

**CONSTITUTIONAL VALIDITY OF  
NEW TAX AMNESTY INITIATIVE CHALLENGED**  
**By: Kenneth L. Hunt**

A new tax amnesty initiative encouraging the voluntary disclosure and payment of taxes is being challenged in Oklahoma Supreme Court as constitutionally suspect. S.B. 2034 creates a new tax amnesty initiative that will waive penalties, interest and any other fees due on eligible taxes if the taxpayer voluntarily files delinquent tax returns and pays the taxes due between September 15 and November 14 of this year. Taxes eligible under the initiative include: individual income tax, gasoline and diesel taxes, franchise tax, gross production and petroleum excise taxes, corporate income tax, bank "in lieu" taxes, withholding taxes, sales and use taxes and mixed beverage taxes. The eligible taxes must have been due prior to January 1, 2008.

The tax liabilities can be paid, or the taxpayer may enter into a payment program to pay the owed taxes in full. The Oklahoma Tax Commission ("OTC") has promulgated emergency rules which are attached hereto. These rules provide specific details of acceptable payment plans. Once the taxes are paid during the specified time period, the OTC will drop all interest, penalties, collection fees, costs and liens that may have been imposed otherwise. Further, the OTC in the emergency rules has announced that the taxpayer will not have to obtain court approval of any waivers of interest and penalty made pursuant to the special initiative. Unless the individual or entity is ineligible to participate or has filed a timely protest, any eligible taxes owed but not paid during the two month amnesty period will be subject to a new second delinquent penalty equal to the original penalty imposed for non-payment of the particular tax.

Retired attorney, Jerry Fent, has filed a lawsuit challenging the constitutionality of the amnesty program because the Oklahoma Constitution prohibits the legislature from releasing liabilities owed to the state. Mr. Fent argued that "liabilities" include penalty and interest on

unpaid taxes. His lawsuit also cites the Oklahoma Constitution's provisions that provide the power of taxation shall never be surrendered, suspended or contracted away. On July 15, 2008, he and OTC Representative Guy Hurst presented their arguments to the Oklahoma Supreme Court Referee Louise Helms. Mr. Fent also asked the Oklahoma Supreme Court to take up the issue before the initiative goes into effect. Mr. Hurst for the OTC said in previous cases tax penalties and interest are considered separate from the amount of tax owed and the state has twice before implemented tax amnesty programs, in 1985 and 2002. Mr. Fent who frequently challenges new laws in Oklahoma has had some success with his lawsuits with the Oklahoma Supreme Court striking down certain bond programs and certain special funds.

S.B. 2034 legislation was estimated to increase by more than \$30 million tax revenues in the current fiscal year by inciting delinquent taxpayers to pay now. The tax amnesty program was one of a handful of suggestions Democratic Gov. Brad Henry had presented in his State of the State address at the beginning of the legislative sessions in February, anticipating revenues for the year would be lower than had previously been estimated. The sole legislative opponent, Republican Rep. Mike Reynolds, who attended the argument before Referee Helms, said "[S.B. 2034] was a poor way to add \$30 million without having to redo the budget. As the revenues came in, they saw they needed another \$30 million to make it work but instead of renegotiating the budget, they did this." If the Oklahoma Supreme Court takes the case, Referee Helms indicated that it will be on the September docket.

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