JURISDICTION:	**OKLAHOMA TAX COMMISSION**
CITE:	**2006-08-15-03 / NOT PRECEDENTIAL**
ID:	**P-05-150-H**
DATE:	**AUGUST 15, 2006**
DISPOSITION:	**SUSTAINED IN PART/DENIED IN PART**
TAX TYPE:	**ESTATE TAX**
APPEAL:	**NONE TAKEN**

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 21st day of April, 2006, and the same, appended hereto, together herewith shall constitute the Order of the Commission.

PROCEDURAL HISTORY

On October 7, 2005, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.[2] On October 10, 2005, a letter was mailed to the last known address of the Protestant advising that this matter had been assigned to ADMINISTRATIVE LAW JUDGE, and docketed as Case Number P-05-150-H. The letter also advised the Protestant that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*. On December 2, 2005, the Notice of Prehearing Conference was mailed to the last known address of the Protestant setting the prehearing conference for December 20, 2005, at 11:00 a.m.[3]

The prehearing conference was held as scheduled. A representative did not appear on behalf of the Protestant. On December 20, 2005, the Prehearing Conference Order was mailed to the parties stating that this cause would be closed and the matter submitted for decision upon the filing of a verified response to the protest by the Division.[4] On January 19, 2006, the Division's Verified Response to Protest was filed. The verification attached to the response was duly sworn under oath, on behalf of the Division by REPRESENTATIVE, Estate Tax Section, Audit Division, Oklahoma Tax Commission.[5]

On February 14, 2006, the undersigned mailed a letter[6] to the parties advising that the Prehearing Conference Order dated December 20, 2005, incorrectly directed the Division's counsel to file a verified response, the pertinent part of the text is as follows, to-wit:

> According to OKLA. ADMIN. CODE § 710:1-5-49(2)[7], if the taxpayer (here the Personal Representative), requests a hearing, but dies prior to the hearing, the Notice of Hearing "shall" be mailed to the taxpayer's last known address. The protest filed by TRUSTEE ONE clearly requests a hearing; therefore, the captioned matter must be pulled from submission for decision and a Notice of Hearing must be sent to the last known address of TRUSTEE ONE.
>
> I apologize for any inconvenience because of my mistake in this matter.

A notice setting this matter for hearing on March 7, 2006, at 1:30 p.m. was enclosed with the above mentioned letter. Additionally, the notice stated that position letters or briefs could be filed on or before February 28, 2006. The Position Letter of the Audit Division was filed on February 28, 2006. No response was filed on behalf of the Protestant.

The hearing was held on March 7, 2006, at 1:30 p.m. The Division called one witness, AUDITOR, Estate Tax Section, Audit Division, Oklahoma Tax Commission, who testified regarding the records of the Division. The Division's Exhibits A through L were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was held open until April 6, 2006, for the Division to address the following matters,[8] to-wit:

> Provide a copy of the deed reflecting that the property listed as "CONDO, Unit 2121E" was owned by the decedent or the trust at the time of the decedent's death.
>
> Provide the basis of the Division's value for the "CONDO, Unit 2121E".
>
> Provide copies of deeds reflecting that the properties listed on the Division's Adjustment Sheet, which were not listed on the schedule of properties owned by the trust, were owned by the decedent or the trust at the time of the decedent's death.
>
> Provide the basis of the Division's values for the additional properties.
>
> Clarify what monies, if any, are still remaining in the accounts listed on the schedule of properties.

On March 17, 2006, and April 5, 2006, the Division filed Status Reports addressing the matters enumerated above. On April 7, 2006, the record in this matter was closed and the case was submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the Division's Position Letter, the undersigned finds:

1. On November 11, 1998, DECEDENT established the REVOCABLE TRUST, with the Decedent as Trustee.[9]

2. Article II of the Revocable Trust[10] contains the follow provisions:

> Lifetime Provisions. Commencing as of the date of this instrument and during my life, the trustee shall administer the trust principal and any net income thereof as follows:

1. Pay or Accumulate Income and Principal. During my lifetime, the trustee shall distribute to me or apply for my benefit, such amounts of net income and principal, even to the extent of exhausting principal, as the trustee believes desirable from time to time for my health, support in reasonable comfort, best interests, and welfare, considering all circumstances and factors deemed pertinent by the trustee. Any undistributed net income shall be accumulated and added to principal, as from time to time determined by the trustee.
2. Power of Withdrawal. In addition, the trustee shall distribute to me or others such amount of net income and principal as I may from time to time direct in writing, provided that if the trustee shall receive a notarized written statement from any attending physician, stating that I am unable to manage my business affairs properly because of advance age, illness, or other cause, the trustee may, in the trustee's sole discretion, decide not to honor a written discretion.

