



OSCPA/Oklahoma Tax Commission Meeting - Questions/Comments January 26, 2022

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

Authorization to Discuss Client’s Tax Return with Power of Attorney Forms:

- 1. Can you discuss the limits to the “check the box” authority for a tax return versus a power of attorney?**

“Check the box” authority on a tax return allows the OTC to speak with the preparer about issues that may arise during the processing of the return. This may include allowing the preparer to provide information which is missing from the return, calling the OTC for information on processing of the return or the status of a refund or payment, or responding to certain OTC notices relating to math errors, offsets or return preparation. Authority is limited to the specific tax form, period of the return and issues related to processing that specific return.

A power of attorney (“POA”) should be used when the taxpayer wants to authorize an individual to receive confidential tax information and represent them before the OTC. A POA is most often required when you want to authorize an individual to represent you in a meeting/call with the OTC or prepare and file a written response to an OTC inquiry. If discussion about a particular tax year goes beyond the issues of processing a return as described above, a POA is required.

- 2. When is a Power of Attorney required instead of being authorized as the tax preparer using the “check the box” authority?**

See response to question no. 1.

- 3. If information is being provided to resolve an issue and no feedback is required, can OTC accept information from a third party without a power of attorney?**
- a. For example, providing a death certificate or other information to close an assessment?**

Depending on the type of information being provided, a POA may or may not be necessary. For example, a preparer may provide a taxpayer's W-2 to facilitate processing of a return if the taxpayer elected to "check the box" and allow that communication. However, the example given appears to go beyond the mere processing of a return. A POA is required to authorize a third party to resolve an assessment, even if only limited information was necessary to reach that resolution.

- 4. The OK Power of Attorney form allows practitioners to list the CPA firm as an authorized representative. Does that mean that anyone from the firm is authorized to communicate with OTC regarding the client's tax matters?**

No. The names of all individuals authorized to communicate with the OTC on behalf of the taxpayer should be listed on the POA.

- 5. Does that authority apply when the firm is listed on the tax return and the taxpayer has checked the box to grant permission to discuss the return?**

In order to ensure that the confidentiality of a taxpayer's information is adequately protected, the OTC will discuss a return only with the individual named as the preparer on the return.

- 6. When submitting a POA online, how do you enter information for the additional representative if he or she is a different designation than the first representative?**
- a. For example, Representative 1 is a CPA. Online allows that information to be filled out. Representative 2 is a lawyer. I see no field to enter this. I am allowed only to enter the first and last name of Representative 2.**

There is currently not an option to designate a different occupation for each representative. You may enter more than one representative and the name of the designated person is the data to be verified for communication concerning the taxpayer.

- 7. Can OTC provide instructions on how to use submit a POA online? It was hard to tell a client what to expect when I've never gone through the process myself.**

The OTC is currently working on an online training video to share with the public. If the representative completes the form on OkTAP under the I Want To section, select Access the Power of Attorney Portal as the "Requestor" then the taxpayer will be mailed a letter the next day by the OTC with instructions to approve or deny the submission using OkTAP. Once approved or denied, the requester will receive a confirmation email.

- 8. After submitting a POA online I received an email from No-Reply@oktax.state.ok.us with the subject: OkTAP Notification. The body of the email was blank. Why is the OTC sending out a blank email?**

The issue has been resolved. Our programmers corrected the problem and you should only receive one of the following in response to a submission: Your request for Power of Attorney (POA) for the below listed taxpayer has been denied. The listed taxpayer has reported the information in the original POA request as incorrect or has not responded to the request, please reach out to the taxpayer directly. You will need to start the process of POA approval again. Your request for Power of Attorney (POA) for the below listed taxpayer has been approved.

- 9. How long on average does it take the OTC to process a paper POA?**

Five to seven business days.

- 10. Is there anything in the works to allow multiple representatives to sign on one page when filing the paper POA similar to what the IRS allows on their form?**

The form allows one signer and allows space to appoint 2 representatives per form/page. There are currently no plans for a change for more than 2 representatives to be appointed per form, but OkTAP allows multiple entries for one submission.

- 11. Since there is only one space for the representative to sign, does this mean the other representatives don't have to sign?**

Only the primary representative from a single firm is required to sign the POA, but all authorized representatives must be listed. If a taxpayer wishes to authorize multiple firms to communicate with the OTC on their behalf, additional POAs should be submitted.

