

**SUBCOMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1396 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Jeff Hickman

\_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 PROPOSED SUBCOMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 SENATE BILL NO. 1396

By: Mazzei and Stanislawski of  
the Senate

and

Hickman of the House

7  
8  
9  
10 PROPOSED SUBCOMMITTEE SUBSTITUTE

11 [ revenue and taxation - income tax refunds -  
12 municipal courts - district courts - Streamlined  
13 Sales and Use Tax Administration Act - electronic  
14 filing - income tax returns -  
15 effective date ]

16  
17  
18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 68 O.S. 2001, Section 205.2, as  
20 last amended by Section 3, Chapter 258, O.S.L. 2009 (68 O.S. Supp.  
21 2009, Section 205.2), is amended to read as follows:

22 Section 205.2 A. A state agency, a municipal court or a  
23 district court seeking to collect a debt, unpaid fines and cost or  
24 final judgment of at least Fifty Dollars (\$50.00) from an individual

1 who has filed a state income tax return may file a claim with the  
2 Oklahoma Tax Commission requesting that the amount owed to the  
3 agency, a municipal court or a district court be deducted from any  
4 state income tax refund due to that individual. The claim shall be  
5 filed electronically in a form prescribed by the Tax Commission and  
6 shall contain information necessary to identify the person owing the  
7 debt, including the full name and Social Security number of the  
8 debtor.

9 1. Upon receiving a claim from a state agency, the municipal  
10 court or a district court, the Tax Commission shall ~~notify the~~  
11 ~~agency or the district court whether there are funds available to~~  
12 ~~pay the claim~~ deduct the claim amount, plus collection expenses as  
13 provided in this section, from the tax refund due to the debtor and  
14 transfer the amount to the municipal court, the district court or  
15 the agency. Provided, the Tax Commission need not report available  
16 funds of less than Fifty Dollars (\$50.00).

17 2. The state agency, the municipal court or the district court  
18 shall send notice to the debtor by regular mail at the last-known  
19 address of the debtor as shown by the records of the Tax Commission  
20 when seeking to collect a debt not reduced to final judgment. The  
21 state agency, the municipal court or the district court shall send  
22 notice to the judgment debtor or municipal court defendant by first  
23 class mail at the last-known address of the judgment debtor or  
24 municipal court defendant as shown by the records of the Tax

1 Commission when seeking to collect a final judgment or unpaid  
2 municipal fines and cost. The notice shall state:

3 a. that a claim has been filed with the Tax Commission  
4 for any portion of the tax refund due to the debtor or  
5 municipal court defendant which would satisfy the  
6 debt, unpaid municipal fines and cost, or final  
7 judgment in full or in part,

8 b. the basis for the claim,

9 c. that the Tax Commission has deducted an amount from  
10 the refund and remitted it to such state agency,  
11 municipal court or district court ~~has applied to the~~  
12 ~~Tax Commission for any portion of the tax refund due~~  
13 ~~to the debtor or municipal court defendant which would~~  
14 ~~satisfy the debt, unpaid municipal fines and cost, or~~  
15 ~~final judgment in full or in part,~~

16 d. that the debtor or municipal court defendant has the  
17 right to contest the claim by sending a written  
18 request to the state agency, the municipal court or  
19 the district court for a hearing to protest the claim,  
20 and if the debtor or municipal court defendant fails  
21 to apply for a hearing within sixty (60) days after  
22 the date of the mailing of the notice, the debtor or  
23 municipal court defendant shall be deemed to have  
24 waived his or her opportunity to contest the claim.

1            Provided, if the claim was filed by the Department of  
2            Human Services, the notice shall state that the debtor  
3            must contest the claim by sending a written request to  
4            the Department within thirty (30) days after the date  
5            of the mailing of the notice,

6            e.    that a collection expense of five percent (5%) of the  
7            gross proceeds owed to the state agency, municipal  
8            court or district court ~~shall be~~ has been charged to  
9            the debtor or municipal court defendant and withheld  
10           from the refund ~~upon final determination of the debt~~  
11           ~~or final judgment at the hearing or upon failure of~~  
12           ~~the debtor to request a hearing, and~~