3. The Decedent retained the right to amend or revoke the Revocable Trust in whole or in part during his lifetime.[11]

4. The Decedent named TRUSTEE ONE, as successor trustee, and in the event TRUSTEE ONE was unable or unwilling to serve, then TRUSTEE TWO would be appointed as the successor trustee.[12]

5. On November 11, 1998, the Decedent executed his Last Will and Testament bequeathing his entire estate to the current trustee of the Revocable Trust.[13] The Decedent named TRUSTEE ONE as the Personal Representative of the Estate and TRUSTEE TWO (TRUSTEE ONE'S daughter) as the successor Personal Representative.[14]

6. The Decedent died on June 13, 1999, a resident of COUNTY, State of Oklahoma.[15]

7. On July 7, 1999, the Division received a "Notice of Transfer for Financial Institutions" ("Notice of Transfer") from BANK "A" for a checking account listed in the name of the Revocable Trust and containing $4,437.44 on the date of the Decedent's death.[16] On July 7, 1999, the Division released the account in full.[17]

8. On August 6, 1999, the Division received a Notice of Transfer from BROKERAGE ONE for an account listed in the name of the Revocable Trust, with TRUSTEE ONE, as Trustee, containing investments in the amount of $75,400.49 on the date of the Decedent's death.[18] On August 6, 1999, the Division released $68,697.39 contained in the account and instructed BROKERAGE ONE to place on hold $6,703.10, represented by investments in the BANK "B" Corp.[19]

9. On January 5, 2000, the Division received a Notice of Transfer from BROKERAGE TWO on an account listed in the name of the Decedent, and listed TRUSTEE ONE, as Executor of Estate. The account contained investments in the amount of $3,988.00 on the date of the

Decedent's death.[20] On January 5, 2000, the Division instructed BROKERAGE TWO to place on hold the entire amount contained in the account.[21]

10. On January 13, 2000, the Oklahoma Estate Tax Return of the Decedent was filed with the Division, together with a remittance in the amount of $348.00.[22] The Decedent's Estate Tax Return listed the gross estate at $30,000.00, consisting of personal property passing to the Trust, consisting of collateral heirs.[23]

11. On June 22, 2000, the Division issued a proposed assessment of additional estate tax in the amount of $73,872.42 and interest from March 13, 2000, to July 13, 2000, in the amount of $3,676.24, for a total of $77,548.66 less $348.00 previously paid, for a balance due of $77,200.66.[24]

12. The proposed assessment of additional estate tax[25] resulted from the inclusion of omitted property from the Revocable Trust as follows, to-wit:

	Amount Reported	Increase/Decrease	Adjusted Valuations
RE, O & G Leases	$ 0.00	$594,632.00	$594,632.00
Stocks & Bonds	30,000.00	84,148.00	114,148.00
Personal Property	0.00	4,437.00	4,437.00
Total Gross Estate	$30,000.00	$683,217.00	$713,217.00

13. On July 21, 2000, the Division received a timely letter of protest from TRUSTEE ONE, as Trustee, to the Division's proposed assessment of additional estate tax.[26]

14. On August 1, 2002, a letter signed by TRUSTEE ONE was faxed to the Division advising that CPA ONE had been "engaged" to represent the Protestant and requested that the Division send CPA ONE a copy of the file.[27]

15. On October 28, 2005, counsel for the Division mailed an introductory letter to CPA ONE and ASSOCIATE, pursuant to the July 18, 2002, Power of Attorney, and requested a meeting to discuss the pending protest.[28]

16. On November 4, 2005, counsel for the Division received a letter from CPA ONE and ASSOCIATE stating that TRUSTEE ONE was deceased and that they had not been in contact with anyone regarding the Protestant since 2003, when all of the original records were returned to the attorney hired by TRUSTEE ONE[29]

