

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1297

By: Crain

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6 AS INTRODUCED

7 An Act relating to administrative tax hearings;
8 creating the State Office of Administrative Tax
9 Hearings Act; providing short title; stating purpose;
10 creating the State Office of Administrative Tax
11 Hearings; providing for appointment, term of office,
12 duties, and compensation of administrative law judges
13 and Chief Administrative Law Judge; providing for
14 location of offices and hearings; creating the State
15 Office of Administrative Tax Hearings Revolving Fund;
16 providing for appointment of clerk, reporter, and
17 other staff and expenditure of funds for library and
18 other office requirements; prohibiting certain
19 representation; providing for certain removal from
20 employment; providing for preparation of transcripts;
21 providing for authority of State Office of
22 Administrative Tax Hearings and Oklahoma Tax
23 Commission; requiring dismissal of certain matters;
24 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

1 and actions; providing for transfer of certain state
2 employees, equipment and funds; amending 68 O.S.
3 2011, Section 207, which relates to hearings held by
4 the Oklahoma Tax Commission; separating the right for
5 certain hearings from hearings held before the State
6 Office of Administrative Tax Hearings; requiring the
7 Oklahoma Tax Commission to provide certain option;
8 amending 68 O.S. 2011, Section 221, which relates to
9 reports or returns by taxpayers; modifying procedures
10 for hearings and orders; amending 68 O.S. 2011,
11 Section 225, which relates to appeals; modifying
12 authority for taxpayer appeals; amending 68 O.S.
13 2011, Sections 227 and 228, which relate to erroneous
14 payments of taxes and claims for refund; modifying
15 procedure for hearings and refunds; amending 68 O.S.
16 2011, Section 2373, which relates to the Income Tax
17 Withholding Refund Account; expanding methods of
18 making certain claims; providing for codification;
19 providing an effective date; and declaring an
20 emergency.

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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:

A. 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

1 Oklahoma Tax Commission and taxpayers, prior to requiring the
2 payment of the amounts in issue or the posting of a bond, but after
3 the taxpayer has had a full opportunity to attempt settlement with
4 the Tax Commission based, among other things, on the hazards of
5 litigation. By establishing an independent office of administrative
6 tax hearings within the executive branch of government, the State
7 Office of Administrative Tax Hearings Act provides taxpayers with a
8 means of resolving controversies that ensures both the appearance
9 and the reality of due process and fundamental fairness.

10 B. It is the intent of the Legislature that the State Office of
11 Administrative Tax Hearings Act foster the settlement or other
12 resolution of tax disputes to the extent possible and, in cases in
13 which litigation is necessary, to provide the people of this state
14 with a fair, independent, pre-payment procedure to determine a
15 dispute with the Oklahoma Tax Commission. The State Office of
16 Administrative Tax Hearings Act shall be interpreted and construed
17 in accordance with, and in furtherance of, this intent.

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

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

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

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

6 D. The State Office of Administrative Tax Hearings shall be
7 created and exist on and after January 1, 2013, but the
8 administrative law judge or judges thereof may be appointed prior
9 thereto and may take any action that is necessary to enable the
10 administrative law judge or judges to exercise, after that date, the
11 duties, functions, and powers given the State Office of
12 Administrative Tax Hearings under the State Office of Administrative
13 Tax Hearings Act.

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

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

21 B. The administrative law judge or judges of the State Office
22 of Administrative Tax Hearings shall be appointed by the Governor,
23 with the advice and consent of the Senate, for a term of ten (10)
24 years. If the State Office of Administrative Tax Hearings has more

1 than one administrative law judge, the administrative law judges
2 initially appointed should be given terms of different lengths not
3 exceeding ten (10) years, so that the terms of all administrative
4 law judges do not expire in the same year.

5 C. Each administrative law judge of the State Office of
6 Administrative Tax Hearings shall receive an annual salary equal to
7 that provided for district court judges under Section 91.1A of Title
8 20 of the Oklahoma Statutes, which salary shall not be diminished
9 during the term of appointment of the administrative law judge.

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

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

17 F. If more than one administrative law judge is appointed, the
18 Governor shall designate one of the judges as Chief Administrative
19 Law Judge. The Chief Administrative Law Judge shall be the
20 executive of the State Office of Administrative Tax Hearings, shall
21 have sole charge of the administration of the State Office of
22 Administrative Tax Hearings, and shall apportion among the
23 administrative law judges all causes, matters, and proceedings
24 coming before the State Office of Administrative Tax Hearings. The

1 individual designated as Chief Administrative Law Judge shall serve
2 in that capacity at the pleasure of the Governor.

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

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

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

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

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

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

18 C. Each administrative law judge shall devote full time during
19 business hours to the duties of office. Except as otherwise
20 provided in this subsection, an administrative law judge shall not
21 engage in any other gainful employment or business, nor hold another
22 office or position of profit in a government of this state, any
23 other state, or the United States. An administrative law judge may
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1 own passive interests in business entities and earn income from
2 incidental teaching or scholarly activities.

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

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

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

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

22 D. The Department of Central Services shall provide hearing
23 rooms, chambers, and offices for the State Office of Administrative
24 Tax Hearings at its principal office and shall arrange for hearing

1 rooms, chambers, and offices or other appropriate facilities when
2 hearings are held elsewhere.

