

# CHAPTER 1. ADMINISTRATIVE OPERATIONS

## SUBCHAPTER 3. PUBLIC POLICY

### PART 13. OTHER POLICY PROVISIONS

#### **710:1-3-80. Procedures for partial release of tax warrant or lien**

- (a) Partial release of a tax warrant or lien may be issued for adequate consideration under the following circumstances:
- (1) Where there is a short sale and the lien of an outstanding tax warrant is unenforceable or uncollectible due to the existence of a prior lien(s) held on the parcel of realty, and the amount of the outstanding prior lien(s) exceeds the amount such property would bring at a sale of the property for fair market value;
  - (2) Where the lien of an outstanding tax warrant is unenforceable or uncollectible due to the existence of a prior outstanding mortgage lien(s) held by the requesting party on the parcel of realty, and the amount of the outstanding mortgage lien(s) exceeds the amount such property would bring at a foreclosure sale;
  - (3) Where a mortgage lien(s) has been foreclosed in an action in a District Court but where there has been a failure to name the State of Oklahoma ex rel, Oklahoma Tax Commission as a party defendant in the foreclosure action and there exists no likelihood of collection or enforceability of a tax warrant against a particular parcel of realty;
  - (4) Where the holder of a mortgage lien(s) has taken a deed in lieu of foreclosure and there exists no likelihood of collection or enforceability of a tax warrant against a particular parcel of realty;
  - (5) Where the applicant is not the taxpayer named in the tax warrant and acquired a parcel of realty encumbered by an Oklahoma Tax Commission tax lien, whether it be at a County Tax Resale or any other situation where title was passed from the taxpayer named in the tax warrant to the applicant without properly extinguishing the tax warrant;
  - (6) Where there exists no likelihood of collection or enforceability of a tax warrant against a particular parcel of realty because the applicant does not have enough equity in the property to satisfy the tax warrant in full;
  - (7) Where the applicant seeks a subordination of an outstanding tax warrant to facilitate the refinancing of a prior mortgage; ~~or~~
  - (8) Where the denial of the partial release would result in an undue expense or hardship on the requesting party; ~~or~~ or
  - (9) Where the applicant is the taxpayer named in the tax warrant and is selling a parcel encumbered by the tax lien.
- (b) For purposes of this Section, under the situations described in (a) of this Section, "**adequate consideration**" for a partial release is defined as follows:
- (1) In a situation described in (a)(1), (a)(2) or (a)(3) of this Section, payment of ~~ten percent (10%)~~ 10% of the tax warrant inclusive of interest ~~and penalty, penalties, and fees,~~ provided such an amount is not less than ~~Five Hundred Dollars (\$500.00)~~ \$500.
  - (2) In a situation described in (a)(4) of this Section, payment of the principal tax liability and filing fees on the tax warrant, provided such an amount is not less than ~~Five Hundred Dollars (\$500.00)~~ \$500.
  - (3) In a situation described in (a)(5) ~~or~~, (a)(6), or (a)(9) of this Section, payment of all the net proceeds from the sale up to the amount needed to satisfy the tax warrant inclusive of interest, penalties, and fees; or 10% of the tax warrant, whichever is more, provided such amount is not less than \$500.
  - (4) In a situation described in (a)(7) of this Section, payment of all the equity extracted. If there is no equity being withdrawn, a payment equal to ~~ten percent (10%)~~ 10% of the tax warrant amount inclusive of both interest ~~and penalty, penalties, and fees,~~ is to be made, provided such amount is not less than ~~Five Hundred Dollars (\$500.00)~~ \$500.
  - (5) Pursuant to 68 O.S. Section 214, a tax warrant may be released without the payment of any consideration only when the Tax Commission determines that the warrant, certificate or judgment is clouding the title of such property by reason of error in the description of properties or similarity of names.
  - (6) In any case where the Commission shall determine that the amount prescribed by (1) through (5) of this subsection shall be excessive or inadequate, or in a situation described in (a)(8) or (a)(9) of this Section, then adequate consideration shall be such amount as the Commission shall ~~prescribe~~ determine to be a reasonable offer.

#### **710:1-3-84. Procedures for notice of excess proceeds from county property tax resale**

(a) Pursuant to 68 O.S. § 3131, when any tract or lot of land is resold by a county for more than the taxes, penalties, interest and cost due thereon, the county treasurer shall notify the Oklahoma Tax Commission within thirty (30) days after the resale. The notification shall be filed electronically in a form prescribed by the Tax Commission and shall contain all information necessary to determine whether a tax lien exists on the subject property, including:

- (1) County of property resale;
- (2) Tax warrant number;
- (3) Taxpayer information as listed on the tax warrant, including name and the last four digits of taxpayer social security number;
- (4) Name of individual who owned the property prior to sale;

(5) Full property street address; and

(6) Amount of excess proceeds from property tax resale.

