

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2004-01-29-12 / NOT PRECEDENTIAL
ID: P0200225
DATE: 01-29-04
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. By letter dated September 2, 2001¹ (sic), A Corporate Income Tax Auditor OF the Commission denied the refund claimed by PROTESTANT as an overpayment on its 1998 fiscal year amended return in the amount of Thirty-three Thousand Six Hundred Forty-seven Dollars (\$33,647.00).
2. PROTESTANT timely filed a formal Protest to the denial of the claim for refund by letter dated November 15, 2002.
3. A Pre-Hearing Conference was held on January 30, 2003. The Administrative Law Judge issued a Pre-Hearing Conference Order on January 30, 2003.
4. A Motion to Modify Scheduling Order was filed on March 3, 2003.
5. An Amended Scheduling Order was issued on March 6, 2003.
6. The Protest of PROTESTANT is properly before the Commission.

Facts Relating to PROTESTANT'S Claim for Refund

7. The statutory due date for PROTESTANT'S 1998 Oklahoma corporate income tax return was March 15, 1999. PROTESTANT filed an Application for Automatic Extension Of Time To File at the federal level, which also extended the time to file at the state level.
8. PROTESTANT made estimated tax payments for the 1998 tax year as follows:

¹ The records filed in this matter reflect that the claim for refund of PROTESTANT at issue herein was denied by letter dated September 20, 2002.

| Tax Year | Remit/DLN Tran Doc | Tax Amount | Penalty/ Interest | Mail Date |
|----------|--------------------|--------------|-------------------|-----------|
| 1998 | 81050400019 | \$104,484.00 | \$ 0.00 | 09/18/98 |
| 1998 | 80478502200 | \$250,000.00 | \$ 0.00 | 04/15/98 |
| 1998 | 80653501101 | \$250,000.00 | \$ 0.00 | 06/15/98 |
| 1998 | 80956102866 | \$ 80,000.00 | \$ 0.00 | 09/14/98 |
| 1998 | 81251802000 | \$250,000.00 | \$ 0.00 | 12/17/98 |

9. In September 1999, PROTESTANT filed its 1998 Oklahoma corporate income tax return. The return showed an overpayment of One Hundred Thirty-six Thousand One Hundred Sixty-four Dollars (\$136,164.00) to be credited to 1999 estimated tax.

10. On April 15, 2002, PROTESTANT filed an amended 1998 Oklahoma corporate income tax return.

11. This amended return called for a refund of Thirty-three Thousand Six Hundred Forty-seven Dollars (\$33,647.00).

12. By letter dated September 2, 2002, the Division denied PROTESTANT'S claim to the 1998 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.

ISSUE AND CONTENTIONS

The sole issue presented for decision is whether PROTESTANT'S claim for refund is barred by the provisions of 68 O.S. Supp. § 2373.

Protestant contends that when an income tax return is timely extended and subsequently filed by the extended due date, such extended due date is the deemed "tax paid" date.

The Division contends that the deemed "tax paid" date is the original due date and an extension of time to file does not extend the date when the tax is due.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 2001, § 221(D).

2. The provisions of Sections 227 and 228 of the Uniform Tax Procedure Code² do not apply to a claim for refund of state income taxes. 68 O.S. 2001, § 227(f). See, *Sowers v. Oklahoma Tax Commission*, 527 P.2d 852 (Okla. 1974).

3. The filing of a completed return which discloses a refund to be due by reason of the credits for withholding and/or estimated taxes previously paid shall constitute a claim for refund of the excess. 68 O.S. 1991, § 2385.10. See, Oklahoma Tax Commission Order No. 91-06-06-04³.

4. The refund of state income taxes is subject to the provisions of 68 O.S. 1991, § 2373, wherein it provides:

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 out of the "Income Tax Withholding Refund Account", created by Section 2385.16 of this title, in the same manner as refunds are paid pursuant to said section.

The information filed, reflecting the revision or adjustment, shall constitute the claim for refund.

Except as provided in subsection (H) of Section 2375 of this title, 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-year limitation shall not apply to the amount 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.

Provided, further, that where the Tax Commission and the taxpayer have signed a consent, as provided by law, extending the period during which the tax may be assessed, the period during which the taxpayer may file a claim for refund or during which an allowance for a refund may be made, is automatically extended to the final date fixed by such consent plus thirty (30) days. [Emphasis added.]

² 68 O.S. 1991, § 201 et seq.

³ In this case, the Tax Commission held that taxpayers' income tax return constituted a claim for refund notwithstanding that taxpayers requested the overpaid taxes be credited to their subsequent year estimated taxes, citing Section 2385.10.

5. 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:

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

6. Protestant argues that the claim for refund was timely filed since it was filed within three years of the extended due date of the return. Protestant's argument is not persuasive.

Section 2373 provides, "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." 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, § 216. See, *Matlock v. Oklahoma Tax Commission*, 2001 OK CIV APP 104 § 3, 29 P.3d 614, 615 (2001)⁴. See also, Oklahoma Tax Commission Order Nos. 92-03-26-033⁵ and 92-12-29-024⁶. State income tax is due at the time of transmitting the return required under the Oklahoma Income Tax Act⁷. 68 O.S. 1991, § 2375(A). "Calendar year corporation returns shall be due on or before the 15th day of March following the close of the taxable year." 68 O.S. 1991, § 2368(G).

7. Protestant stipulated that the due date for filing its 1998 corporate income tax return was March 15, 1999. There is not evidence in the record that Protestant's federal income tax return for 1998 was changed or corrected. Therefore, to be valid, the claim for refund had to be made on or before March 15, 2002. Since the claim was not made until the filing of the amended return on April 15, 2002, the claim was not filed within three years of the date the taxes were deemed paid and is therefore barred.

⁴ Citing *Neer v. State ex rel. Oklahoma Tax Commission*, 1999 OK 41, 982 P.2d 1071 (1999), the Court of Appeals held, "[p]ursuant to the teachings of *Neer*, the extension of time granted the Matlocks did not extend the provisions of § 2373 except in the instances where the federal income tax has been changed or corrected in which case the taxpayer has one year in which to file an amended claim for refund. 68 O.S. Supp. 1997 § 2375(H).

⁵ In this case, the Tax Commission held that estimated or withheld taxes are deemed paid on the due date of the return notwithstanding a federal or Oklahoma extension.

⁶ In this case, the Tax Commission held that a claim for refund must be filed within three years from the date the taxes were erroneously paid.

⁷ 68 O.S. 1991, § 2351 et seq.

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

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the income tax protest 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.