

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 601

By: Rader

4  
5  
6 AS INTRODUCED

7 An Act relating to uniform tax procedure; amending 68  
8 O.S. 2021, Sections 221, 226, 227, as amended by  
9 Section 1, Chapter 114, O.S.L. 2022, and 231 (68 O.S.  
10 Supp. 2022, Section 227), which relate to failure to  
11 make report or return, action to recover taxes as  
12 additional remedy, refund of erroneous payments, and  
13 tax warrants; modifying the start date for certain  
14 deadlines to the date indicated on certain notice or  
15 assessment; requiring certain warrant to be filed by  
16 electronic means; and providing an effective date.

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

18 SECTION 1. AMENDATORY 68 O.S. 2021, Section 221, is  
19 amended to read as follows:

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

1 due for the taxable period, or if, in cases where a report or return  
2 has been filed, the Tax Commission shall determine that the tax  
3 disclosed by such report or return is less than the tax disclosed by  
4 its examination, it shall in writing propose the assessment of taxes  
5 or additional taxes, as the case may be, and shall mail a copy of  
6 the proposed assessment to the taxpayer at the taxpayer's last-known  
7 address. Proposed assessments made in the name of the "Oklahoma Tax  
8 Commission" by its authorized agents shall be considered as the  
9 action of the Tax Commission.

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

1 C. Within sixty (60) days after the ~~mailing of~~ date indicated  
2 on the aforesaid proposed assessment, the taxpayer may file with the  
3 Tax Commission a written protest under oath, signed by the taxpayer  
4 or the taxpayer's duly authorized agent, setting out therein:

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

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

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

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

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

18 D. If in such written protest the taxpayer shall request an  
19 oral hearing, the Tax Commission shall grant such hearing, and  
20 shall, by written notice, advise the taxpayer of a date, which shall  
21 not be less than ten (10) days from the date of mailing of such  
22 written notice, when such taxpayer may appear before the Tax  
23 Commission and present arguments and evidence, oral or written, in  
24 support of the protest. Hearings shall be held as soon as

1 practicable. In the event an oral hearing is not requested, the Tax  
2 Commission shall proceed without further notice to examine into the  
3 merits of the protest and enter an order in accordance with its  
4 findings. Upon request of any taxpayer and upon proper showing that  
5 the principle of law involved in the assessment of any tax is  
6 already pending before the courts for judicial determination, the  
7 taxpayer, upon agreement to abide by the decision of the court, may  
8 pay the tax so assessed under protest and such protest shall be  
9 resolved in accordance with the agreement to abide.

10 E. If the taxpayer fails to file a written protest within the  
11 sixty-day period herein provided for or within the period as  
12 extended by the Tax Commission, or if the taxpayer fails to file the  
13 notice required by Section 226 of this title within thirty (30) days  
14 from the date ~~of mailing of an~~ indicated on the proposed assessment,  
15 then the proposed assessment, without further action of the Tax  
16 Commission, shall become final and absolute. A taxpayer who fails  
17 to file a protest to an assessment of taxes within the time period  
18 prescribed by this section may, within one (1) year of the date the  
19 assessment becomes final, request the Tax Commission to adjust or  
20 abate the assessment if the taxpayer can demonstrate, by a  
21 preponderance of the evidence, that the assessment or some portion  
22 thereof is clearly erroneous. If the Tax Commission determines that  
23 the proper showing has been made, the assessment or portion thereof  
24 determined to be clearly erroneous shall be deemed not to have

1 become final and absolute. No hearing to adjust or abate a clearly  
2 erroneous assessment may be granted after the Tax Commission's  
3 denial of such a request. An order of the Tax Commission denying a  
4 taxpayer's request to adjust or abate an assessment alleged to be  
5 clearly erroneous is not an appealable order under Section 225 of  
6 this title. No proceeding instituted by the Tax Commission to  
7 collect a tax liability may be stayed because of a request made by a  
8 taxpayer to adjust or abate an assessment alleged to be clearly  
9 erroneous.

