JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **2006-03-23-07 / PRECEDENTIAL**
ID: **P-99-161-S**
DATE: **MARCH 23, 2006**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME TAX**
APPEAL: **NO APPEAL TAKEN**

Taxpayers protest the denial of their claim, made after the expiration of the three-year period of limitations provided in 68 O.S. 1991, §2373, for a refund of income taxes which taxpayers contend were erroneously paid because of incorrect and misleading instructions accompanying their 1993 Oklahoma income tax return form. The Administrative Law Judge assigned to this protest entered findings of fact and conclusions of law herein, with a recommendation that the protest be denied. Taxpayers have requested a hearing before the Commission *en banc*.

Because the law is well settled in this area, we deny taxpayers' request for oral argument *en banc*, and make the following findings of fact, conclusions of law and order, denying said protest.

FINDINGS OF FACT

1. In April of 1994, PROTESTANTS filed a joint Oklahoma state income tax return for the 1993 tax year.

2. MR. PROTESTANT prepared this return at a time when the instructions of the "1993 Individual Income Tax Instructions and Tables" provided:

INTEREST ON U.S. GOVERNMENT OBLIGATIONS

> If you report interest on bonds, notes and other obligations of the U.S. on your Federal Return, this income may be excluded from your Oklahoma Adjusted Gross Income if a detailed schedule is furnished, accompanied with 1099's showing the amount of interest income and the name of the obligation from which the interest is earned. If the interest is from a mutual fund which invests in government obligations, enclose a detailed schedule from the mutual fund showing the amount of monies received from each government obligation and the percentage of funds received from each obligation. Interest from entities such as FNMA & GNMA does not qualify. (Instruction #2, inside front cover, "1993 Individual Income Tax Forms, Instructions and Tables")

3. The same instruction appeared in the instructions for tax years 1994 through 1997. No mention was made in the instructions regarding gain or loss from the sale of such obligations.

4. In 1993, Protestants sold some U.S. Treasury Obligations for a capital gain of $15,675.00 and reported that gain as part of their Oklahoma taxable income, resulting in an overpayment of tax in the amount of $1,278.00.

5. In 1999, while preparing their 1998 Oklahoma state income tax return, MR. PROTESTANT read the "Note" after Item 2 on page 7 of the "1998 Oklahoma Resident Individual Income Tax Forms and Instructions. This note stated:

> The capital gain/loss from the sale of an U.S. Government Obligation is exempt. Enter exempt gains on line 6 with a #7 in the box, and exempt losses on line 13.

6. On April 13, 1999, Protestants filed an amended 1993 state income tax return, claiming a refund of the taxes paid on the exempt capital gain.

7. On May 21, 1999, the refund on the amended return was denied because it was filed after the statutory three-year limitation.

8. Taxpayers protest, contending that the language in the "1993 Individual Income Tax Forms, Instructions and Tables" did not put them on notice as to the exclusion of a capital gain from the sale of a U. S. Government Obligation.

CONCLUSIONS OF LAW

1. Federal law exempts stocks and obligations of the United States Government from taxation by a State or political subdivision of a State. 31 U.S.C.A. §3124. "The exemption applies to each form of taxation that would require the obligation, the interest on the obligation, or both, to be considered in computing a tax." *Id.* Taxpayers did not deduct the gain from their sale of T-Bonds when calculating and reporting their Oklahoma adjusted gross income, and consequently overpaid their state income tax. Five years later, upon discovering the error, taxpayers filed a claim for refund of this overpayment.

2. With exceptions not pertinent here, Oklahoma law provides that the amount of income tax refund "shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filings of the claim." 68 O.S. 1991, §2373. The refund claim here was filed beyond the three-year period. Taxpayers argue, in effect, that the State is estopped to assert this three-year statute of limitations because the instructions accompanying the tax return form for that year and the following four tax years failed to notify them that the income in question was exempt from state taxation. Alternatively, taxpayers argue that the three-year period of limitations should not begin to run against them until the Commission either examined their return and notified them that they had overpaid their taxes; or published instructions that stated such income was exempt.

3. It should first be noted that the exemption here in question is granted by federal statute, and neither the State nor any of its agencies has the power to alter it,

either by statute, rule or informal instruction. U.S. Const. art. VI, ch. 2 (Supreme Law of the Land). It should also be noted that it is fundamental law that all persons are charged with knowledge of the laws that affect them. *Ponder v. Ebey*, 152 P.2d 268 (Okla. 1944); *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 64 S. Ct. 599 (1944).

4. Secondly, it is clear that the instruction, as far as it went, was not erroneous. At most, it was incomplete. And, especially where taxes are concerned, an incomplete statement of the law cannot give rise to equitable estoppel against the government. *United States v. Anderson*, 637 F.Supp. 1106 (D. Conn. 1986). Nor can taxpayers' interpretation of the instruction estop the government or change the meaning of the tax statutes. *Adler v. Com'r of Internal Rev.*, 330 F. 2d 91 (9th Cir. 1964). Even if the instructions were totally and completely erroneous, that would not avail the protestants. General principles of equity may not override statutory requirements for timely filing of tax refund claims. *Republic Petroleum Corp. v. United States*, 613 F. 2d 518, 527 (5th Cir. 1980). The statute of limitations applies regardless of whether it is the tax agency's error or the taxpayer's error which leads to overpayment of taxes. *Jones v. Liberty Glass Co.*, 332 U.S. 524, 531, 68 S.Ct. 229, 232 (1947).

5. Taxpayers also argue that the three-year statute of limitations did not begin to run until either the taxpayers discovered their error or the Tax Commission published new instructions. This argument was rejected and put to rest by the Oklahoma Supreme Court in *Neer v. State ex rel. Okla. Tax Com'n*, 982 P.2d 1071 (Okla. 1999).

6. Finally, taxpayers argue that the Tax Commission should have caught the error and either corrected the return or notified taxpayers of their overpayment. The Commission, however, is under no duty to examine every return to ensure that taxpayers take every deduction and exemption to which they might be entitled. This argument is totally without merit.

7. The protest should be denied.

ORDER

For the foregoing reasons, the protest of PROTESTANTS to the denial of their late-filed claim for refund of income tax is denied.