JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-11-30-02 (Non-Precedential)
ID:	CR-05-008-K
DATE:	NOVEMBER 30, 2005
DISPOSITION:	DISMISSED
TAX TYPE:	SALES/CLAIM FOR REFUND
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant, COMPANY, is represented by ACCOUNTANT, Tax Auditor. The Account Maintenance Division of the Tax Commission (hereinafter "Division") is represented by the General Counsel's Office of the Tax Commission, OTC ATTORNEY, Senior Deputy General Counsel, and OTC ATTORNEY 2, Assistant General Counsel.

STATEMENT OF THE CASE

On November 23, 2004 and March 3, 2005, Claimant filed Application[s] for Credit or Refund of State and Local Sales or Use Tax for the respective tax periods, to-wit: January, 2004 through October, 2004, and June, 2002 through December, 2003, and in the respective amounts, to-wit: $30,762.90, and $9,550.50. The Division by letters dated May 17, 2005, denied the refund claims. By letter dated June 17, 2005 and faxed to the Division on the same date, Claimant filed a "protest and request [for] a continuance before the Tax Commission for further review of additional facts". Included with the faxed protest was a copy of the May 17, 2005 letter of denial for sales tax paid during the periods of June, 2002 through December, 2003, in the amount of $9,550.50.

On June 21, 2005, the Division forwarded its files in this matter to the Office of the Administrative Law Judges ("ALJ's Office) for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[2]. The case was docketed as Case No. CR-05-008-K and assigned to ALJ, Administrative Law Judge.[3]

Claimant's protest to the Division's denial of its refund claims was scheduled for hearing on August 17, 2005, by *Notice of Hearing* dated June 23, 2005.[4] On August 9, 2005, the Division filed a *Motion to Dismiss* the protest on the grounds the refund claims were barred because Claimant failed to file a timely protest to the denials of the refunds. By *Notice of Hearing* and letter dated August 12, 2005, inclusive of a *Notice to Appear or Respond in Writing* and the Division's *Motion to Dismiss*[5]; the evidentiary hearing scheduled for August 17, 2005, was stricken and rescheduled for October 3, 2005, at the hour of 10:00 a.m., and the Division's *Motion to Dismiss* was scheduled for hearing on October 3, 2005, at the hour of 9:30 a.m. The hearings scheduled for October 3,

[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[3] *OAC*, 710:1-5-22(b).

[4] 68 O.S. 2001, § 227(e).

[5] *OAC*, 710:1-5-46(b).

2005, were stricken and rescheduled for October 17, 2005, by *Notice of Hearing* issued September 22, 2005. A *Motion to Strike Hearing and Set New Scheduling Order* was filed by the parties on October 12, 2005, which *Motion* was granted in part by *Order Granting Motion to Strike Hearing and Set New Scheduling Order* wherein the evidentiary hearing scheduled for October 17, 2005 was stricken and the issuance of a new scheduling order was held in abeyance pending the decision on the Division's *Motion to Dismiss*.

The Division's *Motion to Dismiss* was heard on October 17, 2005, at the appointed time with the parties' representatives in attendance. The Division called two (2) witnesses; MANAGER, Unit Manager of the Credits and Refund Section of the Division, and SUPERVISOR, Supervisor of the Case Management Section of the Division, through whom Exhibits A, B, C-1, C-2 and D were identified, offered and admitted into evidence. ACCOUNTANT was also called by the Division to testify. The parties' representatives made closing statements, upon the conclusion of which 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 record of the hearing, the *Motion to Dismiss*, the Exhibits received into evidence and the arguments of the parties, the undersigned finds:

1. The Division by two (2) separate letters dated May 17, 2005, denied Claimant's refund claims for sales tax paid in the amounts of $30,762.90 and $9,550.50 during the periods of January, 2004 through October, 2004 and June, 2002 through December, 2003, respectively. Exhibits A and B.

