ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1464

By: Johnson and Reynolds of the House

and

Sykes of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 221 and 225, as amended by Sections 1 and 2, Chapter 458, O.S.L. 2002, 227 and 228 (68 O.S. Supp. 2010, Sections 221 and 225), which relate to the Uniform Tax Procedure Code; modifying time for certain hearings; providing that hearing shall be before an administrative law judge or before the Tax Commission en banc; requiring taxpayer to provide notice to set hearing date; modifying hearing date in certain circumstances; requiring that findings and conclusions be finalized and ready for adoptions within certain time; requiring issuance of final order within certain time; modifying procedure for appeal of certain orders, rulings and findings; providing venue for appeal; providing that appeals to district court are conducted de novo; providing for appeal of district court order or judgment to the Supreme Court; modifying procedure taxpayer shall follow to file appeal; and providing an effective date.

AMENDMENT NO. 1. Page 1, strike the title to read

"[revenue and taxation - Uniform Tax Procedure Code - modifying procedures to file an appeal - effective date]"

Passed the Senate the 26th day of April, 2011.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2011.

_____
Presiding Officer of the House
of Representatives

ENGROSSED HOUSE
BILL NO. 1464

By: Johnson and Reynolds of the House

and

Sykes of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 221 and 225, as amended by Sections 1 and 2, Chapter 458, O.S.L. 2002, 227 and 228 (68 O.S. Supp. 2010, Sections 221 and 225), which relate to the Uniform Tax Procedure Code; modifying time for certain hearings; providing that hearing shall be before an administrative law judge or before the Tax Commission en banc; requiring taxpayer to provide notice to set hearing date; modifying hearing date in certain circumstances; requiring that findings and conclusions be finalized and ready for adoptions within certain time; requiring issuance of final order within certain time; modifying procedure for appeal of certain orders, rulings and findings; providing venue for appeal; providing that appeals to district court are conducted de novo; providing for appeal of district court order or judgment to the Supreme Court; modifying procedure taxpayer shall follow to file appeal; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 221, as amended by Section 1, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2010, Section 221), is amended to read as follows:

Section 221. A. If any taxpayer shall fail to make any report or return as required by any state tax law, the Oklahoma Tax Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period. If a report or return has been filed, the Tax Commission shall examine such report or return and make such audit or investigation as it may deem necessary. If, in cases where no report or return has been filed, the Tax Commission determines that there is a tax due for the taxable period, or if, in cases where a report or return has been filed, the Tax Commission shall determine that the tax disclosed by such report or return is less than the tax disclosed by its examination, it shall in writing propose the assessment of taxes or additional taxes, as the case may be, and shall mail a copy of the proposed assessment to the taxpayer at the taxpayer's last-known address. Proposed assessments made in the name of the "Oklahoma Tax Commission" by its authorized agents shall be considered as the action of the Tax Commission.

B. Any assessment, correction or adjustment made as a result of an office audit shall be presumed to be the result of an audit of the report or return only, and such office audit shall not be deemed a verification of any item in the report or return unless the item shall have been made the subject of a hearing before the Tax Commission, and the correctness and amount of such item determined at such hearing; and such office audit shall not preclude the Tax

Commission from subsequently making further adjustment, correction or assessment as a result of a field audit of the books and records of the taxpayer, wherever located, or upon disclosures from any source other than the return. In cases where no report or return has been filed, the assessment of the tax on any information available shall in no event preclude the assessment at any time on subsequently disclosed information.

C. Within sixty (60) days after the mailing of the aforesaid proposed assessment, the taxpayer may file with the Tax Commission a written protest under oath, signed by the taxpayer or the taxpayer's duly authorized agent, setting out therein:

1. A statement of the amount of deficiency as determined by the Tax Commission, the nature of the tax and the amount thereof in controversy;

2. A clear and concise assignment of each error alleged to have been committed by the Tax Commission;

3. The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in such hearing, or on appeal, to the arguments and legal authorities contained and cited in the application;

4. A statement of relief sought by the taxpayer; and

5. A verification by the taxpayer or the taxpayer's duly authorized agent that the statements and facts contained therein are true.

