

1 **SENATE FLOOR VERSION**

2 April 7, 2011

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL NO. 1362

By: Peters and Grau of the  
House

and

Brown of the Senate

6  
7  
8  
9 [ revenue and taxation - Ad Valorem Tax Code -  
10 appeals - effective date -  
11 emergency ]

12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2871, as  
15 last amended by Section 2, Chapter 140, O.S.L. 2008 (68 O.S. Supp.  
16 2010, Section 2871), is amended to read as follows:

17 Section 2871. A. After delivery of the tax rolls to the county  
18 treasurer of any county, no correction or alteration as to any item  
19 contained therein as of such date of delivery shall ever be made,  
20 except by the county treasurer and on authority of a proper  
21 certificate authorized by law or pursuant to order or decree of  
22 court in determination of a tax protest or other proper case.

23 B. A board of tax roll corrections is hereby created and shall  
24 consist of the chair of the board of county commissioners as chair

1 or, in the chair's absence, the vice-chair of the board of county  
2 commissioners or their statutory designee, the chair of the county  
3 equalization board or, in the chair's absence, the vice-chair of the  
4 county equalization board as vice-chair, the county clerk as  
5 nonvoting member and secretary, and the county assessor, a majority  
6 of whom shall constitute a quorum. The board is hereby authorized  
7 to hear and determine allegations of error, mistake or difference as  
8 to any item or items so contained in the tax rolls, in any instances  
9 hereinafter enumerated, on application of any person or persons  
10 whose interest may in any manner be affected thereby, or by his or  
11 her agent or attorney, verified by affidavit and showing that the  
12 complainant was not at fault through failure to fulfill any duty  
13 enjoined upon him or her by law, or upon discovery by the county  
14 treasurer or assessor before the tax has been paid or attempted to  
15 be paid and disclosure by statement of fact in writing signed by the  
16 treasurer or assessor and verified by the assessor or treasurer as  
17 the case may be. Such right shall not be available to anyone  
18 attempting to acquire, or who has acquired, the lien of the county  
19 for such tax, whether by purchase, assignment, deed or otherwise.  
20 In counties with two county boards of equalization, the chair of  
21 each such board shall serve, in alternating years, as the vice-chair  
22 of the board of tax roll corrections. When a complaint is pending  
23 before the board of tax roll corrections, such taxes as may be owed  
24 by the protesting taxpayer shall not become due until thirty (30)

1 days after the decision of the board of tax roll corrections. When  
2 a complaint is filed on a tax account which has been delinquent for  
3 more than one (1) year, and upon showing that the tax is delinquent,  
4 the complaint shall be dismissed, with prejudice. The board of tax  
5 roll corrections is hereby authorized and empowered to take evidence  
6 and to compel the attendance of witnesses and the production of  
7 books, records and papers by subpoena for the purpose of the  
8 hearing. The ruling of the board of tax roll corrections on any  
9 objection to a subpoena may be appealed to district court.

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

- 11 1. Any personal or real property has been assessed to any  
12 person, firm, or corporation not owning or claiming to own the same;
- 13 2. Property exempt from taxation has been assessed;
- 14 3. Exemption deductions allowed by law have not been taken into  
15 account;
- 16 4. The same property, whether real or personal, has been  
17 assessed more than once for the taxes of the same year;
- 18 5. Property, whether real or personal, has been assessed in the  
19 county for the taxes of a year to which the same was not subject;
- 20 6. The county board of equalization has, after delivery of the  
21 tax rolls, made a finding of fact under authority of law that, after  
22 January 1 of any year and before May 1 of the same year,  
23 improvements to real estate or other property assessed have been  
24 destroyed by fire, or that the value of land has been impaired,

1 damaged or destroyed by floods or overflow of streams, and has made  
2 and entered an adjustment to assessments previously made and  
3 entered;

