STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 811 By: Jolley of the Senate

and

Nance of the House

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 219, Section 1, Chapter 162, O.S.L. 2002, and 220 (68 O.S. Supp. 2004, Section 219.1), which relate to tax settlement agreements and waiver of interest and penalties; increasing amount of agreement or waiver which requires court approval; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 219, is amended to read as follows:

Section 219. The Oklahoma Tax Commission is authorized to enter into an agreement to compound, settle or compromise any controversy relating to taxes collectible by the ~~Oklahoma~~ Tax Commission, or any admitted or established tax liability as to any tax collectible under any State Law in the following cases:

(1) In cases of controversy arising over the amount of tax due, or,

(2) In case of inability to pay, resulting from insolvency of the taxpayer.

In any case where the amount of any tax liability which has been admitted or established exceeds ~~Fifteen Hundred Dollars ($1,500.00)~~ Ten Thousand Dollars ($10,000.00), no agreement to compound, settle or compromise such tax liability shall be effective until the settlement thereof shall have been approved by judgment of one of

the judges of the district court of Oklahoma County, after a full hearing thereon.

SECTION 2. AMENDATORY Section 1, Chapter 162, O.S.L. 2002 (68 O.S. Supp. 2004, Section 219.1), is amended to read as follows:

Section 219.1 A. In accordance with the provisions of the amendment to Section 5 of Article X of the Oklahoma Constitution as set forth in Senate Joint Resolution No. 32 of the 2nd Session of the 48th Oklahoma Legislature, the Oklahoma Tax Commission is hereby authorized to abate all or any portion of tax liability and interest and penalties accruing thereto, pursuant to a settlement agreement entered into with a taxpayer, if the Tax Commission finds, by clear and convincing evidence, that:

1. Collection of the tax liability and interest and penalties accruing thereto would reasonably result in the taxpayer declaring bankruptcy;

2. The tax is uncollectible due to insolvency of the taxpayer resulting from factors beyond the control of the taxpayer or for other similar cause beyond the control of the taxpayer;

3. The tax liability is attributable to actions of a person other than the taxpayer and it would be inequitable to hold the taxpayer liable for the tax liability; or

4. In cases of nonpayment of trust fund taxes, the taxes were not collected by the taxpayer from its customer and the taxpayer had a good faith belief that collection of the taxes was not required.

B. The Tax Commission may consider the following circumstances, in addition to any other aggravating or mitigating circumstances, in determining whether or not to enter into an agreement pursuant to the provisions of this section:

1. Whether the taxpayer has made efforts in good faith to comply with the tax laws of this state;

2. Whether the taxpayer has benefited from nonpayment of the tax; and

3. Involvement of the taxpayer in economic activity from which the tax liability originated.

C. All agreements entered into pursuant to the provisions of this section shall provide for the collection of all or a portion of the tax liability if at all possible, and in all cases collection of the tax liability shall take precedence over collection of interest and penalties.

D. Any abatement of tax liability authorized by this section shall only be granted by a unanimous vote of the members of the Tax Commission. The decision of the members of the Tax Commission in denying the abatement of any tax liability pursuant to this section shall be final and no right of appeal to any court may be taken from such decision.

E. In any case where the amount of tax liability to be abated pursuant to an agreement entered into pursuant to the provisions of this section exceeds ~~Five Thousand Dollars ($5,000.00)~~ Ten Thousand Dollars ($10,000.00), the agreement shall not become effective until it shall have been approved by one of the judges of the district court of Oklahoma County, after a full hearing thereon. Such judge shall be assigned to the matter by the chief judge on a rotating basis.

F. The provisions of this section shall not be construed to grant any legal right to any taxpayer for the abatement of any tax liability. A decision to grant abatement of tax liability pursuant to the provisions of this section shall be a discretionary act within the authority of the members of the Tax Commission.

G. No appointed or elected official shall be eligible to seek relief pursuant to any of the provisions of this section.

H. The Tax Commission shall promulgate rules to implement the provisions of this section.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 220, is amended to read as follows:

Section 220. A. The interest or penalty or any portion thereof ordinarily accruing by reason of a taxpayer's failure to file a report or return or failure to file a report or return in the correct form as required by any state tax law or by this Code or to pay a state tax within the statutory period allowed for its payment may be waived or remitted by the Oklahoma Tax Commission or its designee provided the taxpayer's failure to file a report or return or to pay the tax is satisfactorily explained to the Tax Commission or such designee, or provided such failure has resulted from a mistake by the taxpayer of either the law or the facts subjecting him to such tax, or inability to pay such interest or penalty resulting from insolvency.

B. The waiver or remission of all or any part of any such interest or penalties in excess of ~~Five Thousand Dollars ($5,000.00)~~ Ten Thousand Dollars ($10,000.00) shall not become effective unless approved by one of the judges of the district court of Oklahoma County after a full hearing thereon.

The application for the approval of such waiver or remission shall be filed in the office of the court clerk of the court at least twenty (20) days prior to the entry of the order of the judge finally approving or disapproving the waiver or remission. The order so entered shall be a final order of the district court of the county.

SECTION 4. This act shall become effective November 1, 2005.

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