D. If in such written protest the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing, and shall, by written notice, advise the taxpayer of a date, which shall not be less than ten (10) days from the date of mailing of such written notice, when such taxpayer may appear before the Tax Commission and present arguments and evidence, oral or written, in support of the protest. Hearings shall be held ~~as soon as practicable~~ not later than ten (10) days from the date the taxpayer notifies the Tax Commission that the taxpayer is prepared for hearing either before an administrative law judge or before the Tax Commission sitting en banc. The taxpayer shall provide the notice to set the hearing date to the General Counsel of the Oklahoma Tax Commission. If the date required for hearing occurs on a Saturday, Sunday or legal holiday, the hearing shall be held on the first business day following such date. In the event an oral hearing is not requested, the Tax Commission shall proceed without further notice to examine into the merits of the protest and enter an order in accordance with its findings. Upon request of any taxpayer and upon proper showing that the principle of law involved in the assessment of any tax is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the decision of the court, may pay the tax so assessed under protest and such protest shall be resolved in accordance with the agreement to abide. The findings and conclusions of an administrative law judge

shall be finalized and ready for adoption as the final order in the proceeding not later than ninety (90) days from the conclusion of the hearing. The final order of the Oklahoma Tax Commission shall be issued not later than thirty (30) days from the date as of which the findings and conclusions were finalized and in cases where there has been a hearing en banc before the Tax Commission without the participation of an administrative law judge, the final order of the Tax Commission shall be issued not later than thirty (30) days from conclusion of the hearing en banc.

E. If the taxpayer fails to file a written protest within the sixty-day period herein provided for or within the period as extended by the Tax Commission, or if the taxpayer fails to file the notice required by Section 226 of this title within thirty (30) days from the date of mailing of an assessment, then the proposed assessment, without further action of the Tax Commission, shall become final and absolute. A taxpayer who fails to file a protest to an assessment of taxes within the time period prescribed by this section may, within one (1) year of the date the assessment becomes final, request the Tax Commission to adjust or abate the assessment if the taxpayer 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 Tax Commission's denial of such a request. An order of the Tax Commission denying a taxpayer's request 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.

F. The Tax Commission may in its discretion extend the time for filing a protest for any period of time not to exceed an additional ninety (90) days. Any extension granted shall not extend the period of time within which the notice required by Section 226 of this title may be filed.

G. Within a reasonable time after the hearing herein provided for, the Tax Commission shall make and enter an order in writing in which it shall set forth the disposition made of the protest and a copy of such order shall forthwith be mailed to the taxpayer. The order shall contain findings of fact and conclusions of law. After removing the identity of the taxpayer, the Tax Commission shall make the order available for public inspection and shall publish those orders the Tax Commission deems to be of precedential value. The taxpayer may within the time and in the manner provided for by Section 225 of this title, appeal a final order of the Tax Commission to the ~~Supreme Court~~ district court for the county in

which the individual taxpayer resides or to the district court for the county in which a lawfully recognized entity has its principal place of business or to the district court for the county in which such entity conducts business or, with respect to entities other than for profit business entities, to the district court for the county in which the entity owns any real or personal property, but in the event the taxpayer fails to so proceed, the order shall within thirty (30) days from the date a certified copy thereof is mailed to the taxpayer, become final.

H. Appeals to the district court from a final order of the Tax Commission pursuant to subsection G of this section shall be conducted de novo and the district court shall not be bound by any finding or conclusion made during the proceedings before the administrative law judge of the Tax Commission or before the Tax Commission en banc. Appeals from the order or judgment of the district court shall be to the Supreme Court in the manner prescribed by law for the appeal or orders or judgments in civil cases.

I. The provisions of Section 226 of this title shall not apply where a proposed assessment or an assessment of taxes has been permitted to become final.

~~H.~~ J. In all instances where the proposed assessment or the assessment of taxes or additional taxes has been permitted to become final, a certified copy of the assessment may be filed in the office

of the county clerk of any county in this state, and upon being so filed, the county clerk shall enter same upon the judgment docket in the same manner as provided for in connection with judgments of district courts. When an assessment is so filed and docketed, it shall have the same force and be subject to the same law as a judgment of the district court, and accordingly it shall constitute a lien on any real estate of the taxpayer located in the county wherein filed; and execution may issue and proceedings in aid of execution may be had the same as on judgments of district courts. Such lien is hereby released and extinguished upon the payment of such assessment, or, except as otherwise provided herein, upon the expiration of ten (10) years after the date upon which the assessment was filed in the office of the county clerk; provided, the Tax Commission may, prior to the release and extinguishment of such lien, refile the assessment one time in the office of the county clerk. An assessment so refiled shall continue the lien until payment of the assessment, or upon the expiration of ten (10) years after the date upon which the assessment was refiled in the office of the county clerk. The remedies provided in this subsection shall be in addition to other remedies provided by law. All active liens evidenced by an assessment filed with a county clerk's office prior to November 1, 1989, shall be released and extinguished if the assessment is not refiled prior to November 1, 2001.