17. The probate of the Decedent's estate was filed in COUNTY under Case No. P-XX-XXXX.[30] At the request of Division's counsel, the undersigned is taking judicial notice[31] that the docket for Case No. P-XX-XXXX reflects that the attorney for the estate is PROBATE ATTORNEY TWO. At the request of Division's counsel, the undersigned is also taking judicial notice that PROBATE ATTORNEY TWO contacted this office by phone on February 17, 2006, and advised that he no longer represented the estate and that he thought TRUSTEE TWO had moved to Georgia.[32] There has been no further contact from PROBATE ATTORNEY TWO since the February 2006 phone call.

18. On February 26, 2006, this office received a letter from PROBATE ATTORNEY ONE advising that he had not represented the Protestant since August 2, 2000, and that the docket for Case No. P-XX-XXXX reflected that he had been allowed to withdraw.[33]

19. A copy of the "Schedule of Property" attached to the Revocable Trust ("Revocable Trust Schedule") was used by AUDITOR in the audit of the estate tax return. AUDITOR'S hand-written notations appear next to each of the thirty-one (31) parcels of real property, indicating among other things, the date June 9, 2000 (Assessors office), a value next to each real property, and if the real property had been sold before or after the Decedent's date of death.[34] At the end of the Revocable Trust Schedule are hand-written notations of three (3) additional real properties, with a brief legal description and a value.[35]

20. On June 9, 2000, AUDITOR reviewed the records of the COUNTY Assessor and COUNTY Treasurer to determine the ownership of the thirty-one (31) real properties listed on the Revocable Trust Schedule, the three (3) additional properties, and the fair market value of each property at the time of the Decedent's death (June 13, 1999).[36]

21. On June 9, 2000, AUDITOR could not locate Revocable Trust Schedule Property (1), CONDO, Unit 2121E (ADDRESS). This property was included in the proposed assessment as an omitted property with a date of death fair market value of $100,000.00.[37] The Revocable Trust Schedule Properties numbered as (3) and (11) were sold prior to the Decedent's death and were not included in the proposed assessment. The Revocable Trust Schedule Properties numbered (12) and (20) were sold after the Decedent's death and were included in the proposed assessment as omitted properties.

22. According to the records of the COUNTY Assessor, the Decedent owned three (3) additional real properties not listed on the Revocable Trust Schedule at the time of his death. These properties were included as omitted properties in the Division's proposed assessment.

23. On the Revocable Trust Schedule, listed under Mineral Interests, is a lease, OIL CORP., BIG CITY, Texas ("OIL CORP. Lease"). The Revocable Trust Schedule does not contain any information concerning the lease.[38] The Division included the OIL CORP. Lease as an omitted property in the proposed assessment with a date of death value in the amount of $50,000.00. The value of $50,000.00 was assigned without any basis.[39]

24. On the Revocable Trust Schedule, listed under Bank Accounts, is BANK "C". The Division did not receive a Notice of Transfer from BANK "C" and the proposed assessment does not include an account from BANK "C".[40]

ADDITIONAL FINDINGS OF FACT

25. On March 17, 2006, counsel for the Division filed a Memorandum dated March 14, 2006, from AUDITOR stating that as directed by the undersigned, the records of the COUNTY Assessor and COUNTY Clerk had been reviewed, with the following results:

> Revocable Trust Schedule Property (1) CONDO, ADDRESS, still could not be located. The records of the assessor do not contain any properties described as "CONDO" and the address of ADDRESS does not exist.
>
> The property described as Lots XX-XX, Block X, SUBDIVISION ONE was sold and transferred in November 1997, prior to the Decedent's date of death.
>
> The property described as Lots XX-XX, Block XX, ADDITION was sold and transferred in June 2004 by TRUSTEE TWO, as Trustee, after the Decedent's date of death.
>
> The property described as the DIRECTION ONE 5' of the DIRECTION TWO 107' of Lot XX, and Lots XX-XX, Block X, SUBDIVISION TWO was transferred of record December 2002.[41]

26. On April 5, 2006, counsel for the Division filed an additional Memorandum from AUDITOR advising that the Division's hold on the BROKERAGE ONE account ($6,703.10) represented by the Decedent's investment in the BANK "B" Corp. had been released in error by the Division (August 2004) and is now closed.[42]

27. The Division's hold on the BROKERAGE TWO account containing $3,998.00 now has a balance of $41.00. No explanation has been offered by the Division as to why the hold is no longer in place on this account.[43]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[44]

2. The statute in force at the time of decedent's death governs the questions of taxability of his estate.[45] The Decedent date of death was June 13, 1999.