Online Presence:

- 12. What is the link to "Where's My Refund" on the OTC website, so that we can add the link to our business websites for our clients?**

https://oktap.tax.ok.gov/oktap/Web/_/#1

- 13. Is the OTC considering adding a section for tax professionals on its website similar to what the IRS has?**

Not at this time. Currently all products and services offered on website are available for all taxpayers.

- 14. The IRS provides Internal Revenue Manuals (IRM) to the public which discusses how agents and auditors should handle various tax and penalty situations. Does the OTC have something similar?**

- a. If so, how do we find it?
- b. If not, is the OTC going to do something like this?

No. Tax information is currently available on the Tax Commission website at tax.ok.gov.

- 15. Is there a browser that works best with the OTC website? Sometimes practitioners get different results using Chrome or Edge.**

Chrome

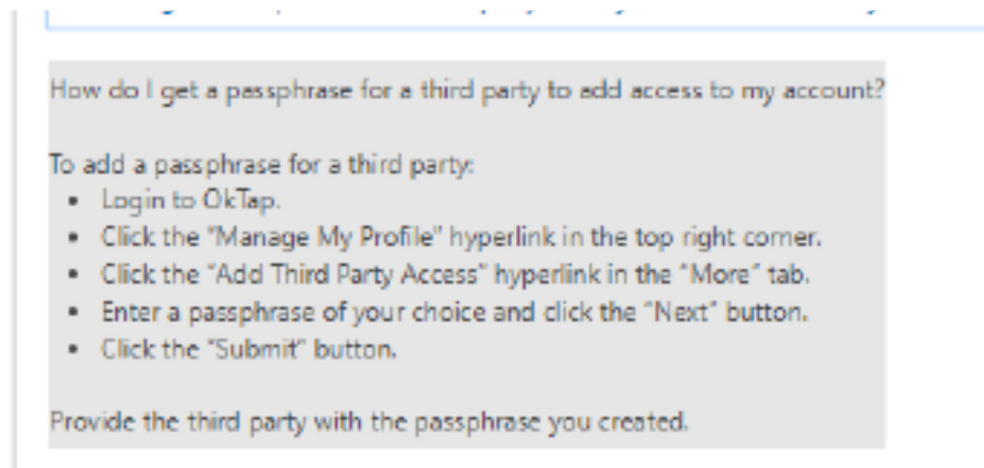
- 16. Can clean forms that do not include watermarks such as "FOR INFORMATIONAL PURPOSES ONLY" be put on the website? We understand that forms should be e-filed. However, there are situations that require paper filing.**

- a. For example, I have a partnership return on final extension that is due. Also, E File won't be open before the due date. Since the 2021 forms aren't finalized in the tax program, practitioners have to go to websites to get forms. We are able to get them from the IRS website, but not the OTC website. This results in taking additional time marking out and writing in the correct dates on the OK forms since the 2020 forms have to be used. Furthermore, E File systems tend to get confused when filing final short-year returns so paper filing is best practice.

All forms are digitized for electronic filing but may also be printed. All 2021 forms are available currently on the website.

17. Third party access is cumbersome for taxpayers and practitioners. Unless things have changed since a couple of months ago, the instructions do not match the prompts you go through. In one example, a practitioner has had only one client even successfully give her access to the OKTAS account. It was such a challenge that the OTC finally had to call the taxpayer and walk him through it. The other clients tried and gave up.

Third party access can be granted by the taxpayer by logging into OkTAP and following the prompts under the "manage my profile" link. Under the "more" tab, there is a section for access and a link to "add third party access". They then create a passphrase and provide that to the third party. The third party also needs to register by filing form BT-120.



Withholding:

18. Is the OTC working on allowing Taxpayers to access their tax transcripts online?
a. If so, when will it be ready?

The OTC does not currently have a return transcript system. At this time, the OTC is not planning on allowing taxpayers to access tax transcripts online.

19. How can taxpayers and preparers currently get past and current transcripts that include Oklahoma withholding information? (We understand that currently the OTC uses withholding as verification as part of fraud verification. However, this makes it impossible to accurately prepare returns for taxpayers who have past due returns).
a. If the OTC isn't working on providing access to transcripts online, who can we lobby to make it happen?

The OTC does not currently have a return transcript system. However, there is an electronic process available to Oklahoma preparers for the retrieval of their clients' W-2 information. This functionality allows preparers, with a valid POA on file with the OTC, to

request Oklahoma earnings and withholding for a represented individual via their OKTAP account.

