STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

SENATE BILL 836 By: Anderson

AS INTRODUCED

An Act relating to administrative hearings; creating the State Office of Administrative Tax Hearings Act; providing short title; stating purpose; creating the State Office of Administrative Tax Hearings; providing for appointment, term of office, duties, and compensation of administrative law judges and Chief Administrative Law Judge; providing for location of offices and hearings; creating the State Office of Administrative Tax Hearings Revolving Fund; providing for appointment of clerk, reporter, and other staff and expenditure of funds for library and other office requirements; prohibiting certain representation; providing for certain removal from employment; providing for preparation of transcripts; providing for authority of State Office of Administrative Tax Hearings and Oklahoma Tax Commission; requiring dismissal of certain matters; providing procedure for challenges to certain statutes; requiring Oklahoma Tax Commission to provide certain independent administrative appeals function; providing procedure for commencing certain proceeding in State Office of Administrative Tax Hearings; providing requirements and timelines for pleadings; providing for fees; providing rules for discovery; providing for the promulgation of rules; providing for the admission of evidence; providing for form and timing of rulings; providing for appeals and the legal effect of decisions; establishing Small Claims Division; providing for jurisdiction, procedures, and effect of decisions in Small Claims Division; providing procedure and record for appeals; providing for appearances and representation of parties; requiring publication of certain decisions; providing for certain notice; providing for rules; providing for effective date for certain procedures

and actions; providing for transfer of certain state employees, equipment and funds; amending 68 O.S. 2001, Section 207, which relates to hearings held by the Oklahoma Tax Commission; separating the right for certain hearings from hearings held before the State Office of Administrative Tax Hearings; requiring the Oklahoma Tax Commission to provide certain option; amending 68 O.S. 2001, Section 221, as amended by Section 1, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2008, Section 221), which relates to reports or returns by taxpayers; modifying procedures for hearings and orders; amending 68 O.S. 2001, Section 225, as amended by Section 2, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2008, Section 225), which relates to appeals; modifying authority for taxpayer appeals; amending 68 O.S. 2001, Sections 227 and 228, which relate to erroneous payments of taxes and claims for refund; modifying procedure for hearings and refunds; amending 68 O.S. 2001, Section 815, as last amended by Section 2, Chapter 70, O.S.L. 2008 (68 O.S. Supp. 2008, Section 815), which relates to estate tax procedures; modifying procedures; amending 68 O.S. 2001, Section 2373, which relates to the Income Tax Withholding Refund Account; expanding methods of making certain claims; providing for codification; providing an effective date; and declaring an emergency.

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 9100 of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 23 of this act shall be known and may be cited as the “State Office of Administrative Tax Hearings Act”.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9101 of Title 74, unless there is created a duplication in numbering, reads as follows:

To increase public confidence in the fairness of the state tax system, the state shall provide an independent administrative office or agency with tax expertise to resolve disputes between the Oklahoma Tax Commission and taxpayers, prior to requiring the payment of the amounts in issue or the posting of a bond, but after the taxpayer has had a full opportunity to attempt settlement with the Tax Commission based, among other things, on the hazards of litigation. By establishing an independent office of administrative tax hearings within the executive branch of government, the State Office of Administrative Tax Hearings Act provides taxpayers with a means of resolving controversies that ensures both the appearance and the reality of due process and fundamental fairness.

The State Office of Administrative Tax Hearings shall provide hearings in all tax matters except those specified by statute, and render decisions and orders relating thereto. A hearing in the State Office of Administrative Tax Hearings shall be commenced by the filing of a petition protesting a tax determination made by the Tax Commission, including any determination that cancels, revokes, suspends or denies an application for a license, permit or registration. A final decision of the State Office of Administrative Tax Hearings shall be an administrative decision that

shall have the same force and effect upon the taxpayer and Tax Commission, and shall be subject to appeal (except in the case of small claims) in a manner analogous to and substantially the same in effect as occurs with respect to a final decision of a state trial court in a matter heard and tried within such a court's jurisdiction.

It is the intent of the Legislature that this act foster the settlement or other resolution of tax disputes to the extent possible and, in cases in which litigation is necessary, to provide the people of this state with a fair, independent, pre-payment procedure to determine a dispute with the Oklahoma Tax Commission. This act shall be interpreted and construed in accordance with, and in furtherance of, this intent.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9102 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the executive branch of state government the State Office of Administrative Tax Hearings.

B. The State Office of Administrative Tax Hearings shall be separate from and independent of the authority of the Oklahoma Tax Commission.

C. The State Office of Administrative Tax Hearings shall adopt a seal for its official use.

D. The State Office of Administrative Tax Hearings shall be created and exist on and after January 1, 2010, but the administrative law judge or judges thereof may be appointed prior thereto and may then take any action that is necessary to enable the administrative law judge or judges properly to exercise after that date the duties, functions and powers given the State Office of Administrative Tax Hearings under the State Office of Administrative Tax Hearings Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9103 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The State Office of Administrative Tax Hearings shall consist of at least one full-time administrative law judge. If there is more than one administrative law judge, each shall exercise the powers of the State Office of Administrative Tax Hearings.

B. The administrative law judge or judges of the State Office of Administrative Tax Hearings shall be appointed by the Governor, with the advice and consent of the Senate, for a term of ten (10) years. If the State Office of Administrative Tax Hearings has more than one administrative law judge, the administrative law judges initially appointed should be given terms of different lengths not exceeding ten (10) years, so that the terms of all administrative law judges do not expire in the same year.

