JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2015-03-17-16 / NON-PRECEDENTIAL**
ID: **P-10-1365-H**
DATE: **MARCH 17, 2015**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NONE TAKEN**

ORDER

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 Recommendation made and entered by the Administrative Law Judge on the 5th day of January, 2015, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED.

FINDINGS, CONCLUSIONS AND RECOMMENDATION

NOW on this 5th day of January, 2015, the above-styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. LLC d/b/a BUSINESS 1 and BUSINESS 2, and MEMBER, as a Member of LLC d/b/a BUSINESS 1 and BUSINESS 2, and as an Individual ("Protestants") appear through attorney, ATTORNEY, FIRM. The Field Audit Section, Compliance Division ("Division"), Oklahoma Tax Commission appears through OTC ATTORNEY, First Deputy General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On October 18, 2010, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[1] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[2] On October 20, 2010, the Protestants were advised that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-10-1365-H.[3] The letter also advised that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[4] The ALJ has omitted the Procedural History from October 21, 2010 through August 26, 2012.

---

[1] OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2014).

[2] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[3] Unless otherwise noted herein, the ALJ notified the parties by letter.

[4] *Id.*

On August 27, 2012, the ALJ issued the Order to Revise Sales Tax Assessments in Conformance with OTC Order No. 2012-07-17-06, as follows, to-wit:

- The Compliance Division shall revise the assessment of sales taxes against the Protestants in a manner not inconsistent with OTC Order No. 2012-07-17-06 (July 17, 2012), as more fully set forth therein.

- The Protestants shall be afforded sixty (60) days to respond to such revised assessments in accordance with Section 221(C) of Title 68.

The ALJ omits the Procedural History from August 28, 2012 through November 15, 2012.

On November 16, 2012, MEMBER filed a Substitution of Counsel and Entry of Appearance as the Protestants' Counsel of record.[5] The ALJ omits the Procedural History from November 17, 2012 through February 27, 2014.

On February 28, 2014, the Division filed its Notice of Third Sales Tax Revision ("Third Revision"), with work papers attached thereto.

On March 4, 2014, the ALJ acknowledged receipt of the Division's Third Revision, struck the "proposed" scheduling order due March 11, 2014, and directed the Protestants to file a response to the Division's Third Revision on or before April 29, 2014.

On April 30, 2014, the Protestants filed their Objection to Notice of Third Sales Tax Revision, with Exhibits A through C, attached thereto.

On May 1, 2014, the ALJ issued the Order Directing Division to File Response to Protestants' Objection to Notice of Third Sales Tax Revision or the Parties to File Proposed Scheduling Order, as more fully set forth therein. On May 30, 2014, the Division filed its Response to Protestants' Objection to Notice of Third Sales Tax Revision, as more fully set forth therein.

On June 16, 2014, the parties filed a Joint Proposed Scheduling Order. On June 19, 2014, the ALJ issued the Scheduling Order setting this matter for hearing on October 21, 2014, at 9:30 a.m. On June 20, 2014, the Protestants filed their In[i]tial Witness and Exhibit Lists. On June 23, 2014, the Division filed its Preliminary Witness and Exhibit List.

On August 7, 2014, the Division filed its Final Witness and Exhibit List.

On October 14, 2014, the Division filed its Position Letter.[6] On October 14, 2014, the Protestants filed their Position Statement and Brief in Support, with Exhibits 1 through 31,

[5] The ALJ deems this filing as a "Withdrawal of Counsel" from ATTORNEY 3.

attached thereto. On October 20, 2014, ATTORNEY filed an Entry of Appearance as Counsel for the Protestants.

On October 21, 2014, at 9:30 a.m. the ALJ conducted a closed hearing[7] as scheduled. The parties stipulated to Exhibits A through Z, AA, BB, CC, and DD. Counsel made Opening Statements on behalf of the parties. The Division stipulated that its Third Revision contained a mathematical error in work papers for BUSINESS 1'S Grocery Category (January 2009).[8] The Protestants called MEMBER, as its first witness, to testify about business practices at BUSINESS 1 and BUSINESS 2, her experience in the convenience store industry, and the audit. During MEMBER'S testimony, WITNESS, a witness of the Protestants entered the courtroom. The Division invoked the Rule of Sequestration.[9] The ALJ duly instructed WITNESS, who left the courtroom, until the Protestants called him to testify. The Protestants called WITNESS, as their second witness, who testified about the business practices at BUSINESS 2, and his employment during the Audit Period.[10] The Protestants called ADMINISTRATOR, Administrator ("Administrator"),[11] Compliance Division, Oklahoma Tax Commission, who testified about the conduct of the audit, the audit methodology, and as custodian of the Division's records. The Protestants identified and offered Protestants' Exhibit 27, which the ALJ admitted into evidence, with any objections noted for the record. The Protestants' identified and offered Protestants' Exhibit 31, which the ALJ did not admit into evidence, with objections noted for the record.[12] After Administrator's testimony, the Protestants rested their case, along with the Division, due to the extensive questioning of Administrator. The Division waived its Closing Argument. ATTORNEY made the Closing Argument on behalf of the Protestants. At the conclusion of the hearing, the ALJ held the record open in this matter in order for the Division to file a spreadsheet, which reflects the breakdown of "Hot Food" and "Refills" in the Grocery Category on or before November 5, 2014. On October 21, 2014, the ALJ memorialized the announcement by letter. On October 31, 2014, the Division filed its Submission of Spreadsheets Reflecting Breakdown of "Hot Food" and "Refills," with attachments thereto.[13]

---

[6] The Division did not attach Exhibits A through Z and AA through BB.

[7] The Protestants, through ATTORNEY, invoked their right to a confidential hearing as provided by the provisions of OKLA. STAT. ANN. tit. 68, § 205 (West 2014).

