



OKLAHOMA Tax Commission

PROTEST AND ABATEMENT PROCESS

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LEARNING OBJECTIVES

- Understand the general timeline, procedures, and final resolution in protests
- How to properly and timely file a protest and abatement
- Learn the roles of OTC auditors, Power of Attorneys, Administrative Law Judges, and Commissioners during the protest/abatement process.

OTC MISSION STATEMENT

“Promote tax compliance through serving taxpayers with transparency and fairness in administration of the tax code and unparalleled customer service.”



OKLAHOMA
Tax Commission

PROTEST OVERVIEW



COMMON TAX TYPES IN PROTESTS

Trust Fund Taxes

- Sales Tax
- Withholding Tax
- Mixed Beverage Tax
- Vendor Use Tax

Income Taxes

- Individual Income Tax
- Corporate Income Tax

Other Types

- Gross Production Tax
- Excise Tax
 - Tobacco Tax
 - Consumer Use Tax

KEY DIVISION ROLES IN THE PROTEST PROCESS

- **Income Tax Accounts** – processes returns, makes return adjustments that can be protested
- **Audit Services Division** – conducts audits, issues assessments that can be protested
- **Business Tax Services** – reviews permit applications, claims for refund, etc., and may issue denials that can be disputed
- **Legal Division** – represents the Divisions in the administrative process before the Administrative Law Judges (ALJs) and Commissioners
- **Headquarters** – consists of the ALJs that hear cases and the Commissioners that issue orders for the agency
- **Central Processing Division** – prints and mails outgoing mail, receives incoming mail, including returns, payments, protests, etc.
- **Taxpayer Resource Center** – welcomes taxpayer inquiries that come in through phone calls and walk-ins

OTHER ACTIONS SUBJECT TO CHALLENGE

- Tax Credit Denials
- Administrative Fines
- Cigarette/Tobacco Confiscations

OTC LETTER EXAMPLES



Date Issued:
Letter ID:
Taxpayer ID:
DLN:

CID

Dear Taxpayer,

Your return for the tax period ended has been adjusted as indicated.

Account:

Description	As Reported or As Previously Adjusted	Adjusted
Oklahoma taxable income		
Tax: 6%		
Amount paid with original return and amount paid after it was filed		
Income Tax Due		

As mandated by Oklahoma Statute, Title 68 Section 221(C), this change will become final 60 days after the date of this notice unless a written protest is submitted explaining your position why the adjustment is not accurate or fails to meet statutory guidelines. Protests should be mailed within 60 days to:

Oklahoma Tax Commission
Compliance Division
PO Box 269054
Oklahoma City, OK 73126-9054

To make payments, visit our web site at tax.ok.gov. Note that state income tax refunds are subject to offset for other state or municipality debt. Also, any balance due reflected on this notice does not include interest or penalty that may apply.

For assistance, contact us at (405) 521-6038 or visit us online at tax.ok.gov.

Sincerely,

Auditor
Audit Services Division
Corporate Income Desk Audit
Oklahoma Tax Commission

Oklahoma Tax Commission Oklahoma City, OK 73194
tax.ok.gov



Date Issued:
Letter ID:
Taxpayer ID:

Dear Valued Taxpayer,

Your company has been selected for audit by the Oklahoma Tax Commission Audit Services. Enclosed, you will find necessary audit forms, some of which may need to be signed and returned. Please complete the included forms and submit them electronically to the email address below. These forms and the documents included will be discussed during our initial conference.

The audit may include, but not be limited to sales, use, withholding, franchise, mixed beverage and waste tire tax types, if applicable. Communication via email and electronic submission of records can be utilized for the audit. The auditor(s) may also visit your place of business to review records. Generally, the audit period will include the last three years of business, as well as any other period(s) for which no tax returns were filed.

Please contact the auditor below no later than to set a time to discuss the audit.

Sincerely,

Oklahoma Tax Commission

Enclosure(s)

Oklahoma City, OK 73194
tax.ok.gov



NEXT STEPS

- Obtain copy of assessment and/or audit letter(s)
- Meet with client and auditor to discuss assessment or audit
- Begin reviewing and obtaining records from client
- Fill out Power of Attorney Form (BT-129) with client
- Timely file a protest within sixty (60) days from date of OTC letter

CONFIDENTIALITY AND POWER OF ATTORNEY FORM



- “The records and files of the OTC shall be considered confidential and privileged.” 68 O.S. § 205
- The OTC cannot speak with anyone other than the taxpayer about his/her account unless a Power of Attorney form is executed between the taxpayer and designated representative
- Form BT-129 available on www.tax.ok.gov under “Forms”
 - Can be filled out electronically via OkTAP



Form BT-129
Revised 11-2021

Oklahoma Tax Commission
Oklahoma City, Oklahoma 73194
Power of Attorney
(Please Type or Print.)

