

JURISDICTION: OKLAHOMA TAX COMMISSION  
CITE: 2005-06-28-04  
ID: P-05-002-K  
DATE: JUNE 28, 2005  
DISPOSITION: DENIED  
TAX TYPE: INCOME  
APPEAL: NONE TAKEN

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

On or about September 14, 2004, Protestants filed an Amended Oklahoma Individual Income Tax Return, Form 511X, for the 2000 tax year claiming a refund of \$1,600.00. The Division by letter dated November 5, 2004, denied the refund claim and stated as the reason therefor that the claim was barred by statute. Protestants timely protested the Division's denial by letter dated December 17, 2004. An oral hearing was not requested in the letter of protest.

On January 6, 2005, the Division forwarded its file in this matter to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings pursuant to the Uniform Tax Procedure Code<sup>1</sup> and the Rules of Practice and Procedure Before the Oklahoma Tax Commission<sup>2</sup>. The case was docketed as Case No. P-05-002-K and assigned to ALJ, Administrative Law Judge.<sup>3</sup>

A pre-hearing conference was scheduled in this cause for March 3, 2005, by *Notice of Prehearing Conference* issued February 3, 2005.<sup>4</sup> Protestants neither appeared at the pre-hearing conference nor responded to the notice thereof. By letter dated March 4, 2005, the parties were notified that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division.<sup>5</sup> Protestants did not respond to this notice.

The *Division's Verified Response* was filed April 4, 2005. Attached to the *Verified Response* were Exhibits A through D. On April 29, 2005, the record in this cause was closed and the case was submitted for decision.

#### FINDINGS OF FACT

Upon review of the file and records, including the *Division's Verified Response* and attached exhibits, the undersigned finds:

1. On October 15, 2001, Protestants filed their 2000 Oklahoma Individual Income Tax Return, Form 511. Exhibit A.

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<sup>1</sup> 68 O.S. 2001, § 201 et seq.

<sup>2</sup> Rules 710:1-5-20 through 710:1-5-47 of the Oklahoma Administrative Code ("OAC").

<sup>3</sup> OAC, 710:1-5-22(b).

<sup>4</sup> OAC, 710:1-5-28.

<sup>5</sup> OAC, 710:1-5-28(c).

2. Protestants assert and the Division does not deny that Protestants on August 15, 2001, applied for and received an extension of time to October 15, 2001, to file the original 2000 tax year return. Exhibit D and Page 1, Paragraph 1 of the Factual Basis for Division Action, *Division's Verified Response* filed April 4, 2005.

3. On or about September 14, 2004, Protestants filed an Amended Oklahoma Individual Income Tax Return, Form 511X, for the 2000 tax year claiming a refund of \$1,600.00, based on their receipt of an amended K-1 from BUSINESS. reporting Protestants' share of an investment/jobs credit in the amount of \$1,600.00. Exhibit B.

4. The Division by letter dated November 5, 2004, notified Protestants that the amended return had been adjusted and the refund denied because the claim was barred by statute. Exhibit C.

5. Protestants, by letter dated December 17, 2004, timely protested the denial of their refund claim, asserting that the amended 2000 tax year return was filed within the three (3) year period allowed for filing the amended return since the due date of the original 2000 tax year return was extended to October 15, 2001. Exhibit D.

6. The amount in controversy is \$1,600.00.

#### ISSUE

The issue presented for decision is whether the Division's denial of Protestants' refund claim on their amended 2000 tax year return is erroneous.

Protestants contend that the Division's denial of their refund claim is erroneous. In support of this contention, Protestants argue that their amended return was timely filed since it was filed within three (3) years of the filing of the original return.

The Division contends that Protestants' refund claim is barred by the provisions of 68 O.S. § 2373. In support of this contention, the Division argues that the refund of income taxes is tied to the date the taxes are paid, that an extension of time for the filing an income tax return does not extend the date on which payment of the taxes are due, that the taxes are due at the time of transmitting the return and that all returns made on the basis of a calendar year are due on April 15 of the succeeding year.

#### CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 2001, § 207.

2. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act<sup>6</sup>, in particular Section 2373.

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<sup>6</sup> 68 O.S. 1991, § 2351 et seq.

3. Section 2373 provides in pertinent part:

[T]he 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.

4. 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.

5. State income tax is due at the time of transmitting the return required under the Oklahoma Income Tax Act. 68 O.S. 1991, § 2375(A). "All returns, \* \* \*, made on the basis of the calendar year shall be made on or before the 15th day of April following the close of the taxable year." 68 O.S. 1991, § 2368(G). 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.

6. Protestants' amended 2000 tax year return was filed on September 14, 2004 which is more than three (3) years from the date the income taxes for the 2000 tax year were deemed paid. *See*, Oklahoma Tax Commission Order Nos. 92-12-29-024 and 92-03-26-033<sup>7</sup>. Accordingly, Protestants' refund claim on their amended 2000 tax year return was not timely filed.

7. Protestants' protest to the denial of their refund claim on their amended 2000 tax year return should be denied.

#### DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestants, HUSBAND, and WIFE, 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.

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<sup>7</sup> These decisions stand for the proposition that estimated or withheld taxes are deemed paid on the due date of the return notwithstanding a federal or Oklahoma extension.