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

15 G. Within a reasonable time after the hearing herein provided  
16 for, the Tax Commission shall make and enter an order in writing in  
17 which it shall set forth the disposition made of the protest and a  
18 copy of such order shall forthwith be mailed to the taxpayer. The  
19 order shall contain findings of fact and conclusions of law. After  
20 removing the identity of the taxpayer, the Tax Commission shall make  
21 the order available for public inspection and shall publish those  
22 orders the Tax Commission deems to be of precedential value. The  
23 taxpayer may within the time and in the manner provided for by  
24 Section 225 of this title, appeal to the Supreme Court, but in the

1 event the taxpayer fails to so proceed, the order shall within  
2 thirty (30) days from the date a certified copy thereof is mailed to  
3 the taxpayer, become final. The provisions of Section 226 of this  
4 title shall not apply where a proposed assessment or an assessment  
5 of taxes has been permitted to become final.

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

1 until payment of the assessment, or upon the expiration of ten (10)  
2 years after the date upon which the assessment was refiled in the  
3 office of the county clerk. The remedies provided in this  
4 subsection shall be in addition to other remedies provided by law.  
5 All active liens evidenced by an assessment filed with a county  
6 clerk's office prior to November 1, 1989, shall be released and  
7 extinguished if the assessment is not refiled prior to November 1,  
8 2001.

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

19 SECTION 2. AMENDATORY 68 O.S. 2021, Section 226, is  
20 amended to read as follows:

21 Section 226. ~~(a)~~ A. In addition to the right to a protest of a  
22 proposed assessment as authorized by Section 221 of this title, a  
23 right of action is hereby created to afford a remedy to a taxpayer  
24 aggrieved by the provisions of this article or of any other state

1 tax law, or who resists the collection of or the enforcement of the  
2 rules or regulations of the Tax Commission relating to the  
3 collection of any state tax; however, such remedy shall be limited  
4 as prescribed by subsection ~~(e)~~ C of this section.

5 ~~(b)~~ B. Within thirty (30) days from the date ~~of mailing to the~~  
6 ~~taxpayer of~~ indicated on an assessment for taxes or additional taxes  
7 pursuant to Section 221 of this title by the Tax Commission, any  
8 such taxpayer shall pay the tax to the Tax Commission, and at the  
9 time of making such payment shall give notice to the Tax Commission  
10 of his intention to file suit for recovery of such tax. The  
11 taxpayer shall not be required to file suit within such thirty-day  
12 period in order to prosecute an action as authorized by this  
13 section; however, failure to file such suit within one (1) year from  
14 the date ~~of mailing~~ of the assessment shall result in the assessment  
15 becoming final and absolute. If the taxpayer prevails the Tax  
16 Commission shall, by cash voucher drawn by the Tax Commission upon  
17 its official depository clearing account or special refund reserve  
18 account with the State Treasurer, refund to the taxpayer the amount  
19 of tax determined not to be due pursuant to the final judgment of  
20 the court having jurisdiction, together with interest on such amount  
21 at the rate applicable to money judgments in civil cases from the  
22 date of payment by the taxpayer to the date of the refund by the Tax  
23 Commission. The refunds paid shall be payable as provided in  
24 Section 225(d). If the taxpayer prevails and the court determines



1 that the position of the Tax Commission in the proceeding was not  
2 substantially justified, the court shall award the taxpayer a  
3 judgment for reasonable attorney fees, reasonable expenses of expert  
4 witnesses in connection with the proceeding and reasonable costs of  
5 any study, analysis, engineering report, test, or project which is  
6 found by the court to be necessary for the preparation of the  
7 taxpayer's case.

8 ~~(e)~~ C. This section shall afford a legal remedy and right of  
9 action in any state or federal court having jurisdiction of the  
10 parties and the subject matter. It shall be construed to provide a  
11 legal remedy in the state or federal courts by action at law only in  
12 cases where the taxes complained of are claimed to be an unlawful  
13 burden on interstate commerce, or the collection thereof violative  
14 of any Congressional Act or provision of the Federal Constitution,  
15 or in cases where jurisdiction is vested in any of the Courts of the  
16 United States. In all actions brought hereunder service of process  
17 upon the Chairman of the Tax Commission shall be sufficient service,  
18 and the Tax Commission shall be the sole, necessary and proper party  
19 defendant in any such suit, and the State Treasurer shall not be a  
20 necessary or proper party thereto.