~~I.~~ K. In order to make more definite the intention of the Legislature in connection with the applicability or lack of applicability of the refund provisions of the tax statutes to those treating with proposed assessments and assessments that have become final, the Legislature being cognizant of the fact that such intent has been questioned, it is declared to be the intent of the Legislature that the refund provisions shall be without application to taxes where the amount thereof has been determined by an assessment, other than an assessment designated as an "office audit", that has become final.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 225, as amended by Section 2, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2010, Section 225), is amended to read as follows:

Section 225. A. Any taxpayer aggrieved by any order, ruling, or finding of the Oklahoma Tax Commission directly affecting the taxpayer or aggrieved by a final order of the Tax Commission issued pursuant to subsection G of Section 221 of this title may appeal therefrom directly to the ~~Supreme Court of Oklahoma~~ district court for the county in which the individual taxpayer resides or to the district court for the county in which a lawfully recognized entity has its principal place of business or to the district court for the county in which such entity conducts business or, with respect to entities other than for profit business entities, to the district

court for the county in which the entity owns any real or personal property.

B. Within thirty (30) days after the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer desiring to appeal shall:

1. File ~~a petition in error in the office of the Clerk of the Supreme Court~~ an appeal with the applicable district court in the manner prescribed by law governing appeals from final orders of agencies pursuant to the Oklahoma Administrative Procedures Act; and

2. Request that the Tax Commission prepare for filing with the ~~Supreme Court~~ applicable district court, within thirty (30) days, the record of the appeal, certified by the Secretary of the Tax Commission, and consisting of any citations, findings, judgments, motions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings, and evidence as the appealing parties and the Tax Commission may agree to be sufficient to present fully to the ~~Court~~ applicable district court the questions involved.

C. Upon request of the taxpayer, the Tax Commission shall furnish the taxpayer a copy of the proceedings had in connection with the matter complained of.

D. If the appeal is from an order of the Tax Commission assessing a tax or an additional tax, a penalty, or interest, the

Tax Commission, within thirty (30) days from the date of the filing of the ~~petition in error~~ appeal to the applicable district court, may request the ~~Court~~ applicable district court to order the taxpayer to pay to the Tax Commission the amounts of tax, additional tax, any penalty assessed, and interest accrued through the date of the payment, as a condition precedent to the right of the taxpayer to make and prosecute an appeal, and a jurisdictional prerequisite to the ~~Supreme Court~~ applicable district court having jurisdiction to hear and determine the appeal. If, upon a final determination of the appeal the order assessing a tax, penalty, or interest is reversed or modified and it is determined that the tax or part thereof was erroneously or illegally assessed, the amounts paid by the taxpayer, together with the interest thereon at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

E. If the appeal is from an order of the Tax Commission or a district court denying a refund of taxes previously paid and if upon final determination of the appeal, the order denying the refund is reversed or modified, the taxes previously paid, together with interest thereon from the date of the filing of the petition in error at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

F. Such refunds and interest thereon shall be paid by the Tax Commission out of monies in the Tax Commission clearing account from

subsequent collections from the same source as the original tax assessment, provided that in the event there are insufficient funds for refunds from subsequent collections from the same source, the refund shall be paid by the Tax Commission from monies appropriated by the Legislature to the special refund reserve account for such purposes as hereinafter provided. There is hereby created within the official depository of the State Treasury an agency special account for the Tax Commission for the purpose of making such refunds as may be required under this section, not otherwise provided. This account shall consist of monies appropriated by the Legislature for the purpose of making refunds under this section.

G. In lieu of the cash payment provided for in subsection D of this section, the taxpayer may file with the Tax Commission, pursuant to Section 210 of this title, a bond in double the amount of the tax, additional tax, penalties and interest so assessed, conditioned that the taxpayer will faithfully and diligently prosecute such appeal to a final determination, and in the event the order of the Tax Commission be affirmed on appeal, will pay such tax, additional tax, penalties and interest, and costs so assessed against the taxpayer. Any bond submitted pursuant to this subsection must be approved by the Tax Commission as to form and amount and accepted within the time prescribed by the Court.

H. If the appeal be from an order, judgment, finding, or ruling of the Tax Commission other than one assessing a tax and from which

a right of appeal is not otherwise specifically provided for in this article the Uniform Tax Procedure Code, any aggrieved taxpayer may appeal from that order, judgment, finding, or ruling as provided in this section and may supersede the effect of such order, judgment, ruling, or finding by filing with the Tax Commission a bond in an amount fixed by the Tax Commission payable to the State of Oklahoma conditioned that the appeal will faithfully and diligently be prosecuted to a final determination, and in the event the order, judgment, ruling, or finding of the Tax Commission be affirmed on appeal, that such person will immediately conform thereto.

I. This section shall be construed to provide to the taxpayer a legal remedy by action at law in any case where a tax, or the method of collection or enforcement thereof, or any order, ruling, finding, or judgment of the Tax Commission is complained of, or is sought to be enjoined in any action in any court of this state or the United States of America.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 227, is amended to read as follows:

Section 227. (a) Any taxpayer who has paid to the State of Oklahoma, through error of fact, or computation, or misinterpretation of law, any tax collected by the Tax Commission may, as hereinafter provided, be refunded the amount of such tax so erroneously paid, without interest.

