STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1265 By: Moore

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 2817, 2863, 2871 and 2874, which relate to ad valorem taxation; modifying provisions related to valuation of property destroyed by certain natural events; modifying terminology regarding protests; modifying provisions related to board of tax roll corrections; modifying basis upon which certain action by board of tax roll corrections to be taken; modifying dates with respect to certain allowed corrections; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2817, is amended to read as follows:

Section 2817. A. All taxable personal property, except intangible personal property, personal property exempt from ad valorem taxation, or household personal property, shall be listed and assessed each year at its fair cash value, estimated at the price it would bring at a fair voluntary sale, as of January 1.

The fair cash value of household personal property shall be valued at ten percent (10%) of the appraised value of the improvement to the residential real property within which such

personal property is located as of January 1 each year. The assessment of household personal property as provided by this section may be altered by the taxpayer listing such property at its actual fair cash value. For purposes of establishing the value of household personal property, pursuant to the requirement of Section 8 of Article X of the Oklahoma Constitution, the percentage of value prescribed by this section for the household personal property shall be presumed to constitute the fair cash value of the personal property.

All unmanufactured farm products shall be assessed and valued as of the preceding May 31. Every person, firm, company, association, or corporation, in making the assessment, shall assess all unmanufactured farm products owned by the person, firm, company, association or corporation on the preceding May 31, at its fair cash value on that date instead of January 1.

Stocks of goods, wares and merchandise shall be assessed at the value of the average amount on hand during the preceding year, or the average amount on hand during the part of the preceding year the stock of goods, wares or merchandise was at its January 1 location.

B. All taxable real property shall be assessed annually as of January 1, at its fair cash value, estimated at the price it would bring at a fair voluntary sale for:

1. The highest and best use for which the property was actually used during the preceding calendar year; or

2. The highest and best use for which the property was last classified for use if not actually used during the preceding calendar year.

When improvements upon residential real property are divided by a taxing jurisdiction line, those improvements shall be valued and assessed in the taxing jurisdiction in which the physical majority of those improvements are located.

The Ad Valorem Division of the Oklahoma Tax Commission shall be responsible for the promulgation of rules which shall be followed by each county assessor of the state, for the purposes of providing for the equitable use valuation of locally assessed real property in this state. Agricultural land and nonresidential improvements necessary or convenient for agricultural purposes shall be assessed for ad valorem taxation based upon the highest and best use for which the property was actually used, or was previously classified for use, during the calendar year next preceding January 1 on which the assessment is made.

C. The use value of agricultural land shall be based on the income capitalization approach using cash rent. The rental income shall be calculated using the direct capitalization method based upon factors including, but not limited to:

1. Soil types, as depicted on soil maps published by the Natural Resources Conservation Service of the United States Department of Agriculture;

2. Soil productivity indices approved by the Ad Valorem Division of the Tax Commission;

3. The specific agricultural purpose of the soil based on use categories approved by the Ad Valorem Division of the Tax Commission; and

4. A capitalization rate to be determined annually by the Ad Valorem Division of the Tax Commission based on the sum of the average first mortgage interest rate charged by the Federal Land Bank for the immediately preceding five (5) years, weighted with the prevailing rate or rates for additional loans or equity, and the effective tax rate.

The final use value will be calculated using the soil productivity indices and the agricultural use classification as defined by rules promulgated by the State Board of Equalization. This subsection shall not be construed in a manner which is inconsistent with the duties, powers and authority of the Board as to valuation of the counties as fixed and defined by Section 21 of Article X of the Oklahoma Constitution.

However, in calculating the use value of buffer strips as defined in Section 2817.2 of this title, exclusive consideration shall be based only on income from production agriculture from such buffer strips, not including federal or state subsidies, when valued as required by subsection C of Section 2817.2 of this title.

D. The use value of nonresidential improvements on agricultural land shall be based on the cost approach to value estimation using currently updated cost manuals published by the Marshall and Swift Company or similar cost manuals approved by the Ad Valorem Division of the Tax Commission. The use value estimates for the nonresidential improvements shall take obsolescence and depreciation into consideration in addition to necessary adjustments for local variations in the cost of labor and materials. This section shall not be construed in a manner which is inconsistent with the duties, powers and authority of the Board as to equalization of valuation of the counties as determined and defined by Section 21 of Article X of the Oklahoma Constitution.

