

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 2009-03-24-02 / NON-PRECEDENTIAL  
**ID:** P-08-055-H  
**DATE:** MARCH 24, 2009  
**DISPOSITION:** DENIED  
**TAX TYPE:** IRS LEVY  
**APPEAL:** ON APPEAL / OK S.CT. 107,003

**AMENDED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above styled and numbered cause comes on for consideration pursuant to remand made by the Oklahoma Tax Commission back to ALJ, Administrative Law Judge. These Amended Findings, Conclusions and Recommendations supersede the findings issued on September 5, 2008. PROTESTANT (“Protestant”) appears through SPOUSE, Attorney-In-Fact.<sup>1</sup> The Account Maintenance Division (“Division”), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

**PROCEDURAL HISTORY**

On May 22, 2008, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*<sup>2</sup> and the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*.<sup>3</sup> On May 28, 2008, a letter was mailed to the Protestant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-08-055-H. The letter also advised the Protestant 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*.<sup>4</sup> On June 23, 2008, the Notice of Prehearing Conference was mailed to the Protestant’s representative, setting the prehearing conference for July 8, 2008, at 9:30 a.m.<sup>5</sup>

The prehearing conference was held as scheduled with the representatives of the parties in attendance. On July 9, 2008, a letter was mailed confirming by agreement of the parties this matter would be submitted on briefs. Briefs were to be filed simultaneously on or before August 11, 2008.

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<sup>1</sup> On May 7, 2008, the Protestant appointed SPOUSE, (Spouse) as her attorney-in-fact. See Protestant’s Exhibit One.

<sup>2</sup> OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

<sup>3</sup> OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

<sup>4</sup> See Note 3.

<sup>5</sup> OKLA. STAT. ANN. tit. 68, § 208 (West 2001). The notice was mailed to SPOUSE, ADDRESS.

On August 8, 2008, the Legal Brief for the Protestant was filed, with “Legal Documents,” consisting of a Cover Sheet, Table of Contents, and Exhibits, and “Definitions” consisting of fifteen (15) pages, attached thereto. On August 11, 2008, the Division’s Memorandum Brief was filed, with Exhibits A through G, attached thereto.

On August 11, 2008, the record in this matter was closed and the case submitted for decision.

On September 5, 2008, the Administrative Law Judge issued proposed Findings, Conclusions and Recommendations.

On October 29, 2008, the Clerk received a copy of OTC Commission Order No. 2008-10-28-12 (October 28, 2008), issued by the Commissioners, which remanded this matter back to the Administrative Law Judge with directions to hold such hearings and further proceedings as may be necessary to make such revisions to the Findings, Conclusions and Recommendations previously issued as may be warranted by the provisions of the Order.

On October 30, 2008, the parties were advised by letter of OTC Order No. 2008-10-28-12 (October 28, 2008). The Division was directed to file a copy of the Memorandum of Understanding referenced in the Order.

On November 14, 2008, the Division filed a copy of the Memorandum of Understanding between the Tax Commission and the Internal Revenue Service, which was also provided to the Protestant.

On December 4, 2008, the Protestant was advised a response could be filed on or before December 19, 2008. On December 8, 2008, a teleconference was held with the parties, at the Administrative Law Judge’s request, to discuss the pending matter.

On December 16, 2008, the Division filed a letter advising the parties had agreed upon a hearing date and time of January 20, 2009, at 10:00 a.m.

On December 16, 2008, a Notice of Hearing on Remanded Cause was mailed to the parties setting the hearing on January 20, 2009, at 10:00 a.m., with position letters or memorandum briefs due on or before January 13, 2009.

On December 29, 2008, the Protestant’s Brief was filed with the Clerk. On January 6, 2009, an “Amended” Brief was filed with the Clerk, which requested the brief filed on December 29, 2008, be disregarded and replaced with this filing.

On January 13, 2009, the Protestant’s “Hearing” Brief and the Division’s Memorandum Brief on Remand were filed with the Clerk.

