JURISDICTION:	OKLAHOMA TAX COMMISSION DECISION
CITE:	2008-09-11-02 / NON-PRECEDENTIAL
ID:	P-08-059-H
DATE:	SEPTEMBER 11, 2008
DISPOSITION:	DENIED
TAX TYPE:	INCOME
APPEAL:	NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The Account Maintenance Division ("Division"), Oklahoma Tax Commission, appears by and through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On June 10, 2008, the protest file was received by this office for further proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*.[3] On June 10, 2008, a letter was mailed to the Protestant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-08-059-H. The letter also advised the Protestant a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission.*[4]

However, on June 30, 2008, the Division filed a *Motion to Dismiss* and *Notice to Appear or Respond in Writing.*[5]

The hearing was held as scheduled on July 22, 2008, at approximately 1:30 p.m. The Protestant advised the Division he did not intend to appear at the hearing, but stood on his protest letter. The Division called one (1) witness, AUDITOR, Auditor III, Account Maintenance Division, Oklahoma Tax Commission, who testified regarding the denial of the Protestant's income tax refund and as custodian of the Division's records. The Division's Exhibits A through C were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on July 22, 2008.[6]

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[1] "**pro se**" (proh **say** *or* **see**), *adv*. & *adj*. [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. -- Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA. BLACK'S LAW DICTIONARY (8th ed. 2004), available at *http://westlaw.com*. (March 16, 2006).

[2] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[4] *See* Note 3.

[5] The motion and notice were mailed by the Division to the Protestant at ADDRESS.

[6] OKLA. ADMIN. CODE § 710:1-5-39 (June 25, 1999).

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, Protest Letter and Division's *Motion to Dismiss* and *Notice to Appear or Respond in Writing*, the undersigned finds:

1. On October 17, 2006, the Tax Commission received the Protestant's 2000 Individual Income Tax Return (Form 511), which reflects a refund of $98.00.[7] Attached to the return was a copy of an "Application for Additional Extension of Time to File U.S. Individual Income Tax Return" for the 2000 tax year dated August 14, 2001.[8]

2. On December 22, 2006, the Refund Section of the Taxpayer Assistance Division ("TPA Division"), Oklahoma Tax Commission, notified the Protestant by letter[9] as follows, to-wit:

> YOUR 2000 OKLAHOMA INCOME TAX REFUND HAS BEEN BARRED BY STATUE SINCE YOUR CLAIM WAS NOT FILED WITHIN THE ALLOCATED TIME OF THREE YEARS FROM THE DATE DUE. (SEE TITLE 68 O.S. 1981, SEC. 2373)
>
> IF YOU HAVE ANY QUESTIONS, TELEPHONE (405) 521-3160).

3. On March 13, 2008, the Protestant sent a written protest to the denial of his 2000 refund by certified mail to the Tax Commission. A copy of the TPA Division's notice of denial dated December 22, 2006, is attached to the protest letter. The grounds of the protest are essentially: (1) a lack of knowledge of the law, and (2) financial hardship.[10] The Protestant does not dispute that the 2000 return was filed past the statutorily prescribed period contained in Section 2373 of Title 68.[11] The Protestant did not request an oral hearing.[12]

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[7] Exhibit A.

[8] Exhibit A. *See* OKLA. ADMIN. CODE § 710:50-3-3(a):

> (a) Income Tax Returns of individuals are due on the 15th day of the fourth month following the close of the taxable year.

See also OKLA. ADMIN. CODE § 710:50-3-4(a), which in pertinent part states:

> (a) A valid extension of time in which to file a Federal Income Tax Return automatically extends the due date of the Oklahoma Income Tax Return, unless an Oklahoma liability is owed. A copy of the Federal extension must be attached to the Oklahoma Return…

[9] Exhibit B. The denial letter was mailed to the Protestant at ADDRESS.

