JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-03-13-002 / NOT PRECEDENTIAL**
ID: **P0200189**
DATE: **03-13-03**
DISPOSITION: **DENIED**
TAX TYPE: **ESTATE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 11th day of February, 2003, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. Upon review of the file in this matter the undersigned finds as follows:

FINDINGS OF FACT

1. On May 13, 1999, an Oklahoma *Estate Tax Return* for the Estate of DECEDENT was filed with the Oklahoma Tax Commission reporting a tax due of $23,633.00.

2. On June 22, 1999, a *Notice of Assessment* was issued by the Audit Division finding no additional taxes to be assessed.

3. An *Order Releasing Taxable Estate* was issued by the Oklahoma Tax Commission on June 22, 1999. The Order indicated that the tax due in the amount of $23,633.00 was paid.

4. By letter dated August 18, 2000, Protestant asked that the estate tax return be amended to allow certain Oklahoma State Turnpike Authority Bonds as exempt from estate tax and requested a refund of estate tax in the amount of $5,603.00.

5. The Division, by letter dated February 13, 2001, advised Protestant that pursuant to 68 O.S. ϑ 815, an estate tax return cannot be amended or changed after one year from the date of assessment or release.

6. By letter dated August 19, 2002, Protestant filed a response to the Division's denial of the claim for refund. The Division treated this response as a protest to the denial and the protest file was forwarded to the Administrative Proceedings Section of the Oklahoma Tax Commission.

7. On December 13, 2002, the Division filed a *Motion to Dismiss* Protestant's protest on the grounds and for the reason that Protestant's request of August 18, 2000, was not filed within the time periods prescribed in Section 815(B) of Title 68.

8. A hearing to consider the *Motion to Dismiss* was scheduled for January 27, 2003. A notice to appear or respond in writing was served on Protestant.

9. Counsel for Protestant did not appear for the hearing on the Motion or respond in writing; however, Counsel did contact the Division attorney by phone and advised he would not appear and to allow the Court to sustain the Motion.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction to consider the *Motion to Dismiss*. 68 O.S. ∋ 207 and *Oklahoma Administrative Code 710:1-5-46*.

2. Upon receipt of the return, the Tax Commission is charged with auditing the same and, if any tax is found to be due, shall notify the administrator and attorney of record by order assessing the tax, together with any interest or penalty. 68 O.S. Supp. 1996, ∋ 815(B). Section 815(B) further provides for the filing of objections by the administrator of the estate or any interested party. This subsection provides in pertinent part:

> Provided, however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or assessment or any appraisement made by the Tax Commission, he shall, within thirty (30) days from the date of mailing of such notice, file with the Tax Commission his objection, in writing, specifically setting forth the grounds of his objections, and thereupon the Commission may grant a hearing, and upon such hearing may adjust the matters in controversy and correct the assessment as justice may require. Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error of omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of his objection, and thereupon the Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require.

3. The Commission has determined that the initial objection period permits interested parties to object to the action of the Tax Commission in assessing the tax, whereas the second limitation period was added to allow the correction of errors or mistakes by the estate's representative in the omission or inclusion of property on the return. See, Oklahoma Tax Commission Order No. 89-07-06-003.

4. An objection to a notice of assessment of estate tax, unless such objection alleges an error of omission or inclusion of property on the estate tax return, must be filed within thirty (30) days from the date of mailing of the notice of assessment. 68 O.S. Supp. 1996, э 815(B). An objection alleging an error of omission or inclusion of property on the estate tax return must be filed within one (1) year from the date of mailing of the notice of assessment. *Id*. Pursuant to Section 815(B), the Division audited the estate tax return and issued a *Notice of Assessment*. The Division mailed its *Notice of Assessment* to Protestant on June 22, 1999. Protestant filed its request to amend the estate tax return and claim a refund on August 18, 2000, approximately fourteen months after the Division mailed its *Notice of Assessment*. This request filed by Protestant in August 2000 cannot be allowed because it is outside the time limitations provided in Section 815(B).

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest of the Estate of DECEDENT 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.