3. A tax is levied upon the transfer of the net estate of every decedent.[46]

4. A tax is levied upon any transfer of the net estate of every decedent and the tax shall accrue at the time of death of the decedent and shall be payable nine (9) months after the date of death of the decedent.[47]

5. The administrator, executor, and trustee of every estate who, before paying the tax due, distributes or transfers any of said estate, to the extent of the value of the property at the time the tax became due, shall be personally liable for such tax until its payment.[48]

6. The value of any interest in property over which the Decedent at the time of his death had possessed a general power of appointment is includable in the gross estate of the Decedent.[49] The Decedent retained a general power of appointment in the Revocable Trust.[50] The Decedent retained the power to amend or revoke the Revocable Trust during his lifetime and could

exercise his power as the trustee for his own benefit, his estate, his creditors, or the creditors of the estate.[51]

7. The properties of Revocable Trust were properly included by the Division as omitted properties in the Decedent's gross estate.

8. The value of the gross estate, used as a basis for the determination of the value for the net estate, shall be determined by including the value of all property that the decedent had an interest in at the time of death or by including the alternate valuation of said property as authorized by statute.[52]

9. Appraisements of property shall be made at the fair cash market value of the property transferred as of the date of death of the decedent.[53] "Fair Cash Market Value" means the value and price at which the property transferred would change hands between a willing buyer and a willing seller.[54]

10. In the case of real property, "fair market value" shall not be valued at the rate it is assessed for local taxes, nor shall it be valued at the "special use valuation" applicable for some Federal Estate Tax Purposes.[55]

11. In the absence of an evaluation of mineral value[56] by a geologist or petroleum engineer, the minimum value to be reported-on the Estate Tax Return is, as follows:

> (1) Producing minerals. Except as noted, oil income should be valued at 48 times the average monthly income for the six months preceding to six months after the date of death. Gas should be valued at 84 times the average income for the period six months before to six months after the date of death. The Oklahoma Tax Commission shall not be bound by the submitted evaluation.
>
> (2) Non-producing leased. For non-producing leased properties, the value should be one and one half (1½) times the lease bonus if the last lease was made within one year of the date of death.
>
> (3) Non-producing non-leased. The value for non-producing non-leased interests should be computed by reference to monthly lease values.

12. Assets that are not reported or disclosed in an Estate Tax Return shall be subject to the tax if discovered by the Commission within ten (10) years of the date of death.[57]

13. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[58] A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.[59]

14. It is the responsibility of the Tax Commission, and consequently the Administrative Law Judges, to "examine into the merits" of any protest and enter an order accordingly.[60] The

statutory mandate of the Tax Commission and the Administrative Law Judges is to determine the facts and the correctness or incorrectness under the law of the Tax Commission's prior action, and to affirm, modify, or vacate that action.[61] If the Tax Commission and the Administrative Law Judges are to accomplish this task, they cannot be bound or restricted in their considerations solely to the arguments of the parties.[62]

The task in this matter is especially difficult because the protest to the proposed assessment was filed over five (5) years ago by TRUSTEE ONE, who from all accounts is now deceased, and her daughter, TRUSTEE TWO, cannot be located. All of the attorneys, accountants, etc. originally retained by TRUSTEE ONE or TRUSTEE TWO have disavowed any connection or responsibility as to the disposition of the Decedent's estate.

The basis of the protest filed by TRUSTEE ONE was that all of the real properties listed on the Revocable Trust Schedule had been conveyed "… to the contract-for-deed buyers at the time the contracts were paid-in-full during the years 1996 thru 1999." According to the records of the COUNTY Assessor, COUNTY Treasurer, and COUNTY Clerk examined by AUDITOR, this assertion was incorrect, except to a handful of the real properties conveyed before the Decedent's date of death (June 13, 1999).