C. Each administrative law judge of the State Office of Administrative Tax Hearings shall receive an annual salary no less than that provided for district court judges under Section 91.1A of Title 20 of the Oklahoma Statutes, which salary shall not be diminished during the administrative law judge's term of appointment.

D. Once appointed and confirmed, each administrative law judge shall continue in office until his or her term expires and until a successor has been appointed and confirmed.

E. A vacancy in the office of an appointed administrative law judge of the State Office of Administrative Tax Hearings occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as an original appointment.

F. If more than one administrative law judge is appointed, the Governor shall designate one of the members as Chief Administrative Law Judge. The Chief Administrative Law Judge shall be the executive of the State Office of Administrative Tax Hearings, shall have sole charge of the administration of the State Office of Administrative Tax Hearings and shall apportion among the administrative law judges all causes, matters and proceedings coming before the State Office of Administrative Tax Hearings. The individual designated as Chief Administrative Law Judge shall serve in that capacity at the pleasure of the Governor.

G. The Governor may remove an administrative law judge, after notice and an opportunity to be heard, for neglect of duty, inability to perform duties, malfeasance in office, or other good cause, with the advice and consent of the Senate.

H. Whenever the State Office of Administrative Tax Hearings trial docket or business becomes congested or any administrative law judge of the State Office of Administrative Tax Hearings is absent, is disqualified or for any other reason is unable to perform his or her duties as administrative law judge, and it appears to the Governor that it is advisable that the services of an additional administrative law judge or administrative law judges be provided, the Governor may appoint an administrative law judge, or administrative law judges, pro tempore of the State Office of Administrative Tax Hearings subject to the advice and consent of the Senate. Any person appointed administrative law judge pro tempore of the State Office of Administrative Tax Hearings shall have the qualifications set forth in subsections A and B of Section 5 of this act and shall be entitled to serve for a period no longer than six (6) months.

I. An administrative law judge may disqualify himself or herself on his or her own motion in any matter, and may be disqualified for any of the causes specified in Title 12, Chapter 2, Appendix, Rule 15, of the Oklahoma Statutes.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9104 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Each administrative law judge of the State Office of Administrative Tax Hearings shall be a citizen of the United States and, during the period of service, a resident of this state. No person shall be appointed as an administrative law judge unless at the time of appointment the individual is an attorney admitted to practice law in this state who has substantial knowledge of the Oklahoma state tax law and substantial experience making the record in a tax case suitable for judicial review.

B. Before entering upon the duties of office, each administrative law judge shall take and subscribe to an oath or affirmation to faithfully discharge the duties of the office, and such oath shall be filed in the office of the Secretary of State.

C. Each administrative law judge shall devote full time during business hours to the duties of office. An administrative law judge shall not engage in any other gainful employment or business, nor hold another office or position of profit in a government of this state, any other state or the United States. Notwithstanding the foregoing provisions, an administrative law judge may own passive interests in business entities and earn income from incidental teaching or scholarly activities.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9105 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The principal office of the State Office of Administrative Tax Hearings shall be located in the seat of government.

B. The State Office of Administrative Tax Hearings shall conduct hearings at its principal office. The State Office of Administrative Tax Hearings may also hold hearings at any place within the state, with a view toward securing to taxpayers a reasonable opportunity to appear before the State Office of Administrative Tax Hearings with as little inconvenience and expense as practicable.

C. The principal office of the State Office of Administrative Tax Hearings shall be located in a building that is separate and apart from the building in which the Oklahoma Tax Commission is located. When the State Office of Administrative Tax Hearings holds hearings outside of its principal office, it shall do so in a location that is physically separated from facilities regularly occupied by the Tax Commission.

D. The state shall provide hearing rooms, chambers and offices for the State Office of Administrative Tax Hearings at its principal office and shall arrange for hearing rooms, chambers and offices or other appropriate facilities when hearings are held elsewhere.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9106 of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the State Office of Administrative Tax Hearings to be designated as the "State Office of Administrative Tax 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 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9107 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The State Office of Administrative Tax Hearings shall appoint a clerk and a reporter, and may appoint such other employees and make such other expenditures, including expenditures for library, publications and equipment, as are necessary to permit it to efficiently execute its functions.

B. The reporter shall be subject to the provisions of Sections 106.1 through 106.13 of Title 20 of the Oklahoma Statutes, and related provisions, as if appointed by an administrative law judge of the district court, except where such provisions are in conflict with the State Office of Administrative Tax Hearings Act.

C. No employee of the State Office of Administrative Tax Hearings shall act as attorney, representative or accountant for others in a matter involving any tax imposed or levied by this state.

D. An employee of the State Office of Administrative Tax Hearings may be removed by the Chief Administrative Law Judge, after notice and an opportunity to be heard, for neglect of duty, inability to perform duties, malfeasance in office, or for other good cause.

