

CHAPTER 1. ADMINISTRATIVE OPERATIONS

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[Authority: 68 O.S. §§118(B), 203, 205(C)(7), 205.2(H), 212, 216.3, 216.4, 218(A), 219.1(H), 221.1, 236, 1406.1, and 1407.4(D); 75 O.S. §§302, 305, 307]

[Source: Codified 12-30-91]

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CHAPTER 1. ADMINISTRATIVE OPERATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

710:1-1-1. Purpose

(a) The provisions of this Chapter have been adopted for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq., and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature for the general maintenance and welfare of the State of Oklahoma.

(b) In particular, the purpose of Subchapter 1 is to set out a general description of the Oklahoma Tax Commission, review the functions performed by the Commission, and briefly present an overview of the statutory role of the Commission, its organization and structure.

(c) Any and all provisions in Title 710 of the Oklahoma Administrative Code which require actions to be taken by the Commission shall be contingent on availability of funding and should there be a reduction or elimination thereof, the Commission may reduce or suspend performance of the obligation until such time as funding is provided or secured.

[Source: Amended at 38 Ok Reg 1502, eff 9-1-21]

710:1-1-2. General description of the Oklahoma Tax Commission

(a) **History.** The Oklahoma Tax Commission, from its inception in 1931, has been responsible for the collection and administration of various tax sources and the apportionment of these revenues to state funds which provide monies for education, transportation, recreation, social welfare, and the myriad of other services provided for the citizens of Oklahoma.

(b) **Composition.** The Tax Commission is comprised of three members (Chairman, Vice Chairman, and Secretary-Member) who are appointed by the Governor with the advice and consent of the State Senate and serve terms of six years each. The Commission appoints an administrator who is the administrative officer of the Tax Commission and manages the activities of its employees. The title of the administrative officer shall be Executive Director.

(c) **Duties.** It is the Commission's responsibility to supervise the administration and enforcement of state tax laws and the collection of a majority of all state-levied taxes and fees. The Commission directs the collection and distribution of the tax and license sources under its administration and, by statute, is responsible for apportioning such tax revenues to the various state funds. In addition, the Oklahoma Tax Commission allocates directly to local units of government certain state-collected levies earmarked to counties, school districts and municipalities. On a contract basis with individual municipalities and counties, the Tax Commission is involved with the administration, collection and distribution of city and county sales taxes and use taxes.

(d) **Areas of administration.** The public may make submissions and requests to the Commission in the following areas of taxation and licensing:

- (1) Admission Tax
- (2) Aircraft Excise Tax
- (3) Aircraft License Fee
- (4) Alcoholic Beverage Tax
- (5) Amateur Radio Operators License Plate
- (6) Bingo Tax
- (7) Charity Games Tax
- (8) Cigarette Tax & License
- (9) Coin Device Decals and Distributor Permits
- (10) Compressed Natural Gas
- (11) Computer Enhancement Fund
- (12) Controlled Dangerous Substances Tax Stamps
- (13) County Clerk Fees
- (14) Diesel Fuel Excise Tax
- (15) Documentary Stamp Tax
- (16) Driving Record Fee
- (17) Energy Resources Assessment
- (18) Farm Implement Tax Stamp
- (19) Franchise Tax
- (20) Freight Car Tax
- (21) Gasoline Excise Tax
- (22) Gross Production Tax
- (23) Horsetrack Gaming Fees
- (24) Income Tax
- (25) Income Tax – Check-Offs
- (26) Liquefied Natural Gas
- (27) Medical Marijuana Excise Tax
- (28) Mixed Beverage Gross Receipts Tax
- (29) Motor Vehicle Collections
- (30) Motor Vehicle Rental Tax
- (31) Multiple Injury Trust Fund
- (32) Nascar License Plates
- (33) 911 Wireless Telephone Fee
- (34) Occupational Health & Safety Tax
- (35) Oklahoma Tax Commission Reimbursement
- (36) Organ Donor Program
- (37) Pari-Mutuel Tax
- (38) Petroleum Excise Tax
- (39) Pick Six/Seven Tax
- (40) Printing and Revolving Account
- (41) Professional Sporting Event Ticket Fees
- (42) Public Services Penalties
- (43) Registered Agents Fee

- (44) Rural Electric Co-op Tax & License
- (45) Sales Tax
- (46) Sales Tax Permits
- (47) Sales Tax Vendor's Lists
- (48) Special Fuel Decals
- (49) Special Fuel Use Tax
- (50) Special License Plates
- (51) Special Printing Account
- (52) Storage Leakage Fund
- (53) Sustaining Energy Resources Fee
- (54) Telecommunications for the Hearing-Impaired Surcharge
- (55) Tobacco Products Tax & License
- (56) Transport & Reclaimer License Fees
- (57) Tribal Cigarette & Tobacco Payments
- (58) Unclassified Receipts
- (59) Use Tax
- (60) Used Tire Recycling Fee
- (61) Vehicle Revenue Tax Stamps
- (62) Warrant Release Filing Fee
- (63) Wire Transmittal Fee
- (64) Workers' Compensation – Insurance Premium Tax
- (65) Workers' Compensation – Self-Insurance Guaranty Fund

(e) **Main offices.** The main offices of the Oklahoma Tax Commission are located at 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma 73102 (405)521-3160.

[**Source:** Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 24 Ok Reg 1688, eff 6-11-07; Amended at 29 Ok Reg 685, eff 5-25-12; Amended at 38 Ok Reg 1502, eff 9-1-21]

710:1-1-3. Statutory citation

Citations to statutes in this Title refer to the last codification of the statute, unless such reference results in a clearly erroneous construction, or where a provision expressly designates otherwise. Statutory references contained in emergency rules and in rules which are not yet finally adopted, but are currently within the promulgation process, will generally refer to the most recent codification.

SUBCHAPTER 3. PUBLIC POLICY PART 1. GENERAL PROVISIONS

710:1-3-1. Purpose

The provisions of Subchapter 3 are intended to describe general, uniform policies which are applicable to all tax types, except where other policy is clearly indicated by statute, controlling case law, or separate, specific Code provision.

710:1-3-2. Required forms and where available

(a) The Oklahoma Tax Commission utilizes a wide variety of forms in the administration of the tax laws. Oklahoma tax forms may be accessed through the Tax Commission website at www.tax.ok.gov.

(b) The Tax Commission may require any person filing a report or return required by the provisions of any state tax law to file the report or return by electronic means or may allow, upon a written request, a taxpayer to file a return on paper that is required to be filed electronically. [68 O.S. § 203]

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 24 Ok Reg 1688, eff 6-11-07]

PART 3. TAXPAYER IDENTIFICATION

710:1-3-5. Intent of rule

The inclusion of Federal Employer's Identification or Social Security Account Numbers (or both) on filings with the Commission is solely for identification purposes.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-3-6. Use of Federal Employer Identification Numbers and other identification numbers mandatory

All returns, applications, and forms required to be filed with the Oklahoma Tax Commission (Commission) in the administration of this State's tax laws shall bear the **Federal Employer's Identification Number(s)**, the **Taxpayer Identification Number**, and/or other government issued identification number of the person, firm, or corporation filing the item and of all persons required by law or agency rule to be named or listed.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 26 Ok Reg 2320, eff 6-25-09; Amended at 27 Ok Reg 127, eff 10-1-09 (emergency); Amended at 27 Ok Reg 2272, eff 7-11-10; Amended at 32 Ok Reg 1330, eff 8-27-15]

710:1-3-7. Checks made payable to the Oklahoma Tax Commission; use of Federal Employer Identification Numbers, Social Security Numbers mandatory [REVOKED]

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99; Revoked at 32 Ok Reg 1330, eff 8-27-15]

710:1-3-8. Confidentiality of records

All Federal Employer's Identification and/or Social Security Account Numbers are deemed to be included in the confidential records of the Commission.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-3-9. [RESERVED]

710:1-3-10. [RESERVED]**710:1-3-11. [RESERVED]****710:1-3-12. [RESERVED]****710:1-3-13. [RESERVED]****710:1-3-14. [RESERVED]****710:1-3-15. Use of driver license number; exception**

(a) All returns, applications, and forms required by the Oklahoma Vehicle Licensing and Registration Act shall bear the driver license number of the person submitting the return, application, or form.

(b) All checks made payable to the Oklahoma Tax Commission for fees required under the Oklahoma Vehicle Licensing and Registration Act shall bear the driver license number of the person issuing or drawing the check, or of the person on whose behalf the check is written.

(c) Other current and valid identifier, acceptable by the receiving authority, may be submitted on the return, application, form, or check described in subsections (a) and (b) of this Section, if the person has no driver license. [See: 47 O.S. §1144]

PART 5. FILING AND MAILING OF DOCUMENTS**710:1-3-30. Timely filing**

(a) **General definition.** When the last date for filing any document or performing any act required by the Oklahoma Tax Commission falls on a day when the offices are not open for business, the filing of the document or performance of the act shall be considered timely if it is performed by the end of the next business day.

(b) **When filing is by mail, timely filing shall be defined as follows.** If any claim, statement, or other document required by law or agency rule to be filed within a prescribed period, or on or before a prescribed date, is delivered after the prescribed period or date by the United States Postal Service or other delivery service designated by OAC 710:1-3-33 to the Oklahoma Tax Commission, at 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma 73102, the date of the United States postmark, stamped on the cover in which the claim, statement, or other document is mailed or the date recorded pursuant to OAC 710:1-3-33 by a designated delivery service shall be considered to be the date of delivery.

(c) **Application.** This provision shall apply:

- (1) Determined with regard to any extension of time granted for the filing;
- (2) Only if the postmark date or date recorded by a designated delivery service falls within the prescribed period, or on or before the prescribed date

for filing the claim, statement, or other document; and,

(3) Only if the claim, statement, or other document was, within the prescribed time, deposited in the mail in the United States or placed with a designated delivery service, in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, office, or officer with which the claim, statement, or other document is required to be filed.

[Source: Amended at 22 Ok Reg 1514, eff 6-11-05]

710:1-3-31. Sender assumes risk of untimeliness of mail

(a) The sender who relies upon the applicability of the definition of **timely filing** in 710:1-3-30 by mailing a claim, statement, or other document, assumes the risk that the postmark will bear a date, on or before the last date or day, of the period prescribed for filing the document.

(b) If the postmark on the envelope or wrapper is not legible or the envelope is unavailable, the person who is required to file the document has the burden of proving when the postmark was made or when the claim, statement, or other document was placed for delivery with a designated delivery service.

[See: OAC 710:1-3-33]

[Source: Amended at 22 Ok Reg 1514, eff 6-11-05]

710:1-3-32. Documentation to avoid risk of untimeliness

(a) If a document is sent by United States Registered Mail or by a delivery service designated in OAC 710:1-3-33, the date of registration of the document shall be treated as the postmark date.

(b) If a document is sent by United States Certified Mail or by a delivery service designated in OAC 710:1-3-33, and the sender's receipt is dated by the service's employee, the date on the receipt shall be treated as the postmark date of the document.

[Source: Amended at 22 Ok Reg 1514, eff 6-11-05]

710:1-3-33. Designated delivery service

(a) For purposes of filing any document or performing any act required by the Oklahoma Tax Commission, in addition to the United States Postal Service (USPS), the Commission may designate delivery services that are substantially equivalent to USPS registered or certified mail.

(b) To qualify as a designated delivery service, the service must:

(1) Be available to the general public;

(2) Be as timely and reliable, on a regular basis, as the USPS; and,

(3) Record electronically to its data base, kept in the regular course of business, the date on which the item was given to the service for delivery; or,

(4) Mark on the cover of the item to be delivered, the date on which the item was given to the service for delivery.

(c) The private delivery services set out in this subsection have been

designated by the Tax Commission as meeting the required standards prescribed in (b) of this Section.

- (1) Airborne Express (Airborne)
 - (A) Overnight Air Express Service
 - (B) Next Afternoon Service
 - (C) Second Day Service
- (2) DHL Worldwide Express
 - (A) DHL "Same Day" Service
 - (B) DHL USA Overnight
- (3) Federal Express (FedEx)
 - (A) FedEx Priority Overnight
 - (B) FedEx Standard Overnight
 - (C) FedEx 2 Day
 - (D) FedEx International Priority
 - (E) FedEx International First
- (4) United Parcel Service (UPS)
 - (A) UPS Next Day Air
 - (B) UPS Next Day Air Saver
 - (C) UPS 2nd Day Air
 - (D) UPS 2nd Day Air A.M.

(d) Only the designated private delivery services and the types of services listed in (c) of this Section qualify for consideration under the "timely filing" provision in 68 O.S. § 221.1. The designated private delivery services listed in this Section are effective until the Commission amends the list.

(e) The "timely filing" rule, OAC 710:1-3-30, does not apply if a taxpayer uses a business that contracts with a designated delivery service, but the business is not itself a designated delivery service.

[Source: Added at 22 Ok Reg 1514, eff 6-11-05]

PART 7. TAXPAYER PAYMENTS

710:1-3-40. Allocation of voluntary payments to delinquent tax, penalty, interest [REVOKED]

[Source: Revoked at 10 Ok Reg 3819, eff 7-12-93]

710:1-3-41. Taxpayer may request particular allocation [REVOKED]

[Source: Revoked at 10 Ok Reg 3819, eff 7-12-93]

710:1-3-42. Interest [REVOKED]

[Source: Revoked at 10 Ok Reg 3819, eff 7-12-93]

710:1-3-43. Effective date of this Part [REVOKED]

[Source: Revoked at 10 Ok Reg 3819, eff 7-12-93]

710:1-3-44. Payment of tax, penalty and interest under protest [REVOKED]

[Source: Revoked at 10 Ok Reg 3819, eff 7-12-93]

710:1-3-45. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Involuntary payment" means any payment received by the Commission as a result of or in connection with any distraint, levy, seizure, attachment or garnishment, or any other legal proceeding or administrative action wherein the Commission seeks to collect or enforce the collection of a tax liability or to file a claim therefor. Such proceedings and actions include, but are not limited to, bankruptcy proceedings, the filing and forwarding of tax warrants directing the levy and sale of property, and any administrative action or proceeding wherein the Commission proposes to revoke, cancel, suspend or deny any license, permit or privilege because of an outstanding tax liability. Payments made pursuant to an installment or "payout" agreement entered into as a result of or subsequent to the institution of any of the above collection measures are deemed involuntary payments.

"Liability period" means the reporting period of a delinquent tax or tax liability, or, in the case of tax liabilities determined as a deficiency, all reporting periods included in the assessment of such deficiency. For purposes of determining the earlier of two or more liability periods, the beginning date of each liability period is used.

"Partial payment" means any payment to or receipt by the Commission of an amount less than sufficient to pay in full all tax liabilities of the taxpayer.

"Tax liability" means delinquent taxes and tax amounts determined as a deficiency, and includes all penalties, interest, service charges and fees accrued and accruing in relation thereto.

"Voluntary payment" means a payment made prior to or in the absence of any legal proceeding or administrative action in or by which the Commission seeks to collect or enforce the collection of a tax liability. Payments made pursuant to an agreement voluntarily entered into between the taxpayer and the Commission prior to such legal proceeding or administrative action will continue to be deemed as voluntary payments only so long as the taxpayer remains in full compliance with the terms of such agreement.

