

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 1. Administrative Operations [AMENDED]

SUMMARY:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to implement recent legislation. All legislative references are to the First Regular Session of the 59th Legislature (2023) unless otherwise indicated.

Section 710:1-3-73 has been revised to provide clarity that letter rulings may be accessed and viewed online.

Section 710:1-3-80 has been amended to provide clarity on the process and specific conditions for requesting a partial release of a tax warrant.

Section 710:1-5-1 has been modified to enhance the clarity between a protest of an assessment and a demand for hearing regarding a denied claim for refund. [68:221, 227]

Part 3. Description Of Administrative Review and Hearings has been amended to provide greater clarity in distinguishing between a protest of an assessment and a demand for hearing relating to a denied claim for refund. Additionally, certain information that was misleading and unnecessary has been removed, and changes were made to implement the provisions of HB 2289. [68:221, 227]

Part 5. Administrative Proceedings Related to Tax Protests has been amended to provide greater clarity in distinguishing between a protest of an assessment (68 O.S. § 221), a demand for hearing relating to a denied claim for refund (68 O.S. § 227) and an application for hearing (68 O.S. § 207). Additionally, the rules have been updated to incorporate recent legislative revisions (HB 2289) and to enhance the clarity of regulations and processes governing proceedings before an administrative law judge.[68:207, 221, 225, 227]

Part 7. Abatement Of Erroneous Tax Assessment has been revised to provide a clearer outline of the procedure for submitting a protest and to incorporate the provisions of HB 2289 which specifies that a written protest must be submitted within 60 days from the date indicated on a proposed assessment. [68:221]

Part 8. Settlement of Tax Liability has been amended to provide greater clarity in distinguishing between a protest of an assessment and a demand for hearing relating to a denied claim for refund. [68:221, 227]

Part 9. Proceedings Related to Permits and Licenses has been amended to implement the provisions of HB 2289 and SB 600 to elucidate the protocols for revoking or suspending a sales tax permit due to noncompliance with any provisions of 68 O.S. § 1364. [68:221]

Part 10. Business Compliance Proceedings has been amended to clarify policy regarding the interpretation and application of current statutory provisions governing business closure proceedings and requirements related thereto. [68:1368.3]

AUTHORITY:

68 O.S. § 203; Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to present their views in writing may do so by 4:30 p.m., January 17, 2024, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or by email to lhaws@tax.ok.gov.

PUBLIC HEARING:

A public hearing is scheduled for 1:00 p.m. on Wednesday, January 17, 2024, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date by calling Lakesha Mackie at (405) 521-3133. Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at tax.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at tax.ok.gov.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194; Telephone number: 405-521-3133; Email: lhaws@tax.ok.gov

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS
SUBCHAPTER 3. PUBLIC POLICY
PART 11. PUBLIC RECORDS**

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 online at ~~the Taxpayer Resource Center, 300 N. Broadway Ave, Oklahoma City, OK 73102, during normal business hours~~ tax.ok.gov.

PART 13. OTHER POLICY PROVISIONS

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

(a) Partial Release release of a ~~Tax Warrant~~ tax warrant or ~~Lien~~ lien may be issued under

the following circumstances:

- (1) Where there is a short sale and the lien of an outstanding ~~Tax Warrant~~ 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~~ 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~~ 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~~ tax warrant against a particular parcel of realty;
 - (5) Where the applicant is not the taxpayer named in the ~~Tax Warrant~~ 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~~ tax warrant to the applicant without properly extinguishing the ~~Tax Warrant~~ tax warrant;
 - (6) Where there exists no likelihood of collection or enforceability of a ~~Tax Warrant~~ tax warrant against a particular parcel of realty because the applicant does not have enough equity in the property to satisfy the ~~Tax Warrant~~ tax warrant in full; or
 - (7) Where the applicant seeks a subordination of an outstanding tax warrant to facilitate the refinancing of a prior mortgage; or
 - (8) Where the denial of the Partial Release 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~~ 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~~ 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~~ tax warrant, provided such an amount is not less than Five Hundred Dollars (\$500.00).
 - (3) In a situation described in (a)(5) or (a)(6) of this Section, payment of all of the net proceeds from the sale.
 - (4) In a situation described in (a)(7) of this Section, payment of all the equity extracted. If there is no equity being withdrawn, a payment equal to ten percent (10%) of the tax warrant amount inclusive of both interest and penalty is to be made, provided such amount is not less than Five Hundred Dollars (\$500.00).
 - (5) Pursuant to 68 O.S. Section 214, a ~~Tax Warrant~~ 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)~~ (6) In any case where the Commission shall determine that the amount prescribed by (1) through ~~(4)~~ (5) of this subsection shall be excessive or inadequate, or in a situation described in (a)(8) of this Section, then adequate consideration shall be such amount as the Commission shall prescribe.