E. In addition to the services of the official reporter, the State Office of Administrative Tax Hearings may contract the reporting of its proceedings and, in the contract, fix the terms and conditions under which transcripts will be supplied by the contractor to the State Office of Administrative Tax Hearings and to other persons and agencies.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9108 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Except as permitted by Section 17 of this act relating to judicial review, the State Office of Administrative Tax Hearings shall be the sole, exclusive and final authority for the conducting of an administrative hearing and determination of questions of law and fact arising in the matters pertaining to taxpayer protests or objections to the assessment of taxes or additional taxes or demands for a hearing on a denial of a claim for refund by the Oklahoma Tax Commission for which a taxpayer may file a petition with the State Office of Administrative Tax Hearings pursuant to Section 11 of this act. The Tax Commission shall retain and have authority to act administratively and meet and communicate with taxpayers and administratively make decisions in the performance of its duties and otherwise exercise its powers and authority to administer the tax laws of the state with respect to collection of taxes, issuance of permits and licenses, the promulgation and administration of rules or regulations, and the waiver or remission of interest or penalty payable by taxpayers as permitted by state law, and to take administrative actions other than and except the conduct of administrative hearings and determination of questions of law and fact in matters referred to in the preceding sentence of this section pursuant to the State Office of Administrative Tax Hearings Act which are to be conducted solely and exclusively by the State Office of Administrative Tax Hearings. Provided, that in the case of any issue or controversy arising with respect to the scope and

effect of the respective authority of the State Office of Administrative Tax Hearings and of the Tax Commission as described in this section, the State Office of Administrative Tax Hearings shall have the sole, exclusive and final authority to decide such issue or controversy upon and at the request of any taxpayer through filing a petition pursuant to Section 11 of this act.

B. Except as permitted by Section 17 of this act relating to judicial review, no person shall contest any matter within the administrative jurisdiction of the State Office of Administrative Tax Hearings in any action, suit or proceeding in the district court or any other court of the state. If a person attempts to do so, then such action, suit or proceeding shall be dismissed without prejudice. The improper commencement of any action, suit or proceeding will not extend the time period for commencing a proceeding in the State Office of Administrative Tax Hearings.

C. Except in cases involving the denial of a claim for refund and except as provided in Section 223 of Title 68 of the Oklahoma Statutes, the taxpayer shall have the right to a hearing by the State Office of Administrative Tax Hearings prior to the payment of any of the amounts asserted as due by the Tax Commission and prior to the posting of any bond.

D. If, with or after the filing of a timely petition, the taxpayer pays all or part of the tax or other amount in issue before the State Office of Administrative Tax Hearings has rendered a

decision, the State Office of Administrative Tax Hearings shall treat the taxpayer's petition as a protest of a denial of a claim for refund of the amount so paid.

E. The State Office of Administrative Tax Hearings shall not decide questions regarding the constitutionality of the application of statutes to the taxpayer and the constitutionality of regulations promulgated by the Tax Commission. A taxpayer desiring to challenge the constitutionality of a statute on its face or the constitutionality of the application of statutes to the taxpayer and the constitutionality of regulations promulgated by the Tax Commission may, at the taxpayer's election, do so by one of the following methods:

1. Commence a declaratory action in the district courts of this state with respect to the constitutional challenge, or a petition in the district courts of this state pursuant to Section 226 of Title 68 of the Oklahoma Statutes and file a petition in the State Office of Administrative Tax Hearings with respect to the remainder of the matter, which proceeding shall be stayed by the State Office of Administrative Tax Hearings pending final resolution of the constitutional challenge;

2. File a petition with the State Office of Administrative Tax Hearings with respect to issues other than the constitutional challenge, in which the taxpayer preserves the constitutional challenge until the entire matter, including the constitutional

challenge and the facts related to the constitutional challenge, is presented to the appellate court; or

3. Bifurcate the matter by commencing a declaratory action in the district court or other action in a district court pursuant to Section 226 of Title 68 of the Oklahoma Statutes with respect to the facial constitutional challenge and by filing a petition with the State Office of Administrative Tax Hearings with respect to the remainder of the issues.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9109 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Before the Oklahoma Tax Commission finalizes a determination that triggers a taxpayer's right to commence a proceeding in the State Office of Administrative Tax Hearings under Section 11 of this act, the Tax Commission shall provide to the taxpayer, including for purposes of this section any person asserted by the Tax Commission to be a taxpayer, the option to obtain review of the audit function's proposed determination by an independent administrative appeals function. An independent administrative appeals function means a program of holding conferences and negotiating settlements that is designed to resolve the vast majority of tax controversies without litigation on a basis that is fair and impartial to the state and the taxpayer and that enhances voluntary compliance and

public confidence in the integrity and efficiency of the Tax Commission.

B. The independent administrative appeals function to be maintained or established by the Tax Commission shall have all of the following characteristics:

1. Appeals personnel shall exercise independent judgment with the objective of settling as many disputed issues as possible without litigation;

2. Appeals personnel shall have expertise in, and extensive experience with, the tax laws of this state;

3. Appeals personnel shall concede or settle individual issues based on the facts and the law, including the hazards of litigation, and an issue specifically conceded or settled by appeals personnel shall not thereafter be contested by the taxpayer or the Tax Commission;

4. Appeals conferences shall be conducted in an informal manner;

5. Appeals conferences shall be conducted, at the taxpayer's option, by correspondence, by telephone or in person;

6. Appeals personnel shall consider argument as to the applicability of the tax laws; settlement proposals and counterproposals; and new evidence in support of the taxpayer's position; provided that, if the new evidence is substantial and should have been presented at the time of audit, appeals personnel

may request the audit function to examine the evidence and to make a recommendation as to the effect of the evidence on the related issue;

7. The taxpayer shall have the right to bring witnesses to an in-person conference;

8. The taxpayer may participate in appeals conferences without representation; may be represented by an officer, employee, partner or member of the taxpayer; or may be represented by a third-party representative;

9. Appeals personnel shall not engage in ex parte communications with Tax Commission employees to the extent that such communications appear to compromise the independence of the appeals function. Consistent with this rule, appeals personnel may on an ex parte basis:

a. ask questions that involve ministerial, administrative, or procedural matters and that do not address the substance of the issues or positions taken in the case, and

b. seek legal advice on an issue from a Tax Commission attorney who was not involved in providing advice on that issue to the employees who made the determination being reviewed.