[Source: Added at 10 Ok Reg 3819, eff 7-12-93]

710:1-3-46. Partial payment of tax liabilities; allocation to taxes, penalties, interest, service charges, and fees

(a) **Voluntary payments.** Voluntary partial payments of tax liabilities will be applied to such liabilities in the manner designated by the taxpayer, where the

taxpayer provides specific written instructions for the application of such payments. If the taxpayer fails to give specific written instructions for the application of a voluntary partial payment, the Commission will allocate and apply such payment in the same manner as provided for involuntary payments.

(b) **Involuntary payments.** The taxpayer has no right to direct or designate the allocation or application of an involuntary payment. In all instances, the Commission will allocate and apply involuntary partial payments in the manner which, in the discretion of the Commission, will best serve the interests of the State. Generally, unless the Commission determines that a different allocation will better serve the State's interests, involuntary partial payments will be allocated and applied in the following manner:

(1) First, to the tax portion of non-trust fund tax liabilities, beginning with the earliest such liability period, and then to the tax portion of each succeeding liability period until all non-trust fund taxes are paid;

(2) Next, to the tax portion of all trust fund tax liabilities, beginning with the earliest such liability period, and then to the tax portion of each succeeding liability period until all trust fund taxes are paid;

(3) Next, to the interest, penalties, service charges, and fees, in that order, associated with non-trust fund tax liabilities, beginning with the earliest such liability period, and then in the same order for each succeeding liability period(s) until all interest, penalties, service charges, and fees associated with non-trust fund tax liabilities have been paid;

(4) Next, to the interest, penalties, service charges, and fees, in that order, associated with trust fund tax liabilities, beginning with the earliest such liability period, and then in the same order for each succeeding liability period(s) until all interest, penalties, service charges, and fees associated with trust fund tax liabilities have been paid.

[Source: Added at 10 Ok Reg 3819, eff 7-12-93; Amended at 12 Ok Reg 139, eff 9-29-94 (emergency); Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 22 Ok Reg 1515, eff 6-11-05]

710:1-3-47. Payment under protest

In any case where a taxpayer files a written protest to a proposed assessment as provided by 68 O.S. §221, the taxpayer may pay the tax amounts proposed to be assessed and designate such payment as being made under protest. Such payment will stop the accrual of interest on the amounts so paid. If the Commission sustains the protest, in whole or in part, the amount determined by the Commission not to be due shall be refunded to the taxpayer, without interest, except as otherwise provided by law.

[Source: Added at 10 Ok Reg 3819, eff 7-12-93]

710:1-3-48. Payment of taxes by credit card

(a) "**Nationally recognized**" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in

obtaining goods, services or anything else of value on credit which is accepted by over one thousand merchants in this state. The Oklahoma Tax Commission shall determine which nationally recognized credit cards will be accepted for payment of taxes. Currently Discover, American Express, Visa and MasterCard are accepted.

(b) Implementation of payment by credit card will be phased in over a period of time as determined by the Commission.

(1) Initially, payment of taxes by credit card will only be allowed at the current designated receiving points or by designated agents.

(2) When tax return forms are modified to include credit card information in a designated area on the form, payment by this method will be accepted when the tax return document is submitted.

(c) The Tax Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(1) If a taxpayer is at a designated receiving point and credit is not available, the taxpayer then has the opportunity to pay by other methods accepted by the Commission.

(2) If the taxpayer mails the credit card information with their return and credit is not available, the return will be handled as a document with no remittance and a bill will be forthcoming.

(d) The Tax Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card.

(e) Credit card payments should not be mixed with other type payments, i.e. checks, cash.

(f) The Commission will contract a third party to process credit card transactions who will place monies received into the Commission's account with the State Treasurers Office and report such payments to the Commission.

(g) Taxpayers wishing to pay by credit cards must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, and card holder name as shown. The Commission assumes no liability for unauthorized use of this information.

[Source: Reserved at 10 Ok Reg 3819, eff 7-12-93; Added at 11 Ok Reg 3465, eff 6-26-94]

PART 9. EXECUTION OF TAX WARRANTS

710:1-3-50. Purpose

The intent of this Part is to provide an efficient system for the collection of taxes evidenced by tax warrants and to provide for the prompt disbursement to sheriffs of fees and expenses authorized by law. [See: 68 O.S. §231.1]

710:1-3-51. Execution on tax warrant and collection of sheriff's penalty

The Sheriff shall execute all warrants as provided by law. All monies so

collected shall be made payable to the Oklahoma Tax Commission. The Sheriff's office is entitled under the law to an amount of money equal to an additional penalty of Fifteen Dollars (\$15.00), or an amount equal to Ten Percent of the total amount of tax, penalty, and interest collected in the execution of a tax warrant, whichever amount is greater, but not to exceed \$200.00, to be paid to the County Sheriff's Office after collection of the amounts due by the Sheriff, Undersheriff, or Deputy Sheriff.

(1) The penalty imposed shall not be assessed or collected more than once for the execution of a tax warrant in each county.

(2) The penalties paid to the sheriff are to be used by the sheriff's department to increase efforts to locate tax debtors and their property, to execute upon tax warrants, and to collect delinquent taxes.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-3-52. Execution and collection duty; return of voucher

Tax warrants for delinquent tax, penalty and interest will be issued by the Oklahoma Tax Commission. Once issued by the Commission, the warrants will be filed by the county clerk and forwarded to the county sheriff. The sheriff is to actively pursue collection of each warrant delivered.

710:1-3-53. County sheriff Collection duty

In execution of tax warrants, and to qualify for collection fee disbursement pursuant to this Rule, the county sheriff's activity shall include, but not be limited to: phone contacts, letters, and personal visits. The sheriff must be able to document the date and type of contact made for each tax warrant for which the sheriff is claiming a fee.

710:1-3-54. Release of tax warrants

A tax warrant issued by the Oklahoma Tax Commission shall only be released by the Commission, after a determination by the Income Tax Accounts Division of the Oklahoma Tax Commission that:

(1) The tax, penalty and interest to date has been paid in full.

(2) The penalty imposed by law and all other fees authorized by law have been paid in full.

(3) Such release shall be processed under Commission procedures, after clearance by the Income Tax Accounts Division.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-3-55. Procedures for remittance and deposit of collections; apportionment; recordkeeping

(a) All tax warrants collected upon by a county sheriff must be returned monthly, attached to a tax warrant summary sheet. Each tax warrant collection summary sheet must have a check attached for the total collected, including collection fee.

(b) All collections shall be deposited within 48 hours of collection to a separate account in the county, maintained by each sheriff and used exclusively for these deposits.

(c) Each month, the sheriff will forward a check, attached to a collection summary sheet, to the Commission.

(d) The Commission shall process, account for and disburse the funds as provided by law. The checks transferred to the Commission shall be deposited in the Oklahoma Tax Commission Fund.

(e) The sheriff's fee shall be apportioned and returned to the sheriff as soon as practicable after deposit and verification that payment of tax, penalty, interest and fees has been made in full.

(f) Sheriffs shall maintain records of deposits made to the Oklahoma Tax Commission fund. Such records shall be kept on forms prescribed by the Commission and be submitted in the manner specified by the Commission for verification of disbursements.

710:1-3-56. Collection fee attaches to tax warrant

A sheriff's collection fee will attach to the tax warrants and accrue for payment on a case-by-case basis. If the taxpayer remits the face amount of the warrant directly to the Commission, the Commission will determine whether the collection fee has attached and either release the warrant, or request the sheriff to pursue additional collection efforts to collect the fee. Any discrepancy shall be resolved by the Commission, and will be final and binding on the sheriff and the taxpayer. If a sheriff is aggrieved, the sheriff may ask the Commission to adjust its determination.

710:1-3-57. Collection fee subject to audit

All sheriff's collection fees are subject to audit.

710:1-3-58. Time limit for collection and return of warrant

Sheriffs shall collect and return warrants assigned to them within 60 days after filing of the warrant.

710:1-3-59. Taxpayer bankruptcy

If a sheriff, during execution of a warrant, learns that the taxpayer has filed bankruptcy and has not yet been discharged, the sheriff shall write the bankruptcy case number on the warrant and return it to the Commission.

710:1-3-60. Verification of discrepancies

In some cases, the amount to be collected on a warrant will be less than the amount shown on the face of the warrant, due to partial payment or an intercepted refund claim. In these cases, the sheriff shall verify the correct amount due with the Warrant Office.

710:1-3-61. Validity of tax warrant

Any questions about the validity of a tax warrant, (i.e. wrong name, wrong business, incorrect address, etc.) should be referred to the Income Tax Accounts Division.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-3-62. Instructional material available to sheriffs

Each sheriff's office will be provided with a detailed instruction packet and forms approved and distributed by the Commission.

PART 11. PUBLIC RECORDS

710:1-3-70. Records in general

(a) **Confidentiality of records.** Generally, the law provides that the records and files of the Oklahoma Tax Commission are confidential except as specifically provided otherwise by statute. [See: 68 O.S. § 205]

(b) **Classes of exceptions to the general rule of non-disclosure.** Certain documents are available to the public by specific exception to the general law set out in (a) of this Section. In addition, some documents are considered public in nature, pursuant to the Open Records Act. [See: 68 O.S. §§ 205, 205.2, 205.5 and 205.6; 51 O.S. § 24A.4]

(c) **Records available under specific provisions of law.** By specific statutory mandate and by exceptions to the general rule of confidentiality set out in 68 O.S. § 205, there are a number of sources of information available to the public and maintained by the Commission.

(1) **List of income tax filers.** A list of persons who filed Oklahoma income tax returns is prepared annually and made available for inspection at the Taxpayer Resource Center, 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

(2) **Register of tax warrants filed.** A register of current outstanding tax warrants issued is updated monthly and made available for inspection at the Taxpayer Resource Center, 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

(3) **Oklahoma aircraft registry.** A list of aircraft registered with the state is maintained and available for public inspection at the Taxpayer Resource Center, 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

(4) **Decedents' list.** A list of decedents within the state, county of probate, and probate number is maintained and available for public inspection at the Audit Services Division, 300 N. Broadway Ave, Oklahoma City, 73102 OK during normal business hours.

(5) **Permits, licenses, exemptions.** Information regarding the issuance or revocation of licenses and permits and documents evidencing exemption are available for most applicable tax types. The elements or items of information available regarding permits, licenses and exemptions may vary by tax type. In addition, the format in which a particular record is available

may be limited to that normally used by the agency. Items of permit-related information may include permit number, permittee name, name of business, and business address. Inquiries should be made to the Business Tax Services Division.

(d) **Limited disclosure in some instances.** Some records and information from records maintained by the Commission may be accessible only by certain persons, or for certain limited uses. In these instances, the release of information must be one permissible by statute. The Commission may require that the request be written and may require supporting documentation or identification, if the release of information sought is one statutorily limited in scope.

(e) **Requesting records; fees.** Where a person desires the Commission to make photocopies of public records, the request should be made in writing, specifying the record requested. The Commission may collect a fee for the copying of records, as well as other fees required by statute, and may structure the manner of response to requests so as to protect the normal business of the agency from undue disruption or delay. [For specific fee information, see Appendix A of this Chapter, Schedule of Fees.]

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-3-71. Rules of the Oklahoma Tax Commission

(a) **Rules described.** "Rules" of the Oklahoma Tax Commission are formal statements of policy which set out procedures to be followed in the administration of various tax levies and fees. Rules describe broad interpretations of the tax laws, often prescribe forms, and may set out informal and formal procedures for filing, remitting, registering and objecting to the various taxing provisions. Rules may also prescribe procedures for the granting, denial, suspension, renewal, or revocation of various permits and licenses administered by the Commission. Rules are subject to the provisions of Article I of the Oklahoma Administrative Procedures Act (APA), in Title 75 of the Oklahoma Statutes and must be promulgated under the terms of the APA before they are considered effective. Rules which have been promulgated have the full force and effect of law and continue in effect until amended or revoked under APA provisions.

(b) **Availability.** Current rules, both permanent and emergency, of the Oklahoma Tax Commission are available on the Oklahoma Tax Commission website at www.tax.ok.gov or from the Taxpayer Resource Center, 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

[Source: Amended at 22 Ok Reg 1515, eff 6-11-05]

710:1-3-72. Decisions of the Oklahoma Tax Commission

(a) **Decision defined.** A "**decision**" of the Oklahoma Tax Commission means a final determination in an adversarial hearing on an individual tax protest or

claim, including a Commission order in writing which is made, entered, and mailed to a taxpayer pursuant to the provisions of the Uniform Tax Procedure Code (68 O.S. § 201, et seq.). Decisions initially rendered from individual tax hearings are considered confidential records. However, decisions from individual tax hearings are available to the public under the grant of authority set out in 68 O.S. § 221 and the mandate of Section 302(A)(4) of Title 75 of the Oklahoma Statutes (Administrative Procedures Act).

(b) **Confidentiality.** To protect the identity of individuals, the decisions of the Oklahoma Tax Commission available for examination by the public utilize fictitious names or have had names and identifying features removed, leaving intact the factual statement, the statement of applicable law, the findings of the Commission, and the disposition of the protest or claim.

(c) **Applicability.** Decisions of the Oklahoma Tax Commission may be broadly categorized into two groups: Precedential and Non-precedential. A Precedential decision is one in which the findings are applicable to a broad spectrum of taxpayers and in which the interpretation of law embodied in the holding may appropriately be relied upon prospectively by the Commission and by the public. A Non-precedential decision is generally one in which the rule of law expressed is unique to the fact situation of the particular case.

(d) **Availability.** Decisions are available from the Administrative Proceedings Section, 3700 North Classen Boulevard, Suite 260, Oklahoma City, Oklahoma, during normal business hours and may be accessed through the Tax Commission website at www.tax.ok.gov.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 22 Ok Reg 1515, eff 6-11-05; Amended at 24 Ok Reg 1688, eff 6-11-07]

710:1-3-73. Opinions and letter rulings

(a) **Opinions not issued by the Commission.** An "opinion" is a formal document, generally prepared by legal counsel, expressing conclusions that interpret or apply the law to a set of assumed facts. As so defined, the Oklahoma Tax Commission does not issue opinions. However, legal counsel may prepare such a document to advise the Commission or a taxing Division within the Commission.

(b) **"Opinion" defined.** Thus, an "opinion," with respect to the Oklahoma Tax Commission, means a written communication embodying formal legal advice, upon which the Commission may base, in whole or in part, administrative decisions, decisions in individual tax proceedings, or prospective policy decisions. Opinions, being advisory to the Commission, do not constitute authority by any party for challenging any matter pending before the Commission.

(c) **Opinion may impact policy, rulemaking.** To the degree that a policy of the Commission, based upon such a legal opinion, impacts broad segments of taxpayers and is to be given future effect by the Commission, such policy may be promulgated as a rule of the Commission.

(d) **Availability of opinions.** Such opinions as may be made available to the

public, pursuant to the provisions of Section 302(A)(4) of Title 75, as further defined and limited by the terms of Section 24A.1, et seq. of Title 51, will be limited to those which are, or will be embodied in policy of the Commission.

