JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2011-03-17-02 / NON-PRECEDENTIAL**
ID: **CR-10-009-H**
DATE: **MARCH 17, 2011**
DISPOSITION: **DENIED**
TAX TYPE: **WITHHOLDING**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

OIL COMPANY ("Claimant") appears pro se,[1] through ACCOUNTANT, Staff Accountant. The Credits and Refunds Section of the Account Maintenance Division ("Division"), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On July 13, 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 July 19, 2010, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division. On July 22, 2010, a letter was mailed to the parties stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number CR-10-009-H, and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[4] The letter also advised the parties that this matter had been set for hearing on August 30, 2010, at 1:30 p.m., with position letters or memorandum briefs due on or before August 23, 2010.[5]

On August 23, 2010, the Division filed its Memorandum Brief with Exhibits A through D attached thereto. The Claimant did not file a position letter or memorandum brief.

On August 30, 2010, at 1:30 p.m. the hearing was held as scheduled. The Claimant did not appear at the hearing. The Division called one (1) witness, AUDITOR,[6] Credits and Refunds

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[1] **"[P]ro se"** (proh **say** *or* **see**), *adv.* & *adj.* [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] OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2010). The letter was mailed to the Claimant c/o ACCOUNTANT, OIL COMPANY at ADDRESS.

[6] AUDITOR has been employed as an Auditor since May 2007.

Section of the Account Maintenance Division, Oklahoma Tax Commission, who testified about the audit of the claim for refund and as custodian of the Division's records. The Division's Exhibits A through D were identified, offered, and admitted into evidence. At the conclusion of the hearing the record in this matter was closed and this case was submitted for decision on August 30, 2010.

On October 13, 2010, a letter was mailed to the parties' Representatives advising this matter was being withdrawn from submission due to the need for additional information and informed the parties' Representatives that a status conference was set for October 27, 2010, at 1:30 p.m. On October 25, 2010, a Memorandum from the undersigned was transmitted electronically to the parties' Representatives in preparation for the status conference. On October 27, 2010, at 1:30 p.m. the Status Conference was held as scheduled. Both parties' Representatives appeared by telephone. On October 27, 2010, at 2:14 p.m. the Court Clerk received a facsimile[7] from ACCOUNTANT consisting of a copy of a letter dated October 27, 2010, a copy of the Claimant's Fourth Quarter 2006 Withholding Tax Report, and a copy of the front and back of Check #0000218045 dated January 26, 2007, for $5,145.77. On October 28, 2010, a letter was mailed to the parties' Representatives acknowledging receipt of ACCOUNTANT'S facsimile, which would be admitted as ALJ's Exhibit 1, and informing the parties' Representatives that a status report would be due on or before November 29, 2010, at which time the undersigned would determine whether this case would be reset for hearing to receive additional testimony from the Division for purposes of the record.

On November 29, 2010, the Division filed the Status Report advising that the Claimant's Fourth Quarter 2006 Withholding Tax Report had been examined and the Division's position remained unchanged.

On December 10, 2010, a Memorandum was electronically transmitted to the parties' Representatives requesting the Division to provide a complete accounting of the Claimant's Withholding Account with copies of screen prints, reports, and checks from the Fourth Quarter of 2005 through the latest filing. On December 28, 2010, the Division filed a Memorandum with the Court Clerk explaining the Division's accounting of the Claimant's Withholding Account, along with copies of documents grouped into two (2) bundles: payroll withholding and royalty interest withholding.[8] A letter was mailed to the parties' Representatives stating that the additional information had been received and the record in this matter was closed and submitted for decision on January 11, 2011.

FINDINGS OF FACT

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

[7] On October 29, 2010, the Court Clerk received a hard-copy of the letter and attachments thereto.

[8] The Memorandum, Bundle One (1) and Bundle Two (2) are identified and admitted into evidence as ALJ's Exhibit 2, ALJ's Exhibit 3, and ALJ's Exhibit 4, respectively.