In all other cases, appeals personnel shall allow the taxpayer to participate in any communications with Tax Commission employees;

10. Appeals decisions and agreements shall not be considered as precedent;

11. A taxpayer's decision to forego appeals consideration shall not constitute a failure to exhaust administrative remedies, nor shall a taxpayer's decision to request appeals consideration with respect to a determination preclude the taxpayer from commencing a proceeding in the State Office of Administrative Tax Hearings with respect to any issue not resolved by settlement or concession; and

12. The Tax Commission may promulgate emergency and other rules governing the operation of the independent administrative appeals function, including, without limitation, a rule allowing the Tax Commission to finalize its determination if the taxpayer fails to timely request or pursue appeals consideration or a rule allowing the Tax Commission to publicly designate specific issues that appeals personnel may not compromise.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9110 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. A taxpayer may commence a proceeding in the State Office of Administrative Tax Hearings by filing a petition protesting the Oklahoma Tax Commission's proposed assessment of taxes or additional taxes under Section 221 of Title 68 of the Oklahoma Statutes, or the Tax Commission's denial of a claim for refund under Section 227 of Title 68 of the Oklahoma Statutes, or any proposed assessment of tax

or denial of claim for refund by the Tax Commission under any succeeding or similar provision of law. The petition shall be filed in the State Office of Administrative Tax Hearings no later than ninety (90) days after the date of mailing of notice of the proposed assessment or denial of claim for refund, as applicable. For purposes of the State Office of Administrative Tax Hearings Act, the term "taxpayer" includes a person:

1. Who is challenging the state's jurisdiction over the person; and

2. Who has standing to challenge the validity or applicability of the tax.

B. The Tax Commission shall file its answer in the State Office of Administrative Tax Hearings no later than seventy-five (75) days after its receipt of the State Office of Administrative Tax Hearings' notification that the taxpayer has filed a petition in proper form. Upon written request, the State Office of Administrative Tax Hearings may grant up to fifteen (15) additional days to file an answer. The Tax Commission shall serve a copy on the taxpayer's representative or, if the taxpayer is not represented, on the taxpayer, and shall file proof of such service with the answer. Material facts alleged in the petition, if not expressly admitted or denied in the answer, shall be deemed admitted. If the Tax Commission fails to answer within the

prescribed time, all material facts alleged in the petition shall be deemed admitted.

C. The taxpayer may file a reply in the State Office of Administrative Tax Hearings within thirty (30) days after receipt of the answer. The taxpayer shall serve a copy on the authorized representative of the Tax Commission and shall file proof of such service with the reply. If the taxpayer fails to reply within the prescribed time, all material facts alleged in the answer shall be deemed denied. When a reply has been filed, or, if no reply has been filed, then thirty (30) days after the filing of the answer, the controversy shall be deemed at issue and will be scheduled for hearing.

D. Either party may amend a pleading once without leave at any time before the period for responding to it expires. After such time, a pleading may be amended only with the written consent of the adverse party or with the permission of the State Office of Administrative Tax Hearings. The State Office of Administrative Tax Hearings shall freely grant consent to amend upon such terms as may be just. Except as otherwise ordered by the State Office of Administrative Tax Hearings, there shall be an answer or reply to an amended pleading if an answer or reply is required to the pleading being amended. Filing of the answer, or, if the answer has already been filed, the amended answer, shall be made no later than seventy-five (75) days after filing of the amended petition. Filing of the

reply or, if the reply has already been filed, the amended reply, shall be made within thirty (30) days after filing of the amended answer. The taxpayer may not amend a petition after expiration of the time for filing a petition, if such amendment would have the effect of conferring jurisdiction on the State Office of Administrative Tax Hearings over a matter that would otherwise not come within its jurisdiction. An amendment of a pleading shall relate back to the time of filing of the original pleading, unless the State Office of Administrative Tax Hearings shall order otherwise either on motion of a party or on the State Office of Administrative Tax Hearings' own initiative.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9111 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Upon filing a petition, the taxpayer shall pay to the clerk a fee in the amount of Sixty Dollars ($60.00), except that, in case of a petition filed in the Small Claims Division as provided in Section 16 of this act, the fee shall be Twenty-five Dollars ($25.00). A similar fee shall be paid by other parties making an appearance in the proceeding, except that no fee shall be charged to a government body or government official appearing in a representative capacity.

B. The State Office of Administrative Tax Hearings may fix a fee, not in excess of the fees charged and collected by the clerks

of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry or other paper and the comparison and certification thereof.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9112 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The parties to a proceeding shall make every effort to achieve discovery by informal consultation or communication, before invoking the discovery mechanisms authorized by this section.