(e) **"Letter ruling" described.** The Tax Policy and Research Division and the Office of the General Counsel may draft and issue letter rulings, which are informal written statements of policy or treatment of specific fact situations under Oklahoma tax law. Such a letter ruling may generally be relied upon only by the taxpayer to whom it is issued, provided that all facts have been accurately and completely stated, and that there has been no change in applicable law.

(f) **Requests for letter rulings.** Requests by individuals or groups of taxpayers for letter rulings will be honored by the Commission, at its discretion, and in consideration of the time and resources available to respond to such requests. Requests for letter rulings should be made to the Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194.

(g) **Letter ruling may initiate rulemaking.** To the degree that a letter ruling impacts broad segments of taxpayers and is to be given future effect by the Commission, such letter ruling may become the basis for a rule of the Commission.

(h) **Availability of letter rulings.** Letter rulings may be viewed at the Taxpayer Resource Center, 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 26 Ok Reg 2320, eff 6-25-09]

710:1-3-74. Public records available under other provisions of law [REVOKED]

[Source: Revoked at 10 Ok Reg 3819, eff 7-12-93]

710:1-3-75. Fees for copying, retrieval, reproduction, and certification of public documents [REVOKED]

[Source: Revoked at 10 Ok Reg 3819, eff 7-12-93]

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 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; or

(7) Where the denial of the Partial Release would result in an undue expense or hardship on the requesting party.

(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%) of the Tax Warrant inclusive of interest and penalty, provided such an amount is not less than Five Hundred Dollars (\$500.00).

(2) In a situation described in (a)(4) of this Section, payment of the principal tax liability on the Tax Warrant, provided such an amount is not less than Five Hundred Dollars (\$500.00).

(3) In a situation described in (a)(5) of this Section, payment of all of the net proceeds from the sale.

(4) 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.

(5) In any case where the Commission shall determine that the amount prescribed by (1) through (4) of this subsection shall be excessive or inadequate, then adequate consideration shall be such amount as the Commission shall prescribe.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 36 Ok Reg 1197, eff 8-11-19]

710:1-3-81. Irrevocable letter of credit in lieu of bond [REVOKED]

[Source: Revoked at 13 Ok Reg 3091, eff 7-11-96]

710:1-3-82. Calculation of amount of nonresident contractor bond to be posted

(a) Along with the notice of contract and a bond in the penal sum of three times the tax liability incurred or to be incurred by a nonresident contractor with a contract in excess of One Hundred Thousand Dollars (\$100,000.00), an estimation for the tax liabilities incurred or to be incurred is to be filed on a form or in a format as required by the Oklahoma Tax Commission, setting out the tax base and the estimated tax liability, to include, but not be limited to the following taxes, as applicable:

- (1) Ad valorem taxes
- (2) Aircraft excise taxes and registration fees
- (3) Employment security tax
- (4) Employee withholding tax
- (5) Franchise tax
- (6) Income tax
- (7) Motor fuel tax
- (8) Motor vehicle excise taxes and registration fees
- (9) Sales and use tax
- (10) Payments for worker's compensation coverage

(b) In the absence of the filing of the estimation of tax liability required above, it will be presumed that the bond required to be filed will be ten percent (10%) of the amount of the contract less the amount of any bonds posted by any subcontractors who are also nonresident contractors.

[Source: Added at 12 Ok Reg 2923, eff 7-14-95; Amended at 22 Ok Reg 1516, eff 6-11-05]

710:1-3-83. Increases in amount of nonresident contractor bond to be posted

If a nonresident contractor who has posted a bond in accordance with Rule 710:01-03-82, enters into other contracts to perform services or duties in this state, or if in the judgment of the Oklahoma Tax Commission the amount of tax liability incurred or to be incurred has increased from the amount used to compute the amount of the original bond, the bond shall be increased so that the total bond shall be equal to three times the increased tax liability. In the case of the nonresident contractor entering into one or more contracts subsequent to the posting of the original bond, but prior to the sending of a Notice of Completion of the original contract, the bond required shall be in an amount equal to three times the sum of the estimated tax liabilities for all contracts on which a Notice of Completion has not been filed.

[Source: Added at 12 Ok Reg 2923, eff 7-14-95]

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 1. GENERAL PROVISIONS

710:1-5-1. Purpose

The provisions of Subchapter 5 have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§302, 305, and 307. The various procedural processes, both formal and informal, by which a party aggrieved by any action of the Commission in the performance of its functions may seek a remedy are described in Subchapter 5.

(1) The provisions of Part 3 are intended to **describe** the various procedures, both formal and informal, by which a taxpayer may seek redress of a grievance or seek to have a particular suggestion or complaint considered by the Commission, pursuant to the various remedial avenues provided by statute.

(2) The provisions of Part 5 of this Subchapter **prescribe** the formal Rules of Practice and Procedure before the Office of the Administrative Law Judges, particularly with respect to protests of tax assessments and protests of denials of claims for refunds of taxes paid.

(3) The provisions of Part 7 govern the procedures for the consideration and disposition of a request for an abatement or adjustment of an alleged erroneous tax assessment.

(4) Finally, Part 9 of this Subchapter addresses procedures which govern the administrative proceedings dealing with the granting, suspension, and revocation of various permits and licenses which fall within the administrative purview of the Commission.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93]

PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS

710:1-5-10. Tax protests and claims for refund

(a) A **protest** may be described as a formal, written challenge to a proposed tax assessment or to the denial of a claim for refund of taxes paid. 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 areas of Income Tax (Article 23 of Title 68 of the Oklahoma Statutes) and Estate Tax (Article 8 of Title 68 of the Oklahoma Statutes) which have additional, and in some instances, superseding, statutory requirements.

(b) There are several routes available, both formal and informal, to a taxpayer in objecting to an assessment. Prior to the filing of a protest, the issues may be resolved by further discussion with the assessing tax division. Challenged assessments or audits may be amended or adjusted by the tax Division involved, upon reasoned grounds and adequate documentation. Should issues remain unresolved after consulting with the assessing division, the taxpayer may file written protest with the taxing division. A protest must be "timely filed." That is, it must be filed on, or before, the statutory time provided for filing

protests, to insure that the protestant-taxpayer preserves his legal rights to a full hearing of the matter and a route for appeal if the disposition of the protest is not resolved in his favor. In the absence of a formal written extension of time within which to file a protest, **proposed assessments which are not protested within the time prescribed by statute are considered final.** Any finally assessed tax in such a case which is paid to or collected by the Tax Commission is not subject to a claim for refund or hearing thereon, to the extent provided in 68 O.S. § 227(f). Thus, a taxpayer who receives a notice of proposed assessment of tax from the Tax Commission should not assume that it can be challenged later by way of a claim for refund, if a protest of the proposed assessment is not timely filed and the proposed assessment then becomes final. However, a taxpayer who fails to file a timely protest may, within one (1) year of the date the assessment becomes final, request the Tax Commission to adjust or abate the assessment pursuant to 68 O.S. § 221(e) and the provisions of Part 7 of this Subchapter.

(c) The following is a brief description of a typical protest that would take place within the framework of the Oklahoma Tax Commission administrative proceedings process.

(1) Initially, an audit is conducted by one of the various taxing Divisions of the Oklahoma Tax Commission pursuant to 68 O.S. § 221(a). Thereafter, a proposed assessment is issued to the taxpayer. If, in fact, the taxpayer disagrees with the proposed assessment, a protest may be filed, generally within sixty (60) days of the date of the assessment, pursuant to the provisions of 68 O.S. § 221(c).

(2) Except for the initial filing of a protest, which may be made with the taxing division, with the Office of the General Counsel, or with the office of the Administrative Law Judges, the office of the Administrative Law Judges serves as the "Court Clerk" for the administrative hearing process. The Administrative Law Judges are appointed by the Commissioners of the Oklahoma Tax Commission and act independently of the taxing Divisions and the Office of the General Counsel.

(3) Once a protest is received by the taxing Division, the Division will generally review the proposed assessment to determine whether further adjustments are appropriate. Additional discussion between the taxpayer and the Division may be requested in this regard. If issues still remain unresolved at the conclusion of this process, the protest is forwarded to the Administrative Law Judges' Office, where the protest is docketed and a Pre-Hearing Conference is scheduled between the taxpayer, the General Counsel's Office attorney who represents the taxing Division and an Administrative Law Judge.

(4) At this time, a case may be resolved through discussion and negotiation with the staff attorney and the protest or claim is formally withdrawn from the docket, at the request of the parties. This informal resolution may be described as either a withdrawn assessment or a withdrawn protest, depending upon the manner in which the issues were resolved.

(5) Generally, the manner in which a case is to be submitted is decided by the parties at the Pre-Hearing Conference. Other matters decided at this conference are the legal issues of the case and the manner of evidence or witnesses (or both) to be presented at any hearing. Taxpayers are urged to respond to letters; appear or make alternate arrangements at scheduled pre-hearing conferences and hearings; file required briefs or position letters in a timely fashion; and in all respects pursue their legal rights diligently.

(6) Following the Pre-Hearing Conference, and assuming the case is not resolved, it is set for hearing. The Administrative Law Judge will preside at the hearing, wherein testimony and exhibits are received and a record is made. After consideration of the merits, the Administrative Law Judge will issue Findings, Conclusions and Recommendations.

(7) Following the issuance of the Findings by the Administrative Law Judge, the Commissioners may either adopt the Finding, or modify it, in part, or in whole. If the taxpayer has requested an en banc hearing, the Commission may grant it at this time. Once the Order of the Commission is issued, the Taxpayer has thirty (30) days within which to file an appeal with the Oklahoma Supreme Court.

(8) Detailed procedural rules governing a tax **protest** 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.

[**Source:** Amended at 9 Ok Reg 3015, eff 7-13-92; Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 20 Ok Reg 2580, eff 7-11-03; Amended at 26 Ok Reg 2320, eff 6-25-09]

710:1-5-11. Petitions for abatement

(a) A **petition or request for abatement or adjustment** of a tax assessment is a procedure by which a taxpayer may request relief from an assessment which has become **final**, but which the taxpayer may show, by a preponderance of the evidence, that the assessment contested was clearly erroneous. The determination of such a petition or request is within the sole discretion of the Commission pursuant to the provisions of 68 O.S. § 221(e) and is not subject to appeal.

(b) The procedures for the filing, consideration, and disposition of **petitions for abatement or adjustment of a tax assessment** are set out in 710:1-5-70 through 710:1-5-78.

(c) Procedures governing an abatement or adjustment request are exclusive and must be clearly distinguished from the procedures required for filing a timely protest of a proposed tax assessment or a protest of a denial of a claim for refund of taxes. Tax **protest procedure** is governed by the provisions of 710:1-5-21 through 710:1-5-49, which set out general rules of Practice and Procedure before the Office of the Administrative Law Judges.

[**Source:** Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-12. Petitions for waiver of interest or penalty (or both)

Waiver of interest or penalty associated with a tax assessment or failure to file a return or report is within the discretionary authority of the Commission pursuant to the provisions of 68 O.S. § 220. Requests for waiver of penalty or interest should be in writing, and addressed to the division which originated the tax assessment or liability notification.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-13. Settlement of claims or protests

Settlement of **disputed, unliquidated** tax claims or assessments is within the discretionary authority of the Oklahoma Tax Commission pursuant to the provisions of 68 O.S. § 219. Request for settlement or offer of settlement proposal should be made to the taxing division which initiated the disputed assessment. Settlements of final liabilities pursuant to 68 O.S. § 219.1 are governed by the provisions of Part 8 of this Subchapter.

[Source: Amended at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-14. Criminal tax prosecution and referral

The Tax Commission has the authority to pursue criminal prosecution in appropriate cases pursuant to the provisions of 68 O.S. § 105. The General Counsel or the district attorney is required to initiate criminal actions for violations of the tax laws of this state. *The attorneys for the Tax Commission may prosecute such criminal actions or may, upon request of a district attorney, appear and assist in the prosecution of such actions initiated by the district attorney.* 68 O.S. § 105(B). *As used herein, the term "tax laws of this state" means any law of the State of Oklahoma which levies, imposes, provides for administration of, or in any way relates to a tax, fee, or revenue raising property which is collected by or required to be deposited with the Commission.* 68 O.S. § 105(C).

[Source: Revoked at 33 Ok Reg 1060, eff 8-25-16; Added at 36 Ok Reg 1197, eff 8-11-19]

710:1-5-15. Requests for rulemaking action

(a) Any interested person may petition the Commission, requesting the adoption, amendment, or revocation of an existing rule of the Oklahoma Tax Commission. Such a request need not take any particular form, but must be written and include the following information:

- (1) The full text, or identifiable portion thereof, of a proposed rule or rules;
- (2) The identification and the full text, or identifiable portion thereof, of an existing rule or rules, as proposed to be amended, clearly indicating proposed changes;
- (3) The identification of the rule or rules for which repeal is sought;
- (4) A statement in support of the proposal made. This statement shall make reference to the statutory basis for the proposal, including, when

appropriate, judicial and administrative interpretations of the statute or statutes in question. The supporting statement should include specific objections to existing rules, practices, or interpretations, and set forth the policy considerations which support adoption of the proposal; and,

(5) A statement describing in detail the interest of the petitioner in making the proposal. This description shall include a statement as to whether the proposal is intended to affect the tax consequences of any transaction or transactions entered into or contemplated by the petitioner, its vendors, customers, clients, or any person upon whose request or upon whose behalf the proposal is made, the taxability of which are known by the petitioner to be the subject of an inquiry, audit, refund, or assessment proceeding by the Commission and shall contain an explanation of the circumstances surrounding the inquiry, audit, refund, or assessment proceeding, if any.

(b) The Commission shall consider each request for rulemaking action which is filed in conformity with this Section and, at its discretion, direct that rulemaking proceedings be initiated in response thereto or deny the request. The Commission may also, at its discretion and with a view to agency resources, direct the rulemaking action be deferred until the next regularly scheduled rulemaking proceedings are commenced. If the rulemaking request is denied, the Commission shall timely so notify the requesting party, in writing, stating the reason(s) for denial. The determination of rulemaking requests shall be solely within the province of the Commission, and no individual proceeding shall be afforded any party in conjunction therewith.

(c) Pursuant to the terms of Section 305 of Title 75 (The Oklahoma Administrative Procedures Act, "APA") any petition for which rulemaking action has not commenced within 30 calendar days is deemed to be denied.

(d) Requests may be made to the Tax Policy and Research Division, at Oklahoma Tax Commission, Oklahoma City, Oklahoma, 73194.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-16. Rulemaking procedure and hearings

(a) **"Hearing" for rulemaking purposes defined.** Rulemaking hearings of the Oklahoma Tax Commission are a forum in which interested parties may express views, make suggestions, and generally have input into the process by which the Commission formulates policy set out in proposed rules. The "hearing" in a rulemaking action consists of:

(1) a period for public comment, during which written submissions are accepted (will be "heard") by the Commission for the rulemaking actions previously announced; and,

(2) a meeting at which interested persons may attend and express opinions, give views, make suggestions, or argue orally.

(b) **Who may appear.** Any persons interested in or affected by proposed rulemaking actions may appear at a rulemaking hearing. An appearance may be made individually, or by a representative.

(c) **Commencement of rulemaking.**

(1) The Commission may commence action to promulgate, amend, or revoke a rule at any time on its own initiative.