[8] *See* Division's Exhibit Z(B) and Note 62, *infra*. The Third Revision work papers reflect BUSINESS 1'S Grocery Sales for January 2009 as $41,641.19. The decimal point was off, reflecting Grocery sales for January 21, 2009 as $33,499.79, instead of $335.78. BUSINESS 1'S correct Grocery Sales for January 2009 is $8,477.18 *See also* Protestants' Position Statement and Brief at 13.

[9] OKLA. STAT. ANN. tit. 12, § 2615 (West 2009).

[10] *See* Notes 65-66, *infra*.

[11] Oklahoma Tax Commission has employed Administrator approximately Twenty-Six (26) years. Administrator has occupied her current position for approximately Two and One-Half (2½) years. Prior position was as a Supervisor. Administrator's Testimony.

[12] The Division objected to Protestants' Exhibit 31, because Protestants did not list the exhibit on the Protestants' Final Exhibit List. The ALJ sustained the Division's objection.

[13] The ALJ identified the Division's schedules for BUSINESS 1 and BUSINESS 2 as ALJ Exhibits 1 and 2,

On November 4, 2014, the ALJ acknowledged receipt of the Division's filing, closed the record, and submitted this case for decision on October 31, 2014, with the *Findings, Conclusions of Law and Recommendations* to issue on or before January 5, 2015.

FINDINGS OF FACT

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

1. On December 26, 2007, LLC ("LLC")[14] filed a Business Registration Application ("Application") to operate a convenience store located at ADDRESS 1 ("BUSINESS 1"). The Application reflected the first date of sale as January 1, 2008, and the members as LLC as MEMBER 2 and MEMBER.[15]

2. On July 10, 2008, LLC filed an Application to operate a convenience store located at ADDRESS 2 ("BUSINESS 2"). The Application reflected the first date of sale as July 1, 2008, and the sole member of LLC as MEMBER ("Sole Member").[16]

3. From January through March 2008, Protestants engaged the service of ACCOUNTING FIRM 1. From April 2008 through September 30, 2009, the Protestants engaged the services of ACCOUNTING FIRM 2 for accounting, bookkeeping and reporting services, including the production of monthly profit and loss statements.[17]

4. During High School, Sole Member worked at her parents' convenience store in Moore. During 2008, the Sole Member was a full-time law student. Sole Member worked in BUSINESS 1 in the mornings or when not in school. MEMBER 2 was no longer a member of LLC, but remained as the "Manager" of BUSINESS 1 and BUSINESS 2.[18]

5. LLC does not maintain an employee manual. Sole Member trained most of the employees. BUSINESS 1 and BUSINESS 2 each have one (1) register only, with pre-programed keys for such categories as groceries, 3.2 beer, hot foods, refills, fuel, tobacco, etc. The 3.2 beer

---

respectively, and admitted both exhibits into evidence.

[14] The Administrative Law Judge is taking judicial notice of the Oklahoma Secretary of State's website at https://www.sos.ok.gov to complete the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999). LLC'S formation date is December 26, 2007.

[15] Stipulated Exhibit A.

[16] Stipulated Exhibit B.

[17] Sole Member's Testimony.

[18] *Id.* The ALJ is taking judicial notice of a copy of the Agreement of Withdrawal as Member from LLC contained in the court file. *See* Note 14, *supra.*

key requires the employee to input the purchaser's driver's license information to reflect their age to legally purchase 3.2 beer.[19]

6. On October 5, 2009, the Division mailed a letter notifying LLC of its selection for an audit.[20]

7. On October 12, 2009, the Division faxed a records request, along with a List of Members, Service Agent Authorization, Taxpayer's Power of Attorney, Statute of Limitations Waiver Agreement for July 11, 2007 through September 30, 2009.[21]

8. On October 20, 2009, the Division faxed an additional records request to LLC.[22]

9. In late October 2009, LLC, through it representative, REPRESENTATIVE, provided the Division with an executed Power of Attorney ("POA"), executed by Sole Member, Service Authorization Form, List of Principal Members, an Audit Methodology Agreement (Sample-Projection), and some Records Request, as per the Division's request.[23]

10. On November 6, 2009, the Division emailed an additional records request to Sole Member.[24]

---

[19] *Id. See* Note 86, *infra.*

[20] Stipulated Exhibit C.

[21] Stipulated Exhibit D. The Records Request included:

1) Sales and Use Tax Reports with all backup documentation.
2) Bank Statements for all accounts for the audit period. 07/11/08 through 09/30/09
3) Purchase Journal and purchase invoices.
4) List of Suppliers/Wholesalers
5) Register tapes, Z-tapes and sales invoices
6) Payroll Journal, 941 Reports, Withholding Reports, W-2's, W-4's, 1099's for the audit period.
7) Sales Journal for the entire audit period. Report or electronic file should include the following:

Invoice Number	Product(s)/Service
Date	Unit Price
Customer Number	Sales/Use Tax
Sold to Customer Name	Total Price

8) Federal and State Income tax returns for 2008
9) General Ledger, income statements and balance sheets.
10) Copy of chart of accounts

Additional records may be needed to complete the audit
*Please circle the numbered items for records made available for this audit

[22] Stipulated Exhibit E.

[23] Stipulated Exhibit F.

[24] Stipulated Exhibit G. The Division sent a Supplier's Contact Approval form.

11. On November 9, 2009, by facsimile, the Division provided a Statute of Limitations Waiver Agreement to Sole Member,[25] and requested a copy of the Income Statement for LLC for December 1, 2008 to December 31, 2008.[26]

12. On November 25, 2009, the Division received LLC'S executed form To Establish Markup Percentages for Use in Sales Tax Audit for BUSINESS 2 and BUSINESS 1.[27]

13. On November 26, 2009, the Division received LLC' Supplier Contact form.[28]

14. On December 2, 2009, the Division acknowledged receipt of records requested from LLC, as more fully set forth therein.[29]

15. On November 30, 2009, by letter, Sole Member advised that the November 8, 2008 sales journal for BUSINESS 2 could not be located.[30]

16. Between December 14, 2009 and January 5, 2010, the Division requested additional information or clarification from LLC, as more fully set forth therein.[31]

17. On December 14, 2009 and December 16, 2009, the Division and Sole Member exchanged e-mails, which state in pertinent parts,[32] as follows, to-wit:

> Division Auditor:
>
> > How did your employees report items removed from stock? I don't have anything I could find, it wasn't on the Daily Sales Report. The February Operating Statement from PBA had an amount but that was all.
>
> Will you or REPRESENTATIVE] please fax a copy to me?

