

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 1244

By: Mazzei

4  
5 AS INTRODUCED

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

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

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

14 Section 217. A. If any amount of tax imposed or levied by any  
15 state tax law, or any part of such amount, is not paid before such  
16 tax becomes delinquent, there shall be collected on the total  
17 delinquent tax interest at the rate of one and one-quarter percent  
18 (1 1/4%) per month from the date of the delinquency until paid.

19 B. Interest upon any amount of state tax determined as a  
20 deficiency, under the provisions of Section 221 of this title, shall  
21 be assessed at the same time as the deficiency and shall be paid  
22 upon notice and demand of the Oklahoma Tax Commission at the rate of  
23 one and one-quarter percent (1 1/4%) per month from the date  
24

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

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

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

21 E. If any part of any deficiency, arbitrary or jeopardy  
22 assessment made by the Tax Commission is based upon or occasioned by  
23 the taxpayer's negligence or by the failure or refusal of any  
24 taxpayer to file with the Tax Commission any report or return, as

1 required by this title, or by any state tax law, within ten (10)  
2 days after a written demand for such report or return has been  
3 served upon any taxpayer by the Tax Commission by letter, the Tax  
4 Commission may assess and collect, as a penalty, twenty-five percent  
5 (25%) of the amount of the assessment. For purposes of this  
6 subsection, "negligence" shall mean the consistent understatement of  
7 income, consistent understatement of receipts or a system of  
8 recordkeeping by the taxpayer that consistently results in an  
9 inaccurate reporting of tax liability.

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

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

21 H. 1. Whenever an income tax refund is not paid to the  
22 taxpayer within ninety (90) days after the return is filed or due,  
23 whichever is later, with all documents as required by the Tax  
24 Commission, entitling the taxpayer to a refund, then the Tax

1 Commission shall pay interest on the refund, at the same rate  
2 specified for interest on delinquent tax payments. The payment of  
3 interest on refunds provided for by this section shall apply to tax  
4 year 1987 and subsequent tax years. The Tax Commission shall not be  
5 required to pay interest on an income tax refund which is applied,  
6 in whole or in part, to a prior year tax liability pursuant to  
7 Section 2385.17 of this title or upon an income tax refund applied,  
8 in whole or in part, to satisfy a debt owed to the Internal Revenue  
9 Service of the United States or to a state agency, including the  
10 Oklahoma Tax Commission, as provided by Section 205.2 of this title.

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

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

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

22 3. For tax returns filed after January 1, 2010, whenever an  
23 income tax refund is not paid to the taxpayer within the following  
24 number of days after the income tax return is filed with all

1 documents as required by the Tax Commission entitling the taxpayer  
2 to a refund, then the Tax Commission shall pay interest on the  
3 refund at the same rate specified for interest on delinquent tax  
4 payments:

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

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

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

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

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

22 (c) Said claim so filed with the Tax Commission, except for an  
23 amended report or return, shall specify the name of the taxpayer,  
24 the time when and period for which said tax was paid, the nature and

1 kind of tax so paid, the amount of the tax which said taxpayer  
2 claimed was erroneously paid, the grounds upon which a refund is  
3 sought, and such other information or data relative to such payment  
4 as may be necessary to an adjustment thereof by the Tax Commission.  
5 It shall be the duty of the Commission to determine what amount of  
6 refund, if any, is due as soon as practicable after such claim has  
7 been filed and advise the taxpayer about the correctness of his  
8 claim and the claim for refund shall be approved or denied by  
9 written notice to the taxpayer.

10 (d) If the claim for refund is denied, the taxpayer may file a  
11 demand for hearing with the Commission. The demand for hearing must  
12 be filed on or before the ~~thirtieth~~ sixtieth day after the date the  
13 notice of denial was mailed. If the taxpayer fails to file a demand  
14 for hearing, the claim for refund shall be barred.

