JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-09-19-041 / NOT PRECEDENTIAL**
ID: **P9800148**
DATE: **09-19-00**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **SUP. CT. NO. 95,363 / OTC DECISION AFFIRMED**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The parties stipulate to the following:

1. MR. PROTESTANT and MS. PROTESTANT (hereinafter "Protestants") received an extension of time to file their 1993 U.S. Individual Income Tax Return to October 15, 1994.

2. The federal extension effectively extended the date by which "Protestants" were required to file their Oklahoma Tax Return for the tax year 1993 until October 15, 1994.

3. "Protestants" signed and dated their 1993 Oklahoma Tax Return on April 30, 1997 which was received by the Oklahoma Tax Commission on May 7, 1997.

4. "Protestants'" 1993 Oklahoma Tax Return reflected overpayment in the sum of Seven thousand, five hundred seventy-one dollars ($7,571.00) for 1993.

5. The "Protestants" requested that the overpayment of Seven thousand, five hundred seventy-one dollars ($7,571.00) be credited to their 1994, 1995, and 1996 Estimated Tax Payments.

6. On September 9, 1997 the Central Processing Division of the Oklahoma Tax Commission (hereinafter "the Division") notified the "Protestants" that their request for a refund for 1993 was barred by statute pursuant to 68 O.S. 1981, Sec. 2373.

7. On May 21, 1998 "the Division" notified the "Protestants" that their credit from the 1993 return would not be carried forward to the 1994 return; "the Division" adjusted the "Protestants" estimated tax credits for 1994 by disallowing the 1993 credit carry forward.

8. On May 22, 1998 "the Division" notified the "Protestants" that their credit from the 1993 return would not be carried forward to their 1995 return; "the Division" adjusted the "Protestants" estimated tax credits for 1995 by disallowing the 1993 credit carry forward.

9. On June 15, 1998, the "Protestants" faxed Exhibit G to the Oklahoma Tax Commission Office of General Counsel, TO AN ANONYMOUS DEPUTY GENERAL COUNSEL AND hand-delivered Exhibit G to the Administrative Law Judge's office on the same date.

10. MR. PROTESTANT testifies or would testify if called to do so, as set forth in the affidavit attached [to the Stipulation of Facts] and marked as Exhibit F. The Division does not stipulate as to the truth of Protestant's assertions therein; the Division stipulates simply that the affidavit attached as Exhibit F represents the Protestant's testimony regarding the facts therein.

11. The Division testifies or would testify if called to do so, by and through its representative(s) as set forth in the affidavit attached [to the Stipulation of Facts] and marked as Exhibit H. The Protestants do not stipulate as to the truth of the Division's assertions therein; the Protestants stipulate simply that the affidavit attached as Exhibit H represents the Division's testimony regarding the facts therein.

ISSUES AND CONTENTIONS

Two issues are presented for decision. The first issue is whether Protestants timely protested the notice of denial of their 1993 income tax return overpayment carry forward credit request to their 1994 estimated income taxes. The second issue is whether Protestants' 1993 income tax return overpayment carry forward credit request is barred by 68 O.S. 1991, § 2373.

Regarding the first issue, the Division denied Protestants' 1993 overpayment carry forward credit request by letter dated September 9, 1997. Protestants admit that they received the denial letter.

The Division asserts that Protestants' protest should be dismissed on the grounds and for the reason that Protestants did not timely protest the denial of their credit request. In support of this assertion, the Division maintains that its records do not show receipt of a timely filed protest. The Division also maintains that Protestants admit that they neither retained a copy of the protesting correspondence nor possess a document indicating receipt of the protest by the Division.

Protestants challenge the dismissal request and offer several contentions in support of said challenge. Initially, Protestants contend that they timely protested the denial by correspondence mailed on or around September 19, 1997. Protestants argue that the Division lost or misplaced the correspondence citing the Division's response to their discovery request. Protestants also contend that they timely responded to the Division's letters of inquiry concerning their 1994 and 1995 estimated tax accounts and the Division's letters of adjustment to their 1994 and 1995 income tax returns. In the alternative, Protestants contend the letter of denial was a deficient notice under due process standards because it failed to inform them of their right to protest and the time limit for doing so. Protestants further contend that the Division waived its right to raise the timeliness issue because it failed to assert the issue at the time of the pre-hearing conference. Additionally, Protestants contend that the Division should be required to issue a new revised written denial of their credit request since the Division is citing additional authority for denying the credit request. In support of this contention, Protestants argue that they have a right to known the authority upon which the denial is based.

Regarding the second issue, the Division contends that Protestants' credit request is barred by the provisions of Sections 2373 and 2385.16 of Title 68 of the Oklahoma Statutes. In support of this contention, the Division cites Rule 170:50-9-2 of the *Oklahoma Administrative Code* ("*OAC*") and Oklahoma Tax Commission Order Nos. 91-06-06-004 and 92-12-29-024. The Division also argues that 68 O.S. Supp. 1992, § 2375(H) is not applicable in this proceeding since the amount of federal taxable income on Protestants' 1993 federal income tax return was neither changed nor corrected.

