JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2004-02-10-02 / NOT PRECEDENTIAL**
ID: **P0300019**
DATE: **02-10-04**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 8th day of January, 2004, 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. By agreement of the parties, this matter was submitted for decision without a hearing. Protestants, by and through their attorney and the Audit Division ("Division"), by and through its former representative, AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission, submitted a Joint Stipulation of Facts and filed briefs in support of their respective positions, all in accordance with Oklahoma Administrative Code 710:1-5-38. The Division is currently represented by ANOTHER Assistant General Counsel.

FINDINGS OF FACT

The parties stipulate to the following:

1. During the tax year 1998 at issue, [Protestants] resided at XXXX N.W. ANONYMOUS Circle, ANYTOWN, Oklahoma.

2. [Protestants] timely filed federal extensions extending the due date of their 1998 Oklahoma Income Tax Return to October 15, 1999.

3. [Protestants] filed their 1998 Oklahoma Income Tax Return on or before October 15, 1999.

4. On October 9, 2002, [Protestants] filed an Amended Individual Income Tax Return for 1998.

5. [Protestants] sought a refund of $3,504.00 in their 1998 Amended Return.

6. Their claim for refund was denied by the Division by letter dated November 22, 2002.

7. The Division maintains that the refund was barred by statute and the [Protestants] maintain the refund was not barred by statute.

8. [Protestants] timely filed a protest of the denial of their claim.

ISSUE AND CONTENTIONS

The sole issue presented for decision is whether Protestants' claim for refund is barred by the provisions of 68 O.S. 1991, § 2373.

Protestants contend 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 Code[1] do not apply to a claim for refund of state income taxes. 68 O.S. 2001, § 227(f). See, Sowders 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. 91-06-06-04[2].

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.

[1] 68 O.S. 1991, § 201 et seq.

[2] 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.

> 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.]

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. Protestants argue that the claim for refund was timely filed since it was filed within three years of the extended due date of the return. Protestants' 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)[3]. See also, Oklahoma Tax Commission Order Nos. 92-03-26-033[4] and 92-12-29-024[5]. State income tax is due at the time of transmitting the return required under the Oklahoma Income Tax Act[6]. 68 O.S. 1991, § 2375(A). The income tax returns of individuals, made on the basis of a calendar year, are due on or before the 15th day of April following the close of the taxable year. 68 O.S. 1991, § 2368(G).

7. Protestants' state income taxes were due on April 15, 1999, the date their income tax return was required to be filed and the extension of that date did not extend the payment of the taxes. No evidence has been presented to show Protestants' 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 April 15, 2002. Since the claim was not made until the filing of the amended return on October 9, 2002, the claim was not filed within three years of the date of payment of the taxes and is therefore barred.

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

DISPOSITION

It is the DETERMINATION of the undersigned Administrative Law Judge, 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.

---

[3]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).

[4]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.

[5]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.

[6]68 O.S. 1991, § 2351 et seq.