

# OSCPA Questions/Comments for Oklahoma Tax Commission – January 20, 2021

CAVEAT: THE ANSWERS PROVIDED ARE NOT "LETTER RULINGS" DEFINED AS INFORMAL WRITTEN STATEMENTS OF POLICY OR TREATMENT OF SPECIFIC FACTS UNDER OKLAHOMA TAX LAW. WHILE IT IS BELIEVED THAT THE ANSWERS ARE CORRECT, A TAXPAYER WISHING TO RELY ON AN ANSWER PROVIDED BY THE TAX COMMISSION SHOULD REQUEST A "LETTER RULING" PURSUANT TO 710:1-3-73.

## Processing of Payments, Refunds & Interest

### 1. Income Tax Accounts:

When there is a discrepancy with an overpayment, the Oklahoma Tax Commission (OTC) automatically sends it to a debit card. The amount can range from a few dollars to a large amount. There are situations where the debit card and the letter describing the unexpected overpayment are sent so closely together that any errors cannot be corrected before the debit card is received.

- a. Could the taxpayer have the option of (1) the debit card; (2) applying the overpayment to the next year; or (3) receiving a check? Older taxpayers sometimes struggle with debit cards.

*For refunds over a certain amount, the OTC requests banking information if it was not provided on the return, as a courtesy to the taxpayer. However, there are certain situations in which our batch process will adjust the return and generate a refund without an auditor's intervention. If a taxpayer receives a debit card, they can apply the amount to their estimated taxes for the next year. We only provide checks in very limited circumstances.*

### 2. CCO:

OKTAPS requires you to submit your password both when logging in and before submitting a payment. Could the second password submission (prior to submitting payment) be removed?

*OKTAP provides a secure means for taxpayer to file and pay their returns. To log on to the TAP system a username and password is required; when filing returns, taxpayers are required to then enter their password again to act as their electronic signature for filing the return similar to the requirement for signature when filing a form by paper with the OTC.*

### 3. Income Tax Accounts:

When setting up an ACH payment via tax software, is there a way to stop the payments? In both situations below, it would be helpful to have an option to stop the ACH payment:

- a. Sub-S Corporation liquidated October 31, 2020. They preferred to close the checking account and make the final distribution by December 31, 2020. But there is an Oklahoma estimate scheduled to be withdrawn from the account January 15, 2021.
- b. An individual died on October 15, 2020 with no further estimates required to be paid but an ACH is scheduled for January 15, 2021.

*Unfortunately we do not control what functionality tax software developers put into their tax preparation software. You are welcome to contact the software company that you use. Alternatively, the taxpayer can contact the banking institution they use and place a stop payment on the pending payments described above.*

*If this question is referring to a payment that is setup when a return is submitted, you can use 511-SP (available on our website) to cancel the payment.*

### 4. Legal:

In 2020, many taxpayers combined their 1<sup>st</sup> and 2<sup>nd</sup> quarter State and Federal estimates into one payment due on or before 7/15/2020 due to the Federally extended due dates. Since Oklahoma's 1<sup>st</sup> quarterly payment for Oklahoma was due 7/15/2020 and the 2<sup>nd</sup> quarterly payment due 6/15/2020, how the late payment and interest be determined?

*The first quarterly installment payment of Oklahoma estimated tax for the 2020 tax year was due July 15, 2020, and the second quarterly installment payment was due on June 15, 2020, in accordance with 68 O.S. § 2385.9. If a taxpayer failed to remit the estimated payment by the due date, interest on the amount of the underpayment will be assessed at an annual rate of twenty percent (20%) for the period of the underpayment.*

*Underestimated interest is calculated in accordance with 68 O.S. § 2385.13. The underpayment is calculated by subtracting the amount paid on or before the due date of the installment from the required installment. Interest on the underpayment amount will run from the due date of the required installment to either April 15 (for individuals) or the 15<sup>th</sup> day of the third month following the close of the taxable year (for corporations), or the date on which the required installment is paid.*

## 5. Legal:

68 O. S. §227 provides for claims for refunds of overpayments of Oklahoma taxes other than Oklahoma income tax. 68 O. S. §2373 appears to provide for claims for refunds of overpayments of Oklahoma income tax. Why are refunds of Oklahoma income tax provided for separately from refunds of other Oklahoma taxes? What are the differences, if any, between the rights of a taxpayer to (1) claim and receive a refund of Oklahoma income tax, and (2) claim and receive a refund of other Oklahoma taxes?

