

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 864

By: Sykes, Sparks and Shortey
of the Senate

and

Johnson of the House

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11 COMMITTEE SUBSTITUTE

12 An Act relating to tax administration; amending 68
13 O.S. 2011, Section 221, which relates to assessment
14 and appeal procedures; providing for exception;
15 expanding methods of appeal of Oklahoma Tax
16 Commission decision; providing appeal for trial de
17 novo in district court; describing which judge will
18 hear the appeal; providing for direct appeal to the
19 Supreme Court of Oklahoma; and providing an effective
20 date.

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

22 SECTION 1. AMENDATORY 68 O.S. 2011, Section 221, is
23 amended to read as follows:

24 Section 221. A. If any taxpayer shall fail to make any report
or return as required by any state tax law, the Oklahoma Tax
Commission, from any information in its possession or obtainable by

1 it, may determine the correct amount of tax for the taxable period.
2 If a report or return has been filed, the Tax Commission shall
3 examine such report or return and make such audit or investigation
4 as it may deem necessary. If, in cases where no report or return
5 has been filed, the Tax Commission determines that there is a tax
6 due for the taxable period, or if, in cases where a report or return
7 has been filed, the Tax Commission shall determine that the tax
8 disclosed by such report or return is less than the tax disclosed by
9 its examination, it shall in writing propose the assessment of taxes
10 or additional taxes, as the case may be, and shall mail a copy of
11 the proposed assessment to the taxpayer at the taxpayer's last-known
12 address. Proposed assessments made in the name of the "Oklahoma Tax
13 Commission" by its authorized agents shall be considered as the
14 action of the Tax Commission.

15 B. Any assessment, correction or adjustment made as a result of
16 an office audit shall be presumed to be the result of an audit of
17 the report or return only, and such office audit shall not be deemed
18 a verification of any item in the report or return unless the item
19 shall have been made the subject of a hearing before the Tax
20 Commission, and the correctness and amount of such item determined
21 at such hearing; and such office audit shall not preclude the Tax
22 Commission from subsequently making further adjustment, correction
23 or assessment as a result of a field audit of the books and records
24 of the taxpayer, wherever located, or upon disclosures from any

1 source other than the return. In cases where no report or return
2 has been filed, the assessment of the tax on any information
3 available shall in no event preclude the assessment at any time on
4 subsequently disclosed information.

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

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

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

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

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

20 5. A verification by the taxpayer or the taxpayer's duly
21 authorized agent that the statements and facts contained therein are
22 true.

23 D. If in such written protest the taxpayer shall request an
24 oral hearing, the Tax Commission shall grant such hearing, and

1 shall, by written notice, advise the taxpayer of a date, which shall
2 not be less than ten (10) days from the date of mailing of such
3 written notice, when such taxpayer may appear before the Tax
4 Commission and present arguments and evidence, oral or written, in
5 support of the protest. Hearings shall be held as soon as
6 practicable. In the event an oral hearing is not requested, the Tax
7 Commission shall proceed without further notice to examine into the
8 merits of the protest and enter an order in accordance with its
9 findings. Upon request of any taxpayer and upon proper showing that
10 the principle of law involved in the assessment of any tax is
11 already pending before the courts for judicial determination, the
12 taxpayer, upon agreement to abide by the decision of the court, may
13 pay the tax so assessed under protest and such protest shall be
14 resolved in accordance with the agreement to abide.

15 E. If the taxpayer fails to file a written protest within the
16 sixty-day period herein provided for or within the period as
17 extended by the Tax Commission, or if the taxpayer fails to file the
18 notice required by Section 226 of this title within thirty (30) days
19 from the date of mailing of an assessment, then the proposed
20 assessment, without further action of the Tax Commission, shall
21 become final and absolute. A taxpayer who fails to file a protest
22 to an assessment of taxes within the time period prescribed by this
23 section may, within one (1) year of the date the assessment becomes
24 final, request the Tax Commission to adjust or abate the assessment

1 if the taxpayer can demonstrate, by a preponderance of the evidence,
2 that the assessment or some portion thereof is clearly erroneous.
3 If the Tax Commission determines that the proper showing has been
4 made, the assessment or portion thereof determined to be clearly
5 erroneous shall be deemed not to have become final and absolute. No
6 hearing to adjust or abate a clearly erroneous assessment may be
7 granted after the Tax Commission's denial of such a request. An
8 order of the Tax Commission denying a taxpayer's request to adjust
9 or abate an assessment alleged to be clearly erroneous is not an
10 appealable order under Section 225 of this title. No proceeding
11 instituted by the Tax Commission to collect a tax liability may be
12 stayed because of a request made by a taxpayer to adjust or abate an
13 assessment alleged to be clearly erroneous.