[10] The Protestant also states in the protest letter, "At my tax preparers urgence she kept after me to get my records together for 2001, 2002, 2003 and 2004…"

[11] OKLA. STAT. ANN. tit. 68, 2373 (West 2001).

4. The hearing held on July 22, 2008, consisted of the two (2) propositions made by the Division in its motion:

(1) The Tax Commission is without jurisdiction to consider Protestant's untimely protest.

(2) Protestant's claim for refund is statutorily barred.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[13]

2. 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.[14]

3. The provisions of Section 221[15] of the *Uniform Tax Procedure Code*,[16] wherein the procedures for protesting a proposed assessment set forth by the Division *are not applicable* to this matter, since the Division did not propose the assessment of taxes or additional taxes to the Protestant's 2000 return.

4. The Oklahoma Supreme Court held in *Sowders v. Oklahoma Tax Commission*[17] Sections 227[18] and 228[19] of the *Uniform Tax Procedure Code*[20] do not apply to a claim for refund of state income taxes.[21]

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[12] Exhibit C.

[13] OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-46 (June 11, 2005).

[14] OKLA. STAT. ANN. tit 68, 2385.10 (West 2001).

[15] *See* OKLA. STAT. ANN. tit. 68, § 221 (West 2001).

[16] *See* Note 2.

[17] *Sowders v. Oklahoma Tax Commission*, 1974 OK 122, 527 P.2d 852.

[18] *See* OKLA. STAT. ANN. tit. 68, § 227(f) (West 2001) in pertinent part states:

> The provisions of this section shall not apply: (1) to refunds of income tax erroneously paid, refunds of which tax shall be payable out of the income tax adjustment fund as provided by law; (Emphasis added.)

[19] OKLA. STAT. ANN. tit. 68, § 228 (West 2001):

> (a) If, upon the hearing as required by Section 227 of this title, the Tax Commission finds that such tax was erroneously paid through mistake of fact, or computation or misinterpretation of

5. The statutory authority for the Protestant's action is set forth in Section 207(c) of Title 68.[22]

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law, it shall enter its written order allowing said claim for refund, which refund may be paid to the taxpayer as provided by law, or credited against any taxes due or to become due by the taxpayer as the case may be; otherwise, the Tax Commission shall deny said claim. The taxpayer shall have the right of appeal to the Supreme Court from a decision of the Commission denying said claim for refund as provided in Section 225 of this article.

(b) Any order entered by the Tax Commission, disallowing a claim for refund, shall become final within thirty-one (31) days from the date it is entered, unless an appeal is prosecuted therefrom, in which event said order shall not become final until the appeal shall have been determined. In the event the Tax Commission allows said claim for refund, it shall pay the claimant the amount of refund, so allowed out of funds in the official depository clearing account of the Tax Commission, derived from collections in said fund from the same source from which the overpayment occurred; and an appropriation of so much of said fund as is necessary to pay said claims for refund erroneously paid or collected is hereby made; provided, that in the case of refunds due hereunder to taxpayers who are required to remit taxes to the Tax Commission on a monthly or quarterly basis, the Commission may, in lieu of a refund of the tax erroneously paid, credit the account of the taxpayer for such amount.

[20] *See* Note 2.

[21] OTC Order No. 2005-04-19-11 (April 19, 2005), 2005 WL 1827935. *See* OTC Order No. 2000-09-19-041 (September 19, 2000), 2000 WL 33394655.

[22] OKLA. STAT. ANN. tit. 68, § 207(c) (West 2001):

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.

See OKLA. STAT. ANN. tit. 68, § 207(d) (West 2001):

If, in such application, the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing and shall, by written notice, advise the taxpayer of a date, which shall not

6. Section 207(c) of Title 68 *does not contain* a statutorily prescribed period for filing the application for hearing.[23]

7. The protest to the denial of the claim for the 2000 income tax refund complied with the procedural requirements of Section 207(c) of Title 68.[24] The protest is not subject to dismissal.