Protestants contend that the denial of their credit request is erroneous. In support of this contention, Protestants argue that since they received an extension to file their 1993 federal income tax return which automatically extended the due date of their 1993 Oklahoma income tax return to October 15, 1994, their 1993 Oklahoma return was filed within the time restrictions of Section 2373. Protestants also argue that Section 2373 is not applicable to their return since their return was neither revised nor adjusted. Protestants further contend that Section 2373 is not applicable herein because they requested a credit on their return as opposed to a refund. In the alternative, Protestants contend that the carry forward estimated tax credits from prior years which amount to an aggregate of $5,764.00 are not barred by Section 2373 because the credits had been requested in prior tax years, the Division had approved the credits and the past conduct of the parties indicate that the credits were only to be used if necessary. In support of this contention, Protestants argue that the Division by their conduct of retaining the prior credits had agreed to hold the credits in an implied trust for the Protestants. Protestants further contend that since the facts in this cause are materially different from the facts in the previous cases cited by the Division, the decisions in those cases are not controlling. Additionally, Protestants contend that in the event Section 2373 is applicable herein, Section 2375(H) must be applied which would cause the statute to be tolled until Protestants' federal taxable income was finally determined.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. The provisions of Sections 227 and 228 of the Uniform Tax Procedure Code[1] do not apply to a claim for refund of state income taxes. 68 O.S. 1991, § 227(f). See, ***Sowders v. Oklahoma Tax Commission***, 527 P.2d 852 (Okl. 1974).

3. The filing of a completed return which discloses a refund to be due by reason of the credits for withholding and/or estimated taxes previously paid shall constitute a claim for refund of the excess. 68 O.S. 1991, § 2385.10. See, Oklahoma Tax Commission Order No. 91-06-06-04.[2]

---

[1] 68 O.S. 1991, § 201 et seq.

[2] In that case, the Tax Commission held that taxpayers' income tax return constituted a claim for refund notwithstanding that taxpayers requested the overpaid taxes be credited to their subsequent year estimated taxes,

4. The provisions of Section 221 of the Uniform Tax Procedure Code, wherein the procedures for protesting a proposed assessment are prescribed, are not applicable to this proceeding since the Division did not propose the assessment of taxes or additional taxes. See, 68 O.S. 1991, § 221(a) and (c).

5. The statutory authority for Protestants' action is set forth in 68 O.S. 1991, § 207(c), wherein it provides:

> "Any person desiring a hearing before the Tax Commission shall file an application for such hearing, * * *, setting out therein:
>
> (1) A statement of the nature of the tax, * * *, and the action of the Tax Commission complained of;
>
> (2) A clear and concise assignment of each error alleged to have been committed by the Tax Commission;"

See, ***Sowders***, supra at 855.

6. Section 207(c) does not prescribe a time limit for filing the application for hearing.

7. Here, Protestants' protest to the Division's denial of their 1993 income tax overpayment carry forward credit request complied with the procedural requirements of Section 207(c). Accordingly, Protestants' protest is not subject to dismissal.

8. The refund of state income taxes is subject to the provisions of 68 O.S. 1991, § 2373, wherein it provides:

> If, upon any revision or adjustment, including overpayment or illegal payment on account of income derived from tax-exempt Indian land, any refund is found to be due any taxpayer, it shall be paid out of the "Income Tax Withholding Refund Account", created by Section 2385.16 of this title, in the same manner as refunds are paid pursuant to said section.
>
> The information filed, reflecting the revision or adjustment, shall constitute the claim for refund.
>
> Except as provided in subsection (H) of Section 2375 of this title, *the amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim, or, if no claim was filed, then during the three (3) years immediately preceding the allowance of the refund*; provided, however this three-year limitation shall not apply to the amount of

---

citing Section 2385.10.

> refunds payable upon claims filed by the United States on behalf of its Indian wards or former Indian wards, to recover taxes illegally collected from tax-exempt lands.
>
> Provided, further, that where the Tax Commission and the taxpayer have signed a consent, as provided by law, extending the period during which the tax may be assessed, the period during which the taxpayer may file a claim for refund or during which an allowance for a refund may be made, is automatically extended to the final date fixed by such consent plus thirty (30) days. (Emphasis Added).

9. In ***Neer v. Oklahoma Tax Commission***,1999 OK 41, 982 P.2d 1071, the Oklahoma Supreme Court considered the language of Section 2373 and held at page 1073:

> § 2373 acts in a manner analogous to a statute of repose in that it acts as a substantive limitation on the right to recover any amount as a refund when the claim for refund is filed more than three years after the date on which Oklahoma income tax is paid. In other words, as applicable here, § 2373 is a legislatively crafted outer limit time boundary beyond which taxpayers' right to recover a refund no longer exists.

10. Protestants initially argue that the credit request was timely filed since it was filed within three years of the extended due date of the return. Protestants' argument is not persuasive.