On January 20, 2009, at approximately 10:00 a.m., an open hearing<sup>6</sup> was held as scheduled with the parties' representatives in attendance. The Division called two (2) witnesses. First, SUPERVISOR, Supervisor of the Case Management Section, Account Maintenance Division, Oklahoma Tax Commission, testified about the processing of the Protestant's waiver request, levy by the IRS, and as custodian of the Division's records. The Division's second witness, ANALYST, Program Analyst Supervisor, Information Technology ("IT") Division, Oklahoma Tax Commission, testified about the IRS levy procedure, the IRS levy against the Protestant, and as custodian of the IT Division's records. The Division's Exhibits B through E were identified, offered, and admitted into evidence. The Protestant did not call any witnesses or submit any exhibits during the course of the hearing.

At the conclusion of the hearing, the record was closed, and the case submitted for decision on January 20, 2009.

### **OTC ORDER NO. 2008-10-28-12**

Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 5<sup>th</sup> day of September, 2008, the Commission finds:<sup>7</sup>

1. The provisions of Sections 6331, 6332, and 6334 of Title 26 of the United States Code are relevant legal authority which should be considered in determining if the Oklahoma Tax Commission acted properly in disbursing funds of the Protestant to the Internal Revenue Service. The Commission further found that any conflicts between the provisions of Section 205.2 of Title 68 of the Oklahoma Statutes and Sections 6331, 6332, and 6334 of Title 26 of the United States Code should be resolved in favor of the federal statutes.<sup>8</sup>

2. The Commission takes judicial notice that the Oklahoma Tax Commission and the Internal Revenue Service ("IRS") had entered into a Memorandum of Understanding ("MOU") for the operation of the State Income Tax Levy Program ("SITLP") for Individuals pursuant to Treasury Order 150-10 and the above referenced federal statutes.<sup>9</sup>

3. The Commission finds that the MOU may determine the property upon which the IRS has imposed a levy.<sup>10</sup>

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<sup>6</sup> OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2009). Confidentiality was waived on behalf of the Protestant by SPOUSE.

<sup>7</sup> OTC Order No. 2008-10-28-12 (October 28, 2008).

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

4. The Administrative Law Judge made no finding of fact with regard to whether the property at issue in this case is included in the type of property specified in the MOU and that a proper resolution of this case requires a finding of fact on that issue.<sup>11</sup>

5. Even though the parties agreed this matter would be submitted on briefs and the Protestant failed to request an oral hearing in this matter, there appears to be a dispute between the parties with regard to the question of “whether or not the IRS had issued a levy to the Tax Commission on property held by the Tax Commission.”<sup>12</sup>

### AMENDED FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the briefs, the undersigned finds:

6. On September 14, 2007, the IRS issued a Memorandum for State of Oklahoma Taxing Authorities Participating in the State Income Tax Levy Program (“Memorandum”),<sup>13</sup> which is a blanket levy, pursuant to Sections 6331 and 6332 of the United States Code. The Memorandum provides in pertinent parts, as follows, to-wit:

The IRC provides that there is [a] lien for the amount that is owed. Although we have given notice and demand required by the Code, the amount owed has not been paid. This notice requires you to turn over to us this person’s property and rights to property in excess of five percent (5%) that you have or which you are already obligated to pay this person...

On a biweekly basis, a data file of taxpayers to whom the levy applies will be sent to the participating state(s) by electronic transmission. Included in the data file will be the name of the state, first and last name of the taxpayer(s), Social Security Number or Employer Identification Number, earliest tax year subject to levy, total amount due IRS, and a secondary Social Security Number, if applicable.

Notice of intent to levy was given to each taxpayer prior to including them on the SITLP data file. This blanket levy authority is valid from the date of this memorandum, until it is rescinded. *A copy of this notice will accompany each electronic levy transmission sent to the state.* (Emphasis added).

7. The IRS and the Tax Commission entered into a Memorandum of Understanding (“MOU”) and “Addendum” to MOU for the operation of the State Income Tax Levy Program

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Division’s “Hearing” Exhibit B. ANALYST testified that a copy of the Memorandum is received with every data file from the IRS.