The Division's proposed assessment properly included the Revocable Trust Schedule Properties, and additional properties, as omitted properties, with the following exceptions:

> CONDO, Unit 2121E, ADDRESS does not exist according to the records of the COUNTY Assessor and it should be removed from the proposed assessment.
>
> Lots XX-XX, Block XX, SUBDIVISION ONE was sold prior to the Decedent's date of death and it should be removed from the proposed assessment.
>
> The Division does not have a basis for the $50,000.00 date of death value assigned to the OIL CORP. Lease and it should be removed from the proposed assessment.

DISPOSITION

It is the recommendation of the undersigned Administrative Law Judge, based upon the specific facts and circumstances of this case, that the protest should be sustained in part and denied in part.

It is further recommended that the proposed assessment of additional estate tax should be *revised* in accordance with the findings and conclusions as more fully set out herein.

It is further recommended that the *revised* amount of additional estate tax be fixed as the Protestant's deficiency and that amount should be determined as due and owing, including interest, accrued and accruing.

[1] OKLA. STAT. tit. 68, § 201 et seq. (1991).

[2] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47 (1998). A number of amendments became effective June 25, 1999, after the Decedent's date of death (June 13, 1999).

[3] OKLA. STAT. tit. 68, § 208 (1991). The notice was mailed c/o TRUSTEE TWO, ADDRESS, CITY, Oklahoma ZIP CODE. On December 9, 2005, the notice was returned as "Not Deliverable." Division's counsel was contacted and asked to provide a current address. On December 13, 2005, a Status Report was filed stating that a current address could not be located.

[4] OKLA. ADMIN. CODE § 710:1-5-28(c) (1998).

[5] *See* Note 4.

[6] The significance of the individuals below will be explained as part of the findings. This letter was mailed to the following persons:

TRUSTEE ONE, ADDRESS, CITY, Oklahoma ZIP CODE
TRUSTEE TWO, ADDRESS, CITY, Oklahoma ZIP CODE
PROBATE ATTORNEY ONE, ADDRESS, CITY, Oklahoma ZIP CODE
SISTER-IN-LAW, ADDRESS, CITY, Texas ZIP CODE.
CPA TWO, ADDRESS, CITY, Oklahoma ZIP CODE
CPA ONE AND ASSOCIATE, ADDRESS, CITY, Oklahoma ZIP CODE
PROBATE ATTORNEY TWO, ADDRESS, CITY, Oklahoma ZIP CODE

[7] *See* Oklahoma Tax Commission Precedential Order No. 1996-05-30-002 (May 30, 1996) for the announcement of this rule. The announcement of a new rule in a decision (Commission Order) shall apply to that case, and all similar cases now pending before the Tax Commission, and to all taxpayer protests brought after that date. The rule was properly promulgated with an effective of June 25, 2005. *See also Dow Jones & Co., Inc. v. State ex rel. Oklahoma Tax Com'n*, 1990 OK 6, 787 P.2d 843.

[8] On March 10, 2006, a letter was mailed to Division's counsel along with the individuals set out in Note 6.

[9] Division's Exhibit A. In the Trust, the Decedent named the following heirs:

TRUSTEE ONE
CAT (a long haired domestic cat)
SISTER-IN-LAW
TRUSTEE TWO

[10] *See* Division's Exhibit A.

[11] Division's Exhibit A, Article XI (2) of the Revocable Trust.

[12] *See* Division's Exhibit A, Article VII (2) of the Revocable Trust.

[13] Division's Exhibit B.

[14] *See* Division's Exhibit B.

[15] Division's Exhibit C.

[16] Division's Exhibit E.

[17] *See* Note 16.

[18] *See* Note 16.

[19] *See* Note 16.

[20] *See* Note 16.

[21] *See* Note 16.

[22] Division's Exhibit D. The estate tax return was filed by PROBATE ATTORNEY ONE and TRUSTEE ONE, as the Personal Representative of the Decedent's estate filed in COUNTY (Probate Case No. P-XX-XXXX).

