STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

SENATE BILL 1471 By: Anderson

AS INTRODUCED

An Act relating to collection of child support; amending 68 O.S. 2011, Section 205.2, which relates to claims against state income tax refunds; requiring Tax Commission to provide certain information to Department of Human Services; establishing priority of certain claims; repealing 68 O.S. 2011, Section 205.3, which relates to claims for collection of child support; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 205.2, is amended to read as follows:

Section 205.2. A. A state agency, a municipal court or a district court seeking to collect a debt, unpaid fines and cost or final judgment of at least Fifty Dollars ($50.00) from an individual who has filed a state income tax return may file a claim with the Oklahoma Tax Commission requesting that the amount owed to the agency, a municipal court or a district court be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the

debt, including the full name and Social Security number of the debtor.

1. Upon receiving a claim from a state agency, the municipal court or a district court, the Tax Commission shall deduct the claim amount, plus collection expenses as provided in this section, from the tax refund due to the debtor and transfer the amount to the municipal court, the district court or the agency. Provided, the Tax Commission need not report available funds of less than Fifty Dollars ($50.00).

2. The state agency, the municipal court or the district court shall send notice to the debtor by regular mail at the last-known address of the debtor as shown by the records of the Tax Commission when seeking to collect a debt not reduced to final judgment. The state agency, the municipal court or the district court shall send notice to the judgment debtor or municipal court defendant by first class mail at the last-known address of the judgment debtor or municipal court defendant as shown by the records of the Tax Commission when seeking to collect a final judgment or unpaid municipal fines and cost. <u>The Tax Commission shall provide in an agreed electronic format to the Department of Human Services the amount withheld by the Tax Commission, the home address and the Social Security number of the taxpayer.</u> The notice shall state:

a. that a claim has been filed with the Tax Commission for any portion of the tax refund due to the debtor or

municipal court defendant which would satisfy the debt, unpaid municipal fines and cost, or final judgment in full or in part,

b. the basis for the claim,

c. that the Tax Commission has deducted an amount from the refund and remitted it to such state agency, municipal court or district court,

d. that the debtor or municipal court defendant has the right to contest the claim by sending a written request to the state agency, the municipal court or the district court for a hearing to protest the claim, and if the debtor or municipal court defendant fails to apply for a hearing within sixty (60) days after the date of the mailing of the notice, the debtor or municipal court defendant shall be deemed to have waived his or her opportunity to contest the claim. Provided, if the claim was filed by the Department of Human Services, the notice shall state that the debtor must contest the claim by sending a written request to the Department within thirty (30) days after the date of the mailing of the notice,

e. that a collection expense of five percent (5%) of the gross proceeds owed to the state agency, municipal court or district court has been charged to the debtor

or municipal court defendant and withheld from the refund.

3. If the state agency, municipal court or district court determines that a refund is due to the taxpayer, the state agency, municipal court or district court shall reimburse the amount claimed plus the five-percent collection expense to the taxpayer. The state agency, municipal court or district court may request reimbursement of the two-percent collection expense retained by the Tax Commission. Such request must be made within ninety (90) days of reimbursement to the taxpayer. If timely requested, the Tax Commission shall make such reimbursement to the state agency, municipal court or district court within ninety (90) days of the request.

4. In the case of a joint return, the notice shall state:

a. the name of any taxpayer named in the return against whom no debt, no unpaid fines and cost, or final judgment is claimed,

b. the fact that a debt, unpaid municipal fines and cost, or final judgment is not claimed against the taxpayer,

c. the fact that the taxpayer is entitled to receive a refund if it is due regardless of the debt, municipal fines and cost, or final judgment asserted against the debtor or municipal court defendant,

d. that in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the municipal court, district court, or the agency named in the notice within sixty (60) days after the date of the mailing of the notice. Provided, if the claim was filed by the Department of Human Services, the notice shall state that the taxpayer must apply, in writing, for a hearing with the Department within thirty (30) days after the date of the mailing of the notice, and

e. if the taxpayer against whom no debt, no unpaid municipal fines and cost, or final judgment is claimed fails to apply in writing for a hearing within sixty (60) days after the mailing of the notice, the taxpayer shall have waived his or her right to a refund. Provided, if the claim was filed by the Department of Human Services, the notice shall state that if the taxpayer fails to apply in writing for a hearing with the Department within thirty (30) days after the date of the mailing of the notice, the taxpayer shall have waived his or her right to a refund.

