

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2011-02-22-02 / NON-PRECEDENTIAL  
**ID:** P-10-086-K  
**DATE:** FEBRUARY 22, 2011  
**DISPOSITION:** DENIED  
**TAX TYPE:** ESTATE  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Estate of DECEDENT (hereinafter "Estate") is represented by ATTORNEY 1 and ATTORNEY 2, Attorneys at Law, LAW FIRM. The Estate Tax Section of 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

Decedent, DECEDENT died on November 5, 2006. An Oklahoma Estate Tax Return on the Estate of the Decedent was filed on January 8, 2008. The Division audited the return and by Order dated February 5, 2008, assessed interest only against the Estate from the due date of the return to the date of filing. The Estate remitted the assessed amount on February 22, 2008. An Order Releasing Taxable Estate was issued by the Tax Commission on February 29, 2008.

On February 22, 2010, the Estate filed an amended Oklahoma Estate Tax Return seeking a refund of the estate tax previously paid. By letter dated March 5, 2010, the Division denied the Estate's refund request. The Estate timely protested the refund denial by *Application for Hearing before the Oklahoma Tax Commission* filed March 26, 2010.

Pursuant to the request of this office, the Division referred its file to the Office of the Administrative Law Judges on April 27, 2010, for further proceedings consistent with the Uniform Tax Procedure Code<sup>1</sup>, the Oklahoma Estate 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-10-086-K and assigned to ALJ, Administrative Law Judge.<sup>4</sup>

A pre-hearing conference was scheduled for May 20, 2010, by *Prehearing Conference Notice* issued on April 20, 2010.<sup>5</sup> The prehearing conference was considered held pursuant to a *Report in Lieu of Prehearing Conference* filed on May 18, 2010. By letter dated May 19, 2010, the

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

<sup>2</sup> 68 O.S. 2001, § 801 et seq.

<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.

parties were directed to file a status report. By *Status Report* filed July 22, 2010, the parties advised of their agreement to submit the protest for decision by stipulations and briefs, and proposed a procedural schedule. Pursuant to the parties' request, a *Scheduling Order* setting forth the procedure by which the protest would be submitted for decision was issued July 27, 2010.

A *Joint Stipulation of Facts and Statement of Issues* ("Joint Stipulation") with Exhibits 1 through 7 attached was filed September 27, 2010. *Applicant's Position Brief* was filed October 15, 2010. *Division's Memorandum Brief* was filed October 28, 2010. *Applicant's Reply to the Division's Memorandum Brief* was filed November 12, 2010. On December 13, 2010, the record was closed and the protest was submitted for decision.

### FINDINGS OF FACT

Upon review of the file and records, including the *Joint Stipulation* and exhibits, and the pleadings of the parties, the undersigned finds:

A. The parties stipulate to the following:

1. On November 5, 2006, DECEDENT ("Decedent") died testate in CITY, Oklahoma. On March 5, 2007 a Petition for Probate of the Will was filed in COUNTY District Court, and on March 26, 2007 the probate Court ordered the Will admitted to probate.

2. On January 8, 2008, the Estate filed an Oklahoma Estate Tax Return, which reflected distributions made to charitable organizations and to some collateral heirs of the Decedent and to non-collateral devisees, which were consistent with the terms of the Will dated May 1, 1996. The return reported a net taxable Oklahoma estate of \$526,343.59, and reported \$48,888.10 in estate tax due which was remitted with the return.

3. Following an audit of the return, on February 5, 2008 the Oklahoma Tax Commission issued an Order of Assessment assessing additional estate tax due in the amount of \$3,055.50<sup>6</sup>. On February 22, 2008 the Oklahoma Tax Commission received payment in full of the additional assessed amount.

4. On February 29, 2008 the Oklahoma Tax Commission issued an Order Releasing Taxable Estate, which subsequently was filed in the probate case.

5. On March 26, 2009 the probate Court entered an Order determining that the Will should be set aside and the probate should proceed as though Decedent died intestate.