20. I had a client that submitted an Offer In Compromise to both the IRS and the Tax Commission. The IRS requested transcripts of the Tax Commission debts, but the only thing the agent could provide at the help center was a handwritten sticky note showing the balances. Why do they not have some kind of transcript for this and other needs?

- a. **That same client went through the IRS process of sending in, waiting for six months, updating and completing the OIC process. The Service declined the offer, but it was more difficult because we had no response from OTC and could only state that we were waiting on Oklahoma. A full year after we submitted the original application, the Tax Commission responded asking for a complete revised application. Why does it take so long to get a response?**

The OTC does not issue transcripts. A period detail letter is the closest thing to a transcript that the OTC can send to taxpayers. The period detail letter will show the details for up to 5 years of the transactions on the taxpayer's account. Taxpayers can also request a copy of their tax returns by completing a Form 599. Statement of Account Letter

PTE

21. Is it still necessary to attach the PTE acknowledgement each year?

Yes, it is the taxpayer's burden of proof to support any claims reported on the return submitted.

22. Why is attaching the PTE acknowledgement required when OTC already has the forms previously submitted and in fact, OTC is the one that issued it to the taxpayer? Isn't it redundant that we are required to send you a form that you sent to us?

Direct linking between owners and entities is not provided within OTC systems. Changes in ownership are not discoverable until the entity's income tax return has been filed for the same period and (IF) subsequently added to the discovery process causing excessive delay in processing of the owner's income tax return.

23. PTE Net Entity Losses can be carried back or carried forward similar to Net Operating Losses. If the entity is dissolved or the PTE election revoked, is there any means of passing that net entity loss through to the partners / shareholders?

The Pass Through Entity Tax Equity Act of 2019 provides for a separately defined tax type exclusive to the PTE Election for PTE Tax which prevents the distribution of Net Entity Loss to the members/owners. There is no provision in the statute for the allowance of

pass-through losses under a PTE Election. PTE elections can be revoked for future periods.

- 24. Proposed federal tax legislation is leaning toward raising the limit on the SALT cap deduction. Do you foresee any changes to the PTE election (or potential repeal) if there is a significant increase in the federal SALT cap limitation?**

There has been no legislation filed in the Oklahoma legislature to modify the Pass-through Entity Tax Equity Act.

- 25. Why are individual tax clients receiving OTC notices requesting completed Form(s) PTE-587 from partnerships or S Corporations when this form is not required to be included with the K-1**

Form 587-PTE is not a requirement to support the owners reporting. They are required to attach a copy of the PTE Acknowledgement Letter and schedule of income received subject to the election generally including a K-1 reconciled to the exclusion reported on the return.

Collections and Payments

- 26. What is the process for a taxpayer's delinquent taxes to be determined uncollectible?**

No process in place since pursuant to state statute the liabilities never expire. However, if a liability is still outstanding after 10 years, and there's no active pay plan on it, it transitions to a low-priority collection. If a tax warrant has been issued and filed with the various county clerks' offices, the liability may eventually be collected as real property is sold, etc.

- 27. What is the process to apply for a waiver of penalties and interest?**

- a. Is there a form for this?**

Taxpayers can request a waiver of penalties and interest online at OKtap.tax.ok.gov. Do not try to sign in. Under Services you will see "Request a Waiver of Penalty and Interest;" click on that topic and fill out the requested information. Additionally, you can send an email to Division-support-ITA-BTS@tax.ok.gov and include your name, account number, address, email, phone number, the reason you are requesting the waiver and the circumstances that caused the balance. If the taxpayers prefers to mail the letter to the OTC, send it to:

Oklahoma Tax Commission
Oklahoma City, OK 73194

- 28. Why is the OTC still charging 15% interest?**
a. How can it get changed?

The delinquent interest rate is set statutorily. See 68 O.S. § 217. The Oklahoma legislature would have to amend 68 O.S. § 217 to change the interest rate

- 29. We have some clients that ask us to do their corporate estimated payments for them. EFTPS allows us to go in and schedule the full year of payments and we can process all four quarters and are done. However, the Tax Commission limits OKTAP to ninety (90) days in advance. Therefore, we must make calendar notes to remind us to go in and schedule the remaining quarterly payments as they come due. Can the OTC continue to leave the 90-day advance on most payments, but also program the system to allow corporate estimated payments to be entered for a full year in advance?**

No changes are pending for making future payments.

