JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-08-26-08 / NOT PRECEDENTIAL**
ID: **CR030004**
DATE: **08-26-03**
DISPOSITION: **DISMISSED**
TAX TYPE: **USE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. A CERTIFIED PUBLIC ACCOUNT ("THE CPA") has represented not only Claimant, but numerous other hospitals for several years with regard to the filing of claims for refund of taxes remitted on medical appliances, medical devices and other medical equipment furnished to Medicare and Medicaid patients.

2. THE CPA testified, and the Division does not dispute, although neither party can find a hard copy of the claims, that in August and September, 1997, he timely filed on behalf of Claimant, twelve (12) claims for refund of taxes paid during the period of 1994 through 1997, on medical appliances, medical devices and other medical equipment furnished to managed Medicare and Medicaid patients.

3. These twelve (12) claims were segregate from other refund claims filed on behalf of Claimant during the same time period because they involved managed Medicare and Medicaid patients.

4. THE CPA testified that in May, 1999, he was verbally informed that the twelve (12) claims would not be processed or allowed by the Tax Commission.

5. THE CPA testified that he did not receive written notification in May, 1999, that these claims were denied.

6. THE CPA notes concerning the claims merely indicate that he cancelled the claims.

7. THE CPA admits that he did not file a protest within thirty (30) days of being notified that the claims would not be processed or allowed.

8. THE CPA also admits that he has withdrawn or cancelled claims for refund in other situations where he was verbally informed that the claims would be denied.

9. THE CPA further admits that it is his decision to withdraw or cancel the claims in those situations, not the Tax Commission decision to not process the claims.

10. THE Division Auditor, testified that in his dealings with THE CPA, THE CPA would withdraw or cancel a claim after being verbally informed the claim would be denied, unless THE CPA wanted the Division to issue a denial so that he could get a legal opinion regarding the claim.

11. In the Fall of 2002, THE CPA filed on behalf of Claimant additional claims for refund of taxes paid on medical appliances, medical devices and other medical equipment furnished to managed Medicare and Medicaid patients.

12. These additional claims were initially denied and timely protested by Claimant.

13. The claims were subsequently allowed and are set to be paid in the Fall of 2003.

14. Based on the decision to pay these additional claims, Claimant on February, 20, 2003, resubmitted the twelve (12) claims originally filed in August and September, 1997.

15. The twelve (12) claims were denied by letter dated February 28, 2003, on the grounds they were not timely filed and the notes by THE CPA indicating he cancelled the claims.

16. Claimant timely protested the denial of the claims and requested a hearing.

17. The auditor testified that he could not determine whether the claims are otherwise payable because no documentation in support of the claims was submitted.

18. The auditor stated that THE CPA told him that he would have to recreated the back-up documentation to support the claims if the Division was inclined to allow the claims.

19. The auditor testified that when he began working in credits and refunds in late 1999 or early 2000, the time frame for processing claims for refund was eleven (11) months.

20. The time frame is currently thirteen (13) months.

21. The amount in controversy is $49,083.57.

ISSUES AND CONTENTIONS

The issue presented for decision is whether claims for refund which are timely filed, but subsequently withdrawn or cancelled by a taxpayer and then resubmitted more than three years after the taxes associated with the claims are remitted, are barred by the provisions of 68 O.S. 1991, ∋ 227.

Claimant contends that the claims for refund should be allowed since the basis for denying the claims was that they had not been previously filed or received and the evidence shows the claims were filed and received. Claimant also argues that the Division failed to comply with the dictates of Section 227 which requires the Division to approve or deny the claims in writing.

The Division contends that the claims for refund are barred. In support of this contention, the Division argues that notwithstanding whether the claims were originally timely filed, Claimant withdrew or cancelled the claims and did not resubmit them within three years of the date the taxes were remitted. The Division disputes any insinuation that the claims for refund were returned to Claimant without rendering a written decision, citing the statute and Claimant's practice of withdrawing or canceling refund claims without receiving a written denial. The Division further argues that Claimant's representative has vast experience with filing claims for refund and should be aware of the statutory procedures. The Division further argues that Claimant should have protested the decision to deny the claims in May, 1999, but instead cancelled or withdrew the claims.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 2001, ∋ 227(e).

2. The State of Oklahoma cannot be sued for the recovery of taxes paid in absence of legislative consent to such suit, and hence the right to recover taxes so paid must be found in a statute. ***Sullivan v. Oklahoma Tax Commission***, 283 P.2d
521 (Okla. 1955).

3. The right of any taxpayer to recover taxes against the State of Oklahoma is generally set forth in Section 227 of the Uniform Tax Procedure Code[1], wherein it provides that a taxpayer may be refunded any tax collected by the Tax Commission, provided the tax was paid through error of fact, or computation, or misinterpretation of law and a verified claim for refund or an amended report or return is filed with the Tax Commission within three (3) years of the date of the erroneous payment. 68 O.S. 1991, ∋ 227(a) and (b).

