

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2011-04-21-03 / NON-PRECEDENTIAL  
**ID:** P-10-1626-K  
**DATE:** APRIL 21, 2011  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestants, HUSBAND AND WIFE, appear pro se. The Account Maintenance Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

### STATEMENT OF THE CASE

Protestants filed original Oklahoma Income Tax Returns for tax years 2005 and 2006 on or about April 10, 2010 and June 21, 2010, respectively<sup>1</sup>. Income tax refunds in the aggregate amount of \$1,728.00 were claimed on the returns. The Division by letters of May 6, 2010 and July 1, 2010, notified Protestants that the refunds were denied as barred by statute. The refund claim denials were timely protested. A hearing was not requested in either letter of protest.

On November 18, 2010, the Division referred the protests to the Office of the Administrative Law Judges for further proceedings pursuant to the Uniform Tax Procedure Code<sup>2</sup> and the Rules of Practice and Procedure before the Office of Administrative Law Judges<sup>3</sup>. The protests were docketed as Case No. P-10-1626-K and assigned to ALJ, Administrative Law Judge.<sup>4</sup>

A pre-hearing conference was scheduled for January 5, 2011, by *Prehearing Conference Notice* issued December 10, 2010.<sup>5</sup> Pursuant to the conference, a scheduling *Order* was issued setting forth the procedure by which the protests would be submitted for decision.<sup>6</sup>

The *Division's Motion for Summary Disposition* ("Motion") was filed January 14, 2011.<sup>7</sup> A verification of the statement of facts and Exhibits A through I-3 were attached to the *Motion*. Protestants did not file a response to the *Motion*. On March 16, 2001, the record was closed and the *Motion* was submitted for decision.<sup>8</sup>

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<sup>1</sup> Signature dates reflected on page 2 of each of the returns. Exhibits B-2 and G-2.

<sup>2</sup> 68 O.S. 2001, § 201 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(a).

<sup>6</sup> OAC, 710:1-5-28(b).

<sup>7</sup> OAC, 710:1-5-38.

<sup>8</sup> OAC, 710:1-5-38(b)(6) and 710:1-5-39(a).

**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 protests are not in dispute and the issue is one of law.

2. The material facts as set forth in the *Motion*, STATEMENT OF MATERIAL FACTS<sup>9</sup>, are:

1. Protestants are protesting the bar of their refund claims for tax years 2005 and 2006.

2. Tax Year **2005** Individual Income Tax returns for non-residents were to be postmarked on or before the statutory due date of April 17, 2006, (emphasis original).

3. On or about April 13, 2010, Protestants filed their original 2005 non-resident income tax return using the paper version of Form 511NR and claiming an overpayment of \$568.00 as a refund. The Return is identified with Document Locator Number 00590010649.<sup>10</sup>

4. On or about May 5, 2010, the Return was processed.

5. On or about May 6, 2010, the Division issued a letter to Protestants which stated that the overpayment claimed on the return was barred by statute.

6. On or about July 1, 2010, Protestants mailed their Protest regarding the 2005 return to the Division for consideration. Protestants aver that they assumed the filing deadline for Oklahoma was the same as Colorado which allows four years since they had a federal extension.

7. On or about August 3, 2010, the Division sent Protestants a letter indicating that the overpayment was barred and the Division could not alter its position.

8. Tax Year **2006** Individual Income Tax returns for non-residents were to be postmarked on or before the statutory due date of April 16, 2007, (emphasis original).

9. On or about June 23, 2010, Protestants filed their original 2006 non-resident income tax return using the paper version of Form 511NR and claiming an overpayment of \$1,160.00 as a refund. The return is identified with Document Locator Number 00690009674 and includes a Federal Form 4686 (extension of time to file) for tax year 2006.<sup>11</sup>

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<sup>9</sup> All references to exhibits are omitted.

<sup>10</sup> Footnote omitted.

<sup>11</sup> Footnote omitted.

10. On or about July 1, 2010, the Return was processed.
  11. On or about July 1, 2010, the Compliance Division<sup>12</sup> issued a letter to Protestants which stated that the overpayment claimed on the return was barred by statute.
  12. On or about July 11, 2010, Protestants mailed their Protest to the Division for consideration.
  13. The protest file was forwarded to the General Counsel Office for review and further processing.
  14. Protestants did not request an oral hearing on the matter.
  15. On January 5, 2011, a Pre-Hearing Conference was held with Protestant, HUSBAND, the ALJ and Division Counsel.
3. The amount in controversy is \$1,728.00.

### 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 Protestants' 2005 and 2006 income tax refunds, filed on or about April 10 and June 21, 2010; respectively, are barred by statute.
3. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act ("Act")<sup>13</sup>, 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

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<sup>12</sup> The July 1, 2010 letter reflects that it was issued by the Account Maintenance Division of the Oklahoma Tax Commission.

<sup>13</sup> 68 O.S. 2001, § 2351 et seq., as amended.

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). An extension of time for filing a return does not "extend the date on which any payment of a state tax is due", 68 O.S. 2001, §§ 216 and 2375(A), and Oklahoma Tax Commission Order Nos. 92-12-29-024 and 92-03-26-033<sup>14</sup>; and does not extend the provisions of § 2373, *Matlock v State, ex rel. Oklahoma Tax Commission*, 2001 OK CIV APP 104, 29 P.3d 614.

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 2005 and 2006 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 April 17, 2006 and April 16, 2007, respectively. See, *OAC*, 710:50-3-3(a). To be timely, a claim for refund for the 2005 tax year was required to be filed on or before April 17, 2009 and for the 2006 tax year on or before April 16, 2010. 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 (5<sup>th</sup> Cir. 1980).

9. Protestants' 2005 and 2006 income tax refunds are barred by operation of law. Accordingly, the protests 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 income tax protests of Protestants, HUSBAND AND WIFE, 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

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<sup>14</sup> Estimated or withheld income taxes are deemed paid on the due date of the return notwithstanding a federal or Oklahoma extension, citing § 216.

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.”