(2) The Commission may commence action to promulgate, amend, or revoke a rule pursuant to a Request or Petition for Rulemaking action described in 710:1-5-15.

(3) The Commission may commence action to promulgate, amend, or revoke a rule pursuant to applicable judicial or statutory mandate.

(d) **Applicable procedures.** Rulemaking procedure, as it applies to the Commission, is set out in general by the terms of the Oklahoma Administrative Procedures Act ("APA"), 75 O.S. §§ 250.1, et seq. Rulemaking hearings required by the APA will substantially conform to the provisions thereof. The following general provisions will apply to rulemaking hearings held by the Oklahoma Tax Commission:

(1) Unless expressly stated otherwise in a Notice of Rulemaking Intent, rulemaking hearings will be held at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma 73102.

(2) Unless expressly stated otherwise in a Notice of Rulemaking Intent, persons wishing to present views orally should notify the Commission in advance of the hearing. To assure efficient use of the forum, the Commission, in its discretion, may limit the amount of time available to each speaker.

(3) All written submissions and requests to be placed on the agenda to make oral submission shall be directed to the Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, OK 73194.

(4) All persons in attendance at a rulemaking hearing, whether offering input or not, will be requested to identify themselves for the rulemaking record.

(5) All persons in attendance at a rulemaking hearing who desire to make oral comment will be requested to provide a name and mailing address for the rulemaking record.

(6) All persons in attendance at a rulemaking hearing will limit oral comments to the merits of the proposed rules for which the hearing is commenced, as announced by the applicable Notice of Rulemaking Intent.

(7) A rulemaking hearing being non-adversarial in nature, all persons in attendance at such hearing will offer input in such a fashion as to comport with the purpose of gathering effective and meaningful information for the guidance of the Commission in formulating policy.

(8) Summaries or audio recordings (or both) will be made of rulemaking hearings and maintained as a part of the rulemaking record. No transcript of the rulemaking hearing will be prepared. Should an interested party desire a transcription or recording of a rulemaking hearing, the taxpayer is directed to contact a certified court reporter, and make the necessary arrangements for the presence of the reporter at the hearing, and the cost thereof. The cost of transcribing will be borne by the party seeking such

transcript, who must furnish the original of the transcript to the Commission.

(9) All records required to be kept pertaining to rulemaking will be maintained and may be viewed at the Oklahoma Tax Commission, Tax Policy and Research Division, 300 N. Broadway Ave, Oklahoma City, Oklahoma 73102, during normal business hours (7:30 a.m. to 4:30 p.m.). Interested persons may obtain copies of both current and proposed rules of the Commission from this source.

(10) Interested persons may request individual notice of proposed rulemaking intent by a written request to the Oklahoma Tax Commission, Tax Policy and Research Division, Rulemaking Liaison, Oklahoma City, Oklahoma, 73194. Requests for individual notice should specify the area of tax or procedure for which notice is desired and must be renewed annually.

(e) **Attendance by Commission representatives; Commission review.** To ensure that public input will receive a meaningful hearing, all rulemaking hearings will be attended by a representative from the taxing Division of the Commission initiating the proposed rules. All submissions or summaries thereof, both written and oral, will be reviewed and considered by the Commission prior to the adoption or promulgation of any proposed rules.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-17. Petitions for declaratory rulings

(a) **General provisions.** The Commission or its duly authorized agent may issue declaratory rulings, as to the applicability of any rule or principle of law embodied in a precedential decision of the Commission, which is requested by or on behalf of a person directly affected thereby, subject to the terms and conditions set forth in this Section.

(b) **Form of petition; where to file.** A declaratory ruling petition must be made in writing and sent in duplicate to the Secretary-Member, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194.

(c) **Contents of a petition for a declaratory ruling.** A declaratory ruling petition must specifically state:

(1) That a "declaratory ruling is requested pursuant to 710:1-5-17";

(2) The petitioner's

(A) Name (the name of the person, partnership, corporation or entity to whom the facts presented in the petition apply);

(B) Address and phone number;

(C) Federal identification number, if applicable; and

(D) Appropriate OTC license, registration or identification number, where applicable.

(3) The type of tax, fee, bond, registration, license, or permit at issue;

(4) The issue(s) on which a declaratory ruling is requested, stated clearly and concisely;

(5) A complete, clear and concise statement of all relevant facts on which the declaratory ruling is requested;

- (6) The petitioner's desired result and the legal basis for that result, including reference to the applicable statutes, rules, regulations, and case law;
- (7) Whether the issue, as it regards the petitioner, is presently under investigation or audit by the Commission or any of its agents. The term investigation or audit includes, but is not limited to, an inquiry, audit, refund, assessment, suspension or revocation proceeding by the Commission; and
- (8) Whether the petitioner is presently pursuing any protest, litigation or negotiation on the issue with the Commission or any of its Divisions, as well as the name of any other person, partnership, corporation or entity whom the petitioner or a duly authorized representative knows is involved with the identical issue pending before or with the Commission.
- (d) **Petition must bear authorized signature.** A petition for a declaratory ruling must be signed by the petitioner or an authorized agent of the petitioner.
- (e) **Proposed draft may be offered.** The petitioner may provide a draft ruling for the Commission's consideration.
- (f) **Commission may require additional information.** The Commission or its authorized representative may request additional information from the petitioner as deemed necessary to issue a declaratory ruling. Failure to provide the requested information shall result in denial of the petition to issue the declaratory ruling.
- (g) **Effect of a declaratory ruling.** A declaratory ruling shall have the following effect:
- (1) The declaratory ruling shall apply only to the particular fact situation stated in the declaratory ruling petition;
 - (2) The declaratory ruling shall apply only to the petitioner;
 - (3) The declaratory ruling shall bind the Commission, its duly authorized agents and their successors only prospectively;
 - (4) The declaratory ruling shall bind the Commission, its duly authorized agents and their successors as to transactions of the petitioner that occur within three (3) years after the date of the issuance of the declaratory ruling; and
 - (5) The declaratory ruling may be revoked, altered, or amended by the Commission at any time.
- (h) **Exceptions to binding effect of declaratory ruling.** The declaratory ruling shall cease to be binding if:
- (1) A pertinent change is made in the applicable law by the Legislature;
 - (2) A pertinent change is made in the Commission's rules;
 - (3) A pertinent change in the interpretation of the law is made by a court of law or by an administrative tribunal; or
 - (4) The actual facts are determined to be materially different from the facts set out in the petitioner's declaratory ruling petition.
- (i) **Issuance of a declaratory ruling.** The Commission will make a good faith effort to issue a declaratory ruling within ninety (90) days from date of receipt of

a complete and proper petition unless, in the Commission's discretion, the issue is of such complexity or novelty that additional time is required.

(j) **Contents of a declaratory ruling.** A written response from the Commission or from any employee or agent of the Commission to an inquiry from a taxpayer may not be construed to be a declaratory ruling unless made in conformity with this Subsection. A declaratory ruling must contain:

- (1) A statement that: "This is a declaratory ruling issued by the Oklahoma Tax Commission pursuant to 75 O.S. § 307;" and
- (2) The signature of the Commission or any person duly authorized to issue declaratory rulings on its behalf.

(k) **Denial of a petition for declaratory ruling.** The Commission, in its discretion, may deny a petition for declaratory ruling for good cause. In this instance, the Commission, in a letter, will indicate the reason(s) for refusing to issue the declaratory ruling. Good cause includes, but is not limited to, the following:

- (1) The petition does not substantially comply with the information required by this Section;
- (2) The petition involves hypothetical situations or alternative plans;
- (3) The petitioner requests the Commission to interpret or apply a statute, or requests a determination as to whether a statute is constitutional under the Oklahoma Constitution or the United States Constitution;
- (4) The facts or issue(s) presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue the declaratory ruling;
- (5) The issue about which the declaratory ruling is requested is primarily one of fact;
- (6) The issue is presently being considered in a rulemaking proceeding, protest proceeding or other agency or judicial proceeding that may definitively resolve the issue;
- (7) The issue cannot be reasonably resolved prior to the issuance of rules;
- (8) The petitioner is under investigation or audit relating to that issue, or the issue is the subject of investigation, audit, administrative proceeding or litigation;
- (9) The issue relates to the application of the law to members of a business, trade, professional or industrial association or other similar group(s); or
- (10) The petitioner is not identified or is anonymous.

(l) **Withdrawal of a petition for declaratory ruling.** The petitioner may withdraw the petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling.

(m) **Response when declaratory ruling inappropriate.** When a declaratory ruling petition requests the Commission to interpret or apply a statute or case law to a specific set of facts, the Commission will issue a letter ruling, as described in OAC 710:1-3-73, instead of a declaratory ruling.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 22 Ok Reg 1516, eff 6-11-05; Amended at

32 Ok Reg 1330, eff 8-27-15]

PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

710:1-5-20. Purpose and general overview of taxpayer protest procedure [REVOKED]

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99; Revoked at 38 Ok Reg 1502, eff 9-1-21]

710:1-5-21. Intent, scope and construction of rules

The Rules of Practice and Procedure before the Office of the Administrative Law Judges set out in this Part shall govern all contested proceedings before the Oklahoma Tax Commission or its delegated Administrative Law Judge. These Rules shall be given the most reasonable meaning, taken in their total context, and will be construed to secure due process in the proper resolution of every controversy. They shall not be construed to limit legal rights or obligations of any party.

710:1-5-22. Commencement and numbering of a protest

(a) Protests must be commenced by filing a timely written protest with the office of any Commissioner, the director of the division out of which the controversy arose, the office of the Administrative Law Judges, or the office of the General Counsel. In order for a protest to be considered timely, it must be filed, pursuant to Oklahoma Statutes, within sixty (60) days after the date of the mailing of the assessment, unless an extension is granted within the sixty (60) day period.

(b) The Administrative Law Judges' Office assigns a case number of a protest of proposed assessment or protest to denial of claim for refund (both called "protest" herein), creates a court file, assigns a Judge and sets a day for a pre-hearing conference between the parties and the Administrative Law Judge.

[Source: Amended at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-23. Protests in writing and timely filed; applications for hearings

All tax protests must be in writing and must be timely filed according to the applicable statute. If an oral hearing is desired, an application or request therefor must be made in writing. No protest hearing will be set without a written application or request therefor.

710:1-5-24. Protests to denials of claims for refunds

A claim for refund has to be denied by the tax division before a taxpayer can file a protest. Once a claim is denied and the taxpayer files a protest with the Tax Commission, the Administrative Law Judge shall set a hearing within sixty (60) days after the filing of the protest. The taxpayer shall be duly notified of time of the hearing. Protests to denials of claims for refund have priority status and shall be set for hearing at the earliest practicable date.

710:1-5-25. Content of protests and applications for hearing

Protests and applications for hearing shall be filed and signed by the taxpayer, or an authorized representative, and shall set out therein:

- (1) The name, address and employer's identification number, if applicable;
- (2) A statement of the amount of the deficiency as determined by the Division in the proposed assessment, the nature of the tax and the amount thereof in controversy;
- (3) A clear and concise assignment of each error alleged to have been committed;
- (4) The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in such hearing, or on appeal, to the arguments and legal authorities contained and cited in said applications;
- (5) A statement of the relief sought by the taxpayer;
- (6) A verification by the taxpayer or his duly authorized agent that the statements and facts contained therein are true; and
- (7) In a refund claim, an assertion as to whether the basis for the claim request is due to a mistake of law or a mistake of fact with a brief statement of the mistake.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 32 Ok Reg 1330, eff 8-27-15]

710:1-5-26. Pleadings to be on 8 ½ " x 11" paper

All pleadings filed with the Oklahoma Tax Commission shall be duplicated on letter size, 8 ½ " x 11" paper.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-27. Representation and participation in administrative proceedings

(a) **Representation.** In an administrative proceeding the taxpayer may represent himself at any stage of the proceeding or may be represented by:

- (1) an attorney;
- (2) an accountant;
- (3) an enrolled agent; or
- (4) a representative who has been approved by the Commission to represent the taxpayer.

(b) **Proper showing may be required.** If a taxpayer wants to be represented by someone other than himself, an attorney, an accountant, or an enrolled agent, the Administrative Law Judge may require that such person, before being recognized as a representative of the taxpayer, make a proper showing that he or she is of good character and in good repute and possessed with necessary qualifications to enable the representative to render such services to the taxpayer. Upon such showing by the representative, the Administrative Law Judge will certify the representative.

(c) **Proof of authority.** Any person representing a taxpayer in any matter may

be required at any time to show written proof, in a form satisfactory to the Commission, of his or her authority to represent such taxpayer in that matter.

(d) **Confidentiality of proceedings; participation of others.** Proceedings are not open to the public unless confidentiality has been waived by the taxpayer or his representative. Any person who is not a party, not employed by a party, or not called as a witness, must obtain the permission of the Administrative Law Judge before observing or participating during any stage of the proceeding. Under provisions of Title 68 O.S. § 205, the taxpayer has the right to enforce the confidentiality of the proceedings.

(e) **Ex parte communication.** Communication with the office of the assigned Administrative Law Judge regarding scheduling and procedural matters is permitted. The taxpayer(s) and/or their representative(s), the taxing division and their attorney(s) shall have no ex parte communication on the substance of a pending case with the assigned Administrative Law Judge.

[Source: Amended at 11 Ok Reg 3465, eff 6-26-94; Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 19 Ok Reg 2027, eff 7-1-08; Amended at 26 Ok Reg 2320, eff 6-25-09; Amended at 30 Ok Reg 1850, eff 7-11-13]

710:1-5-28. Pre-hearing conference

(a) **General provisions.** A pre-hearing conference notice is sent to the parties, usually within sixty (60) days of the filing of the protest. The purpose of the pre-hearing conference is to get the parties together before the Administrative Law Judge to attempt to resolve the case or parts of it, early in the progression of the case, to discuss the facts, identify the legal issues, present discovery requests, make all appropriate stipulations, and to propose a procedural schedule. However, the pre-hearing conference should not serve as the parties introduction to the case. Rather, the parties are to make contact and discuss the merits of the case prior to the scheduled pre-hearing conference.

(b) **Rulings; pre-hearing conference order.** During the pre-hearing conference, the Administrative Law Judge makes all necessary rulings. After the pre-hearing conference, the Administrative Law Judge issues a pre-hearing conference order which reduces to writing the agreements reached at the pre-hearing conference.

(c) **Failure to appear.** If a party fails to appear at the scheduled pre-hearing conference or to timely respond to the notice of pre-hearing conference, but has previously submitted a written request for a hearing on the protest, then a hearing will be set. If a hearing has **not** been requested, then the Division will be directed by the Administrative Law Judge to file a response to the protest, verified by the Division and signed by the attorney representing the Division. If a party files a reply to the Division's Verified Response, and requests a hearing therein, then the Administrative Law Judge may set the matter for hearing on the merits of the protest, and thereafter, enter recommendations to the Commission in accordance with the findings. If a party files a reply to the Verified Response and does **not** request a hearing, then the Administrative Law Judge will consider the reply in making a recommendation to the Commission.

If a party fails to file a reply to the Verified Response, then the Administrative Law Judge will issue Findings, Conclusions and Recommendations. Any party aggrieved by the recommendation may proceed pursuant to 710:1-5-40.