[25] Stipulated Exhibit H.

[26] Stipulated Exhibit I.

[27] Stipulated Exhibit J.

[28] Stipulated Exhibit K.

[29] Stipulated Exhibit L.

[30] Stipulated Exhibit M.

[31] Stipulated Exhibit N.

[32] *See* Division's Brief filed August 8, 2011, Exhibit N.

Sole Member:

> For the most part, my employees do not report minor spillage because the value is minimal or we are able to return those items to the vendor. The only exceptions are when we check for outdated stock and mass remove items from the shelves.
> Please let m[e] now if your need anything else. Thank you for your patience.

18. The Division maintained a running list of contacts with Sole Member.[33]

19. On April 10, 2010, the Division prepared an audit write-up and audit work papers.[34]

20. The Division was unable to calculate taxable sales using LLC'S records. The Division utilized the Convenience Store Gross Sales Computation ("CSGS Computation") to calculate LLC'S taxable sales from January 1, 2009 to September 30, 2009 ("Audit Period") based upon LLC'S 3.2 beer purchases.[35]

21. On May 28, 2010, the Division issued proposed sales tax assessments ("*Original Assessments*") for the Audit Period against the Protestants,[36] as follows, to-wit:

Tax Due:	$126,907.76
Interest @ 15% through 07/31/2010:	$20,892.56
Tax & Interest due within 30 Days:	$147,800.32
30 day delinquent Penalty @ 10%:	$12,690.77
Tax, Interest & Penalty due after 30 Days:	$160,491.09

22. On July 27, 2010, by facsimile, the Division received two (2) timely requests for extensions of time to file a protest to September 24, 2010, from ATTORNEY 2, the Protestants' attorney.[37]

23. On July 27, 2010, the Division granted the extension to September 25, 2010.[38]

---

[33] Stipulated Exhibit O.

[34] Stipulated Exhibits P and Q.

[35] *Id. See* Stipulated Exhibit R.

[36] Stipulated Exhibit S. The Division's assessments cover BUSINESS 1 and BUSINESS 2. The ALJ is taking judicial notice of the Division's assessment against Sole Member contained in the court file. A copy of the assessment is not part of Stipulated Exhibit S. *See* Note 14, *supra.*

[37] Stipulated Exhibit T.

[38] Stipulated Exhibit U.

24. On September 21, 2010, the Division received timely filed protests to the proposed sales tax assessments against the Protestants for the Audit Period, as more fully set forth therein.[39]

25. On August 5, 2011, the Division adjusted the proposed sales tax assessments ("*Revision*") based upon documents provided by the Protestants during discovery and three (3) of LLC'S suppliers, SUPPLIER 1, SUPPLIER 2, and SUPPLIER 3,[40] as follows, to-wit:

Tax:	$84,014.87
Penalty:	$8,401.48
Interest through 09/30/2011:	$28,759.15
Total:	$121,175.50

26. On August 12, 2011, pursuant to a teleconference, the ALJ issued an Order Striking Hearing and Scheduling Order.[41]

27. On September 7, 2011, the Protestants filed a *Motion for Summary Disposition* ("*MSD*"). On September 22, 2011, the Division responded to the *MSD*.

28. On November 1, 2011, the ALJ issued the *Order Sustaining Motion for Summary Disposition in Part and Denying in Part*,[42] as follows, to-wit:

> **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that, after a review of the Protestants' Motion, the Division's Response, and the Protestants' Reply, the Protestants' Motion is sustained in part and denied in part, as follows, to-wit:
>
> 1. On August 8, 2011, the Division issued an "Amended" and/or "Revised" assessment against the Protestants, which is attached to the Division's Brief as Exhibit W, thereby abandoning the use of the NACS Computation in favor of a methodology utilizing the Protestants' records.

[39] Stipulated Exhibit V.

[40] Stipulated Exhibit W.

[41] Stipulated Exhibit X. On August 8, 2011, the Division filed its Brief. Statement of Facts #25 recited, "The amount of tax, interest and penalty calculated by Division based upon LLC'S records adjusted by the percentage of missing invoices is $121,175.50, inclusive of penalty and interest accrued through September 30, 2011. The Order further stated, "The Division's revision using the Protestants' records and a new audit methodology does not comply with the Division's duty to provide adequate notice in order for the Protestants to have the opportunity to present evidence and argument as expressed in the Grasso case." *See Grasso v. Oklahoma Tax Com'n*, 2011 OK CIV APP 37, 249 P.3d 1258. (Citations omitted.)

[42] The ALJ is taking judicial notice of the Order contained in the court file. *See* Note 14, *supra.*

> 2. "'Amended' proposed assessment[s] commences running of new, sole, and separate limitations periods under both statutory section authorizing proposed assessments…" The Protestants have sixty (60) days from the date of this order to file an "Amended" and/or "Revised" protest to the Division's "Revised" and/or "Amended" sales tax assessments (on or before Tuesday, January 3, 2012). The parties are to advise if the captioned matter has been settled or if the captioned matter has not been settled, the parties are to submit a proposed scheduling order on or before January 13, 2012.

