

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1191

By: Grau

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7 COMMITTEE SUBSTITUTE

8 An Act relating to revenue and taxation; amending 68
9 O.S. 2001, Sections 2871, as last amended by Section
10 2, Chapter 140, O.S.L. 2008, 2877, as amended by
11 Section 7, Chapter 518, O.S.L. 2004 and 2880.1 (68
12 O.S. Supp. 2010, Sections 2871 and 2877), which
13 relate to the Ad Valorem Tax Code; authorizing board
14 of tax roll corrections to examine evidence;
15 providing for appeal; authorizing board of tax roll
16 corrections to compel attendance by witnesses and
17 production of certain information; providing for
18 methods of appearance by taxpayers; providing for
19 orders of dismissal by county boards of equalization;
20 modifying procedures related to assessment of costs;
21 providing for preclusive effect of dismissal order;
22 modifying provisions related to appeals from county
23 board of equalization based upon order of dismissal;
24 and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2871, as
last amended by Section 2, Chapter 140, O.S.L. 2008 (68 O.S. Supp.
2010, Section 2871), is amended to read as follows:

Section 2871. A. After delivery of the tax rolls to the county
treasurer of any county, no correction or alteration as to any item

1 contained therein as of such date of delivery shall ever be made,
2 except by the county treasurer and on authority of a proper
3 certificate authorized by law or pursuant to order or decree of
4 court in determination of a tax protest or other proper case.

5 B. A board of tax roll corrections is hereby created and shall
6 consist of the chair of the board of county commissioners as chair
7 or, in the chair's absence, the vice-chair of the board of county
8 commissioners or their statutory designee, the chair of the county
9 equalization board or, in the chair's absence, the vice-chair of the
10 county equalization board as vice-chair, the county clerk as
11 nonvoting member and secretary, and the county assessor, a majority
12 of whom shall constitute a quorum. The board is hereby authorized
13 to hear and determine allegations of error, mistake or difference as
14 to any item or items so contained in the tax rolls, in any instances
15 hereinafter enumerated, on application of any person or persons
16 whose interest may in any manner be affected thereby, or by his or
17 her agent or attorney, verified by affidavit and showing that the
18 complainant was not at fault through failure to fulfill any duty
19 enjoined upon him or her by law, or upon discovery by the county
20 treasurer or assessor before the tax has been paid or attempted to
21 be paid and disclosure by statement of fact in writing signed by the
22 treasurer or assessor and verified by the assessor or treasurer as
23 the case may be. Such right shall not be available to anyone
24 attempting to acquire, or who has acquired, the lien of the county

1 for such tax, whether by purchase, assignment, deed or otherwise.
2 In counties with two county boards of equalization, the chair of
3 each such board shall serve, in alternating years, as the vice-chair
4 of the board of tax roll corrections. When a complaint is pending
5 before the board of tax roll corrections, such taxes as may be owed
6 by the protesting taxpayer shall not become due until thirty (30)
7 days after the decision of the board of tax roll corrections. When
8 a complaint is filed on a tax account which has been delinquent for
9 more than one (1) year, and upon showing that the tax is delinquent,
10 the complaint shall be dismissed, with prejudice. The board of tax
11 roll corrections is hereby authorized and empowered to take evidence
12 and to compel the attendance of witnesses and the production of
13 books, records and papers by subpoena for the purpose of the
14 hearing. The ruling of the board of tax roll corrections on any
15 objection to a subpoena may be appealed to district court.