1. The Claimant has two (2) withholding tax accounts. The first account is a "Monthly" payroll withholding account ("BTWF Account").[9] The second account is a "Quarterly" royalty interest withholding ("RITWF Account").[10]

2. On October 6, 2006, the Division received the Claimant's Oklahoma Nonresident Royalty Interest Withholding Tax Report for the Fourth Quarter of 2005 ("RITWF 4th Quarter 2005 Report"), along with Check #0000214954 in the amount of $7,127.44. The RITWF 4th Quarter 2005 Report was originally due by January 30, 2006. The RITWF 4th Quarter 2005 Report was filed late and included penalty and interest, as follows, to-wit:

Withholding Tax:	$5,878.29
Interest:	661.32
Penalty:	587.83
Total:	$7,127.44[11]

3. The Division correctly posted the RITWF 4th Quarter 2005 Report, including the remittance of $7,127.44, to the Claimant's RITWF Account.[12]

4. On October 31, 2006, the Division received Check #0000215503 in the amount of $5,880.44, without a withholding tax report. The Division created a "dummy" withholding tax report and applied the $5,880.44 to the Fourth Quarter of 2006 ("4th Quarter 2006) BTWF Account.[13]

5. The Division incorrectly posted Check #0000215503 to the Claimant's monthly BTWF Account for the 4th Quarter of 2006.[14] Check #0000215503 was a duplicate payment for the 4th Quarter 2005 Report on the Claimant's RITWF Account.[15]

[9] ALJ's Exhibit 3.

[10] ALJ's Exhibit 4.

[11] *Id.*

[12] *Id.*

[13] Division's Exhibit A. Testimony of AUDITOR.

[14] ALJ's Exhibit 3.

[15] Division's Exhibit B.

6. According to Tax Commission records, the Claimant filed reports and remittances for its "Monthly" BTWF[16] account:

Reporting Period	Payment Received	Tax Due
October 2006	11/10/06	$ 605.00
November 2006	12/10/06	$ 834.00
December 2006	01/10/07	$1,284.00

7. On January 26, 2007, the Division received Check #0000218045 in the amount of $5,145.77, without a report. The Division created a "Dummy" report and correctly applied Check #0000218045 to the Claimant's Quarterly RITWF Account for the 4th Quarter 2006.[17]

8. On April 21, 2010, the Taxpayer Assistance Division received an e-mail from the Claimant requesting a refund or credit of the $5,880.44 paid for the *4th Quarter 2005*. The basis of the claim was that the Claimant had paid the Tax Commission twice for the *4th Quarter 2005*. The first check #214954 for $7,127.44 for withholding tax, penalty, and interest was issued on October 6, 2006, and cashed by the Tax Commission on October 12, 2006. The second check #215503 for $5,880.44 for withholding tax was issued on October 27, 2006, and cashed by the Tax Commission on November 12, 2006. The Claimant further stated the second check should have been voided, but the Claimant had changed over to a new software system and some checks were reissued in error.[18]

9. On June 24, 2010, the Division mailed a letter[19] to the Claimant denying the refund for the *4th Quarter 2006*, which states in pertinent part as follows, to-wit:

> Any taxpayer who has paid any such tax may, within three (3) years of payment thereof file with the Oklahoma Tax Commission a verified claim for refund of such tax erroneously paid.

10. On July 9, 2010, the Division received a timely protest to the denial of the claim for refund for the *4th Quarter 2005*.[20]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of his proceeding.[21]

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[16] *See* Note 14, *supra*.

[17] Testimony of AUDITOR. *See* ALJ's Exhibits 1 and 4.

[18] *See* Note 15, *supra*. The Division's Auditor testified incorrectly that the claim was for the *4th Quarter of 2006.*

[19] Division's Exhibit C.

[20] Division's Exhibit D.

2. Section 227 of Title 68[22] provides as follows, to-wit:

(a) Any taxpayer who has paid to the State of Oklahoma, through error of fact, or computation, or misinterpretation of law, any tax collected by the Tax Commission may, as hereinafter provided, be refunded the amount of such tax so erroneously paid, without interest.