B. The parties to a proceeding shall stipulate all relevant and nonprivileged matters to the fullest extent to which complete or qualified agreement can or fairly should be reached. Neither the existence nor the use of the discovery mechanisms authorized by this section shall excuse failure to comply with this provision.

C. Subject to reasonable limitations prescribed by the State Office of Administrative Tax Hearings, a party may obtain discovery by written interrogatories; requests for the production of returns, books, papers, documents, correspondence or other evidence; depositions of parties, nonparty witnesses and experts; and requests for admissions. The State Office of Administrative Tax Hearings may provide for other forms of discovery.

D. An administrative law judge or the clerk of the State Office of Administrative Tax Hearings, on the request of any party to the proceeding, shall issue subpoenas requiring the attendance of

witnesses and giving of testimony and subpoenas duces tecum requiring the production of evidence or things.

E. Any employee of the State Office of Administrative Tax Hearings designated in writing for the purpose by the Chief Administrative Law Judge may administer oaths.

F. Any witness subpoenaed or whose deposition is taken shall receive the same fees and mileage as a witness in a district court of this state.

G. The State Office of Administrative Tax Hearings may enforce its orders on discovery and other procedural issues, among other means, by deciding issues wholly or partly against the offending party.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9113 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Proceedings before the State Office of Administrative Tax Hearings shall be heard and considered de novo and, to the extent permissible under the constitution, without a jury.

B. Except as set forth in the State Office of Administrative Tax Hearings Act or otherwise precluded by law, the State Office of Administrative Tax Hearings shall take evidence, conduct hearings and issue final and interlocutory decisions.

C. Hearings shall be open to the public and shall be conducted in accordance with such rules of practice and procedure as the State

Office of Administrative Tax Hearings may promulgate. Notwithstanding the foregoing, on motion of either party the State Office of Administrative Tax Hearings shall issue a protective order or an order closing part or all of the hearing to the public, if the party shows good cause to protect certain information from being disclosed to the public.

D. The State Office of Administrative Tax Hearings shall not be bound by the rules of evidence applicable to civil cases in the district courts of this state. The State Office of Administrative Tax Hearings shall admit relevant evidence, including hearsay, if it is probative of a material fact in controversy. The State Office of Administrative Tax Hearings shall exclude irrelevant and unduly repetitious evidence. Notwithstanding the foregoing, the rules of privilege recognized by law shall apply.

E. Testimony may be given only on oath or affirmation.

F. The petition and other pleadings in the proceeding shall be deemed to conform to the proof presented at the hearing, unless a party satisfies the State Office of Administrative Tax Hearings that presentation of the evidence would unfairly prejudice the party in maintaining its position on the merits or unless deeming the taxpayer’s petition to conform to the proof would confer jurisdiction on the State Office of Administrative Tax Hearings over a matter that would not otherwise come within its jurisdiction.

G. In the case of an issue of fact, the taxpayer shall have the burden of persuasion by a preponderance of the evidence in the record, except that the Oklahoma Tax Commission shall have the burden of persuasion in the case of an assertion of fraud and in other cases provided by law.

H. Proceedings before the State Office of Administrative Tax Hearings, except those before the Small Claims Division as provided in Section 15 of this act, shall be officially reported. The State shall pay the expense of reporting from the appropriation for the State Office of Administrative Tax Hearings.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9114 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The State Office of Administrative Tax Hearings shall render its decision in writing, including therein a concise statement of the facts found and the conclusions of law reached. The State Office of Administrative Tax Hearings' decision shall, subject to law, grant such relief, invoke such remedies and issue such orders as it deems appropriate to carry out its decision.

B. The State Office of Administrative Tax Hearings shall render its decision no later than six (6) months after submission of the last brief filed subsequent to completion of the hearing or, if briefs are not submitted, no later than six (6) months after completion of the hearing. The State Office of Administrative Tax

Hearings may extend the six-month period, for good cause, up to three (3) additional months.

C. If the State Office of Administrative Tax Hearings fails to render a decision within the prescribed period, either party may institute a proceeding in the district court to compel the issuance of such decision.

D. The State Office of Administrative Tax Hearings' decision shall finally decide the matters in controversy, unless any party to the matter timely appeals the decision as provided in Section 17 of this act.

E. Except as otherwise provided by the Oklahoma Constitution or the laws of this state, the State Office of Administrative Tax Hearings' decision shall have the same effect, and shall be enforced in the same manner, as a judgment of a district court of the state.

F. The State Office of Administrative Tax Hearings' interpretation of a taxing statute subject to contest in one case shall be followed by the State Office of Administrative Tax Hearings in subsequent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by the State Office of Administrative Tax Hearings in subsequent cases involving similar facts, unless the State Office of Administrative Tax Hearings' interpretation or application conflicts with that of an appellate court or the State Office of Administrative Tax Hearings provides satisfactory reasons for reversing prior precedent.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9115 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established a Small Claims Division of the State Office of Administrative Tax Hearings.

B. The administrative law judges of the State Office of Administrative Tax Hearings shall sit as the administrative law judges of the Small Claims Division.

C. If the taxpayer timely elects, the Small Claims Division shall have jurisdiction over any proceeding with respect to any calendar year for which the net amount of the tax deficiencies and claimed refunds in controversy does not exceed Twenty-five Thousand Dollars ($25,000.00), exclusive of interest and penalties.

