

ENROLLED SENATE
BILL NO. 1435

By: Crain of the Senate

and

Sullivan of the House

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 801 and 815, as last amended by Section 3, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2005, Section 815), which relate to inheritance taxes; modifying certain procedures for specified actions; deleting certain exception; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 801, is amended to read as follows:

Section 801. In any action to determine heirs, partition real estate, quiet title thereto, foreclose a lien thereon, or any combination thereof, where such title has been derived wholly or in part, directly or remotely, by inheritance, devise or gift made in contemplation of death, from any deceased person, the State of Oklahoma may be made a party defendant for the purpose of determining its claim against the estate of such deceased person for inheritance or transfer taxes. The court shall not acquire jurisdiction to enter any judgment against ~~the State of Oklahoma or~~ the Oklahoma Tax Commission in any such action until there shall have been served on the ~~Oklahoma~~ Tax Commission, in the manner hereinafter provided, a notice of the pendency of the suit containing the title and number under which the action is filed, the court in which filed, the name, date and place of death of the deceased person, the name, relationship and address, if known, of each heir, executor, administrator, devisee, trustee, and assign, of such deceased person, the identifying number of any tax liens which may have been filed against the decedent or person or entity in the chain of title, and a description of the real estate covered by such action in which it is claimed the decedent owned or held any right, title or interest, which notice shall be signed by the plaintiff or his attorney of record. The notice, with a copy of the petition in the cause thereto attached, shall be served on the ~~Oklahoma~~ Tax Commission in the same manner as for the service of summons. The ~~Oklahoma~~ Tax Commission or its General Counsel may, in lieu of service, accept service by indorsement of such acceptance on one copy of the notice and the service or acceptance of service shall operate to make the ~~State of Oklahoma~~ Tax Commission a party to such action. The ~~Oklahoma~~ Tax Commission may in its discretion, without

service of any notice on the Tax Commission, disclaim or plead in any such cause. The ~~Oklahoma~~ Tax Commission shall have forty (40) days after the date of service or acceptance of service within which to plead in the cause, and the ~~Oklahoma~~ Tax Commission shall set up any interest the ~~State of Oklahoma~~ Tax Commission may have in the subject matter of the action relating to the identified decedents or identified tax liens. If the ~~Oklahoma~~ Tax Commission fails to answer such petition within the time allowed, judgment may be rendered foreclosing the State of Oklahoma from any interest, lien or claim for state taxes, interest or penalty relating to the named decedents or state tax liens on or against the property described in the notice. Provided, that in all cases where the person, or persons, owning the real property involved in the action at the time of death has been dead for more than ten (10) years, prior to the institution of the action and such facts are set forth in the petition, it shall not be necessary to make the State of Oklahoma a party to such action. If the name, date, and place of death of the deceased person is unknown, the Tax Commission may be joined for the limited purpose of determining if estate taxes are due. Joining the Tax Commission for such limited purpose shall not extinguish a state tax lien filed pursuant to Section 234 of this title and which is not identified in the action.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 815, as last amended by Section 3, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2005, Section 815), is amended to read as follows:

Section 815. A. 1. The executor, administrator, trustee, devisee, heir or transferee shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Oklahoma Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate. The provisions of this subsection shall not apply to estates exempt from filing such return by the provisions of subsections D, E and F of this section.

2. For estate tax returns filed pursuant to this section, an extension of time to file the return may be granted for a period not to exceed six (6) months. The request for the extension shall be made to the Tax Commission before the expiration of the normal filing period as allowed pursuant to paragraph 1 of this subsection.