Tax Notices

- 30. Is the OTC working on providing expanded explanations or transparency in letters?**
a. Example: Many clients have complained about the lack of explanations in their letters. The clients just receive a bill with no explanation as to what it was for or how it was calculated or whether it is a missing estimated tax payment, etc. We are left to guess what happened. The same thing goes for refunds. I had a client who owed money with an amended tax return and instead received a letter saying they were due a refund that didn't match any amounts on the tax return and then applied it to 2014. The client didn't even remember they owed anything for that year. The same thing happens with the debit cards. Clients receive debit cards in the mail and have no idea what it was for.

A billing letter will not have an explanation of the adjustments. When adjustments to a return are made as part of the routine processing of a return, a recomp letter with an explanation of the adjustments will be mailed to the taxpayer. This letter is mailed prior to a billing notice being issued. You can request a copy of the recomp letter from the OTC or your client. Recomp letters generally contain standardized explanations showing how the return was changed; individual letters cannot be modified to provide additional detail.

All audit and assessment letters proposing additional liability contain an explanation of the adjustment, covering the calculation of the tax due as well as the reason. This is usually found on the second page of individual assessments and on the working papers for business tax assessments.

A debit card may be issued to a taxpayer if there has been an overestimate of penalty and interest reported by the preparer, creating a refund. If a minor adjustment is made to a return which creates an overpayment in an amount less than a certain amount, a taxpayer may be issued a debit card for the refund without an accompanying adjustment letter. If a taxpayer receives a debit card, a number is provided for them to call and inquire about the refund balance.

31. I receive letters weekly from clients where the OTC is proposing adjustments. I send in a response and/or documentation and receive no response. I almost never receive a final determination letter showing they either rejected or accepted my information. I assume no news is good news, but that is not always the case. Is the OTC able to send responses to advise the taxpayer there is no balance or there is a balance?

a. How can practitioners or taxpayers find out the result if no letter is sent out?

If changes are made as a result of additional information provided by the taxpayer, a notice of adjustment is mailed to the taxpayer. In addition, the OTC is working on adding a new letter format which will be used to inform taxpayers that the information provided was insufficient to allow the Division to make further adjustments.

All inquiries related to audit and assessment letters are responded to via digital and/or print correspondence. If you believe that you have not received the proper notice then please call either the auditor's direct phone number or the audit call line listed at the bottom of the notice. Please note that the OTC sends correspondence directly to the taxpayer.

32. Every tax season we receive several OTC notices requesting copies of supporting schedules. The Supporting schedules were attached as pdf files to the electronic filed return. Why is the OTC not picking up these schedules from the pdf attachment?

Sometimes our system will auto generate a letter due to the line number.

- *Ex. Misc. 511A: a letter is sent out to everyone regardless of attachments or not.*
- *An incomplete schedule will generate a letter.*

PDF attachments are utilized in the review process if the return requires a review.

33. What is being done to eliminate letters being sent to people with professional licenses, or at a minimum wording these letters to assure professionals nothing is wrong but the letter is simply a reminder to file? The letters sent caused a lot of questions and fear clients. As an example, I received at a minimum 15 calls from professionals terrified the OTC was pulling their license and thought that I as the tax preparer was to blame for not filing something properly.

To avoid confusion future professional license letters will only be sent to taxpayers who are not in tax compliance and will not include a reminder for a tax year not due yet.

- 34. Taxpayers are getting letters of taxes due as much as 6-8 months after their checks have cleared the bank. It appears that the OTC is cashing checks without immediately posting them first.**
- a. Why isn't the OTC posting the checks to accounts before the checks are sent to banks?**
 - b. Should taxpayers send in paper returns whenever there is a balance due to ensure the check is posted to their account?**

Remits and returns are processed separately and returns are not fully processed at the same time. As long as the voucher and check is filled out correctly, there will not be any issues posting the payment to the account.

A paper return is not recommended and electronic filing is always encouraged. If a paper return is sent, the taxpayer will need to send in the proper voucher that indicates where the funds are to be applied.

