

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2009-10-13-03 / NON-PRECEDENTIAL  
**ID:** P-09-069-K  
**DATE:** OCTOBER 13, 2009  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT appears pro se. The Account Maintenance Division of the Oklahoma Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

### STATEMENT OF THE CASE

On January 30, 2009, Protestant filed an original 2002 Oklahoma income tax return claiming a refund of \$312.00. The Division by letter dated March 11, 2009, denied the refund as barred by statute. Protestant timely protested the denial of the refund.

On April 23, 2009, 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>, the Oklahoma Income Tax Act<sup>2</sup> and the Rules of Practice and Procedure before the Office of Administrative Law Judges<sup>3</sup>. The case was docketed as Case No. P-09-069-K and assigned to ALJ, Administrative Law Judge.<sup>4</sup>

A pre-hearing conference was scheduled in this cause for June 17, 2009, by *Prehearing Conference Notice* issued May 20, 2009.<sup>5</sup> As documented by a *Memorandum* to file, a clerk of the ALJ's Office responded to a phone message left by Protestant on the date of the pre-hearing conference. The *Memorandum* reports that Protestant was advised the pre-hearing conference could be conducted by telephone which was declined. The *Memorandum* further reports that Protestant wanted the protest to be submitted for decision without a hearing. By letter issued June 18, 2009, the parties were notified that the protest would be submitted for decision upon the filing of a verified response to protest by the Division and a reply to said response by Protestant.<sup>6</sup>

On June 23, 2009, Protestant filed two (2) pleadings in response to the *Prehearing Conference Notice*. The *Division's Verified Response*, including Exhibits 1 through 4 attached

---

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

<sup>2</sup> 68 O.S. 2001, § 2351 et seq., as amended.

<sup>3</sup> Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("OAC").

<sup>4</sup> OAC, 710:1-5-22(b).

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

<sup>6</sup> OAC, 710:1-5-28(c) and 710:1-5-38.

thereto was filed July 20, 2009. Protestant did not file a reply to the Division's *Response*. On August 5, 2009, the record was closed and the protest was submitted for decision.<sup>7</sup>

### FINDINGS OF FACT

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

1. Protestant filed an original 2002 Oklahoma Income Tax Return on January 30, 2009. An overpayment of income tax for tax year 2002 in the amount of \$312.00 was claimed as a refund on the return which overpayment consisted of excess withholding tax and an Oklahoma earned income credit of \$92.00. Exhibit 1.

2. The Division examined the return and by letter dated March 11, 2009, denied the refund as barred by statute "since your claim was not filed within the allocated time of three years from the date due. (See Title 68 O.S. 1981 [sic], Sec. 2373)". Exhibit 2.

3. Protestant timely protested the denial of the refund by letter dated March 14, 2009, asserting that neither he nor his now deceased wife were able to have the 2002 return prepared and filed prior to January, 2009, because he was incarcerated in May, 2003 and she was terminally ill. Exhibit 3.

4. By letter dated April 7, 2009, the Case Management Section of the Division acknowledged receipt and review of the protest letter. The letter provides: "The due date for filing is not extended by personal problems. Unfortunately, without a provision that provides an extension in such cases, I am not able to restore your 2002 refund." Exhibit 4.

### ISSUE

The issue presented for decision is whether the Division erred in denying Protestant's 2002 Oklahoma income tax refund.

### CONCLUSIONS OF LAW

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

2. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act ("Act")<sup>8</sup>, in particular § 2373, which provides in pertinent part:

---

<sup>7</sup> OAC, 710:1-5-39(a).

<sup>8</sup> 68 O.S. 2001, § 2351 et seq.

[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.

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 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 and 2375(A). See, Oklahoma Tax Commission Order Nos. 92-12-29-024 and 92-03-26-033.<sup>9</sup>

5. The provisions of § 2373 apply to the filing of an original return where the return is not filed within three (3) years of the original due date of the return. OAC, 710:50-9-2. See, Oklahoma Tax Commission Order No. 91-06-06-04.

6. The Oklahoma earned income credit may not be paid in advance and must be claimed on the individual income tax return when filed. OAC, 710:50-15-90(b).

7. Rules promulgated pursuant to the Administrative Procedures Act,<sup>10</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.

---

<sup>9</sup> Estimated or withheld income taxes are deemed paid on the due date of the return notwithstanding a federal or Oklahoma extension, citing § 216.

<sup>10</sup> 75 O.S. 2001, § 250 et seq., § 301 et seq.

9. Protestant's 2002 income tax claim for refund is barred by operation of law. Accordingly, Protestant's protest to the denial of the claim for refund should be 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, PROTESTANT and WIFE (Deceased), 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.