ENGROSSED HOUSE
BILL NO. 1499

By: Bingman, Liotta, Liebmann, Blackburn and Deutschendorf of the House

and

Laster of the Senate

An Act relating to administrative hearings; creating the State Office of Tax Administrative Hearings Act; providing short title; stating purpose; defining terms; creating the State Office of Tax Administrative Hearings within the executive department; providing for judicial authority; providing for jurisdiction; providing for headquarters and other offices; providing for obtaining office space and other facilities; providing that the Office shall not be subject to the Oklahoma Sunset Law; providing that records are open records, with exceptions; providing for travel reimbursement; providing for the position of Chief Tax Administrative Law Judge; providing for appointment and term of office; providing for filling of vacancies; providing for qualifications; providing for removal from office; providing powers and duties of the Chief Tax Administrative Law Judge; providing for compensation and benefits; providing for an Administrator for the State Office of Tax Administrative Hearings; providing powers and duties of the Administrator; providing for compensation and benefits; providing for administrative law judges; providing qualifications for administrative law judges; providing for compensation and benefits; providing that administrative law judges are in the unclassified service; providing that administrative law judges are only under the supervision of the Chief Tax Administrative Law Judge; providing for part-time administrative law judges; prohibiting practice of law by the Chief Tax Administrative Law Judge and full-time administrative law judges; providing that the Code of Judicial Conduct applies to the Chief Tax Administrative Law Judge and administrative law judges; providing for assignment of cases, with exceptions; creating the State Office of Administrative Hearings Revolving Fund; providing for jurisdiction of the State Office of Tax Administrative Hearings; providing venue for hearings; providing for rules for pleadings; providing that hearing shall be held pursuant to the Administrative Procedures Act, rules of the State Office of Administrative Hearings, and applicable laws; providing for actions by the administrative law judge; requiring final decisions to be in writing and to include certain information; providing for reference of cases and other matters to the State Office of Administrative Hearings; providing for cases or other matters pending before a certain time;

providing for transfer of certain materials to the State Office of Administrative Hearings; providing for transfer of certain employees from the Oklahoma Tax Commission to the State Office of Administrative Hearings; providing for the transfer of certain equipment and other property; providing for transfer of unexpended funds, certain financial obligations, personnel records, leave and benefits; providing for coordination of transfer; amending 68 O.S. 2001, Sections 207, 221, as amended by Section 1, Chapter 458, O.S.L. 2002, 225, as amended by Section 2, Chapter 458, O.S.L. 2002, 227 and 228 (68 O.S. Supp. 2005, Sections 221 and 225), which relate to reports or returns by taxpayers; modifying procedures for hearings and orders; modifying procedure for hearings related to erroneous payments of taxes and claims for refund; amending 68 O.S. 2001, Section 2373, which relates to payment of refunds; providing for hearing; allowing for payment of refund; allowing for appeal of decision or order; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 351 of Title 75, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 20 of this act shall be known and may be cited as the “State Office of Tax Administrative Hearings Act”.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 352 of Title 75, unless there is created a duplication in numbering, reads as follows:

The purpose of the State Office of Tax Administrative Hearings Act is to create a state agency to serve as a forum independent from the Oklahoma Tax Commission for the conduct of adjudicative hearings pertaining to state taxes and to separate the adjudicative function in such hearings from the investigative, prosecutorial and policymaking functions of the Tax Commission to ensure that all persons involved in an administrative adjudication pertaining to state taxes receive a fair and impartial hearing before an independent, disinterested and impartial administrative law judge in the most efficient and least costly manner possible.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 353 of Title 75, unless there is created a duplication in numbering, reads as follows:

As used in the State Office of Tax Administrative Hearings Act:

1. "Administrative hearing" means:

a. an individual proceeding conducted by an administrative law judge pursuant to the Administrative Procedures Act and the rules of the State Office of Tax Administrative Hearings, and

b. any other proceeding referable to the State Office of Tax Administrative Hearings and to be conducted by an administrative law judge;

2. "Administrative law judge" means an individual who presides at an administrative hearing, unless the context otherwise requires;

3. "Chief Tax Administrative Law Judge" means the chief presiding officer of the State Office of Tax Administrative Hearings;

4. "Office" means the State Office of Tax Administrative Hearings;

5. "Part-time administrative law judge" means an administrative law judge retained by the State Office of Tax Administrative Hearings by contract because of a high caseload, because of disqualification of other administrative law judges, or for any other reason, when approved by the Chief Tax Administrative Law Judge; and

6. "Tax Commission" means the Oklahoma Tax Commission.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 354 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the State Office of Tax Administrative Hearings which shall be in the Executive Department and shall exercise the judicial authority for hearings on state

taxes as provided in the State Office of Tax Administrative Hearings Act and Section 1 of Article VII of the Constitution of the State of Oklahoma.