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

22 (f) The provisions of this section shall not apply: (1) to  
23 refunds of income tax erroneously paid, refunds of which tax shall  
24 be payable out of the income tax adjustment fund as provided by law;

1 (2) to estate tax because the payment of such tax is covered by an  
2 order of the Tax Commission and the estate and interested parties  
3 are given notice that Commission's position and computation of the  
4 tax will become final unless they protest and resist the payment  
5 thereof as provided by statute; nor, (3) in any case where the tax  
6 was paid after an assessment thereof was made by the Tax Commission  
7 which assessment became final under the law.

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

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

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1 individuals by such date and such payments shall be considered as  
2 timely paid.

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

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

1 ascertained under the provisions of Section 2351 et seq. of this  
2 title.

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

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

12 F. The provisions in this section for penalties shall supersede  
13 all other provisions for penalties on income taxes. The provisions  
14 in this section for penalties shall supersede the provisions in the  
15 Uniform Tax Procedure Code, Section 201 et seq. of this title, only  
16 to the extent of conflict between such provisions and the penalty  
17 provisions in this section.

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

21 H. 1. The period of time prescribed in Section 223 of this  
22 title, in which the procedures for the assessment of income tax may  
23 be commenced by the Tax Commission, shall be tolled and extended  
24 until the amount of taxable income for any year of a taxpayer under

1 the Internal Revenue Code has been finally determined under  
2 applicable federal law and for the additional period of time  
3 hereinafter provided in this subsection.

4 2. If, in such final determination, the amount of taxable  
5 income for any year of a taxpayer under the Internal Revenue Code is  
6 changed or corrected from the amounts included in the federal return  
7 of the taxpayer for such year and such change or correction affects  
8 the Oklahoma taxable income of the taxpayer for such year, the  
9 taxpayer, within one (1) year after such final determination of the  
10 corrected taxable income, shall file an amended return under Section  
11 2351 et seq. of this title reporting the corrected Oklahoma taxable  
12 income, and the Tax Commission shall make assessment or refund  
13 within two (2) years from the date the return required by this  
14 paragraph is filed and not thereafter, unless a waiver is agreed to  
15 and signed by the Tax Commission and the taxpayer.

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

21 4. In administering the provisions of this subsection, the Tax  
22 Commission shall have the authority to audit each and every item of  
23 income, deduction, credit or any other matter related to the return  
24 where such items or matters relate to allocation or apportionment

1 between the State of Oklahoma and some other state or the federal  
2 government even if such items or matters were not affected by  
3 revisions made in such final determination. Where such items or  
4 matters do not relate to allocation or apportionment between the  
5 State of Oklahoma and some other state or the federal government,  
6 the Tax Commission shall be bound by the revisions made in such  
7 final determination.

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

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

19 Section 2385.6. A. If an employer fails to file a return or to  
20 pay to the Oklahoma Tax Commission the withholding tax within the  
21 time prescribed by this article, there shall be imposed on him a  
22 penalty equal to ten percent (10%) of the amount of tax, or ten  
23 percent (10%) of the amount of the underpayment of tax, if such  
24 failure is not corrected within fifteen (15) days after the tax

1 becomes delinquent. There shall also be imposed on such employer  
2 interest at the rate of one and one-quarter percent (1 1/4%) per  
3 month during the period such underpayment exists. For the purposes  
4 of this paragraph, "underpayment" shall mean the excess of the  
5 amount of the tax required to be paid over the amount thereof  
6 actually paid on or before the date prescribed therefor. Such  
7 penalty and interest shall be added to and become a part of the tax  
8 assessed. However, the Tax Commission shall not collect the penalty  
9 assessed if the taxpayer remits the tax and interest within sixty  
10 (60) days of the mailing of a proposed assessment or voluntarily  
11 pays the tax upon the filing of an amended return.

12 B. Any employer who is required under the provisions of Section  
13 2385.3 of this title to furnish a statement to an employee, but who  
14 willfully fails to furnish such employee the statement required by  
15 said section, shall be guilty of a misdemeanor and upon conviction  
16 shall be punished by a fine of not exceeding One Hundred Dollars  
17 (\$100.00), or by imprisonment for not more than six (6) months in  
18 the county jail, or by both such fine and imprisonment for each such  
19 offense.

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

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

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