[Source: Amended at 11 Ok Reg 3465, eff 6-26-94; Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-29. Notice of hearing

If a case is not fully resolved at the pre-hearing conference, the case is set for formal hearing before the Administrative Law Judge. Notice of the time, date and location of the hearing is sent to the parties. The parties are directed to file briefs or position letters (or both) in support of their positions.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-30. Continuances or extensions

A party seeking an extension or continuance shall direct the request to the Administrative Law Judge, with notice to opposing party, and for good cause shown, a continuance or extension will be granted.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-31. Administrative law judge to hear case

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.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-32. Conduct of hearing

Administrative proceedings are conducted by the Oklahoma Tax Commission pursuant to the following procedures:

(1) **Appearances; motions; preliminary matters; oaths.** The burden of proof is generally on the taxpayer. The hearing will be convened by the Administrative Law Judge, appearances noted, and any motions or preliminary matters will be considered. The Administrative Law Judge shall administer oaths or affirmations to the witnesses.

(2) **Argument; witnesses; evidence.** Each party shall have the opportunity to present its case, to make opening statements, to call and

examine witnesses, to offer documentary evidence into the record and to make closing arguments. Each party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, in the discretion of the Administrative Law Judge, upon matters relevant to the issues even though not covered in direct examination. Any objection to testimony or evidentiary offers should be made, and the basis of the objection stated on the record.

(3) **Discretion of Administrative Law Judge in certain matters.** The Administrative Law Judge may question any party or any witness. The Administrative Law Judge shall establish the order of proceeding, but regardless of the order, the taxpayer is entitled to open and conclude in arguments. The Administrative Law Judge is responsible for closing the record, and may hold it open for stated purposes. Parties may submit proposed Findings, Conclusions and Recommendations at any time after notice of the hearing, but prior to closing of the record. Parties may request that the record be held open for this or other purposes.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-33. Discovery

Discovery in administrative proceedings before the Commission shall comply with the following:

(1) **Authority of Administrative Law Judge.** The Administrative Law Judge may, upon his or her own motion or on the motion of either party:

(A) Subpoena any person to appear and testify and to produce certain documents or other tangible items at an oral hearing;

(B) Require either party to complete interrogatories;

(C) Commission the taking of an oral deposition and require production of certain documents or other tangible items at the time of the deposition; and

(D) Order any party to allow entry of a Tax Commission employee upon property under his control for the purpose of doing any act or making any inspection which is reasonably calculated to lead to the discovery of evidence material to the contested case.

(2) **Subpoenas; costs; fees; service.** When a witness is required to appear or to produce documentary evidence, a subpoena shall be issued under the seal of the Secretary of the Tax Commission. The party requesting the subpoena shall fill it in before issuance. The subpoena may be served by certified mail with return receipt requested or it may be hand delivered. The party requesting the subpoena shall bear the cost of serving it. Fees of a non-party witness who is subpoenaed to appear before the Tax Commission shall be the same as those allowed to witnesses appearing before the district courts of this State. Party witnesses are not entitled to witness fees.

(3) **Confidentiality.** Any and all information obtained through the discovery proceedings shall be deemed confidential, shall be used only for matters pending in the case in which they were discovered, and shall be accorded

the same degree of confidentiality as any other document or paper required by law to be filed with the Oklahoma Tax Commission.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

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 related to tax protests 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 issues.** A party to the proceedings who objects to a 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 taxpayer's representative, the tax division attorney and the Administrative Law Judge must be upon the certification.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93]

710:1-5-35. Oral evidence, witnesses and penalty for false statements

An Administrative Law Judge may require the parties to an administrative proceeding to identify the persons they expect to call as witnesses. The testimony of witnesses shall be made under oath or affirmation, and the making of false statements may subject a person to the penalties of perjury.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-36. Evidence by official notice

(a) The Administrative Law Judge in an administrative proceeding may, regardless of whether requested by the parties, take official notice of matters which the judges of district courts of Oklahoma can judicially notice and of facts within the scope of personal knowledge or within the specialized knowledge of the Tax Commission. Such official notice must be stated on the record, and the parties must have an opportunity to contest the material noticed. A party requesting the official notice must state upon the record sufficient information to enable the Administrative Law Judge to comply with the request.

(b) If an Administrative Law Judge receives any document or other evidence

from a party in connection with an administrative proceeding which has not been provided to the other party, the Administrative Law Judge shall give notice of such receipt to the party not receiving the document or other evidence and advise such party of its right to receive a copy of the document or other evidence.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 30 Ok Reg 1850, eff 7-11-13]

710:1-5-37. Transcript of oral hearings; request for certified court reporter

Testimony offered under oath, comments of counsel and the Administrative Law Judge, offers of documentary evidence and rulings made during the course of an oral hearing shall be recorded by electronic media which can be transcribed by the Administrative Law Judge's Office. A copy of the transcript of the hearing will be furnished to any party to the proceeding upon written request to the Administrative Law Judge and payment of a reasonable fee established by the Tax Commission. Upon request to the Administrative Law Judge by either party, the hearing will be recorded and transcribed by a certified court reporter. If a certified court reporter is requested, necessary arrangements for the presence of a reporter at a hearing, the cost thereof, and cost of transcribing will be borne by the requesting party who must furnish the Administrative Law Judge's Office with an original and the attorney for the Commission with a copy, of such transcript.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 13 Ok Reg 3091, eff 7-11-96; Amended at 26 Ok Reg 2320, eff 6-25-09]

710:1-5-38. Submission of case on briefs

When a taxpayer in an administrative proceeding does not request an oral hearing, or the parties agree that an oral hearing is not needed, the Administrative Law Judge will base the Findings, Conclusions and Recommendations on the position letters and briefs submitted by the parties. The Administrative Law Judge will mail notice of a date certain for each party to submit a position letter or brief setting out therein the statement of facts, issues to be determined, contentions and statutory and case law relied upon to support his contentions. The Administrative Law Judge may schedule a conference between the parties if it is deemed necessary to clarify the positions of the parties.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 26 Ok Reg 2320, eff 6-25-09; Amended at 30 Ok Reg 1850, eff 7-11-13]

710:1-5-38.1 Motion for summary disposition

A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact. The procedures for such motion are as follows:

- (1) The motion for summary disposition shall be accompanied by a concise

written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.

(2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judge.

(3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

(4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.

(5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.

(6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts and that one of the parties is entitled to a decision in its favor as a matter of law, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to OAC 710:1-5-10, 710:1-5-40 and 710:1-5-41. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.

(7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial

summary disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13]

710:1-5-39. Findings, conclusions and recommendations

(a) **Issuance.** When the record in an administrative proceeding is closed and submitted, the Administrative Law Judge will issue Findings, Conclusions and Recommendations to the Tax Commission for its consideration. The Findings, Conclusions and Recommendations will include a statement of facts, the issues and contentions, conclusions based on the findings of fact and applicable law, and recommendation to the Tax Commission. The parties to the proceeding will be mailed copies of the Administrative Law Judge's Findings, Conclusions and Recommendations.

(b) **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.

[Source: Amended at 11 Ok Reg 3465, eff 6-26-94; Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-40. Options available to parties after action by Administrative Law Judge

The following options are available to parties to an administrative proceeding related to a tax protest after issuance of an unfavorable recommendation:

(1) **Motion for rehearing or motion for reconsideration; content; replies; time limitations.** Within fifteen (15) days following mailing of the Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge, any party to the proceedings may file a motion for rehearing or a motion for reconsideration with the Administrative Law Judge. The opposing party may reply to a motion for rehearing or a motion for reconsideration within fifteen (15) days after mailing of the motion for rehearing or motion for reconsideration. A party's request shall be reviewed on the basis of the content presented therein and not solely on the style of the party's motion.

(2) **Rehearing procedure.** If a party elects to file a motion for rehearing, that party will be precluded upon rehearing, should the motion be granted, from raising as error any issue not set forth in the motion. If a motion for rehearing is granted, the proposed Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge are vacated pending

rehearing. If the motion is overruled, the original proposed Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge shall be deemed issued on the date the motion is overruled. If a rehearing is granted, notice will be issued to the parties setting out the date, time and place of the hearing.

(3) **Reconsideration procedure.** A motion for reconsideration must specify each ground upon which the party alleges the findings to be erroneous. If a motion for reconsideration is granted, the original proposed Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge are vacated. If the motion is overruled, the original proposed Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge shall be deemed issued on the date the motion is overruled.

(4) **Grounds for granting motion for rehearing.** A motion for rehearing may be granted on any of the following, although such list is illustrative and not exclusive:

(A) Newly-discovered evidence which could not, with reasonable diligence, have been discovered and produced at the hearing on the matter.

(B) Need for additional evidence to develop the facts essential to proper decision.

(C) Additional evidence necessary to address conclusions of law not contemplated prior to the Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge being issued.

(5) **Grounds for granting motion for reconsideration.** A motion for reconsideration may be granted on any of the following, although such list is illustrative and not exclusive:

(A) Need for further consideration of the issues and the evidence.

(B) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(C) Need for application of statute, rule or caselaw to the facts.

(6) **Application for en banc hearing before Commission.** If a motion for rehearing or reconsideration is denied, the aggrieved party may, within fifteen (15) days following mailing of such denial, file an application for oral argument before the Tax Commission en banc. If a motion for hearing en banc is granted, the case will be heard by the Commissioners sitting together as a decision making body.

(7) **En banc hearing procedure.** Any party may apply for a hearing en banc before the Commissioners whether or not he/she moved for rehearing or reconsideration before the Administrative Law Judge. If a motion for rehearing or reconsideration before the Administrative Law Judge is not filed, any party requesting a direct appeal to the Commission en banc, must file said motion for a hearing en banc within fifteen (15) days of the mailing of the Administrative Law Judge's findings. The application must specify each ground upon which the party alleges the Findings, Conclusions and Recommendations to be erroneous. The opposing party may reply to a

motion for hearing en banc within fifteen (15) days after mailing of the motion for hearing en banc. Should the application be granted, the moving party will be precluded from raising as error any issue not set forth in the application for a hearing en banc.

(8) **Granting of hearing en banc; filing of briefs; time limitations.** If such application for oral argument is granted, the Commissioners will set a date, time and place for the hearing and notice will be given to each side by mail at least twenty (20) days in advance of the hearing. Typewritten briefs must be submitted to the Commissioners at least fourteen (14) days prior to such hearing, or as otherwise directed by the Commission. Time limits for oral arguments will be set by the Commissioners at the time of the hearing.

(9) **Exhaustion of administrative remedies.** Although taxpayers must exhaust all administrative remedies before appealing to the Oklahoma Supreme Court, or if appropriate to a Federal court, it is not necessary to move for reconsideration or rehearing or to apply for a hearing en banc to exhaust administrative remedies. All that is necessary for exhaustion is to pursue a protest until the Commissioners issue a final decision in the form of an order.

(10) **Commission decision commences appeal time.** Neither a motion for rehearing or reconsideration nor an application for a hearing en banc will be granted after a final decision has been made and an order issued. Therefore, a motion for rehearing or reconsideration or an application for a hearing en banc will not serve to stay the time to appeal to the Supreme Court.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 11 Ok Reg 3465, eff 6-26-94; Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 13 Ok Reg 3091, eff 7-11-96; Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 19 Ok Reg 2027, eff 7-1-08; Amended at 28 Ok Reg 929, eff 6-1-11]

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, or affirm, in part or whole, the recommendations of the Administrative Law Judge.

[Source: Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-42. Appeals from orders of the Oklahoma Tax Commission

(a) If a taxpayer is aggrieved by any order, ruling, or finding of the Tax Commission, the taxpayer may appeal therefrom directly to the Oklahoma Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a petition in error with the clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Tax Commission at the same time the petition in error is filed.

(b) In lieu of an appeal to the Supreme Court, any taxpayer aggrieved by a final order of the Tax Commission assessing a tax or an additional tax or denial of a claim for refund may opt to file an appeal for a trial de novo in the district court of Oklahoma County or the county in which the taxpayer resides. An appeal for trial de novo in district court must be filed in the district court within thirty (30) days of the mailing of the Tax Commission order. A district court order resulting from such a trial shall be appealable directly to the Supreme Court of Oklahoma by either the taxpayer or the Tax Commission. Such appeal shall be taken in the manner and time provided by law for appeal to the Supreme Court from the district court in civil actions. The provisions of this subsection shall be applicable for tax periods beginning after January 1, 2014. Provided, if the order applies to multiple tax periods which begin before and after January 1, 2014, the appeal provided by this subsection shall be available to the aggrieved taxpayer.

[Source: Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 24 Ok Reg 1688, eff 6-11-07; Amended at 32 Ok Reg 1330, eff 8-27-15]

710:1-5-43. Exceptions to the requirement for exhausting administrative remedies

The taxpayer must exhaust the administrative remedies prescribed by law prior to appealing to the Supreme Court from an order of the Tax Commission, except in cases involving Constitutional issues as outlined in Title 68 O.S. § 226(c). (**See, Cimarron Industries, Inc. v. Oklahoma Tax Commission**, 621 P.2d 539 (Okla. 1980).)

[Source: Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-44. Computation of time

When filing documents in an administrative proceeding related to a tax protest, the following provisions apply:

(1) **General provisions.** In computing any period of time, begin on the day after the act, event, or default and conclude on the last day of the computed period, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

(2) **Filing; evidence of filing.** Documents required to be filed are considered filed on the date of personal service of such documents or upon the date of the postmark showing date mailed on the envelope containing such documents and must show a date on or before the last day of filing as defined hereinabove.

(3) **Use of certified or registered mail.** If the document is sent by United States registered mail, the date of registration of the document shall be treated as the postmarked date. If the document is sent by United States certified mail and the sender's receipt is postmarked by the postal employee, the date of the United States postmark on such receipt shall be

treated as the postmark date of the document. Thus, the risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-45. Service of documents

Service of any document in an administrative proceeding may be accomplished by personal delivery or by mailing such document addressed to the party or his authorized representative at the last known address, postage prepaid. The document shall indicate on its face by Certificate of Service or of Mailing that copies have been served on parties of record.

710:1-5-46. Dismissal of case

(a) **Voluntary dismissal.** A protestant may dismiss his or her protest, or the tax division whose action or proposed action has been protested may withdraw its action or proposed action, without a motion therefor, at any time prior to the entry of a final order by the Commission.

(b) **Dismissal for mootness.** "Moot", for purposes of this Subchapter means that a case presents no actual controversy or that the issues have ceased to exist. A protest that is or has become moot may be dismissed by the Commission or by the Administrative Law Judge on their own motion or on the motion of a party. At least fifteen (15) days' notice of the motion or intent to dismiss shall be given to all parties, who shall have the opportunity to respond and show cause why the protest should not be dismissed. A dismissal by the Administrative Law Judge is appealable to the Commission in the same manner as appeals from other rulings by the ALJ.

(c) **Dismissal for lack of jurisdiction.** The Tax Commission is without jurisdiction to consider a protest that is not filed within the time provided by statute. The question of the Commission's jurisdiction to consider a protest may be raised at any time, by a party, the Administrative Law Judge, or the Commission itself. Questions as to the authority, propriety, or timeliness of the tax division's action or proposed action shall not be raised by a motion to dismiss, but shall be raised as defenses to such action or proposed action, as a part of or addition to the protest.