- 35. Three or four times a year, I will have a client receive a collection notice from either the OTC or one of their collection firms for a balance that is anywhere from 5 to 14 years old. This year, it was a company that had been dissolved ten years ago and the OTC wanted balances on sales tax from ten years ago and withholding tax from fourteen years ago. The collection firm admitted they sat on it for four years and this client is good at getting notices to me so I don't believe any notices ever went out from the Tax Commission. As you might imagine, most records have been destroyed which is completely unfair to my client. Why aren't notices on a monthly or quarterly basis for balances due?**
- a. Why does it take years to collect balances well after those tax years have closed and records been destroyed?**
 - b. Why wasn't this an issue when my client turned in their sales tax permit and filed final sales, income and withholding returns?**

Pursuant to statute, all taxes, interest and penalties imposed by the tax code are declared to constitute a lien in favor of the state from the date the taxes are due and payable until paid. Many of the accounts similar to this one may have been forwarded to collection firm(s) because taxpayer has failed to respond to prior attempts to collect. By the time an account is referred to an outside collection agency, the OTC has already issued several notices of the liability.

- 36. I recently received a letter for a client adjusting out of state income I had excluded and trying to tax it. My understanding was that they received an electronic copy of the federal return and a review of that would have shown the Texas farm income I was excluding. What exactly do they receive as part of the electronic file and do they need to clarify the instructions on what to attach?**

The form 511 instructions for claiming the out-of-state income deduction specify to “furnish detailed schedule showing the type, nature and source of the income and a copy of the federal return. Documents submitted should reflect to which state(s) the income is attributable. Provide the other state’s return and/or Schedule K-1, if applicable.” Simply providing the federal return is not sufficient and may result in an audit to verify the claimed amount.

Investment Credit

- 37. Form 506 investment credit where the lessee is a qualified manufacturer not claiming jobs credit or quality jobs payments. Lessee holds a manufacturing permit and would have been able to claim Form 506 investment credit if it had purchased the property.**
- a. Note that there was a federal investment credit under IRC section 46 (repealed some years ago) and this credit was available to lessors if tests were met.**
 - b. Note also that the federal depreciation classification of leased equipment is determined by the use of the equipment in the hands of the lessee.**
 - c. 68 O.S. section 2357.4 and Rule 710:50-15-74 do not preclude the allowance of an investment credit to a lessor for qualified manufacturing equipment leased to an Oklahoma manufacturer.**
 - d. The OTC addressed this question in our meeting in 2002 and concluded that a lessor may qualify for the Form 506 investment credit, but later action has put this answer in doubt. Since the authority for claiming a credit seems quite strong, we thought this issue worth revisiting.**

A credit is allowed under 68 O.S. § 2357.4 for investment in qualified depreciable property placed in service for use in a manufacturing operation which has received a manufacturer exemption permit. Among other restrictions, “qualified property” is limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year.

Sales/Use Tax

38. When OTC audits and approves a Sales/Use refund claim, the payment notification letter includes a statement, “Note refunds remain subject to audit which may adjust the refund total upon finding of an accounting error or misapplication of statutory or administrative rule provision.” Is there a statute of limitation for this statement or does it remain subject to audit indefinitely?

a. What would be the recommended record retention for the refund applicant?

Three years – see 68 O.S. 1365 (F) and OAC 710:65-3-30

39. Please discuss when a business is required to submit use tax for purchases?

A taxpayer would submit the consumer use tax (SCU) return when they use the materials/parts from their inventory (essentially anything they purchase that is used by the business itself and proper sales tax was not collected at the point of sale).

40. If equipment is purchased from an out-of-state vendor and the sales tax is less than Oklahoma sales tax, when and how much use tax is the business required to remit to OTC?

Use tax is levied at the rate of 4.5% of the purchase price of property which is purchased out-of-state and brought into the state. No use tax is due on the property if sales/use tax has been paid that is equal to or greater than the rate charged by Oklahoma. If the rate charged by another state is less than the rate charged by Oklahoma, the difference in the rate is to be multiplied by the purchase price of the tangible personal property to give the amount of tax due for that purchase. Okla. Admin. Code § 710:65-21-20. Payment of use tax is due on the first of each month for purchases made the preceding month. Okla. Admin. Code § 710:65-21-7.

41. Are the city and county taxes included in the use tax calculation?

Yes – city and county taxes are included in the use tax calculation.

42. Is use tax required when the Oklahoma business uses the equipment only in another state?

The taxability of certain equipment must be determined on a case-by-case basis. Use tax is levied on tangible personal property purchased or brought into this state which is stored, used, or otherwise consumed in this state. Said tax shall not be levied on tangible personal property intended solely for use in other states, but which is stored in

Oklahoma pending shipment to such other states (for example, temporary storage of inventory) or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service.

