the report or return unless 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. Within ~~thirty (30)~~ sixty (60) days after the mailing of the aforesaid proposed assessment, the taxpayer may file with the Tax Commission a written protest under oath, signed by the taxpayer or the taxpayer's duly authorized agent, setting out therein:

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. A clear and concise assignment of each error alleged to have been committed by the Tax Commission;

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 the application;

4. A statement of relief sought by the taxpayer; and

5. A verification by the taxpayer or the taxpayer's duly authorized agent that the statements and facts contained therein are true.

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 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.

E. If the taxpayer fails to file a written protest within the ~~thirty-day~~ sixty-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 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 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. 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. 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 title, appeal to the Supreme Court, but in the event 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

title shall not apply where a proposed assessment or an assessment of taxes has been permitted to become final.

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 county clerk of any county in this state, and upon being so filed, the county 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, except as otherwise provided herein, upon the expiration of ten (10) years after the date upon which the assessment was filed in the office of the county clerk; provided, the Tax Commission may, prior to the release and extinguishment of such lien, refile the assessment one time in the office of the county clerk. An assessment so refiled 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 refiled in the office of the county clerk. The remedies provided in this subsection shall be in addition to other remedies provided by law. All active liens evidenced by an assessment filed with a county clerk's office prior to November 1, 1989, shall be released and extinguished if the assessment is not refiled prior to November 1, 2001.

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 the refund provisions shall be without application to taxes where the amount thereof has been determined by an assessment, other than an assessment designated as an "office audit", that has become final.

SECTION 2. AMENDATORY 68 O.S. 2001, 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; and

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 D, G, and H of this section;~~

~~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 the Tax Commission,~~ 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~~ the filing of the petition in error, may request the Court to order the taxpayer to 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~~ as 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 rate of three percent (3%) per annum, 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 rate of three percent (3%) per annum, 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 D 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~~ by the Court.

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. This act shall become effective July 1, 2002.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

48-2-2416

CD

6/12/2015 11:02:06 AM