QR Code

Taxpayer Name and Address:		Social Security/Federal Employer Identification Number(s):	
		Daytime Telephone Number:	Permit Number(s):

Hereby appoints:

Representative(s) Name and Address:	Daytime Telephone Number:	Fax Number:
Representative(s) Name and Address:	Daytime Telephone Number:	Fax Number:

Note: If you appoint an organization, firm or partnership, you must also name an individual within the organization to act on your behalf.

As attorney(s)-in-fact to represent taxpayer before the Oklahoma Tax Commission (OTC) and/or acquire any tax form(s) and/or documents that taxpayer would be entitled to receive.

Type of Tax (Income, Sales, etc.)	State Tax Number or Description of Tax Document	Year(s) or Period(s) (Date of Death if Estate Tax)

The attorney(s)-in-fact (or either of them) are authorized, until written revocation is received, to represent the taxpayer before the OTC and receive confidential information and to acquire any and all tax forms and/or documents that the principal(s) can receive with respect to the above specified matter(s) unless exceptions are noted below.

Retention/Revocation of Prior Power(s) of Attorney. The filing of this Power of Attorney automatically revokes all earlier power(s) of attorney on file with the OTC for the same matters and years or periods covered by this document.
If you do not want to revoke a prior Power of Attorney, check here: ☐

Attach a copy of any Power of Attorney you want to remain in effect.

Taxpayer's Signature and Date. If signed by a corporate officer, partner or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this Power of Attorney on behalf of the taxpayer.

Signature _____ Title (if applicable) _____ Date _____

Type or print your name below if signing for a taxpayer who is not an individual.

Name _____ Title (if applicable) _____ Date _____

Declaration of Representative
Under penalties of perjury, by my signature below, I declare that:

- I am authorized to represent the taxpayer identified above for the matter(s) specified there, and
- I am one of the following:

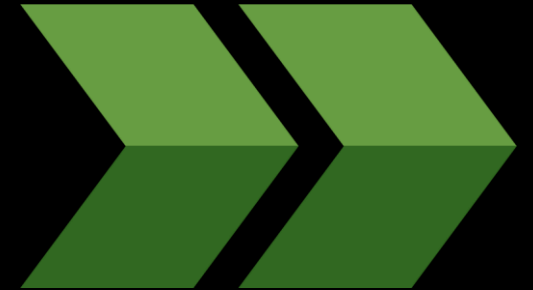
- ☐ Attorney – A member in good standing of the bar of the highest court of the jurisdiction shown below.
- ☐ Certified Public Accountant – Duly qualified to practice as a certified public accountant in the jurisdiction shown below.
- ☐ Enrolled Agent – Enrolled as an agent by the Internal Revenue Service per the requirements of IRS Circular 230.
- ☐ Officer – A bona fide officer of the taxpayer organization.
- ☐ Full-Time Employee – A full-time employee of the taxpayer.
- ☐ Family Member – A member of the taxpayer's immediate family.
- ☐ Tax Return Preparer
- ☐ Other _____

Signature of Representative _____ Title (if applicable) _____ Date _____



OKLAHOMA
Tax Commission

FILING A PROTEST



What is a protest?

- **What is a protest?**

- “A protest may be described as a formal, written challenge to a **proposed tax assessment or to the denial of a claim for refund of taxes paid.**” Okla. Admin. Code § 710:1-5-10(a)

- **How and when do I prepare a protest?**

- Within **sixty (60) days** after the date indicated on the aforesaid proposed assessment, the taxpayer may file with the Tax Commission a written protest under oath, signed by the taxpayer or the taxpayer's duly authorized agent, setting out therein:
 - A statement of the amount of deficiency
 - A clear and concise assignment of each error committed by the OTC
 - The argument and legal authority upon which each assignment of error is made
 - A verification by the taxpayer or the taxpayer's duly authorized agent

68 O.S. § 221(C)

- **Under 68 O.S. § 221(F), the OTC may, in its discretion, grant an extension of ninety (90) days to file a protest.**