6. On August 14, 2009 the Oklahoma Court of Civil Appeals handed down its opinion in *In the Matter of the Estate of Ray Hester*, 80 OBJ 1722 (No.

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<sup>6</sup> The amount assessed consists of interest only accrued from the due date of the return to the date of filing.

106,023) holding that the collateral heir estate tax exemption contained in 68 O.S. Supp. 2006 § 809(A)(8) applied to estates of decedents who died in 2006. The opinion was withdrawn from publication by the Oklahoma Supreme Court on a pending Petition for Certiorari on January 11, 2010.

7. Because the Will was set aside by the probate Court on March 26, 2009, the Decedent's estate passed entirely to her collateral heirs at law thereby requiring that the estate tax return be amended. On February 22, 2010 the Estate filed an Amended Oklahoma Estate Tax Return reflecting distributions only to the Decedent's collateral heirs, including a previously omitted heir. The amended return reported a net taxable Oklahoma estate of \$615,451.21, but subtracted that amount as a Line 19 exemption, reported no estate tax due, and sought a refund of the \$48,888.10 previously remitted with the original return. A Schedule attached to the amended return cited reliance on the Court of Civil Appeals' opinion in *Hester* for the 100% exemption.

8 By letter dated March 5, 2010, the Division notified the Estate of its denial of the refund request contained in the amended return for the reasons that the February 5, 2008 Order of Assessment became final when no objection to it was filed in sixty days, and no request to adjust or abate the estate tax due was received within one year of the Order of Assessment.

9. On March 26, 2010 the Estate's written protest to the refund denial in the form of an *Application for Hearing before the Oklahoma Tax Commission* was filed in the Office of the Administrative Law Judge of the Oklahoma Tax Commission.

### ISSUES AND CONTENTIONS

The issues presented for decision as set forth by the parties are:

1. Whether the Estate's refund claim contained in the amended return is timely under the provision of the Oklahoma Estate Tax Code in effect when it was filed, and if so,
2. Whether the Estate is entitled to the \$1,000,000.00 exemption for bequests to collateral heirs contained in 68 O.S. Supp. 2006 § 809(A)(8).

With respect to the first issue, the Estate contends that the refund claim contained in the amended estate tax return filed February 22, 2010 is timely. In support of this contention, the Estate argues that the sixty (60) day limitation period of § 815(B) does not apply because the Division did not assess a tax against the Estate, but only interest. The Estate further argues that the one (1) year limitation periods of § 815(B) do not apply; first because there was no error of omission or inclusion of property on the return, and second because the Estate's cause of action did not exist until after the probate Court determined the Will was invalid and ordered the distribution of the Decedent's estate as if she died intestate. Finally, the Estate argues that the refund provisions of the Uniform Tax

Procedure Code apply in this case since the audit performed on the return was an “office audit”, citing 68 O.S. § 221(I).

With respect to the second issue, the Estate contends that it is entitled to the \$1,000,000.00 exemption for bequests to collateral heirs, citing *In the Matter of the Estate of Ray Hester*, Case No. 106,023 (Okla.CCA.Div.III Aug. 14, 2009). In support of this contention, the Estate argues that the Decedent died within the applicable statutory time frame for claiming the \$1,000,000.00 exemption. The Estate further argues that it erroneously reported and remitted estate taxes on the collateral heir distribution in reliance on the instructions accompanying the estate tax return and did not discover the mistake until after the passing of the one year limitation period when comparing the instructions with the language of the applicable statute.

With respect to the first issue, the Division contends that the Estate’s refund claim is untimely under the Estate Tax Code. In support of this contention, the Division argues that the Estate’s refund claim is based on an error of inclusion of property on the return and that the one year limitation period found in the first paragraph of § 815(B) is applicable. The Division further argues that the assessment in this case clearly constitutes an order of assessment within the ambit of § 815(B) and triggers the limitation period for filing a refund claim.