D. A taxpayer may elect to proceed in the Small Claims Division of the State Office of Administrative Tax Hearings by filing a petition in the form prescribed by the State Office of Administrative Tax Hearings no later than ninety (90) days after the taxpayer's receipt of written notice of the determination that is the subject of the petition. A taxpayer may not revoke an election to proceed in the Small Claims Division.

E. No later than thirty (30) days after receipt of notice that the taxpayer has filed a petition in proper form, or at such other time as the State Office of Administrative Tax Hearings may order, the Oklahoma Tax Commission shall file with the State Office of

Administrative Tax Hearings an answer similar to that required by Section 11 of this act.

F. At any time prior to entry of judgment, a taxpayer may dismiss a proceeding in the Small Claims Division by notifying the clerk of the State Office of Administrative Tax Hearings in writing. Such dismissal shall be with prejudice, and shall not have the effect of revoking the election made in accordance with subsection D of this section.

G. Hearings in the Small Claims Division shall be informal, and the administrative law judge may receive such evidence as the administrative law judge deems appropriate for determination of the case. Testimony shall be given under oath or affirmation.

H. A judgment of the Small Claims Division shall be conclusive upon all parties and may not be appealed. A judgment of the Small Claims Division shall not be considered as precedent in any other case, hearing or proceeding.

I. The provisions of the State Office of Administrative Tax Hearing Act shall apply to proceedings in the Small Claims Division unless expressly inapplicable thereto or inconsistent with the provisions of this section.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9116 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The taxpayer or the Oklahoma Tax Commission shall be entitled to judicial review of a final decision of the State Office of Administrative Tax Hearings, except a final decision of the Small Claims Division, in accordance with the procedure for appeal from a decision of the district court, but without regard to the sum involved. The taxpayer or the Tax Commission may appeal from a final decision of the State Office of Administrative Tax Hearings to the Oklahoma Supreme Court within thirty (30) days after the date of mailing to the taxpayer and Tax Commission of the final decision by filing a petition in error with the Clerk of the Supreme Court. The taxpayer or the Tax Commission may obtain judicial review of an interlocutory decision of the State Office of Administrative Tax Hearings under the same conditions and in the same manner as an interlocutory decision of the district court.

B. The record on judicial review shall include the decision of the State Office of Administrative Tax Hearings, the stenographic transcript of the hearing before the State Office of Administrative Tax Hearings, the pleadings and all exhibits and documents designated by the parties.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9117 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Appearances in proceedings conducted by the State Office of Administrative Tax Hearings may be by the taxpayer, by an attorney

admitted to practice in this state (including an attorney who is a partner or member of, or is employed by, an accounting or other professional services firm), by an accountant licensed in this state, or by an enrolled agent authorized to practice before the Internal Revenue Service. The State Office of Administrative Tax Hearings may allow any attorney or accountant authorized to practice or licensed in any other jurisdiction of the United States to appear and represent a taxpayer in proceedings before the State Office of Administrative Tax Hearings for a particular matter. In addition, the State Office of Administrative Tax Hearings may promulgate rules and regulations permitting a taxpayer to be represented by an officer, employee, partner or member.

B. The Oklahoma Tax Commission shall be represented by an authorized representative in all proceedings before the State Office of Administrative Tax Hearings.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9118 of Title 74, unless there is created a duplication in numbering, reads as follows:

Except for decisions issued by the Small Claims Division, the State Office of Administrative Tax Hearings shall index and publish its final decisions in such print or electronic form as it deems best adapted for public convenience. Such publications shall be made permanently available and constitute the official reports of the State Office of Administrative Tax Hearings.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9119 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Mailing by first class or certified or registered mail, postage prepaid, to the address of the taxpayer given on the taxpayer's petition, or to the address of the taxpayer's representative of record, if any, or to the usual place of business of the Oklahoma Tax Commission, shall constitute personal service on the other party. The State Office of Administrative Tax Hearings may by rule prescribe that notice by other means shall constitute personal service and may in a particular case order that notice be given to additional persons or by other means.

B. Mailing by registered or certified mail and delivery by a private delivery service approved by the Internal Revenue Service in accordance with Section 7502(f) of the Internal Revenue Code of 1986, as amended, shall be deemed to have occurred, respectively, on the date of mailing and the date of submission to the private delivery service.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9120 of Title 74, unless there is created a duplication in numbering, reads as follows:

The State Office of Administrative Tax Hearings is authorized to promulgate and adopt all reasonable rules and forms as may be

necessary or appropriate to carry out the intent and purposes of the State Office of Administrative Tax Hearings Act.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9121 of Title 74, unless there is created a duplication in numbering, reads as follows:

This act shall take effect January 1, 2010, except that the provisions for the appointment of an administrative law judge or administrative law judges to the State Office of Administrative Tax Hearings shall take effect on July 1, 2009. This act shall apply to:

1. All proceedings commenced in the State Office of Administrative Tax Hearings on or after such date; and

2. All administrative proceedings commenced prior to such date that have not been the subject of a final and irrevocable administrative action as of such effective date, to the extent this act can be made applicable thereto.

