

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-04-19-11
ID: P-04-101-H
DATE: APRIL 19, 2005
DISPOSITION: DEMIED
TAX TYPE: INCOME
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. HUSBAND. and WIFE¹ (“Protestants”), appear *pro se*.² The Account Maintenance Division of the Oklahoma Tax Commission (“Division”) is represented by ATTORNEY, Office of General Counsel, Oklahoma Tax Commission.

On December 30, 2004, this office issued a notice setting this matter for hearing on January 26, 2005, at 1:30 p.m., with briefs or position letters due on or before January 19, 2005. The notice was sent to the Protestants’ last known address.³ The Division filed its Position Statement on January 19, 2005. The Protestants did not file a response. The hearing was held on January 26, 2005, at 1:30 p.m. The Protestants did not appear at the hearing. The Division called one witness, OTC WITNESS, Account Maintenance Division, who testified regarding the records of the Division. The Division’s Exhibits A through G were identified, offered, and admitted into evidence. At the conclusion of the hearing the record was closed and this matter was submitted for decision on January 26, 2005.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceeding and the exhibits received into evidence, the undersigned finds:

1. The Protestants filed their 1997 Oklahoma individual part-year income tax return on or about April 15, 2004. The return claimed a refund due in the amount of \$3,706.00. The statutory due date for the return was April 15, 1998.⁴

¹ HUSBAND. is also known as HUSBAND ALIAS. WIFE is also known as WIFE ALIAS

² “Pro se” is defined as “For himself; in his own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court.” BLACK’S LAW DICTIONARY 1099 (5th ed. 1979).

³ The notice was mailed to 123 FAKE STREET, ANYTOWN, OK 12345. The notice was not returned as undelivered.

⁴ Division’s Exhibit A.

2. The Protestants filed their 1998 Oklahoma resident individual income tax return on or about April 15, 2004. The return claimed a refund due in the amount of \$1,067.00. The statutory due date for the return was April 15, 1999.⁵

3. The Protestants filed their 1999 Oklahoma resident individual income tax return on or about April 15, 2004. The return claimed a refund due in the amount of \$1,821.00. The statutory due date for the return was April 15, 2000.⁶

4. By letter dated August 10, 2004, the Division denied the Protestants' claim for refund on their 1997 individual income tax return.⁷ The basis for the denial was that the claim was made more than three years past the statutory due date of the return and barred by the provisions of 68 O.S. § 2373.

5. By letter dated June 21, 2004, the Division denied the Protestants' claim for refund on their 1998 individual income tax return.⁸ The basis for the denial was that the claim was made more than three years past the statutory due date of the return and barred by the provisions of 68 O.S. § 2373.

6. By letter dated May 18, 2004, the Division denied the Protestants' claim for refund on their 1999 individual income tax return.⁹ The basis for the denial was that the claim was made more than three years past the statutory due date of the return and barred by the provisions of 68 O.S. § 2373.

7. By letter dated June 21, 2004, the Protestants filed a protest to the denial of the refunds for tax years 1997, 1998, and 1999.¹⁰

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.¹¹

⁵ Division's Exhibit B.

⁶ Division's Exhibit C.

⁷ Division's Exhibit D.

⁸ Division's Exhibit E

⁹ Division's Exhibit F.

¹⁰ Division's Exhibit G. The protest letter dated June 21, 2004, was mailed on July 29, 2004, and received by the Tax Commission on July 30, 2004. The letter contains a detailed account of Protestants' personal hardships, which led to the failure to timely file returns for the tax years at issue. No legal authority in support of the protest is provided.

¹¹ OKLA. STAT. ANN. tit. 68, § 207 (West 2001).

2. The provisions of Sections 227 and 228 of the Uniform Tax Procedure Code¹² do not apply to a claim for refund of state income taxes.¹³

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.¹⁴

4. The provisions of Section 221 of the Uniform Tax Procedure Code, wherein the procedures for protesting a proposed assessment are set forth, are not applicable to this matter, since the Division did not propose the assessment of taxes or additional taxes.¹⁵

5. The statutory authority for the Protestants' action is set forth in OKLA. STAT. ANN. tit. 68, § 207(c) (West 2001), which states:

Any person desiring a hearing before the Tax Commission shall file an application for such hearing, signed by himself or his duly authorized agent, setting out therein:

1. A statement of the nature of the tax, the amount thereof in controversy, and the action of the Tax Commission complained of;
2. A clear and concise assignment of each error alleged to have been committed by the Tax Commission;
3. The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in such hearing, or on appeal, to the arguments and legal authorities contained and cited in said application;
4. A statement of the relief sought by the taxpayer;
5. A statement of the witnesses, so far as such witnesses are then known to the taxpayer, showing their names and addresses, and, if the taxpayer so desires, a request that such witnesses be subpoenaed;
6. A verification by such person, or his duly authorized agent, that the statements and facts therein contained are true.

