JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-12-14-06 / NON-PRECEDENTIAL**
ID: **P-10-345-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, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

Protestant filed original Oklahoma Income Tax Returns for tax years 2004 and 2005 on December 29, 2009 and December 30, 2009, respectively. The returns reflect signature dates of December 18, 2009. The returns claimed refunds in the aggregate amount of $1,980.00. The Division by letters of January 4, 2010 and January 5, 2010, notified Protestant that the refunds for tax years 2004 and 2005 were denied as barred by statute, respectively. Protestant timely protested the denials. Protestant did not request a hearing in the letter of protest.

On June 1, 2010, 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-09-345-K and assigned to ALJ, Administrative Law Judge.[4]

A pre-hearing conference was scheduled for July 27, 2010, by *Prehearing Conference Notice* issued June 22, 2010.[5] Pursuant to the conference, a *Prehearing Conference Order* was issued setting forth the procedure by which the protest would be submitted for decision.[6]

The *Account Maintenance Division's Motion for Summary Disposition* ("*Motion*") was filed September 1, 2010.[7] A verification of the statement of facts and Exhibits A through E were attached to the *Motion*. Protestant's verified response to the *Motion* was filed September 20,

[1] 68 O.S. 2001, § 201 et seq.

[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*, 710:1-5-28(b).

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

2010, with several documents attached. The protest was submitted for decision on September 24, 2010.[8]

FINDINGS OF FACT

Upon review of the file and records, including the *Motion* and attached exhibits, and the response to the *Motion* and attachments, 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 December 29, 2009, [Protestant] filed an original 2004 Oklahoma resident income tax return. The return sought a refund of $994.00. (Exhibit "A").
>
> 2. According to an examination of Protestant's income tax records maintained by the Oklahoma Tax Commission, it was revealed that no prior return for these years were [sic] filed by Protestant.
>
> 3. On December 30, 2009, Protestant filed an original 2005 Oklahoma resident income tax return. The return sought a refund of $986.00. (Exhibit "B").
>
> 4. By letters dated January 4, 2009 [sic] and January 5, 2009 [sic] respectively, the Division notified Protestant that it had denied their [sic] requests for refunds in Protestant's 2004 and 2005 returns for the reason that both of them was [sic] barred by the three (3) year limitation period for claiming tax refunds. (Exhibits "C" and "D").
>
> 5. On February 23, 2010, the Division received Protestant's letter of protest to the refund denials. In the letter, Protestant cited personal hardship as a reason for the untimely filing of the returns. (Exhibit "E").

3. Protestant disputes the statement that "personal hardship [is] a reason for the untimely filing of the returns." Response to Motion for Summary Disposition. Whether the untimely filing of the returns is due to personal hardship or other reasons, including "[t]ime spent working as a town official" are not material facts to the disposition of the protest.

4. Protestant did not request an oral hearing in the letter of protest to the denial of the refund claims and has not requested a hearing in any correspondences with respect to this matter.

5. The amount in controversy is $1,980.00.

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

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 Protestant's 2004 and 2005 income tax refunds, filed December 29th and 30th 2009; respectively are barred by statute.

3. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act ("Act")[9], 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 and 2005 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 years were deemed paid on or about April 15, 2005 and April 15, 2006, respectively. 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 and for the 2005 tax year on or before April 15, 2009. 68 O.S. 2001, § 2373.

[9] 68 O.S. 2001, § 2351 et seq., as amended.

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).

7. Protestant's 2004 and 2005 income tax refunds are barred by operation of law. Accordingly, the protest to the denial of the refund claims 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."