(d) **Motion to dismiss.** A motion filed by a party to dismiss a protest for lack of jurisdiction, or a notice by the Administrative Law Judge or the Commission of intent to dismiss a protest on jurisdictional grounds, shall state the reasons therefore, shall be filed in the case, and shall be mailed to all parties or their authorized representatives. The motion or notice of intent to dismiss shall be set for hearing, which shall not be less than fifteen (15) days after the filing of such motion or notice of intent, at which time any party opposing such motion or notice of intent may appear and show cause why the protest should not be dismissed. Notice of the date, time and place of the hearing shall be mailed to the parties or their representatives along with the motion or notice of intent to dismiss.

[Source: Amended at 11 Ok Reg 3465, eff 6-26-94; Amended at 12 Ok Reg 2923, eff 7-14-95; Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 22 Ok Reg 1517, eff 6-11-05]

710:1-5-47. Burden of proof

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-48. Effective date of the Part

The provisions of this Part govern all proceedings and cases commenced after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the Commission or the Administrative Law Judge, their application in a pending case would not be feasible or would work an injustice.

710:1-5-49. Survival and abatement of protests

No protest pending before the Tax Commission shall abate by the death of the protestant. Consideration of such a protest shall proceed according to the following:

- (1) **Death of protestant where no hearing has been requested.** If a taxpayer dies subsequent to the filing of a protest and no oral hearing has been requested, the Commission shall proceed without further notice to examine the merits of the protest and enter an order in accordance with its findings.
- (2) **Death of protestant prior to hearing.** If a taxpayer has requested a hearing as provided by law but dies before such hearing, and the Commission is apprised of such death, notice of the proceedings and any upcoming hearing shall be mailed to taxpayer's address as last given in connection with the protest proceeding, and addressed to taxpayer, taxpayer's estate, or taxpayer's personal representative. Taxpayer's personal representative or persons who demonstrate a legal interest in taxpayer's estate shall be given a opportunity to appear and to be heard in connection with the protest proceedings. If, after such notice, there is no appearance or substitution by such persons in the protest proceedings, the protest shall not be dismissed or decided as by default, but the merits of the protest shall be examined and an order confirming, modifying, or vacating the prior action or proposed action shall be entered, as in a case where no hearing has been requested.
- (3) **Death of protestant after hearing or submission of case.** If a taxpayer

dies after a requested hearing or after the matter has been submitted for decision, findings, conclusions and a recommendation as to the final disposition of taxpayer's protest may be entered by the Administrative Law Judge, and a final order may be entered by the Commission, although the personal representative of the taxpayer or other person has not been substituted as a party to the proceeding. Notice of the findings, conclusions and recommendation of the Administrative Law Judge and of the Commission's final order shall be given to the taxpayer's personal representative or other such person who has demonstrated a legal interest in the estate of the deceased taxpayer and who has requested such notice.

(4) **Substitution of personal representative.** Taxpayer's personal representative may be substituted for the taxpayer on motion of a party with notice to the representative, and shall be substituted for the taxpayer upon application by the representative. [**See:** OTC Order No. 96-02-13-017]

[**Source:** Added at 22 Ok Reg 1518, eff 6-11-05]

PART 7. ABATEMENT OF ERRONEOUS TAX ASSESSMENT

710:1-5-70. Purpose

The provisions of this Part are provided to taxpayers who wish to request adjustment or abatement of an assessment of the Oklahoma Tax Commission which has already become final. [**See:** 68 O.S. § 221(e)]

[**Source:** Amended at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-71, When an assessment becomes final

(a) In the event the person to whom a proposed assessment is issued acquiesces in the changes reflected on the proposed assessment, or fails to file a written protest within the sixty (60) days after the mailing of the proposed assessment (or any extensions allowable by Statute that have been granted by the Division), the proposed assessment becomes final.

(b) In cases in which an extension has been granted for filing a protest, the proposed assessment becomes final at the expiration of the period as extended by the Division if no protest is filed.

[**Source:** Amended at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-72. Request for adjustment or abatement

(a) **Untimely "protest" construed as request for abatement.** Every written statement "protesting" a proposed assessment which is received after the expiration of sixty (60) days from the mailing of the proposed assessment, or after the expiration of any extension granted by the Division, shall be treated as a request for an adjustment or abatement of the assessment.

(b) **Manner in which timeliness determined.** Timeliness of the filing of a request for adjustment or abatement of the assessment shall be determined by

the date of the first filing with the Director of the Division out of which the controversy arose, the office of the Administrative Law Judges, the office of the General Counsel, or the Commission.

(c) **Abatement request does not extend period in which proposed assessment may be timely protested.** A request for adjustment or abatement of an assessment does not extend the time in which a written protest can be timely filed. No request for adjustment or abatement of an assessment filed after a proposed assessment becomes final will be construed as amending the time in which a protest can be filed and a request for hearing submitted.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99; Amended at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-73. Initial review, determination of abatement request

(a) **Division to review.** All requests for adjustment or abatement of an assessment shall be forwarded to the Division which issued the proposed assessment to determine whether the request was timely filed. Should it be determined that the request was timely filed, the Division will determine whether the assessment is clearly erroneous.

(b) **Division may adjust or abate clearly erroneous assessment.** If the Division determines that the assessment, or some portion thereof, is clearly erroneous, the Division shall issue a document, signed by the Division Director, or a designee, adjusting or abating the assessment, a copy of which shall be mailed to the applicant.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-74. Notification of initial disposition of abatement request; procedure upon denial by Division

Should the Division not agree that the evidence presented demonstrates that the assessment, or some portion thereof, is clearly erroneous, the Division shall notify the taxpayer of its determination. The notification letter shall state prominently that should taxpayer disagree with the Division's determination, taxpayer must make written request for a review of the determination, to the General Counsel's office within thirty days of the mailing of the Division notification. Failure of taxpayer to seek review within thirty days of the mailing of the Division's notification shall constitute abandonment of the request.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-75. Docketing of abatement request

The General Counsel's office assigns a case number to a request for adjustment or abatement of a proposed assessment which has become final, creates a file, assigns an attorney, and notifies the taxpayer of the assignment.

710:1-5-76. Presentation of abatement request to Commission

(a) Once docketed, the assigned attorney shall review the evidence submitted

in support of taxpayer's request, prepare a fact sheet for presentation to the Commission at a regularly scheduled meeting, and notify the taxpayer of the day said request will be presented. The taxpayer may appear before the Commission and present documentary evidence and testimony in the form of affidavit(s).

(b) No hearing other than the appearance of taxpayer at a regularly scheduled meeting of the Commission will be held. No transcript of the appearance before the Commission will be prepared.

(c) Should taxpayer desire a transcript or record of taxpayer's appearance before the Commission, the taxpayer will need to contact a certified court reporter, and make the necessary arrangements for the presence of the reporter at the Commission meeting, and the cost thereof. The cost of transcribing will be borne by the taxpayer who must furnish the original of the transcript to the Commission.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-77. "Preponderance of the evidence" and "clearly erroneous" defined; burden of proof for tax abatement purposes

(a) In order to have the assessment adjusted or abated, the taxpayer must demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous.

(b) For purposes of Section 221(e) of Title 68 of the Oklahoma Statutes and Part 7 of this Subchapter, "**preponderance of the evidence**" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

(c) For purposes of Section 221(e) of Title 68 of the Oklahoma Statutes and Part 7 of this Subchapter, "**clearly erroneous**" means unsupported by substantial evidence; contrary to clear weight of evidence or induced by erroneous view of the law.

(d) In order to sustain the burden of demonstrating that the assessment or some portion thereof is clearly erroneous, taxpayer must show evidence that the assessment deviates from the law and is therefore invalid or is unsupported by the evidence, or both.

[Source: Amended at 16 Ok Reg 2628, eff 6-25-99]

710:1-5-78. No appeal; no stay of collection proceedings as a result of abatement request

No appeal to the Supreme Court of the State of Oklahoma may be taken from an Order denying taxpayer's request to adjust or abate an assessment. Furthermore, collection actions instituted by the Commission to collect a tax liability will not be stayed or continued as a result of the filing of a request for adjustment or abatement.

[Source: Amended at 9 Ok Reg 3015, eff 7-13-92; Amended at 16 Ok Reg 2628, eff 6-25-99]

PART 8. SETTLEMENT OF TAX LIABILITY

710:1-5-80. Purpose

The provisions of this Part are provided to taxpayers who wish to request settlement of all or any portion of an Oklahoma tax liability and interest and penalties which have already become final for less than the outstanding amount. [See: 68 O.S. §219.1]

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-81. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Oklahoma Tax Commission.

"Final liability" means:

- (A) The tax, penalty and interest due after the expiration of the statutory prescribed time within which to file a protest to a proposed assessment;
- (B) The amount due after the exhaustion of administrative remedies without appeal to the Supreme Court;
- (C) A tax amount admitted to be due by a taxpayer's report;
- (D) The amount found due after a final court decision concerning the existence or amount of the liability; or,
- (E) Other cases of liabilities where further administrative or judicial review is not available and the only consideration is collectibility.

"Insolvency" means:

- (A) The inability to pay debts as they fall due in the usual course of business; or,
- (B) Having liabilities in excess of the reasonable market value of assets held.

"Person" means any individual, partnership, corporation, limited liability company, association, or public or private organization of any character.

"Settlement Agreement" means a written agreement between a taxpayer and the Commission whereby the Commission agrees to abate all or a portion of an outstanding tax liability, including the interest or penalties accruing thereto, and the taxpayer agrees to pay the remainder of such liability, if any, as provided herein.

"Tax Liability" means and includes the total amount of Oklahoma tax, penalty, or interest due.

"Taxpayer" means:

- (A) Any person subject to or liable for any Oklahoma tax; or,
- (B) Any person required to file a return, or to pay or withhold and remit any tax required by the provisions of any Oklahoma tax law that is administered by the Commission.

"Trust fund tax" means Oklahoma Sales Tax levied pursuant to 68 O.S. §§ 1350 et seq., Oklahoma Gross Receipts Tax (AKA Mixed Beverage Tax) pursuant to 37A §§ 5-105-5-107, Oklahoma Income Tax withholding levied pursuant to 68 O.S. §§ 2385.2-2385.28, or Oklahoma Motor Fuel taxes levied pursuant to 68 O.S. §§ 500.1 et seq.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03; Amended at 39 Ok Reg 2237, eff 9-11-22]

710:1-5-82. Grounds for settlement

(a) **General provisions.** Except for a trust fund tax, the Commission may settle an Oklahoma tax liability for any of the following reasons:

- (1) Collection of the tax with interest and penalties would reasonably result in the taxpayer declaring bankruptcy;
- (2) The tax liability is uncollectible due to the insolvency of the taxpayer resulting from factors beyond the control of the taxpayer or other similar factors; or,
- (3) The tax liability is the result of actions of a person other than the taxpayer and to hold taxpayer liable for the tax liability would be inequitable.

(b) **Uncollected trust fund taxes.** If the tax liability for which settlement is sought is a "trust fund tax", the applicant must show:

- (1) That the tax was not collected; and,
- (2) That applicant had a good faith belief that collection of the tax was not required.

(c) **Unremitted trust fund taxes.** Trust fund taxes collected, but not remitted to the Commission, may not be abated.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-83. Eligibility requirements for settlement

(a) **General requirements.** Before a taxpayer becomes eligible for settlement pursuant to this program, the following general requirements must be met:

- (1) Tax liability must be final.
- (2) All administrative remedies and appeals must have been exhausted.
- (3) Taxpayer must be current with all returns filed or required to be filed with the Commission.
- (4) Taxpayer must not be currently the subject of an open bankruptcy proceeding.
- (5) Taxpayer must not be currently the subject of a State tax-related criminal investigation or criminal prosecution.

(b) **Bankruptcy or insolvency.** If settlement is sought on the grounds of bankruptcy or insolvency:

- (1) Taxpayer must demonstrate that the ability to make payment in full any time in the foreseeable future is unlikely.
- (2) Taxpayer must be without sufficient resources or unable to apply

present or future resources to paying the outstanding tax liability.

(3) Taxpayer must be reasonably unable to dispose of assets or borrow against assets to pay the tax liability.

(4) Taxpayer must demonstrate that monthly income is insufficient to fully pay the tax liability through reasonable installment payments.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-84. Application for a Settlement Agreement

(a) **Application.** The forms necessary to make application for a Settlement Agreement are available online at www.tax.ok.gov.

(b) **When a Power of Attorney is required.** Applications being tendered on behalf of a taxpayer by an attorney, CPA, or other person, must be accompanied by a properly acknowledged Power of Attorney Form, signed by the taxpayer, authorizing the person to act on behalf of the taxpayer.

(c) **Additional information.** The Income Tax Accounts Division may request additional financial or other information deemed necessary to supplement the Settlement Agreement Application.

(d) **Presentation of the application.** The Income Tax Accounts Division shall present a completed application to the Commission during a regularly scheduled meeting of the Commission.

(e) **Notice of the determination of the application.** The Income Tax Accounts Division shall notify the applicant in writing of the decision of the Commission and make any required adjustments to the applicant's account.

(f) **Withdrawal of application.** An application for a Settlement Agreement may be withdrawn by the taxpayer at any time prior to its acceptance.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-85. Effect of Offer in Compromise by the Internal Revenue Service

(a) Acceptance of an Offer in Compromise by the Internal Revenue Service does not automatically guarantee acceptance by the State. An application for a Settlement Agreement tendered to the Commission will be reviewed and evaluated on its own merits.

(b) The federal "Offer in Compromise" form cannot be substituted for the Oklahoma Settlement Agreement Application. However, other documents such as the current financial statements included in a compromise offer submitted to the Internal Revenue Service may also be submitted to the State in support of an application for a Settlement Agreement.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-86. Review by Commission

(a) **Unanimous vote required.** A unanimous vote of the members of the Commission is required for approval of a Settlement Agreement.

(b) **Discretionary act.** The determination of settlement is within the sole discretion of the Commission.

(c) **Facts and other considerations.** In making its decision, the Commission will consider, but not be limited to, the following matters:

- (1) The likelihood of collection of the debt;
- (2) The amount of the debt;
- (3) Efforts made by the Applicant to pay a part of the debt prior to filing an application for settlement;
- (4) The taxpaying record of the Applicant;
- (5) Applicant's current and possible future earning capacity;
- (6) The portion of the tax itself which would be paid under the terms of the proposed Settlement Agreement;
- (7) The composition of the balance of tax, penalty, and interest due;
- (8) The percentage of the tax debt proposed to be settled;
- (9) The Applicant's age and health;
- (10) The Applicant's net worth;
- (11) The acceptance by the Internal Revenue Service of an Offer in Compromise and the amount;
- (12) The age of the debt;
- (13) The existence of liens;
- (14) Current operating status of any business;
- (15) Bankruptcy status;
- (16) The amount determined to be collectible. This amount is generally based upon the Commission's evaluation of the reasonable collection potential of the taxpayer's assets and revenue. The collectible amount is one factor used to determine if an offer is reasonable.
- (17) Other liable parties;
- (18) Whether tax debt due is a trust tax collected by Applicant but not remitted to the Commission;
- (19) What other persons are liable;
- (20) Whether the Applicant is located within Oklahoma or not;
- (21) The accuracy and veracity of the Applicant's representations to the Commission;
- (22) The recommendations of the Income Tax Accounts Division; and
- (23) The expense and time expended in future collection efforts by the Commission on the Applicant's debt.