6. Section 207(c) does not prescribe a time limit for filing the application for hearing.

¹² OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

¹³ OKLA. STAT. ANN. tit. 68, § 227(f) (West 2001). See also *Sowers v. Oklahoma Tax Commission*, 1974 OK 122, 527 P. 2d 852.

¹⁴ OKLA. STAT. ANN. tit. 68, § 2385.10 (West 2001), which states: "In the event that the completed return of the taxpayer discloses a refund to be due by reason of the credits for withholding and/or estimated taxes previously paid, the filing of such tax return shall constitute a claim for refund of the excess."

¹⁵ OKLA. STAT. ANN. tit. 68, § 221(a) and (c) (West 2001).

7. The protest to the denial of the claims for refunds for the 1997, 1998, and 1999 tax years was timely filed.¹⁶

8. The amount of an income tax refund shall not exceed the amount of tax paid during the three years immediately preceding the filing of a claim for refund.¹⁷

9. The statutory due date for the filing of an income tax return is April 15th following the close of the taxable year.¹⁸

10. When an original return has not been filed, the Tax Commission will not issue a refund on a return that is filed more than three years after the original due date of the return.¹⁹

11. The Oklahoma Supreme Court held in *Neer v. Oklahoma Tax Commission*, 1999 OK 41, 982 P.2d 1071, that Section 2375 of Title 68 “is analogous to a statute of repose and the Legislature, by unmistakable language, intended Section 2373 to act as a substantive limitation

¹⁶ If the provisions of OKLA. STAT. ANN. tit. 68, § 227, were determined to apply, the protest must be filed on or before thirtieth (30th) day after the date the notice of denial was mailed.

¹⁷ OKLA. STAT. ANN. tit. 68, § 2373 (West 2001), provides in pertinent parts:

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. . . .

In cases 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 shall be automatically extended to the final date fixed by such consent plus thirty (30) days.

* * *

OKLA. STAT. ANN. tit. 68, § 2375 (West 2001) and OKLA. ADMIN. CODE § 710:50-5-13 contains exceptions to the general rule, but nothing in the record indicates that any of the exceptions apply to this matter. These were original returns, which had not been previously filed.

¹⁸ OKLA. STAT. ANN. tit. 68, § 2368(G)(1) (West 2001).

¹⁹ OKLA. ADMIN. CODE § 710:50-9-2 (2004), provides:

When an original return has not been filed, the Commission will not issue a refund on an original Individual Income Tax Return filed 3 years after the original due date of the return. A refund that is "barred by statute" cannot be used as payment on any delinquent account or applied to estimated tax. Exceptions to the statute of limitations set out in 710:50-5-13 also apply to certain refund situations. [See: 68 O.S. §2373]

See also *Commission Order No. 2000-09-19-041* and *Matlock v. Oklahoma Tax Commission*, 2001 OK CIV APP 104, 29 P.3d 614.

on a taxpayer's 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."

12. In all proceedings before the Tax Commission, the taxpayer has the burden of proof and the taxpayer bears the burden of showing that the Division's action is incorrect and in what respect.²⁰

13. In this matter the Protestants have failed to meet their burden of proof. The Protestants' claims for refund for tax years 1997, 1998, and 1999 were properly denied.

The Protestants' original returns for tax years 1997, 1998, and 1999 were not filed until April 15, 2004. Each of the returns was filed more than three (3) years after the original due date of the respective return. A claim for refund made more than three years beyond the date on which the return was due is barred by statute. The Protestants have failed to cite any basis or authority in support of their position.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case that the protest should be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.

²⁰ OKLA. ADMIN. CODE § 710:1-5-47 (2004). See also *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n.*, 1988 OK 91, 768 P.2d 359.