

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-11-21-008 / PRECEDENTIAL
ID: P9800197
DATE: 11-21-00
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On the following dates and for the following years MR. AND MRS. PROTESTANT filed joint Oklahoma Individual Income Tax Returns, Forms 51.1:

- a. April 15, 1988--1987
- b. March 10, 1989--1988
- c. April 15, 1990--1989
- d. March 12, 1991--1990
- e. February 14, 1992--1991
- f. February 19, 1993--1992
- g. April 15, 1994--1993
- h. April 15, 1995--1994
- i. March 14, 1996--1995
- j. April 2, 1997--1996

2. On each of these returns the Protestants reported as taxable Oklahoma income the annual proceeds from Protestants' account with the United States ANONYMOUS NAME Retirement Board. This income was excludable from Oklahoma Adjusted Gross Income for all subject tax years.

3. Prior to 1991, the Oklahoma Tax Commission did not specifically give notice in its instructions to Form 511 that said category of income was excludable.

4. Protestants attached to each of these original returns their Federal Form XXX-XXXX-X (specialized Federal ANONYMOUS NAME Retirement Board 1099's), which label the income as Federal ANONYMOUS NAME Retirement Board income.

5. On March 24, 1998 Protestants filed joint Amended Oklahoma Individual Income Tax returns for 1987 through 1996. In each of these amended returns the Protestants excluded their ANONYMOUS NAME Retirement income from Oklahoma taxable income, and claimed refunds as follows:

1987	\$477.00
1988	\$1,047.00
1989	\$773.00
1990	\$591.00
1991	\$655.00
1992	\$649.00
1993	\$1,102.00
1994	\$1,130.00
1995	\$801.00
1996	\$1,226.00

6. On April 22, 1998, the Division granted the Protestants' refunds on the amended returns for tax years 1994 through 1996, but denied the refunds for tax years 1987 through 1993 for the stated reason the claims were barred by 68 O.S. §2373.

7. Protestants timely protested this denial by letter of April 30, 1998.

ISSUES

1. Whether Protestants refund claim is barred by the three (3) year statute of limitation at 68 O.S. §2373.

2. Whether the Tax Commission owes a duty to the taxpayer to notify the taxpayer of mistakes on the return.

3. Whether the equitable doctrine of unjust enrichment requires the refund of taxes barred by the statute of limitations.

CONCLUSIONS OF LAW

I. Protestants Refund Claim Is Barred By The Statute Of Limitations

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

2. ANONYMOUS NAME retirees who reported and remitted state income taxes on their United States ANONYMOUS NAME Retirement Board income for the tax years 1987 through 1993 are entitled to a refund of those taxes if a claim for refund of those taxes was timely filed. *Strelecki, et al. v. Oklahoma Tax Commission*, 872 P.2d 910, 923-924 (Okla. 1993).

3. A claim for refund of income taxes is limited to 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." 68 O.S.1991, §2373. See *Turner v. Oklahoma Tax Commission*, 858 P.2d 433, 434 (1993). Thus, a claim for refund for income taxes paid on retirement income received in 1987 must have been filed on or before April 15, 1991; for 1993, the claim for refund must have been filed on or before April 15, 1997. See *Strelecki*, supra at 924. A refund claim filed after the three-year period is barred. *Id.* at 911 n.6.

4. The state cannot be sued for the recovery of taxes paid in absence of legislative consent, and the right to recover taxes so paid must therefore be found in a statute. *Sullivan v. Oklahoma Tax Commission*, 283 P.2d 521, 523 (Okla. 1955), citing *Antrim Lumber Company v. Sneed*, 175 Okl. 47, 52 P.2d 1040, 1045 (1935). The remedy for recovery of taxes illegally exacted is provided by statute and is exclusive. *Id.* at 523-524.