- *Note: Extensions must be obtained prior to the sixty day deadline and supplied in writing to OTC*

Filing a Protest

- The OTC will accept any *written* indication of disagreement as a protest so long as the protest is timely
 - Submission of additional documentation to OTC (prior to protesting) will not be construed as a protest, so always make sure to include some sort of *written* disagreement in your correspondence to OTC!
- All timely protests are heard by the Administrative Law Judge
 - Burden of proof: “In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect.” Okla. Admin. Code § 710:1-5-47

MAILBOX RULE

The protest is timely so long as the postmark on the envelope is within the required number of days from the date on the notice.

OKLA. ADMIN. CODE § 710:1-5-44



Filing a Protest – Tips

1. Enclose a copy of the OTC letter with the protest
2. Enclose documentation supporting the taxpayer's position
3. Document Proof of mailing: copy of post-marked envelope, tracking number, certified mail, etc.

L-25 Form – NEW for 2024

- L-25 Form can be used to file a protest or demand for hearing

Form L-25
January 2024

Oklahoma Tax Commission
**Application for Protest or
Demand for Hearing**
68 OS Sec. 221(C) or 68 OS Sec. 227(D)

-Office Use Only-

Use this form to dispute a **proposed audit adjustment**, an **adjustment to your return**, the **denial of a claim for refund** or the **denial of a permit application**. Use **Form L-26 Application for Commission Hearing** to dispute the denial of the Parental Choice Tax Credit or any other action.

Section I. Applicant Information

ID Number: SSN: FEIN: ITIN:

Legal Name: (Taxpayer first name, middle initial and last name, or business name if applying as a business)

Current Mailing Address: City: State: ZIP Code:

Email Address: Phone Number:

Section II. Proposed Assessment, Adjustment of Tax or Permit Application Denial
If you are disputing a proposed audit adjustment, adjustment to your return or denial of your permit application, enter the letter ID(s) of each notice with which you disagree. At least one letter ID is required to submit this application. Indicate whether you are requesting an in-person hearing.

☐ I am requesting an in-person hearing.

Letter 1 ID (required): Letter 2 ID (if applicable): Letter 3 ID (if applicable):

Letter 4 ID (if applicable): Letter 5 ID (if applicable): Letter 6 ID (if applicable):

Use the space below to describe the nature of the tax and the amount with which you disagree. Your explanation must include:

- A clear explanation of the alleged error(s) committed by the Oklahoma Tax Commission;
- The legal authority you intend to rely upon at hearing;
- A statement of the relief requested; and
- Indication whether the dispute is due to mistake of law or mistake of fact.

☐ I have included additional documentation with this application.

Mail the completed form with supporting documentation to:
Oklahoma Tax Commission PO Box 269060 Oklahoma City, OK 73126

Other Disputes

- What if my client's claim for refund was denied?
 - Governed under 68 O.S. § 227 (does not apply to income tax refunds)
 - Taxpayer has 60 days from the denial letter to file a *demand for hearing* (Form L-25)
 - The OTC must set a hearing before the ALJ within 60 days of mailing of a *demand for hearing*
- What if my client's letter does not involve a tax assessment or claim for refund? (i.e., administrative fine, permit denial, etc.)
 - Governed under 68 O.S. § 207
 - Similar to a protest, the taxpayer can dispute these letters in writing
 - No time limit to dispute
 - Submit Form L-26 on OkTAP to dispute

What happens after the protest is filed?

- Taxpayer will receive acknowledgment letter
- Division level review to determine if the issue can be resolved with the information from the taxpayer
- Division forwards protests that cannot be resolved to the ALJ



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PRE-TRIAL PROCESS



GOAL OF THE ADMINISTRATIVE PROCESS

Resolve controversies at the lowest level and at the lowest cost, in terms of resources and time, to the taxpayer while ensuring that the taxpayer is provided an independent review of the proposed agency action.