The use value of facilities used for poultry production shall be determined according to the following procedures:

1. The Ad Valorem Division of the Tax Commission is hereby directed to develop a standard system of valuation of both real and personal property of such facilities, which shall be used by all county assessors in this state, under which valuation based on the following shall be presumed to be the fair cash value of the property:

a. for real property, a ten-year depreciation schedule, at the end of which the residual value is twenty percent (20%) of the value of the facility during its first year of operation, and

b. for personal property, a five-year depreciation schedule, at the end of which the residual value is zero;

2. Such facilities shall be valued only in comparison to other facilities used exclusively for poultry production. Such a facility which is no longer used for poultry production shall be deemed to have no productive use;

3. During the first year such a facility is placed on the tax rolls, its fair cash value shall be presumed to be the lesser of the actual purchase price or the actual documented cost of construction; and

4. For the purpose of determining the valuation of nonresidential improvements used for poultry production, the provisions of this subsection shall be applicable and such improvements shall not be considered to be commercial property.

E. The value of investment in property used exclusively by an oil refinery that is used wholly as a facility, device or method for the desulphurization of gasoline or diesel fuel as defined in Section 2817.3 of this title shall not be included in the capitalization used in the determination of fair market value of such oil refinery if such property would qualify as exempt property pursuant to Section 2902 of this title, whether or not an application for such exemption is made by an otherwise qualifying

manufacturing concern owning the property described by Section 2817.3 of this title.

F. The use value of a lot in any platted addition or a subdivision in a city, town or county zoned for residential, commercial, industrial or other use shall be deemed to be the fair cash value of the underlying tract of land platted, divided by the number of lots contained in the platted addition or subdivision until the lot shall have been conveyed to a bona fide purchaser or the lot with building or buildings located thereon shall have been occupied other than as a sales office by the owner thereof, or shall have been leased, whichever event shall first occur. One who purchases a lot for the purposes of constructing and selling a building on such lot shall not be deemed to be a bona fide purchaser for purposes of this section. However, if the lot is held for a period longer than two (2) years before construction, then the assessor may consider the lot to have been conveyed to a bona fide purchaser. The cost of any land or improvements to any real property required to be dedicated to public use, including, but not limited to, streets, curbs, gutters, sidewalks, storm or sanitary sewers, utilities, detention or retention ponds, easements, parks or reserves shall not be utilized by the county assessor in the valuation of any real property for assessment purposes.

G. The transfer of real property without a change in its use classification shall not require a reassessment thereof based

exclusively upon the sale value of the property. However, if the county assessor determines:

1. That by reason of the transfer of a property there is a change in the actual use or classification of the property; or

2. That by reason of the amount of the sales consideration it is obvious that the use classification prior to the transfer of the property is not commensurate with and would not justify the amount of the sales consideration of the property;

then the assessor shall, in either event, reassess the property for the new use classification for which the property is being used, or, the highest and best use classification for which the property may, by reason of the transfer, be classified for use.

H. When the term "fair cash value" or the language "fair cash value, estimated at the price it would bring at a fair voluntary sale" is used in the Ad Valorem Tax Code, in connection with and in relation to the assessment of real property, it is defined to mean and shall be given the meaning ascribed and assigned to it in this section and when the term or language is used in the Code in connection with the assessment of personal property it shall be given its ordinary or literal meaning.

I. Where any real property is zoned for a use by a proper zoning authority, and the use of the property has not been changed, the use and not zoning shall determine assessment. Any reassessment required shall be effective January 1 following the change in use.

Taxable real property need not be listed annually with the county assessor.