B. The Office shall have exclusive and complete jurisdiction to determine administrative protests and appeals of taxpayers filed pursuant to the Uniform Tax Procedure Code, including without limitation, taxpayer protests of proposed assessments pursuant to Section 221 of Title 68 of the Oklahoma Statutes, and taxpayer demands for hearing pursuant to Section 227 of Title 68 of the Oklahoma Statutes.

C. The Office shall maintain its headquarters office at the seat of government, but may establish permanent and part-time offices and hearing facilities in other areas of the state as may be determined by the Chief Tax Administrative Law Judge or as otherwise provided by law. When obtaining office space and other facilities in areas other than the seat of government, the Chief Tax Administrative Law Judge shall, by agreement, utilize existing state, county or municipal property when and where appropriate.

D. The Office shall not be subject to review under the Oklahoma Sunset Law.

E. Records of the Office shall be subject to the Oklahoma Open Records Act, except as to the following:

1. Records or documents filed with or coming to the Office that are considered privileged and confidential under and to the extent provided in Section 205 of Title 68 of the Oklahoma Statutes;

2. Notes, memoranda, draft opinions, and other work papers of the administrative law judges and their staff; and

3. Records and evidence relating to matters before an administrative law judge which have been sealed pursuant to the rules of the Office.

F. Records of the Office shall be subject to the Records Management Act and the Archives and Records Commission.

G. Administrative hearings of the Office shall not be subject to the Oklahoma Open Meeting Act, but shall be conducted in public unless required by law to be closed or unless otherwise closed by the administrative law judge pursuant to the rules of the Office.

H. Employees and administrative law judges of the Office shall be entitled to reimbursement for travel expenses approved by the Chief Tax Administrative Law Judge or Administrator in accordance with the State Travel Reimbursement Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 355 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. The Chief Tax Administrative Law Judge of the State Office of Tax Administrative Hearings shall be appointed for a six-year term by the Governor with the advice and consent of the Senate. Any vacancy in the Office shall be filled in the same manner.

B. The Chief Tax Administrative Law Judge shall:

1. Be a resident and qualified elector of this state;

2. Be an attorney licensed to practice law in this state for at least ten (10) years at the time of appointment; and

3. Have demonstrated knowledge of state tax law.

C. The Chief Tax Administrative Law Judge may be removed from office as provided by Sections 1181 through 1197 of Title 22 of the Oklahoma Statutes.

D. The Chief Tax Administrative Law Judge shall receive a salary which is equal to the salary of a judge of the district court. The Chief Tax Administrative Law Judge shall also be entitled to benefits as a state employee.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 356 of Title 75, unless there is created a duplication in numbering, reads as follows:

The Chief Tax Administrative Law Judge of the State Office of Tax Administrative Hearings, on behalf of the Office, shall:

1. Employ administrative law judges;

2. Employ an Administrator of the Office;

3. Adopt rules of procedure in compliance with the Administrative Procedures Act;

4. Adopt a schedule of fees which may be imposed by the administrative law judges in compliance with the Administrative Procedures Act;

5. Approve or disapprove contracts and other agreements;

6. Create teams or divisions within the panel of administrative law judges according to subject matter or types of hearings; and

7. Have such other powers and perform such other duties as may be necessary and proper to implement the provisions of the State Office of Tax Administrative Hearings Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 357 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Subject to the approval of the Chief Tax Administrative Law Judge of the State Office of Tax Administrative Hearings, the Administrator, on behalf of the Office, shall:

1. Supervise the Office;

2. Employ support personnel including, but not limited to, court reporters, legal assistants, law clerks, and interns and set the duties, qualifications, and compensation for such personnel;

3. Enter into contracts and other agreements;

4. When the Administrator meets the qualifications for an administrative law judge, at the request of the Chief Tax Administrative Law Judge, perform the duties of an administrative law judge; and

5. Have such other powers and perform such other duties as the chief presiding officer may prescribe.

B. The compensation of the Administrator shall be set by the Chief Tax Administrative Law Judge in an amount which does not

exceed ninety percent (90%) of the salary of the Chief Tax Administrative Law Judge, exclusive of benefits. The Administrator shall also be entitled to benefits as a state employee.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 358 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. An administrative law judge employed by or performing services pursuant to a contract with the State Office of Tax Administrative Hearings shall:

1. Be an attorney licensed to practice law in this state for at least five (5) years;

2. Be a resident and qualified elector of this state;

3. Have demonstrated knowledge of Oklahoma state tax law; and

4. Have such other qualifications as the Chief Tax Administrative Law Judge shall prescribe by rule.

B. The compensation of administrative law judges shall be set by the Chief Tax Administrative Law Judge, but shall not exceed the compensation provided for a special judge of the district court, exclusive of benefits. Administrative law judges shall also be entitled to benefits as state employees.