Any administrative proceeding in which a hearing has commenced prior to the effective date of this act shall be transferred to the State Office of Administrative Tax Hearings, which shall render the decision in such proceeding unless there is a prior settlement. This act shall not affect any proceeding, prosecution, action, suit or appeal commenced in the judicial branch before the effective date of this act.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9122 of Title 74, 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, 2010, shall be transferred to the State Office of Administrative Tax Hearings, unless the Director of the Office of State Finance, in consultation with the head of the transferring agency, and the Chief Administrative Law Judge determine 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 State Office of Administrative Tax Hearings, unless the Director of the Office of State Finance, in consultation with the head of the transferring agency, and the Chief Administrative Law Judge determine 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 State Office of Administrative Tax Hearings.

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 the State Office of Administrative Tax Hearings Act.

SECTION 24. AMENDATORY 68 O.S. 2001, Section 207, is amended to read as follows:

Section 207. ~~(a)~~ A. Incidental to the performance of its duties in the administration of this article or any state tax law, any member of the Oklahoma 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)~~ 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)~~ C. Any person desiring a hearing before the Tax Commission shall file an application for such hearing, signed by ~~himself~~ the

person or ~~his~~ the person's duly authorized agent, setting out therein:

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

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

~~(3)~~ 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)~~ 4. A statement of the relief sought by the taxpayer;

~~(5)~~ 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)~~ 6. A verification by such person, or his duly authorized agent, that the statements and facts therein contained are true.

~~(d)~~ 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 separate from the right to a hearing on matters pertaining to the assessment of tax or additional tax and denial of claims for refund by the Tax Commission that are afforded to a taxpayer pursuant to the provisions of Sections 221 and 227 of this title, which hearings are to be granted and held exclusively by and before the State Office of Administrative Tax Hearings, pursuant to the State Office of Administrative Tax Hearings Act.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 220.A of Title 68, unless there is created a duplication in numbering, reads as follows:

Before the Tax Commission finalizes a determination that triggers a taxpayer's right to commence a proceeding in the State Office of Administrative Tax Hearings under Section 11 of this act, the Tax Commission shall provide to the taxpayer, including for purposes of this section any person asserted by the Tax Commission to be a taxpayer, the option to obtain review of the Tax Commission audit function's proposed determination by an independent administrative appeals function of and within the Tax Commission.

SECTION 26. AMENDATORY 68 O.S. 2001, Section 221, as amended by Section 1, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2008, 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, in performance of its audit function and 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 in performance of its audit function shall examine such report or return and make such audit or investigation as it may deem necessary. If, after performance of its audit function and providing the taxpayer the option to obtain review of any proposed determination made therein this act, the Tax Commission determines, in ~~cases~~ a case 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~~ a case 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~~ the Tax Commission 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)~~ ninety (90) days after the mailing of the aforesaid proposed assessment, the taxpayer may file with the ~~Tax Commission~~ State Office of Administrative Tax Hearings 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 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 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. 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~~ petition pursuant to the provisions of Section 9 of this act.

~~E.~~ D. If the taxpayer fails to file a ~~written protest~~ petition with the State Office of Administrative Tax Hearings within the ~~sixty-day~~ ninety-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~~ petition with the State Office of Administrative Tax Hearings as 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 available for public inspection and shall publish those orders the Tax Commission 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.~~ E. 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.~~ F. 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 27. AMENDATORY 68 O.S. 2001, Section 225, as amended by Section 2, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2008, 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. An appeal of an order or decision of the State Office of Administrative Tax Hearings in a case heard by it under the State Office of Administrative Tax Hearings Act shall be filed and made pursuant to Section 17 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. Provided, that the Tax Commission shall not have the right to request the Court to order payment by the taxpayer to the Tax Commission the amounts of tax, additional tax, penalty or interest, as a condition of an appeal by the taxpayer of a decision or order of the State Office of Administrative Tax Hearings with respect to any proposed assessment of tax or additional tax that has been entered by the State Office of Administrative Tax Hearings under the State Office of Administrative Tax Hearings Act and that is appealed by the taxpayer pursuant to Section 17 of this act.

~~E.~~ F. If ~~the~~ there is an appeal ~~is~~ from an order of the Tax Commission ~~or~~, a district court or the State Office of Administrative Tax Hearings 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 28. AMENDATORY 68 O.S. 2001, Section 227, is amended to read as follows:

Section 227. ~~(a)~~ 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)~~ 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)~~ 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)~~ 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~~ petition in the State Office of Administrative Tax Hearings pursuant to Section 11 of this act within ninety (90) days after the date the notice of denial was mailed. If the taxpayer fails to file a ~~demand for hearing~~ petition with the State Office of Administrative Tax Hearings, 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 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)~~ E. 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~~

1. 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~~ that has been assessed by an order of

the Tax Commission that has become final and absolute but as to which a request for adjustment or abatement is filed for a clearly erroneous assessment as allowed by subsection C of Section 815 of this title; nor~~, (3) in~~

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

Section 228. ~~(a)~~ A. If, upon the hearing as required by Section 227 of this title, the ~~Tax Commission~~ State Office of Administrative Tax 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 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)~~ B. Any final decision or order ~~entered by~~ of the ~~Tax Commission,~~ State Office of Administrative Tax 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 17 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 Administrative Tax 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 30. AMENDATORY 68 O.S. 2001, Section 815, as last amended by Section 2, Chapter 70, O.S.L. 2008 (68 O.S. Supp. 2008, Section 815), is amended to read as follows:

Section 815. A. 1. The executor, administrator, trustee, devisee, heir or transferee shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Oklahoma Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving

all the information called for or that may be necessary to determine the value of the net estate. The provisions of this subsection shall not apply to estates exempt from filing such return by the provisions of subsections ~~D,~~ E ~~and~~, F and G of this section.