J. If any real property shall become taxable after January 1 of any year, the county assessor shall assess the same and place it upon the tax rolls for the next ensuing year. When any building is constructed upon land after January 1 of any year, the value of the building shall be added by the county assessor to the assessed valuation of the land upon which the building is constructed at the fair cash value thereof for the next ensuing year. However, after the building has been completed it shall be deemed to have a value for assessment purposes of the fair cash value of the materials used in such building only, until the building and the land on which the building is located shall have been conveyed to a bona fide purchaser or shall have been occupied or used for any purpose other than as a sales office by the owner thereof, or shall have been leased, whichever event shall first occur. The county assessor shall continue to assess the building based upon the fair market value of the materials used therein until the building and land upon which the building is located shall have been conveyed to a bona fide purchaser or is occupied or used for any purpose other than as a sales office by the owner thereof, or is leased, whichever event shall first occur.

K. In case improvements on land or personal property located therein or thereon are destroyed by fire, lightning, storm, winds,

floodwaters, overflow of streams or other cause, or the value of land is impaired, damaged or destroyed by fire, lightning, storm, winds, floodwaters, overflow of streams or other cause, ~~after January 1 and before the adjournment of the county board of equalization~~ during any year, ~~the county board of equalization, in cooperation with~~ the county assessor~~,~~ shall determine the amount of damage~~,~~ and shall ~~make an order directing the assessment of~~ reassess the property for that year at the fair cash value of the property, as defined herein, taking into account the damage occasioned by fire, lightning, storm, winds, floodwaters, overflow of streams or other cause and shall present the reassessment to the board of tax roll corrections for its consideration.

L. All taxable personal property used in the exploration of oil, natural gas, or other minerals, including drilling equipment and rigs, shall be assessed annually at the value set forth in the first Hadco International monthly bulletin published for the tax year, using the appropriate depth rating assigned to the drawworks by its manufacturer and the actual condition of the rig.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 2863, is amended to read as follows:

Section 2863. A. The county boards of equalization shall hold sessions commencing on April 1, or the first working day thereafter, and ending not later than May 31, for the purpose of correcting and adjusting the assessment rolls in their respective counties to

conform to the fair cash value of the property assessed, as defined by law. However, in counties having an assessed valuation in excess of One Billion Dollars ($1,000,000,000.00), sessions shall commence on the fourth Monday in January and end not later than May 31. If the number of ~~protests~~ appeals pending would in the estimation of the board make it impracticable for the county board of equalization to complete hearing and adjudication of such ~~protests~~ appeals on or before May 31, a special session may be called, for such time as is necessary to complete consideration of the ~~protests~~ appeals, subject to the approval of the county budget board, between June 1 and no later than July 31. Such approval of the county budget board must be requested no later than May 15. The county board of equalization may meet in special session between March 1 and March 31 for the purpose of considering ~~protests~~ appeals pending on or before the date of notice of such special session, if the number of ~~protests~~ appeals pending would in the estimation of the board make it impracticable for the county board of equalization to complete hearing and adjudication of such ~~protests~~ appeals on or before May 31. At any such special session called between March 1 and March 31, the board shall conduct no other business than the hearing or adjudication of such ~~protests~~ appeals pending pursuant to the provisions of Section 2801 et seq. of this title. Except for special sessions, the meetings of each board shall be called by the chair or, in the event of the refusal or inability of the chair, by

a majority membership of the board. The secretary of the board of equalization shall fix the dates of the extended special session hearings provided for in this section.

B. It shall be the duty of the boards and they shall have the authority to:

1. Raise or lower appraisals to conform to the fair cash value of the property, as defined by law in response to a protest filed as prescribed by law;

2. Add omitted property;

3. Cancel assessments of property not taxable; and

4. Hear all grievances and ~~protests~~ appeals filed with the board secretary as outlined in Section 2877 of this title.

C. It shall be the duty of each county board of equalization to cooperate with and assist the county assessor in performing the duties imposed upon the assessor by the provisions of Section 2840 of this title, to the end that the records required by the provisions of such section shall be fully and accurately prepared and maintained and shall reflect the assessed valuations of the real property of the county. After such records have been prepared and the assessed valuations adjusted in accordance with the provisions of this section, the county board of equalization shall not raise or lower the assessed valuation of any parcel or tract of real estate without hearing competent evidence justifying such change or until at least one member of the board or a person designated by the board

has made a personal inspection of such property and submitted a written report to the board. In no event shall any such change be made by the county board of equalization if such change would be inconsistent with the equalized value of other similar property in the county.