C. Administrative law judges employed by the Office shall be unclassified, exempt employees under the Merit System of Personnel Administration.

D. An administrative law judge shall not be responsible to or subject to the supervision, direction, or indirect influence of any person other than the Chief Tax Administrative Law Judge. In particular, an administrative law judge shall not be responsible to or subject to the supervision, direction, or indirect influence of an officer, employee, or agent of another state agency who performs investigative, prosecutorial, or advisory functions for the other agency.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 359 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Whenever the Chief Tax Administrative Law Judge determines the need exists for a part-time administrative law judge, the Chief Tax Administrative Law Judge may enter into a contract with an individual to serve as a part-time administrative law judge. If the Chief Tax Administrative Law Judge is disqualified or otherwise delegates the authority to the Administrator, the Administrator may enter into a contract with an individual to serve as a part-time administrative law judge.

B. Part-time administrative law judges shall meet the qualifications for administrative law judges pursuant to subsection A of Section 8 of this act.

C. Part-time administrative law judges shall not be members of a retirement system or entitled to any other benefits.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. The Chief Tax Administrative Law Judge of the State Office of Tax Administrative Hearings and all full-time administrative law judges shall devote full time to the duties of their office and shall not practice law while in office nor be a partner, associate, shareholder, or otherwise interested in a firm for the practice of law.

B. The Chief Tax Administrative Law Judge and all full-time administrative law judges shall be subject to the Code of Judicial Conduct.

C. Part-time administrative law judges shall be subject to the Code of Judicial Conduct to the extent the Code is made applicable to them by the rules of the Office or by rule or order of the Supreme Court of Oklahoma.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 361 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Any case or other matter referred to the State Office of Tax Administrative Hearings shall be assigned by the Administrator to an administrative law judge by rotation, except when:

1. The Administrator knows or has reason to believe after inquiry, that the rotation will result in the assignment to a case or other matter to an administrative law judge who would be disqualified to participate;

2. In the opinion of the Administrator, the workload of an administrative law judge might delay or otherwise impair the progress of the case or other matter, in which case, the Chief Tax Administrative Law Judge may remove the administrative law judge from the rotation as the workload of the administrative law judge warrants; or

3. The Administrator determines that a case or other matter is so related to another case or matter that they should be heard by the same administrative law judge, whether because of the same or similar parties, subject matter, or other considerations.

B. Whenever an administrative law judge determines that he or she must disqualify himself or herself from hearing a case or other matter due to personal interest or for any other just cause, the administrative law judge shall notify the Administrator who shall assign the case or other matter to another administrative law judge in rotation.

C. Whenever all administrative law judges have been disqualified from hearing a case or other matter, the Administrator shall assign the case or other matter to a part-time administrative law judge.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 362 of Title 75, unless there is created a duplication in numbering, reads as follows:

There is created in the State Treasury a revolving fund for the State Office of Tax Administrative Hearings to be designated as the "State Office of Administrative Hearings Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of appropriations by the Legislature, transferred funds pursuant to subsection C of Section 20 of this act, and fees, fines, penalties, and other costs collected by the Office as otherwise provided by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Office for any authorized purpose. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 363 of Title 75, unless there is created a duplication in numbering, reads as follows:

The State Office of Tax Administrative Hearings shall have jurisdiction over all cases and other matters which are:

1. Conferred to it by law or by an administrative rule referring agency; or

2. Referred to it by an administrative agency required to refer cases and other matters to the Office or an agency which has discretion to refer cases and other matters to an administrative law judge.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 364 of Title 75, unless there is created a duplication in numbering, reads as follows:

Venue for all administrative hearings shall be as provided by rule of the State Office of Tax Administrative Hearings, unless otherwise provided by law.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 365 of Title 75, unless there is created a duplication in numbering, reads as follows:

The State Office of Tax Administrative Hearings may adopt rules for pleadings filed with the Office, but such rules and pleadings shall be construed liberally and leave to amend shall be liberally granted especially when a party is not represented by counsel.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 366 of Title 75, unless there is created a duplication in numbering, reads as follows:

Hearings conducted by an administrative law judge shall be held pursuant to the Administrative Procedures Act, the rules of the State Office of Tax Administrative Hearings, and other applicable law.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 367 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. After hearing, on default, or by agreement of the parties, an administrative law judge may take any action with relation to a party which could have been taken before January 1, 2006, by the agency or agencies involved in the hearing.

B. Every final decision of an administrative law judge shall be in writing and shall include findings of fact and conclusions of law sufficient to apprise the parties and the public of the basis for the decision.