21 ~~(d)~~ D. Upon request of any taxpayer and upon proper showing  
22 that the principle of law involved in the assessment of any tax is  
23 already pending before the courts for judicial determination, the  
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1 taxpayer, upon agreement to abide by the decision of the court, may  
2 pay the tax so assessed under protest, but need not file a suit.

3 SECTION 3. AMENDATORY 68 O.S. 2021, Section 227, as  
4 amended by Section 1, Chapter 114, O.S.L. 2022 (68 O.S. Supp. 2022,  
5 Section 227), is amended to read as follows:

6 Section 227. A. Except as provided in subsection B of Section  
7 1361.2 and subsection D of Section 1364.1 of this title, any  
8 taxpayer who has paid to the State of Oklahoma, through error of  
9 fact, or computation, or misinterpretation of law, any tax collected  
10 by the Tax Commission may, as hereinafter provided, be refunded the  
11 amount of such tax so erroneously paid, without interest.

12 B. 1. Except as otherwise provided by paragraph 2 of this  
13 subsection, any taxpayer who has so paid any such tax may, within  
14 three (3) years from the date of payment thereof file with the Tax  
15 Commission a verified claim for refund of such tax so erroneously  
16 paid. The Tax Commission may accept an amended withholding tax or  
17 other report or return as a verified claim for refund if the amended  
18 report or return establishes a liability less than the original  
19 report or return previously filed.

20 2. Upon August 26, 2016, with respect to the sales tax imposed  
21 by Section 1354 of this title and with respect to the use tax  
22 imposed by Section 1402 of this title, any taxpayer who has so paid  
23 such sales or use tax may, within two (2) years from the date of  
24 payment thereof file with the Tax Commission a verified claim for

1 refund of such tax so erroneously paid. The Tax Commission may  
2 accept an amended sales or use tax report or return as a verified  
3 claim for refund if the amended report or return establishes a  
4 liability less than the original report or return previously filed.

5 C. The claim so filed with the Tax Commission, except for an  
6 amended report or return, shall specify the name of the taxpayer,  
7 the time when and period for which the tax was paid, the nature and  
8 kind of tax so paid, the amount of the tax which the taxpayer  
9 claimed was erroneously paid, the grounds upon which a refund is  
10 sought, and such other information or data relative to such payment  
11 as may be necessary to an adjustment thereof by the Tax Commission.  
12 It shall be the duty of the Commission to determine what amount of  
13 refund, if any, is due as soon as practicable after such claim has  
14 been filed and advise the taxpayer about the correctness of his  
15 claim and the claim for refund shall be approved or denied by  
16 written notice to the taxpayer.

17 D. If the claim for refund is denied, the taxpayer may file a  
18 demand for hearing with the Commission. The demand for hearing must  
19 be filed on or before the sixtieth day after the date indicated on  
20 the notice of denial ~~was mailed~~. If the taxpayer fails to file a  
21 demand for hearing, the claim for refund shall be barred.

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

5 F. The provisions of this section shall not apply:

6 1. To refunds of income tax erroneously paid, refunds of which  
7 tax shall be payable out of the income tax adjustment fund as  
8 provided by law;

9 2. To estate tax because the payment of such tax is covered by  
10 an order of the Tax Commission and the estate and interested parties  
11 are given notice that Commission's position and computation of the  
12 tax will become final unless they protest and resist the payment  
13 thereof as provided by statute; nor

14 3. In any case where the tax was paid after an assessment  
15 thereof was made by the Tax Commission which assessment became final  
16 under the law.

