

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 864

By: Sykes, Sparks and Shortey
of the Senate

3

and

4

Johnson of the House

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[tax administration - assessment and appeal
procedures - effective date]

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11 AUTHOR: Add the following House Coauthor: Sherrer

12 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

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"An Act relating to tax administration; amending 68
O.S. 2011, Section 225, which relates to appeal
procedures; providing for exception; expanding
methods of appeal of Oklahoma Tax Commission
decision; providing appeal for trial de novo in
district court; describing which judge will hear the
appeal; providing for direct appeal to the Supreme
Court of Oklahoma; and providing an effective date.

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

21 SECTION 1. AMENDATORY 68 O.S. 2011, Section 225, is
22 amended to read as follows:

23 Section 225. A. Any taxpayer aggrieved by any order, ruling,
24 or finding of the Oklahoma Tax Commission directly affecting the

1 taxpayer or aggrieved by a final order of the Tax Commission issued
2 pursuant to subsection G of Section 221 of this title may appeal
3 therefrom directly to the Supreme Court of Oklahoma. Provided, any
4 taxpayer appealing from a final order of the Tax Commission
5 assessing a tax or an additional tax or denial of a claim for refund
6 may opt to file an appeal in district court as provided in
7 subsection D of this section.

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

11 1. File a petition in error in the office of the Clerk of the
12 Supreme Court; and

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

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1 C. Upon request of the taxpayer, the Tax Commission shall
2 furnish the taxpayer a copy of the proceedings had in connection
3 with the matter complained of.

4 ~~D. If the appeal is from an order of the Tax Commission~~
5 ~~assessing a tax or an additional tax, a penalty, or interest, the~~
6 ~~Tax Commission, within thirty (30) days from the date of the filing~~
7 ~~of the petition in error, may request the Court to order the~~
8 ~~taxpayer to pay to the Tax Commission the amounts of tax, additional~~
9 ~~tax, any penalty assessed, and interest accrued through the date of~~
10 ~~the payment, as a condition precedent to the right of the taxpayer~~
11 ~~to make and prosecute an appeal, and a jurisdictional prerequisite~~
12 ~~to the Supreme Court having jurisdiction to hear and determine the~~
13 ~~appeal. If, upon a final determination of the appeal the order~~
14 ~~assessing a tax, penalty, or interest is reversed or modified and it~~
15 ~~is determined that the tax or part thereof was erroneously or~~
16 ~~illegally assessed, the amounts paid by the taxpayer, together with~~
17 ~~the interest thereon at the rate of three percent (3%) per annum,~~
18 ~~shall be refunded to the taxpayer by the Tax Commission. In lieu of~~
19 ~~an appeal to the Supreme Court, any taxpayer aggrieved by a final~~
20 ~~order of the Tax Commission assessing a tax or an additional tax or~~
21 ~~denial of a claim for refund may opt to file an appeal for a trial~~
22 ~~de novo in the district court of Oklahoma County or the county in~~
23 ~~which the taxpayer resides. If the amount in dispute exceeds Ten~~
24 ~~Thousand Dollars (\$10,000.00), the appeal shall be heard by a~~

1 district or associate district judge sitting without a jury. If the
2 amount in dispute does not exceed Ten Thousand Dollars (\$10,000.00),
3 the appeal may be heard by a special judge sitting without a jury.
4 An order resulting from a trial provided pursuant to this subsection
5 shall be appealable directly to the Supreme Court of Oklahoma by
6 either party. Such appeal shall be taken in the manner and time
7 provided by law for appeal to the Supreme Court from the district
8 court in civil actions. Upon the filing of an appeal, the order of
9 the district court shall be superseded and neither party shall be
10 required to give bond. The provisions of this subsection shall be
11 applicable for tax periods beginning after the effective date of
12 this act. Provided, if the order applies to multiple tax periods
13 which begin before and after the effective date of this act, the
14 appeal provided by this subsection shall be available to the
15 aggrieved taxpayer.