C. Every final decision of an administrative law judge may be appealed pursuant to Section 18 of this act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 368 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. An aggrieved party, without any motion for rehearing, may secure a review of any final decision or order of an administrative law judge under this act by appeal therefrom directly to the Supreme Court of Oklahoma.

B. To make such appeal, the aggrieved party shall within thirty (30) days after the date of mailing to the aggrieved party of the order of decision the aggrieved party desires to appeal, file a petition in error in the Office of the Clerk of the Supreme Court.

C. The aggrieved party making such appeal shall request that the State Office of Tax Administrative Hearings prepare and transmit a record of the proceedings in which the decision or order appealed from was entered.

D. This section shall apply to final decisions or orders entered by an administrative law judge of the State Office of Tax Administrative Hearings on all matters referred to it for hearing by the Oklahoma Tax Commission or otherwise heard by it pursuant to the State Office of Tax Administrative Hearings Act, including those referred by the Tax Commission pursuant to Sections 221, 227, and 2373 of Title 68 of the Oklahoma Statutes.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 369 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Any case or other matter referred for an administrative hearing on or after January 1, 2006, shall be referred to the State Office of Tax Administrative Hearings.

B. Any case or other matter which is pending prior to January 1, 2006, shall be subject to the procedure in effect prior to the effective date of this act.

C. All files, notes, memoranda, papers, evidence, and other materials of whatever kind relating to a pending case or other matter which is necessary or useful in completing the case or other matter shall be transferred to the Office unless otherwise determined by the Chief Tax Administrative Law Judge.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 370 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Every state employee who has exclusively or principally served as support staff for the conduct of administrative hearings by the Oklahoma Tax Commission prior to January 1, 2006, shall be transferred to the Office, unless the Director of the Office of State Finance, in consultation with the head of the transferring agency, the Administrator of the Office and the Chief Tax Administrative Law Judge, determines that an employee should not be transferred.

B. All equipment or other tangible property in possession of the Oklahoma Tax Commission, used or held exclusively or principally by personnel transferred under subsection A of this section, shall be transferred to the Office, unless the Director of the Office of State Finance, in consultation with the head of the transferring agency, the Administrator of the Office and the Chief Tax Administrative Law Judge, determines that the equipment or property should not be transferred.

C. All unexpended funds, including unpaid and unearned salaries, personnel records, accrued leave, and accrued benefits relating to an employee transferred pursuant to subsection A of this section shall be transferred to the Office.

D. The Director of the Office of State Finance shall coordinate the transfer of funds, property, personnel, allotments, purchases, outstanding financial obligations and encumbrances required by this act.

SECTION 21. AMENDATORY 68 O.S. 2001, Section 207, is amended to read as follows:

Section 207. (a) Incidental to the performance of its duties in the administration of this article or any state tax law, any member of the Tax Commission shall have the power to administer oaths, conduct hearings, and compel by subpoena the attendance of witnesses and the production of any books, records, or papers of any person, firm, or corporation. The Tax Commission may examine under oath any taxpayer, and the directors, officers, agents and employees of any taxpayer, as well as all other witnesses, relative to the business of such taxpayer in respect of any matter incident to the administration of this article or any state tax law.

(b) The fees of witnesses required by the Tax Commission to attend any hearing shall be the same as those allowed to witnesses appearing before district courts of this state. Such fees shall be paid in the manner provided for the payment of other expenses incident to the administration of this article or of any state tax law.

(c) Any person desiring a hearing before the Tax Commission shall file an application for such hearing, signed by himself <u>or herself</u> or his <u>or her</u> duly authorized agent, setting out therein:

(1) A statement of the nature of the tax, the amount thereof in controversy, and the action of the Tax Commission complained of;

(2) A clear and concise assignment of each error alleged to have been committed by the Tax Commission;

(3) 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 application;

(4) A statement of the relief sought by the taxpayer;

(5) A statement of the witnesses, so far as such witnesses are then known to the taxpayer, showing their names and addresses, and,

if the taxpayer so desires, a request that such witnesses be subpoenaed;

(6) A verification by such person, or his duly authorized agent, that the statements and facts therein contained are true.

(d) If, in such application, the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing and shall, by written notice, advise the taxpayer of a date, which shall not be less than ten (10) days from the date of mailing such written notice, when such taxpayer may appear before the Tax Commission and present argument and evidence, oral or written. The Tax Commission shall, as soon as practicable thereafter, hold a hearing upon the matter and, pursuant to such hearing, shall, as soon as practicable, make an order confirming, modifying or vacating its prior determination, and shall send to the parties appearing before it at such hearing immediately a copy of such order.

(e) The right to a hearing pursuant to this section shall be in addition to the rights to a hearing on matters pertaining to the assessment of tax and denial of claims for refund by the Tax Commission that are afforded to a taxpayer pursuant to the provisions of Sections 221, 227, 228 and 2373 of this title, which hearings are to be granted and held before the State Office of Tax Administrative Hearings.