B. If the municipal court, district court or agency asserting the claim receives a written request for a hearing from the debtor or taxpayer against whom no debt, no municipal fines and cost, or

final judgment is claimed, the agency, the municipal court or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt, unpaid fines and cost, or final judgment asserted by the municipal court, the district court or the agency, no action shall be taken in furtherance of the collection of the debt, unpaid fines and cost, or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act.

C. Upon final determination at a hearing, as provided for in subsection B of this section, of the amount of the debt, unpaid fines and cost, or final judgment, or upon failure of the debtor or taxpayer against whom no debt, no unpaid fines and cost, or final judgment is claimed to request such a hearing, the municipal court, the district court or the agency shall apply the amount of the claim to the debt owed. Any amounts held by the municipal court, district court, or agency in excess of the final determination of the debt and collection expense shall be refunded by the municipal court, district court, or agency to the taxpayer. However, if the tax refund due is inadequate to pay the collection expense and debt, unpaid fines and cost, or final judgment, the balance due the state

agency, the municipal court, or the district court shall be a continuing debt or final judgment until paid in full.

D. Upon receipt of a claim as provided in subsection A of this section, the Tax Commission shall:

1. Deduct from the refund five percent (5%) of the gross proceeds owed to the state agency, the municipal court or district court and distribute it by retaining two percent (2%) and transferring three percent (3%) to the municipal court, the district court or the state agency as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Oklahoma Tax Commission Fund;

2. Transfer the amount of the claimed debt, unpaid fines and cost, or final judgment or so much thereof as is available to the state agency, municipal court or the district court;

3. Notify the debtor in writing as to how the refund was applied; and

4. Refund to the debtor any balance remaining after deducting the collection expense and debt, unpaid fines and cost, or final judgment.

E. The Tax Commission shall deduct from any state tax refund due to a taxpayer the amount of delinquent state tax and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law prior to payment of such refund.

F. The Tax Commission shall have first priority over all other agencies, municipal courts or district courts when the Tax Commission is collecting a debt, municipal court fines and cost, or final judgment pursuant to the provisions of this section. Subsequent to the Tax Commission priority, a claim filed by the Department of Human Services for the collection of child support and spousal support shall have priority over all other claims filed pursuant to this section. Priority in multiple claims by other agencies, municipal courts or district courts pursuant to the provisions of this section shall be in the order in time, in which the Tax Commission receives the claim from the agencies, municipal courts and district courts required by the provisions of subsection A of this section.

G. The Tax Commission shall prescribe or approve forms and promulgate rules and regulations for implementing the provisions of this section.

H. The information obtained by an agency, municipal court or by the district court from the Tax Commission pursuant to the provisions of this section shall be used only to aid in collection of the debt, unpaid fines and cost, or final judgment owed to the agency, municipal court or a district court. Disclosure of the information for any other purpose shall constitute a misdemeanor. Any agency or court employee or person convicted of violating this provision shall be subject to a fine not exceeding One Thousand

Dollars ($1,000.00) or imprisonment in the county jail for a term not exceeding one (1) year, or both said fine and imprisonment and, if still employed by the agency or the courts, shall be dismissed from employment.

I. The Tax Commission may employ the procedures provided by this section in order to collect a debt owed to the Internal Revenue Service if the Internal Revenue Service requires such procedure as a condition to providing information to the Commission concerning federal income tax.

J. The provisions of this section shall not apply to claims filed under the provisions of Section 2906 or Section 5011 of this title.

SECTION 2. REPEALER 68 O.S. 2011, Section 205.3, is hereby repealed.

SECTION 3. This act shall become effective November 1, 2012.

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