With respect to the second issue, the Division contends that the collateral heir exemption does not apply to estates in which the decedent died in 2006. In support of this contention, the Division argues that the collateral heir exemption became effective on January 1, 2007, the date specified by the Legislature. The Division further argues that because the Court of Appeals’ opinion in *Hester* was withdrawn from publication by the Supreme Court of Oklahoma, it lacks any precedential or persuasive value.

Because the undersigned concludes as a matter of law that the Estate’s refund claim is time barred, the merits of the second issue are not addressed.

### 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. Supp. 2004, § 815(B).
2. The refund provisions of the Uniform Tax Procedure Code, in particular § 227<sup>7</sup> do not apply to estate tax refund claims. 68 O.S. 2001, § 227(f); *Estate of Kasishke v. Oklahoma Tax Commission*, 1975 OK 133, 541 P.2d 848, 851. Section 227(f) provides in pertinent part:

The provisions of this section shall not apply: \* \* \* (2) to estate tax because the payment of such tax is covered by an order of the Tax Commission and the estate and interested parties are given notice that

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<sup>7</sup> In general, § 227 permits a taxpayer to file a claim for refund of any taxes paid through error of fact, or computation, or misinterpretation of law within three (3) years of the date of the erroneous payment.

Commission's position and computation of the tax will become final unless they protest and resist the payment thereof as provided by statute \* \* \*.

3. "The state cannot be sued for the recovery of taxes paid in absence of legislative consent to such suit, and hence the right to recover taxes so paid must be found in a statute." *Sullivan v. Oklahoma Tax Commission*, 1954 OK 266, 283 P.2d 521, head note 1. The right to a tax refund can arise only through legislative enactment, and the Legislature may require a refund claim to be brought within a specified time or forever be barred. *Adair v. Clay*, 1988 OK 77, ¶ 23, 780 P.2d 650, 655; *Stallings v. Oklahoma Tax Commission*, 1994 OK 99, ¶ 15, 880 P.2d 912, 917. "When examining a statutory remedy to recover tax payments, we have said that '[g]enerally, when a statute creates both a right and a remedy for its enforcement the statutory remedy is exclusive.'" *Apache Corp. v. Oklahoma Tax Commission*, 2004 OK 48 at ¶ 10, 98 P.3d 1061, 1064, citing *R.R. Tway, Inc. v. Oklahoma Tax Commission*, 1995 OK 129, 910 P.2d 972, 978.

4. The refund of estate taxes is governed by the provisions of § 815 which provide in pertinent part:

(A)(1). The executor, administrator, \* \* \* shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Oklahoma Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate.  
\* \* \*.

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(B). Upon receipt of such return, the Tax Commission may, for the purpose of determining the value of the estate or any transfer, audit the books of account and records of any executor, administrator, trustee, devisee, heir, corporation, bank, trust company or transferee, and may appraise the property transferred or returned and investigate and include any property or transfers which may have been omitted from the return and shall thereupon compute, and by order assess, the tax, together with any interest or penalty which it may find to be due, and shall forthwith notify the administrator, executor, trustee or transferee and such person's attorney of record of such assessment by furnishing a detailed statement of the values of the estate or transfers, as fixed by the Tax Commission, and the amount of tax assessed. Such notice may be delivered in person or may be by mail addressed to such administrator, executor, trustee, transferee and such person's attorney of record at the last-known post office addresses, \* \* \* and upon receipt of such notice of assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided, however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or assessment or any appraisal made by the Tax Commission, such person shall, within sixty (60) days from the date of mailing of such notice, file with the Tax Commission an objection, in writing, specifically setting forth the grounds of the objections, and thereupon the Tax Commission may grant a

hearing, and upon such hearing may adjust the matters in controversy and correct the assessment as justice may require. Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error of omission or inclusion or property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of the objection, and thereupon the Tax Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require.