D. In counties with a net assessed valuation in excess of Five Hundred Million Dollars ($500,000,000.00), the county board of equalization may, subject to the approval of the county budget board, appoint sufficient hearing officers to assist in the hearing of ~~protests~~ appeals filed before the county board of equalization. Such hearing officers shall be knowledgeable in the field of mass appraisal, real estate or related experience. Hearing officers shall receive the same compensation as county board of equalization members. The secretary of the county budget board shall appoint such personnel necessary to assist the hearing officers in the performance of their duties.

Such hearing officers shall review ~~protests~~ appeals assigned to them by the board of equalization, hold hearings, receive testimony from the taxpayer and county assessor and submit a written recommendation to the county board of equalization as to the fair market value of the protested property. Upon submission of the hearing officer's written recommendation, the county board of equalization shall take final action on the ~~protest~~ appeal by either adopting, amending or rejecting the final report. The county board

of equalization may also re-hear the ~~protest~~ appeal itself, request additional testimony from the taxpayer or county assessor or request additional review by a hearing officer.

All proceedings before any hearing officer shall be subject to the provisions of the Oklahoma Open Records Act and the Oklahoma Open Meeting Act.

SECTION 3. AMENDATORY 68 O.S. 2011, Section 2871, is amended to read as follows:

Section 2871. A. After delivery of the tax rolls to the county treasurer of any county, no correction or alteration as to any item contained therein as of such date of delivery shall ever be made, except by the county treasurer and on authority of a proper certificate authorized by law or pursuant to order or decree of court in determination of a tax ~~protest~~ appeal or other proper case.

B. A board of tax roll corrections is hereby created and shall consist of the chair of the board of county commissioners as chair or, in the chair's absence, the vice-chair of the board of county commissioners or their statutory designee, the chair of the county equalization board or, in the chair's absence, the vice-chair of the county equalization board as vice-chair, the county clerk as nonvoting member and secretary, and the county assessor, a majority of whom shall constitute a quorum. The board is hereby authorized to hear and determine allegations of error, mistake or difference as to any item or items so contained in the tax rolls, in any instances

hereinafter enumerated, on application of any person or persons whose interest may in any manner be affected thereby, or by his or her agent or attorney, verified by affidavit and showing that the complainant was not at fault through failure to fulfill any duty enjoined upon him or her by law, or upon discovery by the county treasurer or assessor before the tax has been paid or attempted to be paid and disclosure by statement of fact in writing signed by the treasurer or assessor and verified by the assessor or treasurer as the case may be. Such right shall not be available to anyone attempting to acquire, or who has acquired, the lien of the county for such tax, whether by purchase, assignment, deed or otherwise. In counties with two county boards of equalization, the chair of each such board shall serve, in alternating years, as the vice-chair of the board of tax roll corrections. When a complaint is pending before the board of tax roll corrections, such taxes as may be owed by the protesting taxpayer shall not become due until thirty (30) days after the decision of the board of tax roll corrections. When a complaint is filed on a tax account which has been delinquent for more than one (1) year, and upon showing that the tax is delinquent, the complaint shall be dismissed, with prejudice.

C. If, upon such hearing, it appears that:

1. Any personal or real property has been assessed to any person, firm, or corporation not owning or claiming to own the same;

2. Property exempt from taxation has been assessed;

3. Exemption deductions allowed by law have not been taken into account;

4. The same property, whether real or personal, has been assessed more than once for the taxes of the same year;

5. Property, whether real or personal, has been assessed in the county for the taxes of a year to which the same was not subject;

6. ~~The county board of equalization has, after delivery of the tax rolls, made a finding of fact under authority of law that, after January 1 of any year and before May 1 of the same year, improvements~~ Improvements to real estate or other property assessed which have been destroyed by fire, or that the value of land has been impaired, damaged or destroyed by wildfires, floods or overflow of streams, and has made and entered an adjustment to assessments previously made and entered;