13           f.    ~~if the taxpayer settles the outstanding debt, unpaid~~  
14           ~~municipal fines and costs, or final judgment with the~~  
15           ~~agency, municipal court or district court before the~~  
16           ~~time to contest the claim expires, the agency, the~~  
17           ~~municipal court or the district court shall notify the~~  
18           ~~Tax Commission in writing or by electronic media that~~  
19           ~~the claim has been released.~~

20           3.    If the state agency, municipal court or district court  
21           determines that a refund is due to the taxpayer, the state agency,  
22           municipal court or district court shall reimburse the amount claimed  
23           plus the five percent (5%) collection expense to the taxpayer. The  
24           state agency, municipal court or district court may request

1 reimbursement of the two percent (2%) collection expense retained by  
2 the Tax Commission. Such request must be made within ninety (90)  
3 days of reimbursement to the taxpayer. If timely requested, the Tax  
4 Commission shall make such reimbursement to the state agency,  
5 municipal court or district court within ninety (90) days of the  
6 request.

7 4. In the case of a joint return, the notice shall state:

- 8 a. the name of any taxpayer named in the return against  
9 whom no debt, no unpaid fines and cost, or final  
10 judgment is claimed,
- 11 b. the fact that a debt, unpaid municipal fines and cost,  
12 or final judgment is not claimed against the taxpayer,
- 13 c. the fact that the taxpayer is entitled to receive a  
14 refund if it is due regardless of the debt, municipal  
15 fines and cost, or final judgment asserted against the  
16 debtor or municipal court defendant,
- 17 d. that in order to obtain the refund due, the taxpayer  
18 must apply, in writing, for a hearing with the  
19 municipal court, district court, or the agency named  
20 in the notice within sixty (60) days after the date of  
21 the mailing of the notice. Provided, if the claim was  
22 filed by the Department of Human Services, the notice  
23 shall state that the taxpayer must apply, in writing,

1 for a hearing with the Department within thirty (30)  
2 days after the date of the mailing of the notice, and  
3 e. if the taxpayer against whom no debt, no unpaid  
4 municipal fines and cost, or final judgment is claimed  
5 fails to apply in writing for a hearing within sixty  
6 (60) days after the mailing of the notice, the  
7 taxpayer shall have waived his or her right to a  
8 refund. Provided, if the claim was filed by the  
9 Department of Human Services, the notice shall state  
10 that if the taxpayer fails to apply in writing for a  
11 hearing with the Department within thirty (30) days  
12 after the date of the mailing of the notice, the  
13 taxpayer shall have waived his or her right to a  
14 refund.

15 B. If the municipal court, district court or agency asserting  
16 the claim receives a written request for a hearing from the debtor  
17 or taxpayer against whom no debt, no municipal fines and cost, or  
18 final judgment is claimed, the agency, the municipal court or the  
19 district court shall grant a hearing according to the provisions of  
20 the Administrative Procedures Act, Section 250 et seq. of Title 75  
21 of the Oklahoma Statutes. It shall be determined at the hearing  
22 whether the claimed sum is correct or whether an adjustment to the  
23 claim shall be made. Pending final determination at the hearing of  
24 the validity of the debt, unpaid fines and cost, or final judgment

1 asserted by the municipal court, the district court or the agency,  
2 no action shall be taken in furtherance of the collection of the  
3 debt, unpaid fines and cost, or final judgment. Appeals from  
4 actions taken at the hearing shall be in accordance with the  
5 provisions of the Administrative Procedures Act.

6 C. Upon final determination at a hearing, as provided for in  
7 subsection B of this section, of the amount of the debt, unpaid  
8 fines and cost, or final judgment, or upon failure of the debtor or  
9 taxpayer against whom no debt, no unpaid fines and cost, or final  
10 judgment is claimed to request such a hearing, the municipal court,  
11 the district court or the agency shall ~~submit in the manner~~  
12 ~~prescribed by the Tax Commission notification of the action taken on~~  
13 ~~the claim and a request that the amount owed, including the~~  
14 ~~collection expense, be deducted from the tax refund due to the~~  
15 ~~debtor and transferred to the municipal court, the district court or~~  
16 ~~the agency~~ apply the amount of the claim to the debt owed. Any  
17 amounts held by the municipal court, district court, or agency in  
18 excess of the final determination of the debt and collection expense  
19 shall be refunded by the municipal court, district court, or agency  
20 to the taxpayer. However, if the tax refund due is inadequate to  
21 pay the collection expense and debt, unpaid fines and cost, or final  
22 judgment, the balance due the state agency, the municipal court, or  
23 the district court shall be a continuing debt or final judgment  
24 until paid in full.