(“SITLP”) for Individuals. SITLP is an automated program, which uses state tax refunds as the levy source. The state is provided with a database of taxpayers subject to levy, who are identified as residing in the state or are recipients of state tax proceeds. Utilizing the levy authority, the state compares entities on the IRS levy file, which is transmitted electronically biweekly, with entities on the state refund database. When a match is identified, the state will deduct up to the levied amount from the state tax refund.<sup>14</sup>

8. The Tax Commission is required by the “Addendum” to MOU to process the electronic SITLP levy file only against the applicable state income tax refund files. The SITLP levy file will only be matched against the individual state income tax refund files. No other files or databases will be considered when determining the amount of proceeds subject to levy.<sup>15</sup> The Tax Commission will process the existing SITLP electronic levy file within two (2) weeks of transmission and stop using it after two (2) weeks after transmission.<sup>16</sup>

9. On September 18, 2006, the Tax Commission received the Protestant’s Oklahoma Income Tax Return (Form 511) for the 2002 tax year. The return reflected a filing status of “Married Filing Separate” and tax due (Line 37) of \$7,905.00. The Protestant did not remit a payment with the return.<sup>17</sup>

10. The Division filed Tax Warrant No. ##### against the Protestant in COUNTY for the “Tax Liability”<sup>18</sup> owed for the 2002 tax year totaling \$13,028.85.<sup>19</sup> The Protestant refinanced her residence in order to get the tax warrant released.<sup>20</sup> The Division would only release the tax warrant if the “Tax Liability”<sup>21</sup> was paid in full for the “Liability Period.”<sup>22</sup> In conjunction with

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<sup>14</sup> See copy of MOU and “Addendum” to MOU filed herein.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Division’s Exhibit A.

<sup>18</sup> OKLA. ADMIN. CODE § 710:1-3-45 (July 12, 1993), which states in pertinent part:

“Tax liability” means delinquent taxes and tax amounts determined as a deficiency, and includes all penalties, interest, service charges and fees accrued and accruing in relation thereto.

<sup>19</sup> The court file contains an audit packet, which was forwarded by the Division as part of the protest file on this matter. The Administrative Law Judge is taking judicial notice of the materials contained in the court file to complete the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (July 11, 1996). An electronic copy of Tax Warrant ##### is contained in the court file.

<sup>20</sup> The Protestant states, “I wanted to pay the tax debt and hold the penalty and interest until I could get all or part of it waived at which time I would pay the amount that was not waived. I was informed at that time that I would have to pay the entire amount of the tax debt, penalty and interest in order to the lien released on my home so that I could refinance.”

<sup>21</sup> See Note 18.

<sup>22</sup> OKLA. ADMIN. CODE § 710:1-3-45 (July 12, 1993), which states in pertinent part:

the refinance, the “Tax Liability” was paid in full (\$13,787.18) and the tax warrant was released of record on December 3, 2007.<sup>23</sup>

11. On or about December 15, 2007, the Division received a letter from the Protestant requesting a waiver of the penalty and interest previously paid to obtain the release. The Protestant’s reason for requesting the waiver is summarized on the Division’s Waiver Request Worksheet as, “Taxpayer had borrowed money to pay the taxes, penalty and interest. This summer she had to borrow \$5000.00 to go to Japan and go to her mother’s funeral. Taxpayer would like to have the penalty and interest refunded to help her get her finances in order.” The Division notes on the worksheet that it recommended to the Tax Commission to “Waive \$5,000.00 of penalty and interest due to financial condition. Will result in a refund.”<sup>24</sup>

12. On April 22, 2008, the Tax Commission granted a waiver of penalty and interest totaling \$5,000.00, as reflected by OTC Order No. 2008-04-22-07.<sup>25</sup>

13. On April 29, 2008, the Division mailed notice to the Protestant by letter of the Tax Commission’s action and enclosed a certified copy of OTC Order No. 2008-04-22-07.<sup>26</sup>

14. On April 17, 2008, the IT Division received a levy from the IRS by e-mail, which included a copy of the Memorandum and SITLP electronic data file, which contained the Protestant’s name, address, Social Security Number, and the liability (\$70,512.10) owed to the IRS. On April 21, 2008, the SITLP electronic data file was loaded on the Tax Commission intercept system. On April 30, 2008, the Tax Commission Warrant Intercept System reported a “Notice of Available Fund” for \$5,000.00, pursuant to the IRS levy.<sup>27</sup> On May 5, 2008, the SITLP electronic data file expired by the terms of the MOU and Addendum.<sup>28</sup>

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“Liability period” means the reporting period of a delinquent tax or tax liability, or, in the case of tax liabilities determined as a deficiency, all reporting periods included in the assessment of such deficiency. For purposes of determining the earlier of two or more liability periods, the beginning date of each liability period is used.

<sup>23</sup> See Note 18.

<sup>24</sup> Division’s Exhibit B and Exhibit C.

