

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL 1297

By: Crain of the Senate

and

Peters of the House

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7
8
9 COMMITTEE SUBSTITUTE

10 [Oklahoma Tax Commission - disputes - appeal -
11 codification - effective date]

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

14 SECTION 1. NEW LAW A new section of law to be codified in
15 the Oklahoma Statutes as Section 105.1a of Title 68, unless there is
16 created a duplication in numbering, reads as follows:

17 Any attorney hired by the Oklahoma Tax Commission after the
18 effective date of this act to serve as an administrative law judge to
19 hear disputes on matters pertaining to the assessment of tax or
20 additional tax or denial of a claim for refund by the Tax Commission,
21 shall not have been employed by this state for the twenty-four (24)
22 months preceding the first day of employment by the Commission.

23 SECTION 2. AMENDATORY 68 O.S. 2011, Section 207, is
24 amended to read as follows:

1 Section 207. ~~(a)~~ A. Incidental to the performance of its
2 duties in the administration of this article or any state tax law,
3 any member of the Oklahoma Tax Commission shall have the power to
4 administer oaths, conduct hearings, and compel by subpoena the
5 attendance of witnesses and the production of any books, records, or
6 papers of any person, firm, or corporation. The Tax Commission may
7 examine under oath any taxpayer, and the directors, officers, agents
8 and employees of any taxpayer, as well as all other witnesses,
9 relative to the business of such taxpayer in respect of any matter
10 incident to the administration of this article or any state tax law.

11 ~~(b)~~ B. The fees of witnesses required by the Tax Commission to
12 attend any hearing shall be the same as those allowed to witnesses
13 appearing before district courts of this state. Such fees shall be
14 paid in the manner provided for the payment of other expenses
15 incident to the administration of this article or of any state tax
16 law.

17 ~~(c)~~ C. Any person desiring a hearing before the Tax Commission
18 shall file an application for such hearing, signed by ~~himself~~ the
19 person or ~~his~~ the duly authorized agent of the person, setting out
20 therein:

21 ~~(1)~~ 1. A statement of the nature of the tax, the amount thereof
22 in controversy, and the action of the Tax Commission complained of;

23 ~~(2)~~ 2. A clear and concise assignment of each error alleged to
24 have been committed by the Tax Commission;

1 ~~(3)~~ 3. The argument and legal authority upon which each
2 assignment of error is made; provided, that the applicant shall not
3 be bound or restricted in such hearing, or on appeal, to the
4 arguments and legal authorities contained and cited in ~~said~~ the
5 application;

6 ~~(4)~~ 4. A statement of the relief sought by the taxpayer;

7 ~~(5)~~ 5. A statement of the witnesses, so far as ~~such~~ the
8 witnesses are then known to the taxpayer, showing their names and
9 addresses, and, if the taxpayer so desires, a request that ~~such~~ the
10 witnesses be subpoenaed;

11 ~~(6)~~ 6. A verification by ~~such~~ a person, or ~~his~~ the duly
12 authorized agent of the person, that the statements and facts
13 therein contained are true.

14 ~~(d)~~ D. If, in such application, the taxpayer shall request an
15 oral hearing, the Tax Commission shall grant such hearing and shall,
16 by written notice, advise the taxpayer of a date, which shall not be
17 less than ten (10) days from the date of mailing ~~such~~ of the written
18 notice, when ~~such~~ the taxpayer may appear before the Tax Commission
19 and present argument and evidence, oral or written. The Tax
20 Commission shall, as soon as practicable thereafter, hold a hearing
21 upon the matter and, pursuant to ~~such~~ the hearing, shall, as soon as
22 practicable, make an order confirming, modifying or vacating its
23 prior determination, and shall send to the parties appearing before
24 it at ~~such~~ the hearing immediately a copy of ~~such~~ the order.

1 E. For purposes of appeal, the right to a hearing pursuant to
2 this section shall be separate from the right to a hearing on
3 matters pertaining to the assessment of tax or additional tax or
4 denial of claims for refund by the Tax Commission that are afforded
5 to a taxpayer pursuant to the provisions of Sections 221 and 227 of
6 this title.

7 SECTION 3. AMENDATORY 68 O.S. 2011, Section 221, is
8 amended to read as follows:

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

3 B. Any assessment, correction or adjustment made as a result of
4 an office audit shall be presumed to be the result of an audit of the
5 report or return only, and ~~such~~ the office audit shall not be deemed
6 a verification of any item in the report or return unless the item
7 shall have been made the subject of a hearing before the Tax
8 Commission, and the correctness and amount of ~~such~~ the item
9 determined at such hearing; and ~~such~~ the office audit shall not
10 preclude the Tax Commission from subsequently making further
11 adjustment, correction or assessment as a result of a field audit of
12 the books and records of the taxpayer, wherever located, or upon
13 disclosures from any source other than the return. In cases where no
14 report or return has been filed, the assessment of the tax on any
15 information available shall in no event preclude the assessment at
16 any time on subsequently disclosed information.

