

1 **SENATE FLOOR VERSION**

2 March 31, 2011

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 1231

6 By: Ownbey of the House

7 and

8 Mazzei and Ivester of the  
9 Senate

10 [ revenue and taxation - delinquent taxes - removing  
11 requirement - expanding scope - tax refunds -  
12 additional source of funds - effective date -  
13 emergency ]

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

15 SECTION 1. AMENDATORY Section 1, Chapter 376, O.S.L.  
16 2003, as amended by Section 4, Chapter 479, O.S.L. 2005 (68 O.S.  
17 Supp. 2010, Section 238.2), is amended to read as follows:

18 Section 238.2 A. It is the intent of the Legislature that the  
19 provisions of this section operate to provide for the collection of  
20 income taxes due to the State of Oklahoma by state employees in a  
21 manner that will maximize flexibility for state employees to pay any  
22 such taxes due while minimizing disruption to operations of state  
23 agencies. It is the further intent of the Legislature that the  
24 Oklahoma Tax Commission provide notice to state employees pursuant  
to the provisions of subsection C of this section and that the Tax

1 Commission provide such notice to state employees at least six (6)  
2 months prior to notification of noncompliance to a state agency.

3 B. The Office of State Finance shall, not later than August 1,  
4 2003, and August 1 of each year thereafter, provide to the Tax  
5 Commission a list of all state employees as of the preceding July 1  
6 and such identifying information as may be required by the Tax  
7 Commission. Such list and information shall be used by the Tax  
8 Commission exclusively for the purpose of collection of income taxes  
9 due to the State of Oklahoma. The provisions of any laws making  
10 information confidential shall not apply with respect to information  
11 supplied to the Tax Commission pursuant to the provisions of this  
12 section; provided, such information shall be subject to the  
13 provisions of Section 205 of ~~Title 68 of the Oklahoma Statutes~~ this  
14 title.

15 C. The Tax Commission shall, not later than November 1, 2003,  
16 and November 1 of each year thereafter, notify any state employee  
17 who is not in compliance with the income tax laws of this state.  
18 Such notification shall include:

19 1. A statement that the employee will be subject to  
20 disciplinary action by the appointing authority unless the taxpayer  
21 is deemed by the Tax Commission to be in compliance with the income  
22 tax laws of this state;

23 2. The reasons that the taxpayer is considered to be out of  
24 compliance with the income tax laws of this state, including a

1 statement of the amount of any tax, penalties and interest due or a  
2 list of the tax years for which income tax returns have not been  
3 filed as required by law;

4 3. An explanation of the rights of the taxpayer and the  
5 procedures which must be followed by the taxpayer in order to come  
6 into compliance with the income tax laws of this state; and

7 4. Such other information as may be deemed necessary by the Tax  
8 Commission.

9 D. A state employee who has entered into and is abiding by a  
10 payment agreement, or who has requested relief as an innocent spouse  
11 which is pending or has been granted, shall be deemed to be in  
12 compliance with the state income tax laws for purposes of this  
13 section.

14 E. If the Tax Commission notifies a state employee who is not  
15 in compliance with the income tax laws of this state as required in  
16 this section and such state employee does not respond to such  
17 notification or fails to come into compliance with the income tax  
18 laws of this state after an assessment has been made final or after  
19 the Tax Commission determines that every reasonable effort has been  
20 made to assist the state employee to come into compliance with the  
21 income tax laws of this state, the Tax Commission, notwithstanding  
22 the provisions of Section 205 of ~~Title 68 of the Oklahoma Statutes~~  
23 this title, shall so notify the appointing authority, which shall  
24 commence disciplinary action with respect to the state employee and

1 shall notify the state employee of the reason for such action;  
2 provided, if a state agency receives a third notification with  
3 respect to a state employee who has failed to come into compliance  
4 with the income tax laws ~~for the same tax year or years~~, such  
5 employee shall be terminated by the state agency according to the  
6 procedures provided by law regardless of the state agency in which  
7 the employee currently works. If a state employee who has been  
8 previously reported by the Tax Commission to a state agency as being  
9 out of compliance comes into compliance, the Tax Commission shall  
10 immediately notify the appointing authority. Neither a state agency  
11 nor an appointing authority shall be held liable for any action with  
12 respect to a state employee pursuant to the provisions of this  
13 section.

14 F. The Tax Commission shall promulgate rules for the  
15 implementation of the provisions of this section.

16 G. As used in this section:

17 1. "State agency" means any office, department, board,  
18 commission or institution of the executive, legislative or judicial  
19 branch of state government;

20 2. "Employee" or "state employee" means an appointed officer or  
21 employee of a state agency; provided, the term employee or state  
22 employee shall not include an elected official or an employee of a  
23 local governmental entity; and

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1 3. "Appointing authority" means the chief administrative  
2 officer of a state agency.

3 SECTION 2. AMENDATORY 68 O.S. 2001, Section 255, as last  
4 amended by Section 10, Chapter 412, O.S.L. 2010 (68 O.S. Supp. 2010,  
5 Section 255), is amended to read as follows:

6 Section 255. A. In order to facilitate and expedite the  
7 collection of taxes more than ninety (90) days overdue from any  
8 taxpayer, the Oklahoma Tax Commission may enter into a contract with  
9 a debt collection agency doing business in the State of Oklahoma or  
10 in any other state for the collection of such delinquent taxes in  
11 addition to all other taxes accrued or accruing, including penalties  
12 and interest thereon, from the taxpayer. The contract shall only  
13 authorize the debt collection agency to collect tax liabilities  
14 which are already established and the Tax Commission shall not refer  
15 accounts to the debt collection agency unless the Tax Commission has  
16 notified the taxpayer, by first class mail, of the liability and has  
17 made additional efforts to collect the debt. Provided, if a sales  
18 tax permit holder fails to file two or more ~~consecutive~~ sales tax  
19 returns, as required under Section 1365 of this title, or a taxpayer  
20 required to remit withholding taxes fails to file two or more  
21 withholding tax returns, as required under Section 2385.3 of this  
22 title, the Tax Commission may refer the accounts to the debt  
23 collection agency prior to the establishment of the tax liability,  
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1 but only after the Commission has notified the taxpayer as required  
2 under this subsection.