29. On February 13, 2012, at the Division's request, the ALJ issued a *Subpoena Duces Tecum* to LLC,[43] in pertinent parts, as follows, to-wit:

> You are hereby directed to provide copies, **not previous provided**, of the following:
>
> > All records including but not limited to retail price list, product cost list, list of all vendors and suppliers, **all** purchase invoices, all daily sales sheets, all daily cash register receipts, all monthly profit and loss statements, product mix list, bank statements for all bank accounts, bank deposits for all bank accounts, check stubs/copies for all bank accounts, all federal income tax returns, all state income tax returns, all general ledgers, list of free and/or complimentary items given to customers, all insurance claims reports, and all police reports, relating to LLC of Oklahoma City, Oklahoma for the period covering January 1, 2008 through September 30, 2009. (Emphasis original.)

30. On August 27, 2012, the ALJ issued the *Order to Revise Sales Tax Assessments in Conformance with OTC Order No. 2012-07-17-06 (July 17, 2012)*, in pertinent part,[44] to-wit:

> **THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED** as follows, to-wit:

[43] *Id.*

[44] *Id.* (Footnotes omitted.)

- The Compliance Division shall revise the assessment of sales taxes against the Protestants in a manner not inconsistent with OTC Order No. 2012-07-17-06 (July 17, 2012), as more fully set forth therein.

- The Protestants shall be afforded sixty (60) days to respond to such revised assessments in accordance with Section 221(C) of Title 68.

31. On September 25, 2012, the Division filed its *Notice of Sales Tax Revision*,[45] as follows, to-wit:

Sales Tax:	$84,014.87
Penalty:	$8,401.48
Interest through 12/31/2012:	$44,572.37
Total:	$136,988.72

32. On November 20, 2012, the ALJ issued an Order granting the Protestants' Motion to Extend Time to File Response to Revised Assessment on or before January 18, 2013.[46]

33. On January 18, 2013, the Protestants filed their Objection to Notice of Sales Tax Revision, with Exhibits A through C attached thereto.[47]

34. On February 27, 2013, the Division filed its Reply to Protestants' Objection to Notice of Sales Tax Revision, as more fully set forth therein.[48]

35. On October 22, 2013, the Division filed its *Second Notice of Sales Tax Revision*, with attachments thereto, using the Protestants' sales records, invoices and other financial documents,[49] as follows, to-wit:

Sales Tax:	$17,886.01
Penalty:	$1,788.61
Interest through 11/30/2012:	$11,546.18
Total:	$31,220.80

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] Stipulated Exhibit Y.

36. On February 11, 2014, the ALJ issued an Order Granting Protestants' Motion to Extend Time to File Response to Second Revised Assessment on or before February 24, 2014.[50]

37. On February 24, 2014, the Protestants filed their Objection to Notice of [Second] Sales Tax Revision, as more fully set forth therein.[51]

38. On February 24, 2014, the Protestants filed their Objection to Notice of Second Sales Tax Revision, as more fully set forth therein.[52]

39. On February 28, 2014, the Division issued its *Notice of Third Revision* ("*Third Revision*"), based upon the Protestants' Z-Tapes, Daily Sheets, and information received with the Protestants' Objection to Second Notice of Sales Tax Revision,[53] as follows, to-wit:

Sales Tax:	$7,210.35
Penalty:	$721.06
Interest through 03/31/14:	$5,214.45
Total:	$13,145.86

40. On April 30, 2014, the Protestants filed their Objection to Notice of Third Sales Tax Revision, in pertinent parts,[54] as follows, to-wit:

…

> 5. Protestants' daily sales records show $18,990.11 in receipts for newspapers and periodicals. The Division then decided to apply NACS 29.5 % mark up to Protestants' invoices without verifying the correct markup for periodical's as applied to Protestant' business.[55] The Division incorrectly disallowed $20,680.70 in periodical sales for the period. Protestants' sales were accurately records [sic] in Protestants' daily z-tapes and corroborated by monthly sales records. Protestants should appropriately be allowed

[50] *Id.*

[51] *See* Note 14, *supra*. The ALJ issued an Order granting the Protestants an extension to file their Objection to January 18, 2013.

[52] *Id.*

[53] Stipulated Exhibit Z. The Division used the Protestant's Daily Sheets and Z-Tapes adjusting for any amount not included in the original Daily Sheets, such as "Hot Food" and "Refills." *See* Protestants' Position Statement at 10.

[54] Stipulated Exhibit AA.

[55] Protestants provided detailed Product Cost & Markup for all categories, but Newspapers and Magazines. *See* Note 27, *supra*. The Protestants provided the Division with invoices reflecting the purchase of newspapers and magazines totaling $14,692.54 multiplied by the NACS markup of 29.25% equals $18,990.10. Administrator's Testimony. *See also* Stipulated Exhibits Y(B) and Z(B).

$39,670.81 in periodical sales as shown on Protestants' contemporaneously recorded z-tapes and sales records.

6. The Division incorrectly adjusted Protestants' *grocery and beer* sales based on the Division's review of z[-]tapes to $698,603.17 as opposed to the reported taxable sales of $654,757.00. "Hot Food, Refills added, corrections +/- made to any number that was incorrect" according to the Division's Exhibit B of the Third Revision. Protestants did not offer for sale any hot food at either location during the audit period. The Division's first auditor, Mr. AUDITOR 1, visited both locations to verify sales, as well as an additional OTC representative was later sent out to the locations to verify markups. There have not been any allegations previously of any hot food sales until the Third Revision. Protestants' sales records and z[-]tapes have no category for hot foods due to no hot food being offered for sale on the premises.[56] However, Protestants admit that nominal sales of refills were inadvertently left out of total taxable sales and should have been included in Protestants' taxable sales calculation.

