

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 2008-04-15-04 / NON-PRECEDENTIAL  
**ID:** P-07-119-K  
**DATE:** APRIL 15, 2008  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled and numbered cause comes on for decision pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. Protestants, HUSBAND AND WIFE, are represented by ACCOUNTANT, Public Accountant. The Taxpayer Assistance Division of the Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

### STATEMENT OF THE CASE

The Division by letter dated May 31, 2007, denied Protestant's income tax refund claim stating the refund was barred by statute since the claim was not filed within three years of the due date of the return. By letter dated June 19, 2007, Protestants timely protested the denial of the refund. On July 20, 2007, the Division responded to Protestants' protest by affirming their previous denial.

On August 3, 2007, the Division referred the protest 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-07-119-K and assigned to ALJ, Administrative Law Judge.<sup>3</sup>

A pre-hearing conference was scheduled in this cause for September 26, 2007, by *Prehearing Conference Notice* issued August 15, 2007.<sup>4</sup> By *Memorandum* filed August 16, 2007, the parties filed a *Status Report in Lieu of Prehearing Conference* requesting a scheduling order whereby the protest would be submitted for decision without an oral hearing. Pursuant to the parties' agreement, a *Scheduling Order* was issued setting forth the procedure by which this matter would be submitted for decision.<sup>5</sup>

An *Agreed Stipulation of Facts and Statement of Issue* was filed October 11, 2007. Exhibits 1 through 5 were attached thereto. Protestant's brief in chief was filed November 29,

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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(b) and 710:1-5-38.

2007 and the *Reply Brief of the Taxpayer Assistance Division* was filed December 20, 2007. On January 3, 2008, the record was closed and the protest was submitted for decision.<sup>6</sup>

### FINDINGS OF FACT

Upon review of the file and records, including the *Agreed Stipulation of Facts and Statement of Issue*, the attached exhibits and the pleadings of the parties, the undersigned finds:

The parties stipulate to the following:

1. Protestants filed a 2003 Oklahoma resident individual income tax return, calling for a refund of Oklahoma income tax withheld in the amount of \$700.00. The return was signed and dated by both on April 12, 2007. As maintained on the records of the Commission, the return bears a mailroom receipt date stamp of May 17, 2007, affixed by the Commission. Exhibits 1 and 2 to the *Agreed Stipulation*.

2. The Division examined the return and by letter dated May 31, 2007, adjusted the return to deny the refund because the return was not received within the allocated time of three (3) years from the date due, pursuant to 68 O.S. § 2373. This letter was mailed to Protestants' address on the return, the last known address as reflected on the Commission's records. Exhibit 3 to the *Agreed Stipulation*.

3. By letter dated June 19, 2007, Protestants' representative timely protested the adjustment resulting in the refund claim denial. In the letter, Protestants' representative states that the return was mailed on April 13, 2007 at the same time as the Protestants' Federal return for that year. The letter states the Internal Revenue Service honored that return's \$2,205.77 refund claim. Attached to the letter was a copy of the deposit slip completed by Protestants showing presentment of a check for \$2,205.77 noted by Protestants as "U.S. Treas." and accepted for deposit by Protestants' bank on May 31, 2007. Exhibit 4 to the *Agreed Stipulation*.

4. By letter dated July 20, 2007, the Case Management Section of the Account Maintenance Division of the Commission acknowledged receipt and review of the protest letter. This letter stated the Commission's position that the return's refund claim was due on April 15, 2007, but that the Commission's records showed it was received on May 17, 2007. Exhibit 5 to the *Agreed Stipulation*.

### ISSUE

The stipulated issue is whether the Commission received Protestants' 2003 Oklahoma income tax return containing their refund claim within the three (3) year statutory period for making that claim provided for in 68 O.S. § 2373.

Protestants assert that the 2003 Oklahoma income tax return was postmarked and mailed on April 13, 2007, within the prescribed time period for filing the claim for refund. In support of

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<sup>6</sup> OAC, 710:1-5-39(a).

this assertion, Protestants would show that their 2003 Federal income tax return was mailed at the same time as their Oklahoma return and they received their Federal income tax refund. Protestants also argue that the Commission must have received the return on or before April 15, 2007, otherwise their previous actions of completing the return on April 11, 2007, signing the return on April 12, 2007 and delivering the Federal return to the local Internal Revenue Service office in Enid does not make any sense.

The Division contends that Protestants have not met their burden of proving that their Oklahoma income tax return was mailed within the time prescribed by § 2373. In support of this contention, the Division argues that the fact Protestants received their Federal income tax refund is not probative that the two separate refund claims were mailed at the same time.

In Protestants' brief in chief it is stated that "the federal tax return was delivered to the local Internal Revenue Service office in Enid" and that "[t]he mailing of the state income tax return was completed through a local mail service business" which delivered the return to an Oklahoma City post office on April 13, 2007, and the envelope was postmarked the same day.

### CONCLUSIONS OF LAW

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

2. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act ("Act")<sup>7</sup>, in particular § 2373, which 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.

(Emphasis added).

3. In *Neer v. Oklahoma Tax Commission*, 1999 OK 41, 982 P.2d 1071, the Oklahoma Supreme Court considered the language of § 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.

4. State income tax is due at the time of transmitting the return required under the Act. 68 O.S. 2001, § 2375(A). "All returns, \* \* \*, made on the basis of the calendar year shall be

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<sup>7</sup> 68 O.S. 2001, § 2351 et seq.

made on or before the 15th day of April following the close of the taxable year." 68 O.S. 2001, § 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. 2001, § 216.

5. The date of the postmark stamped on the cover in which any claim is mailed shall be deemed the date of delivery. 68 O.S. 2001, § 221.1(A); *OAC*, 710:1-3-30(b). The foregoing rule shall only apply if the postmark date falls within the prescribed period or on or before the prescribed date for filing the return or claim, including any extensions, and the return or claim was deposited in the mail in an envelope, postage prepaid and properly addressed to the Commission within the prescribed period or on or before the prescribed date. 68 O.S. 2001, § 221.1(B)(1) and (2); *OAC*, 710:1-3-30(c).

6. The sender who relies on the applicability of the definition of timely filing by mailing a claim assumes the risk that the postmark will bear a date, on or before the last date or day, of the period prescribed for filing the claim. *OAC*, 710:1-3-31(a). If the postmark on the envelope containing the claim is not legible or the envelope is unavailable, the person who is required to file the claim has the burden of proving when the postmark was made or when the claim was placed for delivery with a designated delivery service. *OAC*, 710:1-3-31(b).

7. Rules promulgated pursuant to the Administrative Procedures Act,<sup>8</sup> are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 2001, § 306(C). They are valid and binding on the persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 2001, § 308.2(C).

8. In administrative proceedings, the burden of proof standard is "preponderance of evidence." 2 Am.Jur.2d Administrative Law § 357. See, Oklahoma Tax Commission Order No. 91-10-17-061. "Preponderance of evidence" means "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). It is also defined to mean "evidence which is more credible and convincing to the mind \* \* \* [T]hat which best accords with reason and probability." *Id.*

9. Here, Protestants failed to sustain their burden of proving the 2003 Oklahoma income tax return was postmarked and mailed on or before April 15, 2007. Accordingly, Protestants' protest to the denial of their income tax claim for refund should be and the same is hereby denied.

### 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 income tax claim for refund of Protestants, HUSBAND AND WIFE, be denied.

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<sup>8</sup> 75 O.S. 2001, § 250 et seq., § 301 et seq.

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.