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

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

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

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

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

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

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

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

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

11 16. The county treasurer has, of his or her own volition,  
12 restored to the tax rolls any tax or assessment where the entry upon  
13 the tax rolls shows the same theretofore to have been stricken or  
14 reduced by certificate issued by constituted authority, except where  
15 restored by specific court order or in conformity to general decree  
16 of the Supreme Court of Oklahoma invalidating in mass all such  
17 certificates of a class certain, and except if the owner of such  
18 property demand its restoration and make payment, in which instance  
19 the county treasurer shall require that the owner sign on the face  
20 of the owner's receipt a statement that the owner "paid voluntarily  
21 without demand, request or duress"; or

22 17. Any personal property assessment and personal tax charge  
23 has been entered upon the assessment and tax rolls except upon  
24 proper return of assessment by the taxpayer or increase thereof with

1 due notice, or as a delinquent assessment made by the county  
2 assessor or deputies in detail either on view or reliable  
3 information; then, in the event any of the grounds stated in this  
4 subsection are present, it shall be the duty of the board of tax  
5 roll corrections to make and the secretary to enter its findings of  
6 fact and to correct such error, if such exists, by issuing its  
7 order, in words and figures, to accomplish such:

8           a. if such error increases the amount of tax charged, the  
9           county clerk shall issue a certificate of error to the  
10           county assessor ordering the assessor to certify such  
11           correction or increase to the county treasurer for  
12           entry on the tax rolls, and

13           b. if such error does not increase the amount of tax  
14           charged, the county clerk shall issue a certificate of  
15           error to the county treasurer if the tax be not paid,  
16           stating the amount or other effect of such order, and  
17           it shall be the duty of such county treasurer to make  
18           and enter such correction upon the tax rolls and, if  
19           there be a decrease to the amount of tax charged, to  
20           enter a credit, in lieu of cash, for the amount of  
21           decrease of tax shown in such certificate.

22           D. If, prior to such hearing by the board, as provided by this  
23 section, the tax has been paid, no certificate shall issue; but if  
24 less than one (1) year shall have elapsed after the payment of the

1 tax and before the filing of such application for correction of  
2 error, and after such hearing the findings of fact disclose that  
3 less tax was due to have been paid than was paid, then the person  
4 who paid the tax, or such person's heirs, successors, or assigns,  
5 may execute a cash voucher claim setting forth facts and findings,  
6 verify it, and file it with the county clerk, who shall thereupon  
7 deliver such claim to the county treasurer for designation of the  
8 fund from which the claim must be paid and approval of the claim as  
9 to availability of funds by the county treasurer. If taxes have  
10 been paid under protest, the county treasurer must designate the  
11 refund to be paid from such protest fund. If taxes have been paid  
12 but not paid under protest and if there are funds available in  
13 current collections of the taxing unit which received the taxes  
14 paid, then the county treasurer must designate the refund to be paid  
15 from such current collections of such taxing unit. The county clerk  
16 shall thereupon issue a cash voucher against the appropriate fund of  
17 the county, directing the county treasurer to pay to such person the  
18 amount so found to be erroneous. The word "person" as used in this  
19 subsection shall comprehend the person, firm, or corporation who  
20 paid such tax and the heirs, assigns or successors, as the case may  
21 be. No such claim for refund shall be allowed and paid unless the  
22 same be filed within six (6) months after the effective date of the  
23 order of correction.

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1 E. If there be any error in the taxes collected from any  
2 person, the overpayment or duplicate payment of any such taxes  
3 collected in error may be recovered by the taxpayer, and the county  
4 treasurer may make such payment from the resale property fund of the  
5 county if funds are not available as stated in subsection D of this  
6 section.

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

19 G. Upon dismissal of a complaint or denial of relief to the  
20 taxpayer, the county clerk, as secretary of the board of tax roll  
21 corrections, shall prepare a letter order of dismissal or denial  
22 which shall be mailed to the taxpayer or person at the address found  
23 on the complaint.

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1 H. Both the taxpayer and the county assessor shall have the  
2 right of appeal from any order of the board of tax roll corrections  
3 to the district court of the same county. In case of appeal the  
4 trial in the district court shall be de novo.

