JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-03-22-03
ID: CR-04-012-H
DATE: MARCH 22, 2005
DISPOSITION: DENIED
TAX TYPE: MOTOR FUEL REFUND
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held on January 13, 2005, at approximately 9:30 a.m. Notice of hearing was mailed to the Claimant at his last-known address. The Claimant did not appear at the hearing. The Division called one (1) witness, AUDITOR, Auditor, Credits and Refunds Section, Account Maintenance Division, who testified regarding the records of the Division. The Division's Exhibits A through C were identified, offered, and admitted into evidence. Upon conclusion of the hearing the record was closed and this case was submitted for decision January 13, 2005.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence and the position letters and briefs of the parties, the undersigned finds:

1. On September 14, 2004, the Division received the Claimant's Application for Refund of Motor Fuel Tax Gasoline and Non-Dyed Diesel Only, claiming a refund in the amount of $5,038.02.[1]

2. The claim for refund was for the purchase and payment of motor fuel tax on 38,754 gallons of non-dyed diesel fuel, for agriculture use, on June 13, 2000; February 19, 2001; November 13, 2001; September 6, 2002; June 20, 2003; April 26, 2004; and August 17, 2004.[2]

3. On September 17, 2004, the Division granted the refund on 25,901 gallons of non-dyed diesel fuel, purchased for agricultural use, from November 13, 2001, through August 17, 2004, in the amount of $3,367.13.[3] The Division denied the remainder of the claim for refund on 12,853 gallons of non-dyed diesel fuel, purchased for agricultural use on June 13, 2000, and February 19, 2001, in the amount of $1,670.89. According to the

[1] Division's Exhibit A.

[2] Division's Exhibit A.

[3] Division's Exhibit B. The partial refund was issued on September 22, 2004, by Voucher#123456.

application filed by the Claimant, the non-dyed diesel fuel was purchased more than three years before the claim for refund was filed.[4]

4. On October 13, 2004, a timely protest was received from the Claimant.[5]

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[6]

2. A tax, at a rate of thirteen cents ($0.13) per gallon, is imposed on all diesel fuel used and consumed in Oklahoma.[7]

3. An exemption from motor fuel tax is granted by statute for motor fuel used exclusively for agricultural purposes.[8]

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[4] Division's Exhibit C. The Division relies on the information submitted by the claimant on the application. Invoices are not required to be attached to the application, but the claimant must maintain documentation to support the claim for a period of three (3) years.

[5] Division's Exhibit "C". Claimant stated that he "was unaware of the time limit on this tax rebate, had no knowledge of the state statutes, nor did [he] see on the request form or any material that [he] had that there was a time limit."

[6] OKLA. STAT. ANN. tit. 68, § 227(d), which states:

> If the claim for refund is denied, the taxpayer may file a demand for hearing with the Commission. The demand for hearing must be filed on or before the thirtieth day after the date the notice of denial was mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred.

See also OKLA. STAT. ANN. tit. 68, § 227(e), which states:

> Upon the taxpayer's timely filing of a demand for hearing, the Commission shall set a date for hearing upon the claim for refund which date shall not be later than sixty (60) days from the date the demand for hearing was mailed. The taxpayer shall be notified of the time and place of the hearing. The hearing may be held after the sixty-day period provided by this subsection upon agreement of the taxpayer.

[7] OKLA. STAT. ANN. tit. 68, § 500.4(A)(2).

[8] OKLA. STAT. ANN. tit. 68, § 500.10(8) provides:

> Subject to the procedural requirements and conditions set out in this section and Sections 500.11 through 500.17 of this title, the following are exempt from the tax imposed by Section 500.4 of this title on motor fuel:
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> * * *
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> 8. Motor fuel used as fuel for farm tractors or stationary engines owned or leased and operated by any person and used exclusively for agricultural purposes, except as to two and eight one-hundredths cents ($0.0208) per gallon of gasoline as provided in subsection C of Section 500.4 of this title;

4. The exemption from taxation for motor fuel used exclusively for agricultural use shall be perfected by the consumer applying for a refund with respect to motor fuel purchased by the consumer on which motor fuel tax has been previously paid and no refund previously issued.[9]

5. The application for refund filed by the claimant "shall present to the Commission a statement containing a written verification that the claim is made under penalties of perjury and lists the total amount of motor fuel purchased and used for exempt purposes. The claim shall not be transferred or assigned and shall be filed not more than three (3) years after the date the motor fuel was purchased. The statement shall show that payment for the purchase has been made and the amount of tax paid on the purchase has been remitted."[10]

6. In all proceedings before the Oklahoma Tax Commission, the taxpayer has the burden of proof[11] to show the action of the Commission is incorrect, and in what respect.[12]

The Claimant in this case has failed to meet his burden of proof that the Division's denial of the refund for the purchases made on June 13, 2000, and February 13, 2001, was incorrect. The Claimant's application for refund was not filed until September 13, 2004. Both purchases are outside the three (3) year statute of limitation. The Claimant has not cited any authority in support of his position that the refund should be granted, and the undersigned is not aware of any statutory authority or case law, which would provide relief.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based on the above and foregoing findings and conclusions that the protest be denied

OKLAHOMA TAX XOMMISSION

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

[9] OKLA. STAT. ANN. tit. 68, § 500.14(D).

[10] OKLA. STAT. ANN. tit. 68, § 500.16(A). See also OKLA. ADMIN. CODE § 710:55-4-116.

[11] The standard of review in an administrative proceeding is preponderance of the evidence. *Oklahoma Tax Commission Order No. 1999-04-08-003* (citing) *Oklahoma Tax Commission Order No. 1991-10-17-061*. OKLA. ADMIN. CODE § 710:1-5-77(b) provides in pertinent part that "preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[12] OKLA. ADMIN. CODE § 710:1-5-47. See *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359.

effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.