17 SECTION 4. AMENDATORY 68 O.S. 2021, Section 231, is  
18 amended to read as follows:

19 Section 231. A. If any tax, imposed or levied by any state tax  
20 law, or any portion of such tax, is not paid before the same becomes  
21 delinquent, the Oklahoma Tax Commission may immediately issue a  
22 warrant under its official seal. A tax warrant directed to the  
23 sheriff of any county of the state shall command the sheriff to levy  
24 upon and sell without any appraisement or valuation any real or  
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1 personal property of the taxpayer found within the county for the  
2 payment of the delinquent tax, interest, and penalties, and the cost  
3 of executing the warrant, and to return such warrant to the Tax  
4 Commission, and to pay to it any monies collected by virtue thereof,  
5 by a time to be therein specified, not more than sixty (60) days  
6 from the date of the warrant.

7 B. The Tax Commission shall, immediately upon issuance of the  
8 warrant, file with the county clerk of the county for which the  
9 warrant was issued a copy thereof, and thereupon the county clerk  
10 shall record and index such warrant in the same manner as judgments  
11 using the name of the taxpayer named in the warrant, a short name  
12 for the tax, the amount of the tax or portion thereof, and interest  
13 and penalties for which the warrant was issued, and the date and  
14 time when such copy was filed. The Tax Commission ~~may~~ shall file  
15 the warrant in the appropriate office of the county clerk by  
16 electronic means. The filing of the warrant in the office of the  
17 county clerk of the county, shall constitute and be evidence and  
18 notice of the state's lien upon any interest in any real property of  
19 the taxpayer against whom such warrant is issued, until such tax,  
20 penalty and interest accruing thereon is paid. Such lien shall be  
21 in addition to any and all other liens existing in favor of the  
22 state to secure the payment of the unpaid tax, penalty, interest,  
23 and costs, and such lien shall be paramount and superior to all  
24 other liens of whatsoever kind or character, attaching to any of

1 said property subsequent to the date and time of such filing and  
2 shall be in addition to any lien provided by Section 234 of this  
3 title. The Tax Commission shall, immediately upon issuance of the  
4 warrant, mail, by regular mail, a copy of the warrant to the last-  
5 known address of the delinquent taxpayer. Such lien is hereby  
6 released and extinguished upon the payment of such tax, penalty,  
7 interest, and costs, or, except as otherwise provided herein, upon  
8 the expiration of ten (10) years after the date upon which the  
9 warrant was filed with the county clerk; provided, the Tax  
10 Commission may, prior to the release and extinguishment of such  
11 lien, refile the warrant in the office of the county clerk. A  
12 warrant so refiled shall continue the lien until payment of the tax,  
13 penalty, interest, and costs, or upon the expiration of ten (10)  
14 years after the date upon which the warrant was refiled and indexed  
15 by the county clerk. All active liens evidenced by a warrant filed  
16 with a county clerk's office prior to November 1, 1989, shall be  
17 released and extinguished if the warrant is not refiled prior to  
18 November 1, 2001.

19 C. Except as otherwise provided in subsection D of this  
20 section, the Tax Commission shall forward the filed warrant to the  
21 sheriff of the county in which the warrant was filed. Upon receipt  
22 of the warrant, such sheriff shall thereupon proceed to execute the  
23 tax warrant in the same manner prescribed by law for executions  
24 against property upon judgment of a court of record; and such

1 sheriff shall execute and deliver to the purchaser a bill of sale or  
2 deed, as the case may be.

3 D. The Tax Commission shall not direct or forward to the  
4 sheriff of any county any tax warrant issued pursuant to collection  
5 by the Tax Commission. The Tax Commission shall promulgate rules  
6 pertaining to tax warrants issued under this section.

7 E. The Tax Commission may levy upon and sell without any  
8 appraisement or valuation any real or personal property of any  
9 taxpayer identified by a filed tax warrant. The Tax Commission may  
10 execute the tax warrant in the same manner prescribed by law for  
11 executions against property upon judgment of a court of record and  
12 may execute and deliver to the purchaser a bill of sale or deed, as  
13 the case may be.