Role of the Administrative Law Judge

- Facilitate the resolution of a protest, claims for refund, or other cases over which the Administrative Law Judge has jurisdiction
- Sets prehearing conferences and status conferences
- Resolves issues arising between parties
- Presides over hearings
- Issues Findings, Conclusions, and Recommendations in contested cases

APPLICABLE LAW

- Uniform Tax Procedure Code: Title 68 O.S. §§ 201–263
- Oklahoma Administrative Code: Rules of Practice and Procedure §§ 710:1-5-1 through 710:1-5-200
- Commission Orders
 - Available on www.tax.ok.gov
 - “Reporting and Resources” tab then select “Rules and Policies”
- Appeals and Supreme Court Decisions
 - Available on Westlaw and OSCN

PROTEST PRE-TRIAL PROCESS

File Set up in ALJ Office:

- ALJ receives new files from the Division and assigns case number
- ALJ sends taxpayer docketing letter with administrative rules booklet
- Protest file is transmitted to Legal Division for assignment to an attorney

Legal Division First Steps:

- Assigned attorney will file an Entry of Appearance and send taxpayer (or representative) a letter of introduction
- Attorney reviews the file and consults with the Division to determine possible avenues for resolution

PROTEST PRE-TRIAL PROCESS (cont.)

- **ALJ sets prehearing teleconference via letter to OTC attorney and taxpayer/taxpayer representative**
 - The purpose of the call is to apprise the ALJ of the issues and how the parties wish to proceed
 - Can be continued or rescheduled upon request
- **If the parties agree additional time is needed to resolve the issues, the parties may file a joint status report with the ALJ in lieu of the prehearing**
 - ALJ will issue an order or other notice directing the parties as to the next action required by the ALJ

PRE-TRIAL RESOLUTION

- ✓ Protests may be resolved without need for ALJ intervention
 - ✓ Division may withdraw the assessment or adjustment
 - ✓ Taxpayer may withdraw the protest
 - ✓ Division may issue revision to which taxpayer is agreeable



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ALJ HEARING PROCESS



PROCEEDING WITH THE ALJ

- If a case is unable to be resolved, the parties may proceed with a hearing before the ALJ
 - File a scheduling order – hearing can be in person or “on the briefs” without a hearing
 - Stipulation of facts and issues deadline
 - Discovery deadline
 - Brief submission deadline
 - Dispositive motion deadlines, if any
- If the taxpayer is unresponsive, the case can still move forward on verified response or request for hearing.

HEARING PROCESS

- Administrative Law Judge controls hearing
- Confidentiality is invoked unless waived
- Hearing is recorded by ALJ's clerk
 - Party can provide court reporter, but must provide ALJ and opposing party with transcript
- Witnesses testify under oath
- Record may be held open or closed at conclusion of hearing

HEARING PROCESS (cont.)

- Oklahoma Evidence Code generally applies
- ALJ may “officially notice” certain facts
 - Judicial notice
 - Facts within scope of personal knowledge or specialized knowledge of OTC
 - Sua sponte or upon request of a party
- Party objecting to any ruling of ALJ may certify the issue to the Commissioners (usually an evidentiary ruling)

ALJ HEARING ROOM





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ALJ POST-HEARING PROCESS



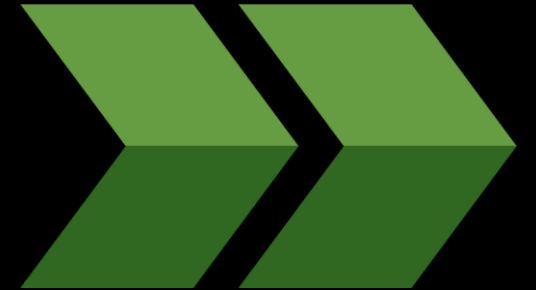
ALJ POST-HEARING PROCESS

- Once the record is closed, ALJ will issue Findings, Conclusions, and Recommendations (FCRs)
 - Within 15 days of issuance, either party may request a motion for reconsideration before the ALJ or a hearing *en banc* before the Commission. See, Okla. Admin. Code 710:1-5-40.
- If no reconsideration or *en banc* motion is filed, the FCR's are presented to the Commissioners for consideration
 - Commissioners may adopt, modify, or vacate the FCR's
- The Commission Order is the final, appealable agency order
 - Within 30 days of the mailed order date, either party may file a Petition in Error with the Oklahoma Supreme Court or an appeal for a trial *de novo* with the district court. See, Okla. Admin. Code 710:1-5-42.



