JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-12-14-05 / NON-PRECEDENTIAL**
ID: **P-10-088-K**
DATE: **DECEMBER 14, 2010**
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, Acting General Counsel, Office of the General Counsel, Oklahoma Tax Commission. Notice of the *Motion for Summary Disposition* filed by the Division was served on FORMER SPOUSE on or about September 21, 2010.

STATEMENT OF THE CASE

Protestant filed an original 2004 Oklahoma income tax return on or about August 31, 2009. An income tax refund of $1,153.00 was claimed by the return. The Division by letter of September 11, 2009, notified Protestant that the refund was denied as barred by statute. Protestant timely protested the denial. Protestant did not request a hearing in the letter of protest.

On March 31, 2010, the protest was referred to the Office of the Administrative Law Judges for further proceedings pursuant to the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Office of Administrative Law Judges[2]. The protest was docketed as Case No. P-10-088-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled for May 20, 2010, by *Prehearing Conference Notice* issued April 20, 2010.[4] By *Status Report in Lieu of Pre-hearing Conference ("Report")* filed May 19, 2010, counsel for the Division advised that after speaking with Protestant it was her understanding that Protestant intended to withdraw the protest. Pursuant to the *Report*, the parties were directed to file an additional status report by June 21, 2010. By *Status Report* filed June 21, 2010, the parties requested additional time to submit Protestant's withdrawal of protest. Pursuant to this report the parties were given to July 23, 2010 to file a status report. By *Status Report* filed July 23, 2010, Division's counsel advised that Protestant had not submitted any correspondence or records regarding the protest.

On July 28, 2010, a *Motion for Summary Disposition* ("*Motion*") was filed by the Division.[5] Attached to the *Motion* were Exhibits A through C and a verification of the statement

[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[3] *OAC*, 710:1-5-22(b).

[4] *OAC*, 710:1-5-28(a).

[5] *OAC*, 710:1-5-38.

of facts. By letter dated July 29, 2010, Protestant was advised that a response to the *Motion* could be filed on or before August 27, 2010, at which time the *Motion* would be submitted for decision. Protestant did not file a response. Upon review of the file it was determined that a copy of the *Motion* should also be served on FORMER SPOUSE. On September 21, 2010, a copy of the *Motion* and verification was served on FORMER SPOUSE. By letter dated September 22, 2010, FORMER SPOUSE was notified that she could file a response to the *Motion*. FORMER SPOUSE did not file a response. The *Motion* and protest were submitted for decision on October 8, 2010.[6]

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, are:

> 1. On or about September 2, 2009, PROTESTANT and FORMER SPOUSE ("Protestants") filed an original 2004 Oklahoma resident income tax return. (Exhibit "A"). The return sought a refund of $1,153.00.
>
> 2. The Division examined Protestants' income tax filing records maintained by the Oklahoma Tax Commission and determined there was no prior return filed for that year. By letter dated September 11, 2009, the Oklahoma Tax Commission notified Protestant that it had denied Protestants' request for a refund in Protestants' 2004 return filed on September 2, 2009 for the reason that it was barred by the three (3) year limitation period for claiming tax refunds. (Exhibit "B").
>
> 3. On September 22, 2009, the Division received a letter of protest stating that the information to file the return has only recently provided Protestant PROTESTANT by FORMER SPOUSE following their divorce [sic]. (Exhibit "C").

3. Neither Protestant nor FORMER SPOUSE has requested a hearing with respect to this matter.

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).

---

[6] *OAC*, 710:1-5-39(a).

2. The issue presented for decision is whether the 2004 income tax refund, filed August 31, 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. 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).

6. 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.

7. Tax year 2004 returns made on the basis of a calendar year were due and the estimated and/or withheld income taxes paid with respect to the tax year were deemed paid on or about April 15, 2005. See *OAC*, 710:50-3-3(a). To be timely, a claim for refund for the 2004 tax year was required to be filed on or before April 15, 2008. 68 O.S. 2001, § 2373.

8. General principles of equity may not override statutory requirements for timely filing of tax refund claims. Oklahoma Tax Commission Order No. 2006-03-23-07 (Prec.). See ***Republic Petroleum Corp. v. United States***, 613 F.2d 518, 527 (5th Cir. 1980).

9. The income tax refund at issue is barred by operation of law.

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 2004 income tax claim for refund of PROTESTANT and FORMER SPOUSE, 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."