<sup>25</sup> Division’s “Hearing” Exhibit C. SUPERVISOR testified the \$5,000.00 was paid by the Protestant, as part of the tax, penalty, and interest paid to the Tax Commission to get the tax warrant released. The Division treated the monies as a refund of the overpayment of penalty and interest, pursuant to the waiver granted by the Commissioners.

<sup>26</sup> Division’s Exhibit D.

<sup>27</sup> Division’s “Hearing” Exhibit E.

<sup>28</sup> Division’s “Hearing” Exhibits D and E. Testimony of ANALYST.



2. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.<sup>33</sup>

3. A tax warrant issued by the Oklahoma Tax Commission shall only be released by the Commission after a determination by the Warrant Office of the Account Maintenance Division of the Oklahoma Tax Commission<sup>34</sup> that:

- (1) The tax, penalty and interest to date has been paid in full.
- (2) The penalty imposed by law and all other fees authorized by law have been paid in full.
- (3) Such release shall be processed under Commission procedures, after clearance by the Warrant Office of the Account Maintenance Division.

4. "Involuntary payment" means any payment received by the Commission as a result of or in connection with any distraint, levy, seizure, attachment or garnishment, or any other legal proceeding or administrative action wherein the Commission seeks to collect or enforce the collection of a tax liability or to file a claim therefor. Such proceedings and actions include, but are not limited to, bankruptcy proceedings, *the filing and forwarding of tax warrants* directing the levy and sale of property, and any administrative action or proceeding wherein the Commission proposes to revoke, cancel, suspend or deny any license, permit or privilege because of an outstanding "Tax Liability." Payments made pursuant to an installment or "payout" agreement entered into as a result of or subsequent to the institution of any of the above collection measures are deemed involuntary payments.<sup>35</sup>

5. The Protestant requested the waiver of penalty and interest pursuant to Section 220(A) of Title 68,<sup>36</sup> which states as follows, to-wit:

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furtherance of the collection of the debt or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act.

*See* OKLA. STAT. ANN. tit. 68, § 208 (West 2001). *See also* OKLA. ADMIN. CODE § 710:50-11-7 (June 11, 2005).

<sup>33</sup> OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2001). *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

<sup>34</sup> OKLA. ADMIN. CODE § 710:1-3-54 (June 25, 1999).

<sup>35</sup> OKLA. ADMIN. CODE § 710:1-3-45 (July 12, 1993).

<sup>36</sup> OKLA. STAT. ANN. tit. 68, § 220 (West Supp. 2008). *See* OKLA. ADMIN. CODE § 710:1-5-12 (June 25, 1999), which states:

Waiver of interest or penalty associated with a tax assessment or failure to file a return or report is within the discretionary authority of the Commission pursuant to the provisions of 68 O.S. §220. Requests for waiver of penalty or interest should be in writing, and addressed to the division which originated the tax assessment or liability notification.

A. The interest or penalty or any portion thereof ordinarily accruing by reason of a taxpayer's failure to file a report or return or failure to file a report or return in the correct form as required by any state tax law or by this Code or to pay a state tax within the statutory period allowed for its payment may be waived or remitted by the Oklahoma Tax Commission or its designee provided the taxpayer's failure to file a report or return or to pay the tax is satisfactorily explained to the Tax Commission or such designee, or provided such failure has resulted from a mistake by the taxpayer of either the law or the facts subjecting him to such tax, or inability to pay such interest or penalty resulting from insolvency.

6. Waiver of interest or penalty associated with a tax assessment or failure to file a return or report is within the discretionary authority of the Commission pursuant to the provisions of 68 O.S. §220. Requests for waiver of penalty or interest should be in writing, and addressed to the division which originated the tax assessment or liability notification.<sup>37</sup>

7. The provisions of Tax Commission Rules, Chapter 50 (Income) were promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250.1 et seq., and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to income.<sup>38</sup>

8. The monies at issue were transmitted by the Division pursuant to a levy received from the IRS on April 17, 2008, pursuant to the Memorandum, MOU, "Addendum" to MOU, and Section 205.2(I) of Title 68,<sup>39</sup> which states as follows, to-wit:

The Tax Commission may employ the procedures provided by this section in order to collect a debt owed to the Internal Revenue Service if the Internal Revenue Service requires such procedure as a condition to providing information to the Commission concerning federal income tax.