SECTION 22. AMENDATORY 68 O.S. 2001, Section 221, as amended by Section 1, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2005, Section 221), is amended to read as follows:

Section 221. A. If any taxpayer shall fail to make any report or return as required by any state tax law, the Oklahoma Tax Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period. If a report or return has been filed, the Tax Commission shall examine such report or return and make such audit or investigation as it may deem necessary. If, in cases where no report or return

has been filed, the Tax Commission determines that there is a tax due for the taxable period, or if, in cases where a report or return has been filed, the Tax Commission shall determine that the tax disclosed by such report or return is less than the tax disclosed by its examination, it shall in writing propose the assessment of taxes or additional taxes, as the case may be, and shall mail a copy of the proposed assessment to the taxpayer at the taxpayer's last-known address. Proposed assessments made in the name of the "Oklahoma Tax Commission" by its authorized agents shall be considered as the action of the Tax Commission.

B. Any assessment, correction or adjustment made as a result of an office audit shall be presumed to be the result of an audit of the report or return only, and such office audit shall not be deemed a verification of any item in the report or return unless the item shall have been made the subject of a hearing before the Tax Commission, and the correctness and amount of such item determined at such hearing; and such office audit shall not preclude the Tax Commission from subsequently making further adjustment, correction or assessment as a result of a field audit of the books and records of the taxpayer, wherever located, or upon disclosures from any source other than the return. In cases where no report or return has been filed, the assessment of the tax on any information available shall in no event preclude the assessment at any time on subsequently disclosed information.

C. Within sixty (60) days after the mailing of the aforesaid proposed assessment, the taxpayer may file with the Tax Commission a written protest under oath, signed by the taxpayer or the taxpayer's duly authorized agent, setting out therein:

1. A statement of the amount of deficiency as determined by the Tax Commission, the nature of the tax and the amount thereof in controversy;

2. A clear and concise assignment of each error alleged to have been committed by the Tax Commission;

3. 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 the application;

4. A statement of relief sought by the taxpayer; and

5. A verification by the taxpayer or the taxpayer's duly authorized agent that the statements and facts contained therein are true.

D. ~~If in such written protest the taxpayer shall request an oral hearing, the~~ The Tax Commission shall ~~grant such~~ refer the protest to the State Office of Tax Administrative Hearings for hearing, and the Office shall~~, by written notice, advise~~ notify the taxpayer of ~~a date, which shall not be less than ten (10) days from the date of mailing of such written notice, when such taxpayer may appear before the Tax Commission and present arguments and evidence, oral or written, in support of the protest. Hearings shall be held as soon as practicable. In the event an oral hearing is not requested, the Tax Commission shall proceed without further notice to examine into the merits of the protest and enter an order in accordance with its findings~~ the time and place of the hearing. Upon request of any taxpayer and upon proper showing that the principle of law involved in the assessment of any tax is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the decision of the court, may pay the tax so assessed under protest and such protest shall be resolved in accordance with the agreement to abide.

E. If the taxpayer fails to file a written protest within the sixty-day period herein provided for or within the period as extended by the Tax Commission, or if the taxpayer fails to file the notice required by Section 226 of this title within thirty (30) days

from the date of mailing of an assessment, then the proposed assessment, without further action of the Tax Commission, shall become final and absolute. A taxpayer who fails to file a protest to an assessment of taxes within the time period prescribed by this section may, within one (1) year of the date the assessment becomes final, request the Tax Commission to adjust or abate the assessment if the taxpayer can demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous. If the Tax Commission determines that the proper showing has been made, the assessment or portion thereof determined to be clearly erroneous shall be deemed not to have become final and absolute. No hearing to adjust or abate a clearly erroneous assessment may be granted after the Tax Commission's denial of such a request. An order of the Tax Commission denying a taxpayer's request to adjust or abate an assessment alleged to be clearly erroneous is not an appealable order under Section 225 of this title. No proceeding instituted by the Tax Commission to collect a tax liability may be stayed because of a request made by a taxpayer to adjust or abate an assessment alleged to be clearly erroneous.

F. The Tax Commission may in its discretion extend the time for filing a protest for any period of time not to exceed an additional ninety (90) days. Any extension granted shall not extend the period of time within which the notice required by Section 226 of this title may be filed.