(d) **Other circumstances which may be considered.** In addition to the factors set out in (c) of this Section, the Commission may consider any other aggravating or mitigating circumstances contributing to the request for settlement, including, but not limited to:

- (1) Good faith efforts made by taxpayer to comply with the tax laws of this state.
- (2) Benefit received by taxpayer from nonpayment of the tax.

(3) Involvement of taxpayer in economic activity which gave rise to tax liability.

(e) **No appeal of denial.** The decision by the Commission to decline a proposed Settlement Agreement is final and is not appealable.

(f) **Court approval required.** If the amount of the tax liability to be abated exceeds Twenty-five Thousand Dollars (\$25,000.00), the Settlement Agreement requires the approval of a judge of the district court of Oklahoma County.

(g) **Resubmission of application.** If a taxpayer has previously submitted an application for a Settlement Agreement and that application was not accepted, the taxpayer may apply at a later date if financial conditions have changed, or to submit additional information not previously provided for review by the Commission.

[**Source:** Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03; Amended at 23 Ok Reg 2802, eff 6-25-06; Amended at 36 Ok Reg 1197, eff 8-11-19]

710:1-5-87. Disclosure

No return or document filed with the Commission pursuant to the Settlement of Tax Liability program will be subject to disclosure except as provided by 68 O.S. § 205.

[**Source:** Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-88. Effect of a Settlement Agreement

(a) Effect of pending Settlement Agreement.

(1) Filing an application for settlement does not constitute the filing of a protest of a proposed assessment, or extend the time to protest a proposed assessment. Filing an application for settlement does not constitute the taking of an appeal to the Oklahoma Supreme Court, nor extend the time to take an appeal to the Supreme Court. Filing an application for settlement does not place a taxpayer in compliance for purposes of renewing a professional license.

(2) If taxpayer is on an existing repayment plan, the taxpayer must continue to make payments until the application for a Settlement Agreement is either accepted or denied. Payments made pursuant to an existing repayment plan will not be considered a part of the amount offered in the agreement.

(3) Collection activities may continue during the review process, however, the Commission may suspend its collection efforts if the interests of the State will not be compromised. If there is any indication that the taxpayer filed the settlement offer simply to delay collection of the tax or that the delay would interfere with collecting the tax, the Commission will immediately resume collection efforts.

(4) Interest and penalty will continue to accrue on any unpaid tax debt while the settlement is being considered.

(b) Effect of accepted Settlement Agreement.

- (1) A Settlement Agreement relates to the entire liability of the taxpayer and all questions of such liability are conclusively settled thereby.
- (2) Neither the Commission nor the taxpayer shall, upon acceptance of the proposed Settlement Agreement, be permitted to revise the agreement except by reason of the following:
 - (A) Falsification or concealment of facts or assets by the taxpayer; or
 - (B) Mutual mistake of a material fact concerning the basis for a Settlement Agreement; or
 - (C) Assets were fraudulently transferred prior to the agreement or were liquidated during the review process; or
 - (D) Taxpayer failed to comply with the terms of the agreement.
- (3) Settlement of a civil liability does not constitute a settlement of a criminal liability concerning the tax period in question.
- (4) Tax liens will be released only after an application for a Settlement Agreement is accepted and the amount offered is paid in full. If the amount of the tax liability to be abated exceeds Twenty-five Thousand Dollars (\$25,000.00), the taxpayer is also required to provide to the Commission a certified copy of Oklahoma County District Court approval of the Settlement Agreement before tax liens will be released.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03; Amended at 24 Ok Reg 1688, eff 6-11-07; Amended at 36 Ok Reg 1197, eff 8-11-19]

710:1-5-89. Payment

- (a) No payment is required to be paid when the Settlement Agreement Application is submitted to the Commission.
 - (b) Full payment of the amount offered in settlement of the tax liability must be made within thirty (30) days from date of notification that the proposed Settlement Agreement has been accepted. Payment of the accepted settlement amount by cash, cashier's check, money order, or charged to an approved credit card must be made by the payment due date indicated on the acceptance notice.
- [See:https://www.ok.gov/tax/Online_Services/Payment_Options/index.html]**
- (c) Any payment made with the application will not be returned to Applicant, even if the Settlement Agreement is declined or withdrawn. The retained payment will be applied to Applicant's outstanding tax liability in accordance with Section 710:1-3-46 of this Chapter.
 - (d) In appropriate circumstances, the Commission may consider proposed Settlement Agreements that provide for payments to be made over a period of time based on future income.
 - (e) The Settlement Agreement becomes void if taxpayer defaults on payment under the agreement.
 - (f) The Settlement Agreement becomes void if the agreement was obtained by fraud or misrepresentation of a material fact.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03; Amended at 24 Ok Reg 1688, eff 6-11-07]

710:1-5-90. If the proposed Settlement Agreement is declined

- (a) If the application for a Settlement Agreement is declined, the taxpayer will be notified by the Income Tax Accounts Division in writing.
- (b) Taxpayer should immediately contact the Commission to arrange payment of the entire liability. If immediate payment of the entire liability is not possible, the taxpayer may request payment through the regular collection procedures.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-91. Return of Settlement Agreement Application

The Commission may reject the Settlement Agreement Application as not processible for any of the following reasons:

- (1) The applicant is not adequately identified (name, address, ID#, etc.) or required signatures are not provided.
- (2) The settlement offer includes an amount already collected or subject to refund.
- (3) The tax liability is not adequately identified.
- (4) The Settlement Agreement Application does not show a reason or a statement supporting the reason for the settlement offer has not been provided.
- (5) Financial statements or other documentation have not been included, or are incomplete or do not present a complete and accurate representation of the taxpayer's financial condition.
- (6) The Commission's records indicate noncompliance with filing of required returns.
- (7) The applicant is currently under bankruptcy court jurisdiction.
- (8) Power of Attorney Form (if indicated) has not been included.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03; Amended at 24 Ok Reg 1688, eff 6-11-07]

710:1-5-92. Exclusivity of request for settlement of tax liability

Procedures governing settlement of final tax liabilities, pursuant to this Part, are exclusive and must be clearly distinguished from procedures required for the filing of a timely **protest** of a proposed tax assessment or a protest of a denial of a claim for refund of taxes as set out in 710:1-5-21 through 710:1-5-49. The procedures for the filing, consideration, and disposition of **petitions for abatement or adjustment of a tax assessment** pursuant to the provisions of 68 O.S. § 221(e) are set out in 710:1-5-70 through 710:1-5-78. Procedures for settlement of disputed, unliquidated tax claims or assessments are set out in 710:1-5-13.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03]

710:1-5-93. Officials ineligible for Settlement Agreement

No appointed or elected officials may apply for settlement pursuant to this Section.

[Source: Added at 20 Ok Reg 748, eff 3-17-03 (emergency); Added at 20 Ok Reg 2580, eff 7-11-03]

PART 9. PROCEEDINGS RELATED TO PERMITS AND LICENSES

710:1-5-100. Show cause hearings

When a Tax Division contests the taxpayer's compliance with State tax laws or Commission Rules, the Division may cause notice to be issued to the taxpayer requiring him to appear before the Administrative Law Judge or an Administrative Hearing Officer to show why his license or permit should not be cancelled. The notice shall contain a date certain for the hearing. Failure to appear at the hearing may result in the cancellation of license or permit. The taxpayer may represent himself or be represented by an attorney, an accountant or other representative approved by the Commission. The taxpayer is to bring all reports and payments for delinquent taxes, penalty and interest to the hearing. Evidence and testimony of witnesses may be presented at the hearing.

[Source: Amended at 10 Ok Reg 3819, eff 7-12-93; Amended at 12 Ok Reg 3474, eff 7-21-95 (emergency); Amended at 13 Ok Reg 3091, eff 7-11-96; Amended at 16 Ok Reg 2628, eff 6-25-99]

PART 10. BUSINESS COMPLIANCE PROCEEDINGS

710:1-5-110. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Business day" means a day on which State offices are open for regular business.

"Noncompliant taxpayer" means any taxpayer operating under a sales tax permit who, within any consecutive twenty-four-month period, has failed to file two (2) reports or remit tax due for any two (2) months, as required under the provisions of any tax law. Provided, a taxpayer shall not be deemed noncompliant for nonpayment of income taxes.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13; Amended at 35 Ok Reg 2032, eff 9-14-18]

710:1-5-111. Noncompliant taxpayer determination and advisory notice

Should a taxpayer fail to file two (2) reports or remit tax due for two (2) months within a twenty-four-month period, the taxpayer is deemed to be noncompliant and will be issued an advisory notice that a third delinquency in reporting or remitting taxes occurring prior to payment of identified tax delinquencies within the twenty-four-month period will result in closure of taxpayer's business. The advisory notice provided pursuant to this Section will be sent certified by the U.S. postal service to the taxpayer's last-known address or will be hand delivered to the taxpayer's business address.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13; Amended at 35 Ok Reg 2032, eff 9-14-18]

710:1-5-112. Commencement of twenty-four (24) month period and examples

(a) **Commencement of twenty-four (24) month period.** A taxpayer's initial tax delinquency begins commencement of the twenty-four (24) month period for purposes of the business compliance proceedings.

(b) **Examples.** The following examples illustrate the application of the twenty-four (24) month period.

(1) A taxpayer is delinquent for July and August of 2017, but does not incur another delinquency until September 2019; no pending business closure notice will be issued. Taxpayer's September 2019, delinquency begins commencement of a new twenty-four (24) month period.

(2) A taxpayer is delinquent for July and August of 2017 and pays the tax, interest, penalty and fees due before incurring an additional delinquency in January 2018. A pending business closure notice will not be issued. The January 2018 delinquency begins a new twenty-four (24) month period.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13; Amended at 35 Ok Reg 2032, eff 9-14-18]

710:1-5-113. Pending business closure notice

(a) **Applicability.** When a taxpayer deemed noncompliant fails to report or pay tax for a third month within a twenty-four-month period, a Pending Business Closure Notice will be issued.

(b) **Contents of pending business closure notice.** The notice will outline the outstanding reports and tax payments and will advise the noncompliant taxpayer that the business will be closed unless taxpayer within five (5) business days from the delivery or attempted delivery of the notice exercises one of the following options:

(1) Provides proof to the satisfaction of the Tax Commission that the delinquent tax reports and/or tax payments have been previously filed and/or paid.

(2) Files all outstanding tax reports and remits the delinquent tax including any accrued interest, penalty and fees.

(3) Pursuant to the terms outlined in Section 710:1-5-115, enters into an installment payment agreement approved by the Tax Commission to satisfy the delinquent tax, interest, penalty and fees due.

(4) Objects to the business closure by filing a written protest and request for an administrative hearing, pursuant to the terms outlined in Section 710:1-5-117.

(c) **Notice requirements.** Pending Business Closure Notices will be sent certified by the U.S. postal service to the taxpayer's last-known address or hand delivered to the taxpayer's business address.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13; Amended at 35 Ok Reg 2032, eff 9-14-18]

710:1-5-114. Closure Order

If a noncompliant taxpayer fails to timely and fully exercise one of the options to avoid business closure outlined in paragraphs (1) through (4) of subsection (b) of Section 710:1-5-113, or to comply with the terms of an installment payment agreement pursuant to Section 710:1-5-115, the Tax Commission will issue a Closure Order.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13]

710:1-5-115. Installment payment agreements

(a) **Eligibility and terms of installment payment agreements.** Noncompliant taxpayers owing tax delinquencies of Five Hundred Dollars (\$500.00) or less are not eligible for an installment payment agreement. Installment Payment Agreements (IPA) for tax delinquencies over Five Hundred Dollars (\$500.00) require a down payment equal to or greater than one-fourth (1/4) of the tax, interest, penalty and fees owed. The agreement shall not exceed twelve (12) months. A tax warrant for the delinquent tax, interest, penalty and fees will be filed by the Tax Commission to protect the State's interest.

(b) **Installment payment agreement conditions.**

(1) Taxpayer must file all delinquent tax returns prior to entering into an installment payment agreement.

(2) Taxpayer must make installment payments when due by cashier's check, money order, or credit card accepted by the Tax Commission.

(3) Taxpayer must remain in compliance, filing all tax returns and paying in full all taxes that come due during the term of the installment payment agreement.

(c) **Execution and form of installment payment agreement.** The installment payment agreement must be in writing and signed by both the taxpayer and a Tax Commission representative.

(d) **Default.** Taxpayers failing to abide by the requirements set out in subsection (b) of this Section will be considered in default. Once in default, a Closure Order will be served immediately without further notice to the defaulting taxpayer and a placard will be affixed to all entrances to the business pursuant to Section 710:1-5-122.

(e) **Exceptions to terms of and eligibility for installment payment agreements.** A taxpayer may request an installment payment agreement outside the parameters of subsection (a) of this Section. Requests by

taxpayers with hearings scheduled pursuant to Section 710:1-5-117 may be made to the Hearing Officer. Otherwise, such requests should be made to the Executive Director of the Oklahoma Tax Commission. In the event the request for an extended installment agreement is denied by the Hearing Officer or Executive Director the taxpayer may make the request at a regularly scheduled meeting of the Tax Commissioners.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13; Amended at 35 Ok Reg 2032, eff 9-14-18]

710:1-5-116. Interest and penalty waiver requests

(a) **Waiver requests.** In the event, a taxpayer prior to business closure by affixing of a placard as provided in Section 710:1-5-122, pays the delinquent tax in full and requests, in writing, a waiver of interest and penalty, the waiver request will be treated as a stay to the business closure and a hearing will be scheduled in the same manner as hearings to business closures in Section 710:1-5-120.

(b) **Consideration of the request.** Before the scheduled hearing date, the waiver request must be considered by the applicable Division or Tax Commissioners, dependent upon the amount requested to be waived, and the taxpayer advised regarding approval/disapproval of the request.

(c) **Applicability of waiver request.** If the waiver request is approved, the hearing will be stricken from the docket and the taxpayer will be deemed compliant for purposes of the business closure proceedings. If the waiver request is not approved or only partially approved, the taxpayer will be afforded the opportunity, prior to or at the hearing, to pay in full the outstanding interest, penalties and fees or enter into an installment agreement to pay the outstanding amounts subject to the provisions of Section 710:1-5-115.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13; Amended at 35 Ok Reg 2032, eff 9-14-18]

710:1-5-117. Hearing request by noncompliant taxpayer

(a) **Contents and form of protest and request for hearing.** The protest and request for hearing must be made in writing, signed by the taxpayer or an authorized representative, and should outline therein:

- (1) Taxpayer's name, address and social security number or employer's identification number;
- (2) Taxpayer's sales tax permit or other identification number issued by the Tax Commission;
- (3) The tax reporting periods at issue; and
- (4) That an administrative hearing is requested including the manner in which the taxpayer desires the hearing to be held whether in person, by telephone, upon written documents furnished by the noncompliant taxpayer, or upon written documents and evidence produced by the noncompliant taxpayer at hearing.