(b) Within sixty (60) days of receipt of the notification outlined in (a), the Oklahoma Tax Commission shall provide notice to the county treasurer of any outstanding tax liabilities, including tax, penalty and interest, attached to each tract or lot of land, regardless of whether a tax warrant has been filed. If any outstanding liabilities exist, the Oklahoma Tax Commission shall include a payment voucher for the county to reference or include when remitting payment. The county treasurer shall remit payment to the Tax Commission in the amount of the outstanding tax liabilities or the excess proceeds, whichever is less, and shall associate all payments to a corresponding payment voucher.

## SUBCHAPTER 5. PRACTICE AND PROCEDURE

### PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS

#### 710:1-5-10.1. Protests / Demands for hearing

(a) A protest is described as a formal, written challenge to a proposed tax assessment or to the denial of a claim for refund of taxes paid. A taxpayer may challenge a proposed tax assessment through the filing of a letter of protest pursuant to 68 O.S. § 221(C). A letter of protest may also contain a request for hearing. A taxpayer may challenge the denial of a claim for refund through the filing of a demand for hearing pursuant to 68 O.S. § 227(D). The statutory requirements for perfecting a protest or claim for refund are governed, generally, by the provisions of the Uniform Tax Procedure Code (68 O.S. §§ 201 et seq.), except in the area of Income Tax (Article 23 of Title 68 of the Oklahoma States) which have additional, and in some instances, superseding, statutory requirements.

(b) All letters of protest and demands for hearing must be timely filed. The letter of protest or demand for hearing must be filed on, or before, the statutory deadline provided for filing to ensure that the taxpayer preserves its legal rights, including but not limited to a full hearing of the matter and a route for appeal if the matter is not resolved in favor of the taxpayer. A proposed assessment which is not protested within the time prescribed by statute is final and absolute. A denied claim for refund for which a demand for hearing is not filed within the time prescribed by statute is forever barred.

(c) Letters of protest of a proposed assessment must be filed within sixty (60) days of the issue date indicated on the proposed assessment pursuant to the provisions of 68 O.S. § 221(C). Letters of protest must should be filed with the taxing division, either online through OkTAP via the Protest link at tax.ok.gov, by mail addressed to ~~Oklahoma Tax Commission, Oklahoma City, OK 73102~~ the address indicated in the letter, or in person at the Taxpayer Resource Center located at 300 N. Broadway, Oklahoma City, OK 73102.

(d) Demands for hearing relating to denial of a claim for refund must be filed within sixty (60) days of the issue date indicated on the notice of denial. Demands for hearing must should be filed with the taxing division, either online through OkTAP via the Demand for Hearing link at tax.ok.gov, by mail addressed to ~~Oklahoma Tax Commission, Oklahoma City, OK 73102~~ the address indicated in the letter, or in person at the Taxpayer Resource Center located at 300 N. Broadway, Oklahoma City, OK 73102.

(e) Taxpayers may have discussions with the taxing division and submit additional documentation in an effort to resolve the matter, but such discussions and/or review of documentation does not remove the requirement or extend the deadline to file a written protest or demand for hearing within sixty (60) days of the date the assessment letter or denial of a claim for refund was issued.

(f) A taxpayer who fails to file a timely protest to a proposed assessment may, within one (1) year of the date the assessment becomes final, request the Tax Commission adjust or abate the assessment pursuant to 68 O.S. § 221(E) and the provisions of Part 7 of this Subchapter.

(g) Detailed procedural rules governing protests and demands for hearing may be found in 710:1-5-21 through 710:1-5-49, which set out rules of Practice and Procedure before the Office of the Administrative Law Judges.

### PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

#### 710:1-5-31. Administrative law judge to hear case [REVOKED]

— Hearings will be conducted by an Administrative Law Judge, who must be a licensed attorney at law, who has been appointed by the Oklahoma Tax Commission. The Administrative Law Judge shall have authority to conduct hearings, to examine witnesses, to rule upon motions, to rule upon the admissibility of evidence, to continue or recess any hearing, to control the record, and to make recommendations to the Oklahoma Tax Commission. If for any reason an Administrative Law Judge cannot continue on a case, the Commissioners shall designate another Administrative Law Judge with the above qualifications, who will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings.

#### 710:1-5-31.1. Jurisdiction and authority of Administrative Law Judge

(a) Hearing by Administrative Law Judge. Administrative proceedings filed pursuant to Subchapter 5 of this Chapter shall be heard by an Administrative Law Judge.

(b) Appointment. Administrative Law Judges shall be appointed by the Commission and shall be:

(1) A licensed attorney in the State of Oklahoma and maintain said licensure throughout the appointment; and

(2) Bound by the Code of Judicial Conduct set forth in 5 O.S. § Appendix 4.