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

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

13 Section 2877. A. Upon receipt of an appeal from action by the  
14 county assessor on the form prescribed by the Oklahoma Tax  
15 Commission, the secretary of the county board of equalization shall  
16 fix a date of hearing, at which time said board shall be authorized  
17 and empowered to take evidence pertinent to said appeal; and for  
18 that purpose, is authorized to compel the attendance of witnesses  
19 and the production of books, records, and papers by subpoena, ~~and~~  
20 The ruling by the board of equalization on any objection to a  
21 subpoena may be appealed to district court. The Board shall also be  
22 empowered to confirm, correct, or adjust the valuation of real or  
23 personal property or to cancel an assessment of personal property  
24 added by the assessor not listed by the taxpayer if the personal

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

18 B. In all cases where the county assessor has, without giving  
19 the notice required by law, increased the valuation of property as  
20 listed by the taxpayer, and the taxpayer has knowledge of such  
21 adjustment or addition, the taxpayer may at any time prior to the  
22 adjournment of the board, file an appeal in the form and manner  
23 provided for in Section 2876 of this title. Thereafter, the board  
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1 shall fix a date of hearing, notify the taxpayer, and conduct the  
2 hearing as required by this section.

3 C. The taxpayer or agent may appear at the scheduled hearing  
4 either in person, by telephone or other electronic means, or by  
5 affidavit.

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

18 E. Communications between the board of equalization and the  
19 county assessor are limited as follows:

20 1. A member of the board of equalization shall not directly or  
21 indirectly communicate with the county assessor or any deputy  
22 assessor or designated agent on any matter relating to any pending  
23 appeal before the board of equalization. A county assessor, deputy  
24 assessor or designated agent shall not directly or indirectly

1 communicate with a member of the board of equalization on any matter  
2 relating to any pending appeal before the board of equalization.

3 2. Paragraph 1 of this subsection does not apply to a routine  
4 communication between the county assessor and the board of  
5 equalization that relates to the administration of an appraisal  
6 roll, including communication made in connection with the  
7 certification, correction, or collection of an account.

8 3. Paragraph 1 of this subsection does not preclude, during an  
9 open board of equalization meeting or hearing, the interaction of  
10 the county assessor or the assessor's staff with respect to  
11 providing input or testimony solicited by one or more members of the  
12 board in that meeting or hearing. Nor does Paragraph 1 of this  
13 subsection preclude the assessor or the assessor's staff from  
14 responding to a subpoena submitted to the assessor by the board of  
15 equalization.

16 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2945, as  
17 amended by Section 2, Chapter 250, O.S.L. 2007 (68 O.S. Supp. 2010,  
18 Section 2945), is amended to read as follows:

19 Section 2945. A. If any person shall knowingly and willfully  
20 make or give under oath or affirmation a false and fraudulent list  
21 of taxable personal property, or a false and fraudulent list of any  
22 taxable personal property under the control of the person or  
23 required to be listed by the person, or shall knowingly and  
24 willfully make false answer to any question which may be put under

1 oath by any person, board or commission authorized to examine  
2 persons under oath in relation to the value or amount of any taxable  
3 personal property, the person shall be deemed guilty of the felony  
4 of perjury, and upon conviction shall be punished as is provided by  
5 law for the punishment of the felony of perjury.

6 B. If any taxpayer, or any official, employee, or agent of the  
7 taxpayer, shall fail or refuse, upon proper request, to permit the  
8 inspection of any property or the examination of any books, records  
9 and papers by any person authorized by the Ad Valorem Tax Code to do  
10 so, or shall fail or refuse to comply with any subpoena duces tecum  
11 legally issued under authority of this Code, the taxpayer shall be  
12 stopped from questioning or contesting the amount or validity of any  
13 assessment placed upon the property of the taxpayer to the board of  
14 equalization. Nothing in this section shall impair or impede the  
15 right of the taxpayer to appeal any order of the board of  
16 equalization to the district court as provided for in Section 2880.1  
17 of this title, and such right of appeal shall include but not be  
18 limited to rulings regarding objections to and compliance with  
19 subpoenas, and issues of valuation. In reviewing rulings regarding  
20 subpoenas, the district court shall apply the same rules it would  
21 apply to subpoenas in a civil action.

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

23 SECTION 5. It being immediately necessary for the preservation  
24 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

3 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-5-11 - DO PASS,  
4 As Amended.

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