

THE HOUSE OF REPRESENTATIVES  
Tuesday, April 13, 2010

Committee Substitute for  
ENGROSSED  
Senate Bill No. 1396

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1396 - By:  
MAZZEI AND STANISLAWSKI of the Senate and HICKMAN of the House.

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 205.2, as last amended by Section 3, Chapter 258, O.S.L. 2009 (68 O.S. Supp. 2009, Section 205.2), which relates to tax refunds; allowing deduction of certain debts; providing for refund of deductions taken in error; providing for refund of excess; amending 68 O.S. 2001, Section 1354.15, as amended by Section 4, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2009, Section 1354.15), which relates to streamlined sales tax; defining term; amending Section 20, Chapter 413, O.S.L. 2003, as last amended by Section 11, Chapter 378, O.S.L. 2008 (68 O.S. Supp. 2009, Section 1354.27), which relates to sourcing of sales; exempting florists from certain provision; amending Section 21, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2009, Section 2385), which relates to income tax returns; requiring certain returns be filed electronically; modifying definition; modifying applicability; and providing an effective date.

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

1           SECTION 1.   AMENDATORY   68 O.S. 2001, Section 205.2, as last amended by  
2   Section 3, Chapter 258, O.S.L. 2009 (68 O.S. Supp. 2009, Section 205.2), is amended to  
3   read as follows:  
4           Section 205.2 A. A state agency, a municipal court or a district court seeking to  
5   collect a debt, unpaid fines and cost or final judgment of at least Fifty Dollars (\$50.00)  
6   from an individual who has filed a state income tax return may file a claim with the

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

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

12 2. The state agency, the municipal court or the district court shall send notice to  
13 the debtor by regular mail at the last-known address of the debtor as shown by the  
14 records of the Tax Commission when seeking to collect a debt not reduced to final  
15 judgment. The state agency, the municipal court or the district court shall send notice to  
16 the judgment debtor or municipal court defendant by first class mail at the last-known  
17 address of the judgment debtor or municipal court defendant as shown by the records of  
18 the Tax Commission when seeking to collect a final judgment or unpaid municipal fines  
19 and cost. The notice shall state:

20 a. that a claim has been filed with the Tax Commission for any portion of  
21 the tax refund due to the debtor or municipal court defendant which

- 1                    would satisfy the debt, unpaid municipal fines and cost, or final  
2                    judgment in full or in part,
- 3                    b.    the basis for the claim,
- 4                    c.    that the Tax Commission has deducted an amount from the refund and  
5                    remitted it to such state agency, municipal court or district court ~~has~~  
6                    ~~applied to the Tax Commission for any portion of the tax refund due to~~  
7                    ~~the debtor or municipal court defendant which would satisfy the debt,~~  
8                    ~~unpaid municipal fines and cost, or final judgment in full or in part,~~
- 9                    d.    that the debtor or municipal court defendant has the right to contest  
10                    the claim by sending a written request to the state agency, the  
11                    municipal court or the district court for a hearing to protest the claim,  
12                    and if the debtor or municipal court defendant fails to apply for a  
13                    hearing within sixty (60) days after the date of the mailing of the  
14                    notice, the debtor or municipal court defendant shall be deemed to  
15                    have waived his or her opportunity to contest the claim. Provided, if  
16                    the claim was filed by the Department of Human Services, the notice  
17                    shall state that the debtor must contest the claim by sending a written  
18                    request to the Department within thirty (30) days after the date of the  
19                    mailing of the notice,
- 20                    e.    that a collection expense of five percent (5%) of the gross proceeds owed  
21                    to the state agency, municipal court or district court ~~shall be~~ has been  
22                    charged to the debtor or municipal court defendant and withheld from

1 the refund ~~upon final determination of the debt or final judgment at~~  
2 ~~the hearing or upon failure of the debtor to request a hearing, and~~  
3 f. ~~if the taxpayer settles the outstanding debt, unpaid municipal fines~~  
4 ~~and costs, or final judgment with the agency, municipal court or~~  
5 ~~district court before the time to contest the claim expires, the agency,~~  
6 ~~the municipal court or the district court shall notify the Tax~~  
7 ~~Commission in writing or by electronic media that the claim has been~~  
8 ~~released.~~

9 3. If the state agency, municipal court or district court determines that a refund is  
10 due to the taxpayer, the state agency, municipal court or district court shall reimburse  
11 the amount claimed plus the five percent (5%) collection expense to the taxpayer. The  
12 state agency, municipal court or district court may request reimbursement of the two  
13 percent (2%) collection expense retained by the Tax Commission. Such request must be  
14 made within ninety (90) days of reimbursement to the taxpayer. If timely requested, the  
15 Tax Commission shall make such reimbursement to the state agency, municipal court or  
16 district court within ninety (90) days of the request.