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

6 There is hereby created in the State Treasury a revolving fund
7 for the State Office of Administrative Tax Hearings to be designated
8 as the "State Office of Administrative Tax Hearings Revolving Fund".
9 The fund shall be a continuing fund, not subject to fiscal year
10 limitations, and shall consist of appropriations by the Legislature,
11 transferred funds pursuant to the State Office of Administrative Tax
12 Hearings Act, and fees, fines, penalties, and other costs collected
13 by the Office as otherwise provided by law. All monies accruing to
14 the credit of the fund are hereby appropriated and may be budgeted
15 and expended by the Office for any authorized purpose. Expenditures
16 from the fund shall be made upon warrants issued by the State
17 Treasurer against claims filed as prescribed by law with the
18 Director of State Finance for approval and payment.

19 SECTION 8. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 9107 of Title 74, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The State Office of Administrative Tax Hearings shall
23 appoint a clerk and a reporter, and may appoint such other employees
24 and make such other expenditures, including expenditures for

1 library, publications, and equipment, as are necessary to permit the
2 Office to efficiently execute its functions.

3 B. The reporter shall be subject to the provisions of Sections
4 106.1 through 106.13 of Title 20 of the Oklahoma Statutes, and
5 related provisions, as if appointed by an administrative law judge
6 of the district court, except where such provisions are in conflict
7 with the State Office of Administrative Tax Hearings Act.

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

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

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

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

4 A. Except as permitted by Section 17 of this act relating to
5 judicial review, the State Office of Administrative Tax Hearings
6 shall be the sole, exclusive, and final authority for the conducting
7 of an administrative hearing and determination of questions of law
8 and fact arising in the matters pertaining to taxpayer protests or
9 objections to the assessment of taxes or additional taxes or demands
10 for a hearing on a denial of a claim for refund by the Oklahoma Tax
11 Commission for which a taxpayer may file a petition with the State
12 Office of Administrative Tax Hearings pursuant to Section 11 of this
13 act. The Tax Commission shall retain and have authority to act
14 administratively and meet and communicate with taxpayers and
15 administratively make decisions in the performance of its duties and
16 otherwise exercise its powers and authority to administer the tax
17 laws of the state with respect to collection of taxes, issuance of
18 permits and licenses, the promulgation and administration of rules
19 or regulations, and the waiver or remission of interest or penalty
20 payable by taxpayers as permitted by state law, and to take
21 administrative actions other than and except the conduct of
22 administrative hearings and determination of questions of law and
23 fact in matters referred to in this subsection pursuant to the State
24 Office of Administrative Tax Hearings Act which are to be conducted

1 solely and exclusively by the State Office of Administrative Tax
2 Hearings. In the case of any issue or controversy arising with
3 respect to the scope and effect of the respective authority of the
4 State Office of Administrative Tax Hearings and of the Tax
5 Commission as described in this section, the State Office of
6 Administrative Tax Hearings shall have the sole, exclusive, and
7 final authority to decide the issue or controversy upon the request
8 of any taxpayer through filing a petition pursuant to Section 11 of
9 this act.

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

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

1 D. If, with or after the filing of a timely petition, the
2 taxpayer pays all or part of the tax or other amount in issue before
3 the State Office of Administrative Tax Hearings has rendered a
4 decision, the State Office of Administrative Tax Hearings shall
5 treat the petition of the taxpayer as a protest of a denial of a
6 claim for refund of the amount so paid.

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

16 1. Commence a declaratory action in the district courts of this
17 state with respect to the constitutional challenge, or a petition in
18 the district courts of this state pursuant to Section 226 of Title
19 68 of the Oklahoma Statutes and file a petition in the State Office
20 of Administrative Tax Hearings with respect to the remainder of the
21 matter, which proceeding shall be stayed by the State Office of
22 Administrative Tax Hearings pending final resolution of the
23 constitutional challenge;

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1 2. File a petition with the State Office of Administrative Tax
2 Hearings with respect to issues other than the constitutional
3 challenge, in which the taxpayer preserves the constitutional
4 challenge until the entire matter, including the constitutional
5 challenge and the facts related to the constitutional challenge, is
6 presented to the appellate court; or

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

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

16 A. Before the Oklahoma Tax Commission finalizes a determination
17 that triggers the right of a taxpayer to commence a proceeding in
18 the State Office of Administrative Tax Hearings under Section 11 of
19 this act, the Tax Commission shall provide to the taxpayer,
20 including for purposes of this section any person asserted by the
21 Tax Commission to be a taxpayer, the option to obtain review of the
22 audit function's proposed determination by an independent
23 administrative appeals function. An independent administrative
24 appeals function means a program of holding conferences and

1 negotiating settlements that is designed to resolve the vast
2 majority of tax controversies without litigation on a basis that is
3 fair and impartial to the state and the taxpayer and that enhances
4 voluntary compliance and public confidence in the integrity and
5 efficiency of the Tax Commission.