7. Lands or lots have in any manner been erroneously described;

8. Any valuation or valuations assessed and entered are at variance with the valuation finally equalized;

9. Any valuation or valuations returned for assessment and not increased by the county assessor have been entered on the assessment rolls for equalization at variance with the value returned, or in the event of increase by either the county assessor or the county board of equalization and no notice thereof was sent; provided, offer of proof of failure to receive notice may not be heard;

10. Any valuation assessed and entered included, in whole or in part, as of the date of assessment under the law relating thereto, any property that had no taxable situs in the county, did not exist or had been erroneously placed;

11. Any property subject to taxation as of January 1 of any year was thereafter acquired by conveyance of title, including tax title, by the county, or any city, town or school district therein;

12. An error resulted from inclusion in the total of levies computed against the valuation entered, a tax levy or levies certified and final for none or part of which such property was liable in fact and the same be self-evident on recomputation, and involve no question of law;

13. As to personal tax, if there has been an error in the name of the person assessed, or, as to real property, the record owner at the time of assessment desires that his or her name be entered in lieu of whatever other name may have been entered as "owner" upon the roll;

14. There has been any error in the tax extended against the valuation entered, whether by erroneous computation or otherwise;

15. There has been any error in transcribing from the county assessor's permanent survey record to the assessment rolls either as to area or value of lands or lots or as to improvements thereon;

16. The county treasurer has, of his or her own volition, restored to the tax rolls any tax or assessment where the entry upon

the tax rolls shows the same theretofore to have been stricken or reduced by certificate issued by constituted authority, except where restored by specific court order or in conformity to general decree of the Supreme Court of Oklahoma invalidating in mass all such certificates of a class certain, and except if the owner of such property demand its restoration and make payment, in which instance the county treasurer shall require that the owner sign on the face of the owner's receipt a statement that the owner "paid voluntarily without demand, request or duress"; or

17. Any personal property assessment and personal tax charge has been entered upon the assessment and tax rolls except upon proper return of assessment by the taxpayer or increase thereof with due notice, or as a delinquent assessment made by the county assessor or deputies in detail either on view or reliable information; then, in the event any of the grounds stated in this subsection are present, it shall be the duty of the board of tax roll corrections to make and the secretary to enter its findings of fact and to correct such error, if such exists, by issuing its order, in words and figures, to accomplish such:

a. if such error increases the amount of tax charged, the county clerk shall issue a certificate of error to the county assessor ordering the assessor to certify such correction or increase to the county treasurer for entry on the tax rolls, and

b. if such error does not increase the amount of tax charged, the county clerk shall issue a certificate of error to the county treasurer if the tax be not paid, stating the amount or other effect of such order, and it shall be the duty of such county treasurer to make and enter such correction upon the tax rolls and, if there be a decrease to the amount of tax charged, to enter a credit, in lieu of cash, for the amount of decrease of tax shown in such certificate.

D. If, prior to such hearing by the board, as provided by this section, the tax has been paid, no certificate shall issue; but if less than one (1) year shall have elapsed after the payment of the tax and before the filing of such application for correction of error, and after such hearing the findings of fact disclose that less tax was due to have been paid than was paid, then the person who paid the tax, or such person's heirs, successors, or assigns, may execute a cash voucher claim setting forth facts and findings, verify it, and file it with the county clerk, who shall thereupon deliver such claim to the county treasurer for designation of the fund from which the claim must be paid and approval of the claim as to availability of funds by the county treasurer. If taxes have been paid under protest, the county treasurer must designate the refund to be paid from such protest fund. If taxes have been paid but not paid under protest and if there are funds available in

current collections of the taxing unit which received the taxes paid, then the county treasurer must designate the refund to be paid from such current collections of such taxing unit. The county clerk shall thereupon issue a cash voucher against the appropriate fund of the county, directing the county treasurer to pay to such person the amount so found to be erroneous. The word "person" as used in this subsection shall comprehend the person, firm, or corporation who paid such tax and the heirs, assigns or successors, as the case may be. No such claim for refund shall be allowed and paid unless the same be filed within six (6) months after the effective date of the order of correction.