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

- 18 a. the name of any taxpayer named in the return against whom no debt,  
19 no unpaid fines and cost, or final judgment is claimed,  
20 b. the fact that a debt, unpaid municipal fines and cost, or final judgment  
21 is not claimed against the taxpayer,

- 1 c. the fact that the taxpayer is entitled to receive a refund if it is due  
2 regardless of the debt, municipal fines and cost, or final judgment  
3 asserted against the debtor or municipal court defendant,
- 4 d. that in order to obtain the refund due, the taxpayer must apply, in  
5 writing, for a hearing with the municipal court, district court, or the  
6 agency named in the notice within sixty (60) days after the date of the  
7 mailing of the notice. Provided, if the claim was filed by the  
8 Department of Human Services, the notice shall state that the  
9 taxpayer must apply, in writing, for a hearing with the Department  
10 within thirty (30) days after the date of the mailing of the notice, and  
11 e. if the taxpayer against whom no debt, no unpaid municipal fines and  
12 cost, or final judgment is claimed fails to apply in writing for a hearing  
13 within sixty (60) days after the mailing of the notice, the taxpayer shall  
14 have waived his or her right to a refund. Provided, if the claim was  
15 filed by the Department of Human Services, the notice shall state that  
16 if the taxpayer fails to apply in writing for a hearing with the  
17 Department within thirty (30) days after the date of the mailing of the  
18 notice, the taxpayer shall have waived his or her right to a refund.

19 B. If the municipal court, district court or agency asserting the claim receives a  
20 written request for a hearing from the debtor or taxpayer against whom no debt, no  
21 municipal fines and cost, or final judgment is claimed, the agency, the municipal court or  
22 the district court shall grant a hearing according to the provisions of the Administrative

1 Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be  
2 determined at the hearing whether the claimed sum is correct or whether an adjustment  
3 to the claim shall be made. Pending final determination at the hearing of the validity of  
4 the debt, unpaid fines and cost, or final judgment asserted by the municipal court, the  
5 district court or the agency, no action shall be taken in furtherance of the collection of the  
6 debt, unpaid fines and cost, or final judgment. Appeals from actions taken at the hearing  
7 shall be in accordance with the provisions of the Administrative Procedures Act.

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

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

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

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

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

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

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

17 F. The Tax Commission shall have first priority over all other agencies, municipal  
18 courts or district courts when the Tax Commission is collecting a debt, municipal court  
19 fines and cost, or final judgment pursuant to the provisions of this section. Priority in  
20 multiple claims by other agencies, municipal courts or district courts pursuant to the  
21 provisions of this section shall be in the order in time, in which the Tax Commission

1 receives the claim from the agencies, municipal courts and district courts required by the  
2 provisions of subsection A of this section.

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

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

14 I. The Tax Commission may employ the procedures provided by this section in  
15 order to collect a debt owed to the Internal Revenue Service if the Internal Revenue  
16 Service requires such procedure as a condition to providing information to the  
17 Commission concerning federal income tax.