1 D. Upon receipt of ~~notification~~ a claim as provided in  
2 subsection € A of this section, the Tax Commission shall:

3 1. Deduct from the refund five percent (5%) of the gross  
4 proceeds owed to the state agency, the municipal court or district  
5 court and distribute it by retaining two percent (2%) and  
6 transferring three percent (3%) to the municipal court, the district  
7 court or the state agency as an expense of collection. The two  
8 percent (2%) retained by the Tax Commission shall be deposited in  
9 the Oklahoma Tax Commission Fund;

10 2. Transfer the amount of the claimed debt, unpaid fines and  
11 cost, or final judgment or so much thereof as is available to the  
12 state agency, municipal court or the district court;

13 3. Notify the debtor in writing as to how the refund was  
14 applied; and

15 4. Refund to the debtor any balance remaining after deducting  
16 the collection expense and debt, unpaid fines and cost, or final  
17 judgment.

18 E. The Tax Commission shall deduct from any state tax refund  
19 due to a taxpayer the amount of delinquent state tax and penalty and  
20 interest thereon, which such taxpayer owes pursuant to any state tax  
21 law prior to payment of such refund.

22 F. The Tax Commission shall have first priority over all other  
23 agencies, municipal courts or district courts when the Tax  
24 Commission is collecting a debt, municipal court fines and cost, or

1 final judgment pursuant to the provisions of this section. Priority  
2 in multiple claims by other agencies, municipal courts or district  
3 courts pursuant to the provisions of this section shall be in the  
4 order in time, in which the Tax Commission receives the claim from  
5 the agencies, municipal courts and district courts required by the  
6 provisions of subsection A of this section.

7 G. The Tax Commission shall prescribe or approve forms and  
8 promulgate rules and regulations for implementing the provisions of  
9 this section.

10 H. The information obtained by an agency, municipal court or by  
11 the district court from the Tax Commission pursuant to the  
12 provisions of this section shall be used only to aid in collection  
13 of the debt, unpaid fines and cost, or final judgment owed to the  
14 agency, municipal court or a district court. Disclosure of the  
15 information for any other purpose shall constitute a misdemeanor.  
16 Any agency or court employee or person convicted of violating this  
17 provision shall be subject to a fine not exceeding One Thousand  
18 Dollars (\$1,000.00) or imprisonment in the county jail for a term  
19 not exceeding one (1) year, or both said fine and imprisonment and,  
20 if still employed by the agency or the courts, shall be dismissed  
21 from employment.

22 I. The Tax Commission may employ the procedures provided by  
23 this section in order to collect a debt owed to the Internal Revenue  
24 Service if the Internal Revenue Service requires such procedure as a

1 condition to providing information to the Commission concerning  
2 federal income tax.

3 J. The provisions of this section shall not apply to claims  
4 filed under the provisions of Section 2906 or Section 5011 of this  
5 title.

6 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1354.15, as  
7 amended by Section 4, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2009,  
8 Section 1354.15), is amended to read as follows:

9 Section 1354.15 As used in the Streamlined Sales and Use Tax  
10 Administration Act:

11 1. "Agreement" means the Streamlined Sales and Use Tax  
12 Agreement;

13 2. "Certified automated system" means software certified  
14 jointly by the states that are signatories to the Agreement to  
15 calculate the tax imposed by each jurisdiction on a transaction,  
16 determine the amount of tax to remit to the appropriate state, and  
17 maintain a record of the transaction;

18 3. "Certified service provider" means an agent certified  
19 jointly by the states that are signatories to the Agreement to  
20 perform all of the seller's sales tax functions;

21 4. "Commission" or "Tax Commission" means the Oklahoma Tax  
22 Commission;

23 5. "Model 1 Seller" means a seller that has selected a  
24 certified service provider as its agent to perform all the seller's

1 sales and use tax functions, other than the seller's obligation to  
2 remit tax on its own purchases;

3 6. "Model 2 Seller" means a seller that has selected a  
4 certified automated system to perform part of its sales and use tax  
5 functions but retains responsibility for remitting the tax;