[1] 68 O.S. 1991, ∋ 201 et seq. Excepted from the provisions of Section 227 are the refund of income taxes erroneously paid, estate taxes and taxes paid as a result of an assessment thereof where the assessment has been allowed to become final by operation of law.

4. The consent of the legislature to the filing of an action for the recovery of taxes erroneously paid is limited by the provisions of Section 227(b)[2], and the action must be commenced within the time allowed or it is barred[3].

5. Upon the filing of a verified claim for refund, the Tax Commission is required to determine what amount, if any, of the claim is due as soon as practicable, advise the taxpayer about the correctness of the claim and provide written notice of approval or denial of the claim to the taxpayer. 68 O.S. 1991, ∋ 227(c).

6. If a claim for refund is denied, the taxpayer may file a demand for hearing which demand must be filed within thirty days of the mailing date of the notice of denial or the claim is barred. 68 O.S. 1991, ∋ 227(d).

7. The undersigned finds that Claimant's refund claims are not barred by the provisions of Section 227(d). Section 227(d) provides that a refund claim shall be barred if the taxpayer fails to file a demand for hearing within thirty (30) days of the mailing date of the notice of denial of the claim. Here, Claimant was verbally informed that its refund claims would not be allowed. No notice of denial was mailed to Claimant. Accordingly, Claimant was under no statutory obligation to file a demand for hearing.

8. The evidence adduced at the hearing indicates that Claimant timely filed twelve (12) claims for refund, the Division in May, 1999, advise Claimant regarding the correctness of the claims and Claimant thereafter withdrew or cancelled the claims. With that shown the issue is whether the Division was required to issue a written notice of denial of the claims and, if so, whether the failure to issue the written notice tolled the limitation period of Section 227(b). The undersigned finds that after the claims were withdrawn or cancelled the Division was not required to issue a written notice of denial of the claims.

9. In an analogous case[4], the Supreme Court of Oklahoma held that the timely filing of a protest to a proposed assessment which is withdrawn does not make taxpayer's purported protest of a new assessment timely by relation back to the first protest. *Id*. at 51. In ***Hamm***, the Tax Commission on September 4, 1980, following an audit, mailed notice of a proposed assessment against the taxpayer. Within thirty (30) days of September 4, 1980, taxpayer requested a 90-day extension within which to protest the assessment. The September 4, 1980, proposed assessment was withdrawn by the Commission and a new audit was instituted. On July 21, 1981, the Commission mailed notice of a new proposed assessment against the taxpayer which was similar to the previous proposed assessment. On November 17, 1981, taxpayer filed an application with the Commission requesting a 90-day extension of time in which to file a protest. The Supreme Court noted that the application was filed after the expiration of the 30-day period referred to in ∋ 221(c), but within 120 days from the date

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[2]See, ***Vinson Supply Co. v. Oklahoma Tax Commission***, 767 P.2d 406 (Okla. 1988) and ***Sun Oil Co. v. Oklahoma Tax Commission***, 620 P.2d 896 (Okla. 1980).

[3]***Budget Rent-A-Car of Tulsa v. Oklahoma Tax Commission***, 773 P.2d 736 (Okla. 1989).

[4]***Matter of the Request of Hamm Production Company for an Extension of Time in which to Protest Proposed Gross Production Tax Assessments Issued on July 21, 1981***, 671 P.2d 50 (Okla. 1983).

of the mailing of the notice of proposed assessment. By Order of November 17, 1981, the Commission denied the application for time extension on the basis that it did not have jurisdiction to consider the application. The taxpayer appealed that decision.

10. Here, like the Tax Commission's proposed assessment in ***Hamm***, Claimant filed a timely claim for refund which was subsequently withdrawn. Also, like the taxpayer in ***Hamm***[5], once the claim for refund was withdrawn no case or controversy existed with regard to the claim for refund and no further action on the claim was required of the Tax Commission. Further, unlike the Tax Commission's second proposed assessment in ***Hamm***, Claimant's resubmitted claim for refund was filed outside the limitation period of ∋ 227(b). However, like the proposed assessments in ***Hamm***, the resubmitted claim does not relate to or become a part of the original claim so as to make the resubmitted claim timely by relation back to the original claim. Each claim must be treated separately and the resubmitted claim must be treated as a new claim for refund.

11. Since Claimant's twelve (12) claims for refund filed on February 20, 2003, were filed more than three (3) years subsequent to the date the taxes associated with the refund claims were remitted, the claims for refund are barred by the provisions of Section 227(b).

12. Claimant's protest to the denial of the twelve (12) claims for refund should be dismissed on the basis that they were not timely filed.

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 claim for refund of Claimant be dismissed.

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.

[5]The taxpayer in ***Hamm*** only filed a 90-day extension request within thirty (30) days of the mailing date of the notice of proposed assessment. After the proposed assessment was withdrawn, the taxpayer was not required to file a protest to such proposed assessment. Once a proposed assessment is withdrawn, and similarly a cancelled claim for refund, no further action is required by the opposing party. No case or controversy exists with regard to a withdrawn proposed assessment or claim for refund which would require some action by the opposing party.