JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-01-05-02 / NON-PRECEDENTIAL**
ID: **P-09-109-K**
DATE: **JANUARY 5, 2010**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT, appears pro se. The Compliance 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 March 30, 2009, the Division received Protestant's 2004 amended Oklahoma Income Tax Return which sought a refund in the amount of $366.00. The Division by letter of June 3, 2009, denied the refund as barred by statute. Protestant timely protested the denial. Protestant did not request a hearing in the letter of protest.

On June 29 2009, the Division referred the protest to the Office of the Administrative Law Judges for further proceedings pursuant to the Uniform Tax Procedure Code[1], the Oklahoma Income Tax Act[2] and the Rules of Practice and Procedure before the Office of Administrative Law Judges[3]. The case was docketed as Case No. P-09-109-K and assigned to ALJ, Administrative Law Judge.[4]

A pre-hearing conference was scheduled for August 18, 2009, by *Prehearing Conference Notice* issued July 15, 2009.[5] Pursuant to the *Status Report* filed in lieu of the pre-hearing conference, the parties were directed to file an additional status report on or before August 31, 2009. By *Status Report* filed August 31, 2009, the Division advised that it had not received Protestant's written withdrawal of the protest and therefore intended to file a motion for summary disposition.

By letter dated September 8, 2009, the Division was directed to file the Motion for Summary Disposition on or before October 8, 2009, and Protestant was advised that she could file a response to the Motion on or before October 23, 2009.

The *Motion for Summary Disposition* was filed September 21, 2009.[6] Attached to the *Motion* was a verification of the statement of facts and Exhibits A through D. Protestant did not

[1] 68 O.S. 2001, § 201 et seq., as amended.
[2] 68 O.S. 2001, § 2351 et seq., as amended.
[3] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").
[4] *OAC*, 710:1-5-22(b).
[5] *OAC*, 710:1-5-28(a).
[6] *OAC*, 710:1-5-38.

file a response to the *Motion*. By letter dated November 12, 2009, the parties were advised that the record in this cause was closed and the *Motion* was submitted for decision.[7]

FINDINGS OF FACT

Upon review of the file and records, including the *Motion* and attached exhibits, the undersigned finds:

1. The facts material to the disposition of the protest are not in dispute and the issue is one of law.

2. The material facts as set forth in the *Motion*, STATEMENT OF FACTS, p. 1 are:

> 1. On May 3, 2005, [Protestant], filed a 2004 State of Oklahoma Income Tax Return, ("original return"). (Exhibit "A"). An income tax refund in the amount of $137.00 was claimed at Line 38. (Exhibit "A").
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> 2. On March 30, 2009, the Protestant filed a 2004 State of Oklahoma Amended Resident Individual Income Tax Return, ("amended return"). (Exhibit "B"). The amended return included Oklahoma subtractions at Line 2 that were not listed on the original return. (Exhibit "B"). The amended return also claimed an income tax refund in the amount of $366.00 at Line 30. (Exhibit "B").
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> 3. On June 3, 2009, the Division mailed notice to the Protestant that the refund claimed on the amended return was barred by statute. (Exhibit "C").
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> 4. On June 10, 2009, the Division received a letter from the Protestant dated June 5, 2009 protesting the barring of her 2004 income tax refund. (Exhibit "D").

3. The subtraction from federal adjusted gross income to arrive at Oklahoma adjusted gross income on the amended return was erroneously identified by Protestant on Schedule 511-A as Oklahoma depletion. See, Exhibit B, p. 3. The subtraction of $5,500.00 is actually attributable to the retirement exemption as expressed in 68 O.S. Supp. 2003, § 2358(D)(9)[8]. See, Exhibit A, pp 3 and 6.

4. Protestant did not request an oral hearing in the letter of protest and has not requested a hearing in any of her correspondences with this office or pleadings filed in support of her protest.

5. The amount in controversy is $366.00.

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[7] *OAC*, 710:1-5-39(a).
[8] Now codified at § 2358(E)(9).

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter 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 issue presented for decision is whether Protestants' income tax claim for refund for tax year 2004, filed March 30, 2009, is barred by statute.

3. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act, 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.

4. 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.

5. Protestant's income tax liability for tax year 2004 was paid April 15, 2005, by and through the income tax withholding on her retirement benefits distribution. Protestant's refund request was filed March 30, 2009, more than three (3) years after the date the taxes were deemed paid. In accordance with the Court's decision and reasoning in ***Neer,*** Protestant's income tax claim for refund for tax year 2004 is barred by operation of law and her protest to the denial of the 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 Protestant, PROTESTANT, 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.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."