14 F. Any purchaser, other than the State of Oklahoma, shall be  
15 entitled, upon application to the court having jurisdiction of the  
16 property, to have confirmation, the procedure for which shall be the  
17 same as is now provided for the confirmation of a sale of property  
18 under execution, of such sale prior to the issuance of a bill of  
19 sale or deed. The State of Oklahoma shall be authorized to make  
20 bids at any such sale to the amount of tax, penalty, and costs  
21 accrued. In the event such bid is successful, the sheriff shall  
22 issue proper muniment of title to the Tax Commission which shall  
23 hold such title for the use and benefit of the State of Oklahoma;  
24 and any taxpayer, or transferee of such taxpayer, shall have the

1 right, at any time within one (1) year from the date of such sale,  
2 to redeem such property, upon the payment of all taxes, penalties  
3 and costs accrued to the date of redemption. Such applicant shall  
4 not be entitled to a credit upon such taxes, penalties, and costs,  
5 by reason of revenue that might have accrued to the State of  
6 Oklahoma or other purchaser under sale, prior to such redemption.  
7 After the expiration of the period of redemption herein provided,  
8 the Tax Commission acting for the State of Oklahoma may sell such  
9 property at public auction, upon giving thirty (30) days' notice,  
10 published in a newspaper of general circulation in the county where  
11 such property is located, to the highest and best bidder for cash;  
12 and upon a sale had thereof, or when a redemption is made, the Tax  
13 Commission, for and on behalf of the State of Oklahoma, shall issue  
14 its bill of sale or quit claim deed, as the case may be, to the  
15 successful bidder or to the redemptioner. Such muniment of title  
16 shall be executed by the Tax Commission, and attested by its  
17 secretary, with the seal of the Tax Commission affixed. The sheriff  
18 shall be entitled to the same fee for services in executing the  
19 warrant, as the sheriff would be entitled to receive if he or she  
20 were executing an execution issued by the court clerk of the county  
21 upon a judgment of a court of record.

22 G. If any sheriff shall refuse or neglect to levy upon and sell  
23 any real or personal property of any taxpayer as directed by any  
24 warrant issued by the Tax Commission, or shall refuse or neglect, on



1 demand, to pay over to the Tax Commission, its agents or attorneys,  
2 all monies collected or received under any warrant issued by the Tax  
3 Commission, at any time after collecting or receiving the same, such  
4 sheriff or other officer shall, upon motion of the Tax Commission in  
5 court, and after thirty (30) days' notice thereof, in writing, be  
6 amerced in the amount for which any such warrant was issued by the  
7 Tax Commission, together with all penalties and costs and with an  
8 additional penalty of ten percent (10%) thereon, to and for the use  
9 of the State of Oklahoma. Every surety of any sheriff or officer  
10 shall be made a party to the judgment rendered as aforesaid against  
11 the sheriff or other officer.

12 H. The Tax Commission may expend funds from the Oklahoma Tax  
13 Commission Fund in the State Treasury to reimburse the sheriff for  
14 travel and administrative costs actually and necessarily incurred  
15 while performing duties required by this section. Such costs shall  
16 be assessed against the delinquent taxpayer, shall be added to the  
17 amount necessary to satisfy the tax warrant, and upon collection  
18 thereof shall be deposited in the Oklahoma Tax Commission Fund.

19 I. A tax warrant issued and filed under authority of this  
20 section shall:

21 1. Constitute and be evidence and notice of the state's lien  
22 upon real property; and  
23  
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1           2. Not be subject to the provisions of any dormancy statute  
2 which would limit the enforceability, effect, or operation of the  
3 lien, except as otherwise provided in this section.

4           J. After July 1, 1993, the Tax Commission shall not issue any  
5 certificates of indebtedness pursuant to the provisions of Section  
6 230 of this title.

7           K. When a tax warrant has been issued and filed as provided in  
8 this section, the Tax Commission shall have all of the remedies and  
9 may take all of the proceedings thereon for the collection thereof  
10 which may be had or taken upon a judgment of the district court.

11           SECTION 5. This act shall become effective November 1, 2023.

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