

1 **SENATE FLOOR VERSION**

2 February 19, 2013

3 **AS AMENDED**

4 SENATE BILL NO. 864

By: Sykes of the Senate

and

Johnson of the House

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8 **[tax administration - assessment and appeal -
exception - methods of appeal - effective date]**
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11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

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

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

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

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

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

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

1 merits of the protest and enter an order in accordance with its
2 findings. Upon request of any taxpayer and upon proper showing that
3 the principle of law involved in the assessment of any tax is
4 already pending before the courts for judicial determination, the
5 taxpayer, upon agreement to abide by the decision of the court, may
6 pay the tax so assessed under protest and such protest shall be
7 resolved in accordance with the agreement to abide.

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

1 order of the Tax Commission denying a taxpayer's request to adjust
2 or abate an assessment alleged to be clearly erroneous is not an
3 appealable order under Section 225 of this title. No proceeding
4 instituted by the Tax Commission to collect a tax liability may be
5 stayed because of a request made by a taxpayer to adjust or abate an
6 assessment alleged to be clearly erroneous.

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

12 G. Within a reasonable time after the hearing herein provided
13 for, the Tax Commission shall make and enter an order in writing in
14 which it shall set forth the disposition made of the protest and a
15 copy of such order shall forthwith be mailed to the taxpayer. The
16 order shall contain findings of fact and conclusions of law. After
17 removing the identity of the taxpayer, the Tax Commission shall make
18 the order available for public inspection and shall publish those
19 orders the Tax Commission deems to be of precedential value. The
20 taxpayer may within the time and in the manner provided for by
21 Section 225 of this title, appeal to the Supreme Court, but in the
22 event the taxpayer fails to so proceed, the order shall within
23 thirty (30) days from the date a certified copy thereof is mailed to
24 the taxpayer, become final. The provisions of Section 226 of this

1 title shall not apply where a proposed assessment or an assessment
2 of taxes has been permitted to become final.

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

1 subsection shall be in addition to other remedies provided by law.
2 All active liens evidenced by an assessment filed with a county
3 clerk's office prior to November 1, 1989, shall be released and
4 extinguished if the assessment is not refiled prior to November 1,
5 2001.

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

16 J. Notwithstanding any other provisions of law, after the
17 hearing provided for in subsection D of this section for a dispute
18 which relates to a proposed assessment of taxes or additional taxes,
19 or denial of a claim for refund, either the Tax Commission or the
20 taxpayer may:

21 1. File an appeal in the district court of Oklahoma County or
22 the county in which the taxpayer resides; or

23 2. Appeal directly to the Supreme Court for a trial de novo on
24 the dispute.

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

2 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
3 February 19, 2013 - DO PASS AS AMENDED
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