6 7. "Model 3 Seller" means a seller that has sales in at least  
7 five states that are members of the Streamlined Sales and Use Tax  
8 Agreement, has total annual sales revenue of at least Five Hundred  
9 Million Dollars (\$500,000,000.00), has a proprietary system that  
10 calculates the amount of tax due each jurisdiction, and has entered  
11 into a performance agreement with the member states that establishes  
12 a tax performance standard for the seller. As used in this  
13 definition, a seller includes an affiliated group of sellers using  
14 the same proprietary system;

15 8. "Model 4 Seller" means a seller registered under the  
16 Agreement which is not a Model 1 Seller, Model 2 Seller or Model 3  
17 Seller;

18 9. "Person" means an individual, trust, estate, fiduciary,  
19 partnership, limited liability company, limited liability  
20 partnership, corporation, or any other legal entity;

21 ~~9.~~ 10. "Sales tax" means a tax levied by the state, by a county  
22 or by another entity under Section 1350 et seq. of this title or a  
23 sales tax levied by a municipality under Section 2701 of this title;

24

1       ~~10.~~ 11. "Seller" means any person making sales, leases or  
2 rentals of personal property or services;

3       ~~11.~~ 12. "State" means any state of the United States and the  
4 District of Columbia; and

5       ~~12.~~ 13. "Use tax" means a tax levied under Section 1401 et seq.  
6 of this title or a use tax levied by a county, municipality or other  
7 entity as provided by law.

8       SECTION 3.        AMENDATORY        Section 20, Chapter 413, O.S.L.  
9 2003, as last amended by Section 11, Chapter 378, O.S.L. 2008 (68  
10 O.S. Supp. 2009, Section 1354.27), is amended to read as follows:

11       Section 1354.27 A. The retail sale, excluding lease or rental,  
12 of a product shall be sourced as follows:

13       1. When the product is received by the purchaser at a business  
14 location of the seller, the sale is sourced to that business  
15 location;

16       2. When the product is not received by the purchaser at a  
17 business location of the seller, the sale is sourced to the location  
18 where receipt by the purchaser, or the purchaser's donee, designated  
19 as such by the purchaser, occurs, including the location indicated  
20 by instructions for delivery to the purchaser or donee, known to the  
21 seller. Provided, this subsection shall not apply to florists ~~until~~  
22 ~~January 1, 2011. Prior to that date, all.~~ All sales by florists  
23 shall be sourced to its business location;

24

1           3. When the provisions of paragraphs 1 and 2 of this subsection  
2 do not apply, the sale is sourced to the location indicated by an  
3 address for the purchaser that is available from the business  
4 records of the seller that are maintained in the ordinary course of  
5 the seller's business when use of this address does not constitute  
6 bad faith;

7           4. When the provisions of paragraphs 1, 2 and 3 of this  
8 subsection do not apply, the sale is sourced to the location  
9 indicated by an address for the purchaser obtained during the  
10 consummation of the sale, including the address of a purchaser's  
11 payment instrument, if no other address is available, when use of  
12 this address does not constitute bad faith; and

13           5. When none of the previous rules of paragraphs 1, 2, 3 and 4  
14 of this subsection apply, including the circumstance in which the  
15 seller is without sufficient information to apply the previous  
16 rules, then the location will be determined by the address from  
17 which tangible personal property was shipped, from which the digital  
18 good or the computer software delivered electronically was first  
19 available for transmission by the seller, or from which the service  
20 was provided, disregarding for these purposes any location that  
21 merely provided the digital transfer of the product sold. In the  
22 case of a sale of mobile telecommunications service that is a  
23 prepaid telecommunications service, the location will be that which  
24 is associated with the mobile telephone number.

1 B. The lease or rental of tangible personal property, other  
2 than property identified in subsection C or D of this section, shall  
3 be sourced as follows:

4 1. For a lease or rental that requires recurring periodic  
5 payments, the first periodic payment is sourced the same as a retail  
6 sale in accordance with the provisions of subsection A of this  
7 section. Periodic payments made subsequent to the first payment are  
8 sourced to the primary property location for each period covered by  
9 the payment. The primary property location shall be as indicated by  
10 an address for the property provided by the lessee that is available  
11 to the lessor from its records maintained in the ordinary course of  
12 business, when use of this address does not constitute bad faith.  
13 The property location shall not be altered by intermittent use at  
14 different locations, such as use of business property that  
15 accompanies employees on business trips and service calls; and

16 2. For a lease or rental that does not require recurring  
17 periodic payments, the payment is sourced the same as a retail sale  
18 in accordance with the provisions of subsection A of this section.