5. The right or privilege of recovery of income taxes in a proper case is well established; *Sowders v. Oklahoma Tax Commission*, 527 P.2d 852 (Okla. 1974); *Sullivan*, supra; *Oklahoma Tax Commission v. Liberty Nat. Bank & Trust Co.*, 289 P.2d 388 (1955), and is recognized by various provisions of the Income Tax Act. See 68 O.S. 1991, §§2358.1, 2368(A) (3), 2373, 2374, 2375(H). See also 68 O.S. 1991, §217(h). Conditions and restrictions may be prescribed by the legislature on the exercise of such right or privilege, and these conditions or restrictions must be strictly complied with. See *Sowders*, supra; *Sullivan*, supra. Claims for tax refund must conform strictly to statutory requirements; *Rosenman v. U.S.*, 323 U.S. 658, 65 S.Ct. 536, 89 L.Ed. 535 (1945), and the Commission is without authority to waive the statute limiting the time within which claims must be filed. *U.S. v. Garbutt Oil Co.*, 302 U.S. 528, 58 S.Ct. 320, 82 L.Ed. 405 (1938). See *Matter of Phillips Petroleum Co.*, 652 P.2d 283 (Okla. 1982).

6. Taxpayers are charged with notice of and the duty to discover all duly enacted tax statutes, as the same may apply to them. *Anderson National Bank v. Lockett*, 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692 (1944); *Ponder v. Ebey*, 194 Okl. 407, 152 P.2d 268 (1944). Additionally, the Tax Commission is not required to give actual notice to taxpayers of changes in any state tax law. See 68 O.S. §257.

7. Here, the record reflects that Protestants failed to file a claim for refund of the income taxes paid on the federal ANONYMOUS NAME retirement income within three (3) years of the payment of the taxes on such income. Accordingly, Protestants' refund claim is barred under the provisions of Section 2373.

II. The Tax Commission Does Not Have A duty To Notify The Taxpayer Of Mistakes On The Return

8. The Protestants are personally responsible for the correctness of the income tax return that they sign themselves. By signing the return, the Protestants made the following statement that is printed on each return:

Under penalties of perjury, I declare that I have filed an original return and that I have examined this return including accompanying schedules and statements, and to the best of my knowledge and belief this amended return is true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

9. The Division's review of a return in an office audit or by processing the return as filed is not a verification by the Tax Commission of any item on the return 68 O.S. §221(B).

10. Any mistakes made by a taxpayer on a return may be corrected by the taxpayer by filing a claim for refund pursuant to 68 O.S. §2373 within three (3) years of the tax payment or may be assessed for additional taxes within three (3) years from the date the return was filed pursuant to 68 O.S. §223(A). These statutes provide a mechanism to correct mistakes made by taxpayers but limit the Tax Commission's authority to the three (3) year time period in order to bring finality to matters before the Tax Commission. This policy is imposed upon the Tax Commission by the State Legislature and the Tax Commission has no authority to deviate from this policy even though a taxpayer is barred from fully recovering taxes erroneously paid by him or her. This law is equally enforced against all taxpayers including the Protestants. The Tax Commission does not have a duty to notify taxpayers of mistakes on their return and the Protestants have not provided any authority upon which they can base their assertion that a duty exists.

On the contrary, the Protestants have a duty to correctly file their income tax return, 68 O.S. §2368, and must assume personal responsibility for any errors they might have made on their returns.

III. The Equitable Doctrine Of Unjust Enrichment Is Inapplicable To An Action At Law

11. The Protestants submit that the equitable doctrine of unjust enrichment is available to them as a basis upon which their refund can be granted because the Tax Commission has been enriched at the expense of the taxpayers who failed to timely file their claim. In Oklahoma, it is a well settled principle of law that if a person has a plain, speedy and adequate remedy at law, equity will not grant him relief, *Powell Briscoe, Inc. v. Peters*, 269 P.2d 787 (Okl. 1954), *Oklahoma Tax Commission v. Harris*, 191 Okl. 28, 126 P.2d 685 (1942). In the case at bar, Section 2373 provided a refund to the Protestants for income taxes paid within three (3) years of their claim. The Protestants have been fully paid for all compensable claims pursuant to that statute. No further relief under law is available to the Protestants, and the equitable theory of recovery is not applicable in this case.

12. Protestants' protest to the denial of their claim for refund of income taxes should be denied.

DISPOSITION

It WAS the DETERMINATION of the undersigned based upon the specific facts and circumstances of this case, that the income tax protest of MR. AND MRS. PROTESTANT be denied.

OKLAHOMA TAX COMMISSION