16 C. If, upon such hearing, it appears that:

- 17 1. Any personal or real property has been assessed to any
18 person, firm, or corporation not owning or claiming to own the same;
- 19 2. Property exempt from taxation has been assessed;
- 20 3. Exemption deductions allowed by law have not been taken into
21 account;
- 22 4. The same property, whether real or personal, has been
23 assessed more than once for the taxes of the same year;

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1 5. Property, whether real or personal, has been assessed in the
2 county for the taxes of a year to which the same was not subject;

3 6. The county board of equalization has, after delivery of the
4 tax rolls, made a finding of fact under authority of law that, after
5 January 1 of any year and before May 1 of the same year,
6 improvements to real estate or other property assessed have been
7 destroyed by fire, or that the value of land has been impaired,
8 damaged or destroyed by floods or overflow of streams, and has made
9 and entered an adjustment to assessments previously made and
10 entered;

11 7. Lands or lots have in any manner been erroneously described;

12 8. Any valuation or valuations assessed and entered are at
13 variance with the valuation finally equalized;

14 9. Any valuation or valuations returned for assessment and not
15 increased by the county assessor have been entered on the assessment
16 rolls for equalization at variance with the value returned, or in
17 the event of increase by either the county assessor or the county
18 board of equalization and no notice thereof was sent; provided,
19 offer of proof of failure to receive notice may not be heard;

20 10. Any valuation assessed and entered included, in whole or in
21 part, as of the date of assessment under the law relating thereto,
22 any property that had no taxable situs in the county, did not exist
23 or had been erroneously placed;

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1 11. Any property subject to taxation as of January 1 of any
2 year was thereafter acquired by conveyance of title, including tax
3 title, by the county, or any city, town or school district therein;

4 12. An error resulted from inclusion in the total of levies
5 computed against the valuation entered, a tax levy or levies
6 certified and final for none or part of which such property was
7 liable in fact and the same be self-evident on recomputation, and
8 involve no question of law;

9 13. As to personal tax, if there has been an error in the name
10 of the person assessed, or, as to real property, the record owner at
11 the time of assessment desires that his or her name be entered in
12 lieu of whatever other name may have been entered as "owner" upon
13 the roll;

14 14. There has been any error in the tax extended against the
15 valuation entered, whether by erroneous computation or otherwise;

16 15. There has been any error in transcribing from the county
17 assessor's permanent survey record to the assessment rolls either as
18 to area or value of lands or lots or as to improvements thereon;

19 16. The county treasurer has, of his or her own volition,
20 restored to the tax rolls any tax or assessment where the entry upon
21 the tax rolls shows the same theretofore to have been stricken or
22 reduced by certificate issued by constituted authority, except where
23 restored by specific court order or in conformity to general decree
24 of the Supreme Court of Oklahoma invalidating in mass all such

1 certificates of a class certain, and except if the owner of such
2 property demand its restoration and make payment, in which instance
3 the county treasurer shall require that the owner sign on the face
4 of the owner's receipt a statement that the owner "paid voluntarily
5 without demand, request or duress"; or

6 17. Any personal property assessment and personal tax charge
7 has been entered upon the assessment and tax rolls except upon
8 proper return of assessment by the taxpayer or increase thereof with
9 due notice, or as a delinquent assessment made by the county
10 assessor or deputies in detail either on view or reliable
11 information; then, in the event any of the grounds stated in this
12 subsection are present, it shall be the duty of the board of tax
13 roll corrections to make and the secretary to enter its findings of
14 fact and to correct such error, if such exists, by issuing its
15 order, in words and figures, to accomplish such:

16 a. if such error increases the amount of tax charged, the
17 county clerk shall issue a certificate of error to the
18 county assessor ordering the assessor to certify such
19 correction or increase to the county treasurer for
20 entry on the tax rolls, and

21 b. if such error does not increase the amount of tax
22 charged, the county clerk shall issue a certificate of
23 error to the county treasurer if the tax be not paid,
24 stating the amount or other effect of such order, and

1 it shall be the duty of such county treasurer to make
2 and enter such correction upon the tax rolls and, if
3 there be a decrease to the amount of tax charged, to
4 enter a credit, in lieu of cash, for the amount of
5 decrease of tax shown in such certificate.