19 This subsection does not affect the imposition or computation of  
20 sales or use tax on leases or rentals based on a lump sum or  
21 accelerated basis, or on the acquisition of property for lease.

22 C. The lease or rental of motor vehicles, trailers,  
23 semitrailers, or aircraft that do not qualify as transportation  
24

1 equipment, as defined in subsection D of this section, shall be  
2 sourced as follows:

3 1. For a lease or rental that requires recurring periodic  
4 payments, each periodic payment is sourced to the primary property  
5 location. The primary property location shall be as indicated by an  
6 address for the property provided by the lessee that is available to  
7 the lessor from its records maintained in the ordinary course of  
8 business, when use of this address does not constitute bad faith.  
9 This location shall not be altered by intermittent use at different  
10 locations; and

11 2. For a lease or rental that does not require recurring  
12 periodic payments, the payment is sourced the same as a retail sale  
13 in accordance with the provisions of subsection A of this section.

14 This subsection does not affect the imposition or computation of  
15 sales or use tax on leases or rentals based on a lump sum or  
16 accelerated basis, or on the acquisition of property for lease.

17 D. The retail sale, including lease or rental, of  
18 transportation equipment shall be sourced the same as a retail sale  
19 in accordance with the provisions of subsection A of this section,  
20 notwithstanding the exclusion of lease or rental in subsection A of  
21 this section. "Transportation equipment" means any of the  
22 following:

23 1. Locomotives and railcars that are utilized for the carriage  
24 of persons or property in interstate commerce;

1           2. Trucks and truck-tractors with a Gross Vehicle Weight Rating  
2 (GVWR) of ten thousand one (10,001) pounds or greater, trailers,  
3 semitrailers, or passenger buses that are:

4           a. registered through the International Registration  
5 Plan, and

6           b. operated under authority of a carrier authorized and  
7 certificated by the United States Department of  
8 Transportation or another federal authority to engage  
9 in the carriage of persons or property in interstate  
10 commerce;

11           3. Aircraft that are operated by air carriers authorized and  
12 certificated by the United States Department of Transportation or  
13 another federal or a foreign authority to engage in the carriage of  
14 persons or property in interstate or foreign commerce; and

15           4. Containers designed for use on and component parts attached  
16 or secured on the items set forth in paragraphs 1, 2 and 3 of this  
17 subsection.

18           E. For the purposes of this section, the terms "receive" and  
19 "receipt" mean:

20           1. Taking possession of tangible personal property;

21           2. Making first use of services; or

22           3. Taking possession or making first use of digital goods,  
23 whichever comes first.

1 The terms "receive" and "receipt" do not include possession by a  
2 shipping company on behalf of the purchaser.

3 SECTION 4. AMENDATORY Section 21, Chapter 472, O.S.L.  
4 2003 (68 O.S. Supp. 2009, Section 2385), is amended to read as  
5 follows:

6 Section 2385. Any specified tax return preparer, ~~who prepared~~  
7 ~~more than fifty Oklahoma tax returns for the prior tax year, must~~  
8 shall file all ~~Oklahoma~~ individual income tax returns prepared by  
9 such preparer ~~for the current tax year~~ by electronic means. The  
10 term "specified tax return preparer" ~~means any person who prepares~~  
11 ~~for compensation, or who employs one or more persons to prepare for~~  
12 ~~compensation, any return of tax imposed by Title 68 of the Oklahoma~~  
13 ~~Statutes or any claim for refund of tax imposed by Title 68 of the~~  
14 ~~Oklahoma Statutes~~ shall have the same meaning as provided in Section  
15 6011 of the Internal Revenue Code of 1986, as amended. The  
16 preparation of a substantial part of a return or claim for refund is  
17 treated as if it were the preparation of the entire return or claim  
18 for refund. This section shall ~~not~~ apply to ~~a return upon which the~~  
19 ~~taxpayer has indicated that the taxpayer did not want the return~~  
20 filed by electronic means all returns filed after December 31, 2010.

21 SECTION 5. This act shall become effective November 1, 2010.

22

23 52-2-10393 MAH 03/25/10

24