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

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

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

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

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

21 5. Appeals conferences shall be conducted, at the option of the
22 taxpayer, by correspondence, by telephone, or in person;

23 6. Appeals personnel shall consider argument as to the
24 applicability of the tax laws; settlement proposals and

1 counterproposals; and new evidence in support of the position of the
2 taxpayer. If the new evidence is substantial and should have been
3 presented at the time of audit, appeals personnel may request the
4 audit function to examine the evidence and to make a recommendation
5 as to the effect of the evidence on the related issue;

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

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

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

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

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

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

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

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

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

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

22 A. A taxpayer may commence a proceeding in the State Office of
23 Administrative Tax Hearings by filing a petition protesting the
24 Oklahoma Tax Commission's proposed assessment of taxes or additional

1 taxes under Section 221 of Title 68 of the Oklahoma Statutes, or the
2 Tax Commission's denial of a claim for refund under Section 227 of
3 Title 68 of the Oklahoma Statutes, or any proposed assessment of tax
4 or denial of claim for refund by the Tax Commission under any
5 succeeding or similar provision of law. The petition shall be filed
6 in the State Office of Administrative Tax Hearings no later than
7 ninety (90) days after the date of mailing of notice of the proposed
8 assessment or denial of claim for refund, as applicable. For
9 purposes of the State Office of Administrative Tax Hearings Act, the
10 term "taxpayer" includes a person:

11 1. Who is challenging the jurisdiction of the state over the
12 person; and

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

15 B. The Tax Commission shall file its answer in the State Office
16 of Administrative Tax Hearings no later than seventy-five (75) days
17 after its receipt of the State Office of Administrative Tax
18 Hearings' notification that the taxpayer has filed a petition in
19 proper form. Upon written request, the State Office of
20 Administrative Tax Hearings may grant up to fifteen (15) additional
21 days to file an answer. The Tax Commission shall serve a copy on
22 the representative of the taxpayer or, if the taxpayer is not
23 represented, on the taxpayer, and shall file proof of such service
24 with the answer. Material facts alleged in the petition, if not

1 expressly admitted or denied in the answer, shall be deemed
2 admitted. If the Tax Commission fails to answer within the
3 prescribed time, all material facts alleged in the petition shall be
4 deemed admitted.

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

15 D. Either party may amend a pleading once without leave at any
16 time before the period for responding to it expires. After such
17 time, a pleading may be amended only with the written consent of the
18 adverse party or with the permission of the State Office of
19 Administrative Tax Hearings. The State Office of Administrative Tax
20 Hearings shall freely grant consent to amend upon such terms as may
21 be just. Except as otherwise ordered by the State Office of
22 Administrative Tax Hearings, there shall be an answer or reply to an
23 amended pleading if an answer or reply is required to the pleading
24 being amended. Filing of the answer, or, if the answer has already

1 | been filed, the amended answer, shall be made no later than seventy-
2 | five (75) days after filing of the amended petition. Filing of the
3 | reply or, if the reply has already been filed, the amended reply,
4 | shall be made within thirty (30) days after filing of the amended
5 | answer. The taxpayer may not amend a petition after expiration of
6 | the time for filing a petition, if the amendment would have the
7 | effect of conferring jurisdiction on the State Office of
8 | Administrative Tax Hearings over a matter that would otherwise not
9 | come within its jurisdiction. An amendment of a pleading shall
10 | relate back to the time of filing of the original pleading, unless
11 | the State Office of Administrative Tax Hearings shall order
12 | otherwise either on motion of a party or on the State Office of
13 | Administrative Tax Hearings' own initiative.

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

17 | A. Upon filing a petition, the taxpayer shall pay to the clerk
18 | a fee in the amount of Sixty Dollars (\$60.00), except that, in case
19 | of a petition filed in the Small Claims Division as provided in
20 | Section 16 of this act, the fee shall be Twenty-five Dollars
21 | (\$25.00). A similar fee shall be paid by other parties making an
22 | appearance in the proceeding, except that no fee shall be charged to
23 | a government body or government official appearing in a
24 | representative capacity.

1 B. The State Office of Administrative Tax Hearings may fix a
2 fee, not in excess of the fees charged and collected by the clerks
3 of the district courts, for comparing, or for preparing and
4 comparing, a transcript of the record, or for copying any record,
5 entry, or other paper and the comparison and certification thereof.

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

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

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

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

24

1 D. An administrative law judge or the clerk of the State Office
2 of Administrative Tax Hearings, on the request of any party to the
3 proceeding, shall issue subpoenas requiring the attendance of
4 witnesses and giving of testimony and subpoenas duces tecum
5 requiring the production of evidence or things.

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

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

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

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

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

22 B. Except as set forth in the State Office of Administrative
23 Tax Hearings Act or otherwise precluded by law, the State Office of
24

1 Administrative Tax Hearings shall take evidence, conduct hearings
2 and issue final and interlocutory decisions.

3 C. Except as otherwise provided in this subsection, hearings
4 shall be open to the public and shall be conducted in accordance
5 with such rules of practice and procedure as the State Office of
6 Administrative Tax Hearings may promulgate. On motion of either
7 party, the State Office of Administrative Tax Hearings shall issue a
8 protective order or an order closing part or all of the hearing to
9 the public, if the party shows good cause to protect certain
10 information from being disclosed to the public.

11 D. Except as otherwise provided in this subsection, the State
12 Office of Administrative Tax Hearings shall not be bound by the
13 rules of evidence applicable to civil cases in the district courts
14 of this state. The State Office of Administrative Tax Hearings
15 shall admit relevant evidence, including hearsay, if it is probative
16 of a material fact in controversy. The State Office of
17 Administrative Tax Hearings shall exclude irrelevant and unduly
18 repetitious evidence. The rules of privilege recognized by law
19 shall apply.