- c. Will there be relief such as forgiveness options on penalties and interest?
- d. Can this payment be moved to first quarter?

*As you have noted, claims for refund of income tax are governed by 68 O.S. § 2373, while claims for refund of other tax types are governed by 68 O.S. § 227. Generally, claims for refund are subject to similar procedural requirements: claims must be filed in the form prescribed by the OTC, with all required supporting documentation, and within the relevant statute of limitations.*

*The primary differences between the two sections relate to the statute of limitations. For income tax, claims for refund must be filed within three years from the due date of the return or the date the tax was paid, whichever is later. That statute of limitations can be extended, however, for IRS adjustments to the taxable income included in the federal return. Section 2375(H) authorizes a refund of income tax within two years from the date an amended return reporting IRS adjustments is required to be filed. For sales tax, claims for refund must be filed within two years from the date of payment in accordance with § 227(b)(2); all other tax types are subject to the three year statute of limitations.*

*One other item of note is that refunds of non-income tax may not be claimed in any case where the tax was paid after an OTC assessment which became final. See 68 O.S. § 227(f)(3). There is no similar provision for income tax.*

## 6. Income Tax Accounts:

68 O. S. §217 stipulates that for tax returns filed electronically with all documents as required by the Tax Commission entitling the taxpayer to a refund, that interest will be paid on the refund if it is not paid to the taxpayer within 45 days. However, taxpayers' 2019 refunds have been significantly delayed in many cases, and there is some question as to whether the refunds being received include the entire amount of interest that was anticipated. Can the OTC clarify how interest is being calculated and paid on late 2019 tax refunds?

*Interest accrues on refunds that are processible; for efiled returns older than 45 days and paper filed returns older than 90 days. However, in order for a refund to accrue interest it must be completely processible. What is meant by processible is that it cannot have any math, scrivener, or other errors on the return and it should have every required schedule and supporting document to receive interest if the refund has not been issued past the*

*allotted time limits. If a taxpayer receives a letter requesting more information, they will not receive interest.*

## Net Operating Losses

### 7. Audit Services:

A client who has a carryforward farm net operating loss from prior years to 2016 and then to 2017. The OTC says the carryforward is limited to \$60,000. The statute places the \$60,000 limitation on carrybacks but not carryforwards. The OTC is recommending this issue go to appeals. Can you confirm the statute places the limitation on carrybacks, but not carryforwards?

*Yes – the statute places the \$60,000 limitation on carrybacks from net operating losses attributed to farming and not on the carryforward amount. This has recently been clarified with OTC Legal and Tax Policy after reviewing Oklahoma Statute 68 O.S. § 2358(A)(7) and Oklahoma Administrative Code § 710:50-15-53.*

### 8. Audit Services:

What is the agency's standing on refunding tax on an NOL carryback when the return year the NOL is carried to was filed after the statute of limitations for that year?

*The statute of limitations regarding a refund from an NOL carryback is not determined by the date of the carryback year but rather by the date of the return filed which establishes the net operating loss (NOL) deduction and is three years from the filing date of said return, including extensions. If a federal amended return is filed, the date to obtain a state refund is extended by one year from the date that the IRS accepts the return.*

## Processing Disputes / Power of Attorney

### 9. CCO:

Can the OTC provide updated guidance on the acceptable method for submitting POA's? Is the online POA tool on OKTAP now the preferred method?

*The OTC has several options available for submission of the POA. These include:*

- Non-logged in online request through the OkTAP system*
- Upload through a logged in TAP account*
- Paper submission via mail-in services*
- Paper submission via walk-in services*

*Each of these methods provides a secure way for you to submit a POA on behalf of your client—and allows you to choose your preferred methodology for submission.*

### 10. CCO:

When a CPA has a valid Oklahoma Power of Attorney Form on file with the OTC, can the OTC begin providing full information rather than only confirming or denying taxpayer information?

*In most cases an OTC representative is able to provide full information to the POA; however there are instances in which we are only able to confirm or deny information as provided—this generally occurs when we are working with information that may be sensitive to our fraud prevention and identity theft programs.*

## W-2s and Withholding

### 11. Income Tax Accounts:

Is it possible for the OTC to use the information they already have when questioning withholdings? As it currently exists, the burden is placed on the taxpayer to provide the information, but older taxpayers struggle to use the system, remember where they lived a certain year or when they obtained a certain loan or credit card.