2. For estate tax returns filed pursuant to this section, an extension of time to file the return may be granted for a period not to exceed six (6) months. The request for the extension shall be made to the Tax Commission before the expiration of the normal filing period as allowed pursuant to paragraph 1 of this subsection.

B. Upon receipt of such return, the Tax Commission may, for the purpose of determining the value of the estate or any transfer, audit the books of account and records of any executor, administrator, trustee, devisee, heir, corporation, bank, trust company or transferee, and may appraise the property transferred or returned and investigate and include any property or transfers which may have been omitted from the return and shall thereupon compute, and ~~by order assess,~~ propose the assessment of tax or additional tax, together with any interest or penalty which it may find to be due, and shall forthwith notify the administrator, executor, trustee or transferee and such person's attorney of record of such proposed assessment by furnishing a detailed statement of the values of the estate or transfers, as fixed by the Tax Commission, and the amount of tax or additional tax proposed to be assessed. Such notice may be delivered in person or may be by mail addressed to such

administrator, executor, trustee, transferee and such person's attorney of record at the last-known post office addresses, with the postage thereon prepaid, and upon receipt of such notice of proposed assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided, however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or proposed assessment or any appraisement made by the Tax Commission, such person ~~shall~~ may, within ~~sixty (60)~~ ninety (90) days from the date of mailing of such notice, file ~~with the Tax Commission an objection, in writing, specifically setting forth the grounds of the objections, and thereupon the Tax Commission may grant a hearing, and upon such hearing may adjust the matters in controversy and correct the assessment as justice may require. Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error of omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of the objection, and thereupon the Tax Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require~~ a petition in the State Office of Administrative Tax Hearings pursuant to Section 11 of this act. If

such petition is not filed with the State Office of Administrative Tax Hearings within the ninety-day period herein provided for, or if a notice is not filed as required by Section 226 of this title within thirty (30) days from the mailing of the proposed assessment, the proposed assessment, without further action of the Tax Commission, shall become final and absolute.

C. An administrator, executor, trustee or any interested party who fails to file ~~an objection~~ a petition with the State Office of Administrative Tax Hearings within the ~~sixty-day~~ ninety-day time period prescribed by this section may, within one (1) year from the date of mailing of the notice, request the Tax Commission to adjust or abate the assessment ~~for reasons other than an error of omission or inclusion of property on return~~, if the administrator, executor, trustee or any interested party 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 denial by the Tax Commission of such a request. An order of the Tax Commission denying a request of an administrator, executor, trustee or any interested party 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.

~~C.~~ D. No assessment of inheritance, estate or transfer tax shall be made hereunder subsequent to the lapse of ten (10) years after the date of the death of any decedent. If an estate tax return is filed as required by law, additional assessment may be made based upon unreported assets of the estate if such assessment is made not later than ten (10) years from the date of death of the decedent; provided, however, such additional assessment shall be made and any lien applicable thereto shall attach only against such unreported assets.

~~D.~~ E. When all the property, both real and personal, of a decedent passes to the surviving spouse, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiary from payment of estate tax shall be necessary for any purpose, unless there are taxes due under the provisions of Section 804 of this title. However, an estate tax return or affidavit in a form provided by the Tax Commission may be filed which indicates that all the property of the decedent passes to the surviving spouse, and the Tax Commission, upon being satisfied from an examination of the return or affidavit and any other information available to it that all of the property of the decedent passes to the surviving spouse, shall issue an order

exempting as nontaxable all property included in such decedent's estate.

~~E.~~ F. When an order releasing estate tax liability is obtained from the district court, as provided in this act, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiaries from the payment of estate tax shall be necessary for any purpose for any property described in such order of the district court.

~~F.~~ G. When the net estate of a decedent is equal to or less than the applicable exemption provided in Section 809 of this title, a simplified return or affidavit, on a form prescribed by the Tax Commission, may be filed in lieu of the return required in subsection A of this section. The return shall contain sufficient information to determine that the value of the net estate is equal to or less than the applicable exemption provided in Section 809 of this title. The Tax Commission, upon being satisfied from an examination of the return or affidavit and any other information available to it, shall issue an order exempting as nontaxable all property included in such decedent's estate.

~~G.~~ H. The provisions of this section or Section 205 of this title shall not prevent the Tax Commission from delivering, upon written request, to a duly authorized representative of the taxpayer, or any individual who has judicially been determined to be an heir, devisee, or legatee of the taxpayer by a court of competent

jurisdiction, or any individual named as a beneficiary of a trust of the taxpayer, a copy of any return exclusive of distribution schedule, any order assessing tax or any other paper or report filed or issued pursuant to the provisions of Sections 801 et seq. of this title.

SECTION 31. 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 <u>that shall be the basis for such a payment from such Income Tax Withholding Refund Account. Provided, that a taxpayer may also file an amended income tax return or other written form of claim for refund and such amended return or claim for refund shall be allowed to be made and filed pursuant and subject to the provisions of Section 227 of this title</u>.

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 Oklahoma 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.

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 32. This act shall become effective July 1, 2009.

SECTION 33. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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