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

21 F. The petition and other pleadings in the proceeding shall be
22 deemed to conform to the proof presented at the hearing, unless a
23 party satisfies the State Office of Administrative Tax Hearings that
24 presentation of the evidence would unfairly prejudice the party in

1 maintaining its position on the merits or unless deeming the
2 petition of the taxpayer to conform to the proof would confer
3 jurisdiction on the State Office of Administrative Tax Hearings over
4 a matter that would not otherwise come within its jurisdiction.

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

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

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

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

24

1 B. The State Office of Administrative Tax Hearings shall render
2 its decision no later than six (6) months after submission of the
3 last brief filed subsequent to completion of the hearing or, if
4 briefs are not submitted, no later than six (6) months after
5 completion of the hearing. The State Office of Administrative Tax
6 Hearings may extend the six-month period, for good cause, up to
7 three (3) additional months.

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

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

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

21 F. The State Office of Administrative Tax Hearings'
22 interpretation of a taxing statute subject to contest in one case
23 shall be followed by the State Office of Administrative Tax Hearings
24 in subsequent cases involving the same statute, and its application

1 of a statute to the facts of one case shall be followed by the State
2 Office of Administrative Tax Hearings in subsequent cases involving
3 similar facts, unless the State Office of Administrative Tax
4 Hearings' interpretation or application conflicts with that of an
5 appellate court or the State Office of Administrative Tax Hearings
6 provides satisfactory reasons for reversing prior precedent.

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

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

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

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

20 D. A taxpayer may elect to proceed in the Small Claims Division
21 of the State Office of Administrative Tax Hearings by filing a
22 petition in the form prescribed by the State Office of
23 Administrative Tax Hearings no later than ninety (90) days after the
24 receipt of written notice by the taxpayer of the determination that

1 is the subject of the petition. A taxpayer may not revoke an
2 election to proceed in the Small Claims Division.

3 E. No later than thirty (30) days after receipt of notice that
4 the taxpayer has filed a petition in proper form, or at such other
5 time as the State Office of Administrative Tax Hearings may order,
6 the Oklahoma Tax Commission shall file with the State Office of
7 Administrative Tax Hearings an answer similar to that required by
8 Section 11 of this act.

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

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

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

23 I. The provisions of the State Office of Administrative Tax
24 Hearings Act shall apply to proceedings in the Small Claims Division

1 unless expressly inapplicable thereto or inconsistent with the
2 provisions of this section.

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

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

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

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

4 A. Appearances in proceedings conducted by the State Office of
5 Administrative Tax Hearings may be by the taxpayer, by an attorney
6 admitted to practice in this state, including an attorney who is a
7 partner or member of, or is employed by, an accounting or other
8 professional services firm, by an accountant licensed in this state,
9 or by an enrolled agent authorized to practice before the Internal
10 Revenue Service. The State Office of Administrative Tax Hearings
11 may allow any attorney or accountant authorized to practice or
12 licensed in any other jurisdiction of the United States to appear
13 and represent a taxpayer in proceedings before the State Office of
14 Administrative Tax Hearings for a particular matter. In addition,
15 the State Office of Administrative Tax Hearings may promulgate rules
16 permitting a taxpayer to be represented by an officer, employee,
17 partner, or member.

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

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

24

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

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

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

19 B. Mailing by registered or certified mail and delivery by a
20 private delivery service approved by the Internal Revenue Service in
21 accordance with Section 7502(f) of the Internal Revenue Code of
22 1986, as amended, shall be deemed to have occurred, respectively, on
23 the date of mailing and the date of submission to the private
24 delivery service.

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

4 The State Office of Administrative Tax Hearings may promulgate
5 and adopt all reasonable rules and forms as may be necessary or
6 appropriate to carry out the intent and purposes of the State Office
7 of Administrative Tax Hearings Act.

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

11 A. The State Office of Administrative Tax Hearings Act shall
12 take effect January 1, 2013, except that the provisions for the
13 appointment of an administrative law judge or administrative law
14 judges to the State Office of Administrative Tax Hearings shall take
15 effect on July 1, 2012. The State Office of Administrative Tax
16 Hearings Act shall apply to:

17 1. All proceedings commenced in the State Office of
18 Administrative Tax Hearings on or after January 1, 2013; and

19 2. All administrative proceedings commenced prior to January 1,
20 2013, that have not been the subject of a final and irrevocable
21 administrative action as of January 1, 2013, to the extent the State
22 Office of Administrative Tax Hearings Act can be made applicable
23 thereto.

24

1 B. Any administrative proceeding in which a hearing has
2 commenced prior to January 1, 2013, shall be transferred to the
3 State Office of Administrative Tax Hearings, which shall render the
4 decision in such proceeding unless there is a prior settlement. The
5 State Office of Administrative Tax Hearings Act shall not affect any
6 proceeding, prosecution, action, suit, or appeal commenced in the
7 judicial branch before January 1, 2013.

8 SECTION 23. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 9122 of Title 74, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Every state employee who has exclusively or principally
12 served as support staff for the conduct of administrative hearings
13 by the Oklahoma Tax Commission prior to January 1, 2013, shall be
14 transferred to the State Office of Administrative Tax Hearings,
15 unless the Director of the Office of State Finance, in consultation
16 with the head of the transferring agency, and the Chief
17 Administrative Law Judge determine that an employee should not be
18 transferred.

