

SB 714

THE STATE SENATE
Monday, February 23, 2009

Senate Bill No. 714
As Amended

SENATE BILL NO. 714 - By: Aldridge of the Senate and Banz of the House.

[revenue and taxation - expanding tax refund claimants - emergency]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 205.2, as last amended by Section 1, Chapter 135, O.S.L. 2007 (68 O.S. Supp. 2008, Section 205.2), is amended to read as follows:

Section 205.2 A. A state agency, a municipal court or a district court seeking to collect a debt, unpaid fines and cost or final judgment of at least Fifty Dollars (\$50.00) from an individual who has filed a state income tax return may file a claim with the Oklahoma Tax Commission requesting that the amount owed to the agency, a municipal court or a district court be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security number of the debtor.

1 1. Upon receiving a claim from a state agency, a municipal
2 court or a district court, the Tax Commission shall notify the
3 agency, the municipal court or the district court whether there are
4 funds available to pay the claim. Provided, the Tax Commission need
5 not report available funds of less than Fifty Dollars (\$50.00).

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

- 16 a. that a claim has been filed,
17 b. the basis for the claim,
18 c. that such state agency, municipal court or district
19 court has applied to the Tax Commission for any
20 portion of the tax refund due to the debtor or
21 municipal court defendant which would satisfy the
22 debt, unpaid municipal fines and cost or final
23 judgment in full or in part,

- 1 d. that the debtor or municipal court defendant has the
2 right to contest the claim by sending a written
3 request to the state agency, the municipal court or
4 the district court for a hearing to protest the claim
5 and if the debtor or municipal court defendant fails
6 to apply for a hearing within sixty (60) days after
7 the date of the mailing of the notice, the debtor or
8 municipal court defendant shall be deemed to have
9 waived his or her opportunity to contest the claim.
10 Provided, if the claim was filed by the Department of
11 Human Services, the notice shall state that the debtor
12 must contest the claim by sending a written request to
13 the Department within thirty (30) days after the date
14 of the mailing of the notice,
- 15 e. that a collection expense of five percent (5%) of the
16 gross proceeds owed to the state agency, municipal
17 court or district court shall be charged to the debtor
18 or municipal court defendant and withheld from the
19 refund upon final determination of the debt or final
20 judgment at the hearing or upon failure of the debtor
21 to request a hearing, and
- 22 f. if the taxpayer settles the outstanding debt, unpaid
23 municipal fines and cost or final judgment with the

1 agency, municipal court or district court before the
2 time to contest the claim expires, the agency, the
3 municipal court or the district court shall notify the
4 Tax Commission in writing or by electronic media that
5 the claim has been released.

6 3. In the case of a joint return, the notice shall state:

7 a. the name of any taxpayer named in the return against
8 whom no debt, no unpaid fines and cost or final
9 judgment is claimed,

10 b. the fact that a debt, unpaid municipal fines and cost
11 or final judgment is not claimed against the taxpayer,

12 c. the fact that the taxpayer is entitled to receive a
13 refund if it is due regardless of the debt, municipal
14 fines and cost or final judgment asserted against the
15 debtor or municipal court defendant,

16 d. that in order to obtain the refund due, the taxpayer
17 must apply, in writing, for a hearing with the
18 municipal court, the district court or the agency
19 named in the notice within sixty (60) days after the
20 date of the mailing of the notice. Provided, if the
21 claim was filed by the Department of Human Services,
22 the notice shall state that the taxpayer must apply,
23 in writing, for a hearing with the Department within

1 thirty (30) days after the date of the mailing of the
2 notice, and

3 e. if the taxpayer against whom no debt, no unpaid
4 municipal fines or 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 from the debtor or taxpayer
17 against whom no debt, no municipal fines or cost or final judgment
18 is claimed requesting a hearing, the agency, the municipal court or
19 the district court shall grant a hearing according to the provisions
20 of the Administrative Procedures Act, Section 250 et seq. of Title
21 75 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

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

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

22 D. Upon receipt of notification provided in subsection C of
23 this section, the Tax Commission shall:

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

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

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

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

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

20 F. The Tax Commission shall have first priority over all other
21 agencies, municipal courts or district courts when the Tax
22 Commission is collecting a debt, municipal court fines and cost or
23 final judgment pursuant to the provisions of this section. Priority

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

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

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

21 I. The Tax Commission may employ the procedures provided by
22 this section in order to collect a debt owed to the Internal Revenue
23 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. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

10 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-10-09 - DO PASS,
11 As Amended and Coauthored.