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~~ provided in
22 subsection A of Section 217 of this title, shall be refunded to the
23 taxpayer by the Tax Commission.

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

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

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

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

20 SECTION 2. This act shall become effective January 1, 2014."
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1 ENGROSSED SENATE
2 BILL NO. 864

By: Sykes, Sparks and Shortey
of the Senate

3 and

4 Johnson of the House

5
6
7 [tax administration - assessment and appeal
8 procedures - effective date]
9

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

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

13 Section 221. A. If any taxpayer shall fail to make any report
14 or return as required by any state tax law, the Oklahoma Tax
15 Commission, from any information in its possession or obtainable by
16 it, may determine the correct amount of tax for the taxable period.
17 If a report or return has been filed, the Tax Commission shall
18 examine such report or return and make such audit or investigation
19 as it may deem necessary. If, in cases where no report or return
20 has been filed, the Tax Commission determines that there is a tax
21 due for the taxable period, or if, in cases where a report or return
22 has been filed, the Tax Commission shall determine that the tax
23 disclosed by such report or return is less than the tax disclosed by
24 its examination, it shall in writing propose the assessment of taxes

1 or additional taxes, as the case may be, and shall mail a copy of
2 the proposed assessment to the taxpayer at the taxpayer's last-known
3 address. Proposed assessments made in the name of the "Oklahoma Tax
4 Commission" by its authorized agents shall be considered as the
5 action of the Tax Commission.

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

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

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

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

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

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

11 5. A verification by the taxpayer or the taxpayer's duly
12 authorized agent that the statements and facts contained therein are
13 true.

14 D. If in such written protest the taxpayer shall request an
15 oral hearing, the Tax Commission shall grant such hearing, and
16 shall, by written notice, advise the taxpayer of a date, which shall
17 not be less than ten (10) days from the date of mailing of such
18 written notice, when such taxpayer may appear before the Tax
19 Commission and present arguments and evidence, oral or written, in
20 support of the protest. Hearings shall be held as soon as
21 practicable. In the event an oral hearing is not requested, the Tax
22 Commission shall proceed without further notice to examine into the
23 merits of the protest and enter an order in accordance with its
24 findings. Upon request of any taxpayer and upon proper showing that

1 the principle of law involved in the assessment of any tax is
2 already pending before the courts for judicial determination, the
3 taxpayer, upon agreement to abide by the decision of the court, may
4 pay the tax so assessed under protest and such protest shall be
5 resolved in accordance with the agreement to abide.

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

1 appealable order under Section 225 of this title. No proceeding
2 instituted by the Tax Commission to collect a tax liability may be
3 stayed because of a request made by a taxpayer to adjust or abate an
4 assessment alleged to be clearly erroneous.

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

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

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

1 clerk's office prior to November 1, 1989, shall be released and
2 extinguished if the assessment is not refiled prior to November 1,
3 2001.

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

14 J. Notwithstanding any other provisions of law, after the
15 hearing provided for in subsection D of this section for a dispute
16 which relates to a proposed assessment of taxes or additional taxes,
17 or denial of a claim for refund, either the Tax Commission or the
18 taxpayer may file an appeal for a trial de novo in the district
19 court of Oklahoma County or the county in which the taxpayer
20 resides. If the amount in dispute does not exceed Ten Thousand
21 Dollars (\$10,000.00), the appeal shall be heard by a special judge
22 sitting without a jury. If the amount in dispute exceeds Ten
23 Thousand Dollars (\$10,000.00), the appeal shall be heard by a
24 district or associate district judge sitting without a jury. An

1 order resulting from a trial provided pursuant to this subsection
2 shall be appealable directly to the Supreme Court of Oklahoma.

3 SECTION 4. This act shall become effective November 1, 2013.
4 Passed the Senate the 12th day of March, 2013.

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Presiding Officer of the Senate

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8 Passed the House of Representatives the ____ day of _____,
9 2013.

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Presiding Officer of the House
of Representatives

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