19 B. All equipment or other tangible property in possession of
20 the Oklahoma Tax Commission, used or held exclusively or principally
21 by personnel transferred under subsection A of this section, shall
22 be transferred to the State Office of Administrative Tax Hearings,
23 unless the Director of the Office of State Finance, in consultation
24 with the head of the transferring agency, and the Chief

1 Administrative Law Judge determine that the equipment or property
2 should not be transferred.

3 C. All unexpended funds, including unpaid and unearned
4 salaries, personnel records, accrued leave, and accrued benefits
5 relating to an employee transferred pursuant to subsection A of this
6 section shall be transferred to the State Office of Administrative
7 Tax Hearings.

8 D. The Director of the Office of State Finance shall coordinate
9 the transfer of funds, property, personnel, allotments, purchases,
10 outstanding financial obligations, and encumbrances required by the
11 State Office of Administrative Tax Hearings Act.

12 SECTION 24. AMENDATORY 68 O.S. 2011, Section 207, is
13 amended to read as follows:

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

24

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

7 ~~(c)~~ C. Any person desiring a hearing before the Tax Commission
8 shall file an application for such hearing, signed by ~~himself~~ the
9 person or ~~his~~ the duly authorized agent of the person, setting out
10 therein:

11 ~~(1)~~ 1. A statement of the nature of the tax, the amount thereof
12 in controversy, and the action of the Tax Commission complained of;

13 ~~(2)~~ 2. A clear and concise assignment of each error alleged to
14 have been committed by the Tax Commission;

15 ~~(3)~~ 3. The argument and legal authority upon which each
16 assignment of error is made; provided, that the applicant shall not
17 be bound or restricted in such hearing, or on appeal, to the
18 arguments and legal authorities contained and cited in ~~said~~ the
19 application;

20 ~~(4)~~ 4. A statement of the relief sought by the taxpayer;

21 ~~(5)~~ 5. A statement of the witnesses, so far as ~~such~~ the
22 witnesses are then known to the taxpayer, showing their names and
23 addresses, and, if the taxpayer so desires, a request that ~~such~~ the
24 witnesses be subpoenaed;

1 ~~(6)~~ 6. A verification by ~~such~~ a person, or ~~his~~ the duly
2 authorized agent of the person, that the statements and facts
3 therein contained are true.

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

15 E. The right to a hearing pursuant to this section shall be
16 separate from the right to a hearing on matters pertaining to the
17 assessment of tax or additional tax and denial of claims for refund
18 by the Tax Commission that are afforded to a taxpayer pursuant to
19 the provisions of Sections 221 and 227 of this title, which hearings
20 are to be granted and held exclusively by and before the State
21 Office of Administrative Tax Hearings, pursuant to the State Office
22 of Administrative Tax Hearings Act.

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

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

12 SECTION 26. AMENDATORY 68 O.S. 2011, Section 221, is
13 amended to read as follows:

14 Section 221. A. If any taxpayer shall fail to make any report
15 or return as required by any state tax law, the Oklahoma Tax
16 Commission, in performance of its audit function and from any
17 information in its possession or obtainable by it, may determine the
18 correct amount of tax for the taxable period. If a report or return
19 has been filed, the Tax Commission in performance of its audit
20 function shall examine ~~such~~ the report or return and make ~~such~~ the
21 audit or investigation as it may deem necessary. If, after
22 performance of its audit function and providing the taxpayer the
23 option to obtain review of any proposed determination made therein
24 pursuant to subsection A of Section 220 of this title, the Tax

1 Commission determines, in ~~cases~~ a case where no report or return has
2 been filed, ~~the Tax Commission determines~~ that there is a tax due
3 for the taxable period, or ~~if~~, in ~~cases~~ a case where a report or
4 return has been filed, ~~the Tax Commission shall determine~~ that the
5 tax disclosed by ~~such~~ the report or return is less than the tax
6 disclosed by its examination, ~~it~~ the Tax Commission shall in writing
7 propose the assessment of taxes or additional taxes, as the case may
8 be, and shall mail a copy of the proposed assessment to the taxpayer
9 at the taxpayer's last-known address. Proposed assessments made in
10 the name of the "Oklahoma Tax Commission" by its authorized agents
11 shall be considered as the action of the Tax Commission.

12 B. Any assessment, correction or adjustment made as a result of
13 an office audit shall be presumed to be the result of an audit of
14 the report or return only, and ~~such~~ the office audit shall not be
15 deemed a verification of any item in the report or return unless the
16 item shall have been made the subject of a hearing before the Tax
17 Commission, and the correctness and amount of ~~such~~ the item
18 determined at ~~such~~ the hearing; and ~~such~~ the office audit shall not
19 preclude the Tax Commission from subsequently making further
20 adjustment, correction or assessment as a result of a field audit of
21 the books and records of the taxpayer, wherever located, or upon
22 disclosures from any source other than the return. In cases where
23 no report or return has been filed, the assessment of the tax on any
24

1 information available shall in no event preclude the assessment at
2 any time on subsequently disclosed information.