9. Pursuant to Section 205.2(A) of Title 68, "A state agency or a district court seeking to collect a debt or final judgment of at least Fifty Dollars (\$50.00) from an individual who has filed a state income tax return may file a claim with the Oklahoma Tax Commission requesting that the amount owed to the agency or a district court be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security number of the debtor."<sup>40</sup> The levy received from the IRS by the Tax Commission on April 17, 2008, complied with the provisions of Section 205.2(A), and the terms of the Memorandum, MOU, and "Addendum" to MOU.

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<sup>37</sup> OKLA. ADMIN. CODE § 710:1-5-12 (June 25, 1999).

<sup>38</sup> OKLA. ADMIN. CODE § 710:50-1-1.

<sup>39</sup> OKLA. STAT. ANN. tit. 68, § 205.2(I) (West Supp. 2008).

<sup>40</sup> OKLA. STAT. ANN. tit. 68, § 205.2(A) (West Supp. 2008).

10. Upon receiving a claim from a state agency or a district court, the Tax Commission shall notify the agency or the district court whether there are funds available to pay the claim. Provided, the Tax Commission need not report available funds of less than Fifty Dollars (\$50.00). The state agency or the district court shall send notice to the debtor by regular mail at the last-known address of the debtor as shown by the records of the Tax Commission when seeking to collect a debt not reduced to final judgment. The state agency or the district court shall send notice to the judgment debtor by first class mail at the last-known address of the judgment debtor as shown by the records of the Tax Commission when seeking to collect a final judgment. The notice shall state:

- a. that a claim has been filed,
- b. the basis for the claim,
- c. that such state agency or district court has applied to the Tax Commission for any portion of the tax refund due to the debtor which would satisfy the debt or final judgment in full or in part,
- d. that the debtor has the right to contest the claim by sending a written request to the state agency or the district court for a hearing to protest the claim and if the debtor fails to apply for a hearing within sixty (60) days after the date of the mailing of the notice, the debtor shall be deemed to have waived his or her opportunity to contest the claim. Provided, if the claim was filed by the Department of Human Services, the notice shall state that the debtor must contest the claim by sending a written request to the Department within thirty (30) days after the date of the mailing of the notice,
- e. that a collection expense of five percent (5%) of the gross proceeds owed to the state agency or district court shall be charged to the debtor and withheld from the refund upon final determination of the debt or final judgment at the hearing or upon failure of the debtor to request a hearing, and
- f. if the taxpayer settles the outstanding debt or final judgment with the agency or district court before the time to contest the claim expires, the agency or the district court shall notify the Tax Commission in writing or by electronic media that the claim has been released.<sup>41</sup>

The “Notice of Refund Disbursal” mailed to the Protestant by the Division on May 1, 2008, complied with the provisions of Section 205.2(A)(2), the MOU, and the “Addendum” to MOU.

11. Section 6331 of the United States Code states, “The term ‘levy’ as used in this title includes the power of distraint and seizure by any means.”<sup>42</sup>

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<sup>41</sup> OKLA. STAT. ANN. tit. 68, § 205.2(A)(2) (West Supp. 2008). There is also a provision when a “joint return” is filed, which provides for notice to the spouse. Notice was not sent to the Protestant’s spouse because the 2002 return was filed “Married Filing Separate.” See Note 17.

<sup>42</sup> 26 U.S.C. § 6331(b).

12. Section 6332 of the United States Code states, “Except as otherwise provided in this section, any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.”<sup>43</sup>

13. Section 6334 of the United States Code provides, “Notwithstanding any other law of the United States (including section 207 of the Social Security Act), no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).”<sup>44</sup> The waiver granted by the Tax Commission resulted in a refund of overpayment of interest and penalties, which is not listed as being exempt by subsection (a) of Section 6334.

14. Any term used in the Oklahoma Income Tax Code (“Oklahoma Code”) shall have the same meaning as when used in a comparable context in the Internal Revenue Code (“IRC”), unless a different meaning is clearly required.<sup>45</sup>

15. The provisions of Tax Commission Rules, Chapter 50 (Income), Subchapter 12 have been promulgated to implement and administer, in conjunction with the IRS, the Treasury Offset Program (“TOP”) authorized by Section 6402(e) of the United States Code<sup>46</sup> and Section 285.8 of the Code of Federal Regulations.<sup>47</sup> TOP is the federal counterpart of SITLP for Individuals, which is the initiative between the Tax Commission and the IRS for the collection of state tax liabilities owed by individuals to the State of Oklahoma.<sup>48</sup>

16. For purposes of TOP, “Tax Refund Payment” means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits for any liabilities for any Federal tax on the part of the person who made the overpayment.<sup>49</sup>

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<sup>43</sup> 26 U.S.C. § 6332(a).

