

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2004-01-15-09 / NOT PRECEDENTIAL  
**ID:** P0200069  
**DATE:** 01-15-04  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During 1953, DECEDENT, a member of a federally recognized Indian tribe, received a lease bonus payment for an oil and gas lease located on tax-exempt allotted Indian land.
2. An application was made by DECEDENT for \$6,928.56 of Indian money credited to her account on the books of the Bureau of Indian Affairs ("BIA") for the stated purpose of "pay[ing] my 1953 Oklahoma Income Tax." A *Recommendation and Approval* is attached indicating the funds, which were derived from an oil and gas lease, were approved by the BIA for "DECEDENT" for payment of Oklahoma income tax and mailed on April 12, 1954.
3. Upon the death of DECEDENT in 1972<sup>1</sup>, the residue of her estate passed to a nephew of her husband, ALSO a member of a federally recognized Indian tribe.
4. The bulk of the estate of NEPHEW, who died in 1975, passed in accordance to his will to his step-daughters. STEP-DAUGHTERS [PROTESTANTS] are both members of a federally recognized Indian tribe.
5. A *Claim for Refund of Income Taxes* dated January 12, 2002, was filed by AN attorney-in-fact for STEPDAUGHTERS [PROTESTANTS], on the income tax paid on the 1953 lease bonus payment received by DECEDENT. The *Claim* requested the refund of the \$6,928.56 paid, plus interest.
6. By letter dated April 24, 2002, the Division denied the *Claim for Refund of Income Taxes*.
7. A protest to the denial was filed by letter dated April 25, 2002.

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<sup>1</sup> Protestants, in their position letter of November 15, 2002, state that DECEDENT died in 1972, but no documentation was presented in support of that date of death. For the purposes of this matter, however, it is assumed that DECEDENT died in 1972.

**ISSUE**

Whether the Division properly denied the refund of income taxes claimed by Protestants.

**CONTENTIONS**

Protestants contend that Oklahoma state income tax paid in 1954 by the Bureau of Indian Affairs on behalf of DECEDENT was exempt from state income tax and therefore DECEDENT had a right to refund of those taxes, plus interest, under Section 2373 of Title 68, which allows for refund of illegally collected taxes from members of federally recognized Indian tribes without a three-year limitation for refund. Further, Protestants contend that the right to refund was an asset of the estate of DECEDENT in 1972 at the time of her death and passed to her heir, NEPHEW. Likewise, Protestants contend that the right to refund of tax, plus interest, passed to Protestants in 1975 as heirs of NEPHEW.

Division contends that while amendments to Section 2373 of Title 68 do allow that certain taxes erroneously paid may be refunded beyond the three-year limit, the section allows those refunds only to the member of a federally recognized Indian tribe who paid the tax or to the United States on behalf of that Indian ward or former Indian ward. Additionally, the Division contends that Section 167 of Title 84 supports the denial because only property to which the testator was entitled at the time of death may be bequeathed through a residual clause. The amendment to Section 2373 of Title 68, removing the three-year statute of limitations for claims filed by members of federally recognized Indian tribes, did not occur until at least 19 years following her death. Thus, the claimed funds are statutorily precluded from being included in the assets of her estate.

**CONCLUSIONS OF LAW**

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. 2001, § 207.
2. At the time of payment of income tax in the amount of \$6,928.56 at issue herein, the refund of state income taxes was governed by 68 O.S. 1951, § 899.<sup>2</sup> Section 899 provided in pertinent part as follows:

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 upon verified and approved claim filed therefor, and the State Auditor shall issue his warrant to cover the same drawn upon the State Treasury, which shall be paid out of the "Income Tax Adjustment Fund", created by Section 873 hereof; and said Fund, or so much thereof as may be necessary, is hereby appropriated for that purpose.

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<sup>2</sup> This section was recodified as 68 O.S. Supp. 1965, § 2322 and was later recodified as 68 O.S. 1971, § 2373.

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 (3) year limitation shall not apply to the amounts of 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.

3. The statute specifically provided for an exception to the general three (3) year limitation period in the limited situation where the refund claim is filed by the United States on behalf of its Indian ward or former Indian ward and the claimed refund is for taxes illegally collected from tax-exempt lands. Consequently, a claim by DECEDENT for a refund of the income taxes erroneously paid would have been required to be filed on or before April 12, 1957.

Although Section 2373, the successor statute to Section 899, was amended to expand the exception to the three (3) year limitation period for amounts claimed by members of federally recognized Indian tribes, this amendment did not become effective until some 24 years after DECEDENT'S death. 68 O.S. Supp. 1996, § 2373.

4. The burden of proof in all proceedings is on the Protestant to show in what respect the action or proposed action of the Commission is incorrect. *Oklahoma Administrative Code 710:1-5-47*. Although Protestants have objected to the denial of the claim for refund by the Division, Protestants did not submit any authority upon which to base the objection. Therefore the claim for refund was properly denied.

### **DISPOSITION**

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest to the denial of the income tax claim for refund filed on behalf of DECEDENT be denied.

### **ORDER**

The above matter CAME on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, the Commission hereby ADOPTED the Findings of Fact, Conclusions of Law, and Recommendations made and entered herein by the assigned Administrative Law Judge on the 12th day of December, 2003; and MADE the following additional findings and conclusions:

**ADDITIONAL CONCLUSION OF LAW**

1. Irrespective of the statute of limitations, we also conclude that the protestants have failed to show that the decedent was entitled to any refund at all. In accordance with the income tax rates in effect for 1953,<sup>3</sup> tax on the lease bonus payment of \$22,802.76, if decedent had no other income, would amount to only \$1,156.68, without any deductions or exemptions. The taxes paid by the decedent, \$6,928.56, equate to a taxable income of approximately \$120,000.00. Protestants have not shown that the decedent paid any taxes on the lease bonus payment, or what part of the taxes paid, if any, is attributable to the bonus payment. The refund claim should be denied for this reason, also.

**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.

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<sup>3</sup> See, 68 O.S.1951, §876.