3 C. Within ~~sixty (60)~~ ninety (90) days after the mailing of the
4 aforesaid proposed assessment, the taxpayer may file with the Tax
5 ~~Commission~~ State Office of Administrative Tax Hearings a ~~written~~
6 ~~protest under oath, signed by the taxpayer or the taxpayer's duly~~
7 ~~authorized agent, setting out therein:~~

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

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

13 3. ~~The argument and legal authority upon which each assignment~~
14 ~~of error is made; provided, that the applicant shall not be bound or~~
15 ~~restricted in such hearing, or on appeal, to the arguments and legal~~
16 ~~authorities contained and cited in the application;~~

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

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

21 D. ~~If in such written protest the taxpayer shall request an~~
22 ~~oral hearing, the Tax Commission shall grant such hearing, and~~
23 ~~shall, by written notice, advise the taxpayer of a date, which shall~~
24 ~~not be less than ten (10) days from the date of mailing of such~~

1 ~~written notice, when such taxpayer may appear before the Tax~~
2 ~~Commission and present arguments and evidence, oral or written, in~~
3 ~~support of the protest. Hearings shall be held as soon as~~
4 ~~practicable. In the event an oral hearing is not requested, the Tax~~
5 ~~Commission shall proceed without further notice to examine into the~~
6 ~~merits of the protest and enter an order in accordance with its~~
7 ~~findings. Upon request of any taxpayer and upon proper showing that~~
8 ~~the principle of law involved in the assessment of any tax is~~
9 ~~already pending before the courts for judicial determination, the~~
10 ~~taxpayer, upon agreement to abide by the decision of the court, may~~
11 ~~pay the tax so assessed under protest and such protest shall be~~
12 ~~resolved in accordance with the agreement to abide petition pursuant~~
13 ~~to the provisions of Section 9 of this act.~~

14 E. D. If the taxpayer fails to file a ~~written protest~~ petition
15 with the State Office of Administrative Tax Hearings within the
16 ~~sixty-day~~ ninety-day period herein provided for ~~or within the period~~
17 ~~as extended by the Tax Commission,~~ or if the taxpayer fails to file
18 the notice required by Section 226 of this title within thirty (30)
19 days from the date of mailing of an assessment, then the proposed
20 assessment, without further action of the Tax Commission, shall
21 become final and absolute. A taxpayer who fails to file a ~~protest~~
22 petition with the State Office of Administrative Tax Hearings as to
23 an assessment of taxes within the time period prescribed by this
24 section may, within one (1) year of the date the assessment becomes

1 final, request the Tax Commission to adjust or abate the assessment
2 if the taxpayer can demonstrate, by a preponderance of the evidence,
3 that the assessment or some portion thereof is clearly erroneous.
4 If the Tax Commission determines that the proper showing has been
5 made, the assessment or portion thereof determined to be clearly
6 erroneous shall be deemed not to have become final and absolute. No
7 hearing to adjust or abate a clearly erroneous assessment may be
8 granted after the Tax Commission's denial of such a request. An
9 order of the Tax Commission denying a taxpayer's request to adjust
10 or abate an assessment alleged to be clearly erroneous is not an
11 appealable order under Section 225 of this title. No proceeding
12 instituted by the Tax Commission to collect a tax liability may be
13 stayed because of a request made by a taxpayer to adjust or abate an
14 assessment alleged to be clearly erroneous.

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

20 ~~G. Within a reasonable time after the hearing herein provided~~
21 ~~for, the Tax Commission shall make and enter an order in writing in~~
22 ~~which it shall set forth the disposition made of the protest and a~~
23 ~~copy of such order shall forthwith be mailed to the taxpayer. The~~
24 ~~order shall contain findings of fact and conclusions of law. After~~

1 ~~removing the identity of the taxpayer, the Tax Commission shall make~~
2 ~~the order available for public inspection and shall publish those~~
3 ~~orders the Tax Commission deems to be of precedential value. The~~
4 ~~taxpayer may within the time and in the manner provided for by~~
5 ~~Section 225 of this title, appeal to the Supreme Court, but in the~~
6 ~~event the taxpayer fails to so proceed, the order shall within~~
7 ~~thirty (30) days from the date a certified copy thereof is mailed to~~
8 ~~the taxpayer, become final. The provisions of Section 226 of this~~
9 ~~title shall not apply where a proposed assessment or an assessment~~
10 ~~of taxes has been permitted to become final.~~

11 H. E. In all instances where the proposed assessment or the
12 assessment of taxes or additional taxes has been permitted to become
13 final, a certified copy of the assessment may be filed in the office
14 of the county clerk of any county in this state, and upon being so
15 filed, the county clerk shall enter same upon the judgment docket in
16 the same manner as provided for in connection with judgments of
17 district courts. When an assessment is so filed and docketed, it
18 shall have the same force and be subject to the same law as a
19 judgment of the district court, and accordingly it shall constitute
20 a lien on any real estate of the taxpayer located in the county
21 wherein filed; and execution may issue and proceedings in aid of
22 execution may be had the same as on judgments of district courts.
23 Such lien is hereby released and extinguished upon the payment of
24 such assessment, or, except as otherwise provided herein, upon the

1 expiration of ten (10) years after the date upon which the
2 assessment was filed in the office of the county clerk; provided,
3 the Tax Commission may, prior to the release and extinguishment of
4 such lien, refile the assessment one time in the office of the
5 county clerk. An assessment so refiled shall continue the lien
6 until payment of the assessment, or upon the expiration of ten (10)
7 years after the date upon which the assessment was refiled in the
8 office of the county clerk. The remedies provided in this
9 subsection shall be in addition to other remedies provided by law.
10 All active liens evidenced by an assessment filed with a county
11 clerk's office prior to November 1, 1989, shall be released and
12 extinguished if the assessment is not refiled prior to November 1,
13 2011.

