



OKLAHOMA
Tax Commission

COMMON OKLAHOMA WITHHOLDING AUDIT ISSUES

What is Withholding Tax?

The Oklahoma Tax Commission (OTC) is responsible for administering and reviewing payments and withholding returns submitted for Oklahoma state income tax withheld from employee paychecks. Withholding tax is considered a trust tax. Employers are entrusted to collect withholding taxes on behalf of the state of Oklahoma. Employers are required to file **Form WTH-10001 Oklahoma Quarterly Wage Withholding Tax Return** on a quarterly basis, along with any payment due. A company's remittance schedule varies depending on the total amount of employee wages. A quarterly withholding return is due on or before the 20th day of the month following the close of each quarter, pursuant to the Oklahoma Administrative Code (OAC) Sec. 710:90-3-4. On an annual basis, the OTC also reviews Internal Revenue Service (IRS) Form W-3 Transmittal of Wage and Tax Statements: A summary document for an entity compiling all the employee information that is included on an employee's annual W-2.

What is HB 2289?

HB 2289 is a tax statute, enacted in 2023, which imposes a penalty of up to \$1,000.00 on any employer who fails to furnish the OTC with the required annual reconciliation by January 31 (codified at 68 Oklahoma Statutes Sec. 2385.3). This annual reconciliation has been a requirement for many years; however, the addition of the \$1,000 penalty was new for the 2023 calendar year under HB 2289. The OTC proactively advised taxpayers of the change by placing banners on the OTC website, updating the website's FAQs, and sending notices to taxpayers with Oklahoma withholding accounts. Annual reconciliations can only be filed electronically on OKTAP via oktap.tax.ok.gov.

What are Withholding Tax Audits?

Generally, there are two different types of withholding audits initiated by the OTC: under-filers and non-filers. An under-filer audit reviews withholding returns for taxpayers whose IRS Form W-3 reports withholding that is greater than the quarterly amounts paid in by a taxpayer/employer. A non-filer audit reviews withholding accounts for taxpayers who have not filed reports with the OTC.

Both audit types are initiated with an inquiry letter to the taxpayer requesting they contact the OTC and provide additional documentation.

How is an Audit Initiated?

Under-Filer Audits

The OTC auditor compares the IRS Form W-3 with the amounts reported and paid to the OTC on the quarterly WTH-10001 forms submitted during the calendar year. If there is a discrepancy between the two amounts reported, the inquiry letter details the difference. The following is an example:

Reported on IRS Form W-3 (box 17 for calendar year 2023)	\$1,500.00
Reported to the OTC for calendar year 2023	\$1,000.00
Difference	\$500.00

The letter asks the taxpayer to either amend the Oklahoma withholding return(s) and remit payment or provide a written explanation of why the variance is valid within 30 days.

Non-Filer Audits

If no withholding returns are found under the withholding account on file for the taxpayer, the taxpayer is considered a non-filer. The OTC auditor compares the IRS Form W-3 with the withholding amounts paid to the OTC during the calendar year on all the taxpayer's withholding accounts.

The inquiry letter to non-filers states that the business has a filing requirement for withholding and no returns have been filed for that tax year. The inquiry letter also asks for the tax identification number if returns have been previously filed to identify the correct withholding account. As with the under-filer inquiry letter, the taxpayer has 30 days to resolve the discrepancy by either filing the withholding return(s) or providing a written explanation.

What Happens After the Inquiry Letter?

If the issue identified in the inquiry letter is not resolved, the OTC will proceed with a withholding audit. During a withholding audit, the auditor may request documents from a taxpayer. The following documentation is the most requested:

- Copy of IRS Form W-2: Wage and Tax Statement
- Copy of IRS Form W-3: Transmittal of Wage and Tax Statements
- Copy of IRS Form W-2C: Corrected Wage and Tax Statement (date and signature by an officer or member of the company required)
- Copy of IRS Form W-3C: Transmittal of Corrected Wage and Tax Statements (date and signature by an officer or member of the company required)
- Copy of the Business Registration Form
- Copy of the Payroll Register
- Copy of the proof of sale or transfer of business ownership

During the audit process, there will be communication between the taxpayer and the OTC auditor. If a taxpayer does not respond timely to the inquiry letter, the withholding auditor will proceed with an audit based upon the best information available and issue an assessment letter to the taxpayer.

The assessment letter allows 60 days for the taxpayer to contact the OTC with additional information, pay the proposed tax due or protest the audit findings. Once the 60 days have passed, the audit tax becomes final, and the taxpayer will begin to receive billing notices regarding the amount owed.

Officer/Owner Assessments

As withholding is a trust tax, assessments for withholding audits are made against the business entity, as well as other person(s) who may be liable for the tax during the period. Persons liable include anyone who was responsible for the withholding and remittance of taxes, or had direct control, supervision, or responsibility for filing the returns, pursuant to OAC Sec. 710:90-5-3. These assessments are placed under the account of the responsible individual.

Common Errors Which Trigger Withholding Audits

Common errors in withholding tax filings generally fall within five areas: incorrect tax identification number, changes of ownership, payments not matching returns, W-3/W-2 reconciliations, and failure to file quarterly returns.

Incorrect Tax Identification Number

One mistake is filing the W-2/W-3 with a different tax identification number than the quarterly withholding filings. The OTC wage withholding tax accounts are linked to the federal identification number for the taxpayer. These withholding accounts can be associated with a variety of business entities, such as corporations, partnerships, etc. It is important to ensure that the withholding tax account is linked with the same tax identification number for both federal and Oklahoma filings. If a business has multiple withholding accounts, the correct account number needs to be used for both payments and returns.

Changes of Ownership

One of the most common errors found in withholding audits is the reporting accuracy of current owners/officers. Since withholding tax is a trust tax, the owners/officers are held personally responsible for the tax if the business fails to pay. Businesses should ensure the list of corporate officers and owners is correct within the OTC systems. If business ownership has changed, it is vital to notify the OTC with **Form BT-191 Change of Officer, Member, or Partner Notification**. If business ownership has changed and the OTC is not notified, officers who are no longer associated with the business may be personally assessed. Form BT-191 can be found on tax.ok.gov by selecting the Forms tab.

Payments Not Matching Returns

Any mismatching of payments to returns will result in an under-filer inquiry letter. The total payments made for each quarter need to match the total quarterly withholding return filed with the OTC. If there is a quarter with no activity, a zero dollar return needs to be filed.

W-3/W-2 Reconciliations

The yearly total for the quarterly withholding returns filed with the OTC needs to match the W-2/W-3 yearly total withholding filed with the IRS. If a business is not consistently filing quarterly returns with the OTC or if a business is not filing Oklahoma withholding returns (non-filer), a mismatch will occur.

Not Filing Oklahoma Quarterly Returns (Non-Filer)

If a business does not file Oklahoma quarterly returns, the business will be considered a non-filer. It is important for businesses to file quarterly, even if there is no payroll for the period. Employers should be diligent in maintaining all federal and state payroll filing requirements. Applicable interest and penalties are added to all withholding audit assessments.

By identifying common areas where withholding tax issues occur, taxpayers and their CPAs can review these issues to ensure compliance and avoid unnecessary penalties and interest that result from a withholding audit.