*The burden of proving withholding amounts is upon the taxpayer when they file their return. Withholding amounts can come from multiple sources and we do not have the information for all withholding amounts readily available for our processing team to review. Further, we do use withholding verification as part of our Fraud verification.*

### 12. Income Tax Accounts:

What are the procedures for notifying the taxpayer their return has been reversed? For example, a taxpayer filed their 2018 tax return on time. They had a refund of Oklahoma tax, but no W-2 was on file. The OTC processed the return and reversed it when no W-2 was matched. The taxpayer never received a refund for 2018 but did receive a 1099 showing a refund had been issued. The taxpayer received a notice from their professional licensing agency that they needed to file their Oklahoma return to renew their license.

*In the situation described above, and generally speaking, returns reverse after we have sent a letter to the taxpayer requesting an action on the taxpayer's part and 6 months have lapsed with no response. We do not anticipate changing those procedures any time soon. Certainly if professional have questions about specific clients, I encourage them to utilize our taxprofessional questions inbox where they can receive quick status updates regarding specific clients.*

*1099-Gs are only issued if a refund is issued and not if the refund was snagged, carried forward, donated, not processed, etc. It is possible that the taxpayer in this scenario was issued a 1099G for a different tax year, but was refunded in the calendar year identified on the form; it is also possible the taxpayer received a 1099-G from another state agency. Without having the specifics on the taxpayer it is difficult to definitively say.*

## State Adjustments

### 13. Audit Services:

What is the process for questioning OTC changes to state adjustments/deductions from the amounts reported on the federal return?

*Issues concerning OTC changes to state adjustments/deductions from the amounts reported on the federal return may be resolved at the division level between the auditor supervisor and the taxpayer, prior to the filing of a protest. Thus a challenged assessment or audit may be adjusted or amended based upon reasoned grounds and adequate documentation. However, if issues remain unresolved after consulting with the assessing/adjusting division, the taxpayer may file a written protest with that division. After the filing of the protest, the Legal Division will review the proposed assessment to determine whether further adjustments are appropriate. Additional discussion with the taxpayer may be requested as part of this review. If the issues are still unresolved, the protest is forwarded to the Administrative Law Judges' Office, docketed, and scheduled for a pre-hearing conference. Please refer to Oklahoma Administrative Code § 710:1-5-10 for further detail.*

## Pass-through Entity Tax Election

### 14. Income Tax Accounts:

The IRS has gone on record as accepting many state workarounds regarding state income tax deductions, how is the OTC preparing to handle the influx of elections?

*Processes for the processing of Form 586 have improved vastly since inception and current procedures should be sufficient to accommodate future elections.*

### 15. Income Tax Accounts:

Regarding the PTE election, will the OTC allow a late 2020 PTE election now that the IRS had acquiesced on allowing the tax at the entity level?

*No further revision has been introduced to the Oklahoma legislature to modify the Pass-through Entity Tax Equity Act. The due dates for elections at this time remain unchanged.*

## PPP Considerations

### 16. Legal:

Will Oklahoma follow Federal law in treating the forgiveness of PPP loans as nontaxable and allowing deductions for PPP-funded expenses?

*The starting point for calculating Oklahoma taxable income is federal taxable income before the NOL and Special Deduction line of the federal income tax return. See 68 O.S. § 2353(12); Okla. Admin. Code § 710:50-17-50. In the absence of Oklahoma legislation which specifically includes PPP loan forgiveness or disallows deductions for PPP-funded expenses, the standard rules for calculating Oklahoma taxable income will apply.*

**17. Legal:**

Under Federal law, PPP forgiveness will increase basis to partners and S Corp shareholders, which will give them tax basis for claiming the eligible expenditures. However, it is unclear if this basis from forgiveness has any timing considerations. For example, if forgiveness does not occur until 2021, is basis increased in 2020, or is it increased in 2021? If a basis increase from forgiveness is delayed to 2021, for state tax purposes would there be a potential for suspended 2020 losses for partners or S Corp shareholders where no PTE election has been made?

*There is no specific provision in the Oklahoma statutes which addresses this issue; therefore, Oklahoma would follow the federal basis rules. If the losses are suspended for federal purposes, they would likewise be suspended for Oklahoma.*

## McGirt v. Oklahoma and Other Topics

**18. Legal:**

Has there been movement on the application of the McGirt case to income or sales taxation?