G. ~~Within a reasonable time after the hearing herein provided for, the Tax Commission shall make and enter an order in writing in which it shall set forth the disposition made of the protest and a copy of such order shall forthwith be mailed to the taxpayer. The order shall contain findings of fact and conclusions of law.~~ After removing the identity of the taxpayer, the Tax Commission shall make the ~~order~~ orders and decisions of the Tax Commission and of the State Office of Tax Administrative Hearings available for public

inspection and shall publish all such orders and decisions of the State Office of Tax Administrative Hearings, and publish ~~those~~ orders of the Tax Commission that it deems to be of precedential value. ~~The taxpayer may within the time and in the manner provided for by Section 225 of this title, appeal to the Supreme Court, but in the event the taxpayer fails to so proceed, the order shall within thirty (30) days from the date a certified copy thereof is mailed to the taxpayer, become final. The provisions of Section 226 of this title shall not apply where a proposed assessment or an assessment of taxes has been permitted to become final.~~

H. A final decision or order of the State Office of Tax Administrative Hearings under this section may be appealed by a taxpayer pursuant to the provisions of Section 18 of this act.

I. The provisions of Section 226 of this title shall not apply where a proposed assessment or an assessment of taxes has been permitted to become final.

J. In all instances where the proposed assessment or the assessment of taxes or additional taxes has been permitted to become final, a certified copy of the assessment may be filed in the office of the county clerk of any county in this state, and upon being so filed, the county clerk shall enter same upon the judgment docket in the same manner as provided for in connection with judgments of district courts. When an assessment is so filed and docketed, it shall have the same force and be subject to the same law as a judgment of the district court, and accordingly it shall constitute a lien on any real estate of the taxpayer located in the county wherein filed; and execution may issue and proceedings in aid of execution may be had the same as on judgments of district courts. Such lien is hereby released and extinguished upon the payment of such assessment, or, except as otherwise provided herein, upon the expiration of ten (10) years after the date upon which the assessment was filed in the office of the county clerk; provided,

the Tax Commission may, prior to the release and extinguishment of such lien, refile the assessment one time in the office of the county clerk. An assessment so refiled shall continue the lien until payment of the assessment, or upon the expiration of ten (10) years after the date upon which the assessment was refiled in the office of the county clerk. The remedies provided in this subsection shall be in addition to other remedies provided by law. All active liens evidenced by an assessment filed with a county clerk's office prior to November 1, 1989, shall be released and extinguished if the assessment is not refiled prior to November 1, 2001.

~~I.~~ K. In order to make more definite the intention of the Legislature in connection with the applicability or lack of applicability of the refund provisions of the tax statutes to those treating with proposed assessments and assessments that have become final, the Legislature being cognizant of the fact that such intent has been questioned, it is declared to be the intent of the Legislature that the refund provisions shall be without application to taxes where the amount thereof has been determined by an assessment, other than an assessment designated as an "office audit", that has become final.

SECTION 23. AMENDATORY 68 O.S. 2001, Section 225, as amended by Section 2, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2005, Section 225), is amended to read as follows:

Section 225. A. Any taxpayer aggrieved by any order, ruling, or finding of the Oklahoma Tax Commission directly affecting the taxpayer or aggrieved by a final order of the Tax Commission issued pursuant to subsection G of Section 221 of this title may appeal therefrom directly to the Supreme Court of Oklahoma.

B. Within thirty (30) days after the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer desiring to appeal shall:

1. File a petition in error in the office of the Clerk of the Supreme Court; and

2. Request that the Tax Commission prepare for filing with the Supreme Court, within thirty (30) days, the record of the appeal, certified by the Secretary of the Tax Commission, and consisting of any citations, findings, judgments, motions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings, and evidence as the appealing parties and the Tax Commission may agree to be sufficient to present fully to the Court the questions involved.

C. Upon request of the taxpayer, the Tax Commission shall furnish the taxpayer a copy of the proceedings had in connection with the matter complained of.

D. Any taxpayer aggrieved of a final decision or order of an administrative law judge entered pursuant to Sections 1 through 20 of this act may appeal therefrom pursuant to Section 18 of this act.

E. If the appeal is from an order of the Tax Commission assessing a tax or an additional tax, a penalty, or interest, the Tax Commission, within thirty (30) days from the date of the filing of the petition in error, may request the Court to order the taxpayer to pay to the Tax Commission the amounts of tax, additional tax, any penalty assessed, and interest accrued through the date of the payment, as a condition precedent to the right of the taxpayer to make and prosecute an appeal, and a jurisdictional prerequisite to the Supreme Court having jurisdiction to hear and determine the appeal. If, upon a final determination of the appeal the order assessing a tax, penalty, or interest is reversed or modified and it is determined that the tax or part thereof was erroneously or illegally assessed, the amounts paid by the taxpayer, together with

the interest thereon at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

~~E.~~ F. If the appeal is from an order of the Tax Commission or a district court denying a refund of taxes previously paid and if upon final determination of the appeal, the order denying the refund is reversed or modified, the taxes previously paid, together with interest thereon from the date of the filing of the petition in error at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

~~F.~~ G. Such refunds and interest thereon shall be paid by the Tax Commission out of monies in the Tax Commission clearing account from subsequent collections from the same source as the original tax assessment, provided that in the event there are insufficient funds for refunds from subsequent collections from the same source, the refund shall be paid by the Tax Commission from monies appropriated by the Legislature to the special refund reserve account for such purposes as hereinafter provided. There is hereby created within the official depository of the State Treasury an agency special account for the Tax Commission for the purpose of making such refunds as may be required under this section, not otherwise provided. This account shall consist of monies appropriated by the Legislature for the purpose of making refunds under this section.