[23] *See* Division's Exhibit D, Line 3 of the Estate Tax Return and Schedule C-1 of the Estate Tax Return, which lists Estate Account No. XX-XXXXX at BROKERAGE TWO, ADDRESS, CITY, OK ZIP CODE. *See also* Division's Exhibit D, Schedule J.

[24] Division Exhibit F.

[25] *See* Note 24.

[26] Division's Exhibit G. The protest letter was mailed with a cover letter from PROBATE ATTORNEY ONE, stating that TRUSTEE ONE was protesting the proposed assessment and that TRUSTEE ONE had hired CPA TWO, ADDRESS, CITY, OK ZIP CODE. The cover letter also states that CPA TWO would be forwarding a more detailed objection. The cover letter also states "Please note that this office does not represent TRUSTEE ONE for tax purposes and all future notices should be forwarded to TRUSTEE ONE and the above named CPA." The cover letter reflects that it was copied to TRUSTEE ONE and CPA TWO.

The basis of the protest signed by TRUSTEE ONE is that the "Real Estate properties listed in the auditor report are not legal properties of this estate due to the fact that 'Legal Property Deeds' were conveyed to the contract-for-deed buyers a the time the contracts were paid-in-full during years: 1996 thru 1999. Our files and buyers affidavits will attest these facts." The protest also states that "[t]he audit assessment value of [the] OIL CORP. Lease is greatly over valued. The annual Oil Royalties Income from this lease is only $150.00 yearly." The Trustee also wanted to examine the findings on the BROKERAGE ONE account, BROKERAGE TWO account, and BANK "A" account.

[27] Division's Exhibit H and Exhibit J. A Power of Attorney for CPA ONE and ASSOCIATE to represent the Protestant was signed by TRUSTEE ONE and enclosed with the letter. TRUSTEE ONE'S address on the letter is ADDRESS, CITY, OK ZIP CODE and phone number is (XXX) XXX-XXXX. This letter also states that a tax warrant had been filed with the COUNTY Clerk for the proposed assessment, which is being protested in this case. According to the Division's transmittal, the tax warrant is EGEXXXX0000XXXX, $73,872.42 (tax), $61,387.87 (interest thru 10/05/05), plus $226.00 (tax warrant fees) and -$348.00 (credit for payment) is $135,138.29 (total).

[28] Division's Exhibit I.

[29] Division's Exhibit F.

[30] Division's Exhibit D.

[31] Division's Exhibit I. The Memorandum dated October 19, 2005, filed in the case by CLERK, Office of Administrative Law Judge, details the efforts to locate TRUSTEE ONE after the introductory letter sent by the undersigned was returned by the U.S. Postal Service as "attempted, not known." TRUSTEE ONE'S phone number was called, but now belongs to someone unrelated to this case. CPA TWO and PROBATE ATTORNEY ONE both confirmed that TRUSTEE ONE was deceased and that her daughter, TRUSTEE TWO, was the successor Trustee. PROBATE ATTORNEY ONE'S office advised that the attorney representing the estate in the probate filed in

COUNTY was PROBATE ATTORNEY TWO, ADDRESS, CITY, Oklahoma. No one contacted had any information regarding the whereabouts of TRUSTEE TWO. CLERK provided counsel for the Division with a copy of the Memorandum. *See* Division's Exhibit L.

[32] *See* Memorandum dated February 16, 2006 signed by CLERK and contained in the Court File. At the request of Division's counsel, the Administrative Law Judge is taking judicial notice of the materials contained in the court file for the purpose of completing the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 1998).

[33] Division's counsel also requested that the undersigned take judicial notice of the letter from PROBATE ATTORNEY ONE, which is contained in the court file. PROBATE ATTORNEY ONE enclosed a copy of the docket sheet from Case No. P-XX-XXXX, which confirms that he was allowed to withdraw on August 2, 2000. *See* Note 32.

[34] *See* Division's Exhibit A. AUDITOR testified in detail regarding his audit of the estate tax return.

[35] *See* Note 34.