(c) **Authority.** The authority of an Administrative Law Judge derives only from the Administrative rules as promulgated by the Commission, unless otherwise specified by statute. Administrative Law Judges have the authority under these Rules to:

- (1) Conduct hearings;
- (2) Examine witnesses;
- (3) Issue subpoenas pursuant to OAC 710: 1-5-33(1)(a);
- (4) Rule upon motions;
- (5) Rule upon admissibility of evidence;
- (6) Continue or recess any hearing;
- (7) Control the record;
- (8) Make findings, conclusions, and recommendations to the Commission; and
- (9) Any other authority specifically delegated by the Commission.

(d) **Recusal.** If an Administrative Law Judge cannot continue on a case for any reason, including conflicts of interests, another Administrative Law Judge shall be designated. The newly designated Administrative Law Judge shall:

- (1) Become familiar with the record;
- (2) Continue with the matter where the prior Administrative Law Judge ceased presiding over the case; and
- (3) Perform all necessary actions to proceed efficiently in issuing findings, conclusions, and recommendations to the Commission.

#### **710:1-5-34. Rules of evidence**

(a) **Rules governing; admissibility; objections.** The rules of evidence as applied in non-jury, civil cases in the district courts of this State shall be followed in administrative proceedings except when it is necessary to ascertain facts not reasonably susceptible of proof under those rules. In that event, evidence not admissible under the rules of evidence may be admitted, if it is of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The Administrative Law Judge shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, part or all of the evidence may be received in written form if the hearing will be expedited and the interest of the parties will not be substantially prejudiced.

(b) **Certification of evidentiary issues.** A party to the proceedings who objects to ~~a~~ an evidentiary ruling of the Administrative Law Judge may request and obtain certification ~~of the issue~~ to the Commission for a decision prior to the issuance of Findings, Conclusions and Recommendations by the Administrative Law Judge. ~~The signatures of the requesting party and the Administrative Law Judge must be upon the certification.~~

- (1) The party requesting Certification of the Issue shall file an Application for Certification of the Issue with the Commission along with a brief in support of the Application. The Application for Certification of the Issue shall be served on the opposing party as well as the Administrative Law Judge who issued the contested ruling.
- (2) The opposing party may reply to the Application for Certification of the Issue within fifteen (15) days after mailing of the Application.
- (3) The matter shall be stayed with the Administrative Law Judge, pending the decision on the Application by the Commission.
- (4) The burden to show the ruling made by the Administrative Law Judge is contrary to law or rule is upon the party seeking the Certification of the Issue.
- (5) Upon submission of the briefs or at the conclusion of the hearing, if so ordered, the Commission shall determine whether the Administrative Law Judge erred in making the ruling that led to the certification. After the determination is made, the stay will be lifted and the matter will be remanded to the Administrative Law Judge for further proceedings.

#### **710:1-5-39. The Record; Findings, conclusions and recommendations**

(a) **Record.** The Administrative Law Judge shall control the record. The initial record shall only consist of submissions made by the taxpayer(s) or authorized representatives of the taxpayer(s) and the General Counsel's Office. When forwarding a new protest to the Administrative Law Judge's Office, the division shall only forward the proposed assessment letter or refund denial letter and the protest of demand for hearing filed by the taxpayer or authorized representative. At the conclusion of the evidence, the Administrative Law Judge shall document in writing that the record is closed and submitted for decision. The final record shall consist of the following:

- (1) All evidence admitted, including oral testimony;
- (2) Pleadings and other documents filed by the Parties;
- (3) Matters taken under Official Notice;
- (4) Rulings made by the Administrative Law Judge during the pendency of the action;
- (5) Recordings of oral hearings; and
- (6) Nothing in this rule shall preclude a party from submitting an offer of proof.

(b) **Issuance.** When the record in an administrative proceeding is closed and submitted, the Administrative Law Judge ~~will~~ shall issue Findings, Conclusions and Recommendations (FCRs) within a reasonable time to the Tax Commission for its consideration. The Office of the Administrative Law Judges shall send copies of the FCRs to the parties. The Findings, Conclusions and Recommendations ~~will~~ shall include:

- (1) a ~~A~~ statement of facts;

(2) ~~the~~The issues and contentions;

(3) ~~conclusions~~ Conclusions based on the findings of fact and applicable law;; and

(4) A recommendation to the Tax Commission. ~~The parties to the proceeding will be mailed copies of the Administrative Law Judge's Findings, Conclusions and Recommendations.~~

(c) **No appeal.** No appeal may be based upon the Findings, Conclusions and Recommendations issued by the Administrative Law Judge, since only the Tax Commission may issue the final order from which an appeal may be brought.

**710:1-5-41. Decision and order of the Oklahoma Tax Commission**

The Tax Commission will issue a written order in each case whether or not application for oral argument is made. The Tax Commission may, in its discretion, vacate, modify, remand, or affirm, in part or whole, the recommendations of the Administrative Law Judge.