7. Lastly, Protestants disagrees with the Division's allegation that $21,237.49 should have been added to beer sales. As previously noted in paragraph 6 of this Protest, the Division has already accounted for *grocery and beer* sales and adjusted for any difference in beer and grocery discrepancies. Protestants' employees often rang up beer as grocery because it was more convenient. During busy time, the employees often did not have time to ring up beer sales using the beer category due to the way the register systems were set up at the time. Both locations were branded and the register systems were pre-programmed by fuel distributors to meet the compliance requirements of each fuel brand. Grocery is always the default method for taxable items. Protestants were required to upgrade register systems and kept the old register system for production to the Division and the Court to show the additional steps required to use the beer button versus the ease of pressing the grocery button should the same be necessary. Moreover, Protestants are not aware of any law or rule requiring registers to separately keep track of beer from general taxable grocery sales at the time of the audit period. Therefore, the Division's adjustment to add $21,237.49 to beer sales as unreported sales should be disallowed as double counting as the alleged sales were already counted in the calculations shown in paragraph 6.

[56] *See* Protestants' Position Statement at 13. "Also discovered through the audit process was that clerks, from time to time, punched in sales in categories that didn't exist in store such as hot foods."

…

41. On May 1, 2014, the ALJ issued an Order Directing Division to File Response to Protestants' Objection to Notice of Third Sales Tax Revision or the Parties to File Proposed Scheduling Order.[57]

42. On May 30, 2014, the Division filed its Response to Protestants' Objection to Notice of Third Sales Tax Revision,[58] in pertinent parts, as follows, to-wit:

> Division's auditor reviewed the Objection and the records of Protestants upon which the Notice of Third Sales Tax Revision was based. The following issues and responses have been previously provided to Protestants' counsel:
>
> > The auditor identified the following three issues in Protestants' Objection to Notice of Third Sales Tax Revision:
> >
> > 1. Beer was rung up in the wrong category (grocery) on the z tape so tax was paid on beer and should be included as part of the assessment.
> > 2. Magazines were rung up correctly each time and, therefore, a deduction for the full amount shown on the z tapes for periodical sales should be given.
> > 3. "Hot food" was never sold so it shouldn't be taxed on the assessment.[59]
>
> Based on review of Protestants' records, the auditor reviewed responded to the issues as follows:
>
> > 1. It is inconsistent that the clerks, who didn't correctly ring up beer on the beer key, always rang up periodicals correctly.
> > 2. If actual invoices for periodicals and Profit & Loss Statement costs for periodicals (where no

[57] *Id.*

[58] Stipulated Exhibit BB.

[59] Sole Member testified that BUSINESS 1 and BUSINESS 2 did not sell "Hot Food." *See* Note 56, *supra*.

> actual invoice was produced) are combined, magazine costs were only about $18,000. Protestant was given credit for more purchases than should have been credited because a non-periodical item was left in periodical costs. Based upon costs, periodicals would have had to been sold at 200% markup to have made the sales on the Monthly Sales Sheets.
>
> 3. An example of some of the problems encountered between the z tapes and the Monthly Sales Sheets which are believed to be the basis for the monthly sales report is seen in the January 2009 BUSINESS 2 Monthly Sales Sheet and copies of some of the z-tapes that go with it. The z-tapes clearly show sales were made under the category 'hot food'. Also noted was that on the 17th, 'grocery' was shown as $284 on the Monthly Sales Sheet but the z-tape shown a net amount of $384.30.
>
> Based on the foregoing, Division does not intend to issue a Fourth Sales Tax Revision. …

43. In its Position Statement filed October 14, 2014, the Protestants noted that there was a mathematical error on the work papers for the *Third Revision*.[60] The Protestants state in pertinent part,[61] as follows, to-wit:

> Protestants original monthly sheets did not include categories where clerks punched sales in categories that were not picked up in the setup of the sheet such as refills for BUSINESS 1. Also discovered through the audit process was that clerks, from time to time, punched in sales in categories that didn't exist in store such as hot foods."

[60] *See* Note 8, *supra.*

[61] *See* Protestants' Position Statement at 13. (Footnotes omitted.) *See also* Note 56, *supra.*

44. On October 20, 2014, the Division prepared work papers to correct the mathematical error ("*Mathematical Error Correction*") brought to its attention by the Protestants in their Position Statement. The Division corrected BUSINESS 1'S Grocery Sales for January 21, 2009 from $33,499.79 to $335.78. This *Mathematical Error Correction* resulted in the following,[62] to-wit:

	Third Revision	*Mathematical Error Correction*
Total Taxable Sales	$698,503.17	$665,439.20
Reported Taxable Sales	$654,757.00	$654,757.00
Underreported Sales	$43,746.17	$10,682.20
Underreported Beer Sales	$21,237.49	$21,237.49
Disallowed Periodical Deduction	$20,680.70	$20,680.70
Total Underreported Sales	$85,664.36	$52,600.39
Sales Tax:	$7,210.35	$4,429.61
Penalty:	$721.06	$442.99
Interest:	$5,214.45	$3,641.80
Total:	$13,145.86	$8,514.40

45. The Protestants did not provide a Beginning or Ending Inventory for 3.2 beer for BUSINESS 1 or BUSINESS 2 during the Audit Period.[63] The Protestants did not maintain any written records of shoplifting, breakage, or spoilage for 3.2 beer or any other items during the Audit Period for either convenience store.[64]

46. During the Audit period, WITNESS worked at BUSINESS 2 from 4:00 p.m. to 10:00 p.m. ("Evening Shift").[65] WITNESS testified that there was shoplifting, breakage, and spoilage, but that Protestants did not maintain any written records. During the Evening Shift, WITNESS accepted vendor deliveries, including newspapers and magazines. WITNESS never paid vendors with cash, but paid the vendors with "prewritten" checks provided by the Protestants. During the Evening Shift, when it got busy, to save time, WITNESS skipped the 3.2 beer button on the register, and rang 3.2 beer sales as groceries.[66]

47. Protestants do not dispute that that invoices produced for Newspapers and Magazines for the Audit Period total $14,692.54.[67]

---

[62] Stipulated Exhibits CC and DD. *See* ALJ Exhibits 1 and 2. *See also* Note 8, *supra.*

[63] Sole Member testified the Division did not ask for a beginning or ending inventory for 3.2 beer.