[36] Division's Exhibit K and Exhibit L. Division's Exhibit K is a copy of the computer screens from the COUNTY Assessors Office, using Revocable Trust Schedule Property (13), ADDRESS, as an example of what AUDITOR examined on June 9, 2000. The computer screen lists the "Market Value", "Taxable Market Value", and a brief history of the chain of title for the property. Division's Exhibit K, a copy of a computer screen from the Oklahoma County Treasurer's Office confirms that at the time of the Decedent's death, the property was listed of record in the name of TRUSTEE ONE, as Successor Trustee of the Revocable Trust.

[37] In the Memorandum filed in this matter on April 5, 2006, AUDITOR states that the value of $100,000.00 assigned was an average value for condominiums in the CITY metro area at the time.

[38] The value of the OIL CORP. Lease is one of the adjustments protested by TRUSTEE ONE. *See* Division's Exhibit G. In the protest TRUSTEE ONE states that the OIL CORP. Lease "… is greatly overvalued. The annual Oil Royalties Income from this lease is only $150.00 yearly."

[39] *See* Note 34.

[40] *See* Division's Exhibits A through E. In the conclusion of the Division's Position Letter, counsel states:

> The Protestant failed to provide any support for its argument that the tax should be assessed against the beneficiary of the life insurance proceeds and not against the Estate.

This case, according to the record, does not involve the proceeds from a life insurance policy or the question of what party should be assessed for the proceeds from a life insurance policy.

[41] The first deed of note is dated May 8, 1999, from the Decedent to GRANTEE, but not filed until December 3, 2002. The second deed is dated November 1, 2002, from TRUSTEE ONE/Revocable Trust to GRANTEE and filed on December 3, 2002. It was the quiet title action(s) filed by GRANTEE on properties purchased from the Revocable Trust that brought the July 2000 protest to the attention of the Office of General Counsel, resulting in the protest being forwarded to this office in October 2005.

[42] *See* Note 37. According to AUDITOR the brokerage sent another Notice of Transfer, which slipped by the examiners in the Division and the hold was released.

[43] *See* Note 37.

[44] OKLA. STAT. tit. 68, § 207 (1991).

[45] *Perkins v. Oklahoma Tax Commission*, 1967 OK 110, 428 P.2d 328.

[46] OKLA. STAT. tit. 68, § 802 (1991):

> A tax, at the rates prescribed in the following section is hereby levied upon the transfer of the net estate of every decedent, whether in trust or otherwise, to persons, associations, corporations, or bodies politic, of property, real, personal, or mixed, whether tangible or intangible, or any interest therein or income therefrom, by will or the intestate laws of this state, by any order setting apart property and/or granting family allowances pursuant to the probate code, by deed, grant, bargain, sale, or gift made in contemplation of death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Provided, however, that nothing in this article shall be construed as subjecting to payment of such tax the escheat of property to the state for the benefit of its common schools. Such tax shall be imposed upon the value of the net estate and transfers at the rates, under the conditions, and subject to the exemptions and limitations hereinafter prescribed.
>
> The word "transfer," as used in this article, shall be taken to include, but shall not be limited to, the passing of property, or any vested or contingent interest therein, in possession or enjoyment, present or future, by distribution, by statute, descent, devise, bequest, grant, deed, bargain, sale, or gift.

[47] OKLA. STAT. tit. 68, § 806(a) (1991):

> The tax levied by this article shall accrue at the time of the transfer by the death of decedent or otherwise and shall be due and payable nine (9) months after the date of the death of the decedent. All taxes shall bear interest at the rate of one and one-quarter percent (1¼%) per month from the date when the same are delinquent. No interest or penalty shall be collected on any tax levied by this article except as provided in this section.

See OKLA. STAT. tit. 68, § 815(A)(1) (1999):

> The executor, administrator, trustee, devisee, heir or transferee shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Oklahoma Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate. The provisions of this subsection shall not apply to estates exempt from filing such return by the provisions of subsections D and E of this section.

[48] OKLA. STAT. tit. 68, § 811(a) (1991):

> Taxes levied pursuant to the provisions of this article shall be and remain a lien upon all the property transferred until paid, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of administration, allowed by the court having jurisdiction thereof, shall be divested of such lien. The person, corporation, or association to whom the property is transferred and the administrator, executor, and trustee of every estate so transferred who, before paying the tax, distributes or transfers any of said estate, to the extent of the value of the property at the time the tax became due, shall be personally liable for such tax until its payment. Every executor, administrator, or trustee shall have full power to sell or to convert into money so much of the property of the decedent or the property of any transferee subject to the tax as will enable him to pay such tax in the same manner as he might be entitled to do by law for the payment of other preferred and secured claims against the decedent.

