An Act

ENROLLED SENATE
BILL NO. 1244

By: Mazzei of the Senate

and

Sears of the House

An Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 217, 227, 2375 and 2385.6, as amended by Section 9, Chapter 357, O.S.L. 2012 (68 O.S. Supp. 2013, Section 2385.6), which relate to administrative procedures used to assess penalties; modifying circumstances under which Tax Commission collects penalty; and providing an effective date.

SUBJECT: Tax procedure

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 217, is amended to read as follows:

Section 217. A. If any amount of tax imposed or levied by any state tax law, or any part of such amount, is not paid before such tax becomes delinquent, there shall be collected on the total delinquent tax interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

B. Interest upon any amount of state tax determined as a deficiency, under the provisions of Section 221 of this title, shall be assessed at the same time as the deficiency and shall be paid upon notice and demand of the Oklahoma Tax Commission at the rate of one and one-quarter percent (1 1/4%) per month from the date

prescribed in the state tax law levying such tax for the payment thereof to the date the deficiency is assessed.

C. If any tax due under state sales, use, tourism, mixed beverage gross receipts, or motor fuel tax laws, or any part thereof, is not paid within fifteen (15) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax and interest within ~~thirty (30)~~ sixty (60) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

D. If any tax due under any state tax law other than those specified in subsection C of this section, or any part thereof, is not paid within thirty (30) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax and interest within sixty (60) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

E. If any part of any deficiency, arbitrary or jeopardy assessment made by the Tax Commission is based upon or occasioned by the taxpayer's negligence or by the failure or refusal of any taxpayer to file with the Tax Commission any report or return, as required by this title, or by any state tax law, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by letter, the Tax Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. For purposes of this subsection, "negligence" shall mean the consistent understatement of income, consistent understatement of receipts or a system of recordkeeping by the taxpayer that consistently results in an inaccurate reporting of tax liability.

F. If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency, in addition to such deficiency, including interest as herein provided, shall be added, collected and paid.

G. All penalties or interest imposed by this title, or any state tax law, shall be recoverable by the Tax Commission as a part of the tax with respect to which they are imposed, the penalties bearing interest as provided in this section for the tax, and all penalties and interest shall be apportioned as provided for the apportionment of the tax on which such penalties or interest are collected.

H. 1. Whenever an income tax refund is not paid to the taxpayer within ninety (90) days after the return is filed or due, whichever is later, with all documents as required by the Tax Commission, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund, at the same rate specified for interest on delinquent tax payments. The payment of interest on refunds provided for by this section shall apply to tax year 1987 and subsequent tax years. The Tax Commission shall not be required to pay interest on an income tax refund which is applied, in whole or in part, to a prior year tax liability pursuant to Section 2385.17 of this title or upon an income tax refund applied, in whole or in part, to satisfy a debt owed to the Internal Revenue Service of the United States or to a state agency, including the Oklahoma Tax Commission, as provided by Section 205.2 of this title.

2. For tax returns filed after January 1, 2004, and before January 2, 2010, whenever an income tax refund is not paid to the taxpayer within the following number of days after the income tax return is filed with all documents as required by the Tax Commission or after the income tax return is due, whichever is later, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund at the same rate specified for interest on delinquent tax payments:

a. for returns filed electronically, thirty (30) days, and

b. for all other returns, one hundred fifty (150) days.

3. For tax returns filed after January 1, 2010, whenever an income tax refund is not paid to the taxpayer within the following number of days after the income tax return is filed with all documents as required by the Tax Commission entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the

refund at the same rate specified for interest on delinquent tax payments:

a. for returns filed electronically, twenty (20) days, and

b. for all other returns, ninety (90) days.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 227, is amended to read as follows:

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

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

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

(d) If the claim for refund is denied, the taxpayer may file a demand for hearing with the Commission. The demand for hearing must be filed on or before the ~~thirtieth~~ sixtieth day after the date the

notice of denial was mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred.

(e) Upon the taxpayer's timely filing of a demand for hearing, the Commission shall set a date for hearing upon the claim for refund which date shall not be later than sixty (60) days from the date the demand for hearing was mailed. The taxpayer shall be notified of the time and place of the hearing. The hearing may be held after the sixty-day period provided by this subsection upon agreement of the taxpayer.

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

SECTION 3. AMENDATORY 68 O.S. 2011, Section 2375, is amended to read as follows:

Section 2375. A. At the time of transmitting the return required hereunder to the Oklahoma Tax Commission, the taxpayer shall remit therewith to the Tax Commission the amount of tax due under the applicable provisions of Section 2351 et seq. of this title. Failure to pay such tax on or before the date the return is due shall cause the tax to become delinquent. If the return is filed electronically, the amount of the tax due pursuant to the provisions of this article shall be due on or before the twentieth day of April following the close of the taxable year regardless of when the return is electronically filed. The tax shall be deemed delinquent if unpaid after the twentieth day of April if the return is electronically filed. Provided, if the Internal Revenue Code provides for a later due date for returns of individuals, the Tax Commission shall accept payments made with returns filed by individuals by such date and such payments shall be considered as timely paid.