*At this time, McGirt has not been expanded beyond the realm of the Major Crimes Act.*

**19. Legal:**

Continuing the statutory basis of Question 5 above, 68 O. S. §2373 provides, in part, the following:

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

*The information filed, reflecting the revision or adjustment, shall constitute the claim for refund.*

*Except as provided in subsection H of Section 2375 of this title, the amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim, or, if no claim was filed, then during the three (3) years immediately preceding the allowance of the refund. However, this three-year limitation shall not apply to the amount of refunds payable upon claims filed by members of federally*

recognized Indian tribes or the United States on behalf of its Indian wards or former Indian wards, to recover taxes illegally collected from tax-exempt lands. (Emphasis added)

Does this mean the time for making a claim for refund is unlimited for members of federally recognized tribes? Can you describe the meaning of the term “taxes illegally collected from any tax-exempt lands,” as stated in the statute? Will the OTC establish procedures for filing such claims? Will the OTC provide guidance for determining which taxpayers may be the rightful claimants?

*The language “taxes illegally collected from any tax-exempt lands” has not been defined in statute or case law. The OTC is still evaluating these issues, but at this time the OTC believes the three year statute of limitations will apply for all claims for refund of income tax. Guidance for individuals who may be eligible for the income tax exclusion for enrolled members of federally recognized Indian tribes is currently available in the OTC rules, Okla. Admin. Code § 710:50-15-2.*

**20. Legal:**

Are Creek Nation tribal members allowed to claim refunds of sales taxes for prior sales to them by tribal or non-tribal businesses on sales in the Creek Nation’s tribal lands? If so, how are claims for refund filed?

*Claims for refund of sales taxes submitted by a purchaser are generally made on an OTC Form 13-9, and must be made in accordance with Okla. Admin. Code § 710:65-11-1(c). Such claims typically require a description of the reason sales tax was improperly paid to the vendor (i.e., the vendor would not honor a tax exemption card presented at the time of the sale).*

**21. Legal:**

How are OTC Frequently Asked Questions (FAQs) prepared? What is the weight of authority of OTC FAQs? Can taxpayers suggest or request changes or additions be made to OTC FAQs?

*The FAQs are prepared by the Communications Division of the OTC in conjunction with the particular division of the agency with specialized knowledge of the tax type at issue. FAQs are provided for informational purposes only, to help taxpayers get prompt guidance on a wide variety of issues; the FAQs have no legal authority and are not entitled to deference by a court. Changes or additions suggested by taxpayers will be evaluated on a case-by-case basis.*



## 22. Audit Services:

For federal income tax under the Bi-Partisan Budget Act (BBA) Centralized Partnership Audit Regime (CPAR), the IRS generally assesses and collects any understatement of tax (called an imputed underpayment) at the partnership level. Do Oklahoma and the OTC apply the same rules with respect to audits, assessment, and collection of Oklahoma income tax for partnerships?

*Oklahoma law has not conformed to the Centralized Partnership Audit Regime.*

*However there are two circumstances where the partnership can be assessed at the partnership level in Oklahoma:*

- 1) The partnership elects to pay some or all of the tax at the partnership level by filing a composite return for its non-resident partners and computing the tax using Form 514PT. In this case any Oklahoma adjustments would be made to the partnership and a new tax liability determined with Form 514PT.*
- 2) Through the Pass-Through Entity Tax Equity Act of 2019 (defined in 68 OS Sec 2355.1P-2(6)) the partnership can make an election to be a Pass Through Entity (PTE) (68 OS Sec 2355.1P-4(F) by filing Form 586. For tax years beginning on or after January 1, 2020, the election must be filed: (1) anytime during the preceding tax year or (2) two months and fifteen days after the beginning of the tax year. The OTC will send an acknowledgement letter to each electing PTE. The electing PTE must attach a copy of the OTC acknowledgement letter to their Oklahoma income tax return. Each electing PTE must provide their shareholders, partners, or members a copy of the OTC acknowledgement letter and advise the shareholder, partner or member of the requirement to attach a copy of the acknowledgement letter to their Oklahoma income tax return. Once this is received and approved by the OTC the taxpayer may begin filing their Form 514 as a PTE per the Form 586 instructions and computing the tax by filing Form 587-PTE. In this case any Oklahoma adjustments would be made to the partnership and a new tax liability determined with Form 587-PTE.*