

1 ENGROSSED HOUSE
2 BILL NO. 1464

By: Johnson and Reynolds of the
House

3 and

4 Sykes of the Senate
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8 An Act relating to revenue and taxation; amending 68
9 O.S. 2001, Sections 221 and 225, as amended by
10 Sections 1 and 2, Chapter 458, O.S.L. 2002, 227 and
11 228 (68 O.S. Supp. 2010, Sections 221 and 225), which
12 relate to the Uniform Tax Procedure Code; modifying
13 time for certain hearings; providing that hearing
14 shall be before an administrative law judge or before
15 the Tax Commission en banc; requiring taxpayer to
16 provide notice to set hearing date; modifying hearing
17 date in certain circumstances; requiring that
18 findings and conclusions be finalized and ready for
19 adoptions within certain time; requiring issuance of
20 final order within certain time; modifying procedure
21 for appeal of certain orders, rulings and findings;
22 providing venue for appeal; providing that appeals to
23 district court are conducted de novo; providing for
24 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:

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

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

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

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

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

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

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

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

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

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

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

10 E. If the taxpayer fails to file a written protest within the
11 sixty-day period herein provided for or within the period as
12 extended by the Tax Commission, or if the taxpayer fails to file the
13 notice required by Section 226 of this title within thirty (30) days
14 from the date of mailing of an assessment, then the proposed
15 assessment, without further action of the Tax Commission, shall
16 become final and absolute. A taxpayer who fails to file a protest
17 to an assessment of taxes within the time period prescribed by this
18 section may, within one (1) year of the date the assessment becomes
19 final, request the Tax Commission to adjust or abate the assessment
20 if the taxpayer can demonstrate, by a preponderance of the evidence,
21 that the assessment or some portion thereof is clearly erroneous.
22 If the Tax Commission determines that the proper showing has been
23 made, the assessment or portion thereof determined to be clearly
24 erroneous shall be deemed not to have become final and absolute. No

1 hearing to adjust or abate a clearly erroneous assessment may be
2 granted after the Tax Commission's denial of such a request. An
3 order of the Tax Commission denying a taxpayer's request to adjust
4 or abate an assessment alleged to be clearly erroneous is not an
5 appealable order under Section 225 of this title. No proceeding
6 instituted by the Tax Commission to collect a tax liability may be
7 stayed because of a request made by a taxpayer to adjust or abate an
8 assessment alleged to be clearly erroneous.

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

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

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

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

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

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

1 of the county clerk of any county in this state, and upon being so
2 filed, the county clerk shall enter same upon the judgment docket in
3 the same manner as provided for in connection with judgments of
4 district courts. When an assessment is so filed and docketed, it
5 shall have the same force and be subject to the same law as a
6 judgment of the district court, and accordingly it shall constitute
7 a lien on any real estate of the taxpayer located in the county
8 wherein filed; and execution may issue and proceedings in aid of
9 execution may be had the same as on judgments of district courts.
10 Such lien is hereby released and extinguished upon the payment of
11 such assessment, or, except as otherwise provided herein, upon the
12 expiration of ten (10) years after the date upon which the
13 assessment was filed in the office of the county clerk; provided,
14 the Tax Commission may, prior to the release and extinguishment of
15 such lien, refile the assessment one time in the office of the
16 county clerk. An assessment so refiled shall continue the lien
17 until payment of the assessment, or upon the expiration of ten (10)
18 years after the date upon which the assessment was refiled in the
19 office of the county clerk. The remedies provided in this
20 subsection shall be in addition to other remedies provided by law.
21 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 ~~F.~~ K. 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
10 audit", that has become final.

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

14 Section 225. A. Any taxpayer aggrieved by any order, ruling,
15 or finding of the Oklahoma Tax Commission directly affecting the
16 taxpayer or aggrieved by a final order of the Tax Commission issued
17 pursuant to subsection G of Section 221 of this title may appeal
18 therefrom directly to the ~~Supreme Court of Oklahoma~~ district court
19 for the county in which the individual taxpayer resides or to the
20 district court for the county in which a lawfully recognized entity
21 has its principal place of business or to the district court for the
22 county in which such entity conducts business or, with respect to
23 entities other than for profit business entities, to the district
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1 court for the county in which the entity owns any real or personal
2 property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Section 228. (a) If, upon the hearing as required by Section
16 227 of this title, the Tax Commission finds that such tax was
17 erroneously paid through mistake of fact, or computation or
18 misinterpretation of law, it shall enter its written order allowing
19 said claim for refund, which refund may be paid to the taxpayer as
20 provided by law, or credited against any taxes due or to become due
21 by the taxpayer as the case may be; otherwise, the Tax Commission
22 shall deny said claim. The taxpayer shall have the right of appeal
23 to the ~~Supreme Court~~ applicable district court from a decision of
24 the Commission denying said claim for refund in the same manner as

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

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

20 SECTION 5. This act shall become effective November 1, 2011.
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1 Passed the House of Representatives the 14th day of March, 2011.

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4 Presiding Officer of the House of
Representatives
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6 Passed the Senate the ____ day of _____, 2011.

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9 Presiding Officer of the Senate
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