[64] Sole Member's Testimony.

[65] WITNESS has over ten (10) years of convenience store experience. WITNESS' Testimony.

[66] *Id.*

[67] Sole Member's Testimony. Sole Member testified that numerous invoices were missing for the Audit Period, and although she did not try to get the missing invoices from vendors, such as The Oklahoman, that she has tried to get invoice in her representation of other convenience store owners without success.

CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.[68]

2. The Oklahoma Sales Tax Code ("Sales Tax Code") governs the collection and remittance of sales tax.[69] The Sales Tax Code levies "upon all sales,[70] not otherwise exempted…an excise tax of four and one-half percent (4.5%) of the gross receipts[71] or gross proceeds of each sale of…tangible personal property…"[72] Oklahoma Statutes authorize incorporated cities, towns, and counties to levy taxes as the Legislature may levy and collect taxes for purposes of state government.[73]

3. It shall be the duty of every tax remitter required to make a sales tax report and pay any tax under the Sales Tax Code[74] to keep and preserve suitable records of the gross daily sales together with invoices of purchases and sales, bills of lading, bills of sale and other pertinent records and documents which may be necessary to determine the amount of tax due hereunder and such other records of goods, wares and merchandise, and other subjects of taxation under the Sales Tax Code[75] as will substantiate and prove the accuracy of such returns. It shall also be the duty of every person who makes sales for resale to keep records of such sales which shall be subject to examination by the Tax Commission or any authorized employee thereof while engaged in checking or auditing the records of any person required to make a report under the

---

[68] OKLA. STAT. tit. 68, § 221(D) (West 2014).

[69] OKLA. STAT. ANN. tit. 68, § 1350 et seq. (West 2008).

[70] OKLA. STAT. ANN. tit. 68, § 1352(22)(a) and (b) (West 2008):

> "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this paragraph, including but not limited to:
>
> a. the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property,
>
> b. the disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing,
>
> …

[71] OKLA. STAT. ANN. tit. 68, § 1352(12) (West 2008).

[72] OKLA. STAT. ANN. tit. 68, § 1354(A)(1) (West 2008). *See* OKLA. ADMIN. CODE § 710:65-13-120.

[73] OKLA. STAT. ANN. tit. 68, § 1370 *et seq.* (West 2008). *See* OKLA. STAT. tit. 68, § 2701 (West 2013).

[74] OKLA. STAT. ANN. tit. 68, § 1350 *et seq.* (West 2008).

[75] *Id.*

terms of the Sales Tax Code.[76] All such records shall remain in Oklahoma and be preserved for a period of three (3) years, unless the Tax Commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the Tax Commission or by any of its duly authorized agents. The burden of proving that a sale was not a taxable sale shall be upon the person who made the sale.[77]

4. If any taxpayer shall fail to make any report or return as required by any state tax law, the Tax Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period. If a report or return has been filed, the Tax Commission shall examine such report or return and make such audit or investigation, as it may deem necessary. If, in cases where no report or return has been filed, the Tax Commission determines that there is a tax due for the taxable period, or if, in cases where a report or return has been filed, the Tax Commission shall determine that the tax disclosed by such report or return is less than the tax disclosed by its examination, it shall in writing propose the assessment of taxes or additional taxes, as the case may be, and shall mail a copy of the proposed assessment to the taxpayer at the taxpayer's last-known address. Proposed assessments made in the name of the "Oklahoma Tax Commission" by its authorized agents shall be considered as the action of the Tax Commission.[78]

5. When the Oklahoma Tax Commission files a proposed assessment against corporations, limited liability companies or other legal entities for unpaid sales taxes, withheld income taxes or motor fuel taxes collected pursuant to Article 5, 6 or 7 of this title, the Commission shall file such proposed assessments against the individuals personally liable for the tax.[79]

6. Any individual shall be liable for the payment of sales tax, withheld income tax or motor fuel tax if, during the period of time for which the assessment was made, the individual was responsible for withholding or collection and remittance of taxes or had direct control, supervision or responsibility for filing returns and making payments of the tax due the State of Oklahoma.[80] From the record, there is no dispute that the Sole Member of LLC is personally responsible for the filing and remittance of sales tax during the Audit Period.[81]

---

[76] *Id.*

[77] OKLA. STAT. ANN. tit. 68, § 1365(F) (West 2008).

[78] OKLA. STAT. tit. 68, § 221(A) (West 2014).

[79] *See* OKLA. STAT. ANN. tit. 68, § 253 (West Supp. 2015) and OKLA. ADMIN. CODE § 710:65-5-5(d) (June 26, 1994).

[80] *Id.*

[81] OKLA. STAT. ANN. tit. 68, § 253 (West 2014).

7. In the administration of the Low-Point Beer Act,[82] the following words and phrases are given the meanings respectively indicated,[83] as follows, to-wit:

> 1. "Low-point beer" means and includes beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar products;
>
> …
>
> 5. "Retail dealer" means and includes any person who sells any low-point beer, as defined herein, at retail for consumption or use, and such definitions include state and county fair associations, and special licenses may be issued for the sale of low-point beer, as herein defined, by such associations, and to other persons for the sale of such low-point beer at rodeos, picnics, or other organized temporary assemblages of people. The term "retail dealer" also includes railways for the sale of such beverages, and licenses may be issued for each dining car or railway train, which railways and dining cars shall pay the same license fees as regular retail dealers.[84]

8. It shall be unlawful for any person to sell, barter, or give to any person under twenty-one (21) years of age any low-point beer, as defined in Section 163.2[85] of this title.[86]

9. That the person demanded, was shown, and reasonably relied upon proof of age shall be a rebuttable presumption to any action brought pursuant to this section. A person cited for violating this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of such violation if:

> 1. The individual who purchased or received the low-point beer presented what a reasonable person would have believed was a driver license or other government-issued photo identification purporting to establish that the individual was twenty-one (21) years of age or older; or

[82] OKLA. STAT. ANN. tit. 37, § 163.1 *et seq.* (West 2009).