See OKLA. ADMIN. CODE § 710:35-3-4 (1998):

> Individuals Liable. The Oklahoma Estate Tax imposed by statute with respect to the estates of residents and nonresidents, is payable by the executor or administrator of the decedent's estate. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which does not come within the possession of the executor or administrator. If there is no executor or administrator appointed, qualified and acting in this state, any person in actual or constructive possession of any property of the decedent is required to pay the entire tax to the extent of the value of the property in his possession. This is applicable to any interest due and owing.

[49] OKLA. STAT. tit. 68, § 807(A)(9) (1999):

> The value of the gross estate, used a basis for a determination of the value of the net estate, shall be determined by including:
>
> …
>
> To the extent of the value of any interest in property within the jurisdiction of this state, over which the decedent at the time of the death of the decedent had possessed a "general power of appointment". A "general power of appointment" as used herein is restricted to one which is exercisable in favor of the decedent, the estate of the decedent, creditors of the decedent, or the creditors of the estate of the decedent.

[50] *See* Note 47 and Division's Exhibit A.

[51] *See* Note 47. *See also* Division's Exhibit A, Article II, ¶ 1 and ¶ 2 and Article VI.

[52] OKLA. STAT. tit. 68, 816(A) (1991):

> Any and all appraisements of property provided by this article shall be made at the fair cash market value of the property transferred as of the date of the death of the decedent, and the term "fair cash market value," as used herein, is hereby declared to mean the value and price at which the property transferred would change hands between a willing buyer and a willing seller, both being free of any compulsion to buy or sell, and the locally assessed value of such property shall not be the criterion of the fair cash market value of such property, but all appraisements for estate, inheritance, gift or transfer tax purposes under the provisions of this article shall be made independently of the locally assessed value for ad valorem tax, at the full one hundred percent (100%) fair cash market value of such property as the measures of applying the provisions of this article.

[53] *See* Note 51.

[54] OKLA. STAT. tit. 68, § 816(A) (1991).

[55] OKLA. ADMIN. CODE § 710:35-5-20 (1999):

> (a) Fair market value. Valuation of all property included in the Estate Tax Return shall be at fair market value and, in the case of real property, shall not be valued at the rate it is assessed for local taxes, nor shall it be valued at the "special use valuation" applicable for some Federal Estate Tax purposes.
>
> (b) Appraisals. If an appraisal has been obtained, submit with filing. The Oklahoma Tax Commission is not restricted to the appraised value submitted in determining the value of the taxable estate.

[56] OKLA. ADMIN. CODE § 710:35-5-21 (1999).

[57] OKLA. STAT. tit. 68, § 815(c) (1991):

> No assessment of inheritance, estate or transfer tax shall be made hereunder subsequent to the lapse of ten (10) years after the date of the death of any decedent, except that this time limitation on the making of assessments and the beginning of proceedings for collection shall not affect or apply to assessments of inheritance, estate, transfer or gift taxes upon the estates of restricted Indians. If an estate tax return is filed as required by law, additional assessment may be made based upon unreported assets of the estate if such assessment is made not later than ten (10) years from the date of death of the decedent; provided, however, such additional assessment shall be made and any lien applicable thereto shall attach only against such unreported assets.

See OKLA. ADMIN. CODE § 710:35-5-5 (1999):

> Assets that are not reported or disclosed in an Estate Tax Return shall be subject to the tax if discovered by the Commission within ten (10) years of the date of death.

[58] OKLA. ADMIN. CODE § 710:1-5-47 (1998).

OKLA. ADMIN. CODE § 710:1-5-77(b) (1998), provides in pertinent part:

> "…preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[59] *See Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

[60] OKLA. STAT. tit. 68, § 221(d) (1991).

[61] OKLA. STAT. tit. 68, § 207(d) (1991).

[62] *First Nat. Bank of Cordell v. City Guaranty Bank of Hobart, et al.*, 1935 OK 1105, ¶ 5, 51 P.2d 573, 577.

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.