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~~ 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 and demands for hearing.~~

(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.

PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS

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

~~(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.~~

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

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

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

(c) Letters of protest of a proposed assessment must be filed within sixty (60) days of the issue date indicated on the proposed assessment pursuant to the provisions of 68 O.S. § 221(C). Letters of protest must be filed with the taxing division, either online through OkTAP via the Protest link at tax.ok.gov, by mail addressed to Oklahoma Tax Commission, Oklahoma City, OK 73194, or in person at the Taxpayer Resource Center located at 300 N. Broadway, Oklahoma City, OK 73102.

(d) Demands for hearing relating to denial of a claim for refund must be filed within sixty (60) days of the issue date indicated on the notice of denial. Demands for hearing must be filed with the taxing division, either online through OkTAP via the Demand for Hearing link at tax.ok.gov, by mail addressed to Oklahoma Tax Commission, Oklahoma City, OK 73194, or in person at the Taxpayer Resource Center located at 300 N. Broadway, Oklahoma City, OK 73102.

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

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

(g) Detailed procedural rules governing protests and demands for hearing may be found in

710:1-5-21 through 710:1-5-49, which set out rules of Practice and Procedure before the Office of the Administrative Law Judges.

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)~~(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.~~

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 Division taxing division which initiated the disputed assessment or denied the claim for refund. Settlements of final liabilities pursuant to 68 O.S. § 219.1 are governed by the provisions of Part 8 of this Subchapter.

PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

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

~~(a) An assessment, correction or adjustment must be issued before a taxpayer can file a protest.~~

~~(b) Protests must be commenced by filing a timely written protest with the taxing division, either online through OkTAP via the Protest link at tax.ok.gov, by mail addressed to Oklahoma Tax Commission, Oklahoma City, OK 73194, or in person at the Taxpayer Resource Center located at 300 N. Broadway, Oklahoma City, OK 73102. 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 indicated on the proposed assessment, unless an extension is granted in writing within the sixty (60) day period.~~

~~(b)(c) 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.~~

710:1-5-24. ~~Protests to denials of claims for refunds~~ Commencement and numbering of a demand for hearing related to a claim for refund

~~(a) A claim for refund has to must be denied by the Division taxing division before a taxpayer can file a protest demand for hearing.~~

(b) Once a claim for refund is denied and the taxpayer files a ~~protest with the Tax Commission demand for hearing~~, the Administrative Law Judge ~~Judges' Office~~ assigns a case number, creates a court file, assigns a Judge and shall set sets a hearing within sixty (60) days after the filing of the ~~protest demand for hearing~~. The taxpayer shall be duly notified of time of the hearing. ~~Protests to~~ Demands for hearing relating 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, demands for hearing, and applications for hearing

Protests, demands for hearing, 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 the taxpayer's 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.

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, but not less than twenty (20) days prior to the pre-hearing conference date. 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 Administrative Law Judge may close the record and issue Findings, Conclusions and Recommendations based on information in the record or may request the Division to file a Verified Response. A Verified Response is a pleading filed by the attorney representing the Division, verified by the Division, which sets forth the legal and factual basis for the action taken by the Division and the response of the Division to the issues raised in the protest, and is accompanied by documentation the Division would like the Administrative Law Judge to consider in reaching a decision. If a party files a reply to the

Division's Verified Response, and requests a hearing therein, then the Administrative Law Judge ~~may shall~~ set the matter for hearing on the merits of the protest, and thereafter, ~~enter recommendations to the Commission in accordance with the findings~~ issue Findings, Conclusions and Recommendations. 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 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 Findings, Conclusions and Recommendations~~ issuing Findings, Conclusions and Recommendations. Any party aggrieved by the recommendation may proceed pursuant to 710:1-5-40.

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~~ notice of the time, date and location of the hearing is sent to the parties. The parties ~~are~~ may be directed to file briefs or position letters ~~(or both) in support of their positions, witness and exhibits lists, copies of proposed exhibits and such other documents the Administrative Law Judge deems appropriate.~~

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~~ rules of Evidence 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 requesting party and the Administrative Law Judge must be upon the certification.

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 the Administrative Law Judge learns 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.

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~~ opposing party with a copy, of such transcript.

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~~ pleadings 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 ~~the~~ contentions of the party. The Administrative Law Judge may schedule a conference between the parties if it is deemed necessary to clarify the positions of the parties.

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~~ case 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.