~~G.~~ H. In lieu of the cash payment provided for in subsection ~~D~~ E of this section, the taxpayer may file with the Tax Commission, pursuant to Section 210 of this title, a bond in double the amount of the tax, additional tax, penalties and interest so assessed, conditioned that the taxpayer will faithfully and diligently prosecute such appeal to a final determination, and in the event the order of the Tax Commission be affirmed on appeal, will pay such tax, additional tax, penalties and interest, and costs so assessed against the taxpayer. Any bond submitted pursuant to this

subsection must be approved by the Tax Commission as to form and amount and accepted within the time prescribed by the Court.

~~H.~~ I. If the appeal be from an order, judgment, finding, or ruling of the Tax Commission other than one assessing a tax and from which a right of appeal is not otherwise specifically provided for in this article the Uniform Tax Procedure Code, any aggrieved taxpayer may appeal from that order, judgment, finding, or ruling as provided in this section and may supersede the effect of such order, judgment, ruling, or finding by filing with the Tax Commission a bond in an amount fixed by the Tax Commission payable to the State of Oklahoma conditioned that the appeal will faithfully and diligently be prosecuted to a final determination, and in the event the order, judgment, ruling, or finding of the Tax Commission be affirmed on appeal, that such person will immediately conform thereto.

~~I.~~ J. This section shall be construed to provide to the taxpayer a legal remedy by action at law in any case where a tax, or the method of collection or enforcement thereof, or any order, ruling, finding, or judgment of the Tax Commission is complained of, or is sought to be enjoined in any action in any court of this state or the United States of America.

SECTION 24. AMENDATORY 68 O.S. 2001, Section 227, is amended to read as follows:

Section 227. (a) Any taxpayer who has paid to the State of Oklahoma, through error of fact, or computation, or misinterpretation of law, any tax collected by the Tax Commission may, as hereinafter provided, be refunded the amount of such tax so erroneously paid, without interest.

(b) Any taxpayer who has so paid any such tax may, within three (3) years from the date of payment thereof file with the Tax Commission a verified claim for refund of such tax so erroneously paid. The Tax Commission may accept an amended sales tax,

withholding tax or other report or return as a verified claim for refund if the amended report or return establishes a liability less than the original report or return previously filed.

(c) Said claim so filed with the Tax Commission, except for an amended report or return, shall specify the name of the taxpayer, the time when and period for which said tax was paid, the nature and kind of tax so paid, the amount of the tax which said taxpayer claimed was erroneously paid, the grounds upon which a refund is sought, and such other information or data relative to such payment as may be necessary to an adjustment thereof by the Tax Commission. It shall be the duty of the Commission to determine what amount of refund, if any, is due as soon as practicable after such claim has been filed and advise the taxpayer about the correctness of his claim and the claim for refund shall be approved or denied by written notice to the taxpayer.

(d) If the claim for refund is denied, the taxpayer may file a demand for hearing with the Commission. The demand for hearing must be filed on or before the thirtieth day after the date the notice of denial was mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred.

(e) Upon the taxpayer's timely filing of a demand for hearing, the Commission shall ~~set a date for hearing upon the claim for refund which date shall not be later than sixty (60) days from the date the demand for hearing was mailed. The~~ refer the demand for hearing to the State Office of Tax Administrative Hearings, which shall notify the taxpayer ~~shall be notified~~ of the time and place of the hearing. ~~The hearing may be held after the sixty-day period provided by this subsection upon agreement of the taxpayer.~~

(f) The Tax Commission may in its discretion extend the time for filing a demand for hearing for any period of time not to exceed an additional ninety (90) days.

(g) The provisions of this section shall not apply: (1) to refunds of income tax erroneously paid, refunds of which tax shall be payable out of the income tax adjustment fund as provided by law; (2) to estate tax because the payment of such tax is covered by an order of the Tax Commission and the estate and interested parties are given notice that Commission's position and computation of the tax will become final unless they protest and resist the payment thereof as provided by statute; nor, (3) in any case where the tax was paid after an assessment thereof was made by the Tax Commission which assessment became final under the law.