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

19 G. Within a reasonable time after the hearing herein provided
20 for, the Tax Commission shall make and enter an order in writing in
21 which it shall set forth the disposition made of the protest and a
22 copy of such order shall forthwith be mailed to the taxpayer. The
23 order shall contain findings of fact and conclusions of law. After
24 removing the identity of the taxpayer, the Tax Commission shall make

1 the order available for public inspection and shall publish those
2 orders the Tax Commission deems to be of precedential value. The
3 taxpayer may within the time and in the manner provided for by
4 Section 225 of this title, appeal to the Supreme Court, but in the
5 event the taxpayer fails to so proceed, the order shall within
6 thirty (30) days from the date a certified copy thereof is mailed to
7 the taxpayer, become final. The provisions of Section 226 of this
8 title shall not apply where a proposed assessment or an assessment
9 of taxes has been permitted to become final.

10 H. In all instances where the proposed assessment or the
11 assessment of taxes or additional taxes has been permitted to become
12 final, a certified copy of the assessment may be filed in the office
13 of the county clerk of any county in this state, and upon being so
14 filed, the county clerk shall enter same upon the judgment docket in
15 the same manner as provided for in connection with judgments of
16 district courts. When an assessment is so filed and docketed, it
17 shall have the same force and be subject to the same law as a
18 judgment of the district court, and accordingly it shall constitute
19 a lien on any real estate of the taxpayer located in the county
20 wherein filed; and execution may issue and proceedings in aid of
21 execution may be had the same as on judgments of district courts.
22 Such lien is hereby released and extinguished upon the payment of
23 such assessment, or, except as otherwise provided herein, upon the
24 expiration of ten (10) years after the date upon which the

1 assessment was filed in the office of the county clerk; provided,
2 the Tax Commission may, prior to the release and extinguishment of
3 such lien, refile the assessment one time in the office of the
4 county clerk. An assessment so refiled shall continue the lien
5 until payment of the assessment, or upon the expiration of ten (10)
6 years after the date upon which the assessment was refiled in the
7 office of the county clerk. The remedies provided in this
8 subsection shall be in addition to other remedies provided by law.
9 All active liens evidenced by an assessment filed with a county
10 clerk's office prior to November 1, 1989, shall be released and
11 extinguished if the assessment is not refiled prior to November 1,
12 2001.

13 I. In order to make more definite the intention of the
14 Legislature in connection with the applicability or lack of
15 applicability of the refund provisions of the tax statutes to those
16 treating with proposed assessments and assessments that have become
17 final, the Legislature being cognizant of the fact that such intent
18 has been questioned, it is declared to be the intent of the
19 Legislature that the refund provisions shall be without application
20 to taxes where the amount thereof has been determined by an
21 assessment, other than an assessment designated as an "office
22 audit", that has become final.

23 J. Notwithstanding any other provisions of law, after the
24 hearing provided for in subsection D of this section for a dispute

1 which relates to a proposed assessment of taxes or additional taxes,
2 or denial of a claim for refund, either the Tax Commission or the
3 taxpayer may file an appeal for a trial de novo in the district
4 court of Oklahoma County or the county in which the taxpayer
5 resides. If the amount in dispute does not exceed Ten Thousand
6 Dollars (\$10,000.00), the appeal may be heard by a special judge
7 sitting without a jury. If the amount in dispute exceeds Ten
8 Thousand Dollars (\$10,000.00), the appeal shall be heard by a
9 district or associate district judge sitting without a jury. An
10 order resulting from a trial provided pursuant to this subsection
11 shall be appealable directly to the Supreme Court of Oklahoma.

12 SECTION 2. This act shall become effective November 1, 2013.

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14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/03/2013 - DO
15 PASS, As Amended.
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