Section 2373 provides, "the amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim." An extension of time for filing a return does not "extend the date on which any payment of a state tax is due." 68 O.S. 1991, § 216. State income tax is due at the time of transmitting the return required under the Oklahoma Income Tax Act[3]. 68 O.S. 1991, § 2375(A). "All returns, * * *, made on the basis of the calendar year shall be made on or before the 15th day of April following the close of the taxable year." 68 O.S. 1991, § 2368(G).

Here, Protestants' 1993 state income tax return was filed on or about May 7, 1997. The date of filing the credit request is more than three (3) years from the date the taxes were deemed paid. See, Oklahoma Tax Commission Order Nos. 92-12-29-024 and 92-03-26-033[4]. Accordingly, Protestants' credit request was not timely filed.

---

[3] 68 O.S. 1991, § 2351 et seq.

[4] These decisions stand for the proposition that estimated or withheld taxes are deemed paid on the due date of the return notwithstanding a federal or Oklahoma extension.

11. Protestants' contentions that the provisions of Section 2373 are not applicable since their return was neither revised nor adjusted and their return requests a credit as opposed to a refund are also not persuasive. The provisions of Section 2373 have been construed to include the filing of an original return where the return is not filed within three (3) years of the original due date of the return. Rule 710:50-9-2 of the *Oklahoma Administrative Code*. See, Oklahoma Tax Commission Order No. 91-06-06-04.

Rules promulgated pursuant to the Administrative Procedures Act[5] are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 1991, § 306(C). They are valid and binding on the persons they affect and have the force of law. 75 O.S. 1991, § 308.2(C). They also are prima facie evidence of the proper interpretation of the matter to which they refer. Id.

Here, Protestants did not file their return within three (3) years of the original due date of the return or April 15, 1997. The original due date of the return was April 15, 1994, notwithstanding the extension of time to file the return. 68 O.S. 1991, § 2368(G). Protestants argue that a valid extension of time to file a federal return automatically extends the due date of the Oklahoma return citing *OAC*, Rule 710:50-3-4. Rule 710:50-9-2, however, addresses this issue by utilizing the language "original due date." Rule 710:50-9-2 also properly interprets the language of the statute since the time period for filing a claim begins to run from the date the taxes are deemed paid which corresponds with the original due date of the return. See, 68 O.S. 1991, §§ 216 and 2375(A). Protestants credit request was not timely filed.

In addition, the provisions of § 2373 are applicable to overpayment credit requests. See, Oklahoma Tax Commission Order No. 91-06-06-04. The filing of the return reporting an overpayment of taxes constitutes a claim for refund of the excess notwithstanding whether a refund or credit request is claimed. 68 O.S. 1991, § 2385.10. Furthermore, if Protestants' argument was sustained the provisions of § 2373 could be circumvented simply by requesting a credit of the overpayment as opposed to a refund. As the Commission previously decided, "such a result is untenable." Accordingly, Protestants' income tax return which requested a credit of the overpayment of taxes to the subsequent year estimated taxes was a claim for refund subject to the provisions of § 2373.

12. Protestants contention that the carry forward estimated tax credits from prior years are not barred by § 2373 by reason of the equitable theory of an implied trust is without merit. First, the imposition of an implied trust is an equitable remedy applied by courts where no other remedy exists. See, ***Federal Deposit Ins. Corp. v. Haines Pipeline Const., Inc.***, 617 F.Supp. 61 (W.D.Okla. 1985). Here, Protestants had a statutory remedy for the recovery of the prior year estimated tax credits which Protestants failed to timely avail themselves of.

Second, implied trusts are remedial in that they are devised to prevent wrongful taking or

[5] 75 O.S. 1991, § 250 et seq., § 301 et seq.

unlawful holding of property. ***Wootton v. Melton***, 631 P.2d 1337 (Okl.App. 1981). Third, an implied trust is a remedial device used by courts to enforce substantive rights and is not itself a substantive right. ***Howell Petroleum Corp. v. Samson Resources Co.***, 903 F.2d 778 (10th Cir. Okla. 1990). In ***Neer****, supra* at pages 1078-1079, the Court held:

> * * * [T]he legislature, by unmistakable language, intended § 2373 to act as a substantive limitation on the right to recover **any** amount as a refund when the claim for refund is filed more than three years after the date on which Oklahoma income tax is paid. In short, the relevant terms of § 2373 clearly evidence a legislative intent to craft an outer limit time boundary beyond which a taxpayer's right or ability to recover a refund no longer exists.
>
> A statute of limitation extinguishes a remedy for an existing right by penalizing a party who sleeps on that right. (Citation omitted). A statute of repose sets an outer chronological time boundary beyond which no cause of action may arise for conduct that would otherwise have been actionable. (Citations omitted). (Emphasis original).

13. Because Protestants' 1993 federal income tax return was neither changed nor corrected by the IRS, § 2375(H) of the Oklahoma Income Tax Act is not applicable in this cause.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of MR. PROTESTANT AND MS. PROTESTANT be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.