6 D. If, prior to such hearing by the board, as provided by this
7 section, the tax has been paid, no certificate shall issue; but if
8 less than one (1) year shall have elapsed after the payment of the
9 tax and before the filing of such application for correction of
10 error, and after such hearing the findings of fact disclose that
11 less tax was due to have been paid than was paid, then the person
12 who paid the tax, or such person's heirs, successors, or assigns,
13 may execute a cash voucher claim setting forth facts and findings,
14 verify it, and file it with the county clerk, who shall thereupon
15 deliver such claim to the county treasurer for designation of the
16 fund from which the claim must be paid and approval of the claim as
17 to availability of funds by the county treasurer. If taxes have
18 been paid under protest, the county treasurer must designate the
19 refund to be paid from such protest fund. If taxes have been paid
20 but not paid under protest and if there are funds available in
21 current collections of the taxing unit which received the taxes
22 paid, then the county treasurer must designate the refund to be paid
23 from such current collections of such taxing unit. The county clerk
24 shall thereupon issue a cash voucher against the appropriate fund of

1 the county, directing the county treasurer to pay to such person the
2 amount so found to be erroneous. The word "person" as used in this
3 subsection shall comprehend the person, firm, or corporation who
4 paid such tax and the heirs, assigns or successors, as the case may
5 be. No such claim for refund shall be allowed and paid unless the
6 same be filed within six (6) months after the effective date of the
7 order of correction.

8 E. If there be any error in the taxes collected from any
9 person, the overpayment or duplicate payment of any such taxes
10 collected in error may be recovered by the taxpayer, and the county
11 treasurer may make such payment from the resale property fund of the
12 county if funds are not available as stated in subsection D of this
13 section.

14 F. Beginning January 1, 1987, notwithstanding the one-year
15 limitations period for filing a claim for refund as provided in
16 subsection D of this section, if there be any error in taxes
17 collected from any person on property constitutionally exempt under
18 Section 6B of Article X of the Oklahoma Constitution, by the county
19 treasurer in counties with a population in excess of five hundred
20 thousand (500,000) persons, according to the latest Federal
21 Decennial Census, to the extent that such county has been reimbursed
22 from the Ad Valorem Reimbursement Fund provided by Section 193 of
23 Title 62 of the Oklahoma Statutes, the overpayment or duplicate
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1 payment of any such taxes collected in error may be recovered by the
2 taxpayer as provided by law.

3 G. Upon dismissal of a complaint or denial of relief to the
4 taxpayer, the county clerk, as secretary of the board of tax roll
5 corrections, shall prepare a letter order of dismissal or denial
6 which shall be mailed to the taxpayer or person at the address found
7 on the complaint.

8 H. Both the taxpayer and the county assessor shall have the
9 right of appeal from any order of the board of tax roll corrections
10 to the district court of the same county. In case of appeal the
11 trial in the district court shall be de novo.

12 I. Notice of appeal shall be served upon the county clerk, as
13 secretary of the board of tax roll corrections, and a copy served
14 upon the county assessor. The appeal shall be filed in the district
15 court within fifteen (15) days of the date of the mailing of the
16 order of the board of tax roll corrections to the taxpayer.

17 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2877, as
18 amended by Section 7, Chapter 518, O.S.L. 2004 (68 O.S. Supp. 2010,
19 Section 2877), is amended to read as follows:

20 Section 2877. A. Upon receipt of an appeal from action by the
21 county assessor on the form prescribed by the Oklahoma Tax
22 Commission, the secretary of the county board of equalization shall
23 fix a date of hearing, at which time said board shall be authorized
24 and empowered to take evidence pertinent to said appeal; and for

1 that purpose, is authorized to compel the attendance of witnesses
2 and the production of books, records, and papers by subpoena, and to
3 confirm, correct, or adjust the valuation of real or personal
4 property or to cancel an assessment of personal property added by
5 the assessor not listed by the taxpayer if the personal property is
6 not subject to taxation or if the taxpayer is not responsible for
7 payment of ad valorem taxes upon such property. The secretary of
8 the board shall fix the dates of the hearings provided for in this
9 section in such a manner as to ensure that the board is able to hear
10 all complaints within the time provided for by law. The county
11 board of equalization shall be required to follow the procedures
12 prescribed by the Ad Valorem Tax Code or administrative rules and
13 regulations promulgated pursuant to such Code governing the
14 valuation of real and personal property. The county board of
15 equalization shall not modify a valuation of real or personal
16 property as established by the county assessor unless such
17 modification is explained in writing upon a form prescribed by the
18 Oklahoma Tax Commission. Each decision of the county board of
19 equalization shall be explained in writing upon a form prescribed by
20 the Oklahoma Tax Commission. The county board of equalization shall
21 make a record of each proceeding involving an appeal from action by
22 the county assessor either in transcribed or tape recorded form.