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

24

1 SECTION 27. AMENDATORY 68 O.S. 2011, Section 225, is
2 amended to read as follows:

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

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

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

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

23
24

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

4 D. An appeal of an order or decision of the State Office of
5 Administrative Tax Hearings in a case heard by it under the State
6 Office of Administrative Tax Hearings Act shall be filed and made
7 pursuant to Section 17 of this act.

8 E. If the appeal is from an order of the Tax Commission
9 assessing a tax or an additional tax, a penalty, or interest, the
10 Tax Commission, within thirty (30) days from the date of the filing
11 of the petition in error, may request the Court to order the
12 taxpayer to pay to the Tax Commission the amounts of tax, additional
13 tax, any penalty assessed, and interest accrued through the date of
14 the payment, as a condition precedent to the right of the taxpayer
15 to make and prosecute an appeal, and a jurisdictional prerequisite
16 to the Supreme Court having jurisdiction to hear and determine the
17 appeal. If, upon a final determination of the appeal the order
18 assessing a tax, penalty, or interest is reversed or modified and it
19 is determined that the tax or part thereof was erroneously or
20 illegally assessed, the amounts paid by the taxpayer, together with
21 the interest thereon at the rate of three percent (3%) per annum,
22 shall be refunded to the taxpayer by the Tax Commission. The Tax
23 Commission shall not have the right to request the Court to order
24 payment by the taxpayer to the Tax Commission the amounts of tax,

1 additional tax, penalty or interest, as a condition of an appeal by
2 the taxpayer of a decision or order of the State Office of
3 Administrative Tax Hearings with respect to any proposed assessment
4 of tax or additional tax that has been entered by the State Office
5 of Administrative Tax Hearings under the State Office of
6 Administrative Tax Hearings Act and that is appealed by the taxpayer
7 pursuant to Section 17 of this act.

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

16 ~~F. G.~~ G. Such refunds and interest thereon shall be paid by the
17 Tax Commission out of monies in the Tax Commission clearing account
18 from subsequent collections from the same source as the original tax
19 assessment, provided that in the event there are insufficient funds
20 for refunds from subsequent collections from the same source, the
21 refund shall be paid by the Tax Commission from monies appropriated
22 by the Legislature to the special refund reserve account for such
23 purposes as hereinafter provided. There is hereby created within
24 the official depository of the State Treasury an agency special

1 account for the Tax Commission for the purpose of making such
2 refunds as may be required under this section, not otherwise
3 provided. This account shall consist of monies appropriated by the
4 Legislature for the purpose of making refunds under this section.

5 ~~G.~~ H. In lieu of the cash payment provided for in subsection ~~D~~
6 E of this section, the taxpayer may file with the Tax Commission,
7 pursuant to Section 210 of this title, a bond in double the amount
8 of the tax, additional tax, penalties and interest so assessed,
9 conditioned that the taxpayer will faithfully and diligently
10 prosecute such appeal to a final determination, and in the event the
11 order of the Tax Commission be affirmed on appeal, will pay such
12 tax, additional tax, penalties and interest, and costs so assessed
13 against the taxpayer. Any bond submitted pursuant to this
14 subsection must be approved by the Tax Commission as to form and
15 amount and accepted within the time prescribed by the Court.

16 ~~H.~~ I. If the appeal be from an order, judgment, finding, or
17 ruling of the Tax Commission other than one assessing a tax and from
18 which a right of appeal is not otherwise specifically provided for
19 in this article of the Uniform Tax Procedure Code, any aggrieved
20 taxpayer may appeal from that order, judgment, finding, or ruling as
21 provided in this section and may supersede the effect of such order,
22 judgment, ruling, or finding by filing with the Tax Commission a
23 bond in an amount fixed by the Tax Commission payable to the State
24 of Oklahoma conditioned that the appeal will faithfully and

1 diligently be prosecuted to a final determination, and in the event
2 the order, judgment, ruling, or finding of the Tax Commission be
3 affirmed on appeal, that such person will immediately conform
4 thereto.

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

11 SECTION 28. AMENDATORY 68 O.S. 2011, Section 227, is
12 amended to read as follows:

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

18 ~~(b)~~ B. Any taxpayer who has so paid any ~~such~~ the tax may,
19 within three (3) years from the date of payment thereof file with
20 the Tax Commission a verified claim for refund of ~~such~~ the tax so
21 erroneously paid. The Tax Commission may accept an amended sales
22 tax, withholding tax or other report or return as a verified claim
23 for refund if the amended report or return establishes a liability
24 less than the original report or return previously filed.

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

14 ~~(d)~~ D. If the claim for refund is denied, the taxpayer may file
15 a demand for hearing with the Commission. ~~The demand for hearing~~
16 ~~must be filed on or before the thirtieth day~~ petition in the State
17 Office of Administrative Tax Hearings pursuant to Section 11 of this
18 act within ninety (90) days after the date the notice of denial was
19 mailed. If the taxpayer fails to file a ~~demand for hearing~~ petition
20 with the State Office of Administrative Tax Hearings, the claim for
21 refund shall be barred.