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

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

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

2 1. “Agreement” means the Streamlined Sales and Use Tax Agreement;

3 2. “Certified automated system” means software certified jointly by the states that  
4 are signatories to the Agreement to calculate the tax imposed by each jurisdiction on a  
5 transaction, determine the amount of tax to remit to the appropriate state, and maintain  
6 a record of the transaction;

7 3. “Certified service provider” means an agent certified jointly by the states that  
8 are signatories to the Agreement to perform all of the seller’s sales tax functions;

9 4. “Commission” or “Tax Commission” means the Oklahoma Tax Commission;

10 5. “Model 1 Seller” means a seller that has selected a certified service provider as  
11 its agent to perform all the seller's sales and use tax functions, other than the seller's  
12 obligation to remit tax on its own purchases;

13 6. “Model 2 Seller” means a seller that has selected a certified automated system to  
14 perform part of its sales and use tax functions but retains responsibility for remitting the  
15 tax;

16 7. “Model 3 Seller” means a seller that has sales in at least five states that are  
17 members of the Streamlined Sales and Use Tax Agreement, has total annual sales  
18 revenue of at least Five Hundred Million Dollars (\$500,000,000.00), has a proprietary  
19 system that calculates the amount of tax due each jurisdiction, and has entered into a  
20 performance agreement with the member states that establishes a tax performance  
21 standard for the seller. As used in this definition, a seller includes an affiliated group of  
22 sellers using the same proprietary system;

1           8. “Model 4 Seller” means a seller registered under the Agreement which is not a  
2 Model 1 Seller, Model 2 Seller or Model 3 Seller;

3           9. “Person” means an individual, trust, estate, fiduciary, partnership, limited  
4 liability company, limited liability partnership, corporation, or any other legal entity;

5           9. 10. “Sales tax” means a tax levied by the state, by a county or by another entity  
6 under Section 1350 et seq. of this title or a sales tax levied by a municipality under  
7 Section 2701 of this title;

8           10. 11. “Seller” means any person making sales, leases or rentals of personal  
9 property or services;

10          11. 12. “State” means any state of the United States and the District of Columbia;  
11 and

12          12. 13. “Use tax” means a tax levied under Section 1401 et seq. of this title or a use  
13 tax levied by a county, municipality or other entity as provided by law.

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

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

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

21           2. When the product is not received by the purchaser at a business location of the  
22 seller, the sale is sourced to the location where receipt by the purchaser, or the

1 purchaser's donee, designated as such by the purchaser, occurs, including the location  
2 indicated by instructions for delivery to the purchaser or donee, known to the seller.  
3 Provided, this subsection shall not apply to florists ~~until January 1, 2011. Prior to that~~  
4 ~~date, all.~~ All sales by florists shall be sourced to its business location;

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

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

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

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

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

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

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

19 C. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do  
20 not qualify as transportation equipment, as defined in subsection D of this section, shall  
21 be sourced as follows:

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

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

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

13           D. The retail sale, including lease or rental, of transportation equipment shall be  
14 sourced the same as a retail sale in accordance with the provisions of subsection A of this  
15 section, notwithstanding the exclusion of lease or rental in subsection A of this section.

16           “Transportation equipment” means any of the following:

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

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

22           a.       registered through the International Registration Plan, and

1           b.       operated under authority of a carrier authorized and certificated by the  
2                   United States Department of Transportation or another federal  
3                   authority to engage in the carriage of persons or property in interstate  
4                   commerce;

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

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

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

- 11           1. Taking possession of tangible personal property;  
12           2. Making first use of services; or  
13           3. Taking possession or making first use of digital goods, whichever comes first.

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

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

18          Section 2385. Any specified tax return preparer, ~~who prepared more than fifty~~  
19          ~~Oklahoma tax returns for the prior tax year, must~~ shall file all Oklahoma individual  
20          income tax returns prepared by such preparer ~~for the current tax year~~ by electronic  
21          means. The term "specified tax return preparer" ~~means any person who prepares for~~  
22          ~~compensation, or who employs one or more persons to prepare for compensation, any~~

1 ~~return of tax imposed by Title 68 of the Oklahoma Statutes or any claim for refund of tax~~  
2 ~~imposed by Title 68 of the Oklahoma Statutes~~ shall have the same meaning as provided  
3 in Section 6011 of the Internal Revenue Code of 1986, as amended. The preparation of a  
4 substantial part of a return or claim for refund is treated as if it were the preparation of  
5 the entire return or claim for refund. This section shall ~~not~~ apply to a return upon which  
6 ~~the taxpayer has indicated that the taxpayer did not want the return filed by electronic~~  
7 ~~means~~ all returns filed after December 31, 2010.

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

9 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,  
10 dated 04-12-10 - DO PASS, As Amended.

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.