SECTION 25. AMENDATORY 68 O.S. 2001, Section 228, is amended to read as follows:

Section 228. (a) If, upon the hearing as required by Section 227 of this title, the ~~Tax Commission~~ State Office of Tax Administrative Hearings finds that such tax was erroneously paid through mistake of fact, ~~or~~ computation ~~or~~, misinterpretation of law, or other reason, it shall enter ~~its~~ a written order allowing said claim for refund, which refund may be paid by the Tax Commission to the taxpayer as provided by law, or credited against any taxes due or to become due by the taxpayer as the case may be~~; otherwise, the Tax Commission shall deny said claim. The taxpayer shall have the right of appeal to the Supreme Court from a decision of the Commission denying said claim for refund as provided in Section 225 of this article~~.

(b) Any final decision or order ~~entered by the Tax Commission~~ of the State Office of Tax Administrative Hearings, disallowing a claim for refund, shall become final within thirty-one (31) days from the date it is entered, unless an appeal is prosecuted therefrom pursuant to the provisions of Section 18 of this act, in which event said order or judgment shall not become final until the appeal shall have been determined. In the event an order of the ~~Tax Commission allows said~~ State Office of Tax Administrative Hearings allowing a

claim for refund becomes final, ~~it~~ the Tax Commission shall pay the claimant the amount of refund, so allowed out of funds in the official depository clearing account of the Tax Commission, derived from collections in said fund from the same source from which the overpayment occurred; and an appropriation of so much of said fund as is necessary to pay said claims for refund erroneously paid or collected is hereby made; provided, that in the case of refunds due hereunder to taxpayers who are required to remit taxes to the Tax Commission on a monthly or quarterly basis, the Commission may, in lieu of a refund of the tax erroneously paid, credit the account of the taxpayer for such amount.

SECTION 26. AMENDATORY 68 O.S. 2001, Section 2373, is amended to read as follows:

Section 2373. If, upon any revision or adjustment, including overpayment or illegal payment on account of income derived from tax-exempt Indian land, any refund is found to be due any taxpayer, it shall be paid out of the "Income Tax Withholding Refund Account", created by Section 2385.16 of this title, in the same manner as refunds are paid pursuant to such section. The information filed, reflecting the revision or adjustment, shall constitute the claim for refund.

Except as provided in subsection H of Section 2375 of this title, the amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim, or, if no claim was filed, then during the three (3) years immediately preceding the allowance of the refund. However, this three-year limitation shall not apply to the amount of refunds payable upon claims filed by members of federally recognized Indian tribes or the United States on behalf of its Indian wards or former Indian wards, to recover taxes illegally collected from tax-exempt lands. In the case of any refund to a member of a federally recognized Indian tribe or to the United States on behalf of its

Indian wards or former Indian wards, to recover taxes illegally collected on bonus payments from oil and gas leases located on tax-exempt Indian lands pursuant to this section, the Tax Commission shall pay interest on all refunds issued after January 1, 1996, at the rate of six percent (6%) per annum from the date of payment by the taxpayer to the date of the refund.

If a claim for refund of a taxpayer is denied, the taxpayer may file a demand for hearing with the Tax Commission. The demand for hearing must be filed within sixty (60) days after the date of notice of denial is mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred. The Tax Commission may in its discretion extend the time for filing a demand for hearing for any period of time not to exceed an additional ninety (90) days.

Upon a taxpayer's timely filing of a demand for hearing on a denied claim for refund, the Tax Commission shall refer the demand for hearing to the State Office of Tax Administrative Hearings which shall notify the taxpayer of the time and place of the hearing.

If the State Office of Tax Administrative Hearings finds that the tax was erroneously paid through mistake of fact, computation, misinterpretation of law, or other reason, it shall enter a written decision or order allowing the claim or refund. The refund may be paid to the taxpayer by the Tax Commission as provided by law out of funds in the Income Tax Withholding Refund Account created in Section 2385.16 of this title, in the same manner as refunds are paid pursuant to that section.

Any final decision or order of the State Office of Tax Administrative Hearings on a claim for refund, shall become final within thirty-one (31) days from the date the decision or order is entered, unless an appeal is prosecuted therefrom pursuant to the provisions of Section 18 of this act, in which event the decision or

order shall not become final until the appeal shall have been determined.

In cases where the Tax Commission and the taxpayer have signed a consent, as provided by law, extending the period during which the tax may be assessed, the period during which the taxpayer may file a claim for refund or during which an allowance for a refund may be made shall be automatically extended to the final date fixed by such consent plus thirty (30) days.

The Oklahoma Tax Commission may authorize the use of direct deposit in lieu of refund checks for electronically filed income tax returns.

SECTION 27. This act shall become effective January 1, 2007.

Passed the House of Representatives the 15th day of March, 2006.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2006.

_____
Presiding Officer of the Senate