3 B. If an account has been referred to a debt collection agency,  
4 the Tax Commission shall review all payments posted by the  
5 collection agency prior to commencing any further collection  
6 activity against the taxpayer. Further, the collection agency shall  
7 review all payments posted by the Tax Commission prior to commencing  
8 any collection activity. The Tax Commission or the collection  
9 agency shall, within ten (10) business days, provide the taxpayer  
10 with a written confirmation of all payments received and any balance  
11 due. In addition, the contract shall not authorize the debt  
12 collection agency to conduct audits or examine the books and records  
13 of a taxpayer in any manner. The Tax Commission may also enter into  
14 a contract with a person doing business in the State of Oklahoma or  
15 in any other state for the purpose of identifying and locating the  
16 assets of such delinquent taxpayer. Such contracts authorized by  
17 this section shall be subject to the provisions of The Oklahoma  
18 Central Purchasing Act.

19 C. In addition to the authority provided in subsection A of  
20 this section, the Tax Commission may enter into a contract for the  
21 purpose of identifying nonresident businesses and individuals who  
22 are required by law to file and pay Oklahoma state taxes and who are  
23 presently unknown to the Tax Commission.

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1 D. Prior to entering into such a contract with a debt  
2 collection agency, the Tax Commission shall require that the debt  
3 collection agency file a bond in the amount of One Hundred Thousand  
4 Dollars (\$100,000.00). The bond shall be a bond from a surety  
5 company chartered or authorized to do business in this state, cash  
6 bond, certificates of deposits, certificates of savings or U.S.  
7 Treasury bonds, as the Tax Commission may deem necessary to  
8 guarantee compliance with the terms of the contract.

9 E. Each contract entered into by the Tax Commission with a debt  
10 collection agency, pursuant to the provisions of this section, shall  
11 specify that fees for services rendered, reimbursements or other  
12 remuneration shall be based on the total amount of delinquent taxes,  
13 including accrued penalties and interest, which is actually  
14 collected. No costs shall be reimbursed unless authorized in the  
15 contract. Each contract entered into between the Tax Commission and  
16 a debt collection agency shall provide for the payment of fees for  
17 such services, reimbursements or other remuneration not in excess of  
18 thirty-five percent (35%) of the total amount of delinquent taxes,  
19 penalty and interest actually collected. The debt collection agency  
20 contract fee shall be added to the amount of the delinquent taxes,  
21 accrued penalties and interest collected from the taxpayer. The  
22 total amount of the delinquent tax, accrued penalties and interest,  
23 and the debt collection agency contract fee shall be owed and  
24 collected from the taxpayer.

1 F. Each contract entered into by the Tax Commission with a  
2 person for the purpose of identifying and locating assets of  
3 delinquent taxpayers shall specify the amount of money to be paid  
4 for the performance of such services. No costs shall be reimbursed  
5 unless authorized in the contract.

6 G. All such funds collected by a debt collection agency,  
7 including the fees for collection services as provided for in such  
8 contract, shall be remitted to the Tax Commission within five (5)  
9 days from the date of collection from a taxpayer. The Tax  
10 Commission shall pay from such remitted fees the amount of fees to  
11 which such debt collecting agency is entitled for services performed  
12 pursuant to the provisions of such contract. All assets of such  
13 delinquent taxpayers which are identified and located shall be  
14 reported to the Tax Commission within five (5) days from the date of  
15 identification and location. Forms to be used for such remittances  
16 and reports shall be prescribed by the Tax Commission.

17 H. A debt collection agency entering into a contract with the  
18 Tax Commission or a person entering into a contract with the Tax  
19 Commission for asset location purposes pursuant to this section  
20 shall agree that it is receiving income from sources within this  
21 state or doing business in this state for purposes of the Oklahoma  
22 tax laws. Debt collection agency employees and/or their agents  
23 shall not disclose confidential tax information except as authorized  
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1 by Section 205 of this title, subject to the penalties contained  
2 therein.

3 SECTION 3. AMENDATORY 68 O.S. 2001, Section 228.1, is  
4 amended to read as follows:

5 Section 228.1 Except as otherwise provided by law, claims for  
6 refunds which are required to be paid by the Oklahoma Tax Commission  
7 shall be paid from funds in the official depository clearing account  
8 of the Tax Commission, derived from collections from the same source  
9 from which the overpayment occurred. Provided, in the case of  
10 refunds due to taxpayers who are required to remit taxes to the Tax  
11 Commission on a monthly or quarterly basis, the Tax Commission may,  
12 in lieu of such refund, credit the account of the taxpayer for such  
13 amount. If current collections from the same source are  
14 insufficient to pay refunds, available cash funds from the  
15 unclassified taxes account may be used for such purpose.

16 SECTION 4. This act shall become effective July 1, 2011.

17 SECTION 5. It being immediately necessary for the preservation  
18 of the public peace, health and safety, an emergency is hereby  
19 declared to exist, by reason whereof this act shall take effect and  
20 be in full force from and after its passage and approval.

21 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-29-11 - DO PASS,  
22 As Amended and Coauthored.

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