22 ~~(e)~~ ~~Upon the taxpayer's timely filing of a demand for hearing,~~
23 ~~the Commission shall set a date for hearing upon the claim for~~
24 ~~refund which date shall not be later than sixty (60) days from the~~

1 ~~date the demand for hearing was mailed. The taxpayer shall be~~
2 ~~notified of the time and place of the hearing. The hearing may be~~
3 ~~held after the sixty day period provided by this subsection upon~~
4 ~~agreement of the taxpayer.~~

5 ~~(f) E. The provisions of this section shall not apply: (1) to~~
6 ~~refunds of income tax erroneously paid, refunds of which tax shall~~
7 ~~be payable out of the income tax adjustment fund as provided by law;~~
8 ~~(2) to~~

9 ~~1. To estate tax because the payment of such tax is covered by~~
10 ~~an order of the Tax Commission and the estate and interested parties~~
11 ~~are given notice that Commission's position and computation of the~~
12 ~~tax will become final unless they protest and resist the payment~~
13 ~~thereof as provided by statute that has been assessed by an order of~~
14 ~~the Tax Commission that has become final and absolute but as to~~
15 ~~which a request for adjustment or abatement is filed for a clearly~~
16 ~~erroneous assessment as allowed by law; nor, (3) in~~

17 ~~2. In any case where the tax was paid after an assessment~~
18 ~~thereof was made by the Tax Commission which assessment became final~~
19 ~~under the law.~~

20 SECTION 29. AMENDATORY 68 O.S. 2011, Section 228, is
21 amended to read as follows:

22 Section 228. ~~(a) A.~~ If, upon the hearing as required by
23 Section 227 of this title, the ~~Tax Commission~~ State Office of
24 Administrative Tax Hearings finds that such tax was erroneously paid

1 through mistake of fact, or computation ~~or~~, misinterpretation of
2 law, or other reason, it shall enter its written order allowing ~~said~~
3 the claim for refund, which refund may be paid by the Oklahoma Tax
4 Commission to the taxpayer as provided by law, or credited against
5 any taxes due or to become due by the taxpayer as the case may be,
6 ~~otherwise, the Tax Commission shall deny said claim. The taxpayer~~
7 ~~shall have the right of appeal to the Supreme Court from a decision~~
8 ~~of the Commission denying said claim for refund as provided in~~
9 ~~Section 225 of this article.~~

10 ~~(b) B.~~ Any final decision or order entered by of the Tax
11 Commission, State Office of Administrative Tax Hearings disallowing
12 a claim for refund, shall become final within thirty-one (31) days
13 from the date it is entered, unless an appeal is prosecuted
14 therefrom pursuant to the provisions of Section 17 of this act, in
15 which event ~~said~~ the order or judgment shall not become final until
16 the appeal shall have been determined. In the event an order of the
17 ~~Tax Commission allows said~~ State Office of Administrative Tax
18 Hearings allowing a claim for refund becomes final, it the Tax
19 Commission shall pay the claimant the amount of refund, so allowed
20 out of funds in the official depository clearing account of the Tax
21 Commission, derived from collections in ~~said~~ the fund from the same
22 source from which the overpayment occurred; and an appropriation of
23 so much of ~~said~~ the fund as is necessary to pay ~~said~~ the claims for
24 refund erroneously paid or collected is hereby made; provided, that

1 in the case of refunds due hereunder to taxpayers who are required
2 to remit taxes to the Tax Commission on a monthly or quarterly
3 basis, the Commission may, in lieu of a refund of the tax
4 erroneously paid, credit the account of the taxpayer for ~~such~~ the
5 amount.

6 SECTION 30. AMENDATORY 68 O.S. 2011, Section 2373, is
7 amended to read as follows:

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

14 The information filed, reflecting the revision or adjustment,
15 shall constitute the claim for refund that shall be the basis for
16 such a payment from the Income Tax Withholding Refund Account. A
17 taxpayer may also file an amended income tax return or other written
18 form of claim for refund and the amended return or claim for refund
19 shall be allowed to be made and filed pursuant and subject to the
20 provisions of Section 227 of this title.

21 Except as provided in subsection H of Section 2375 of this
22 title, the amount of the refund shall not exceed the portion of the
23 tax paid during the three (3) years immediately preceding the filing
24 of the claim, or, if no claim was filed, then during the three (3)

1 years immediately preceding the allowance of the refund. However,
2 this three-year limitation shall not apply to the amount of refunds
3 payable upon claims filed by members of federally recognized Indian
4 tribes or the United States on behalf of its Indian wards or former
5 Indian wards, to recover taxes illegally collected from tax-exempt
6 lands. In the case of any refund to a member of a federally
7 recognized Indian tribe or to the United States on behalf of its
8 Indian wards or former Indian wards, to recover taxes illegally
9 collected on bonus payments from oil and gas leases located on tax-
10 exempt Indian lands pursuant to this section, the Oklahoma Tax
11 Commission shall pay interest on all refunds issued after January 1,
12 1996, at the rate of six percent (6%) per annum from the date of
13 payment by the taxpayer to the date of the refund.

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

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

23 SECTION 31. This act shall become effective July 1, 2012.
24

1 SECTION 32. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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