(b) **Rule applicability.** The tax protest procedure outlined in 710:1-5-21 through 710:1-5-48 is not applicable to the business closure protest proceedings which are solely governed by the provisions of 710:1-5-117 through 710:1-5-121.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13; Amended at 32 Ok Reg 1330, eff 8-27-15; Amended at 35 Ok Reg 2032, eff 9-14-18]

710:1-5-118. Timely filing of protest and applications for hearing

In order for the hearing request to be considered timely it must be filed within five (5) business days after the date of delivery or attempted delivery of the pending business closure notice.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13]

710:1-5-119. Defenses to business closure

The only defenses to business closure are proof that the noncompliant taxpayer:

- (1) Filed all delinquent returns and paid the delinquent tax due including interest, penalty and fees; or
- (2) Has entered into a payment agreement pursuant to Section 710:1-5-115 to satisfy the tax due including interest, penalty and fees.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13; Amended at 35 Ok Reg 2032, eff 9-14-18]

710:1-5-120. Hearing procedures governing hearing requests to pending business closure notice

(a) **Hearing schedule.** The date, time, and place for the hearing will be set by the hearing officer and provided to the noncompliant taxpayer by mail at least five (5) days in advance of the hearing.

(b) **Administrative hearing.** The administrative hearing will be conducted by a hearing officer appointed by the Tax Commission. The administrative hearing will be held within fourteen (14) calendar days of receipt by the Tax Commission of the noncompliant taxpayer's request for hearing. Subject to the approval of the hearing officer, the administrative hearing may be held in person, by telephone, upon written documents furnished by the noncompliant taxpayer, or upon written documents and any evidence produced by the noncompliant taxpayer at an administrative hearing. A noncompliant taxpayer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing regarding the matter prior to the date a decision is rendered by the hearing officer. The noncompliant taxpayer may be represented by an authorized representative who may present evidence in support of the position of the noncompliant taxpayer.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13]

710:1-5-121. Hearing officer decisions

The decision of the hearing officer to affirm or deny the business closure must be rendered in writing and a decision to affirm the business closure shall constitute a Closure Order with copies delivered to the noncompliant taxpayer by the U.S. postal service or by hand delivery.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13]

710:1-5-122. Business closure

If a noncompliant taxpayer fails to fully exercise one of the options to avoid business closure outlined in paragraphs (1) through (4) of subsection (b) of Section 710:1-5-113, or to comply with the terms of an installment payment agreement pursuant to Section 710:1-5-115, or if the business closure decision is affirmed after administrative or judicial review, the Tax Commission shall provide notice of business closure by affixing a placard to all entrances of the business that:

- (1) Identifies the business as being subject to a Closure Order; and
- (2) States that the business is prohibited from further operation.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13]

710:1-5-123. District Court injunctions

After being served with a Closure Order, it shall be unlawful for any person to continue to operate the business. If a person continues or threatens to continue the unlawful operation of the business after having received a Closure Order, the Tax Commission may seek an injunction in District Court to enjoin the taxpayer from further operating or conducting the unlawful business. In all cases where injunction proceedings are brought under this Section, the Tax Commission shall not be required to furnish bond. Where notice of closure has been given in accordance with the provisions of Section 710:1-5-122, no further notice shall be required before the issuance of a temporary restraining order.

[Source: Added at 30 Ok Reg 1850, eff 7-11-13]

**PART 11. DISQUALIFICATION OF PERSONS REPRESENTING TAXPAYERS
BEFORE THE OKLAHOMA TAX COMMISSION****710:1-5-200. Disqualification procedure**

(a) **General provisions.** Any person shown to be in violation of the provisions of Section 236 of Title 68 of the Oklahoma Statutes, may, after notice and an opportunity for hearing, be disqualified from practice before the Oklahoma Tax Commission.

(b) **Complaint and initial investigation.** The Commission may, upon its own initiative, or upon receiving a written complaint filed with the Secretary-

Member, cause the complaint to be investigated and a determination made as to whether good cause exists for initiating a disqualification proceeding. If it is determined that no violation has occurred, or if there is insufficient evidence to support the allegation, the investigation will be terminated. If a determination is made that good cause exists for initiating a disqualification proceeding, such proceeding will be promptly commenced.

(c) **Commencement of proceeding.** Upon the initiation of a disqualification proceeding, the matter shall be set for hearing before a hearing examiner or an Administrative Law Judge assigned by the Commission. The respondent who is the subject of the proceeding, and the Office of the General Counsel who shall prosecute the matter, shall be provided notice of the hearing, at least thirty (30) days prior to the hearing date.

(d) **Notice.** Notice to respondent shall be made by certified mail, return receipt requested, postage prepaid, to the last known address, and shall contain a summary of the complaint, the name of the Administrative Law Judge or hearing examiner assigned to the matter, and the time and date of the hearing.

(e) **Conduct of hearing.** The hearing shall be public except where prohibited by confidentiality imposed by law, and shall be conducted in conformity with the Rules of Practice and Procedure before the Office of the Administrative Law Judges (OAC 710:1-5-20 through 710:1-5-49).

(f) **Burden of proof.** The Office of the General Counsel shall have the burden of establishing, by a preponderance of the evidence, that a violation of Section 236 has occurred such that respondent should be disqualified from practice before the Commission. Notice of the final disposition of the disqualification proceedings will be provided respondent.

(g) **Scope of action.** The respondent may be found qualified to practice and the proceeding dismissed on the merits; or the respondent may be disqualified from practice before the Commission for a stated period of time, or indefinitely. The Commission may provide notice of the determination of the disqualification proceeding to other agencies, boards, or Commissions who exercise jurisdiction or regulatory authority over the respondent or the activities involved in the violation. Nothing in this Section shall preclude the Commission from seeking any other remedies or legal proceedings available at law to enforce its orders, rules, or the provisions of 68 O.S. § 236.

[Source: Added at 16 Ok Reg 2642, eff 6-25-99]

SUBCHAPTER 8. TAX AMNESTY PROGRAM [EXPIRED]

710:1-8-1. General provisions [EXPIRED]

[Source: Added at 19 Ok Reg 3023, eff 8-14-02 through 7-14-03 (emergency)]

710:1-8-2. Definitions [EXPIRED]

[Source: Added at 19 Ok Reg 3023, eff 8-14-02 through 7-14-03 (emergency)]

710:1-8-3. Eligible tax liabilities to which tax amnesty may apply [EXPIRED]

[Source: Added at 19 Ok Reg 3023, eff 8-14-02 through 7-14-03 (emergency)]

710:1-8-4. Qualification for amnesty program [EXPIRED]

[Source: Added at 19 Ok Reg 3023, eff 8-14-02 through 7-14-03 (emergency)]

710:1-8-5. Application procedures [EXPIRED]

[Source: Added at 19 Ok Reg 3023, eff 8-14-02 through 7-14-03 (emergency)]

710:1-8-6. Verification and review [EXPIRED]

[Source: Added at 19 Ok Reg 3023, eff 8-14-02 through 7-14-03 (emergency)]

710:1-8-7. Disclosure [EXPIRED]

[Source: Added at 19 Ok Reg 3023, eff 8-14-02 through 7-14-03 (emergency)]

710:1-8-8. Special circumstances [EXPIRED]

[Source: Added at 19 Ok Reg 3023, eff 8-14-02 through 7-14-03 (emergency)]

**SUBCHAPTER 9. OKLAHOMA VOLUNTARY COMPLIANCE INITIATIVE
[EXPIRED]****710:1-9-1. General provisions [EXPIRED]**

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

710:1-9-2. Definitions [EXPIRED]

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

710:1-9-3. Eligible tax liabilities to which Voluntary Compliance Initiative may apply [EXPIRED]

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

710:1-9-4. Qualification for Voluntary Compliance Initiative [EXPIRED]

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

710:1-9-5. Application procedures [EXPIRED]

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

710:1-9-6. Verification and review [EXPIRED]

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

710:1-9-7. Disclosure [EXPIRED]

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

710:1-9-8. Nonpayment penalty [EXPIRED]

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

710:1-9-9. Special circumstances [EXPIRED]

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

710:1-9-10. Payment plan guidelines [EXPIRED]

[Source: Added at 26 Ok Reg 17, eff 8-8-08 through 7-14-09 (emergency)]

SUBCHAPTER 11. RETAILER COMPLIANCE INITIATIVE [EXPIRED]**710:1-11-1. Purpose [EXPIRED]**

[Source: Added at 28 Ok Reg 461, eff 12-27-10 through 7-14-11 (emergency)]

710:1-11-2. [RESERVED]

[Source: Added at 28 Ok Reg 461, eff 12-27-10 through 7-14-11 (emergency)]

710:1-11-3. Definitions [EXPIRED]

[Source: Added at 28 Ok Reg 461, eff 12-27-10 through 7-14-11 (emergency)]

710:1-11-4. [RESERVED]

[Source: Added at 28 Ok Reg 461, eff 12-27-10 through 7-14-11 (emergency)]

710:1-11-5. Retailer Compliance Initiative [EXPIRED]

[Source: Added at 28 Ok Reg 461, eff 12-27-10 through 7-14-11 (emergency)]

SUBCHAPTER 13. CONSUMER COMPLIANCE INITIATIVE**710:1-13-1. Purpose**

In order to encourage the voluntary disclosure and payment of use taxes owed to the State, the Legislature has authorized the Tax Commission to establish a Consumer Compliance Initiative.

[Source: Added at 28 Ok Reg 929, eff 6-1-11]

710:1-13-2. [RESERVED]**710:1-13-3. Consumer Compliance Initiative**

Relief granted under Initiative. Taxpayers who qualify under the Initiative will be granted a waiver of penalty, interest and other collection fees and the Tax Commission will refrain from assessing use tax for more than one year prior to the date the taxpayer registers to pay consumer use tax.

(1) **Eligibility.** Only businesses that make regular purchases of tangible personal property outside the State of Oklahoma for their own use, storage or consumption in this state are eligible for the relief granted under the Initiative.

(2) **Qualification.** To qualify for the relief granted under the Initiative the taxpayer must:

(A) Voluntarily file delinquent use tax returns and pay the delinquent consumer use taxes reflected thereon; and

(B) Apply with the Oklahoma Tax Commission for an Oklahoma consumer use tax account to report and remit use tax on a monthly basis.

(i) Complete the business registration application online at www.tax.ok.gov.

(ii) No fee is required to obtain the account.

(iii) Upon receipt and review of the application by the Tax Commission, a consumer use tax account will be assigned.

(3) **Exceptions.** The relief provided under the Initiative is not available to a taxpayer with respect to:

(A) Any matter or matters for which the consumer received notice of the commencement of an audit and which the audit is not yet finally resolved including any related administrative and judicial processes; and

(B) Use taxes already paid or remitted to the state.

(4) **Applicability.** The relief provided pursuant to the Initiative applies only to use taxes due from a taxpayer in its capacity as a buyer not to use taxes due from a taxpayer in its capacity as a seller.

[Source: Added at 28 Ok Reg 929, eff 6-1-11]

SUBCHAPTER 15. OKLAHOMA VOLUNTARY COMPLIANCE INITIATIVE 2015 [EXPIRED]

710:1-15-1. General provisions [EXPIRED]

710:1-15-2. Definitions [EXPIRED]

710:1-15-3. Eligible tax liabilities to which Voluntary Compliance Initiative may apply [EXPIRED]

710:1-15-4. Qualification for Voluntary Compliance Initiative [EXPIRED]

710:1-15-5. Payments [EXPIRED]

710:1-15-6. Verification and review [EXPIRED]**710:1-15-7. Disclosure [EXPIRED]****710:1-15-8. Special circumstances [EXPIRED]****710:1-15-9. Payment plan guidelines [EXPIRED]****SUBCHAPTER 17. OKLAHOMA VOLUNTARY DISCLOSURE INITIATIVE
[EXPIRED]****710:1-17-1. General provisions [EXPIRED]**

[Source: Added at 35 Ok Reg 53, eff 8-28-17 through 9-14-18 (emergency)]

710:1-17-2. Definitions [EXPIRED]

[Source: Added at 35 Ok Reg 53, eff 8-28-17 through 9-14-18 (emergency)]

710:1-17-3. Voluntary Disclosure Initiative [EXPIRED]

[Source: Added at 35 Ok Reg 53, eff 8-28-17 through 9-14-18 (emergency)]

710:1-17-4. Eligible tax liabilities to which Voluntary Disclosure Initiative may apply [EXPIRED]

[Source: Added at 35 Ok Reg 53, eff 8-28-17 through 9-14-18 (emergency)]

710:1-17-5. Eligible taxpayers [EXPIRED]

[Source: Added at 35 Ok Reg 53, eff 8-28-17 through 9-14-18 (emergency)]

710:1-17-6. Modified Voluntary Disclosure Agreement [EXPIRED]

[Source: Added at 35 Ok Reg 53, eff 8-28-17 through 9-14-18 (emergency)]

710:1-17-7. Verification and review [EXPIRED]

[Source: Added at 35 Ok Reg 53, eff 8-28-17 through 9-14-18 (emergency)]

710:1-17-8. Disclosure [EXPIRED]

[Source: Added at 35 Ok Reg 53, eff 8-28-17 through 9-14-18 (emergency)]

710:1-17-9. Payment plan guidelines [EXPIRED]

[Source: Added at 35 Ok Reg 53, eff 8-28-17 through 9-14-18 (emergency)]

APPENDIX A. SCHEDULE OF FEES

DOCUMENT	AUTHORITY	FEE	NOTES
Prior Notice of Meetings of the Oklahoma Tax Commission	25 O.S. Supp. 1992, §311(11)	\$18.00 year	(Annual Renewal Required)
Certification of Documents	68 O.S. 1991, §108	\$2.00 each certificate	
Authentication of Documents	68 O.S. 1991, §204	\$1.00 each	
Hearing transcripts	68 O.S. 1991, §108	\$2.50 per page (One original + 2 copies)	
Copies of Exhibits	68 O.S. 1991, §108	\$0.25 per page	
Precedential Decisions	68 O.S. 1991, §221(g)	\$0.25 per page	
Decisions from Individual Tax Hearings	68 O.S. 1991, §221(g)	\$0.25 per page	
General Document Copying Fee	75 O.S. 1991, §302	\$0.25 per page	
Prior Years' Returns and Accompanying Forms	51 O.S. Supp. 1992, §24A.5(3)	\$0.25 per page	
FAX Documents	68 O.S. 1991, §108	\$1.00 per document plus \$0.25 per page	Destination unrestricted.
Certificate of Compliance with Franchise Tax Code	68 O.S. 1991, §1213	\$1.00	
Search Fee: Data Search, Retrieval and Compilation of Certain Information Pertaining to Plugged Wells, Leases, Unit Numbers, Volume of Production, and	68 O.S. Supp. 1992, §1024	\$20.00 first hour \$10.00 each additional half-hour	

Well Classification

[Source: Added at 10 Ok Reg 3819, eff 7-12-93; Amended at 11 Ok Reg 3465, eff 6-26-94; Revoked and reenacted at 13 Ok Reg 3933, eff 9-3-96 (emergency); Revoked and reenacted at 14 Ok Reg 2667, eff 6-26-97; Revoked and reenacted at 18 Ok Reg 2325, eff 5-7-01 (emergency); Revoked and reenacted at 19 Ok Reg 2429. eff 6-27-02]