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

The Unless otherwise provided in these rules, 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~~ 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~~ filing an appeal, 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.** The time for filing an appeal commences upon issuance of a final order by the Commissioners for which an appeal is permitted by statute. 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 has been~~ issued by the Commissioners. Therefore, a motion for rehearing or reconsideration or an application for a hearing en banc filed after the Commissioners have issued a final order will not serve to stay the time to appeal ~~to the Supreme Court~~.

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, 1980 OK 190, 621 P.2d 539 ~~(Okla. 1980)~~.)

710:1-5-44. Computation of time in pending administrative proceedings

When filing documents in ~~an~~ a pending 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.

710:1-5-45. Service of documents in pending administrative proceedings

Service of any document in ~~an~~ a pending administrative proceeding may be accomplished by personal delivery or by mailing such document addressed to the party or the party's authorized representative at the last known address, postage prepaid. In the alternative, upon written consent of the party filed in the administrative proceeding, service of any document may be made by electronic mail to the address provided by the party or the party's authorized representative. 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 taxpayer may dismiss his or her protest or demand for hearing, or the tax taxing division whose action or proposed action has been protested formally challenged by protest or demand for hearing 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 case 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 case should not be dismissed. A dismissal by the Administrative Law Judge is appealable to subject to review by the Commission in the same manner as appeals from other rulings by the ALJ Administrative Law Judge.

(c) **Receipt of untimely protest or demand for hearing.** The Commission is without jurisdiction to consider a protest or demand for hearing that is not filed within the time provided by statute. Upon receipt of a protest that was untimely filed, in lieu of transmitting the matter to the Office of Administrative Law Judges, the taxing division shall notify the taxpayer in writing that the assessment has become final pursuant to 68 O.S. § 221(C), of further options for the taxpayer to have the timeliness determination reviewed, and of adjustment/abatement provisions contained within 68 O.S. § 221(E). Upon receipt of a demand for hearing that was untimely filed, in lieu of transmitting the matter to the Office of Administrative Law Judges, the taxing division shall notify the taxpayer in writing that the demand for hearing was untimely filed, of further options for the taxpayer to have the timeliness determination reviewed, and that the claim for refund is barred pursuant to 68 O.S. § 227(D).

~~(d) **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 or demand for hearing 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 a proposed assessment, denial of a claim for refund or other action or proposed action of the Division 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 by the Division.~~

~~(d)~~ (e) **Motion to dismiss.** A motion filed by a party to dismiss seeking dismissal of a protest or demand for hearing for lack of jurisdiction, or a notice by the Administrative Law Judge or the Commission of intent to dismiss a protest case 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 case 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.

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 taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. If the protestant taxpayer fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest relief sought solely upon the grounds of failure to prove sufficient facts which would entitle the protestant taxpayer to the requested relief.

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

No protest or demand for hearing pending before the Tax Commission shall abate by the death of the protestant or claimant. Consideration of such a protest case 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 or claimant 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 an 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 case shall not be dismissed or decided as by default, but the merits of the protest case 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 or claimant 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 case 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]

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)~~(E)]

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 date the proposed assessment is issued (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.

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~~ filed after the expiration of sixty (60) days from the mailing of the proposed assessment date the proposed assessment is issued, or after the expiration of any written extension granted by the Tax Division, shall be processed as a request for an adjustment or abatement of the assessment. [See also 710:1-5-46(c)]

(b) **Manner in which timeliness determined.** A request for adjustment or abatement filed beyond the time provided by 68 O.S. § 221(E) shall be automatically denied by the taxing division. Timeliness of the filing of a request for adjustment or abatement of the assessment shall be determined by using the date of the first filing with the Director of the Division taxing 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.

PART 8. SETTLEMENT OF TAX LIABILITY

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 a demand for hearing related to a denial of a claim for refund, or extend the time to file a protest a proposed assessment or demand for hearing. 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.

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~~ timely demand for hearing relating to 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)~~(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.

PART 9. PROCEEDINGS RELATED TO PERMITS AND LICENSES

710:1-5-100. Show cause hearings relating to license or permit cancellation

When a ~~Tax Division~~ taxing division contests the taxpayer's compliance with State tax laws or Commission Rules rules, the ~~Division~~ taxing division may cause notice to be issued to the taxpayer requiring ~~him~~ the taxpayer to appear before the Administrative Law Judge or an Administrative Hearing Officer to show why ~~his~~ the taxpayer's license or permit should not be cancelled. The notice shall ~~contain a date certain for the hearing~~ provide the owner of the license or permit twenty (20) days' notice of date and time of the hearing by registered or certified mail, return receipt requested. Failure to appear at the hearing may result in the

cancellation of license or permit. The taxpayer may represent himself or herself 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.