23 B. In all cases where the county assessor has, without giving
24 the notice required by law, increased the valuation of property as

1 listed by the taxpayer, and the taxpayer has knowledge of such
2 adjustment or addition, the taxpayer may at any time prior to the
3 adjournment of the board, file an appeal in the form and manner
4 provided for in Section 2876 of this title. Thereafter, the board
5 shall fix a date of hearing, notify the taxpayer, and conduct the
6 hearing as required by this section.

7 C. The taxpayer or agent may appear at the scheduled hearing
8 either in person, by telephone or other electronic means, or by
9 affidavit.

10 D. If the taxpayer or agent fails to appear in a manner
11 permitted under this section before the county board of equalization
12 at the scheduled hearing, unless advance notification is given for
13 the reason of absence, ~~the county shall be authorized to assess~~
14 ~~against the taxpayer the costs incurred by the county in preparation~~
15 ~~for the scheduled hearing~~ an order of dismissal will be entered. If
16 ~~such costs are assessed, payment of the costs shall be a~~
17 ~~prerequisite to the filing of an appeal to the district court.~~ A An
18 order of dismissal will preclude an appeal to district court for
19 failure to exhaust its administrative remedies; however, a taxpayer
20 that gives advance notification of their absence shall be given the
21 opportunity to reschedule the hearing date.

22 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2880.1, is
23 amended to read as follows:

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1 Section 2880.1 A. Both the taxpayer and the county assessor
2 shall have the right of appeal from any order of the county board of
3 equalization to the district court of the same county, and right of
4 appeal of either may be either upon questions of law or fact
5 including value, or upon both questions of law and fact except when
6 an order of dismissal has been issued by the board of equalization
7 as provided in Section 2877 of this title. In case of appeal the
8 trial in the district court shall be de novo. Provided, the county
9 assessor shall not be permitted to appeal an order of the county
10 board of equalization upon a question of the constitutionality of a
11 law upon which the board based its order, but the county assessor is
12 hereby authorized in such instance to request a declaratory judgment
13 to be rendered by the district court.

14 B. Notice of appeal shall be filed with the county clerk as
15 secretary of the county board of equalization, which appeal shall be
16 filed in the district court within ten (10) days after the final
17 adjournment of the board. It shall be the duty of the county clerk
18 to preserve all complaints and to make a record of all orders of the
19 board and both the complaint and orders shall be a part of the
20 record in any case appealed to the district court from the county
21 board of equalization.

22 C. Either the taxpayer or the county assessor may appeal from
23 the district court to the Supreme Court, as provided for in the Code
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1 of Civil Procedure, but no matter shall be reviewed on such appeal
2 which was not presented to the district court.

3 D. In such appeals to the district court and to the Supreme
4 Court and in requests for declaratory judgment it shall be the duty
5 of the district attorney to appear for and represent the county
6 assessor. The General Counsel or an attorney for the Tax Commission
7 may appear in such appeals or requests for declaratory judgment on
8 behalf of the county assessor, either upon request of the district
9 attorney for assistance, or upon request of the county assessor. It
10 shall be the mandatory duty of the board of county commissioners and
11 the county excise board to provide the necessary funds to enable the
12 county assessor to pay the costs necessary to be incurred in
13 perfecting appeals and requests for declaratory judgment made by the
14 county assessor to the courts.

15 E. In all appeals taken by the county assessor the presumption
16 shall exist in favor of the correctness of the county assessor's
17 valuation and the procedure followed by the county assessor.

18 SECTION 4. This act shall become effective November 1, 2011.

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