[83] OKLA. STAT. ANN. tit. 37, § 163.2 (West 2009).

[84] OKLA. STAT. ANN. tit. 37, § 163.2(1) (West 2009).

[85] *Id.*

[86] OKLA. STAT. ANN. tit. 37, § 241(A) (West 2009).

> 2. The person cited for the violation confirmed the validity of the driver license or other government-issued photo identification presented by the individual by performing a transaction scan by means of a transaction scan device.
>
> Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such person failed to exercise reasonable diligence to determine whether the physical description and picture on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.[87]

10. Tax Commission Rules contain a rule on the "Withdrawal of stale stock of low-point beer from a Retailer's Inventory, by a wholesaler or distributor,[88] as follows, to-wit:

> (a) A wholesaler or distributor may withdraw beer from the stock of a retailer, with the retailer's permission, only if, at the time of a regular delivery, the low-point beer is:
>
> > (1) Undamaged and in its original packaging;
> > (2) Withdrawn before, or immediately after the date for recommended use stamped on the product by the manufacturer; and,
> > (3) Replaced with low-point beer of identical brands, quantities, and packaging as the product withdrawn.
>
> *(b) The provisions of this Section do not apply to low-point beer that has suffered damage at the retailer's location. A wholesaler or distributor shall not give a refund or replace low-point beer that was damaged while in the possession of the retailer.* (Emphasis added.)

11. The Tax Commission shall also collect interest at the rate of one and one-quarter percent (1¼%) per month from the date prescribed by state law.[89]

---

[87] OKLA. STAT. ANN. tit. 37, § 241(E) (West 2009).

[88] OKLA. ADMIN. CODE § 710:20-2-12 (May 25, 2002).

[89] OKLA. STAT. ANN. tit. 68, § 217(B) (West Supp. 2015).

12. If any tax due under any state tax law is not paid within thirty (30) days after such tax becomes delinquent, a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid.[90]

13. The rules promulgated pursuant to the Administrative Procedures Act[91] are presumed to be valid and binding on the persons they affect and have the force of law.[92]

14. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[93] A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[94]

DISCUSSION

It is the Protestants' position that the *Third Revision* is incorrect in pertinent parts,[95] as follows, to-wit:

> According to the Division, [LLC'S] total sales were $698,503.17. Protestants identified input errors in the Division's Sales Calculations. Protestants' actual taxable sales were $662,228.35 for the audit period. Protestants' reported $654,757.00 in taxable sales. The difference in actual z-tapes and reported sales is $7,471.35 with an error rate of 1.13%.[96]

---

[90] OKLA. STAT. ANN. tit. 68, § 217(D) (West Supp. 2015.

[91] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002).

[92] *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

[93] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

> 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. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), 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.

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

[95] Protestants' Position Statement at 11-12. (Footnotes omitted.)

[96] The Protestants based their position upon the Sole Member's "revision" of the Z-Tapes, which were not listed on the Protestants' Final Exhibit List and which were not provided to the Division until the morning of the

> An order of the Tax Commission must be supported by substantial evidence. The Division arbitrarily determined that Protestant underreported beer sales in the amount of $21,237.49. The Division entirely disregarded inventory fluctuations, loss and breakage, and beer sales inputted as grocery sales. Protestants sold $39,670.81 in newspapers and magazines but the Division disallowed $20,680.70 in contemporaneously recorded sales based on the number of available purchase invoices in Protestants' records. The Division's sales tax assessment in the Third Revision is based [sic] calculation errors, complete disregard of Protestants' beer inventory fluctuations, loss and breakage, and beer inputted as general grocery sales, and arbitrary disallowance of contemporaneously recorded sales and therefore, is not supported by substantial evidence, contrary to OTC Order No. 2012-07-17-06 (July 17, 2012) and existing law.

The Division responds, "All records provided by Protestant[s] were reviewed and scheduled by Division. Protestant[s] [were] notified of the filing of the revisions and also given time to provide documentation supporting any objection it had to the revisions. The revision was conducted as all other sales tax revisions – Division first established the amount of Protestant[s'] gross receipts and then allowed a deduction for exemptions documented through purchase documentation and profit and loss statement. While Protestant[s] disagrees with Division not exempting periodical sales reflected on z tapes and no allowance being made of beer in inventory, Protestant has failed to present *evidence* tending to support [their] assertion that the revision is clearly erroneous. As a result of Protestant[s'] failure to provide evidence, the protest should be denied."[97]

The ALJ has previously noted herein, that the Division stipulated to the *Mathematical Error Calculation* for BUSINESS 1'S Grocery Category for January 2009,[98] and corrected its *Third Revision*, which lowered the proposed sales tax assessments from $7,210.35 to $4,429.61 (sales tax only).[99] The Protestants have acknowledged "…that the original monthly sheets did not include categories where clerks punched sales in categories that were not picked up in the setup of the sheet such as refills for BUSINESS 1. … discovered through the audit process was that clerks, from time to time, punched in sales in categories that didn't exist in store such as hot

---

hearing. The ALJ sustained the Division's objection to the admission of Protestants' Exhibit 31, which is the basis of the Protestants' position.

[97] Division's Position Letter at 5-6.

[98] *See* Note 8, *supra.*

[99] Stipulated Exhibits CC and DD. The Protestants brought the mathematical error to the Division's attention in its Position Statement at 13. The Division's Mathematical Error Calculation is not a violation of procedural due process. *See* Note 41, *supra.*

foods."[100] However, the clerks were still ringing up sales in a "sales taxable category," which the Protestants ask the ALJ to ignore.