710:1-5-101. Protest of refusal to issue, extend or reinstate license or permit

(a) The applicant of any license or permit shall be given notice in writing of any refusal of a taxing division to issue or reinstate the license or permit for which the application was filed. If the applicant disagrees with the refusal, the applicant may file a written protest of the refusal. Letters of protest of a refusal to issue or reinstate a license or permit must be filed within sixty (60) days of the issue date indicated on the notice pursuant to the provisions of 68 O.S. § 212(C).

(b) Letters protesting a refusal to issue or reinstate a license or permit must be filed with the taxing division which issued the notice of refusal to issue or reinstate, either online through OKTAP via the License or Permit Protest link at tax.ok.gov, by mail addressed to Oklahoma Tax Commission, Oklahoma City, OK 73194, or in person at the Taxpayer Resource Center located at 300 N. Broadway, Oklahoma City, OK 73102. Letters protesting the refusal to issue or reinstate a license or permit must be signed by the applicant or authorized agent of the applicant and state the reasons the license or permit should be issued. The letter of protest may include a request for hearing.

(c) If a hearing is requested, the applicant shall be given no less than ten (10) days' notice of the hearing. Evidence and testimony of witnesses may be presented at the hearing.

(d) The tax protest and demand for hearing procedures outlined in 710:1-5-21 through 710:1-5-48 are not applicable to proceedings relating to permits and licenses governed by the provisions of 710:1-5-100 and 710:1-5-101.

PART 10. BUSINESS COMPLIANCE PROCEEDINGS

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. A taxpayer is delinquent for February 2021 and June 2022 and pays all outstanding tax, penalty, interest and fees, as applicable, before incurring an additional delinquency in January 2023; a pending business closure notice will be issued because the three delinquencies occurred in a 24-month period.

710:1-5-114. Closure Order

(a) 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.

(b) Once a Closure Order has been issued, the taxpayer must file outstanding reports and pay all taxes, interest, penalties and fees due and owing in addition to posting a surety bond as provided in 68 O.S. § 210 before being allowed by the Tax Commission to operate the business which was the subject of the Closure Order.

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

RULE IMPACT STATEMENT

Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 1 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: Section 710:1-3-73 has been revised to provide clarity that letter rulings may be accessed and viewed online.

Section 710:1-3-80 has been amended to provide clarity on the process and specific conditions for requesting a partial release of a tax warrant.

Section 710:1-5-1 has been modified to enhance the clarity between a protest of an assessment and a demand for hearing regarding a denied claim for refund.

Part 3. Description Of Administrative Review and Hearings has been amended to provide greater clarity in distinguishing between a protest of an assessment and a demand for hearing relating to a denied claim for refund. Additionally, certain information that was misleading and unnecessary has been removed, and changes were made to implement the provisions of HB 2289.

Part 5. Administrative Proceedings Related to Tax Protests has been amended to provide greater clarity in distinguishing between a protest of an assessment (68 O.S. § 221), a demand for hearing relating to a denied claim for refund (68 O.S. § 227) and an application for hearing (68 O.S. § 207). Additionally, the rules have been updated to incorporate recent legislative revisions (HB 2289) and to enhance the clarity of regulations and processes governing proceedings before an administrative law judge.

Part 7. Abatement Of Erroneous Tax Assessment has been revised to provide a clearer outline of the procedure for submitting a protest and to incorporate the provisions of HB 2289 which specifies that a written protest must be submitted within 60 days from the date indicated on a proposed assessment.

Part 8. Settlement of Tax Liability has been amended to provide greater clarity in distinguishing between a protest of an assessment and a demand for hearing relating to a denied claim for refund.

Part 9. Proceedings Related to Permits and Licenses has been amended to implement the provisions of HB 2289 and SB 600 to elucidate the protocols for revoking or suspending a sales tax permit due to noncompliance with any provisions of 68 O.S. § 1364.

Part 10. Business Compliance Proceedings has been amended to clarify policy regarding the interpretation and application of current statutory provisions governing business closure proceedings and requirements related thereto.

CLASSES AFFECTED: Taxpayers seeking a letter ruling or partial release of a tax warrant; all taxpayers aggrieved by any action of the Tax Commission; parties to an administrative proceeding; and Tax Commission administrative law judges.

PERSONS BENEFITED: All parties will benefit from increased clarity and efficiency of administrative and judicial processes.

PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS: There are no anticipated increase to costs associated with the proposed rule changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The rulemaking action does not levy, implement, or increase an existing fee.

PROBABLE COSTS TO THE AGENCY: Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule changes at this time.

SMALL BUSINESS IMPACT: After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

ALTERNATIVE METHODS AND COSTS OF COMPLIANCE: There are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of this proposed rules. No formalized compliance cost minimization measures have been pursued.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED: The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

DATE PREPARED: November 27, 2023