(b) Any taxpayer who has so paid any such tax may, within three (3) years from the date of payment thereof file with the Tax Commission a verified claim for refund of such tax so erroneously paid. The Tax Commission may accept an amended sales tax, withholding tax or other report or return as a verified claim for refund if the amended report or return establishes a liability less than the original report or return previously filed.

(c) Said claim so filed with the Tax Commission, except for an amended report or return, shall specify the name of the taxpayer, the time when and period for which said tax was paid, the nature and kind of tax so paid, the amount of the tax which said taxpayer claimed was erroneously paid, the grounds upon which a refund is sought, and such other information or data relative to such payment as may be necessary to an adjustment thereof by the Tax Commission. It shall be the duty of the Commission to determine what amount of refund, if any, is due as soon as practicable after such claim has been filed and advise the taxpayer about the correctness of his claim and the claim for refund shall be approved or denied by written notice to the taxpayer.

(d) If the claim for refund is denied, the taxpayer may file a demand for hearing with the Commission. The demand for hearing must be filed on or before the thirtieth day after the date the notice of denial was mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred.

(e) Upon the taxpayer's timely filing of a demand for hearing, the Commission shall set a date for hearing upon the claim for refund which date shall not be later than sixty (60) days from the date the demand for hearing was mailed. The taxpayer shall be notified of the time and place of the hearing. The hearing may be held after the sixty-day period provided by this subsection upon agreement of the taxpayer.

(f) The provisions of this section shall not apply: (1) to refunds of income tax erroneously paid, refunds of which tax shall be payable out of the income tax adjustment fund as provided by law; (2) to estate tax because the payment of

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[21] OKLA. STAT. ANN. tit. 68, § 207 and § 227 (West 2001).

[22] *Id. See* OKLA. ADMIN. CODE § 710:65-11-1.

> such tax is covered by an order of the Tax Commission and the estate and interested parties are given notice that Commission's position and computation of the tax will become final unless they protest and resist the payment thereof as provided by statute; nor, (3) in any case where the tax was paid after an assessment thereof was made by the Tax Commission which assessment became final under the law.

3. Estoppel generally does not apply against the state acting in its sovereign capacity because of the unauthorized acts of its officers,[23] or because of mistakes or errors of its employees.[24] Application of estoppel is not allowed against state, political subdivisions, or agencies, unless the interposition of estoppel would further some principal of public policy or interest.[25] 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.[26]

4. General principles of equity may not override statutory requirements for timely filing of tax refund claims.[27] 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.[28]

5. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[29]

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[23] *State ex rel. Cartwright v. Dunbar*, 1980 OK 15, 618 P.2d 900.

[24] *Id. See State, ex rel. Oklahoma Tax Com'n v. Emery*, 1982 OK CIV APP 13, 645 P.2d 1048.

[25] OTC Order No. 2003-12-16-06 (December 16, 2006). *See Burdick v. Independent School Dist. No. 52 of Oklahoma County*, 1985 OK 49, ¶5, 702 P.2d 48:

> Generally, Oklahoma jurisprudence does not allow the application of estoppel against the state, the political subdivisions or agencies, unless its interposition would further some principle of public policy or interest. The rationale for recognizing a government shield from estoppel is to enable the state to protect public policies and interests from being jeopardized by judicial orders preventing full performance of legally-imposed duties.

[26] *Hiland Dairy Foods Co., LLC v. Oklahoma Tax Com'n*, 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.

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

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

[29] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

> In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

6. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[30]

DISCUSSION

There is no dispute that the Claimant paid the duplicate payment for the *4th Quarter of 2005* RITWF account on October 31, 2006, and that the claim for refund was received by the Division on April 14, 2010, which is beyond the three (3) year time period. Pursuant to Section 227 of Title 68,[31] the Claimant had three (3) years from the date of the payment to file a claim for refund, which in this matter was October 31, 2009.

The Claimant has failed to meet its burden of proof that the Division's denial of its claim for refund for the *4th Quarter of 2005* RITWF account was incorrect and in what respects.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protest should 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."

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

> …"preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[30] *See Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

[31] *See* Note 21, *supra*.