B. If any tax due under Section 2351 et seq. of this title, except a deficiency determined under Section 221 of this title, is not paid on or before the date such tax becomes delinquent, a penalty of five percent (5%) of the total amount of the tax due shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax and interest within ~~thirty (30)~~ sixty (60) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

C. If any part of deficiency, arbitrary or jeopardy assessment made by the Tax Commission is based upon or occasioned by the refusal of any taxpayer to file with the Tax Commission any return as required by Section 2351 et seq. of this title, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by registered letter with a return receipt attached, the Tax Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. In the exercise of the authority granted by subsection C of Section 223 and Section 224 of this title, the Tax Commission shall assess the tax as an estimated tax on the basis of its own determination of the Oklahoma taxable income of the taxpayer, to be adjusted if and when Oklahoma taxable income is ascertained under the provisions of Section 2351 et seq. of this title.

D. If any part of any deficiency was due to negligence or intentional disregard, without the intent to defraud, then ten percent (10%) of the total amount of the deficiency, in addition to such deficiency, including interest as authorized by law, shall be added, collected and paid.

E. If any part of any deficiency was due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency, in addition to such deficiency, including interest as herein provided, shall be added, collected and paid.

F. The provisions in this section for penalties shall supersede all other provisions for penalties on income taxes. The provisions in this section for penalties shall supersede the provisions in the Uniform Tax Procedure Code, Section 201 et seq. of this title, only

to the extent of conflict between such provisions and the penalty provisions in this section.

G. All taxes, penalties and interest levied under Section 2351 et seq. of this title must be paid to the Tax Commission at Oklahoma City, in the form or remittance required by and payable to it.

H. 1. The period of time prescribed in Section 223 of this title, in which the procedures for the assessment of income tax may be commenced by the Tax Commission, shall be tolled and extended until the amount of taxable income for any year of a taxpayer under the Internal Revenue Code has been finally determined under applicable federal law and for the additional period of time hereinafter provided in this subsection.

2. If, in such final determination, the amount of taxable income for any year of a taxpayer under the Internal Revenue Code is changed or corrected from the amounts included in the federal return of the taxpayer for such year and such change or correction affects the Oklahoma taxable income of the taxpayer for such year, the taxpayer, within one (1) year after such final determination of the corrected taxable income, shall file an amended return under Section 2351 et seq. of this title reporting the corrected Oklahoma taxable income, and the Tax Commission shall make assessment or refund within two (2) years from the date the return required by this paragraph is filed and not thereafter, unless a waiver is agreed to and signed by the Tax Commission and the taxpayer.

3. In the event of failure by a taxpayer to comply with the provisions of paragraph 2 of this subsection, the statute of limitations shall be tolled for a period of time equal to the time between the date the amended return under this subsection is required until such return is actually furnished.

4. In administering the provisions of this subsection, the Tax Commission shall have the authority to audit each and every item of income, deduction, credit or any other matter related to the return where such items or matters relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government even if such items or matters were not affected by revisions made in such final determination. Where such items or matters do not relate to allocation or apportionment between the

State of Oklahoma and some other state or the federal government, the Tax Commission shall be bound by the revisions made in such final determination.

5. The provisions of this subsection shall be effective on September 1, 1993, and except in the case of tax years which are the subject of closing, settlement or resolution agreements entered into by taxpayers and the Tax Commission, keep open all tax years beginning after June 30, 1988, and all tax years beginning on or before June 30, 1988, for which extensions of the statute of limitations have been executed by the taxpayer, but only to the extent such extensions remain open on the date of enactment hereof.

SECTION 4. AMENDATORY 68 O.S. 2011, Section 2385.6, as amended by Section 9, Chapter 357, O.S.L. 2012 (68 O.S. Supp. 2013, Section 2385.6), is amended to read as follows:

Section 2385.6 A. If an employer fails to file a return or to pay to the Oklahoma Tax Commission the withholding tax within the time prescribed by this article, there shall be imposed on him a penalty equal to ten percent (10%) of the amount of tax, or ten percent (10%) of the amount of the underpayment of tax, if such failure is not corrected within fifteen (15) days after the tax becomes delinquent. There shall also be imposed on such employer interest at the rate of one and one-quarter percent (1 1/4%) per month during the period such underpayment exists. For the purposes of this paragraph, "underpayment" shall mean the excess of the amount of the tax required to be paid over the amount thereof actually paid on or before the date prescribed therefor. Such penalty and interest shall be added to and become a part of the tax assessed. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax <u>and interest</u> within sixty (60) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

B. Any employer who is required under the provisions of Section 2385.3 of this title to furnish a statement to an employee, but who willfully fails to furnish such employee the statement required by said section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding One Hundred Dollars ($100.00), or by imprisonment for not more than six (6) months in

the county jail, or by both such fine and imprisonment for each such offense.

C. The provisions of subsections A and B of this section shall also apply to every person making payments of winnings subject to withholding.

SECTION 5. This act shall become effective November 1, 2014.

Passed the Senate the 6th day of May, 2014.

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Presiding Officer of the Senate

Passed the House of Representatives the 7th day of April, 2014.

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Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

_____
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20 _____, at _____ o'clock _____ M.

By: _____