(b) Any taxpayer who has so paid any such tax may, within three (3) years from the date of payment thereof file with the Tax Commission a verified claim for refund of such tax so erroneously paid. The Tax Commission may accept an amended sales tax, withholding tax or other report or return as a verified claim for refund if the amended report or return establishes a liability less than the original report or return previously filed.

(c) Said claim so filed with the Tax Commission, except for an amended report or return, shall specify the name of the taxpayer, the time when and period for which said tax was paid, the nature and kind of tax so paid, the amount of the tax which said taxpayer claimed was erroneously paid, the grounds upon which a refund is sought, and such other information or data relative to such payment as may be necessary to an adjustment thereof by the Tax Commission. It shall be the duty of the Commission to determine what amount of refund, if any, is due as soon as practicable after such claim has been filed and advise the taxpayer about the correctness of his claim and the claim for refund shall be approved or denied by written notice to the taxpayer.

(d) If the claim for refund is denied, the taxpayer may file a demand for hearing with the Commission. The demand for hearing must be filed on or before the thirtieth day after the date the notice of denial was mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred.

(e) Upon the taxpayer's timely filing of a demand for hearing, the Commission shall set a date for hearing upon the claim for refund ~~which date shall not be later than sixty (60) days from the date the demand for hearing was mailed~~. The taxpayer shall be notified of the time and place of the hearing. ~~The hearing may be held after the sixty-day period provided by this subsection upon agreement of the taxpayer~~ Hearings based on the denial of a claim for refund shall be held not later than ten (10) days from the date the taxpayer notifies the Tax Commission that the taxpayer is prepared for hearing either before an administrative law judge or before the Tax Commission sitting en banc. The taxpayer shall provide the notice to set the hearing date to the General Counsel of the Oklahoma Tax Commission. If the date required for hearing occurs on a Saturday, Sunday or legal holiday, the hearing shall be held on the first business day following such date. The findings and conclusions of an administrative law judge shall be finalized and ready for adoption as the final order in the proceeding not later than ninety (90) days from the conclusion of the hearing. The final order of the Oklahoma Tax Commission shall be issued not later than thirty (30) days from the date as of which the findings and conclusions were finalized and in cases where there has been a hearing en banc before the Tax Commission without the participation of an administrative law judge, the final order of the Tax

Commission shall be issued not later than thirty (30) days from conclusion of the hearing en banc.

(f) The provisions of this section shall not apply: (1) to refunds of income tax erroneously paid, refunds of which tax shall be payable out of the income tax adjustment fund as provided by law; (2) to estate tax because the payment of such tax is covered by an order of the Tax Commission and the estate and interested parties are given notice that Commission's position and computation of the tax will become final unless they protest and resist the payment thereof as provided by statute; nor, (3) in any case where the tax was paid after an assessment thereof was made by the Tax Commission which assessment became final under the law.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 228, is amended to read as follows:

Section 228. (a) If, upon the hearing as required by Section 227 of this title, the Tax Commission finds that such tax was erroneously paid through mistake of fact, or computation or misinterpretation of law, it shall enter its written order allowing said claim for refund, which refund may be paid to the taxpayer as provided by law, or credited against any taxes due or to become due by the taxpayer as the case may be; otherwise, the Tax Commission shall deny said claim. The taxpayer shall have the right of appeal to the ~~Supreme Court~~ applicable district court from a decision of the Commission denying said claim for refund in the same manner as

provided ~~in~~ for appeals from final orders in cases involving the denial of a protest to the assessment of additional taxes as prescribed by Section 225 of this article.

(b) Any order entered by the Tax Commission, disallowing a claim for refund, shall become final within thirty-one (31) days from the date it is entered, unless an appeal is prosecuted therefrom, in which event said order shall not become final until the appeal shall have been determined. In the event the Tax Commission allows said claim for refund, it shall pay the claimant the amount of refund, so allowed out of funds in the official depository clearing account of the Tax Commission, derived from collections in said fund from the same source from which the overpayment occurred; and an appropriation of so much of said fund as is necessary to pay said claims for refund erroneously paid or collected is hereby made; provided, that in the case of refunds due hereunder to taxpayers who are required to remit taxes to the Tax Commission on a monthly or quarterly basis, the Commission may, in lieu of a refund of the tax erroneously paid, credit the account of the taxpayer for such amount.

SECTION 5. This act shall become effective November 1, 2011.

Passed the House of Representatives the 14th day of March, 2011.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2011.

_____
Presiding Officer of the Senate