An administrator, executor, trustee or any interested party who fails to file an objection within the sixty-day time period prescribed by this section may, within one (1) year from the date of mailing of the notice, request the Tax Commission to adjust or abate the assessment for reasons other than an error of omission or inclusion of property on return, if the administrator, executor, trustee or any interested party can demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous. If the Tax Commission determines that the proper showing has been made, the assessment or portion thereof determined to be clearly erroneous shall be deemed not to have become final and absolute. No hearing to adjust or abate a clearly erroneous assessment may be granted after the denial by the Tax Commission of such a request. An order of the Tax Commission denying a request of an administrator, executor, trustee or any interested party to adjust or abate an assessment alleged to be clearly erroneous is not an appealable order under Section 225 of this title. No proceeding instituted by the Tax Commission to collect a tax liability may be stayed because of a request made by a taxpayer to adjust or abate an assessment alleged to be clearly erroneous.

5. In *Estate of Kasishke, supra*, the taxpayer reported and remitted estate taxes on the value of certain turnpike bonds. The Tax Commission audited the return and issued an order assessing additional estate tax on three items not related to the transfer of the turnpike bonds. Pursuant to § 815, the taxpayer timely protested<sup>8</sup> the order with respect to the adjustment of the three items. More than two years after the protest was filed, the taxpayer filed a claim for refund of the estate taxes paid on the value of the turnpike bonds. The Supreme Court of Oklahoma at page 852 held that the taxpayer was not entitled to a refund of any portion of the estate taxes paid with the originally filed return since the claim was not filed within the thirty (30) day period specified by § 815.

6. Here, on January 8, 2008, the Estate filed an estate tax return reporting the net taxable value of the estate passing to collateral heirs and paying estate tax on said value. The Division accepted the return as filed and issued an assessment order assessing interest only which interest had accrued from the due date of the return to the date of filing. See, 68 O.S. 2001, § 806(a). A little over two (2) years later, the Estate files an amended estate tax return claiming an exemption

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<sup>8</sup> At that time § 815 required an objection to an assessment order to be filed within thirty (30) days after the order was mailed.

of the value of the net estate passing to the collateral heirs and a refund of the estate tax previously paid on the value of the estate passing to the collateral heirs.

While no provision of the Estate Tax Code prohibits the Estate from filing an amended or corrected estate tax return to conform with the order of the probate Court, § 815 prevents a taxpayer from changing its position with respect to the taxability of an item unless the objection is filed within one (1) year of the mailing of the assessment notice. The Estate's amended return was not filed within one (1) year of the mailing of the Order by the Division. Accordingly, the refund claim is time barred.

7. Estoppel generally does not apply against the state acting in its sovereign capacity because of unauthorized acts of its officers, *State ex rel. Cartwright v. Dunbar*, 1980 OK 15, 618 P.2d 900; or because of mistakes or errors of its employees, *State ex rel. Cartwright v. Tidmore*, 1983 OK 116, 674 P.2d 14; *State ex rel. Oklahoma Tax Commission v. Emery*, 1982 OK CIV APP 13, 645 P.2d 1048. Application of estoppel is not allowed against state, political subdivisions, or agencies, unless the facts and circumstances implicate the interposition of estoppel would further some prevailing principal of public policy or interest. *Tice v. Pennington*, 2001 OK CIV APP 95, 30 P.3d 1164; *Burdick v. Independent School District*, 1985 OK 49, 702 P.2d 48, 26 Ed. Law Rep. 486. Where there is no power to act, a public official cannot bind a government entity even if he or she mistakenly or falsely asserts such authority. *Hiland Dairy Foods Company, LLC v. Oklahoma Tax Commission*, 2006 OK CIV APP 68, ¶ 11, 136 P.3d 1072, citing *Indiana Nat'l Bank v. State Dept. of Human Services*, 1993 OK 101, 857 P.2d 53, 64.

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 (5<sup>th</sup> Cir. 1980).

9. The protest to the denial of the Estate's refund claim should be denied.

### DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest to the denial of the refund claim of the Estate of DECEDENT, be denied as untimely filed.

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.