2. The Division's standard procedure with respect to the generation of letters and mailing of letters is as follows, to-wit: (1) an auditor drafts the letter of denial which is reviewed by an audit supervisor and upon approval is sent to typing; (2) two (2) letters are generated by typing, an original and a File Copy, which are reviewed by a unit manager whom upon approval initials the File Copy; (3) the original letter is signed by the auditor and placed in an envelope, the auditor fills out a mailing form indicating the date the letter is being placed in the out-going mail basket and mailed and deposits the envelope in the out-going mail basket; (4) the File Copy of the letter is maintained in the file of the Division; (5) in the event the letter is not received from typing in time to deposit it in the out-going mail basket by 2:00 p.m. to be postmarked on the date of the letter, a handwritten notation of the date of actual mailing is made on the File Copy. Testimony of MANAGER.

3. According to MANAGER, it is his understanding of the Commission's mailroom procedures that if a letter is placed in the out-going mail basket by 2:00 p.m. on any given date, the letter is postmarked on that date. MANAGER is unaware of what actual happens with the letter after it is placed in the out-going mail basket of the Division.

4. In this case, the letters of denial were mailed May 17, 2005, since there was no handwritten notation of another mailing dated made on the File Copies of the letters. Testimony of MANAGER.

5. Claimant's letter of protest dated June 17, 2005 was faxed to the Division on June 17, 2005. Exhibits C-1 and D, and Testimony of SUPERVISOR. Included with the faxed protest was a copy of the May 17, 2005 letter of denial for sales tax paid during the periods of June, 2002 through December, 2003, in the amount of $9,550.50.[6] Exhibit C-2 and Testimony of SUPERVISOR.

6. According to SUPERVISOR, he received a telephone call from Claimant's representative, ACCOUNTANT, on June 17, 2005, requesting an extension to protest a denial to a claim for refund. See, Exhibit D.[7] SUPERVISOR testified that he advised ACCOUNTANT that there was no provision for an extension of time to protest a refund denial and that he needed to get the protest in. See, Exhibit D.

7. According to ACCOUNTANT, he faxed the letter of protest to the Division on the 17th day of June thinking they were within thirty (30) days from the mailing of the denial letters. ACCOUNTANT testified that he does not recall asking for an extension of time to protest the denial letters. He further testified that Claimant did not preserve the envelopes to the denial letters to show the letters were postmarked on a date different from May 17, 2005.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that:

1. Jurisdiction over the parties and the subject matter of this proceeding, including the dismissal thereof, is vested in the Tax Commission. 68 O.S. 2001, §227 and *OAC*, 710:1-5-46.

2. Claims for refund of taxes erroneously paid to the Tax Commission are governed by the provisions of § 227 of the Uniform Tax Procedure Code. Section 227(d) provides:

> 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.

3. The evidence proves the denial letters were mailed May 17, 2005. The testimony of the witness with respect to whether it is possible the letters were mailed on May 18, 2005 is speculative at best. The witnesses' knowledge of the Commission's mailroom procedures is limited to the understanding that a letter must be placed in the Division's out-going mail basket by 2:00 p.m. in order for it to be postmarked on that date. The witness is not competent to testify regarding the procedures for postmarking and mailing the letters. Furthermore, Claimant failed to come forward with the most reliable evidence to support its assertion that the denial letters were not mailed on May 17, 2005.

[6] The Division accepted the letter of protest as a protest to both refund claim denials.

[7] A contemporaneous handwritten notation of his conversation with ACCOUNTANT.

4. Claimant's protest to the denials of the refund claims was not timely filed. The thirtieth day after the date the notices of denial were mailed in this cause was June 16, 2005. Claimant's protest was filed June 17, 2005. Consequently, the claims for refund are statutorily barred and Claimant's protest to the denial of the refund claims should be and the same is hereby dismissed.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest to the denial of the refund claims of Claimant, COMPANY, be dismissed.

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.