JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-02-06-005 / NOT PRECEDENTIAL**
ID: **P0200042**
DATE: **02-06-03**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

PROCEDURAL FACTS

1. On April 15, 1998, Protestant filed a request for an automatic extension of time until October 15, 1998, within which to file its 1997 Oklahoma income tax return. Protestant made a $10,000.00 deposit with this extension request.

2. On October 16, 1998, Protestant filed its original [Sic] 1997 Oklahoma income tax return. This original return called for an overpayment of $16,715.00 to be credited to 1998 estimated tax. This filing was timely under the extension.

3. The statutory due date of this original return was April 15, 1998.

4. On August 27, 2001, the Protestant filed an amended 1997 Oklahoma income tax return. This amended return claimed Investment/New Job Credits which they did not claim on the original returns for that year, and to carry forward prior year credit amounts, by way of Forms 506 attached to the amended return.

5. This amended return called for a refund of $15,081.00.

6. By letter dated January 28, 2002, the Division denied Protestant's claim to the 1997 refund on the grounds that the claim was made more than three years from the date of payment of the monies claimed to be refunded.

7. The calculations in the 1997 amended return are mathematically correct.

8. By letter dated February 19, 2002, Protestant timely protested the refund claim denial.

9. The Office of Administrative Proceedings issued a Notice of Prehearing Conference on April 11, 2002, and said conference was conducted May 23, 2002. On May 24, 2002, and again on September 5, 2002, that office issued a Scheduling Order in this matter.

10. Until the receipt of an original return, the Division is unable to determine the correct amount of required payment of tax due for any given year.

11. It is the Division's policy and practice to deem the date of payment of tax for a particular year to be the statutory due date of the return for that year, even if that payment was made prior to the statutory due date of the return for that year.

ISSUES PRESENTED FOR DECISION

1. Whether Protestant's claim for refund made in its amended income tax return for 1997 was timely, or rather is barred by Oklahoma's three-year limitation period from the date of payment for refund claims. It is Protestant's position that the date of payment of the monies claimed to be refunded was on October 16, 1998, the date the original 1997 return was filed under extension, so as to make the refund claim timely. It is the Division's position that the date of those monies' payment was, at the latest, on April 15, 1998, the statutory due date of the original return, so as to make the refund claim untimely, and further that the statutory due date of the original return is the date of payment regardless whether the payment to be attributed to a particular year was made prior to the statutory due date of the return for that year.

2. Whether by failing to set a full hearing on the merits in this matter within sixty (60) days from the filing of the Protest letter as described in 68 O.S. 2001 ϶ 227(e), the Commission has forfeited the Division's ability to deny the refund claim herein.

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 refund of state income taxes is subject to the provisions of Section 2373 of the Oklahoma Income Tax Act[1], wherein it provides in pertinent part:

> [T]he 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.

3. Section 2373 specifically provides that the period within which to file for a refund of state income taxes is tied to the date the tax is paid.

4. 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:

[1] 68 O.S. 1991, ϶ 2351 et seq.

ϑ 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, ϑ 2373 is a legislatively crafted outer limit time boundary beyond which taxpayers' right to recover a refund no longer exists.

5. 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, ϑ 216. State income tax is due at the time of transmitting the return required under the Act. 68 O.S. 1991, ϑ 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, ϑ 2368(G).
6. Estimated or withheld income taxes paid prior to the statutory due date of an income tax return are deemed paid on the original due date of the return notwithstanding the granting of an extension of time within which to file the return. See, Oklahoma Tax Commission Order Nos. 2000-09-19-041, 92-12-29-024 and 92-03-26-033.

7. Here, Protestant's claim for refund was filed more than three (3) years subsequent to the date the taxes subject to the claim were deemed paid. Accordingly, Protestant's refund is barred.

8. The provisions of Sections 227 and 228 of the Uniform Tax Procedure Code[2] do not apply to a claim for refund of state income taxes. 68 O.S. 1991, ϑ 227(f)(1). See, ***Sowders v. Oklahoma Tax Commission***, 527 P.2d 852 (Okla. 1974). Accordingly, the Division is not statutorily precluded from seeking the denial of the refund claim.

9. Protestant's protest to the denial of its 1997 income tax claim for refund should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest to the denial of the income tax claim for refund of 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.

[2] 68 O.S. 1991, ϑ 201 et seq.