17 C. ~~Within~~ Except as provided in subsection J of this section,
18 within sixty (60) days after the mailing of the aforesaid proposed
19 assessment, the taxpayer may file with the Tax Commission a written
20 protest under oath, signed by the taxpayer or the taxpayer's duly
21 authorized agent, setting out therein:

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

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

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

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

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

11 D. If in such written protest the taxpayer shall request an oral
12 hearing, the Tax Commission shall grant ~~such~~ the hearing, and shall,
13 by written notice, advise the taxpayer of a date, which shall not be
14 less than ten (10) days from the date of mailing of ~~such~~ the written
15 notice, when such taxpayer may appear before the Tax Commission and
16 present arguments and evidence, oral or written, in support of the
17 protest. Hearings shall be held as soon as practicable. In the
18 event an oral hearing is not requested, the Tax Commission shall
19 proceed without further notice to examine into the merits of the
20 protest and enter an order in accordance with its findings. Upon
21 request of any taxpayer and upon proper showing that the principle of
22 law involved in the assessment of any tax is already pending before
23 the courts for judicial determination, the taxpayer, upon agreement
24 to abide by the decision of the court, may pay the tax so assessed

1 under protest and ~~such~~ the protest shall be resolved in accordance
2 with the agreement to abide.

3 E. If the taxpayer fails to file a written protest within the
4 sixty-day period herein provided for or within the period as extended
5 by the Tax Commission, or if the taxpayer fails to file the notice
6 required by Section 226 of this title within thirty (30) days from
7 the date of mailing of an assessment, then the proposed assessment,
8 without further action of the Tax Commission, shall become final and
9 absolute. A taxpayer who fails to file a protest to an assessment of
10 taxes within the time period prescribed by this section may, within
11 one (1) year of the date the assessment becomes final, request the
12 Tax Commission to adjust or abate the assessment if the taxpayer can
13 demonstrate, by a preponderance of the evidence, that the assessment
14 or some portion thereof is clearly erroneous. If the Tax Commission
15 determines that the proper showing has been made, the assessment or
16 portion thereof determined to be clearly erroneous shall be deemed
17 not to have become final and absolute. No hearing to adjust or abate
18 a clearly erroneous assessment may be granted after the Tax
19 Commission's denial of such a request. An order of the Tax
20 Commission denying a taxpayer's request to adjust or abate an
21 assessment alleged to be clearly erroneous is not an appealable order
22 under Section 225 of this title. No proceeding instituted by the Tax
23 Commission to collect a tax liability may be stayed because of a
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1 request made by a taxpayer to adjust or abate an assessment alleged
2 to be clearly erroneous.

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

8 G. Within a reasonable time after the hearing herein provided
9 for, the Tax Commission shall make and enter an order in writing in
10 which it shall set forth the disposition made of the protest and a
11 copy of such order shall forthwith be mailed to the taxpayer. The
12 order shall contain findings of fact and conclusions of law. After
13 removing the identity of the taxpayer, the Tax Commission shall make
14 the order available for public inspection and shall publish those
15 orders the Tax Commission deems to be of precedential value. The
16 taxpayer may within the time and in the manner provided for by
17 Section 225 of this title, appeal to the Supreme Court, but in the
18 event the taxpayer fails to so proceed, the order shall within thirty
19 (30) days from the date a certified copy thereof is mailed to the
20 taxpayer, become final. The provisions of Section 226 of this title
21 shall not apply where a proposed assessment or an assessment of taxes
22 has been permitted to become final.

23 H. In all instances where the proposed assessment or the
24 assessment of taxes or additional taxes has been permitted to become

1 final, a certified copy of the assessment may be filed in the office
2 of the county clerk of any county in this state, and upon being so
3 filed, the county clerk shall enter same upon the judgment docket in
4 the same manner as provided for in connection with judgments of
5 district courts. When an assessment is so filed and docketed, it
6 shall have the same force and be subject to the same law as a
7 judgment of the district court, and accordingly it shall constitute a
8 lien on any real estate of the taxpayer located in the county wherein
9 filed; and execution may issue and proceedings in aid of execution
10 may be had the same as on judgments of district courts. Such lien is
11 hereby released and extinguished upon the payment of such assessment,
12 or, except as otherwise provided herein, upon the expiration of ten
13 (10) years after the date upon which the assessment was filed in the
14 office of the county clerk; provided, the Tax Commission may, prior
15 to the release and extinguishment of such lien, refile the assessment
16 one time in the office of the county clerk. An assessment so refiled
17 shall continue the lien until payment of the assessment, or upon the
18 expiration of ten (10) years after the date upon which the assessment
19 was refiled in the office of the county clerk. The remedies provided
20 in this subsection shall be in addition to other remedies provided by
21 law. All active liens evidenced by an assessment filed with a county
22 clerk's office prior to November 1, 1989, shall be released and
23 extinguished if the assessment is not refiled prior to November 1,
24 2001.

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

11 J. Notwithstanding any other provisions of law, after the
12 hearing provided for in subsection D of this section for a dispute
13 which relates to a proposed assessment of taxes or additional taxes,
14 or denial of a claim for refund:

15 1. If the disputed amount is equal to or less than Fifteen
16 Thousand Dollars (\$15,000.00), the taxpayer may appeal directly to
17 the Supreme Court for a trial de novo on the dispute; or

18 2. If the disputed amount is greater than Fifteen Thousand
19 Dollars (\$15,000.00), the taxpayer or the Tax Commission may appeal
20 directly to the Supreme Court for a trial de novo on the dispute.

21 SECTION 4. This act shall become effective January 1, 2013.

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23 53-2-3235 JCR 3/1/2012 2:45:14 PM

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