<sup>44</sup> 26 U.S.C. § 6334(c).

<sup>45</sup> OKLA. STAT. ANN. tit. 68, § 2353(3) (West 2008).

<sup>46</sup> 26 U.S.C. § 604(e).

<sup>47</sup> OKLA. ADMIN. CODE § 710:50-12-1 (June 11, 2005).

<sup>48</sup> Id.

<sup>49</sup> OKLA. ADMIN. CODE § 710:50-12-2(C) (June 11, 2005).

17. In all proceedings before the Oklahoma Tax Commission, the taxpayer has the burden of proof to show the action of the Commission is incorrect, and in what respects.<sup>50</sup>

### ISSUE

Are the monies at issue in this matter subject to levy by the IRS through SITLP?

### DISCUSSION

As the Division points out in its brief, this is a case of first impression and presents a novel question of law. Neither the *Uniform Tax Procedure Code*<sup>51</sup> nor any Oklahoma Tax Rule contains a definition of “Re fund” or “Income Tax Refund.”

The Protestant maintains there was not a levy or federal tax lien<sup>52</sup> in place by the IRS and the funds are not subject to levy because “...these funds are not a true tax refund. The funds are a settlement for the waived amount.”<sup>53</sup>

However, the record reflects the IRS did have a levy in place on April 17, 2008, pursuant to the SITLP for Individuals.<sup>54</sup>

The Division asserts it acted in accordance with the federal statutes cited herein, the Memorandum, MOU, and “Addendum” to MOU.

Although SITLP for Individuals does not contain a definition of what constitutes a “refund,” the provisions of TOP contain the following definition:

“Tax refund payment” means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits for any liabilities for any Federal tax on the part of the person who made the overpayment.<sup>55</sup>

By Tax Commission Rule, “Any term used in the Oklahoma Income Tax Code shall have the same meaning as when used in a comparable context in the Internal Revenue Code, unless a

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<sup>50</sup> OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999). See *Enterprise Management Consultants, Inc. v. Oklahoma Tax Com’n*, 1988 OK 91, 768 P.2d 359.

<sup>51</sup> See Note 2.

<sup>52</sup> Protestant’s Hearing on Memorandum at 2. Sometime after the Division mailed the “Notice of Refund Disbursal,” the IRS filed a Federal Tax Lien, which is irrelevant to this case. A Federal Tax Lien is a claim used as security for the federal tax debt, while a levy actually takes a taxpayer’s property to satisfy the federal tax debt.

<sup>53</sup> Division’s Exhibit G.

<sup>54</sup> See Notes 27 and 28.

<sup>55</sup> See Note 49.

different meaning is clearly required.”<sup>56</sup> TOP and SITLP for Individuals are opposite sides of the same coin. Both programs are initiatives used by the Tax Commission and IRS to collect state and federal tax liabilities owed by individuals.

So, for purposes of SITLP for Individuals, “Tax refund payment” shall mean any overpayment of state taxes to be refunded to the person making the overpayment after the Tax Commission makes the appropriate credits for any liabilities for any State Tax on the part of the person who made the overpayment.

This definition includes the monies at issue in this matter, which is a refund of the overpayment of penalty and interest, resulting from the waiver granted by the Tax Commission, so TOP and SITLP for Individuals are in parity.<sup>57</sup>

The Division correctly intercepted the monies in question pursuant to Section 205.2 of Title 68, Memorandum, MOU, “Addendum” to MOU, and the federal statutes cited herein.

### **DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, the protest to the Division’s “Notice of Disbursal” of the funds attributable to the overpayment of penalty and interest totaling \$5,000.00 for the 2002 tax year should be denied.

### **OKLAHOMA TAX COMMISSION**

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.

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<sup>56</sup> See Note 45.

<sup>57</sup> This is also consistent with the Division’s second proposition in its August 8<sup>th</sup> Memorandum Brief at 4. See OKLA. STAT. tit. 68, § 217(G) (West Supp. 2004).