8. The amount of an income tax refund shall not exceed the amount of tax paid during the three (3) years immediately preceding the filing of a claim for refund.[25]

9. For the 2000 tax year, "All returns, except corporate returns, made on the basis of the calendar year shall be made on or before the fifteenth day of April following the close of the taxable year."[26]

10. With exceptions not pertinent in this matter,[27] 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 (3) years after the original due date of the return.[28]

> be less than ten (10) days from the date of mailing such written notice, when such taxpayer may appear before the Tax Commission and present argument and evidence, oral or written. The Tax Commission shall, as soon as practicable thereafter, hold a hearing upon the matter and, pursuant to such hearing, shall, as soon as practicable, make an order confirming, modifying or vacating its prior determination, and shall send to the parties appearing before it at such hearing immediately a copy of such order.

The Protestant did not request an oral hearing in the protest letter.

[23] *See* Note 22.

[24] *See* Note 22.

[25] OKLA. STAT. ANN. tit. 68, § 2373 (West 2001), which states in pertinent part:

> …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…

See OKLA. ADMIN. CODE § 710:50-9-2:

> 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]

[26] OKLA. STAT. ANN. tit. 68, § 2368(G) (West 2001).

The Protestant's 2000 return was not filed electronically.

[27] *See* Note 22. *See also* OKLA. ADMIN. CODE § 710:50-5-13 (June 26, 1994).

11. The Oklahoma Supreme Court held in *Neer v. State ex rel. Oklahoma Tax Com'n*, 1999 OK 41, 982 P.2d 1071, ¶ 11 as follows, to-wit:

> …§ 2373…is analogous to a statute of repose and the Legislature, by unmistakable language, intended § 2373 to act 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 short, the relevant terms of § 2373 clearly evidence a legislative intent to craft an outer limit time boundary beyond which a taxpayer's right or ability to recover a refund no longer exists.

12. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[29]

13. It should also be noted that it is fundamental law that all persons are charged with knowledge of the laws that affect them.[30] The Protestant's claim he was not aware of the statutorily prescribed period is not a defense to the Division's denial of the 2000 income tax refund.

14. General principles of equity may not override statutory requirements for timely filing of tax refund claims.[31] The statute of limitations applies regardless of whether it is the tax agency's error or the taxpayer's error which leads to the overpayment of taxes.[32]

15. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[33]

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[28] *See* Note 25. *See also* OKLA. STAT. ANN. tit. 68, § 216 (West 2001).

[29] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2001).

[30] OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). *See Ponder v. Ebey*, 1944 OK 271, 152 P.2d 268.

[31] OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). *See Republic Petroleum Corp. v. United States*, 613 F.2d 518.

[32] OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). *See Jones v. Liberty Glass Co.*, 332 U.S. 524.

[33] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

> In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

The original due date of the Protestant's 2000 income tax return was April 15, 2001.[34] Pursuant to Section 2373(c) of Title 68 and Tax Commission Rule 710:50-9-2, the statutorily prescribed time period for the Protestant to request a refund on the 2000 return was April 15, 2004.

The Protestant filed his 2000 income tax return on October 17, 2006, which is more than three (3) years from the due date of the 2000 income tax return. The Protestant's defenses, which are both equitable in nature, do not override the filing requirement mandated by Oklahoma Statute and Tax Commission Rule.

The Protestant has failed to meet his burden of proof that the Division's denial of his income refund for the 2000 tax year was incorrect and in what respects.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the Division's *Motion to Dismiss* should be denied.

It is further the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protest to the Division's denial of the Protestant's 2000 refund 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.

> . . . "preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[34] *Matlock v. Oklahoma Tax Com'n*, 2001 OK CIV APP 104, 29 P.3d 614, which held, "Three year period during which taxpayers could request refund commenced on original due date of tax return, not on extended date taxpayers received when they filed for an extension of time."