E. If there be any error in the taxes collected from any person, the overpayment or duplicate payment of any such taxes collected in error may be recovered by the taxpayer, and the county treasurer may make such payment from the resale property fund of the county if funds are not available as stated in subsection D of this section.

F. Beginning January 1, 1987, notwithstanding the one-year limitations period for filing a claim for refund as provided in subsection D of this section, if there be any error in taxes collected from any person on property constitutionally exempt under Section 6B of Article X of the Oklahoma Constitution, by the county treasurer in counties with a population in excess of five hundred thousand (500,000) persons, according to the latest Federal

Decennial Census, to the extent that such county has been reimbursed from the Ad Valorem Reimbursement Fund provided by Section 193 of Title 62 of the Oklahoma Statutes, the overpayment or duplicate payment of any such taxes collected in error may be recovered by the taxpayer as provided by law.

G. Upon dismissal of a complaint or denial of relief to the taxpayer, the county clerk, as secretary of the board of tax roll corrections, shall prepare a letter order of dismissal or denial which shall be mailed to the taxpayer or person at the address found on the complaint.

H. Both the taxpayer and the county assessor shall have the right of appeal from any order of the board of tax roll corrections to the district court of the same county. In case of appeal the trial in the district court shall be de novo.

I. Notice of appeal shall be served upon the county clerk, as secretary of the board of tax roll corrections, and a copy served upon the county assessor. The appeal shall be filed in the district court within fifteen (15) days of the date of the mailing of the order of the board of tax roll corrections to the taxpayer.

SECTION 4. AMENDATORY 68 O.S. 2011, Section 2874, is amended to read as follows:

Section 2874. Whether upon discovery by the county treasurer or county assessor or any of their deputies, or upon complaint of the taxpayer, the agent or attorney or any person acting on behalf of

the taxpayer, upon certificate of clerical error issued by the county assessor to the county treasurer, with a copy to the county clerk and a copy retained, the county treasurer shall be authorized to make correction upon the tax rolls of either of the following specifically enumerated errors of strictly clerical import not involving valuations assessed and equalized and not involving any exemption allowed whether of homestead, service in the armed forces, charitable, educational, religious, or other authorized exemptions, and which clerical error certificates shall issue only under the conditions stated as to each, as follows:

1. Error in the name of the person assessed, upon affidavit verifying the name of the true owner as of ~~January 1~~ October 1 of the taxable year involved;

2. Error in the address of the person, firm or corporation assessed, when furnished by such person or a representative of the firm or corporation;

3. Error in the legal description of real property, when verified by the county clerk, certifying to the description on his land records as of January 1 of the taxable year involved;

4. Error in land-list entry, such as section or part thereof, township, range or of lot or block or of designation of urban addition, when verified by the county clerk to the land records or plats on file, as of January 1 of the taxable year involved;

5. Error in the school district designation as of the date when school district tax levies attached themselves to such property, when verified by the county assessor certifying to the date, if after January ~~1st~~ 1 of such taxable year, when the school district designation or location changed, or the school district designation prior to January ~~1st~~ 1 of such taxable year where no change of the boundaries of such district was thereafter ordered during such taxable year. If a school district boundary change occurs after April 15 of such taxable year, the opinion of the district attorney as to the applicable school district designation to such property for purpose of levy of such taxable year shall be attached to the certification;

6. If the error of school district designation caused the application of levies not applicable thereto, then also the "extension of tax", when verified by the county clerk with proof of computation attached;

7. Error commonly called duplicate assessment, but only in instances where the two entries as delivered to the county treasurer are verified by the county treasurer or deputy to be completely identical in every specific detail; and

8. Error in transcribing to the tax rolls from assessment rolls or assessment lists, conditioned on complete absence of all indication of erasures or other alteration of original entry when confirmed by endorsement to the certificate by the county clerk

certifying to personal visual inspection and verifying absence of all indication of erasure or change in original entry.

SECTION 5. This act shall become effective November 1, 2013.

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