B. Upon receipt of such return, the Tax Commission may, for the purpose of determining the value of the estate or any transfer, audit the books of account and records of any executor, administrator, trustee, devisee, heir, corporation, bank, trust company or transferee, and may appraise the property transferred or returned and investigate and include any property or transfers which may have been omitted from the return and shall thereupon compute, and by order assess, the tax, together with any interest or penalty which it may find to be due, and shall forthwith notify the administrator, executor, trustee or transferee and such person's attorney of record of such assessment by furnishing a detailed statement of the values of the estate or transfers, as fixed by the Tax Commission, and the amount of tax assessed. Such notice may be delivered in person or may be by mail addressed to such

administrator, executor, trustee, transferee and such person's attorney of record at the last-known post office addresses, with the postage thereon prepaid, and upon receipt of such notice of assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided, however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or assessment or any appraisement made by the Tax Commission, such person shall, within sixty (60) days from the date of mailing of such notice, file with the Tax Commission an objection, in writing, specifically setting forth the grounds of the objections, and thereupon the Tax Commission may grant a hearing, and upon such hearing may adjust the matters in controversy and correct the assessment as justice may require. Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error of omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of the objection, and thereupon the Tax Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require.

An administrator, executor, trustee or any interested party who fails to file an objection within the sixty-day time period prescribed by this section may, within one (1) year from the date of mailing of the notice, request the Tax Commission to adjust or abate the assessment for reasons other than an error of omission or inclusion of property on return, if the administrator, executor, trustee or any interested party 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 denial by the Tax Commission of such a request. An order of the Tax Commission denying a request of an administrator, executor, trustee or any interested party 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.

C. No assessment of inheritance, estate or transfer tax shall be made hereunder subsequent to the lapse of ten (10) years after the date of the death of any decedent, ~~except that this time limitation on the making of assessments and the beginning of proceedings for collection shall not affect or apply to assessments of inheritance, estate, transfer or gift taxes upon the estates of restricted Indians.~~ If an estate tax return is filed as required by law, additional assessment may be made based upon unreported assets of the estate if such assessment is made not later than ten (10) years from the date of death of the decedent; provided, however, such additional assessment shall be made and any lien applicable thereto shall attach only against such unreported assets.

D. When all the property, both real and personal, of a decedent passes to the surviving spouse, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiary from payment of estate tax shall be necessary for any purpose, unless there are taxes due under the provisions of Section 804 of this title. However, an estate tax return or affidavit in a form provided by the Tax Commission may be filed which indicates that all the property of the decedent passes to the surviving spouse, and the Tax Commission, upon being satisfied from an examination of the return or affidavit and any other information available to it that all of the property of the decedent passes to the surviving spouse, shall issue an order exempting as nontaxable all property included in such decedent's estate.

E. When an order releasing estate tax liability is obtained from the district court, as provided in this act, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiaries from the payment of estate tax shall be necessary for any purpose for any property described in such order of the district court.

F. When all the property, both real and personal, of a decedent passes to the father, mother, child, child of husband or wife, adopted child or any lineal descendant of decedent or of such adopted child and the net estate is equal to or less than the applicable exemption provided in Section 809 of this title, a simplified return or affidavit, on a form prescribed by the Tax Commission, may be filed in lieu of the return required in subsection A of this section. The return shall contain sufficient information to determine that all the property of the decedent passes to one or more of the persons listed in this subsection and that the value of the net estate is equal to or less than the applicable exemption provided in Section 809 of this title. The Tax Commission, upon being satisfied from an examination of the return or affidavit and any other information available to it, shall issue an order exempting as nontaxable all property included in such decedent's estate.

G. The provisions of this section or Section 205 of this title shall not prevent the Tax Commission from delivering, upon written request, to a duly authorized representative of the taxpayer, or any individual who has judicially been determined to be an heir, devisee, or legatee of the taxpayer by a court of competent jurisdiction, or any individual named as a beneficiary of a trust of the taxpayer, a copy of any return exclusive of distribution schedule, any order assessing tax or any other paper or report filed or issued pursuant to the provisions of Sections 801 et seq. of this title.

SECTION 3. This act shall become effective November 1, 2006.

Passed the Senate the 25th day of May, 2006.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of May, 2006.

Presiding Officer of the House
of Representatives