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Tax Commission

ABATEMENT PROCESS



ABATEMENT RULES

- **What if my client is past the 60 (sixty) day deadline to protest?**
 - “A taxpayer who *fails to file a protest to an assessment of taxes* within the time period prescribed by this section may, *within one (1) year* of the date the assessment becomes final, request the Tax Commission to adjust or abate the assessment.” 68 O.S. § 221(E)
 - Burden of proof: “The taxpayer [must] demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous.” 68 O.S. § 221(E); *See also* Okla. Admin. Code § 710:1-5-77.
 - **Note: A request for an abatement does not halt collection activity**

ABATEMENT PROCESS

- Confer with client for documentation
- Meet with OTC attorney and auditor to discuss case
- No prehearing timelines or scheduling orders
- Once ready to present case, OTC attorney will schedule a hearing before the Commission
 - Commission will be deciding whether to abate the tax based on evidence of an erroneous assessment
 - OTC attorney presents the case first, then the taxpayer's representative may present its case

ABATEMENT PROCESS (cont.)

- If the Commission rules to abate the tax, the Commission will issue an abatement order
 - Taxpayer may request a waiver of interest and penalty before the Commission after the abatement. See, 68 O.S. § 220(A).
- If the Commission denies the abatement request, taxpayer has no right to appeal the decision.

ABATEMENT HEARING ROOM





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Protests, Abatements, and Bankruptcy



Protests, Abatements, and Bankruptcy

- If a taxpayer has filed for bankruptcy and is actively protesting or requesting an abatement, OTC's bankruptcy counsel will collaborate on case
- Actively work to resolve matter through ALJ or Commissioners as much as possible

WAIVERS OF INTEREST AND PENALTY

- The Commissioners have the authority to waive interest and penalty - 68 O.S. §220 (A)
 - At the discretion of the Commission
 - Requests are presented at a regularly-scheduled Commission meeting
 - Proceeding is confidential
- Waivers in excess of \$25,000.00 must be approved in the District Court of Oklahoma County
- Requests can be submitted in writing by mail or online through OkTAP

LETTER RULINGS

- Informal written statements of policy or treatment of specific fact situations under Oklahoma tax law
 - May generally be relied on only by the taxpayer to whom it is issued
 - Requests must identify the taxpayer making the request
- Requests may be denied if:
 - there are insufficient facts to make a determination
 - the subject concerns pending litigation



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Tax Commission

We've moved!

Taxpayer Resource Center
300 N. Broadway Ave.
Oklahoma City, OK 73102

Oklahoma Tax Commission
123 Robert S. Kerr Ave.
Oklahoma City, OK 73102

New legal division mailing address
P.O. Box 269056
Oklahoma City, OK 73126

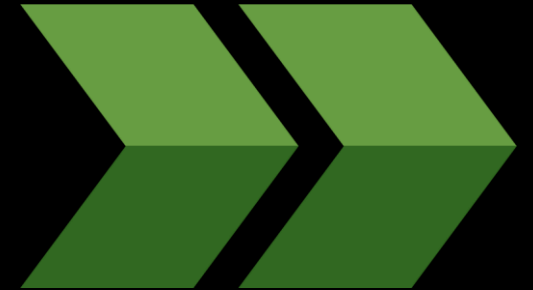




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Letters Refresh Project

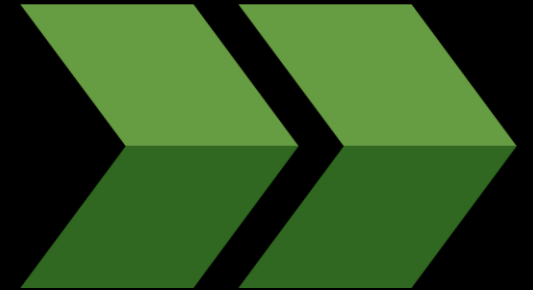
New assessment, billing, and audit letters coming soon!





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Power of Attorney Form and Process Update

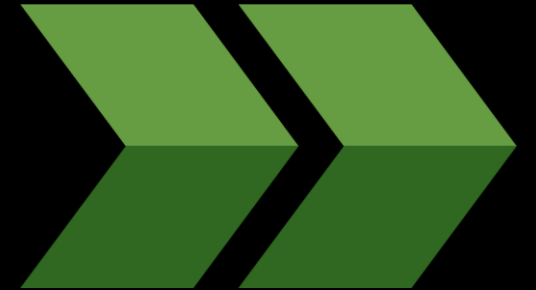


New format coming soon!



OKLAHOMA
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New Protest Procedures Coming Soon!



Protest vs. Demand for Hearing rules

Protest Form



OKLAHOMA
Tax Commission

Questions?

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405-522-9439

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