The Protestants also assert that, "The Division entirely disregarded inventory fluctuations, loss and breakage, and beer sales inputted as general grocery sales. Protestants explained to the Division that clerks input beer into groceries due to the fact that beer sales takes more steps on the register to input as beer sales due to age requirement. At high volume times, clerks have been known to press beer sales as groceries simply because groceries is the biggest button available on the cash register, hence most convenient. Furthermore, there is no statutory and/or legal rule requiring Protestants to separate beer sales from general taxable sales at the time of the audit period."[101]

At hearing, Sole Member testified that she did not provide beginning and ending 3.2 beer inventories "because the Division did not ask for them,"[102] despite numerous requests for records by the Division, during almost four (4) years elapsing from the time the Division selected LLC for an audit and the hearing on this matter.[103] The record does not support the Sole Member's testimony.

The assertion that "…there is no statutory and/or legal rule requiring Protestants to separate beer sales from general taxable sales at the time of the audit period"[104] is belied by the Protestants' own position.[105] In Oklahoma, the minimum purchase age for 3.2 beer is twenty-one (21).[106] As in other states, the sale of 3.2 beer is heavily regulated in the State of Oklahoma, which is why the "Beer Button" on the cash registers in BUSINESS 1 and BUSINESS 2 were programmed to require a driver's license or other government-issued photo identification to establish that the individual was twenty-one (21) years of age or older.[107] When the clerks at BUSINESS 1 and BUSINESS 2 bypassed the "Beer Button," the Protestants' Z-Tapes did not accurately reflect total 3.2 beer sales.

As to loss (shoplifting) and breakage of 3.2 beer, Sole Member and WITNESS testified that BUSINESS 1 and BUSINESS 2 did not maintain any written records during the Audit

---

[100] *See* Note 61, *supra.*

[101] *See* Protestants' Position Statement at 16.

[102] Sole Member's Testimony.

[103] *See* specifically Notes 20-21, 43, and 63, *supra*. *See also* Procedural History herein.

[104] *See* Note 100, *supra.*

[105] *Id.*

[106] *See* Note 86, *supra.*

[107] *See* Note 87, *supra.*

Period. Unlike, the Oklahoma Alcoholic Beverage Control Act, the Sales Tax Code does not provide for an automatic percentage attributable to loss or breakage of 3.2 beer.[108]

During the Audit Period, the Protestants assert BUSINESS 1 and BUSINESS 2 "…sold $39,670.81 in newspapers and magazines but the Division disallowed $20,680.70 in contemporaneously recorded sales based on the number of available purchase invoices in Protestants' records."[109]

The Division responds, "It is inconsistent that the clerks, who didn't correctly ring up beer on the beer key, always rang up periodicals correctly. …If actual invoices for periodicals and Profit & Loss Statement costs for periodicals (where no actual invoice was produced) are combined, magazine costs were only about $18,000. …Based on costs, periodicals would have to been sold at 200% markup to have made the sales on the Monthly Sales Sheets."[110]

The Protestants produced invoices for newspapers and periodicals during the Audit Period totaling $14,692.54.[111] Sole Member testified that she had tried in her representation of convenience store owners in other protests to obtain records from The Oklahoman, but that she was unable to obtain the records. Sole Member also testified that she had not tried to obtain records in this matter. There are several troubling aspects of the Protestants' position concerning the amount of newspapers and periodicals reflected by the Daily Sheets and Z-Tapes for the Audit Period. First, the Profit and Loss Statements examined by the Division reflect only about $18,000.00 in purchases. Second, WITNESS testified that when vendors delivered newspapers

---

[108] *See* OKLA. STAT. ANN. tit. 37, § 579(G) (West 2009):

> In addition to any other authority granted by law, the Tax Commission is hereby authorized to audit any mixed beverage, beer and wine, caterer, public event or special event licensee to determine if the correct amount of tax payable under Section 576 of this title has been collected; provided, if such an audit reveals that the amount collected is within the following percentages of the amount of tax payable, the taxpayer shall be deemed to be in compliance:
>
> 1. For spirits, eighty-four percent (84%) to one hundred sixteen percent (116%);
> 2. For wine, ninety percent (90%) to one hundred ten percent (110%);
> 3. For beer sold at draft and not in original packages, eighty-six percent (86%) to one hundred fourteen percent (114%); and
> 4. For beer sold in original packages, ninety-five percent (95%) to one hundred five percent (105%).

See also OKLA. ADMIN. CODE § 710:20-5-8(b) (May 25, 2002).

[109] Protestants' Position Statement at 12.

[110] Division's Response to Protestants' Objection to Notice of Third Sales Tax Revision at 2.

[111] *See* Stipulated Exhibit Z(B). ($18,990.11 ÷ 129.25% = $14,692.54) Administrator's Testimony. Sole Member's Testimony.

and periodicals during his Evening Shift at BUSINESS 2, the Sole Member never paid vendors with cash, but that WITNESS paid with "prewritten" checks provided by the Protestants. In reviewing the Sole Member's testimony, there is no indication that any newspaper or periodical vendor was paid by cash, so even if the Sole Member could not obtain copies of the invoices, copies of the checks to the vendors should have been available for the Division's review.

In this matter, the Protestants failed to meet their statutory duty to maintain complete and accurate records. The Protestants cannot hide behind the deficiencies in its records, whether by design, ignorance of the law, or negligence, to prevent the Division from determining LLC'S Taxable Sales for the Audit Period.

CONCLUSION

The Protestants have failed to meet their burden of proof, by preponderance of the evidence, that the Division's proposed sales tax assessments (*Mathematical Error Correction*)[112] for the Audit Period are incorrect and in what respects.

RECOMMENDATIONS

The ALJ recommends, based upon the facts and circumstances of this case that the protest should be denied, as set forth herein.

The ALJ further recommends that the proposed sales tax assessments (*Mathematical Error Correction*) against the Protestants, inclusive of accrued interest and penalty, should be fixed as the amounts due and owing.

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.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).

[112] *See* Note 62, *supra.*