43. What if the equipment is used out-of-state for several years, then brought to Oklahoma?

There is no exemption from use tax for property used out-of-state for several years before being brought into Oklahoma. The levy remains the same: 4.5% of the purchase price of the equipment.

44. The notices regarding sales tax on items reported on Federal form 4797 are challenging for the client and the tax professional to provide a response. Often the items sold are exempt for various reasons such as farm sales or sales to out of state buyers or sales at auction. What can we do when we prepare the tax return to clarify that the 4797 sales were not subject to sales tax? Should we file a zero-sales tax return with the income tax return or attach a pdf statement or something else?

When preparing the tax return, please note reasons that would cause the sale to be exempt from taxation in the item description. For example, note any sales that are out of state i.e. "Sale of Equipment – KS" or items sold at auction i.e. "Sold at auction by John Doe Auctioneer" or something to that effect. Further support to include may be relevant documents such as a disposition of assets showing the state that the property was sold in.

45. When estimated tax payments differences result in an OTC notice, can the OTC provide a list of estimated tax payments on record with OTC?

Yes – a list of payments can be provided that shows the period to which each payment was applied.

46. Why are taxpayers required to log in again to submit a sales or state withholding return after already being logged into the account?

Prior to the final submission of the return, the taxpayer is required to input their password as both a security measure and a verification, much like signing a paper return.

McGirt

47. Has there been any movement or guidance regarding the tribal income exclusion in response to the McGirt case?

The Commission recently issued Order No. 2021-12-08-04 which involved a claim for the tribal income exclusion. Although McGirt was discussed in the order, the Commission declined to resolve the criminal/civil implications of McGirt to taxation because it was not necessary to reach a decision on the merits of the factual issue presented in the case. Apart from this order, no additional guidance or instruction has been issued. Stay tuned for more later.

Other

48. Are there any plans to update the Form 511-NOL or to allow tax software providers to allow it?

Currently there are no plans to update the Form 511-NOL.

49. Can instructions on Form 511-NOL be expanded to provide clarification? Currently this form and the instructions are confusing.

Please see response to No. 48.

50. If there is a BBA Partnership who is filing an Administrative Adjustment Request (AAR) for the 2018 tax year, that adjustment gets recognized on the partners Federal tax return in the year the AAR was filed, in this case 2021. For Oklahoma purposes, would these adjustments also get picked up in the 2021 tax year (since Oklahoma starts with Federal AGI) or would they be picked up via an amended 2018 Oklahoma return?

Oklahoma law has not conformed to the Centralized Partnership Audit Regime. Pursuant to 68 O.S. § 2358 Oklahoma would recognize the adjustments in the same year the recognition is made by IRS regardless of the period specific to the adjustment.

51. How has delayed processing by the IRS affected return processing by the OTC?

IRS delay does not impact the OTC for normal processing of returns. However, an IRS delay may impact processing of amended returns where the OTC has sent a letter requesting IRS acceptance of an amended federal return—the OTC cannot process the amended return until the taxpayer has provided the requested IRS acceptance.

52. Many taxpayers have not received refunds for timely filed individual income tax returns. What plans does the OTC have to improve timeliness in light of the slowdowns caused by covid?

The OTC is always working on refinements to our processes. Covid-19 has not caused any system delays. There are always a number of things that affect return processing such as math or entry errors, line numbers used that may require manual review, internal processes that look for fraud or under-reporting. Once resolved, then refunds can be issued.

53. Although the OTC does not prepare the returns that are included in preparation software, can someone from the OTC reach out to the various companies to push them to include certain forms such as the Oklahoma POA? Is there a software liaison?

Third party vendors are providing a service and the OTC has no authority over them. The OTC does not have a liaison with tax software providers.

54. Caller ID has started coming through as anonymous when someone calls from the OTC. Can this be fixed so that it says OTC?

In many circumstances caller ID does come through as "OTC" until a taxpayer reports the call as spam. This is an issue with cell phone providers such as (AT&T). OTC will continue to work through this issue.

55. Can we be given a preferred method for practitioners to securely submit documents to the OTC? For example, documents that are requested for items challenged on returns, especially Form 561 audits.

There are multiple methods of submitting documentation to the OTC. Some of the options include submitting documentation through OkTAP, via email with the auditor, through regular US mail, and by fax. Electronic document submission is preferred.