JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-11-30-02 / NON-PRECEDENTIAL**
ID: **P-10-051-H**
DATE: **NOVEMBER 30, 2010**
DISPOSITION: **SUMMARY DISPOSITION GRANTED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

PROCEDURAL HISTORY

On March 5, 2010, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[3] On March 9, 2010, a letter was mailed to the Protestant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-10-051-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 Office of Administrative Law Judges*.[4] On March 11, 2010, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division.

On April 8, 2010, the Notice of Prehearing Conference was mailed to the parties setting the prehearing conference on April 20, 2010, at 10:00 a.m. The prehearing conference was held as scheduled with the parties appearing by telephone. On April 20, 2010, a letter was mailed to the parties advising that a status report was due on or before May 20, 2010.

On May 14, 2010, the Division filed the Status Report advising that on April 20, 2010, a copy of the *Matlock*[5] decision had been mailed to the Protestant, along with copies of the relevant Oklahoma Statutes and Tax Commission Rules. OTC ATTORNEY tried to follow-up on the letter by phone, but was unable to reach the Protestant. On May 14, 2010, OTC

[1] "[P]ro se" (proh say or see), adv. & ad]. [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.

[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] *Id.*

[5] *See* Note 24, *infra.*

ATTORNEY mailed the Protestant another letter asking the Protestant how she wished to proceed. OTC ATTORNEY requested thirty (30) days in order for the Protestant to respond.

On May 21, 2010, a letter was mailed to the parties stating a status report was due on or before June 14, 2010, advising how the parties wished to proceed.

On June 17, 2010, the Division filed the Status Report advising that the Protestant had not responded and that the Division would file a Motion for Summary Deposition.

On August 12, 2010, the Account Maintenance Division's Motion for Summary Deposition ("*Motion*") was filed with Exhibits A through F attached thereto. The Verification attached to the Division's *Motion* was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Case Management Section of the Account Maintenance Division, Oklahoma Tax Commission.[6] On August 19, 2010, a letter was mailed to the parties acknowledging the filing of the Division's *Motion* and advising the Protestant that she could file a response on or before August 26, 2010, at which time the *Motion* would be submitted for ruling. The notice was mailed to the Protestant's last-known address.[7] The Protestant did not file a response to the Division's *Motion*. The *Motion* was submitted for ruling on August 30, 2010.

FINDINGS OF MATERIAL FACTS AS TO WHICH THERE IS NO CONTROVERSY

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the protest, and the Division's *Motion*, the undersigned finds:

1. On May 15, 2009, the Individual Income Tax Section of the Compliance Division mailed a letter to the Protestant noting information made available to the Tax Commission indicated that the Protestant had sufficient income from Oklahoma sources to require the filing of an Oklahoma Income Tax Return for the 2005 Tax Year.[8]

2. On June 19, 2009, the Tax Commission received the Protestant's 2005 Individual Income Tax Return ("2005 Return") from the Protestant's accountant, which reflected a refund of $427.00.[9]

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[6] *See* OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

[7] The notice was mailed to the Protestant's last-known address at LAST KNOWN ADDRESS. *See* OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2010).

[8] Division's Exhibit A.

[9] Division's Exhibit B.

3. By letter dated June 29, 2009, the Division notified the Protestant concerning her refund,[10] which in pertinent part, states as follows, to-wit:

> YOUR 2005 OKLAHOMA INCOME TAX REFUND HAS BEEN 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, SEC. 2373)

4. The Division received a written protest dated July 28, 2010. The basis of the protest is that the Protestant's state and federal returns for the 2005 Tax Year were "…mailed…at the same time as I've done every year in the past."[11]

5. On September 22, 2009, the Division mailed a letter to the Protestant requesting verification that the original return was filed within the three (3) year time period.[12]

6. On April 20, 2010, OTC ATTORNEY mailed a letter to the Protestant summarizing the relevant statutory provisions, Tax Commission Rules, and a copy of the *Matlock*[13] decision.[14]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[15]

2. A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact.[16] The procedures for such motion are as follows:

> (1) The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no

[10] Division's Exhibit C.

[11] Division's Exhibit D. The protest letter is not date-stamped, nor is a copy of the envelope in the court file to check the date of the post-mark.

[12] Division's Exhibit E.

[13] *See* Note 24, *infra.*

[14] Division's Exhibit F.

[15] OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

[16] OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.

(2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judge.

(3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

(4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.

(5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.

(6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts and that one of the parties is entitled to a decision in its favor as a matter of law, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to *OAC* 710:1-5-10, 710:1-5-40 and 710:1-5-41. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.

(7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial summary

> disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge.

3. 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.[17]

4. 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.[18]

5. For the 2005 tax year, "All returns, except corporate 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."[19]

6. With exceptions not pertinent in this matter, 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.[20]

7. 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

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

[18] OKLA. STAT. ANN. tit. 68, § 2373 (West 2001), which in pertinent part states as follows, to-wit:

> …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]

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

[20] *See* Note 18. *See also* OKLA. STAT. ANN. tit. 68, § 216 (West 2001).

> 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.

8. The rules promulgated pursuant to the Administrative Procedures Act[21] are presumed to be valid and binding on the persons they affect and have the force of law.

9. General principles of equity may not override statutory requirements for timely filing of tax refund claims.[22] 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.[23]

DISCUSSION

The original due date of the Protestant's 2005 Return was April 15, 2006.[24] 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 2005 Return was April 15, 2009. The Protestant filed her 2005 Return on June 19, 2009, which is more than three (3) years from the due date of the 2005 Return.

The Protestant asserts that the state and federal returns for the 2005 Tax Year were "…mailed…at the same time as I've done every year in the past,"[25] but the Protestant has failed to present any proof of timely filing.

Based upon the record, there is no substantial controversy as to the material facts and the Division is entitled to a decision in its favor as a matter of law.

DISPOSITION

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

OKLAHOMA TAX COMMISSION

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[21] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002).

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

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

[24] *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."

[25] *See* Note 11, *supra*.

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."